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## Legislation

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EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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## I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 228/2001  
of 2 February 2001  
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 1498/98 <sup>(2)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 198, 15.7.1998, p. 4.

## ANNEX

**to the Commission Regulation of 2 February 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

| CN code                                        | Third country code <sup>(1)</sup> | Standard import value |
|------------------------------------------------|-----------------------------------|-----------------------|
| 0702 00 00                                     | 052                               | 97,5                  |
|                                                | 204                               | 50,3                  |
|                                                | 999                               | 73,9                  |
| 0707 00 05                                     | 052                               | 106,4                 |
|                                                | 624                               | 196,9                 |
|                                                | 628                               | 141,3                 |
|                                                | 999                               | 148,2                 |
| 0709 90 70                                     | 052                               | 113,7                 |
|                                                | 204                               | 65,6                  |
|                                                | 999                               | 89,7                  |
| 0805 10 10, 0805 10 30, 0805 10 50             | 052                               | 35,4                  |
|                                                | 204                               | 50,9                  |
|                                                | 212                               | 42,9                  |
|                                                | 624                               | 65,6                  |
|                                                | 999                               | 48,7                  |
| 0805 20 10                                     | 204                               | 98,1                  |
|                                                | 999                               | 98,1                  |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | 052                               | 74,8                  |
|                                                | 204                               | 105,1                 |
|                                                | 600                               | 75,5                  |
|                                                | 624                               | 78,6                  |
|                                                | 999                               | 83,5                  |
| 0805 30 10                                     | 052                               | 60,4                  |
|                                                | 600                               | 62,6                  |
|                                                | 999                               | 61,5                  |
| 0808 10 20, 0808 10 50, 0808 10 90             | 400                               | 84,8                  |
|                                                | 404                               | 92,4                  |
|                                                | 720                               | 117,1                 |
|                                                | 728                               | 79,8                  |
|                                                | 999                               | 93,5                  |
| 0808 20 50                                     | 052                               | 189,0                 |
|                                                | 388                               | 111,1                 |
|                                                | 400                               | 103,1                 |
|                                                | 528                               | 106,0                 |
|                                                | 999                               | 127,3                 |

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 229/2001****of 2 February 2001****on the issuing of a standing invitation to tender for the resale on the internal market of 250 000 tonnes of barley held by the German intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000<sup>(2)</sup>, and in particular Article 5 thereof.

Whereas:

- (1) Commission Regulation (EEC) No 2131/93<sup>(3)</sup>, as last amended by Regulation (EC) No 1630/2000<sup>(4)</sup>, lays down the procedure and conditions for the disposal of cereals held by the intervention agencies.
- (2) In the present market situation, a standing invitation to tender for the resale on the internal market of 250 000 tonnes of barley held by the German intervention agency should be issued.
- (3) The management Committee for cereals has not delivered an opinion within the time set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

The German intervention agency shall issue pursuant to Regulation (EEC) No 2131/93 a standing invitation to tender for the

resale on the internal market of 250 000 tonnes of barley held by it.

*Article 2*

1. The final date for the submission of tenders for the first partial invitation to tender shall be 20 February 2001.
2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 24 April 2001.

3. Tenders must be lodged with the German intervention agency at the following address:

Bundesanstalt für Landwirtschaft und Ernährung (BLE)  
Adickesallee 40  
D-60322 Frankfurt am Main  
Fax (49-69) 15 64-793.

*Article 3*

Not later than Tuesday of the week following the final date for the submission of tenders, the German intervention agency shall notify the Commission of the quantities and average prices of the various lots sold.

*Article 4*

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, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 191, 31.7.1993, p. 76.

<sup>(4)</sup> OJ L 187, 26.7.2000, p. 24.

## COMMISSION REGULATION (EC) No 230/2001

of 2 February 2001

**imposing a provisional anti-dumping duty on certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey and accepting undertakings offered by certain exporters in the Czech Republic and Turkey**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, as last amended by Regulation (EC) No 2238/2000 <sup>(2)</sup>, and in particular Article 7 thereof,

Whereas:

## A. PROCEDURE

## 1. Initiation

- (1) On 5 May 2000, the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* <sup>(3)</sup> the initiation of an anti-dumping proceeding with regard to imports into the Community of certain iron or steel ropes and cables originating in the Czech Republic, the Republic of Korea (hereinafter referred to as 'Korea'), Malaysia, Russia, Thailand and Turkey.
- (2) The proceeding was initiated as a result of a complaint lodged in March 2000 by the Liaison Committee of European Union Wire Rope Industries (EWRIS) (hereinafter referred to as the 'complainant') on behalf of producers representing a major proportion, i.e. 76 % of the Community production of the product concerned. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the exporting producers, exporters and importers known to be concerned as well as their associations, the representatives of the exporting countries concerned, the EU-Czech Republic and EC-Turkey Association Councils, the complainant and all known Community producers, raw material suppliers and users, about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) A number of exporting producers in the countries concerned, as well as Community producers and importers made their views known in writing. All parties who so requested within the above time limit and who

demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

- (5) The Commission sent questionnaires to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the notice of initiation. Replies were received from 19 Community producers, 11 exporting producers in the countries concerned, as well as from their related importers in the Community, from one unrelated importer in the Community and one raw material supplier. No user responded to the questionnaire.
- (6) In order to allow exporting producers from Russia to submit a claim for market economy status (MES) or individual treatment if they so wished, the Commission sent to Russian companies known to be concerned a market economy status and an individual treatment claim form. No other companies made themselves known within the deadline set out in the notice of initiation. Two companies requested MES pursuant to Article 2(7)(b) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic regulation') or individual treatment should the investigation establish that they did not meet the conditions for MES.
- (7) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:
  - (a) Community producers
    - BTS Drahtseile GmbH, Gelsenkirchen, Germany
    - Randers Rebslaeri A/S, Randers, Denmark
    - Redaelli Tecna Cordati SpA, Gardone V.T., Italy
    - Trefileurope, Bourg-en-Bresse, France
    - Trenzas y Cables, SL, Barberà del Vallès, Spain
  - (b) Exporting producers
    - Czech Republic*
      - ŽDB a. s., Bohumín and its related exporter, Prague
    - Korea*
      - Kiswire Ltd, Seoul and Pusan
      - Chung Woo Rope Co., Pusan
      - DSR Wire Corp., Suncheon

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ L 257, 11.10.2000, p. 2.

<sup>(3)</sup> OJ C 127, 5.5.2000, p. 12.

*Malaysia*

— Kiswire Sdn. Bhd., Johor Bahru

*Russia (market economy status verification)*

— Cherepovetsky Staleprokatny Zavod, Cherepovets

*Thailand*

— Usha Siam Steel Industries plc

*Turkey*

— Celik Halat ve Tel Sanayii A.S, Istanbul/Izmit  
— Has Celik ve Halat Sanayi Ticaret A.S, Kayseri

## (c) Related importers in the Community

*United Kingdom*

— Usha Martin UK Ltd, Clydebank

*Denmark*

— Usha Martin Scandinavia A/S, Vallensbaek Strand

*Netherlands*

— Kiswire Europe BV, Dongen.

- (8) The investigation of dumping and injury covered the period from 1 April 1999 to 31 March 2000 (hereinafter referred to as 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1997 up to the end of the IP (hereinafter referred to as 'period considered').

**2. Product concerned and like product****(a) Product concerned**

- (9) The product concerned is ropes and cables, including locked coil ropes, of iron or steel but not stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with attached fittings or not. These products are often referred to by the industry as 'steel wire ropes' (SWR). Indeed, the investigation established that iron cannot be used as raw material for producing ropes and cables. SWR are currently classifiable within CN codes 7312 10 82, 7312 10 84, 7312 10 86, 7312 10 88 and 7312 10 99.
- (10) SWR consist of three basic components: the steel wires that form the strand, the strands that are wrapped around a core, and the core itself. These components vary in design depending on the physical requirement of the intended application of the SWR. There are different

types of steel wire, with varying tensile strength and diameter. The steel wire may be galvanised (i.e. zinc coated) or bright. The strand is obtained by closely twisting together several wires arranged in different geometric patterns or formations (e.g. standard, seale, filler, warrington). The quantity, size and quality of the steel wire and the specific construction establish the properties of each type of SWR. The strands are usually assembled and wrapped around a core which can be of fibre (natural or synthetic), steel, or a combination of the two. There are other specifications of SWR such as the lay direction, whether there is pre-forming or other special properties (e.g. compacted, cable lay, rotation resistance). They are generally round in cross-section but may also be rectangular. SWR may be covered with plastic and may be cut to length or fitted (hooks, rings).

- (11) SWR are used in a variety of industries including fishing, maritime/shipping, oil and gas industries, mining, forestry, aerial transport, civil engineering, construction and elevator. All SWR were found to have the same basic physical characteristics (i.e. the steel wires that form the strand, the strands that are wrapped around the core that form the ropes, and the core itself).
- (12) Several interested parties claimed that SWR should be divided into two different products, general purpose SWR and high performance SWR (including locked coil ropes). It was alleged that high performance SWR or at least locked coil ropes<sup>(4)</sup> should be excluded from the scope of the proceeding on the ground that they differ substantially from general purpose SWR in terms of physical characteristics, production process, end-uses, end-markets and prices.
- (13) The investigation revealed that SWR are produced in a wide range of different types with a certain degree of physical and technical differences and that various types of SWR can be classified into a number of product groups reflecting their physical and technical characteristics. However, it was also found that all of them have the same basic physical characteristics and the same technical characteristics and while products in the bottom end and in the top end of the range are not interchangeable, products in adjoining groups are. It was therefore concluded that a certain degree of overlapping and competition existed between SWR in different groups. Moreover, products in the same group may have different applications. In the absence of a clear dividing line in the range of SWR and given that all of them have the same basic physical and technical characteristics, all SWR are considered as one product.

**(b) Like product**

- (14) Certain interested parties argued that the product under consideration and that manufactured and sold by the Community industry on the Community market are different given that the former consists mostly of general purpose SWR whereas the latter include mostly high performance ropes. In view of the reasons given in recital 13, this argument could not be accepted.

<sup>(4)</sup> A locked coil rope is made up of layers of interlocking wires around a round-wire strand core. The special shape of the wires prevents locked coil ropes from fraying if one wire breaks and makes them technically part of the SWR family.

(15) The Commission found that there were no significant differences in the basic physical and technical characteristics of the various types of SWR (see description above). As concerns the application and usage of SWR, although a wide range of user industries exists, all SWR were found to have essentially the same use, i.e. to transmit force. Furthermore, within each product type it was found that SWR were interchangeable. SWR produced and sold on the domestic market in the Czech Republic, Korea, Malaysia, Thailand and Turkey and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry were found to have the same physical and technical characteristics and uses. The same has been found to be the case with the SWR exported to the Community from Russia as well as those produced and sold by the Community industry.

(16) It was therefore concluded that the SWR produced and sold by the Community industry on the Community market were a like product to the SWR exported to the Community originating in the countries concerned, within the meaning of Article 1(4) of the basic Regulation. It was also concluded, that the SWR produced and sold on the domestic market in the Czech Republic, Korea, Malaysia, Thailand and Turkey were alike to the SWR originating in the countries concerned and exported to the Community. Similarly, the SWR produced and sold on the domestic market in Korea were alike to the SWR originating in Russia and exported to the Community.

## B. DUMPING

### 1. General methodology

(17) The general methodology set out hereinafter has been applied for all exporting countries concerned. The presentation of the findings on dumping for each of the six countries concerned therefore only describes what is specific for each exporting country.

#### (a) *Normal value*

(18) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of SWR were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(19) The Commission subsequently identified, for the companies having representative domestic sales, those types of SWR sold domestically that were identical or directly comparable to the types sold for export to the Community. In general, types with the same diameter,

construction, number of strands and wires per strand, core, material of wire, rope characteristics, rope cover, surface finishing, tensile strength, whether with fittings attached or not were considered to be directly comparable. One exporting producer claimed that identification of directly comparable types should also take into consideration the following factors: breaking load, diameter tolerance, application, elongation factor, corrosion protection properties, extraordinary length and weight, special wires. The alternative categorisation of the comparable product type proposed by this exporting producer included only some of these additional factors and the analysis of prices charged by this exporting producer did not establish that the prices were influenced by these additional factors. Accordingly, this claim was rejected. No other interested party contested the criteria proposed by the Commission.

