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## Legislation

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## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EC) No 711/97****of 22 April 1997****amending, for the second time, Regulation (EC) No 390/97 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1997 and certain conditions under which they may be fished**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture <sup>(1)</sup>, and in particular Article 8 (4) thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to the terms of Article 8 (4) of Regulation (EEC) No 3760/92, it is incumbent on the Council to establish the total allowable catches (TACs) by fishery or group of fisheries;

Whereas Regulation (EC) No 390/97 <sup>(2)</sup> fixes, for certain fish stocks and groups of fish stocks, the TACs for 1997 and certain conditions under which they may be fished;

Whereas, in order to prevent overfishing, the Community fishery for Atlanto-Scandinavian herring in areas I and II

should be subject to allocation among Member States so that this fishery is properly monitored;

Whereas Regulation (EC) No 390/97 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

The table in the Annex to this Regulation shall replace the first table in Annex I to Regulation (EC) No 390/97.

*Article 2*

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

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

Done at Luxembourg, 22 April 1997.

*For the Council*

*The President*

J. VAN AARTSEN

<sup>(1)</sup> OJ No L 389, 31. 12. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

<sup>(2)</sup> OJ No L 66, 6. 3. 1997, p. 1. Regulation as amended by Regulation (EC) No 551/97 (OJ No L 85, 27. 3. 1997, p. 6).

## ANNEX

| Species: Herring<br><i>Clupea harengus</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Zone: I, II                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| België/Belgique 50 <sup>(1)</sup><br>Danmark 45 500 <sup>(1)</sup> <sup>(2)</sup><br>Deutschland 7 500 <sup>(1)</sup> <sup>(2)</sup><br>Ελλάδα<br>España 150 <sup>(1)</sup><br>France 1 500 <sup>(1)</sup> <sup>(4)</sup><br>Ireland 12 000 <sup>(1)</sup> <sup>(2)</sup><br>Italia<br>Luxembourg<br>Nederland 17 670 <sup>(1)</sup> <sup>(4)</sup><br>Österreich<br>Portugal 150 <sup>(1)</sup><br>Suomi/Finland 700 <sup>(1)</sup><br>Sverige 18 980 <sup>(1)</sup> <sup>(7)</sup> <sup>(8)</sup><br>United Kingdom 25 800 <sup>(1)</sup> <sup>(8)</sup><br>EC 130 000 <sup>(1)</sup><br>TAC 1 500 000 <sup>(1)</sup> | <sup>(1)</sup> Member States must inform the Commission every Tuesday of their landings the preceding week.<br><sup>(2)</sup> Of which no more than 5 450 tonnes may be fished in Faeroese waters and no more than 17 470 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 13 100 tonnes in the Norwegian EEZ.<br><sup>(3)</sup> Of which no more than 220 tonnes may be fished in Faeroese waters and no more than 700 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 520 tonnes in the Norwegian EEZ.<br><sup>(4)</sup> Of which no more than 90 tonnes may be fished in Faeroese waters and no more than 290 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 220 tonnes in the Norwegian EEZ.<br><sup>(5)</sup> Of which no more than 1 060 tonnes may be fished in Faeroese waters and no more than 3 400 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 2 550 tonnes in the Norwegian EEZ.<br><sup>(6)</sup> Of which no more than 1 490 tonnes may be fished in Faeroese waters and no more than 4 760 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 3 570 tonnes in the Norwegian EEZ.<br><sup>(7)</sup> Of which no more than 1 350 tonnes may be fished in Faeroese waters and no more than 4 300 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 3 230 tonnes in the Norwegian EEZ.<br><sup>(8)</sup> Of which no more than 2 840 tonnes may be fished in Faeroese waters and no more than 9 080 tonnes in Norwegian waters and in the fishing zone around Jan Mayen, but no more than 6 810 tonnes in the Norwegian EEZ.<br><sup>(9)</sup> Fishing of this stock is not allowed in Community waters. |

## COUNCIL REGULATION (EC) No 712/97

of 22 April 1997

setting up a specific measure in favour of cephalopod producers permanently based in the Canary Islands

THE COUNCIL OF THE EUROPEAN UNION,

17 December 1992 on the common organization of the market in fishery and aquaculture products<sup>(6)</sup>,

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

HAS ADOPTED THIS REGULATION:

Having regard to the proposal from the Commission<sup>(1)</sup>,

*Article 1*

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

1. Annual aid shall be granted for a transitional period to cephalopod producers permanently based in the Canary Islands.

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

2. The aid referred to in paragraph 1 shall be ECU 108 per tonne for a maximum quantity of 30 000 tonnes per year and may not exceed an amount equivalent to 2,5 % of the annual production value.

Whereas Council Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands<sup>(4)</sup> provides that the common fisheries policy applies to the Canary Islands and that application will be accompanied by specific measures, where necessary, to take account of the specific nature of Canary Islands production;

3. The transitional period for granting the aid provided for in paragraph 1 shall begin on 1 January 1996 and end on 31 December 1997.

The duration and amount of this aid may be reduced in accordance with the procedure referred to in Article 2 if the factors justifying the granting of the aid referred to in paragraph 1 change.

Whereas Council Regulation (EEC) No 1658/93 of 24 June 1993 setting up a specific measure in favour of cephalopod producers permanently based in the Canary Islands<sup>(5)</sup> has made it possible to maintain competitiveness and improve the production system in the region;

*Article 2*

The detailed rules for the implementation of Article 1 shall be laid down in accordance with the procedure set out in Article 32 of Regulation (EEC) No 3759/92.

Whereas the economic environment of the sector is unchanged, in particular the difficulty of disposing of the region's cephalopod production on competitive terms; whereas the arrangements introduced in 1993 should therefore be continued; whereas, however, the measure should be limited to defined quantities and amounts; whereas, because of the uncertainties surrounding the conditions of competition affecting these producers, provision should be made for the possibility of reducing the duration and amount of the aid while at the same time limiting the duration of the specific measure;

*Article 3*

The specific measure provided for in this Regulation shall be regarded as intervention intended to stabilize the agricultural markets within the meaning of Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy<sup>(7)</sup>. It shall be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

Whereas detailed rules for applying this Regulation must be adopted in accordance with the procedure laid down in Article 32 of Council Regulation (EEC) No 3759/92 of

*Article 4*

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

It shall apply from 1 January 1996.

<sup>(1)</sup> OJ No C 373, 10. 12. 1996, p. 10.

<sup>(2)</sup> OJ No C 115, 14. 4. 1997.

<sup>(3)</sup> OJ No C 75, 10. 3. 1997.

<sup>(4)</sup> OJ No L 171, 29. 6. 1991, p. 1.

<sup>(5)</sup> OJ No L 158, 30. 6. 1993, p. 9.

<sup>(6)</sup> OJ No L 388, 31. 1. 1992, p. 1. Regulation as last amended by Regulation (EC) No 3318/94 (OJ No L 350, 31. 12. 1994, p. 15).

<sup>(7)</sup> OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ No L 125, 8. 6. 1995, p. 1).

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

Done at Luxembourg, 22 April 1997.

*For the Council*

*The President*

J. VAN AARTSEN

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**COMMISSION REGULATION (EC) No 713/97**  
**of 23 April 1997**  
**altering the export refunds on white sugar and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector <sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96 <sup>(2)</sup>, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 654/97 <sup>(3)</sup>;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 654/97 to the informa-

tion known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 654/97, are hereby altered to the amounts shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ No L 100, 17. 4. 1997, p. 3.

## ANNEX

to the Commission Regulation of 23 April 1997 altering the export refunds on white sugar and raw sugar exported in its unaltered state

| Product code    | Amount of refund                |
|-----------------|---------------------------------|
|                 | — ECU/100 kg —                  |
| 1701 11 90 9100 | 37,86 <sup>(1)</sup>            |
| 1701 11 90 9910 | 35,48 <sup>(1)</sup>            |
| 1701 11 90 9950 | <sup>(2)</sup>                  |
| 1701 12 90 9100 | 37,86 <sup>(1)</sup>            |
| 1701 12 90 9910 | 35,48 <sup>(1)</sup>            |
| 1701 12 90 9950 | <sup>(2)</sup>                  |
|                 | — ECU/1 % of sucrose × 100 kg — |
| 1701 91 00 9000 | 0,4116                          |
|                 | — ECU/100 kg —                  |
| 1701 99 10 9100 | 41,16                           |
| 1701 99 10 9910 | 40,54                           |
| 1701 99 10 9950 | 40,54                           |
|                 | — ECU/1 % of sucrose × 100 kg — |
| 1701 99 90 9100 | 0,4116                          |

<sup>(1)</sup> Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

<sup>(2)</sup> Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

## COMMISSION REGULATION (EC) No 714/97

of 23 April 1997

fixing the maximum export refund for white sugar for the 35th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector <sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96 <sup>(2)</sup>, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1464/96 of 25 July 1996 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar <sup>(3)</sup>, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1464/96 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 35th partial invitation to

tender, the provisions set out in Article 1 should be adopted;

Whereas 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*

For the 35th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1464/96 the maximum amount of the export refund is fixed at ECU 43,542 per 100 kilograms.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ No L 187, 26. 7. 1996, p. 42.

## COMMISSION REGULATION (EC) No 715/97

of 23 April 1997

## fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar<sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68<sup>(3)</sup>, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68<sup>(4)</sup>; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

Whereas 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 representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ No L 141, 24. 6. 1995, p. 12.