(20) For each of the types sold by the exporting producers on their domestic markets and found to be directly comparable to types sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of SWR of that type during the IP represented 5 % or more of the total sales volume of SWR of the comparable type exported to the Community.

(21) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the product type in question. In cases where the sales volume sold at a net sales price equal to or above the calculated cost of production (also referred to as 'profitable sales') represented 80 % or more of the total sales volume and where the weighted average price of that type was equal to or above cost of production, normal value was based on the weighted average of the prices of all domestic sales made during the IP, irrespective of whether all these sales were profitable or not. In cases where the volume of profitable sales represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the weighted average price of profitable sales only.

(22) In cases where the volume of profitable sales of any type of SWR represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(23) Wherever domestic prices of a particular type sold by an exporting producer could not be used, normal value was based on the weighted average of the prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade in accordance with Article 2(1) of the basic Regulation, whenever such data were available.

(24) Where, per product type, there were insufficient sales or no such representative domestic sales by other producers in the country concerned, normal value was constructed, in accordance with Article 2(3) of the basic Regulation, by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses (SG & A) and a reasonable margin of profit. To this end, the Commission examined whether the SG & A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(25) Actual domestic SG & A expenses were considered reliable when the domestic sales volume of the like product by the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales of the product concerned made in the ordinary course of trade as defined in recital 21.

#### **(b) Export price**

(26) In all cases where SWR were exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable.

(27) Where the export sale was made to a related importer, the export price was constructed pursuant to Article 2(9) of the basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price. Since information made available from the only cooperating unrelated importer was incomplete, the level of profit of the importers was based on the information submitted by the cooperating unrelated importers of the product concerned in a previous proceeding concerning the same product<sup>(5)</sup> and considered to be reasonable for the functions performed by the parties concerned. On that basis the level of profit was set at 5 %.

#### **(c) Comparison**

(28) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

#### **(d) Dumping margin for the companies investigated**

(29) According to Article 2(11) of the basic Regulation, the dumping margins were established on the basis of a comparison between the weighted average normal value per product type and the weighted average export price at ex-factory level and at the same level of trade. When there was a pattern of export prices differing among purchasers, regions or time periods and the method previously described did not reflect the full degree of dumping, normal value established on a weighted average basis was compared to prices of all individual export transactions to the Community.

#### **(e) Residual dumping margin**

(30) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

(31) For all countries subject to the investigation, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent import data reported by Eurostat in order to establish the overall level of cooperation.

(32) For those countries with a high level of cooperation, it was decided to set the residual dumping margin at the level established for the cooperating exporting producer with the highest dumping margin.

(33) For those countries where the level of cooperation was low or where there was evidence of known exporters that deliberately did not cooperate in the investigation, information from the cooperating exporting producer with the highest dumping margin was also used. However, in this case, the residual dumping margin was set at the highest level of dumping found for representative types made by the said cooperating exporting producer. This approach was taken, as there is no reason to believe that any non-cooperating exporting producer in the country concerned would have dumped at a lower level than a cooperating exporting producer in the same country.

(34) The above approach with regard to non-cooperating exporting producers was also considered necessary in order to prevent non-cooperating exporting producers benefiting from their non-cooperation.

<sup>(5)</sup> Commission Regulation (EC) No 362/1999 of 18 February 1999 imposing a provisional anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, Mexico, South Africa and the Ukraine and accepting undertakings offered by certain exporters in Hungary and Poland, O J L 45, 19.02.1999, p. 8.

## 2. Czech Republic

- (35) Two companies replied to the questionnaire for exporting producers. However, the reply submitted by one exporting producer in the Czech Republic was too incomplete to enable the Commission to arrive at a reasonably accurate finding. Notably, audited accounts or other financial statements were not transmitted, no information was submitted on costs of production, or, apart from total figures, on exports to the Community and domestic sales of the product concerned. In accordance with Article 18(4) of the basic Regulation, the company was duly informed that the information was insufficient to make any individual determination in its respect and given an opportunity to provide further explanations. None of the major deficiencies noted above were corrected and accordingly the company was informed that provisional findings in its respect would be based on facts available pursuant to Article 18(1) of the basic Regulation. No verification visit was carried out at the premises of this exporting producer in accordance with Article 16(1) of the basic Regulation. For this company, a residual dumping margin was established as described in recital 33.

### (a) Normal value

- (36) For types sold in the Community and on the domestic market in representative quantities and in the ordinary course of trade, normal values were established on the basis of the domestic sales prices in accordance with Article 2(1) of the basic Regulation.
- (37) For most of the types, in the absence of representative domestic sales of comparable models and of cooperation on the part of another exporting producer in the Czech Republic, normal values were calculated in accordance with Article 2(3) of the basic Regulation. The company's own SG & A expenses and the company's own profit on domestic sales of the product concerned in the ordinary course of trade were added to the manufacturing costs of these exported types.

### (b) Export price

- (38) All sales for export to the Community of the product concerned by the exporting producer, whether directly or via its related exporter, were to independent importers in the Community. Consequently, the export price was established according to Article 2(8) of the basic Regulation as the price actually paid or payable for the product concerned when sold for export to the Community.

### (c) Comparison

- (39) Allowances for differences in level of trade, transport, insurance, handling, loading and ancillary costs, packing, and credit have been made where applicable and justified.

- (40) As the related exporter's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 5 % for SG & A expenses and profit was also deducted from the prices charged by the related trading subsidiary to independent customers in the Community. This figure was estimated by reference to the commissions paid for transactions on the product concerned by two Korean exporting producers to an unrelated agent and was considered reasonable given the degree of the related trader's involvement in the selling activities of the exporter.

### (d) Dumping margin

- (41) Pursuant to Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned. Indeed, although a different pattern of prices between customers, regions and time periods had been declared, this method reflected the full degree of dumping being practised.
- (42) The comparison showed the existence of dumping in respect of the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid is for:
- ŽDB a.s.: 47,1 %.
- (43) Since a known exporting producer deliberately did not cooperate, the methodology followed to determine a provisional residual dumping margin for the Czech Republic was the one explained in recital 33 for countries where the level of cooperation was low. On this basis, the residual dumping margin is 66,0 %.

## 3. Republic of Korea

- (44) In view of the large number of Korean exporting producers mentioned in the complaint and the time limits established in Article 6(9) of the basic Regulation, the Commission initially envisaged to investigate dumping for Korea on the basis of a sample of exporters, in accordance with Article 17 of the basic Regulation. However, only three exporting producers contacted the Commission and provided the information requested in the notice of initiation within 15 days of its publication. Consequently the use of sampling techniques was deemed unnecessary. These three companies replied to the questionnaire for exporting producers. A related importer of one of the exporting producers also sent in a response to the questionnaire intended for related importers.

**(a) Normal value**

- (45) One Korean exporting producer which purchases the raw material (wire) from a related company requested the Commission to calculate the cost of production of the product concerned by taking the cost of production of the raw material from the related company. The claim was rejected as those costs were entered into the company accounts at the purchasing price which was found to be at arms-length and thus considered to reasonably reflect the cost associated with the production of the product under consideration.
- (46) Another exporting producer did not report all SG & A expenses incurred for the production and sales of the product concerned. However, given the fact that the party had acted to the best of its ability, and that the information submitted was verifiable, the Commission was able to correct the figures reported in the questionnaire on the basis of the information obtained and verified on the spot.
- (47) For most of the types sold for export to the Community, normal values were established on the basis of the domestic sales price of comparable types in accordance with Article 2(1) of the basic Regulation.
- (48) For other product types sold for export to the Community, normal value was based on the weighted average of the prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade in accordance with Article 2(1) of the basic Regulation.
- (49) For the remaining types normal value was constructed in accordance with Article 2(3) of the basic Regulation.

**(b) Export price**

- (50) A major part of the sales for export to the Community were made directly to independent customers. For these sales the export price was established on the basis of the prices actually paid or payable when sold for export to the Community as provided for in Article 2(8) of the basic Regulation.

**(c) Comparison**

- (51) Allowances for differences in physical characteristics, import charges, charges for transport, insurance, handling, loading, ancillary costs, packing, credit, and commission have been made where applicable and justified.
- (52) One exporting producer claimed an allowance for differences in levels of trade. The company considers that indirect selling expenses incurred for domestic sales should be deducted from the domestic price in the calculation of normal value in a similar way as selling expenses for its related importer in the Community are deducted from the resale price in order to construct the

export price. Alternatively, the company asked the Commission to disregard export sales in the Community made through its related importer.

- (53) These claims could not be accepted. The involvement of a related importer is not in itself a reason to make a deduction on the normal value side. Rather, the determination of the export price and the subsequent comparison of this export price with normal value are two separate steps governed by separate rules. The provisional determination has not shown any differences in the level of trade of export and domestic sales. It should finally be noted that the amount of exports into the Community market channelled through its related importer is substantial.
- (54) The same company claimed an adjustment on both domestic and export sales for differences in other factors, consisting of the costs incurred by the company for the inspection fees and outside processing (cut to length ropes or incorporation of fittings) of certain sales in order to meet customers' requirements. It was considered more appropriate to grant this claim as an adjustment for differences in physical characteristics. The amount of the adjustment corresponds to a reasonable estimate of the market value of the difference established by the Commission.

**(d) Dumping margin**

- (55) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned.
- (56) The comparison showed the existence of dumping in respect of the cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community frontier duty unpaid are for:
- |                       |         |
|-----------------------|---------|
| — Kiswire, Ltd:       | 0,21 %  |
| — Chung Woo Rope Co.: | 2,71 %  |
| — DSR Wire Corp.:     | 0,49 %. |
- (57) The three exporting producers appear to represent (when compared to the import data reported by Eurostat) the entirety of the Korean exports to the Community of the product concerned. In order to assess whether, on a countrywide basis, the dumping margin was *de minimis*, a weighted average dumping margin was established. This margin amounted to: 1,2 %.

**4. Malaysia**

- (58) One company replied to the questionnaire for exporting producers. A company in the Community related to this exporting producer also replied to the questionnaire intended for related importers.

**(a) Normal value**

- (59) For most of the types sold for export to the Community, normal values were established on the basis of the domestic sales price of comparable types in accordance with Article 2(1) of the basic Regulation.
- (60) For the remaining types normal value was constructed in accordance with Article 2(3) of the basic Regulation.

**(b) Export price**

- (61) A major part of the sales for export to the Community were made to a related importer in the Community. For these sales the Commission constructed the export price according to Article 2(9) of the basic Regulation.

**(c) Comparison**

- (62) Allowances for differences in physical characteristics, import charges, charges for transport, insurance, handling, loading, ancillary costs, packing, credit, and commission have been made where applicable and justified.
- (63) The cooperating exporting producer claimed an allowance for differences in levels of trade on the same ground as one of the Korean cooperating exporting producers. However, no differences in the level of trade of export and domestic sales was found. This claim could not be granted for the reasons explained in recital 53.

**(d) Dumping margin**

- (64) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned.
- (65) The comparison showed the existence of dumping in respect of the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid is for:
- Kiswire, Sdn. Bhd.: 0,56 %.
- (66) The exporting producer appears to represent (when compared to the import data reported by Eurostat) the entirety of the Malaysian exports to the Community of the product concerned. Accordingly, the dumping margin provisionally established for this sole exporting producer is valid for the whole country.

**5. Thailand**

- (67) One company replied to the questionnaire for exporting producers. Two companies in the Community related to this exporting producer also replied to the questionnaire intended for related importers.

**(a) Normal value**

- (68) The Thai exporting producer, which also purchases its raw material (wire rod) from a related company in India, at a price higher than the prevailing market price, requested the Commission to consider the arms-length price for the calculation of the cost of manufacturing for both the purpose of carrying out the normal course of trade test and constructing normal value where appropriate. The claim was accepted as it was found that the purchasing price was a transfer price and did not merely reflect the costs associated with the production and sale of the product concerned.
- (69) For most of the types sold for export to the Community, normal values were established on the basis of the domestic sales price of comparable types in accordance with Article 2(1) of the basic Regulation.
- (70) For the remaining types normal value was constructed in accordance with Article 2(3) of the Regulation.

**(b) Export price**

- (71) All sales of SWR on the Community market were to related importers in the Community. Consequently, export prices were constructed according to Article 2(9) of the basic Regulation.

**(c) Comparison**

- (72) Allowances for differences in physical characteristics, import charges, charges for transport, insurance, handling, loading, ancillary costs, packing, credit, and commission have been made where applicable and justified.
- (73) The exporting producer claimed an adjustment to the normal values for finance costs for value added tax (VAT), pursuant to Article 2(10)(k) of the basic Regulation. The claim was based on the grounds that the government refunds VAT with a significant delay and therefore the company incurs additional finance costs on the non-refunded VAT amount. The claim could not be granted since the company did not demonstrate that this factor affects price comparability and, in particular, that customers consistently pay different prices on the domestic market because of the difference in such a factor. The finance costs for the VAT are, in fact, a normal operational overhead.

**(d) Dumping margin**

(74) As provided by Article 2(11) of the basic Regulation, the comparison was made on the basis of a weighted average normal value to a weighted average export price.

(75) The comparison showed the existence of dumping in respect of the exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid is for:

— Usha Siam Steel Industries plc: 30,5 %

(76) Since the level of cooperation was low (less than 80 % of the exports of the product concerned to the Community from Thailand), the residual provisional dumping margin was set at the level of the highest dumping margin established for representative transactions by the cooperating exporting producer. Expressed as a percentage of the free-at-Community frontier price, duty unpaid, the margin is 42,8 %.

**6. Turkey**

(77) Two companies replied to the questionnaire for exporting producers.

**(a) Normal value**

(78) In line with the general methodology, it was possible, for some of the product types, to establish normal value on the basis of the domestic price of comparable types in accordance with Article 2(1) of the basic Regulation. Representativeness and ordinary course of trade tests for the domestic sales of comparable types were carried out on a monthly basis given the high inflation in Turkey during the IP.

(79) For all other types of the product concerned sold for export to the Community by the cooperating companies, normal value was constructed in accordance with Article 2(3) of the basic Regulation. The companies' own domestic SG & A expenses and the profit margin realised on the domestic market in the ordinary course of trade were added to the manufacturing cost. To account for the high inflation, constructed normal values were calculated for each month of the IP.

**(b) Export price**

(80) All sales of the product concerned made by the cooperating companies on the Community market were to independent customers in the Community. Consequently, the export price was established on the basis of the prices actually paid or payable as provided for in Article 2(8) of the basic Regulation.

**(c) Comparison**

(81) Allowances for differences in import charges and indirect taxes, discounts, rebates and quantities, transport, insurance, handling, loading and ancillary costs, credit, technical assistance, commissions have been made where applicable and justified.

(82) One exporting producer claimed pursuant to Article 2(10)(b) of the basic Regulation an adjustment to normal values for a 3 % tax paid on imported raw materials purchased on delayed payment terms as this tax would not be collected in respect of raw materials to be used in the manufacture of wire ropes to be eventually exported. The on-the-spot verification established that companies obtain at the beginning of the year the right to import free of this tax a quantity of raw materials based on the previous year's exports of finished products, no matter whether these materials would be incorporated in domestically sold or exported finished products. There was consequently no means of establishing that the tax had been paid on imported raw materials physically incorporated in SWR sold domestically. The claim was accordingly rejected.

(83) One exporting producer claimed an adjustment to the domestic prices for differences in levels of trade pursuant to Article 2(10)(d)(i) of the basic Regulation on the ground that all exports to the Community were to retailers whereas domestic sales were to retailers and to end-users. This adjustment was not granted since the company was unable to demonstrate that there were consistent and distinct differences in prices and functions on the domestic market for the alleged different levels of trade. The other exporting producer described its distribution channels in the Community and on the domestic market and submitted a claim for an allowance without any explanation on how this affected price comparability. Moreover, explanations received on the spot established that its distribution channel in the Community could not be described as claimed. Accordingly, no adjustment was made at this stage of the investigation.

(84) The adjustment for differences in the direct costs of providing warranties claimed by one exporting producer was partly rejected in respect of the amount which corresponded actually to expenses incurred for bank guarantees. These costs were a normal operational overhead not eligible to an adjustment claim. This claim also included returns on sales which were duly deducted from the price of the relevant transactions.

(85) Both exporting producers presented two claims under Article 2(10)(j) of the basic Regulation for currency conversions allowance. The claims were as follows: (i) the export prices set in euro or in currencies of the Member States having adopted the euro should be converted first to US dollars as domestic prices are set in

US dollars, using the exchange rate of 60 days prior to the date of invoice (or preferably, for one, the exchange rate at the beginning of the IP) due to the 'sustained' depreciation of the euro vis-a-vis the US dollar; (ii) then export prices should be converted from US dollar to Turkish lira using the exchange rate of the date of payment.

- (86) As regards the first claim, it was established that even if the US dollar was used to set the domestic price list to avoid its on-going revision because of the high inflation, the currency used for invoicing and settling the debts on the domestic market was the Turkish lira. As price comparison required a conversion from euro to Turkish lira, the Commission considered that the relevant exchange rate for comparing export and domestic prices was the Turkish lira/euro rate and thus the first claim could not be granted. The Commission could not grant the second claim presented by the companies either. Indeed, Article 2(10)(j) of the basic Regulation grants exporters time to adjust their export prices in order to reflect sustained movement in exchange rates, but it does not provide for an adjustment which takes into account exchange rate variations that occur after the date of sale.

- (87) Both exporting producers claimed an adjustment to normal values pursuant to Article 2(10)(k) of the basic Regulation to cover the cost resulting from financing the VAT payment from its due date (25th of the month following the sale) to the due date of payment by the domestic customer. The claim could not be granted since the companies did not demonstrate that this factor affects price comparability and, in particular, that customers consistently pay different prices on the domestic market because of the difference in such a factor. The finance costs for the VAT are, in fact, a normal operational overhead.

- (88) Finally, pursuant to Article 2(10)(k) of the basic Regulation, one exporting producer claimed that the normal value should be adjusted considering that unlike the Community exports, domestic sales were irregular and on small quantities. This claim was provisionally rejected since the company did not quantify it and could not demonstrate that this factor affected price comparability and in particular that customers consistently paid different prices on the domestic market because of the difference in such factors.

#### (d) *Dumping margin*

- (89) Pursuant to Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned. Indeed, although both exporting producers declared that there was a different pattern of prices between customers,

regions and time periods, this method reflected the full degree of dumping being practised.

- (90) This comparison shows the existence of dumping for the cooperating companies. The provisional dumping margins expressed as a percentage of the cif import price at the Community frontier duty unpaid are for:

— Celik Halat ve Tel Sanayii A.S: 58,1 %

— Has Celik ve Halat San Tic A.S: 19,2 %

- (91) Since the level of cooperation was high (more than 80 % of the exports of the product concerned to the Community from Turkey), the residual provisional dumping margin was set at the same level as the highest established for the cooperating companies, i.e. 58,1 %.

## 7. *Russia*

### (a) *General aspects*

#### (i) *Analysis of market economy status*

- (92) Two Russian companies requested market economy status (MES), pursuant to Article 2(7)(b) of the basic Regulation. For one of these Russian companies, the reply to the questionnaire for producers/exporters in the countries concerned was submitted beyond the deadline without giving any acceptable reason for this delay after having been granted twice an extension of one week. In addition the reply was clearly insufficient. Notably, the company submitted no listings of its export sales to the Community or its domestic sales, nor did it provide the requisite information regarding the cost of production. The company was therefore considered as non-cooperating in the investigation and informed that findings in its respect (as part of the 'residual determination') would be based on facts available in accordance with Article 18(1) of the basic Regulation. Its market economy status/individual treatment claim was therefore rejected. Furthermore, it did not reply to the request for additional information and clarification critical to its market economy status/individual treatment application.

- (93) The Commission sought all information deemed necessary and verified on the spot all information submitted in the MES application of the other applicant.

- (94) It was established that this company did not meet several of the criteria laid down in Article 2(7)(c) of the basic Regulation, notably that it had several contradicting and irreconcilable sets of basic accounting records, some costs did not substantially reflect market values and some payments were made via compensation of debts.

- (95) Consequently, after consultation of the Advisory Committee, both companies were informed that their MES applications could not be granted.

(ii) *Choice of analogue country*

- (96) In the absence of any companies fulfilling the requirements of MES, it was necessary to compare the export prices of the Russian exporting producers with a normal value established in an appropriate market economy country, pursuant to Article 2(7)(a) of the basic Regulation.
- (97) The Czech Republic was suggested by the complainant. The Commission envisaged in the notice of initiation the Czech Republic or Brazil. Within the required time limit, two Russian exporting producers provisionally expressed their agreement with the countries envisaged and indicated that they could also accept the choice of South Korea as a possible analogue country. The complainant expressed some concerns about the choice of Brazil in particular given the high level of custom duties. The complainant confirmed that the Czech Republic was an appropriate choice in its opinion and also suggested Canada as an alternative.
- (98) None of the contacted Brazilian producers replied to the request for cooperation. The Commission also tried without success to obtain cooperation from Canadian producers. Other known producing countries were not envisaged as either imports of the product concerned originating in these countries were currently under anti-dumping measures or the previous investigation established they were not an appropriate choice on grounds which had remained unchanged (i.e. limited competition in Norway, non-cooperation in the USA) <sup>(6)</sup>.
- (99) The cooperating exporting producer in the Czech Republic sold on the domestic market mostly types of the product concerned different from those exported by the Russian producers to the Community.
- (100) Under these circumstances, the Commission have investigated the appropriateness to use one of the other countries involved in the proceeding. The Republic of Korea was considered the most appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation. First, the South Korean domestic market is the largest in size, characterised by a significant number of competing local producers; second, South Korean domestic sales of the product concerned are the most representative in terms of types and volume when compared with Russian exports to the Community. Interested parties were informed, pursuant to Article 2(7)(a) of the basic Regulation, that the Republic of Korea was envisaged as analogue country and no objections were received.

(iii) *Individual treatment*

- (101) In accordance with Article 9(5) of the basic Regulation, it is the Community Institutions' practice to calculate a countrywide duty for non-market economy countries, except in those cases where exporting producers can demonstrate a degree of legal and factual independence

comparable to that which would prevail in a market economy country and which would justify a departure from the determination of a single countrywide duty. To this end, detailed questions were included in the MES claim form sent to the parties concerned upon the initiation of the proceeding.

- (102) The two exporting producers that requested MES also asked for individual treatment, should their claim for MES be rejected.
- (103) The individual treatment claim of one company was rejected since, due to its non-cooperation in the investigation, findings in its respect (as part of the 'residual determination') are based on facts available in accordance with Article 18(1) of the basic Regulation (see recital 92).
- (104) The Commission sought all information deemed necessary, verified on the spot all information submitted in the application of the other applicant and analysed it on the basis of the following criteria for individual treatment <sup>(7)</sup>:
- the first criteria (freedom to repatriate capital and profits) is not relevant in the present case, the Joint Stock Company Cherepovetsky Staleprokatny Zavod (JSC CHSPZ) being a wholly Russian owned company,
  - no restrictions in the determination of export prices and quantities were identified; the majority of the shares of the applicant company and of the parent companies up to two levels belongs to private persons,
  - JSC CHSPZ carries operations at the foreign exchange rate of the Central Bank of the Russian Federation, which is the market rate determined at Moscow International Foreign Exchange,
  - no State interference was established in the management of the company, of the parent company or of the major shareholder of this parent company.

- (105) Consequently, individual treatment is granted to this company.

(b) *Normal value*

- (106) Normal value for the Russian exporting producers was calculated on the basis of the normal values established for the cooperating Korean companies by using the methodology described in recitals 47 to 49. In this context, the types sold on the Korean domestic market which were found to be comparable to the Russian types exported to the Community were used.

<sup>(6)</sup> Regulation (EC) No 362/1999 (See footnote 5) and Council Regulation (EC) No 1796/1999 (OJ L 217, 17.8.1999, p. 1).

<sup>(7)</sup> Review of the anti-dumping regime applicable to China and Russia, (COM (2000) 363 final).

**(c) Export price**

- (107) For the cooperating exporting producer, the export price was established by reference to the prices paid or payable.