<sup>(4)</sup> OJ No L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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ANNEX

**fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector**

| CN code                   | Amount of the representative price in ECU per 100 kg net of the product in question | Amount of the additional duty in ECU per 100 kg net of the product in question | Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 <sup>(2)</sup> |
|---------------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1703 10 00 <sup>(1)</sup> | 8,37                                                                                | —                                                                              | 0,00                                                                                                                                                                                        |
| 1703 90 00 <sup>(1)</sup> | 12,21                                                                               | —                                                                              | 0,00                                                                                                                                                                                        |

<sup>(1)</sup> For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

<sup>(2)</sup> This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

## COMMISSION REGULATION (EC) No 716/97

of 23 April 1997

**amending Annexes II and III to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990, laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin<sup>(1)</sup>, as last amended by Commission Regulation (EC) No 434/97<sup>(2)</sup>, and in particular Articles 6, 7 and 8 thereof,

Whereas, in accordance with Regulation (EEC) No 2377/90, maximum residue limits must be established progressively for all pharmacologically active substances which are used within the Community in veterinary medicinal products intended for administration to food-producing animals;

Whereas maximum residue limits should be established only after the examination within the Committee for Veterinary Medicinal Products of all the relevant information concerning the safety of residues of the substance concerned for the consumer of foodstuffs of animal origin and the impact of residues on the industrial processing of foodstuffs;

Whereas, in establishing maximum residue limits for residues of veterinary medicinal products in foodstuffs of animal origin, it is necessary to specify the animal species in which residues may be present, the levels which may be present in each of the relevant meat tissues obtained from the treated animal (target tissue) and the nature of the residue which is relevant for the monitoring of residues (marker residue);

Whereas, for the control of residues, as provided for in appropriate Community legislation, maximum residue limits should usually be established for the target tissues of liver or kidney; whereas, however, the liver and kidney are frequently removed from carcasses moving in interna-

tional trade, and maximum residue limits should therefore also always be established for muscle or fat tissues;

Whereas, in the case of veterinary medicinal products intended for use in laying birds, lactating animals or honey bees, maximum residue limits must also be established for eggs, milk or honey;

Whereas D-Phe<sup>6</sup>-luteinizing-hormone-releasing-hormone and neostigmine should be inserted into Annex II to Regulation (EEC) No 2377/90;

Whereas, in order to allow for the completion of scientific studies, ivermectin should be inserted into Annex III to Regulation (EEC) No 2377/90;

Whereas a period of 60 days should be allowed before the entry into force of this Regulation in order to allow Member States to make any adjustment which may be necessary to the authorizations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Council Directive 81/851/EEC<sup>(3)</sup>, as last amended by Directive 93/40/EEC<sup>(4)</sup> to take account of the provisions of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes II and III to Regulation (EEC) No 2377/90 are hereby amended as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on the 60th day following its publication in the *Official Journal of the European Communities*.

<sup>(1)</sup> OJ No L 224, 18. 8. 1990, p. 1.

<sup>(2)</sup> OJ No L 67, 7. 3. 1997, p. 1.

<sup>(3)</sup> OJ No L 317, 6. 11. 1981, p. 1.

<sup>(4)</sup> OJ No L 214, 24. 8. 1993, p. 31.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

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## ANNEX

Regulation (EEC) No 2377/90 is amended as follows:

A. Annex II is modified as follows:

2. Organic compounds

| Pharmacologically active substance(s)                            | Animal species              | Other provisions |
|------------------------------------------------------------------|-----------------------------|------------------|
| '2.85. D-Phe <sup>6</sup> -luteinizing-hormone-releasing-hormone | All food producing species  |                  |
| 2.86. Neostigmine                                                | All food producing species' |                  |

B. Annex III is modified as follows:

2. Antiparasitic agents

2.3. Agents acting against endo- and ectoparasites

2.3.1. Avermectins

| Pharmacologically active substance(s) | Marker residue                    | Animal species              | MRLs      | Target tissues | Other provisions                       |
|---------------------------------------|-----------------------------------|-----------------------------|-----------|----------------|----------------------------------------|
| '2.3.1.6. Ivermectin                  | 22,23-Dihydro-avermectin<br>B 1 a | Deer,<br>including reindeer | 20 µg/kg  | Muscle         | Provisional MRLs expire on 1. 1. 1999' |
|                                       |                                   |                             | 100 µg/kg | Fat            |                                        |
|                                       |                                   |                             | 50 µg/kg  | Liver          |                                        |
|                                       |                                   |                             | 20 µg/kg  | Kidney         |                                        |

**COMMISSION REGULATION (EC) No 717/97  
of 23 April 1997**

**on applications for import licences for rice and broken rice submitted in the  
first five working days of April 1997 pursuant to the arrangements provided for  
in Council Regulation (EC) No 1522/96**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1522/96 of 24 July 1996 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice <sup>(1)</sup>, as amended by Commission Regulation (EC) No 112/97 <sup>(2)</sup>, and in particular Article 5 (2) thereof,

Whereas, pursuant to Article 5 (2) of Regulation (EC) No 1522/96, the Commission must decide within 10 days of the closing date for the submission of licence applications the extent to which applications can be granted and must fix the available quantities for the following tranche;

Whereas, in the light of the quantities for which applications are submitted during the first five working days of April 1997 and the quantities available, licences may be

issued subject to the application of a percentage reduction,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Reduction coefficients to be applied to quantities covered by applications for import licences submitted for rice and broken rice pursuant to the arrangements provided for in Regulation (EC) No 1522/96 in the first five working days of April 1997 and which have been notified to the Commission, shall be as laid down in the Annex hereto.
2. The quantities available under the tranche for July 1997 shall be as laid down in the Annex hereto.

*Article 2*

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

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ No L 190, 31. 7. 1996, p. 1.

<sup>(2)</sup> OJ No L 20, 23. 1. 1997, p. 23.

## ANNEX

## Article 5 (2) of Regulation (EC) No 1522/96

Reduction coefficient to be applied to the quantities applied for and the quantities available under the following tranche:

- (a) Quota referred to in Article 2 (1) (a), wholly-milled and semi-milled rice falling within CN code 1006 30

| Origin          | Percentage reduction | Quantity available under the tranche for July 1997 (tonnes) |
|-----------------|----------------------|-------------------------------------------------------------|
| USA             | —                    | 38 721                                                      |
| Thailand        | 0                    | 9 249                                                       |
| Australia       | 0                    | 804                                                         |
| Other countries | 97,2765              | 0                                                           |

- (b) Quota referred to in Article 1 (2) (b), husked rice falling within CN code 1006 20

| Origin          | Percentage reduction | Quantity available under the tranche for July 1997 (tonnes) |
|-----------------|----------------------|-------------------------------------------------------------|
| Australia       | 0                    | 10 429                                                      |
| USA             | —                    | 7 642                                                       |
| Thailand        | 33,8927              | 0                                                           |
| Other countries | 90,9722              | 0                                                           |

- (c) Quota referred to in Article 1 (2) (c), broken rice falling within CN code 1006 40 00

| Origin          | Percentage reduction | Quantity available under the tranche for July 1997 (tonnes) |
|-----------------|----------------------|-------------------------------------------------------------|
| Thailand        | 0                    | 22 612                                                      |
| Australia       | 0                    | 5 450                                                       |
| Guyana          | 0                    | 8 503                                                       |
| USA             | —                    | 7 281                                                       |
| Other countries | 0                    | 9 663                                                       |

**COMMISSION REGULATION (EC) No 718/97**  
**of 23 April 1997**  
**establishing the standard import values for determining the entry price of**  
**certain fruit and vegetables**

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

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

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 24 April 1997.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ No L 337, 24. 12. 1994, p. 66.

<sup>(2)</sup> OJ No L 325, 14. 12. 1996, p. 5.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 22, 31. 1. 1995, p. 1.

## ANNEX

to the Commission Regulation of 23 April 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

| (ECU/100 kg)                       |                                   |                       |
|------------------------------------|-----------------------------------|-----------------------|
| CN code                            | Third country code <sup>(1)</sup> | Standard import value |
| 0702 00 20                         | 052                               | 123,5                 |
|                                    | 204                               | 98,4                  |
|                                    | 212                               | 96,5                  |
|                                    | 624                               | 125,2                 |
|                                    | 999                               | 110,9                 |
| 0707 00 15                         | 052                               | 93,8                  |
|                                    | 068                               | 123,8                 |
|                                    | 999                               | 108,8                 |
| 0709 90 75                         | 052                               | 114,1                 |
|                                    | 999                               | 114,1                 |
| 0805 10 11, 0805 10 15, 0805 10 19 | 052                               | 43,7                  |
|                                    | 204                               | 41,6                  |
|                                    | 212                               | 61,8                  |
|                                    | 220                               | 32,9                  |
|                                    | 400                               | 38,0                  |
|                                    | 448                               | 26,8                  |
|                                    | 600                               | 44,7                  |
|                                    | 624                               | 43,5                  |
|                                    | 625                               | 36,3                  |
|                                    | 999                               | 41,0                  |
| 0805 30 20                         | 400                               | 73,6                  |
|                                    | 600                               | 67,3                  |
|                                    | 999                               | 70,5                  |
| 0808 10 61, 0808 10 63, 0808 10 69 | 052                               | 56,7                  |
|                                    | 060                               | 48,8                  |
|                                    | 388                               | 86,2                  |
|                                    | 400                               | 94,9                  |
|                                    | 404                               | 103,4                 |
|                                    | 508                               | 75,8                  |
|                                    | 512                               | 77,0                  |
|                                    | 524                               | 81,7                  |
|                                    | 528                               | 80,7                  |
|                                    | 804                               | 100,8                 |
| 0808 20 37                         | 999                               | 80,6                  |
|                                    | 388                               | 69,5                  |
|                                    | 512                               | 72,6                  |
|                                    | 528                               | 79,4                  |
|                                    | 999                               | 73,8                  |

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

## COMMISSION REGULATION (EC) No 719/97

of 23 April 1997

## amending representative prices and additional duties for the import of certain products in the sugar sector

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector <sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses <sup>(3)</sup>, as last amended by Regulation (EC) No 1127/96 <sup>(4)</sup>, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1195/96 <sup>(5)</sup>, as last amended by Regulation (EC) No 707/97 <sup>(6)</sup>;

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ No L 141, 24. 6. 1995, p. 16.

<sup>(4)</sup> OJ No L 150, 25. 6. 1996, p. 12.

<sup>(5)</sup> OJ No L 161, 29. 6. 1996, p. 3.

<sup>(6)</sup> OJ No L 104, 22. 4. 1997, p. 26.

## ANNEX

to the Commission Regulation of 23 April 1997 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

| CN code                   | Amount of representative prices per 100 kg net of product concerned | Amount of additional duty per 100 kg net of product concerned |
|---------------------------|---------------------------------------------------------------------|---------------------------------------------------------------|
| 1701 11 10 <sup>(1)</sup> | 24,28                                                               | 4,16                                                          |
| 1701 11 90 <sup>(1)</sup> | 24,28                                                               | 9,39                                                          |
| 1701 12 10 <sup>(1)</sup> | 24,28                                                               | 3,97                                                          |
| 1701 12 90 <sup>(1)</sup> | 24,28                                                               | 8,96                                                          |
| 1701 91 00 <sup>(2)</sup> | 27,60                                                               | 11,43                                                         |
| 1701 99 10 <sup>(2)</sup> | 27,60                                                               | 6,91                                                          |
| 1701 99 90 <sup>(2)</sup> | 27,60                                                               | 6,91                                                          |
| 1702 90 99 <sup>(3)</sup> | 0,28                                                                | 0,37                                                          |

<sup>(1)</sup> For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ No L 89, 10. 4. 1968, p. 3).

<sup>(2)</sup> For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1).

<sup>(3)</sup> By 1 % sucrose content.

## COMMISSION REGULATION (EC) No 720/97

of 23 April 1997

**temporarily suspending the issuing of export licences for certain milk products  
and determining what proportion of the amounts covered by pending  
applications for export licences may be allocated**

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

Having regard to Council Regulation (EEC) No 804/68 of  
27 June 1968 on the common organization of the market  
in milk and milk products <sup>(1)</sup>, as last amended by Regula-  
tion (EC) No 1587/96 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No  
1466/95 of 27 June 1995 laying down special detailed  
rules of application for export refunds on milk and milk  
products <sup>(3)</sup>, as last amended by Regulation (EC) No  
417/97 <sup>(4)</sup>, and in particular Article 8 (3) thereof,

Whereas the market in certain milk products is currently  
subject to uncertainty; whereas licence applications of a  
speculative nature should be avoided which may lead to  
distortions of competition between operators and poten-  
tially disrupt the continuity of exports of these products  
for the remainder of the period in question; whereas the  
issue of export licenses for the products involved should

be temporarily suspended and licences for some of these  
products should not be issued in respect of applications  
pending,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The issue of export licences for milk products falling  
within CN code 0406 is hereby suspended for the period  
24 April 1997 to 30 April 1997.
2. No licences shall be issued for products falling  
within CN code 0406 for which applications submitted  
from 17 April 1997 are still pending and against which  
licences would have been issued from 24 April 1997.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 13.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 21.

<sup>(3)</sup> OJ No L 144, 28. 6. 1995, p. 22.

<sup>(4)</sup> OJ No L 64, 5. 3. 1997, p. 1.

## COMMISSION REGULATION (EC) No 721/97

of 23 April 1997

**determining the percentages of quantities which may be allowed in respect of import licence applications lodged in April 1997 under tariff quotas for meat provided for in Regulation (EC) No 2512/96 for the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

*Article 1*

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2512/96 of 23 December 1996 setting for 1997 rules of application for the tariff quotas for beef and veal provided for by Council Regulation (EC) No 3066/95 for the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania<sup>(1)</sup>, and in particular Article 3 (4) thereof,

Whereas Article 1 (1) and (3) of Regulation (EC) No 2512/96 fixes the quantities of fresh, chilled or frozen beef and veal originating in Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria, and of processed products originating in Poland which may be imported on special terms in respect of the period 1 April to 30 June 1997; whereas the quantities of fresh, chilled or frozen beef and veal originating in Poland, the Czech Republic, Slovakia, Romania and Bulgaria, covered by import licence applications submitted are such that applications may be accepted in full; whereas, however, quantities covered by applications in respect of beef and veal originating in Hungary and processed products must be reduced proportionately in accordance with Article 3 (4) of that Regulation;

Whereas Article 1 (4) of Regulation (EEC) No 2512/96 states that if for the year 1997 the quantities for which applications for import licences have been submitted for the first, second or third period specified in paragraph 3 of the Article are less than the quantities available, the remaining quantities are to be added to the quantities in respect of the second period, the quantities available for the six countries concerned for the third period running from 1 July to 30 September 1997 should accordingly be determined,

1. The following percentages of quantities covered by import licence applications submitted in respect of the period 1 April to 30 June 1997 under the quotas referred to in Regulation (EC) No 2512/96 may be allowed:

- (a) 100 % of quantities covered by applications in respect of products falling within CN codes 0201 and 0202 originating in Poland, the Czech Republic, Slovakia, Romania and Bulgaria;
- (b) 95,333 % of quantities covered by applications in respect of products falling within CN codes 0201 and 0202 originating in Hungary;
- (c) 16,667 % of quantities covered by applications in respect of products falling within CN codes 1602 50 31 and 1602 50 39 originating in Poland.

2. The quantities available for the period referred to in Article 1 (3) of Regulation (EC) No 2512/96 running from 1 July to 30 September 1997 shall amount to:

- (a) beef and veal falling within CN codes 0201 and 0202:
  - 4 665,0 tonnes for meat originating in Poland,
  - 1 787,5 tonnes for meat originating in Hungary,
  - 1 527,5 tonnes for meat originating in the Czech Republic,
  - 812,5 tonnes for meat originating in Slovakia,
  - 135,0 tonnes for meat originating in Bulgaria,
  - 761,0 tonnes for meat originating in Romania;
- (b) 110 tonnes of processed products falling within CN codes 1602 50 31 and 1602 50 39 originating in Poland.

*Article 2*

This Regulation shall enter into force on 24 April 1997.

<sup>(1)</sup> OJ No L 345, 31. 12. 1996, p. 26.

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

Done at Brussels, 23 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 22 October 1996

on a tax credit scheme introduced by Italy for professional road hauliers

(C 45/95 ex NN 48/95)

(Only the Italian text is authentic)

(Text with EEA relevance)

(97/270/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 5, 92 and 93 thereof,

Having regard to the Agreement on the European Economic Area, and in particular Articles 61 and 62 thereof,

Whereas:

## I

The Italian authorities have introduced a tax credit scheme for Italian road hauliers relating to tax for 1993 and 1994, accompanied by compensatory payments for non-Italian Community hauliers to refund part of their fuel costs. This scheme was instituted by the following legal framework:

As regards 1993:

- Decree Law No 82 of 29 March 1993 (*Gazzetta Ufficiale della Repubblica Italiana* (GURI) No 134, 10. 6. 1993), as amended and converted by Law No 162 of 27 May 1993 (GURI No 123, 28. 5. 1993),

- Decrees of 27 April 1993 (GURI No 100, 30. 4. 1993) and of 23 September 1993 (GURI No 228, 28. 9. 1993),

- Decree Law No 309 of 23 May 1994 (GURI No 119, 24. 5. 1994), as converted into Law No 459 of 22 July 1994,

- Decree of 23 April 1993 (GURI No 100, 30. 4. 1993);

As regards 1994:

- Decree Law No 642 of 22 November 1994 (GURI No 273, 22. 11. 1994),

- Decree Law No 21 of 21 January 1995 (GURI No 17, 21. 1. 1995), as converted into Law No 84 of 22 March 1995 (GURI No 68, 22. 3. 1995),

- Decree of 28 November 1994 (GURI No 280, 30. 11. 1994),

- Decree Law No 92 of 29 March 1995 (GURI No 75, 30. 3. 1995),

- Decree Law No 205 of 30 May 1995 (GURI No 124, 30. 5. 1995),

- Decree Law No 311 of 28 July 1995 (GURI No 176, 29. 7. 1995),

- Decree Law No 402 of 26 September 1995 (GURI No 226, 27. 9. 1995) (Not converted into Law within two months),

- Implementing Decree of 30 March 1995 (GURI No 78, 3. 4. 1995).

In June 1993 a similar tax credit scheme relating to 1992, examined under State aid procedure C/32/92, was declared incompatible with the common market by Commission Decision 93/496/EEC of 9 June 1993<sup>(1)</sup>.

In addition, given that the Italian authorities had failed to comply with this Decision, on 21 December 1994 the Commission decided to refer the matter to the Court of Justice pursuant to the second subparagraph of Article 93 (2) of the Treaty for failure to implement the Decision<sup>(2)</sup>.

In the course of the correspondence which followed this Decision to initiate proceedings the Italian authorities and the Commission exchanged information on the tax credit scheme for 1993. The Italian authorities argued that the 1993 scheme differed from the 1992 scheme by introducing compensatory payments for non-Italian Community carriers with a specific budget allocated for this purpose.

In February 1995 the Commission learned of the actual introduction of the scheme for the first half of 1994 as well, through the publication in the Italian Official Gazette of the Decree Law of 21 January 1995<sup>(3)</sup>.

In the subsequent correspondence the Italian authorities submitted the text of a new Decree Law extending the same tax credit scheme to the second half of 1994.

Following a further exchange of correspondence, by letter dated 4 December 1995 (SG(95) D/15427) the Commission informed the Italian authorities that it had decided to initiate the procedure provided for by Article 93 (2) of the Treaty against the Italian aid scheme in the form of tax credit for professional road hauliers for 1993 and 1994. By the same letter, the Commission requested Italy to supply all the documents, information and data necessary to examine whether this aid was compatible with the common market and to suspend immediately payment of any further aid in the same form of tax credit. This obligation includes not only the requirement to abstain from paying aid for which arrangements have already been made but also to refrain from adopting new legislative acts aiming at introducing the same types of aid scheme.