**(d) Comparison**

- (108) Where applicable, adjustments were made on the export price to take account of differences relating to transport, insurance, handling, loading and ancillary costs, packing, credit, commissions. Given that costs in non-market economy countries cannot be taken into account in determining prices on the basis of which the comparison between export prices and normal value is made, the adjustment on export prices for transport costs and related costs (handling loading and ancillary costs) as far as they were incurred in Russia, was based on the analogue country costs.
- (109) To allow a fair comparison at an ex-work level, adjustments were also made on the normal value established on the basis of the normal values of the cooperating Korean companies in respect of physical characteristics (including the estimated market value of the general differences in quality between the product manufactured and sold on the Korean market and the product manufactured in Russia and exported to the Community), import charges, transport, insurance, handling, loading, ancillary costs, packing, credit, and commission where applicable and justified.

**(e) Dumping margin**

- (110) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.
- (111) The provisional dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid has been established for the company granted individual treatment as follows:
- Cherepovetsky Staleprokatny Zavod: 35,8 %
- (112) Since a known exporting producer did deliberately not cooperate, the methodology followed to determine a provisional residual dumping margin for Russia was the one explained in recital 33 for countries where the level of cooperation was low. On this basis, the residual dumping margin is 50,7 %.

**8. Conclusion on dumping**

- (113) The Commission established substantial dumping margins for all cooperating companies in the Czech Republic, Russia, Thailand and Turkey. In the case of the Republic of Korea and Malaysia the dumping margins found were *de minimis*.

**C. COMMUNITY INDUSTRY****1. Community production**

- (114) The product concerned is manufactured in the Community by the following:
- producers who lodged the complaint or supported it and cooperated in the investigation (see recital 118),
  - producers who lodged the complaint and were considered non-cooperators in the current investigation (see recital 120),
  - other producers who were not complainants, who either provided general information or not but did not oppose the proceeding.
- (115) The Commission found that eight complainant/supporting Community producers purchased SWR from various sources outside the Community, including the countries concerned, in the IP. However, the total volume of these imports represented a negligible share of total production (i.e. less than 1 % of their production in the IP). In particular, the imports from the countries concerned during the IP were below 0,5 % of the complainant/supporting Community producers' production of SWR. The Commission therefore considered that these purchases were in accordance with standard commercial practice of producers who had to supplement their own range of products with small purchases. In view of the above, it was concluded that there were no grounds to exclude any of these Community producers from the total Community production.
- (116) The SWR produced by all these companies constitute therefore the Community production within the meaning of Article 4(1) of the basic Regulation.

**2. Definition of Community industry**

- (117) The Commission examined whether the cooperating complainant or supporting Community producers represented a major proportion of the total Community production of the product concerned and arrived at the conclusion that they accounted for 70,6 % of the total Community production of SWR in the IP. The Commission therefore considered that the cooperating/supporting Community producers represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.
- (118) The following Community producers made up the Community industry:

- Bridon International, Retford, United Kingdom
- BTS Drahtseile GmbH, Germany
- Cables y Alambres Especiales, SA, Spain

- CASAR Drahtseilwerk Saar GmbH, Germany
- Cordoaria Oliveira Sá — Manuel Rodrigues de Oliveira Sá & Filhos, SA, Portugal
- Drahtseilerei Gustav Kocks GmbH & Co., Germany
- Drahtseilwerk GmbH, Germany
- Drahtseilwerk Hemer GmbH & Co. KG, Germany
- Hamburger Drahtseilerei A. Steppuhn GmbH, Germany
- Metal Press SRL, Italy
- Randers Rebslaeri A/S, Denmark
- Redaelli Tecna Cordati SpA, Italy
- Trefileurope, France
- Trenzas y Cables, SL, Spain
- Vereinigte Drahtseilwerke GmbH, Germany
- Voest-Alpine Austria Draht GmbH, Austria
- Wadra GmbH, Germany.

(119) Drahtseilwerk Hemer GmbH & Co. KG only started production of SWR in January 2000. Therefore the company could not provide information for the period considered. In view of the above, the data provided by this company has not been taken into account.

### 3. Other Community producers

(120) Five producers who belonged to the complainant organisation EWRIS but failed to cooperate (Iscar SRL, Metalcalvi Wire Ropes SRL, Midland Wire Cordage Co. Ltd, Teufelberger Seil GmbH and Westfälische Drahtindustrie GmbH — Seilfabrik Zwickau) as well as the other producers who were not complainants, who either provided general information or not but did not oppose to the proceeding, are hereinafter referred to as the 'other Community producers'.

## D. INJURY

### 1. Preliminary remarks

- (121) Since the margins of dumping found for Korea and Malaysia are *de minimis*, the analysis of injury and causality refers to the remaining countries under investigation, i.e. the Czech Republic, Russia, Thailand and Turkey (hereinafter referred to as the 'countries concerned').
- (122) The analysis of injury should be seen in the light of the anti-dumping measures imposed on the product concerned by Council Regulation (EC) No 1796/1999<sup>(8)</sup>. The latter imposed a definitive anti-dumping duty on imports of the product concerned originating in the People's Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine.

### 2. Collection of injury data

- (123) The Commission requested information from the whole Community industry relating to the product concerned with respect to production, capacity, capacity utilisation, sales, stocks and employment. In view of the large number of producers in the Community industry and the time limits established in Article 6(9) of the basic Regulation, the Commission based the analysis of the remaining injury indicators on a sample of companies from the Community industry. Whenever the injury indicators mentioned refer to information from the sample, it will be expressly stated in this Regulation. In the absence of such reference, the injury indicators refer to the information obtained from all of the Community producers that form the Community industry.
- (124) The sample was made according to geographical location and the size of the companies in terms of production. In this context, the sample includes medium and large Community producers from six Member States: BTS Drahtseile GmbH, Randers Rebslaeri A/S, Redaelli Tecna Cordati SpA, Trefileurope, Trenzas y Cables, SL and Teufelberger Seil GmbH. The latter failed to cooperate and was therefore excluded from the sample.
- (125) The cooperating sampled companies accounted for 51 % of the production volume of the product concerned manufactured by the Community industry in 1999.

### 3. Apparent Community consumption

- (126) Apparent Community consumption was based on the questionnaire replies (volume of sales of the Community industry), Eurostat information (volume of imports) and the complaint (other Community producers' volume of sales).
- (127) It should be noted that the development of apparent consumption is largely influenced by the behaviour of importers/traders (important stockholders) on the Community market because they act as intermediaries between producers of SWR on one hand and users on the other hand. The apparent consumption figures therefore reflect to a large extent the purchases made by importers/traders during the period considered and not necessarily those made by users.
- (128) On the above basis, the apparent Community consumption decreased 6 % during the period considered from 156 658 tonnes in 1997 to 147 963 tonnes in the IP. Taking into account that it had increased 9 % in 1998 reaching 170 922 tonnes, the decrease in 1999 to 147 104 tonnes can be explained by sales of stock built up in 1998 by importers/traders. In 1998, imports from the countries that were subject to anti-dumping duties in the following year increased 28 % before decreasing significantly in 1999 and the IP. This explanation also seems to be in line with the fact that the sectors that are the main users of SWR (fisheries, mining and the offshore oil and gas industry, construction including lifts) have registered low and, in the case of fisheries, negative, growth throughout the period considered.

<sup>(8)</sup> See footnote 6.

#### 4. Cumulative assessment of the effects of the imports concerned

- (129) The Commission examined whether imports of SWR originating in the countries concerned should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (130) It was found that the margin of dumping established in relation to the imports from each of the countries concerned was found to be more than *de minimis* as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these countries was not negligible.
- (131) As regards the conditions of competition, the investigation showed that SWR imported from the countries concerned, considered on a type-by-type basis, were alike in all their essential physical and technical characteristics. Furthermore, on that basis, these SWR were interchangeable and were marketed in the Community during the period considered through comparable sales channels under similar commercial conditions. It should be noted that the imported SWR were therefore considered to compete with each other and with the SWR produced in the Community.
- (132) In the light of the above, the Commission considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should therefore be examined cumulatively.

#### 5. Imports from the countries concerned

##### (a) Volume and market share of dumped imports

- (133) The volume of the dumped imports into the Community of SWR originating in the countries concerned increased continuously from 5 100 tonnes in 1997 to 7 233 tonnes in 1998, 13 644 tonnes in 1999 and 16 052 tonnes in the IP, i.e. a 215 % growth during the period considered.
- (134) The market share held by these countries increased by 7,5 percentage points over the period considered, from 3,3 % in 1997 to 4,2 % in 1998, 9,3 % in 1999 and 10,8 % in the IP. The greatest increase took place in 1999 (+5,1 percentage points), coinciding with the imposition of anti-dumping measures against imports

from certain other third countries in a previous proceeding.

##### (b) Prices of the dumped imports

###### (i) Price evolution

- (135) The prices of imports from the countries concerned in EUR per kg as reported by Eurostat decrease 16 % between 1997 and 1998 and stabilised thereafter.

###### (ii) Price undercutting

- (136) As regards price undercutting, the Community industry and the exporting producers concerned were requested to provide information on sales prices of SWR categorised in models according to the following criteria: number of strands, number of wires per strand, arrangement of wires in strand, core, material of the wire, tensile strength, wire characteristics, rope characteristics, rope cover and diameter of the rope.
- (137) In view of the large number of Community producers in the sample and the large number of models sold by both the exporting producers concerned and the Community industry on the Community market, the Commission grouped the models according to those criteria that were considered to be the main price drivers on the Community market. In this context, the tensile strength was not taken into account since it was found not to have a separate impact on sales prices.
- (138) Furthermore, the exporting producers' prices were adjusted for post-importation costs (customs duties, incoming freight and handling costs), on the basis of the substantiated information provided by one unrelated importer. Furthermore, those prices were further adjusted for differences in level of trade to take into account the costs incurred by unrelated importers between importation and sales ex works.
- (139) For each type of SWR, the Commission compared the exporting producers' and the Community industry's average selling prices net of all rebates and taxes, calculated on the basis of sales to the first unrelated customer at the same level of trade.
- (140) Based on the above methodology, the difference between the prices, expressed as a percentage of the Community industry's weighted average price (ex works), i.e. the price undercutting margin, is shown in the table below.

| Country        | Company                           | Undercutting margin (%) |
|----------------|-----------------------------------|-------------------------|
| Czech Republic | ŽDB a.s.                          | 30,4                    |
| Russia         | Cherepovetsky Staleprokatny Zavod | 51,4                    |
| Thailand       | Usha Siam Steel Industries plc    | 26,1                    |
| Turkey         | Celik Halat ve Tel Sanayii AŞ     | 16,4                    |
|                | Has Celik ve Halat San Tic AŞ     | 30,8                    |

## 6. Situation of the Community industry

### (a) *Production, installed capacity and capacity utilisation*

(141) The production of the Community industry decreased by 8 % over the period considered from 107 735 tonnes in 1997 to 99 588 tonnes in the IP. In 1998, production increased by 6 % but sales expectations were above actual sales and stocks built up (+19 %) as importers increased significantly their imports, especially those from the countries now subject to anti-dumping measures. In 1999, production decreased by around 15 000 tonnes to cope with the stock built-up and a decrease in sales. After the imposition of anti-dumping measures in 1999, production stabilised at around 100 000 tonnes.

(142) The installed capacity of the Community industry increased by 7 % in the period considered, going from 203 319 tonnes in 1997 to 209 313 tonnes in 1998, 213 984 tonnes in 1999 and 216 904 tonnes in the IP. The increase in capacity was due to investment in new machinery.

(143) The acquisition of new machinery, coupled with the existence of old, but still usable machinery (in some cases already fully depreciated) and optimum set-up times and number of shifts resulted in a low capacity utilisation rate throughout the period considered (53 % in 1997, 55 % in 1998 and 46 % in 1999 and the IP). Even if the Community industry were to produce also what is currently being sold on the Community market by the countries concerned, its capacity utilisation would remain at around 55 %.

### (b) *Stocks*

(144) The Community industry's closing stocks increased by 13 % over the period considered from 26 136 tonnes in 1997 to 29 660 tonnes in the IP. Stocks have, however, decreased after reaching 31 208 tonnes in 1998, falling to 30 050 tonnes in 1999.