In accordance with the procedure, the Commission invited the Italian authorities to submit their comments on the decisions outlined above and informed the other

Member States and interested parties by publishing the letter in the *Official Journal of the European Communities*<sup>(\*)</sup>.

Following this publication, the Commission received comments from the Italian association of large and medium-sized transport undertakings, *Coordinamento*, and from the Vienna and Brussels representatives of the Austrian Chamber of Commerce. These comments primarily agreed with the reasoning followed by the Commission in its letter initiating the procedure. On 4 April 1996 the Commission sent the Italian Government copies of the comments which it had received from third parties and requested it to submit any replies it wished to make.

By letter dated 26 March 1996, registered by the Commission on 1 April 1996, the Italian authorities gave their response to the initiation of the procedure. By letter dated 31 May 1996 the Commission made certain comments on the arguments in this response and invited the Italian authorities to a meeting which was held in Brussels on 21 June 1996.

## II

The legislation in question introduces, for the 1993 and 1994 tax years, a tax credit scheme for Italian road hauliers and compensatory payments for non-Italian Community hauliers based on fuel consumption over the distance covered on Italian territory.

The tax credit for Italian road hauliers relates to income tax on natural persons, income tax on legal persons, municipal income tax, value added tax and to deductions at source on the incomes of dependents and compensation for self-employed work. The tax credit scheme covers Italian road hauliers entered in the register provided for by Law No 298 of 6 June 1974.

The amounts of aid are fixed as a percentage of the actual cost, less VAT, of fuels and lubricants but may not exceed certain ceilings according to the weight of the vehicle and its load. For the second half of 1994, the Italian authorities also limited the aid to the amounts corresponding to 100 vehicles per firm. The budget set aside for this tax credit and the maximum percentages and ceilings for each period of application are indicated in the table below:

(\*) OJ No C 3, 6. 1. 1996, p. 2.

<sup>(1)</sup> OJ No L 233, 16. 9. 1993, p. 10.

<sup>(2)</sup> See minutes of the 1228th meeting of the Commission held in Brussels on 21 December 1994 (morning).

<sup>(3)</sup> Decree Law No 20 of 21 January 1995 published in the *Gazzetta Ufficiale della Repubblica Italiana* on 21 January 1995.

| Tax credit for Italian road hauliers             |                              | 1993                                        | 1994                                    |                                      |
|--------------------------------------------------|------------------------------|---------------------------------------------|-----------------------------------------|--------------------------------------|
|                                                  |                              |                                             | first half                              | second half                          |
| Budget                                           |                              | Lit 340 + 200 000 million (ECU 247 million) | Lit 270 000 million (ECU 123,5 million) | Lit 210 000 million (ECU 96 million) |
| % of expenditure on diesel and lubricants        |                              | 24,30 %                                     | 10,43 %                                 | 9,7 %                                |
| Maximum ceilings per vehicle according to weight | < 6 000 kg                   | Lit 650 000 (ECU 297)                       | Lit 295 000 (ECU 134)                   | Lit 280 000 (ECU 127)                |
|                                                  | between 6 000 and 11 500 kg  | Lit 1 375 000 (ECU 629)                     | Lit 625 000 (ECU 285)                   | Lit 580 000 (ECU 265)                |
|                                                  | between 11 500 and 24 000 kg | Lit 3 915 000 (ECU 1 791)                   | Lit 1 790 000 (ECU 819)                 | Lit 1 670 000 (ECU 764)              |
|                                                  | > 24 000 kg                  | Lit 6 650 000 (ECU 3 035)                   | Lit 3 045 000 (ECU 1 389)               | Lit 2 850 000 (ECU 1 300)            |
| Corresponding Ministerial Decree                 |                              | Decree of 23 September 1993                 | Decree of 28 November 1994              | Decree of 30 March 1995              |

The Decrees lay down that these maximum amounts are calculated on the basis of the hypothesis that the four categories of vehicles can cover 8, 6, 3,5 and 2,2 km per litre of diesel consumed respectively.

For each period of application, moreover, the scheme provides for compensatory payments to road hauliers from EC Member States on the basis of the consumption of fuel over the distance covered on Italian territory. The budgets set aside for this are Lit 30 000 million for 1993, Lit 15 000 million for the first half of 1994 and Lit 8 000 million for the second half of 1994.

The arrangements for granting such compensatory payments should have been laid down by Ministerial Decree (see Article 15 (4) of Decree Law No 82 of 29 March 1993, as amended and converted by Law No 162 of 27 May 1993, Article 1 (4) of Decree Law No 21 of 21 January 1995, as converted into Law No 84 of 22 March 1995 and Article 1 (4) of Decree Law No 92 of 29 March 1995). By letter dated 26 March 1996, the Italian authorities stated that the Decrees were still not finalized but would not be introduced to comply with the suspension of payments ordered by the Commission. The drafts would nevertheless be forwarded to the Commission to obtain a possible derogation from this suspension.

Moreover, the Italian authorities admitted by letter dated 19 May 1995 that the scheme introduced for the first half of 1994 was a six-month extension of the scheme which

had been introduced for 1993 and examined under State aid procedure C/32/92, giving rise to the Decision of 9 June 1993 declaring the aid incompatible with the common market under Article 93 (1) of the Treaty, since it met none of the requirements for exemptions laid down in Article 92 (2) and (3), nor any of the conditions laid down in Council Regulation (EEC) No 1107/70 <sup>(1)</sup>.

### III

Under Article 92 of the 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. This concept of aid therefore calls for analysis of three fundamental aspects: use of State resources, distortion of competition and effect on trade.

### IV

Article 92 makes no distinction as to the form, causes or objectives of the measures in question, but defines them in terms of their effects. The fact that the measure is fiscal in nature is not therefore sufficient to exclude it from the scope of Article 92.

<sup>(1)</sup> OJ No L 130, 15. 6. 1970, p. 1.

In this case, the effect of the tax credit scheme is to increase the cash flow of a single sector of the economy - Italian road hauliers operating for hire or reward - by favouring them as compared with own-account hauliers through a temporary exemption from a general system of taxation and therefore constitutes an exemption which is not justified on the basis of the nature or general scheme of the system, in the terms of the judgment of the Court of Justice in Case 173/73<sup>(1)</sup>, and is not, therefore, a general measure.

In their letter of 26 March 1996 the Italian authorities defended the tax credit scheme in question as a mechanism specific to an 'industrial' policy of differentiation of the selling prices of fuels depending on whether they are for domestic or industrial use, along similar lines to the electricity or water sectors.

As stated in its letter of 31 May 1996, the Commission considers that if this were price differentiation based on purely commercial criteria, it could indeed be considered not to be State aid but normal commercial practice<sup>(2)</sup>. However, in the case of the tax credit scheme for road hauliers, the tariff differentiation cannot be considered commercial practice since it is implemented by the State through a tax system, without any possibility of reduction in the operating accounts of operators in the fuel sector and, hence, does not correspond to the normal behaviour of a commercial operator. Moreover, if the tax credit were based on genuine commercial calculations, it would not be limited to 100 vehicles per firm for the second half of 1994.

The tax credit for Italian professional road hauliers, examined under aid dossier No C/45/95, relates to an amount equivalent to between 9,7% and 24,3% of the actual cost of fuels and lubricants borne by road hauliers. The Italian authorities argue that this aid does not constitute a benefit but rather compensation since the Italian excise duties on fuels are very high compared with those in other Community countries. The table below shows the excise duty levels on diesel fuel in Community countries for 1993 and 1994:

|     | 1993 | 1994 |
|-----|------|------|
| B   | 296  | 288  |
| DK  | 245  | 257  |
| D   | 267  | 318  |
| GR  | 289  | 243  |
| E   | 287  | 252  |
| F   | 249  | 321  |
| IRL | 291  | 303  |
| I   | 406  | 357  |
| L   | 197  | 234  |
| NL  | 258  | 309  |
| P   | 328  | 296  |
| UK  | 318  | 372  |

Council Directive 92/82/EEC of 19 October 1992<sup>(3)</sup> establishes, from 1 January 1993, minimum rates for indirect taxes on mineral fuels in the Community countries. As regards diesel, this minimum rate is ECU 245 per thousand litres.

Although it is true that excise duties on diesel in Italy in 1993 and 1994 were amongst the highest in the Union, the Commission cannot, in view of the case-law of the Court of Justice<sup>(4)</sup>, accept this as an argument for introducing financial aid which directly reduces the operating costs of a single sector. The circumstance that the Italian Government proposed bringing the fuel tax levels into line with those practised in the other Member States makes no difference to the nature of the measure as State aid, which is prohibited save in the cases and under the procedures provided for in the Treaty. Disparities in legislation which distort competition in no way justify compensatory State aid. This aid therefore constitutes a non-additional benefit for the hauliers receiving it through the direct increase in the cash flow of a single sector.

Moreover, the table set out below shows, for each category, the maximum number of kilometres subsidized per category of vehicle, given the prices excluding VAT for each year (ECU 599 per 1 000 litres in 1993 and ECU 550 per 1 000 litres in 1994)<sup>(5)</sup>, as well as the hypotheses of kilometres covered per vehicle per litre of diesel applied by the Italian authorities in their Implementing Decree. The figures indicate the number of kilometres covered without fuel costs for the haulier.

<sup>(1)</sup> Judgment of 2 July 1974 — *Government of the Italian Republic v. Commission of the European Communities* [1974] ECR, p. 709 to 721.

<sup>(2)</sup> Cf. Judgment of the Court of Justice of 29 February 1996 in Case C-56/93 (preferential tariff system for supplies of natural gas to Dutch nitrate fertilizer producers).

<sup>(3)</sup> OJ No L 316, 31. 10. 1992, p. 19.

<sup>(4)</sup> Judgment of 10 December 1969, Cases 6 and 11/69, *Commission v. France* [1969] ECR 523, paragraph 21.