### (c) *Growth, volume of sales and market share*

(145) Growth prospects on the Community market are influenced by the modest growth prospects of the sectors that use SWR and the ability of the Community industry to compete with low-priced imports from third countries. The Community industry was unable to benefit fully from the virtual withdrawal from the market of the imports from the countries subject to anti-dumping measures in 1999, which were largely replaced by the dumped imports from the countries included in the current proceeding.

(146) The Community industry's sales to unrelated customers on the Community market decreased by 5 % over the period considered from 71 125 tonnes in 1997 to 67 671 tonnes in the IP (they had increased to 72 676 tonnes in 1998 before falling to 66 331 tonnes in 1999), though they showed signs of recovery after the imposition of anti-dumping measures in 1999.

(147) The market share held by the Community industry decreased by 0,6 percentage points over the period considered, going from 55,2 % in 1997 to 50,5 % in 1998 and remaining stable in 1999 and the IP (54,3 % and 54,6 % respectively) — a period which registered a further growth of the market share of the countries concerned. The Community industry's increase in market share in 1999 is largely attributable to a decline in consumption following the stock built-up which occurred just before the imposition of anti-dumping measures in 1999.

### (d) *Sales prices and factors affecting sales prices — information from sample*

(148) The weighted average selling price of SWR sold by the Community industry on the Community market to unrelated customers increased by 8 % during the period considered. This increase took place mostly in 1999 when it grew by 6 %. The 1 % price increase in the IP is modest taking into account the level of the anti-dumping measures imposed in 1999. The price of the main raw material (steel wires), which represents up to 50 % of the manufacturing costs, declined in 1999 and remained stable in the IP.

### (e) *Profitability, return on investment and cash flow — information from sample*

(149) The Community industry has consistently registered a pre-tax loss over the period considered on its sales to unrelated customers on the Community market (– 1,4 % in 1997, – 1,5 % in 1998 and – 0,6 % in 1999), with the exception of the IP, a period in which it broke even. This poor financial result coincided with the presence of dumped imports throughout the period considered.

(150) The figures concerning the return on investment and cash flow were only available for the total company in respect of each sampled company. Taking into account that the product concerned is only one among other products produced by the sampled Community producers, these indicators are not considered to provide guidance as to the situation of the Community industry regarding the product concerned. It is, however, clear that the poor profitability of the product concerned did not contribute positively either to the low return on investment registered or a cash inflow from operating activities.

**(f) Investments and ability to raise capital — information from sample**

- (151) Investments increased over the period considered from EUR 5,8 million in 1997 to EUR 11,6 million in 1998, EUR 22,3 million in 1999 and EUR 21,5 million in the IP. The part of investment made in plant and machinery is responsible for a large share of total investment, ranging from around 95 % in 1997 to 44 % in the IP. During the period considered, the majority of the remaining investments was made in buildings. Investment in plant and machinery is essential for the Community industry to remain competitive in the long term. The investment effort needs thus to be maintained even during periods of low profitability.
- (152) The impact of these investments on the profitability of the Community industry is mostly taken into account in the form of depreciation and interest paid. In this respect, given that most investment has been made in plant and machinery (depreciated over a period of around 10 years) and buildings (depreciated over a period of around 25 years), the impact of these investments on the profitability of the Community industry in the period considered is minor.
- (153) The Community industry does not appear to have been hampered in its ability to raise capital either from the parent companies or from the banking system.

**(g) Employment**

- (154) Employment decreased continuously going from 2 226 persons in 1997 to 2 045 in the IP, i.e. 8 % over the period considered. This decrease in employment was mainly the result of the restructuring effort made by the Community industry.

**(h) Productivity**

- (155) Productivity of the Community industry, measured in tonnes per employee, improved only by 1 % over the period considered. In 1998, productivity increased due to an increase in production, whereas productivity decreased in 1999 because production decreased faster than employment. Productivity improved slightly in the IP since production improved whereas employment fell slightly.

**(i) Wages — information from sample**

- (156) The Community industry's labour costs per unit of output, measured in euro per kg, remained stable over the period considered.

**(j) Magnitude of the actual margin of dumping**

- (157) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

**(k) Conclusion on injury**

- (158) During the period considered, the volume of dumped imports from the countries concerned increased by 215 % and their market share went from 3,3 % to 10,8 %.
- (159) Following the imposition of anti-dumping measures in 1999, the situation of the Community industry stabilised in the IP but was still weak: production remained largely stable, capacity utilisation was kept at the same level and stocks decreased slightly from 30 050 to 29 660 tonnes. Although sales increased modestly from 66 331 in 1999 to 67 671 tonnes in the IP, the Community industry's market share did not increase despite the restored, effective competition from the countries subject to anti-dumping measures.
- (160) Regarding the profitability of the Community industry, although it improved slightly from - 1,4 % to 0 % over the period considered, it still remained at a level which is insufficient for the long-term viability of the Community industry. Furthermore, in the IP, the Community industry's prices did not increase as expected following the anti-dumping measures imposed in 1999. Therefore the Community industry could hardly benefit from the imposition of anti-dumping measures in 1999 due to the increase in the volume of imports from the countries concerned at prices which significantly undercut those of the Community industry.
- (161) In view of the above, it has been provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(2) of the basic Regulation.

**E. CAUSATION**

**1. Preliminary remarks**

- (162) In order to reach its provisional conclusion as to whether there is a causal link between the dumped imports and the injury suffered by the Community industry, the Commission examined the impact of the dumped imports from the countries concerned on the situation in that industry.
- (163) Pursuant to Article 3(7) of the basic Regulation, other known factors, such as the development of consumption, the situation of other Community producers, the export performance of the Community industry, the evolution and impact of imports from third countries and the effect of changes in the cost of raw materials are analysed below in order to examine whether any causal link between the dumped imports and the injury suffered by the Community industry could have been broken by factors other than the dumped imports.

**2. Impact of the imports concerned**

- (164) At the outset, it should be noted that in the SWR market, where the bulk of the products are highly standardised, competition takes place to a great extent in terms of prices.

- (165) There is a clear coincidence between the increase in imports from the countries concerned and the impossibility for the Community industry to reasonably benefit from the anti-dumping measures imposed in 1999. Furthermore, the imports from the countries concerned were found to have significantly undercut the Community industry's prices in the IP.
- (166) Indeed, following the imposition of anti-dumping measures in 1999 on imports originating in the People's Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine, the Community industry was able to stabilise or slightly improve the situation in terms of production, capacity utilisation, stocks and sales while the development of market share was unsatisfactory and the development of profitability was clearly inadequate.
- (167) The imports from the countries concerned increased significantly in 1999 and the IP. Indeed, the imports from the countries concerned have not only largely substituted the imports from the countries under measures but have also been able to grow at the expense of the Community industry (and also of the other Community producers). These imports significantly undercut the prices of the Community industry. All this can be directly linked to the fact that the Community industry could not significantly benefit from the imposition of the aforementioned measures by using its spare capacity and improving its sales volume thus reversing its bad financial situation (during the IP, the Community industry was only at break even point).
- (168) It can therefore be concluded that the imports from the countries concerned have largely undermined the effects of the anti-dumping measures adopted in 1999 and that the stagnation of the Community industry's market share, its level of prices and its poor situation, in particular in terms of profitability, can be attributed to the dumped imports from the countries concerned.

### 3. Effect of other factors

#### (a) *Development of apparent consumption*

- (169) The Commission considered whether the development of apparent consumption was a material cause of the deterioration of the situation of the Community industry.
- (170) It should be noted that while apparent consumption strongly increased in 1998 (by 9 %), the volume of sales of the Community industry remained almost the same. That increase only benefited the countries now subject to anti-dumping measures, the countries concerned as well as Korea and Malaysia. These countries saw their market shares rise, while the Community industry lost 4,7 percentage points in market share in the same period. This coincided with the initiation of the previous anti-dumping proceeding and it may be explained by a stock built-up by importers of SWR. In 1999, apparent consumption contracted, coinciding with the imposition of anti-dumping measures in the previous proceeding and with sales out of stocks by importers. During this period, the Community industry's sales volume to unrelated customers in the Community decreased significantly (from 72 676 in 1998 to 66 331 tonnes in 1999), while the imports from the countries concerned continued to grow despite the contraction in apparent consumption. In 1999 and the IP consumption remained largely at the same level, whereas the volume of imports from the countries concerned increased from 13 644 to 16 052 tonnes and the sales of the Community industry recovered slightly from 66 331 to 67 671 tonnes.
- (171) It is therefore unlikely that the development in apparent consumption has contributed to the deterioration of the situation of the Community industry.

#### (b) *Situation of the other Community producers*

- (172) In the course of the investigation it was also considered whether the situation of the other Community producers, which represented 29,4 % of the total Community production in the IP, had been the cause of the injury suffered by the Community industry. For this purpose, it is recalled that the Commission based their conclusions on the information contained in the complaint and additional information provided by some other Community producers on their overall production and sales volume. Both their sales volume and production declined over the period considered (4 % and 5 % respectively) following a similar pattern as that of the Community industry.
- (173) It cannot therefore be argued that the performance of the other Community producers was the cause of the stagnation in the volume of production and sales of the Community industry.

#### (c) *Imports from other third countries*

- (174) Imports from other third countries, including those from third countries not concerned by this proceeding as well as those originating in Korea and Malaysia, lost market share, which deced from 27 % in 1997 to 19,7 % in the IP.
- (i) *Korea*
- (175) The investigation has shown that the margins of dumping found for exporting producers in Korea were *de minimis*. Nonetheless, imports from this country registered a significant increase during the period considered (299 %) and increased their market share from 1,9 % in 1997 to 8,2 % in the IP. The prices of imports originating in Korea were found to undercut the selling prices of the Community industry in the IP.

- (176) It is therefore considered that imports from Korea have had a negative impact on the situation of the Community industry.

(ii) *Malaysia*

- (177) The investigation has shown that the margin of dumping found for the exporting producer in Malaysia was *de minimis*. Nonetheless, imports from this country registered a significant increase during the period considered (244 %) and increased their market share from 0,5 % in 1997 to 1,8 % in the IP. The prices of imports originating in Malaysia were found to undercut the selling prices of the Community industry in the IP.
- (178) It is therefore considered that imports from Malaysia have had a negative impact on the situation of the Community industry.

(iii) *Other third countries excluding Korea and Malaysia*

- (179) The Commission found that the market share held by third countries other than those included in the current proceeding decreased by 63 % during the period considered, mainly due to the decrease in imports from the countries subject to anti-dumping measures. Given the fact that these imports are mostly subject to anti-dumping measures and in view of the sharp decline in their volume, it cannot be concluded that they have contributed to the material injury suffered by the Community industry.

(iv) *Raw materials*

- (180) The Commission has examined whether the injury found to be suffered by the Community industry could be attributed to an increase in the costs of raw materials.
- (181) It was found that the price of the raw materials commonly used in the production of the product concerned (steel wire rod and steel wire, depending on the Community producers' structure) decreased during the period considered.
- (182) In view of the above, the Commission considered that the price of the raw material did not contribute to the injury suffered by the Community industry.

#### 4. Conclusion

- (183) In the light of the above, it is concluded that, although other factors, namely the imports from Korea and Malaysia, may have had a negative impact on the situation of the Community industry in the IP, this impact is not such as to break the causal link between the dumped imports and the situation of the Community industry. Therefore, the imports from the countries concerned

taken in isolation have been found to cause material injury to the Community industry.

#### F. COMMUNITY INTEREST

##### 1. General considerations

- (184) The Commission provisionally examined, on the basis of the information submitted, whether despite the dumping and injury findings, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in the present case.
- (185) For this purpose, the Commission considered the impact of possible measures for all parties involved in the proceeding and also the consequences for those same parties of not taking provisional measures.

##### 2. Collection of information

- (186) In order to assess the impact of possible measures, the Commission sent Community interest questionnaires to all interested parties known to be concerned in the upstream and downstream industries at the time of the initiation of the proceeding. The Commission also requested information on Community interest from the Community industry. Only one raw-material supplier, two non-complainant Community producers, one importer and the Community industry responded to the questionnaires. No users replied to the questionnaire.

##### 3. Interest of the Community industry

###### (a) *Nature and structure of the Community industry*

- (187) The Community industry is composed of small and medium-sized companies as well as two large companies, located in the Member States (Austria, Denmark, France, Germany, Italy, Portugal, Spain and the UK). Substantial competition exists in the Community market due to this large number of Community producers.
- (188) Production of SWR is capital intensive and the Community industry needs to invest in new machinery and carry out R & D to maintain a comparative advantage in the upper segment of the market, in particular to improve the product offer of custom-made SWR. SWR produced by the Community industry are often subject to operations that add value to them, sometimes carried out by related trading companies, such as cutting and the attachment of fittings. It should be noted that SWR are used by a variety of end-user industries that incorporate them into various applications. The Community industry employed around 2 000 people in the IP and bought its raw materials from Community suppliers, thus having an impact on the employment levels of raw material suppliers.

(189) In addition to the production of standard SWR, the Community industry also produces a wide range of special SWR, including some on a project basis such as for the construction of suspension bridges or the offshore oil industry. The manufacturing of project SWR has the advantage of higher profit margins, lower costs of stocking (the SWR is produced on order) and a more efficient use of capacity since the set-up of machinery does not need to be altered so frequently as when small volumes are produced. It needs sophisticated machinery, investment in R & D (often carried out by related companies) and good planning so that the project SWR is completed within the deadlines usually established by contract. It is to be noted that project work has over the years become an important source of revenue for the Community industry. Given that project orders usually require close technical cooperation with the customers and additional services, not only in the installation of the SWR but also in repair and maintenance work, the Community industry is virtually the exclusive supplier in the Community market of project SWR.

(190) However, with the exception of project SWR and other upper segments of the market, the range of SWR is highly standardised and both the Community industry and the exporting producers in the countries concerned produce SWR to agreed norms. Given this high degree of standardisation and the bargaining power of the major importers/traders in the Community, some of which act both as importers of SWR produced in third countries and SWR produced in the Community, competition mostly takes place on the basis of prices of SWR. The most common types are thus extremely sensitive to dumped imports.

(191) Furthermore, the Community industry produces special SWR on the same machinery and using the same labour force as for standard SWR of equivalent dimension, and therefore the production of special SWR is linked to the production of standard SWR to the extent that the latter are needed to spread fixed costs. These standard and special SWR, and not project SWR, constitute the bulk of the Community industry's production.

**(b) Effects of the imposition/non-imposition of measures on the Community industry**

(192) Given that the injury found has taken the form of an insufficient increase both in the volume of sales and sales prices, which in turn resulted in the Community industry's poor profitability, it is expected that, following the imposition of anti-dumping duties, the volume of SWR sold by the Community industry might increase and, to a certain extent, the prices of SWR on the

Community market might also rise. This would enable the Community industry to reach an acceptable level of profitability. However, the prices of the Community industry are unlikely to increase by the full amount of the duty, due to the conditions of competition among Community producers and the presence of other low-priced imports not subject to anti-dumping measures.

(193) It should be noted that the Community industry's poor profit margins are to a large extent the result of its difficulty to compete with the dumped, low-priced imports originating in the countries concerned. It is likely that the imposition of measures will allow the Community industry to increase its sales volume and thus get higher contributions to cover its fixed costs. The types of SWR produced by the countries concerned that can be economically produced by the Community industry in the absence of dumped imports have been estimated to represent above 70 % of the total imports from the countries concerned. In view of the expected gains in productivity and the prospects regarding the growth of consumption, the imposition of measures is unlikely to result in an increase in the level of employment.

(194) It should be noted, however, that the benefit to the Community industry from the imposition of anti-dumping measures is unlikely to result from an increase in sales in the lowest segment of the product range. Given the cost structure of the Community industry, in particular its variable costs, exporting producers will continue to have a comparative advantage in that segment. This segment has been found to represent slightly less than 30 % of the total imports from the countries concerned.

(195) Should measures not be imposed, the Community industry's situation is likely to deteriorate since it will not be able to compete with the dumped, low-priced imports from the countries concerned. In this respect the restructuring efforts undertaken by the Community industry in recent years could be frustrated. The closure of some companies in the medium term may become inevitable, resulting in a further decrease in the level of employment. Furthermore, the injury suffered by the Community industry on the types of SWR exported from the countries concerned could have a negative impact on its ability to produce project SWR if it led major producers of these types of SWR to close down.

(196) In conclusion, it is expected that measures would be effective in giving the industry the opportunity to fully recover from the injurious dumping found in this investigation and in the previous investigation

#### 4. Interest of the supplier industry

##### (a) *Situation of the raw material suppliers*

- (197) The principal raw material used in the production of SWR is industrial steel wire (produced from steel wire rod), in particular high-carbon steel wire that may be galvanised or otherwise coated. Some Community producers of SWR manufacture their own steel wire and the raw material they buy is thus steel wire rod. It is to be noted that there are other inputs, such as synthetic fibres and grease, which are also important in the production of SWR. The steel wire comes in reels. The steel wire rod and the steel wire used by the Community industry are produced by the major steel makers in Europe, who supply the entirety of the raw materials consumed by the sampled Community producers. There are a number of qualities and diameters of steel wire that can be used in this type of production. The steel wire makers in the Community produce the full range necessary for the production of SWR.
- (198) Only one cooperating raw material supplier (producer of steel wire), which employed a total of 589 persons in 1999, responded to the questionnaire. Its volume of sales in the Community of the raw material concerned to Community producers of SWR decreased (between 24 % and 26 %) <sup>(9)</sup> over the period considered. The profit margin of the total company increased by (between 1 and 2 percentage points) between 1997 and 1999 and the turnover of the raw material concerned represented (between 22 % and 26 %) of the company's turnover in 1999.

##### (b) *Effect of imposition/non-imposition of measures*

- (199) On the basis of the information provided by this company, it can be concluded that Community suppliers of the raw materials concerned sell more than two thirds of their production on the Community market to producers of SWR.
- (200) Taking into account that total Community production of the raw materials concerned represents (between 15 % and 20 %) of the total turnover and employment of raw material suppliers, it can be considered that in the event of the imposition of measures they could benefit from higher sales volumes.
- (201) On the other hand, should measures not be imposed, the downward trends in the sales volumes and turnover of the raw material concerned are likely to continue.

#### 5. Interest of importers/traders

##### (a) *Structure of the import and distribution channels*

- (202) The distribution of SWR in the Community is characterised by the existence of a significant number of importers/traders that hold large stocks of the product concerned. In essence, the importers/traders act between producers (Community and non-EU) and users of SWR and their behaviour on the market strongly influences the prices of SWR. Importers are able to control the levels of apparent consumption and thus prices through their access to dumped imports and their bargaining power over third-country suppliers and the Community industry. It was found that the Community industry still relies on this well established distribution network for around 15 % of its sales in the Community.

##### (b) *Economic situation of importers*

- (203) The only importer responding to the questionnaire reported low pre-tax profit margins over the period considered, though it is not possible to know from the reply what was the profitability of the product concerned (SWR accounted for 32 % of its total sales in 1999). This importer accounted for around 6,5 % of imports from the countries included in this proceeding. It is recalled that the previous investigation showed that the overall profit margin of importers ranged between 3 % and 18 %.

##### (c) *Effect of imposition/non-imposition of measures*

- (204) It should be noted that importers trade also in a large number of other items that are not concerned by this proceeding. Indeed, the Commission found in the previous anti-dumping investigation that the product concerned represented between 40 % and 80 % of the importers' total turnover. Furthermore, alternative third country sources of supply not subject to measures exist and they represented around 15 % of the Community consumption in the IP.
- (205) The Commission also examined the impact of anti-dumping measures on the economic situation of importers in the light of the measures already imposed in the previous anti-dumping proceeding. In this context, it is worth noting that only one importer responded to the questionnaire in the present proceeding, which could indicate that the anti-dumping measures imposed in 1999 did not have a significant impact on them. In any event, the impact of any anti-dumping duty on the situation of importers should also be seen in the light of the fact that these parties trade in other products. It is also important to note that they obtain additional revenues from the sale of SWR produced according to customers requirements such as length and fittings.

<sup>(9)</sup> Data is given in a range to preserve confidentiality.

(206) Should anti-dumping measures be imposed, the Commission considers that prices of SWR on the Community market will probably increase. Although the prices of the dumped imports will in all likelihood increase to the full extent of the duty, prices of the Community SWR are not expected to increase to the same extent. This increase in prices is likely to have a negative impact on importers and their margins will probably decrease. However, it should be noted that the importers, who also act to a large extent as traders, may choose to increase their purchases from the Community industry or from sources not subject to measures and may obtain discounts for larger volumes. Furthermore, it should also be noted that importers/traders may also pass increases in prices on to users, for whom the product concerned represents a negligible part of their total costs.

(207) In the light of the above, it was considered by the Commission that if measures are imposed, it is unlikely that the situation of importers will significantly worsen.

## 6. Interest of users

### (a) *Nature and structure of user industries*

(208) In the absence of any cooperation from users in the present proceeding, the effects of the imposition of anti-dumping measures on users have been analysed on the basis of the findings in the previous investigation.

(209) SWR are used in a wide variety of applications: fishing, maritime/shipping, mining (deep-shaft and surface mining) and offshore oil and gas industry, forestry, aerial transport (including skilifts and cableways), civil engineering (suspension bridges, towers, covered roof structures), construction (cranes and lifts). In view of the type of user industry involved, and in accordance with the information submitted by users in the previous proceeding, it is not incorrect to conclude that SWR represent a small percentage of the costs of the final products. It was found during the previous investigation that the proportion of user's turnover related to the product concerned ranged from 0,01 % to only 3 % showing that SWR had a minimal impact on the overall activities of users.

### (b) *Effect of imposition/non-imposition of measures*

(210) Given the lack of cooperation from users in the present proceeding, the supply channels and the type of users concerned, the impact of any anti-dumping duty on users is likely to be very marginal as the prices of SWR represent a marginal proportion of the cost of production of the final product as shown in the previous investigation.

(211) Furthermore, should anti-dumping measures be imposed, it is unlikely that supply constraints would occur, given the existence of alternative sources of supply not covered by measures, including the Community industry.

## 7. Conclusion on Community interest

(212) The investigation has shown that the imposition of measures can be expected to allow the Community industry to increase prices and volumes and therefore to improve profitability, with consequent beneficial effects on the competitive conditions on the Community market. The imposition of anti-dumping duties is also expected to benefit raw material suppliers.

(213) Whilst any negative effects are likely to result for the importers in price increases, the extent of these may be reduced by decreasing margins or by increasing the prices charged to the user industry.

(214) The user industry, in turn, is unlikely to suffer serious consequences from such an increase given the low incidence of SWR on their final products.

(215) In the light of the above, the Commission considers that no compelling reasons exist for not imposing measures and that the application of anti-dumping duties would be in the interests of the Community.

## G. PROVISIONAL ANTI-DUMPING MEASURES

### 1. Injury elimination level

(216) Having established that the dumped imports under consideration caused material injury to the Community industry and that there are no compelling reasons not to take action, the measures envisaged should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found.

(217) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community.

(218) On the basis of the information provided by interested parties, it was preliminarily found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious dumping. It is also considered that this profit margin would allow the Community industry to make the necessary investments.

- (219) On this basis, the weighted average export prices of SWR, adjusted according to the methodology described in recitals 138 and 139, were compared with the selling prices charged by the Community industry, adjusted to reflect a reasonable profit margin of 5 %. The result was then expressed as a percentage of the exporting producers' export prices on a cif Community frontier level, i.e. the injury margin.

## 2. Provisional anti-dumping measures

- (220) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margins found, except for a company in Turkey for which the duty should be imposed at the level of the injury margin which is lower, in accordance with Article 7(2) of the basic Regulation.
- (221) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the residual duty applicable to 'all other companies' are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (222) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>(10)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

## 3. Non-imposition of provisional measures in respect of Korea and Malaysia

- (223) In view of the results of the investigation concerning Korea and Malaysia, and considering that the dumping margin found in the case of these two countries is below the 2 % threshold set in Article 9(3) of the basic Regulation, no provisional measures should be imposed in respect of Korea and Malaysia. The Commission will continue to investigate and consider any further

evidence submitted. Should the provisional findings be confirmed at the definitive stage, the proceeding would be terminated as regards these imports.