<sup>(5)</sup> Figures from *Oil Bulletin* — European Commission — Directorate-General for Energy.

| Category of vehicle | km/l | 1993  |          | 1994 <sup>(1)</sup> |          | 1994 <sup>(2)</sup> |          |
|---------------------|------|-------|----------|---------------------|----------|---------------------|----------|
|                     |      | A     | B        | A                   | B        | A                   | B        |
| < 6 000 kg          | 8    | 297   | 61 km    | 134                 | 30,4 km  | 127                 | 28 km    |
| 6 000 — 11 500 kg   | 6    | 629   | 175 km   | 285                 | 86 km    | 265                 | 80 km    |
| 11 500 — 24 000 kg  | 3,5  | 1 791 | 854 km   | 819                 | 425 km   | 764                 | 397 km   |
| > 24 000 kg         | 2,2  | 3 035 | 2 303 km | 1 389               | 1 147 km | 1 300               | 1 074 km |

A: maximum ceiling of aid in ECU.

B: maximum number of kilometres subsidized.

<sup>(1)</sup> first half.

<sup>(2)</sup> second half.

It should be noted that the tax credit involves a subsidy which increases on a non-linear basis with the size of the vehicle so that the biggest vehicles will benefit most. It is precisely these that are most likely to be in competition on the international market.

In addition, in response to the opening of the procedure, the Italian association of large and medium-sized transport undertakings, *Coordinamento*, stressed that since the adoption of Decree No 92 of 29 March 1995 the tax credit scheme has been limited to a maximum of 100 vehicles per company with the result that the largest companies could not be refunded for the fuel of all their vehicles in the same way as small operators.

As regards non-Italian Community hauliers engaged in the carriage of goods for hire or reward, the Italian authorities argue that the measure introduces no discrimination against them given that provision has been made for an equivalent compensatory payment to them. At a meeting on 21 June 1996 the Italian authorities announced that they had found a mechanism for compensation for the fuel costs of non-Italian hauliers through the requests for VAT refunds on exports. The draft decree to this end is apparently frozen in response to the suspension of payments ordered by the Commission. Consequently, as things stand, Italian professional road hauliers' costs are reimbursed automatically on the basis of their income tax return and this has been regulated by Decree since 1993, whereas the rules for compensatory payments for non-Italians are not clear and have not actually been put into effect.

At the meeting on 21 June 1996 the Italian authorities also pointed out that non-Italian hauliers could have made informal requests for refunds but did not do so, which, in their opinion, proves that non-Italian hauliers feel no need for compensation because they obtain their fuel supplies outside Italy, where the tax is lower. The Commission considers this reasoning unacceptable because the lack of any pre-established refund procedure

constitutes an obvious barrier to any initiative by non-Italian hauliers, while, by contrast, Italian hauliers are free to obtain fuel supplies in other countries on the same terms as non-Italian hauliers.

Moreover, the budget allocated to non-Italian hauliers constitutes between 3,7 % and 5,3 % of the total budget. For the 1993 tax year, the breakdown of the initial overall budget between Italian and non-Italian hauliers was determined by ministerial decree 'on the basis of the distances covered by the two categories on Italian territory'. However, no justification was given for the distribution of the additional budget of Lit 200 000 million for 1993, nor of the budgets allocated for 1994. This breakdown is not balanced and could give rise to discrimination in favour of Italian road hauliers. Finally, evidence has to be provided that non-Italian road hauliers engaged in the carriage of goods for hire or reward can be refunded for the cost of lubricants in the same way as Italian firms.

Italian road hauliers carrying goods for hire or reward are in competition both with road hauliers of other nationalities and own-account road hauliers.

In 1992 own-account operations accounted for 19,2 % of national and 3,8 % of international transport operations by Italians <sup>(1)</sup>.

As regards the discrimination that the aid scheme for professional road hauliers could imply for own-account carriers, the Italian authorities consider that this has no significance (letter of 13 January 1994). This view is based on the argument that the costs of fuels and lubricants are of marginal importance in these firms since transport operations are subsidiary to their main activity. That argument cannot be accepted by the Commission, which feels that, from the competition point of view, the transport market includes both hire or reward and the alternative

<sup>(1)</sup> Road freight transport in the single European market — Report by the Committee of Enquiry — July 1994.

own-account services and that the effect in terms of distortion of competition has to be analysed by comparing the conditions in which the competing activities operate, without taking account of any other activities in which the companies are involved.

As regards competition with other Community hauliers acting for hire or reward, it should be pointed out that in 1992 around 16,2 % of Italian road transport operations for hire or reward, in terms of kilometre tonnes, were international operations. Similarly, between 1990 and 1993, 14 % of Community road cabotage, in terms of kilometre tonnes, was carried out in Italy <sup>(1)</sup>, making it the second most attractive country in the Union for Community hauliers.

These figures which reflect actual competition in the past have to be considered in the light of potential competition and the recent liberalization of the carriage of goods by road which since 1993 has opened the way to more intensive competition in this sector. This liberalization in the goods transport sector stems in particular from the following Community legislation:

- Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States <sup>(2)</sup>. This Regulation envisages the abolition of all quantitative restrictions on international road transport services from 1 January 1993,
- Council Regulation (EEC) No 3118/93 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State <sup>(3)</sup>. This Regulation provides for the complete liberalization of road cabotage by 1 July 1998, but establishes a transitional period with an annual increase of 30 % from 1 January 1995, starting from an initial total of 30 000 Community authorizations.

The Commission therefore considers that the aid benefits firms in a sector which is open to international competition and is therefore involved in international trade.

Where financial aid granted by a Member State enhances the opportunities for firms in a particular sector engaged in intra-Community trade, the latter must be considered as being affected within the meaning of Article 92 (1) of the Treaty.

The Italian aid to hauliers engaged in the carriage of goods for hire or reward improves the financial position

and opportunities of those firms receiving it as compared with their competitors and this effect is produced in the context of intra-Community trade, which is therefore likely to be affected.

The Italian authorities argue in their letter dated 26 March 1996 that a lorry of more than 24 000 kg covers an average of 80 000 km per year, whereas a subsidy covering 2 303 km would be equivalent to only one return journey without fuel costs between Rome and Munich. Other similar examples of calculations were also submitted by the Italian authorities to defend the view that the amounts involved are too small to distort or threaten to distort competition. The Commission has reminded the Italian authorities on several occasions that the *de minimis* rule established in the guidelines on State aid for SMEs <sup>(4)</sup> in force at the time did not apply to the transport sector, as is clear from Article 3 (2) thereof. In a sector such as transport, where the European Union is employing all means to promote a transfer of capacity from roads to other cleaner, safer modes, a qualitative, non-quantitative analysis must be made of any aid schemes.

## V

Given that the aid to the road haulage sector constitutes aid within the meaning of Article 92 (1) of the Treaty, consideration must be given to whether it is eligible for the exemptions provided for in Articles 77, 92 and 93 of the Treaty, application of which, moreover, has not been invoked by the Italian authorities.

Article 3 of Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway authorizes, until the entry into force of Community rules on access to the transport market, aid granted as an exceptional and temporary measure in order to eliminate, as part of a reorganization plan, excess capacity causing serious structural problems and thus to contribute towards meeting more effectively the needs of the transport market. The aid to the road transport sector examined under dossier No C/45/95 cannot be covered by the exemption referred to in the abovementioned Regulation since it does not form part of any reorganization plan for the sector in question within the meaning of the abovementioned Article.

Moreover, the scheme is not aid granted to individual consumers on social grounds, is not intended to make good damage caused by natural disasters or exceptional occurrences and does not relate to a project of European interest within the meaning of Article 92 (2) and (3) of the Treaty.

<sup>(1)</sup> Data sent by Member States to DG VII and included in the letter of 10 February 1995 to the Permanent Representatives.

<sup>(2)</sup> OJ No L 95, 9. 4. 1992, p. 1.

<sup>(3)</sup> OJ No L 279, 12. 11. 1993, p. 1.

<sup>(4)</sup> OJ No C 213, 19. 8. 1992, p. 2.

The exemptions for aid serving regional development provided for in Article 92 (3) (a) and (c) of the Treaty cannot apply either to the Italian aid scheme in question given that all road hauliers operating for hire or reward, wherever their place of establishment, may receive them and that the aid has no regional development objective.

As regards Article 92 (3) (c) of the Treaty relating to aid to facilitate the development of certain economic activities, it should be noted that the aid in question, for which all road hauliers are eligible (since the only condition is to be entered on the register of hauliers), meets no objective associated with reorganization of this sector and is nothing other than an operating subsidy; generally, such subsidies are considered not to meet the admissibility criteria laid down by the Article in question. Such operating aid may result in other Member States having to introduce similar measures with all the consequent financial costs. Moreover, the absence of any *quid pro quo* constitutes an undue advantage which cannot be justified by the Community interest.

In their letters dated 26 August 1993 and 26 March 1996 the Italian authorities stated that the same result could have been achieved by reducing tax on fuels (which is above the Community minimum), but that it was not possible to adopt such a solution because it was contrary to budgetary policy and to the policy to control fuel consumption. This argument does not alter the incompatibility of the aid and cannot be accepted by the Commission given the above considerations indicating that the measure constitutes aid within the meaning of Article 92 (1) of the Treaty. Moreover, it appears that this type of aid also has the effect of reducing the fuel costs borne by hauliers and thus of encouraging higher consumption.

The Commission therefore considers that the Italian aid to road hauliers carrying goods for hire or reward in the form of a tax credit is not compatible with the common market under the terms of Article 92.

## VI

The aid should have been notified to the Commission in good time, as required by Article 93 (3) of the Treaty. Since the Italian Government introduced the aid scheme without complying with this notification obligation, the aid must be considered illegal under Community law.

When the Commission initiated the procedure, as communicated to the Italian authorities by letter dated 4 December 1995, it called on Italy to suspend immediately the payment of any new aid in the form described above,

pending the result of its examination, and to inform the Commission within 15 working days of the steps it had taken to comply with this obligation. This obligation includes not only the requirement to abstain from paying aid for which arrangements have already been made, but also to refrain from adopting new legislative instruments aimed at introducing the types of aid scheme described above.