## 4. Undertakings

- (224) The exporting producers in the Czech Republic and Turkey have offered price undertakings in accordance with Article 8(1) of the basic Regulation. By doing so, they have agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. In addition, the nature of the product, the structure of the companies and their sales patterns is such that the risk of circumvention of the undertakings is also minimised.
- (225) In view of this, the offers of undertakings are therefore considered acceptable and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.
- (226) To further enable the Commission to effectively monitor the compliance of the companies with their undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.
- (227) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.
- (228) Furthermore, in accordance with Article 8(6) of the basic Regulation, the investigation of dumping, injury and Community interest will be completed in respect of the countries concerned notwithstanding the acceptance of undertakings in the course of the investigation.

## H. FINAL PROVISION

- (229) In the interest of sound administration, a period should be fixed within which the interested parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive measures which the Commission may propose,

<sup>(10)</sup> European Commission  
Directorate-General Trade  
Directorate C  
TERV 0/12  
Rue de la Loi/Wetstraat 200  
B-1049 Brussels

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of iron or steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not, falling within CN codes 7312 10 82, 7312 10 84, 7312 10 86, 7312 10 88 and 7312 10 99, originating in the Czech Republic, Russia, Thailand and Turkey.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

| Country        | Provisional duty (%) | TARIC additional code |
|----------------|----------------------|-----------------------|
| Czech Republic | 66,0                 | A999                  |
| Russia         | 50,7                 | A999                  |
| Thailand       | 42,8                 | A999                  |
| Turkey         | 32,1                 | A999                  |

3. The above rates shall not apply to the products manufactured by the companies listed below, which shall be subject to the following anti-dumping duty rates.

| Country        | Company                           | Provisional duty (%) | TARIC additional code |
|----------------|-----------------------------------|----------------------|-----------------------|
| Czech Republic | ŽDB a.s                           | 47,1                 | A216                  |
| Russia         | Cherepovetsky Staleprokatny Zavod | 35,8                 | A217                  |
| Thailand       | Usha Siam Steel Industries plc    | 30,5                 | A218                  |
| Turkey         | Celik Halat ve Tel Sanayii AS     | 32,1                 | A219                  |
|                | Has Celik ve Halat San Tic AS     | 19,2                 | A220                  |

4. Notwithstanding Article 1(1), the provisional duty shall not apply to imports released for free circulation in accordance with Article 2.

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

6. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

### Article 2

1. The undertakings offered by the companies listed below are hereby accepted.

| Country        | Company                         | TARIC additional code (%) |
|----------------|---------------------------------|---------------------------|
| Czech Republic | ŽDB a.s.                        | A216                      |
| Turkey         | Celik Halat ve Tel Sanayii A.S. | A219                      |
|                | Has Celik ve Halat San Tic A.S. | A220                      |

2. Imports declared for release into free circulation under TARIC additional codes A216, A219, A220 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and directly exported (i. e. invoiced and shipped) by a company mentioned in Article 2(1) to a company acting as an importer in the Community. Such imports shall also be accompanied by a commercial invoice containing at least the elements listed in the Annex.
3. Exemption from the duty shall be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice.

#### Article 3

1. Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, present their views in writing and request a hearing from the Commission within one month of the date of entry into force of this Regulation.
2. Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may request a hearing concerning the analysis of the Community interest and may comment on the application of this Regulation within one month of the date of its entry into force.

#### Article 4

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

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

Done at Brussels, 2 February 2001.

For the Commission  
Pascal LAMY  
Member of the Commission

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## ANNEX

**Necessary information for commercial invoices accompanying sales made subject to an undertaking**

1. The invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at the Community frontier.
3. The exact description of the goods, including:
  - the product code number (PCN) (as established in the undertaking offered by the exporting producer in question),
  - CN code,
  - quantity (to be given in kg).
4. The description of the terms of the sale, including:
  - price per kg,
  - the applicable payment terms,
  - the applicable delivery terms,
  - total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the invoice and the following signed declaration.

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by... [company], and accepted by the European Commission through Regulation (EC) No 230/2001. I declare that the information provided in this invoice is complete and correct.'

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**COMMISSION REGULATION (EC) No 231/2001****of 2 February 2001****fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2281/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice <sup>(1)</sup>, as last amended by Regulation (EC) No 1667/2000 <sup>(2)</sup>, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2281/2000 <sup>(3)</sup>.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 <sup>(4)</sup>, as last amended by Regulation (EC) No 299/95 <sup>(5)</sup>, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2281/2000 is hereby fixed on the basis of the tenders submitted from 26 January to 1 February 2001 at 225,00 EUR/t.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 3.

<sup>(3)</sup> OJ L 260, 14.10.2000, p. 7.

<sup>(4)</sup> OJ L 61, 7.3.1975, p. 25.

<sup>(5)</sup> OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 232/2001****of 2 February 2001****concerning tenders submitted in response to the invitation to tender for the export to certain third European countries of wholly milled round, medium and long grain A rice issued in Regulation (EC) No 2282/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(1)</sup>, as last amended by Regulation (EC) No 1667/2000 <sup>(2)</sup>, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2282/2000 <sup>(3)</sup>.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 <sup>(4)</sup>, as last amended by Regulation (EC) No 299/95 <sup>(5)</sup>, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

- (3) On the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

No action shall be taken on the tenders submitted from 26 January to 1 February 2001 in response to the invitation to tender for the export refund on wholly milled round, medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2282/2000.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 3.

<sup>(3)</sup> OJ L 260, 14.10.2000, p. 10.

<sup>(4)</sup> OJ L 61, 7.3.1975, p. 25.

<sup>(5)</sup> OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 233/2001****of 2 February 2001****fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2283/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(1)</sup>, as last amended by Regulation (EC) No 1667/2000 <sup>(2)</sup>, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2283/2000 <sup>(3)</sup>.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 <sup>(4)</sup>, as last amended by Regulation (EC) No 299/95 <sup>(5)</sup>, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2283/2000 is hereby fixed on the basis of the tenders submitted from 26 January to 1 February 2001 at 237,00 EUR/t.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 3.

<sup>(3)</sup> OJ L 260, 14.10.2000, p. 13.

<sup>(4)</sup> OJ L 61, 7.3.1975, p. 25.

<sup>(5)</sup> OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 234/2001****of 2 February 2001****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2284/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(1)</sup>, as last amended by Regulation (EC) No 1667/2000 <sup>(2)</sup>, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2284/2000 <sup>(3)</sup>.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 <sup>(4)</sup>, as last amended by Regulation (EC) No 299/95 <sup>(5)</sup>, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The maximum export refund on wholly milled long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2284/2000 is hereby fixed on the basis of the tenders submitted from 26 January to 1 February 2001 at 314,00 EUR/t.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 3.

<sup>(3)</sup> OJ L 260, 14.10.2000, p. 16.

<sup>(4)</sup> OJ L 61, 7.3.1975, p. 25.

<sup>(5)</sup> OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 235/2001****of 2 February 2001****fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2285/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(1)</sup>, as last amended by Regulation (EC) No 1667/2000 <sup>(2)</sup>, and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion <sup>(3)</sup> as amended by Regulation (EC) No 1453/1999 <sup>(4)</sup>, and in particular Article 9(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2285/2000 <sup>(5)</sup> opens an invitation to tender for the subsidy on rice exported to Réunion.
- (2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum subsidy.

(3) The criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89 should be taken into account when fixing this maximum subsidy. Successful tenderers shall be those whose bids are at or below the level of the maximum subsidy.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 29 January to 1 February 2001 at 314,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2285/2000.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 3.

<sup>(3)</sup> OJ L 261, 7.9.1989, p. 8.

<sup>(4)</sup> OJ L 167, 2.7.1999, p. 19.

<sup>(5)</sup> OJ L 260, 14.10.2000, p. 19.

**COMMISSION REGULATION (EC) No 236/2001**  
**of 2 February 2001**  
**amending the import duties in the cereals sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector <sup>(3)</sup>, as last amended by Regulation (EC) No 2235/2000 <sup>(4)</sup>, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 200/2001 <sup>(5)</sup>.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 200/2001,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I and II to Regulation (EC) No 200/2001 are hereby replaced by Annexes I and II to this Regulation.

*Article 2*

This Regulation shall enter into force on 3 February 2001.

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

Done at Brussels, 2 February 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 161, 29.6.1996, p. 125.

<sup>(4)</sup> OJ L 256, 10.10.2000, p. 13.

<sup>(5)</sup> OJ L 30, 1.2.2001, p. 9.

## ANNEX I

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

| CN code    | Description                                                    | Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne) | Import duty by air or by sea from other ports <sup>(2)</sup> (EUR/tonne) |
|------------|----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1001 10 00 | Durum wheat high quality                                       | 0,00                                                                                                         | 0,00                                                                     |
|            | medium quality <sup>(1)</sup>                                  | 0,00                                                                                                         | 0,00                                                                     |
| 1001 90 91 | Common wheat seed                                              | 0,00                                                                                                         | 0,00                                                                     |
| 1001 90 99 | Common high quality wheat other than for sowing <sup>(3)</sup> | 0,00                                                                                                         | 0,00                                                                     |
|            | medium quality                                                 | 28,77                                                                                                        | 18,77                                                                    |
|            | low quality                                                    | 50,15                                                                                                        | 40,15                                                                    |
| 1002 00 00 | Rye                                                            | 42,09                                                                                                        | 32,09                                                                    |
| 1003 00 10 | Barley, seed                                                   | 42,09                                                                                                        | 32,09                                                                    |
| 1003 00 90 | Barley, other <sup>(3)</sup>                                   | 42,09                                                                                                        | 32,09                                                                    |
| 1005 10 90 | Maize seed other than hybrid                                   | 66,04                                                                                                        | 56,04                                                                    |
| 1005 90 00 | Maize other than seed <sup>(3)</sup>                           | 66,04                                                                                                        | 56,04                                                                    |
| 1007 00 90 | Grain sorghum other than hybrids for sowing                    | 42,09                                                                                                        | 32,09                                                                    |

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

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

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

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

<sup>(3)</sup> The importer may benefit from a flat-rate reduction of EUR 24 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

**Factors for calculating duties**

(period from 31 January to 1 February 2001)

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

| Exchange quotations                   | Minneapolis | Kansas City  | Chicago | Chicago | Minneapolis | Minneapolis        | Minneapolis |
|---------------------------------------|-------------|--------------|---------|---------|-------------|--------------------|-------------|
| Product (% proteins at 12 % humidity) | HRS2. 14 %  | HRW2. 11,5 % | SRW2    | YC3     | HAD2        | Medium quality (*) | US barley 2 |
| Quotation (EUR/t)                     | 129,49      | 124,73       | 110,83  | 90,46   | 212,76 (**) | 202,76 (**)        | 126,36 (**) |
| Gulf premium (EUR/t)                  | 45,28       | 15,72        | 7,48    | 11,96   | —           | —                  | —           |
| Great Lakes premium (EUR/t)           | —           | —            | —       | —       | —           | —                  | —           |

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

(\*\*) Fob Gulf.

## 2. Freight/cost: Gulf of Mexico — Rotterdam: 17,86 EUR/t; Great Lakes — Rotterdam: 28,78 EUR/t.

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

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 23 June 1999

**conditionally approving aid granted by France to Crédit Foncier de France**

*(notified under document number C(1999) 2035)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2001/89/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular, Articles 87 and 88 thereof,

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

Having given the interested parties notice, in accordance with the abovementioned Articles, to submit their comments <sup>(1)</sup>,

Whereas:

Economic Affairs and Finance released a statement to the press announcing support for the ailing bank and committing the Government to guaranteeing CFF's debts and restoring its solvency ratio.

- (3) Taking the view that some of the planned measures for supporting CFF were liable to involve State aid within the meaning of Article 87(1) of the EC Treaty and could not, at that stage and on the basis of the information then available, be declared compatible with the common market, the Commission on 3 July 1996 initiated the procedure provided for in Article 88(2) of the EC Treaty and requested the French authorities to provide further clarifications concerning the planned aid measures.