By letter dated 26 March 1996, the Italian authorities stated that no legislation had been adopted in Italy to extend the tax credit scheme beyond the 1994 tax year. They also stated that it was impossible to suspend the scheme for 1993 and 1994 since it had already been put fully into effect when those directions were issued. Finally, they said that they had frozen the process for adoption of the decrees aiming to introduce compensatory payments for non-Italian carriers.

In accordance with the case law of the Court of Justice, the Commission reserved the right to take a Decision calling on the Member State to recover any aid granted unlawfully, as the Member States were reminded in the Communication published in *Official Journal of the European Communities* No C 156 of 22 June 1995, page 5. In the case in point the Commission considers recovery of the aid necessary in order to restore the equitable conditions of competition which existed before the aid was granted,

HAS ADOPTED THIS DECISION:

### Article 1

The scheme of aid in favour of professional road hauliers introduced by Italy in the form of a tax credit, as provided for in Law No 162 of 27 May 1993 (GURI No 123, 28. 5. 1993), Law No 84 of 22 March 1995 (GURI No 68, 22. 5. 1995) and Decree Law No 402 of 26 September 1995 (GURI No 226, 27. 9. 1995), is unlawful on the grounds that it was introduced in breach of the procedural rules laid down in Article 92 (3), and is also incompatible with the common market within the meaning of Article 92 (1) of the Treaty, in so far as it meets none of the conditions for the exemptions provided for in Article 92 (2) and (3) nor the conditions in Regulation (EEC) No 1107/70.

### Article 2

Italy shall abolish the aid referred to above, refrain from adopting new legislative or regulatory instruments introducing any new aid in the form described above and recover the aid. The aid shall be reimbursed in accordance with the procedures and provisions of Italian law,

together with interest calculated by applying the reference rates used for assessment of regional aid, for the period from the date on which the unlawful aid was granted to the date on which it was actually repaid.

*Article 3*

The Italian Government shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with it.

*Article 4*

This Decision is addressed to the Italian Republic.

Done at Brussels, 22 October 1996.

*For the Commission*

Neil KINNOCK

*Member of the Commission*

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**COMMISSION DECISION**  
**of 18 December 1996**  
**ECSC steel — Forges de Clabecq**  
(Only the French and Dutch texts are authentic)  
(Text with EEA relevance)

(97/271/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 No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry<sup>(1)</sup>,

Having given the parties concerned the opportunity to submit their comments<sup>(2)</sup>, in accordance with the above-mentioned Decision, and having regard to those comments,

Whereas:

I

In June 1996 the Belgian authorities notified the Commission, in accordance with Article 6 (2) of Decision No 3855/91/ECSC (hereinafter referred to as the 'Steel Aid Code'), of financial assistance to be granted by the Region of Wallonia, through Société wallonne de sidérurgie (SWS), a company which it wholly owns, to the undertaking Forges de Clabecq, an integrated steel plant which produces liquid steel and finished flat products, namely sheet and flattened slabs.

The assistance was planned as part of the restructuring of the undertaking and consisted chiefly of a capital injection of Bfrs 1 500 million. Pending Commission authorization of this assistance and to enable the undertaking to continue to operate, rescue measures were taken, such as restructuring of the undertaking's long-term debt, the waiver of claims by SWS and its subsidiary SA Forges Finances, and the grant of bridging loans.

Belgium takes the view that no aid elements are involved. On the basis of the information then available, the Commission was unable to share Belgium's opinion. Consequently, in order to obtain as much information as

possible and to give interested parties the opportunity of commenting on the case, the Commission decided to initiate the procedure provided for in Article 6 (4) of Decision No 3855/91/ECSC.

In the framework of that procedure, the Commission received Belgium's reply on 25 October 1996 and nine letters from interested parties, eight of which were communicated to the Belgian authorities for comment on 15 November 1996 and one on 20 November 1996. Three other letters were received but were not taken into account by the Commission since they were dispatched after expiry of the time allowed for comments. Belgium presented its observations on those comments by letter of 27 November 1996.

II

Forges de Clabecq is an integrated steel plant which produces liquid steel and finished flat products, namely sheet and flattened slabs. In 1995/96, it produced 725 000 tonnes of cast iron, 710 000 tonnes of steel (slabs) and 504 000 tonnes of sheet and flattened slabs. Annual production capacity is 1 250 000 tonnes of cast iron, 1 500 000 tonnes of steel and 980 000 tonnes of hot-rolled sheet. Monthly turnover is in the order of Bfrs 900 million. The workforce stood at 2 145 employees on 31 January 1996.

In June 1996, the undertaking had capital resources of Bfrs 51 million and financial debts of Bfrs 3 443 million, together with other debts (commercial, social and tax debts) totalling Bfrs 1 997 million.

After having studied various possibilities regarding the future of the undertaking the Region of Wallonia, through SWS, decided to take control of Forges de Clabecq and drew up a recovery plan for the undertaking, accompanied by a number of conditions. Before restructuring, the authorized capital of the undertaking was Bfrs 3 080 million, broken down as follows: SWS, 39 %; Socindus (private), 21,3 %; and the general public through stock exchange quotations, the remainder (nearly 40 %). Since 17 June 1996, the Belgian State, through SWS, has held 60,4 % of the shares.

<sup>(1)</sup> OJ No L 362, 31. 12. 1991, p. 57.

<sup>(2)</sup> OJ No C 301, 11. 10. 1996, p. 4.

After having considered various scenarios, the Region of Wallonia decided to maintain Forges de Clabecq as an integrated steel plant, while at the same time refocusing on a limited range of products for which the undertaking was in a more advantageous position. This option was taken against the advice of an independent expert who had come to the conclusion that Forges de Clabecq could survive in its existing industrial structure only if its capital was increased by Bfrs 4 500 million and that, in any event, it could possibly survive in that structure for five years at the most.

Total production would be limited in volume to 550 000 tonnes of hot-rolled sheet and 790 000 tonnes of slabs (including 150 000 tonnes for sale). Excess output from the liquid stage, and at least 200 000 tonnes, had to be disposed of externally, the Boël group having undertaken to continue to take the same tonnage as in recent years.

A social contract was signed with the employees in June 1996. The workforce was to be cut by 700 in the period up to June 1998. Most of the shedding of the workforce (560) was to be through early retirement and only 140 jobs were to be lost through redundancies/voluntary departures.

So as to enable the undertaking to continue to operate pending a final Commission decision, the Region of Wallonia implemented the following measures:

- (1) the grant of bridging loans (so far amounting to Bfrs 700 million) as advance payments on the capital increase;
- (2) the waiver of loan claims by SWS and its subsidiary SA Forges Finances totalling Bfrs 802 309 274;
- (3) the rescheduling of the undertaking's debts to the financial institutions Belfin (50 % in public hands) and SNCI (recently privatized).

### III

The Belgian authorities maintain that the measures taken to assist Forges de Clabecq do not constitute aid. They have presented the following arguments and clarifications in response to the decision to initiate the procedure:

#### (a) *The description of the case*

The Belgian authorities argue that the return to profit is not solely dependent on reducing the workforce. The job shedding results exclusively from refocusing the undertaking's industrial and commercial activities on the markets in which it is well placed and the product niche

in which the finishing mill is efficient, margins are best and the undertaking faces least competition from strip mills and wide sheet mills.

The Belgian authorities also state that the outside financing for social measures will normally be provided through the compensation fund for workers made redundant in the event of company closures, in pursuance of the general legislation enabling the current restructuring to be treated in the same way as a closure. The maximum theoretical ceiling for assistance by this fund is set at Bfrs 553 667 000. The Belgian authorities therefore take the view that no aid is involved.

#### (b) *Legal basis*

The Belgian authorities regard the Commission's position as based on too restrictive an interpretation of the ECSC Treaty rules on aid, particularly when it comes to assessing a capital injection by a public undertaking. The Commission's position leads *inter alia* to a denial of the State's public-service responsibilities. The Belgian authorities therefore take the view that, because of its abstract and general nature, the principle of the market-economy investor often proves inappropriate for determining whether or not a measure involves State aid. The principle disregards any social, regional or sectoral policy considerations.

#### (c) *Capital injection*

Irrespective of those considerations, the Belgian authorities maintain that a private investor would have taken the same decision as SWS with regard to Forges de Clabecq. It frequently happens that private shareholders judge the cost of abandoning an ailing company to be so high that it is preferable to continue supporting it in an attempt to save at least some of the existing assets. That is the case with Forges de Clabecq.

The Belgian authorities consider that the withdrawal of private shareholders from Forges de Clabecq is not due to their lack of confidence in the prospects for restoring the company's viability but can be accounted for by three factors:

- the private shareholders' lack of financial resources,
- management shortcomings to be attributed to the private shareholders,
- SWS's wish to reap the benefits of the efforts undertaken so far.

The Belgian authorities also maintain that the fact that SWS is fully controlled by the Region of Wallonia does not mean that the capital injection by SWS is financed from public funds. The recapitalization will in fact be financed by SWS's own funds.

According to the Belgian authorities, the action by SWS, which followed the same logic as that of a private investor in the same circumstances, was therefore aimed, by means of a limited, temporary investment and in return for major efforts on the part of both the undertaking itself (reorganization, cost cutting and capacity reductions) and its workforce (large job losses), at safeguarding the efforts already made and thereafter reaping the benefits. As any shareholder should do, SWS also legitimately took account of its economic and social obligations towards the undertaking and towards the economic conversion of Walloon Brabant.

According to the Belgian authorities, the Commission also attaches priority to the reduction of production capacities. The action taken by SWS in the case of Forges de Clabecq is in line with this principle. A restructuring plan enabling the undertaking to adjust to the economic situation has thus been drawn up, the implementation of which involves a reduction in its production capacities.

The Belgian authorities stress that the objective pursued is to arrive at a lasting solution to the problem of Forges de Clabecq through action commensurate with the economic problems which the undertaking has to face and with a view to enabling it to adjust to Community-wide competition and prepare for privatization.

According to the Belgian authorities, these different considerations demonstrate that the measures in question do not constitute State aid but can, at the very most, be regarded as a derogation from the rules prohibiting State aid as introduced by the Commission.

The Belgian authorities stress that an unconditional and immediate negative decision on Forges de Clabecq by the Commission would seriously jeopardize the conversion plan for the western part of Walloon Brabant. That plan, which is supported by the Walloon Government and local authorities, relies on maintaining a certain level of industrial and service activity in the area concerned. It would be paradoxical if the Commission were to nip this plan in the bud while at the same time providing constant support for the revival of regions facing serious economic difficulties.

#### (d) *Rescheduling of debts*

The Belgian authorities point out that Belfin is not a public body since half of its shares and of its management structures are in private hands. Similarly, SNCI is controlled by CGER, which in turn is controlled by the private group Fortis AG. Contrary to what the Commis-

sion claims, they are therefore not public bodies. Furthermore, the loans granted by Belfin to Forges de Clabecq are not backed by a State guarantee.

According to the Belgian authorities, it is incorrect to claim that these bodies made deferment of their claims conditional on an increase in the guarantees attached to their loans, since they agreed to the guarantees being maintained at the previous level.

Although the undertaking is in difficulty, it still has the short-term support of its bankers: Générale de Banque, Banque Bruxelles Lambert, Kredietbank and Banque Paribas.

The Belgian authorities conclude, in view of the foregoing, that the debt rescheduling cannot be classed as aid and corresponds to normal management by the creditors of their claims on the company in the context of a recovery plan.

#### (e) *Waiver of claims*

The Belgian authorities maintain that the Belgian State and the Region of Wallonia did not intervene in the waiver of claims. The claims were waived by SWS and SA Forges Finances in the context of the undertaking's restructuring plan and to ensure its liquidity.

SA Forges Finances was a company incorporated pursuant to Luxembourg law and whose liquidation was completed on 26 July 1996. It was a 99,99 % subsidiary of Clabecq Lease, itself controlled on a 50/50 basis by SWS and Forges de Clabecq. The claims waived amounted to Bfrs 302 309 274, broken down as follows:

- long-term finance: Bfrs 188 790 412,
- short-term loans: Bfrs 113 518 862.

According to the Belgian authorities, unlike other creditors, SWS also had to protect its assets as a shareholder. In this respect, it acted in the same way as any private shareholder and creditor would have done with regard to a subsidiary. The Belgian authorities also stress that it is acknowledged in most ECSC Member States that the waiver of such claims does not confer an abnormal fiscal advantage on the beneficiary and that it is therefore fully justified.

With regard to the Bfrs 500 million loan granted in 1992 and renewed since 1993 without the Commission's authorization, the Belgian authorities ask the Commission to bear in mind that it was prompted by the need to support a rescue plan while safeguarding SWS's assets. Interest on this loan, the rate of which was negotiated with the Commission, has been paid regularly.

(f) *Bridging loans*

According to the Belgian authorities, the grant of bridging loans should be regarded as a temporary rescue measure. SWS takes the view that it could not afford to take the risk of losing its subsidiary pending a definitive decision by the ECSC authorities on the measures provided for by the recovery plan. SWS also considers that the measures in question do not constitute aid and that it is therefore in its interest and it has the duty to give the recovery plan a chance of succeeding.

## IV

In the course of the procedure, the Commission received comments on the measures proposed by Belgium from four competing undertakings, namely two in Germany (Preussag Stahl AG and Dillinger Hütte), one in the Netherlands (Koninklijke Hoogovens) and one in the United Kingdom (British Steel); the French steel federation (Fédération française de l'acier); the German steel producers' association (Wirtschaftsvereinigung Stahl); the British Iron and Steel Producers Association (Bispa); the Permanent Representation of France to the European Union; and the Permanent Representation of the United Kingdom to the European Union.

All the third parties who presented comments are unanimous in the view that Belgium's action to assist Forges de Clabecq constitutes State aid which is contrary to the ECSC Treaty and the Steel Aid Code. All point to the large amount of excess capacity on the heavy sheet market and the efforts made by the industry to adapt to that situation. Reference is also made to the aid received in the past by Forges de Clabecq and its difficulty in adjusting to the fierce competition in the sector. In view of its history and the current state of the market, the undertaking's present troubles cannot be regarded as temporary difficulties and a capital injection is not justified in a market economy.

According to those third parties, allowing a competitor to operate with aid in order to safeguard jobs could quite simply result in the closure of competing plants and job losses elsewhere in the Community. In the present situation, in which the steel industry is again going through a difficult phase, that could also trigger a race for illegal subsidies.

They all call on the Commission not to allow the aid measures proposed by the Belgian authorities. They also stress the need to insist that the amounts already paid be recovered.

The Belgian authorities replied to the comments sent in by third parties by informing the Commission, on 28 November 1996, that they considered that the observations they had submitted in response to its letter of

formal notice adequately answered the different points made by third parties.

## V

The Commission's view of the observations submitted by the Belgian authorities, after analysing them in the light of the abovementioned provisions and with due regard to the comments submitted by the third parties, is as follows:

**Assessment of the case, legal basis and capital injection**

The statements made by the Belgian authorities concerning the description of the case do not alter the nature of the measures taken by the Region of Wallonia to assist Forges de Clabecq.

The Commission's position on State aid to steel undertakings and the role of public undertakings in the economy is directly based on legal instruments: in the case in point the ECSC Treaty, Article 4 of which expressly prohibits State aid, and the Steel Aid Code. Neither does Community law affect in any way the rules on ownership in the Member States. The fact that the Belgian State uses public undertakings in order to fulfil its public-service responsibilities cannot therefore be accepted by the Commission as justification for conferring on public undertakings advantages that would distort or threaten to distort competition.

The Belgian authorities take the view that SWS acted in the same way as a private investor would have done in choosing the least costly option, namely to restructure the undertaking instead of closing it. The cost of closing down an ailing undertaking, whether publicly or privately owned, can indeed be high. Article 4 of the Steel Aid Code therefore provides for the possibility of aid for closures being deemed compatible with the common market under certain conditions. Where the owner of an undertaking decides to provide capital in order to restructure it, even if it is because the closure costs would be higher, care must be taken to ensure that a public undertaking does not derive an advantage from its public status and that it acts in the same way as a private undertaking would, i.e. without State aid. It is in order to determine the answer to this question that the Commission applies the principle of the market-economy investor expressly provided for in Article 1 (2) of the Steel Aid Code.

In this context, the Commission takes the view that there is a presumption that State aid is involved where the injection of capital into companies whose capital is divided between private and public shareholders makes the public holding reach a significantly higher level than originally and where the withdrawal of private shareholders is largely due to the company's poor profit outlook.

This is precisely the case with Forges de Clabecq. When the company's difficulties worsened, the private shareholder not only did not take part in the recapitalization but completely withdrew from the company, and the Belgian State purchased his holding. The arguments put forward by the Belgian authorities can do nothing to change that situation. The lack of financial resources cannot serve to justify the withdrawal, since if the investment had been regarded as viable, the private shareholder would have been able to obtain the necessary finance from the banks. If the previous private-sector management of the company is held responsible for its present difficulties, that does not change the nature of the withdrawal in any way either, but on the contrary proves that the State has replaced the private sector. The same applies to the Belgian authorities' claim that 'the State wished to reap the benefits of the efforts undertaken so far'. The region of Wallonia also failed in its efforts to find another partner who could take over all or part of the company.

The immediate origin of the funds used by SWS to make the capital injection in no way changes the nature of its involvement. SWS is a public body and its own funds, irrespective of their immediate origin, are therefore regarded as State resources for the purposes of application of the Steel Aid Code.

The Commission also takes the view that there is a presumption that State aid is involved where the financial situation of the company, and in particular the structure and volume of its indebtedness, is such that there would appear to be no justification for expecting a normal return (in dividends or in value) on the capital invested within a reasonable timescale. That is the case with Forges de Clabecq. The level of the company's indebtedness is such that its equity even became negative in September 1996. That is the result of a process which began in 1992, if not before. Since then, the company's capital base has been almost constantly eroded. On 30 June 1993, its capital still amounted to Bfrs 950,3 million; on 30 June 1994, it stood at only Bfrs 546,3 million; on 30 June 1995, it fell to Bfrs 347,5 million and on 30 June 1996 to as little as Bfrs 51 million. The company has consistently made losses: Bfrs 3 300 million in 1993, Bfrs 3 700 million in 1994, Bfrs 3 900 million in 1995 and Bfrs 4 200 million in 1996. The company is therefore experiencing not temporary difficulties but a structural crisis which calls for drastic measures and not merely a limited and temporary investment.

In view of the foregoing, the Commission can only conclude that the capital injection of Bfrs 1 500 million

constitutes State aid within the meaning of Article 1 of the Steel Aid Code.

### Rescheduling of debts

It is apparent from the statements by the Belgian authorities that Belfin remains under public control and SNCI is a private company; there was no increase in the State guarantees in respect of the loans granted by those financial institutions to Forges de Clabecq, but only an extension of the existing guarantees until the due dates that were postponed. The Belgian authorities also stated that the loans granted by Belfin to Forges de Clabecq are not covered by a State guarantee.

The latter statement is contradicted by a letter from Belfin to Forges de Clabecq dated 25 June 1996 (transmitted in Annex 12 to the notification), in which Belfin stated that it agreed to 'a three-year postponement of the schedule for repayment of the capital for the loans granted by Belfin to Forges de Clabecq (...) subject to the conditions (...) 4. Agreement by the State to extend its guarantee to the postponed due dates'. It is also in contradiction with the other statement made by the Belgian authorities that 'It is incorrect to claim that these institutions made the postponement of the due dates conditional on an increase in the guarantees attached to their loans, since they were satisfied with them being merely maintained (see Annex 12 to our letter of 26 July 1996)'. It is therefore clear that there already was a guarantee and that it was also extended.

The provision of a State guarantee in respect of a loan normally constitutes State aid, which should have been notified to the Commission and should not have been put into effect without the latter's approval (Article 6 (2) of the Steel Aid Code). These rules were not complied with in the case of the loans granted to Forges de Clabecq. The extension of the guarantee in respect of those loans for a further three-year period certainly increases the aid element involved in the guarantee, particularly coming at a time when the undertaking is technically almost insolvent. As was pointed out when the procedure was initiated, the amount of aid involved in the guarantee often corresponds in such cases to the total amount guaranteed, since the undertaking could not obtain the loans (or postponement of due dates) without the guarantee.

The guarantees in respect of the loans granted by Belfin and SNCI and their extension to the postponed due dates

constitute State aid. The aid is furthermore illegal since it was granted without the Commission's prior authorization, in breach of Articles 1 (2) and 6 (2) of the Steel Aid Code.

### Waiver of claims

As stated earlier, the concept of aid applied in the Steel Aid Code also includes aid elements contained in transfers of State resources by institutions and bodies to steel undertakings. SWS being a public body, as was SA Forges Finances, transfers from those companies to a steel undertaking fall within the scope of Article 1 of the Steel Aid Code.

The waiver of claims by those two companies, totalling Bfrs 802,3 million (Bfrs 302,2 million by SA Forges Finances and Bfrs 500 million by SWS), constitutes State aid because it was granted without any counter-concession by private institutions and in a situation in which the undertaking was technically insolvent. It is also illegal aid since it was granted without the Commission's prior authorization, in breach of Articles 1 (2) and 6 (2) of the Steel Aid Code.

### Bridging loans

The Belgian authorities have so far informed the Commission that three bridging loans have been granted totalling Bfrs 700 million. They take the view that this is a rescue measure which is necessary in order to keep the undertaking in business pending the Commission's decision and in anticipation of measures which they do not regard as constituting aid. The loans granted by SWS constitute State aid because no private financial or credit institution would have agreed to do so under market conditions. It is also illegal aid since it was granted without the Commission's prior authorization, in breach of Articles 1 (2) and 6 (2) of the Steel Aid Code.

## VI

At the beginning of 1995, Community steel production had risen very substantially. However, after a period of slackening, it fell sharply in the last two months of the year such that the total for the whole of 1995 stood at 155,7 million tonnes, corresponding to a 2,6 % increase on the figure for the previous year.

During the first four months of 1996, Community steel production continued to fall sharply owing to the low level of activity in the user sectors and the general trend towards stock reduction. The total fall in production over

the first four months of 1996 was around 9,3 % in comparison with the corresponding period in 1995.

In the sector in which Forges de Clabecq operates (sheet and flattened slabs), capacity utilization has remained very low. In 1995, a year in which some improvement was observed, the rate of capacity utilization for the Community as a whole (EUR 15) stood at 76 % for liquid steel and 67 % for hot-rolled sheet. From 1991 to 1994, the rate of capacity utilization in EUR 12 was 60 %, 56 %, 53 % and 62 %.

In a market in which there is so much excess capacity, the independent expert referred to above also came to the conclusion that it would be extremely difficult for Forges de Clabecq to find outlets for its products given its extremely poor competitiveness, its production costs being between 20 % and 30 % higher than the average for its European competitors and between 45 % and 50 % higher than those of its most efficient competitors. That gap could not even be bridged with the Bfrs 4 500 million investment regarded as the minimum necessary for maintaining the undertaking as an integrated steel plant. The expert therefore concluded that there was no solution enabling Forges de Clabecq to stay in business in its present industrial structure.

## VII

All the financing measures analysed in the preceding section constitute aid within the meaning of Article 1 of the Steel Aid Code.

The Belgian authorities situate their action in the context of the restructuring of Forges de Clabecq and refer to the Commission's application of the capacity reduction criterion when assessing specific cases, concluding that the measures to assist Forges de Clabecq can, at the very most, be regarded as a derogation from the rules prohibiting State aid as introduced by the Commission.

A distinction should be drawn here between, on the one hand, the prohibition on State aid enshrined in the ECSC Treaty, the only exceptions to which are the aid measures referred to in Articles 2 to 5 of the Steel Aid Code, and, on the other hand, the provisions of Articles 95 of the Treaty, pursuant to which State aid for restructuring has exceptionally been approved, in specific cases, by treating it in the same way as Community aid. Aid of this type has in such cases been approved by the Commission with the unanimous assent of the Council. In the present case, Belgium has not asked for the aid to be approved, in the Community interest, using the procedure laid down in Article 95 of the ECSC Treaty.

The Belgian authorities also stress the importance of saving Forges de Clabecq in order to ensure the success of the conversion plan for the western part of Walloon Brabant. Again, the Commission can only refer to the different legal frameworks in which decisions must be taken. Forges de Clabecq is a steel undertaking and is thus subject to the rules of the ECSC Treaty, which prohibits State aid. Neither does the Steel Aid Code allow regional or restructuring aid. Any aid in connection with the plan for the western part of Walloon Brabant can be granted only to activities or undertakings which fall within the scope of the EC Treaty.

Within the meaning of Article 6 (2) of the Steel Aid Code, the Commission has to assess the compatibility of aid with the provisions of Articles 2 to 5 of that Code.

Article 2 of the Steel Aid Code provides that aid for research and development may be deemed compatible with the common market if certain conditions are met. None of the financing measures taken by the Region of Wallonia to assist Forges de Clabecq are intended to defray expenditure on research and development projects, neither did the Belgian authorities make any such claim in their notification. The measures cannot therefore be regarded as satisfying the conditions of Article 2 of the Code.

Article 3 of the Steel Aid Code provides that aid for environmental protection may be deemed compatible with the common market if certain conditions are met. None of the financing measures taken by the Region of Wallonia to assist Forges de Clabecq are intended to defray expenditure to bring plants into line with new statutory environmental standards, neither did the Belgian authorities make any such claim in their notification. The measures cannot therefore be regarded as satisfying the conditions of Article 3 of the Code.

Article 4 of the Steel Aid Code provides that aid for closures may be deemed compatible with the common market if certain conditions are met. None of the financing measures taken by the Region of Wallonia to assist Forges de Clabecq are intended to contribute towards expenditure to facilitate the closure of the undertaking, neither did the Belgian authorities make any such claim in their notification. The measures cannot therefore be regarded as satisfying the conditions of Article 4 of the Code.

Article 5 of the Steel Aid Code applies only to undertakings located in Greece, Portugal or the territory of the former German Democratic Republic. It cannot therefore

apply to Forges de Clabecq. The financing measures taken by the Region of Wallonia cannot therefore be regarded as satisfying the conditions of Article 5 of the Code.

The measures taken by the Region of Wallonia to assist Forges de Clabecq, as described above, are incompatible with the Steel Aid Code and therefore with the orderly functioning of the common market.

The illegal aid already paid must be reimbursed, in accordance with the procedures and provisions of Belgian law, using as a basis for calculation of the commercial interest rate the reference rate used for calculating the net grant equivalent of regional aid. This is necessary in order to restore the previous situation by removing any financial benefit which the undertaking has improperly enjoyed since the date on which the aid was paid,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The measures taken by Belgium to assist Forges de Clabecq, namely:

- a capital injection of BEF 1 500 million,
- the provision of State guarantees in respect of loans granted by Belfin and SNCI,
- the waiver of claims amounting to BEF 802,3 million (BEF 302,2 million by SA Forges Finances and BEF 500 million by SWS),
- the grant of bridging loans totalling BEF 700 million,

constitute State aid within the meaning of Article 1 (2) of Decision No 3855/91/ECSC.

#### *Article 2*

The aid measures referred to in Article 1 are incompatible with the common market since they do not satisfy the conditions laid down in Articles 2 to 5 of Decision No 3855/91/ECSC, as provided for in Article 1 (2) of that Decision, and are therefore prohibited by Article 4 (c) of the Treaty.

#### *Article 3*

Belgium is hereby required to abolish the aid measures referred to in Article 1 and demand that the illegal aid already paid be reimbursed, with interest from the date on which it was paid, within two months of the date of notification of this Decision.

Such reimbursement shall be effected in accordance with the procedures and provisions of national law, using as a basis for calculation of the commercial interest rate the reference rate used for calculating the grant equivalent of regional aid.

*Article 4*

Belgium shall inform the Commission of the measures taken to comply with this Decision within two months of the date of its notification.

*Article 5*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 18 December 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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## EUROPEAN ECONOMIC AREA

## EFTA COURT

## DECISION

of 22 August 1996

on official holidays of the EFTA Court in Luxembourg

THE EFTA COURT,

Having regard to Article 24 (3) of the Rules of Procedure, which requires the Court to observe the official holidays of the place where it has its seat,

Having regard to Article 76 (2) of the Rules of Procedure, which requires the Court to draw up a list of official holidays and to publish it in the EEA Section of and the EEA Supplement to the *Official Journal of the European Communities*,

Having regard to the fact that the moving of the seat of the Court from Geneva, Switzerland, to the City of Luxembourg, Grand Duchy of Luxembourg, as from 1 September 1996, makes it necessary to draw up a revised list of official holidays, replacing the list of official holidays of the EFTA Court as published in the EEA Section of the *Official Journal of the European Communities* No L 123, of 23 May 1996 and the EEA Supplement to the *Official Journal of the European Communities* No 23, 23 May 1996,

DECIDES:

As long as the EFTA Court is seated in Luxembourg, the following days will be observed as official holidays during which the Court will be closed:

New Year's Day  
Easter Monday  
1 May  
Ascension Day  
Whit Monday  
23 June (National Day of Luxembourg)  
24 June, where 23 June is a Sunday  
15 August (Assumption)  
1 November (All Saints' Day)  
25 December  
26 December

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