**1. PROCEDURE**

- (1) By letter of 2 February 1996 the Commission requested information from the French authorities concerning the provision of an overdraft facility of some FRF 20 to 25 billion, via Caisse des Dépôts et Consignations (CDC), to meet the liquidity requirements of the specialist financial institution Crédit Foncier de France (CFF). The French authorities replied by letters of 29 February and 21 March 1996, in which they supplied some of the documentation requested and informed the Commission that the new Governor of CFF would shortly be putting forward a plan for restructuring the bank.
- (2) By letter of 17 April 1996 the Commission asked the French authorities to provide the information it needed in order to complete its analysis of the public support measures for the bank. On 29 April the Minister for

- (4) The solution to CFF's problems initially envisaged by the French authorities was based on implementation of a recovery plan, whereby the group was to reorganise and refocus its activities on medium- and long-term property lending, and on a link-up with a partner. Thanks to its credit rating, the new shareholder was to have enabled the cost of refinancing to be reduced and the bank's own funds to be restored. After the appointment of a new Governor, the bank began pursuing a resolute policy of asset disposals and divestment of non-strategic interests. An agreement was negotiated and concluded with the trade unions enabling a plan to be launched which involved 600 voluntary departures with a view to reducing CFF's workforce to 2 400 by the end of 1997.

<sup>(1)</sup> OJ C 275, 20.9.1996, p. 2.

- (5) Since the initial efforts to find a buyer were not successful, the French authorities decided to nationalise CFF in order to facilitate a link-up. The plan adopted by the French Government along with its decision to nationalise CFF, called the 'Arthuis plan' and communicated to the Commission on 26 July 1996, provided for CFF to be subsequently wound up and a public institution, Caisse Nationale du Crédit Foncier de France (CNCF), created. Crédit Immobilier de France (CIF) was to have taken over CFF's branches and management of its portfolio of outstanding loans as well as some of its staff. CNCF was to have received a capital grant of FRF 2,5 to 2,6 billion from the Government in order to acquire all the mortgage bonds taken over by CDC and would have been responsible for underwriting CFF's debts and recovering its property loans with a view to winding up CFF in the long term (over a period of around ten years). Following the announcement on 9 September 1996 of a takeover bid by Caisse des Dépôts et Consignations (CDC) on behalf of the Government, CDC then controlled 90,6 % of CFF's capital, the remainder being held by the savings scheme for CFF staff (1,3 %), the pension fund for CFF staff (1,2 %) and other shareholders (6,9 %). Faced with stiff opposition to CIF among CFF staff, the plan was then abandoned by the new Government that had been in office since June 1996, which instead planned simply to sell off CFF.
- (6) Not having received all the information requested, the Commission sent the French authorities a reminder by letter of 9 July 1997. The French Finance Minister replied on 17 October 1997, informing the Commission that the task of finding a reference shareholder had been entrusted by CFF, in agreement with the Government, to the bank Deutsche Morgan Grenfell, which had prepared a presentation dossier and sent letters and presentation memos to potentially interested candidates that had at least FRF 10 billion in consolidated own funds. Offers were to involve the shares in CFF held by CDC and were preferably to cover the whole of the CFF group, but it was also possible to submit partial offers or joint offers with third parties where this would still result in privatisation. By letter of 21 November 1997 the Commission asked for information on the procedure for finding a partner that had been announced, and in particular the report drawn up by Deutsche Morgan Grenfell. The Commission received that report on 18 December 1997 and in the light of its analysis asked for further information by letter of 26 January 1998 concerning any other possible government support for CFF as part of the sell-off.
- (7) According to press reports, several candidates interested in CFF's commercial network came forward (the names mentioned are GE Capital, the Azur-GMF group, the French Post Office, the French savings banks and the US companies General Electric and General Motors). In particular, the solution apparently preferred was to set up a pool with minority holdings in CFF's capital around an industrial operator with an excellent credit rating. The group's financial documents were made available for consultation to the most serious candidates from 19 January to 30 April 1998. In September 1998, after several months of negotiation, the French Government broke off discussions with the sole candidate for taking over CFF, the US consortium GMAC-Bass. The reason for the failure of negotiations was GMAC-Bass' unwillingness to commit itself to taking over the whole of CFF and the extent of the guarantees it was demanding. According to the press, GMAC-Bass feared that, if it were to take over CFF's entire balance sheet (amounting at that stage to around FRF 310 billion) without any government guarantee, its own rating would be downgraded by the rating agencies. GMAC-Bass therefore requested the French Government to split CFF's balance sheet in two and to keep for itself all the outstanding liabilities covered by a public guarantee.
- (8) Following the failure of discussions with GMAC-Bass for the takeover of CFF, the French Government notified the Commission by letter of 18 September 1998 that it was initiating a fresh procedure with a view to finding a definitive solution for CFF. The new plan under consideration, which was notified to the Commission by letter of 24 December 1998 and communicated in full with all the technical annexes on 23 March 1999, was a three-stage operation: financial restructuring, recapitalisation by the Government via CDC and initiation of a new procedure for linking CFF to a partner.
- (9) On 24 March 1999 the French Government announced that it was recapitalising CFF by a maximum of FRF 1,85 billion via a shareholder's advance from CDC, bearing interest at a short-term market rate. The French authorities also stated that they intended to link CFF to a partner before the end of 1999. In particular, the Director of the Treasury announced by letter of 11 May 1999 that CDC would dispose of its interest in CFF (90,5 % of the capital and the shareholder's advance of FRF 1,85 billion) through an open, transparent and non-discriminatory procedure with bidding specifications.

## 2. DESCRIPTION

### 2.1. **Crédit Foncier de France**

- (10) Crédit Foncier de France (CFF) is a medium-sized financial group. At the end of 1994 it had a balance-sheet total of FRF 377 billion and a staff of 3 400. The group was made up of 52 companies active in the spheres of finance, low-cost housing and property development. It had a national network of 145 permanent or temporary sales outlets as well as subsidiaries in France and abroad (United Kingdom, Spain, Italy and the Netherlands).
- (11) CFF is a specialist financial institution within the meaning of the 1984 Banking Act. As such it is responsible for carrying out various activities which are regarded by the French authorities as public-service tasks, for example the distribution of certain loans for building low-cost housing (PLA — prêts locatifs aidés),

the organisation of the mortgage market and the payment of premiums under housing savings contracts to credit institutions. Its main public-service task was the distribution of subsidised loans for the purchase of a main residence (PAP — prêts pour l'accèsion à la propriété). The Government paid CFF grants enabling it to offer loans at preferential rates. CFF accounted for 75 % of the distribution and 100 % of the financing of these loans. This task was discontinued from 1 October 1995 when home-ownership funding was completely reformed.

- (12) Following the French Government's decision in October 1995 that no more new PAP loans were to be granted and the reform of the PLA loans system in October 1996, total turnover in subsidised loans fell (–85 % over the period 1994 to 1996). CFF still has to manage the stock of outstanding subsidised loans, which is shrinking as loans are reimbursed (scheduled or early repayments). CFF's competitive activity, which is generally more profitable but riskier, used to be limited but has become increasingly important in recent years as a means of counterbalancing the decline in the institution's public-service tasks.
- (13) Up to 1994 the bulk of CFF's capital (59 %) was widely dispersed among private investors, with the remainder being controlled by a group of national institutional shareholders (such as Caisse des Dépôts et Consignations, Assurances Générales de France and others, with approximately 15 % of the capital) and foreign institutions (UBS Asset Management, Templeton Global Investors and others, with around 22 % of the capital). CFF staff held approximately 3 % of the capital. CFF was nevertheless controlled by the Government, which appoints its Governor and Deputy Governors. The Government is also represented at the annual meeting of shareholders and appoints one of three auditors who have the task of ensuring that the articles of association are strictly applied; it is also represented by a deputy Government commissioner. By virtue of its legal status, CFF is subject to public supervision in addition to the usual checks carried out on limited companies that issue securities and on credit institutions.

## 2.2. Description of the Government intervention

- (14) Unlike the commercial banks, CFF has no traditional deposit-taking activity and raises funds by issuing bonds on the domestic and international markets which are assigned a rating by the major international rating agencies. The recession on the property market in the 1990s,

abolition of the PAP subsidised loans, over which CFF had a near-monopoly, and, above all, CFF's recorded or anticipated losses caused its long-term ratings to be downgraded by Moody's to Baa1 and by Standard & Poor's (S & P) to A1 <sup>(2)</sup>, increasing the cost of its borrowing to the point where it was impossible for it to tap the capital markets without compromising its profitability.

- (15) In early 1996 CFF was refinanced by means of an overdraft facility of FRF 20 billion, which could be increased to FRF 25 billion, granted by CDC for a period of 18 months to enable it to overcome its liquidity crisis. The accounts for 1995 showed a huge loss (FRF 10,8 billion) due to provisions of FRF 13,6 billion linked largely to a poorly conducted policy towards lending in the competitive property sector and insufficiently strict monitoring of the risks involved. The group's own funds were negative to the tune of FRF 2,4 billion. The extraordinary general meeting of 28 June 1996 reduced the registered capital to FRF 943 billion by cutting the nominal value per share from FRF 200 to FRF 25.
- (16) The statutory solvency ratio having fallen to 0,5 %, the institution's survival was safeguarded by the Government itself, which stepped in and guaranteed CFF's debt and future solvency. The aid measures contemplated by the French Government were as follows:
1. an overdraft facility of FRF 20 to 25 billion granted by Caisse des Dépôts et Consignations (wholly owned by the Government) for a period of 18 months;
  2. a Government guarantee that all CFF debt represented by securities would be honoured in terms of principal and interest over the whole maturity range;
  3. the Government's undertaking that every necessary step would be taken to ensure that CFF could continue to carry out its activities in accordance with the prudential rules in force.

## 3. COMMENTS BY INTERESTED PARTIES

- (17) In the course of these proceedings, no comments were submitted to the Commission by other interested parties within the prescribed deadline.

## 4. COMMENTS BY FRANCE

- (18) As regards the terms of the loan granted by CDC to CFF, the French authorities put forward several arguments aimed at demonstrating that the intervention was of a temporary and urgent nature and that the terms of the loan were dissuasive, given its limited duration and the fact that the interest rates were progressive.

<sup>(2)</sup> Standard & Poor's rating agency uses the following scale: AAA: the issuer's capacity to reimburse is extremely strong; AA: capacity is very strong; A: capacity is still strong but the issuer is susceptible to changes in economic conditions; BBB: capacity is adequate but with great sensitivity to changes in economic conditions; BB and B: speculative characteristics and uncertainty of payment; CCC, CC and C: doubtful claim; D: already in payment default. Moody's scale for investment grade risks is as follows: Aaa, Aa1, Aa2, Aa3, A1, A2, A3, Baa1, Baa2. The two scales are not comparable on a one-to-one basis.

- (19) On the duration of the loan, the French authorities stressed that it was reimbursed definitively and in full eight months after it was granted. As regards the loan guarantees, the selection of loans to local authorities provided as collateral<sup>(3)</sup> to CDC was made up of loans with a maturity of more than two years and of good quality, i.e. free from any arrears or risks of dispute, amounting to FRF 27,8 billion. As far as the interest rate was concerned, the average effective margin was 31 basis points, rising from 27 basis points in February to 41 basis points in August; it was therefore higher than those observed on the interbank market.
- (20) The French authorities argued that the undertaking given by the Minister for Economic Affairs and Finance on 29 April 1996 and reiterated in the statement of 26 July 1996, to the effect that all CFF's debt liabilities falling due would be honoured, did not have the same legal value as a genuine government guarantee. No details were given of the technical and legal arrangements and, even if there had been a formal government guarantee, such an undertaking would have had to be written into a finance bill. The Minister's declaration was therefore, according to the French authorities, rather a political commitment to monitor CFF's situation and to reassure the financial markets.
- (21) The French authorities also stated that only some of the bond issues (i.e. foreign-currency loans issued prior to 1 January 1991) were covered by a formal government guarantee. A Government guarantee was granted during the 1970s in respect of loans issued by State-owned enterprises and specialist financial institutions in order to finance the balance of payments in a context of high inflation and exchange controls. The guarantee had been withdrawn by the French Government since 18 January 1991 in view of progress in controlling inflation and the greater stability of the French franc; loans issued by CFF after 18 January 1991 were therefore not covered by a formal guarantee provided by either the Government or a public institution.
- (22) Lastly, with reference to Government guarantees for CFF's assets, the public guarantee covering its mortgage loans for housing purchases stems from an Act dated 31 December 1950: the conditions of the guarantee are determined by agreement between the Government and CFF under a procedure which ensures that the Government guarantee is limited to not more than 50 % of the value of the mortgaged property (60 % since 1991) and is exercised only if the net amount collected through foreclosure on a mortgage is insufficient to cover the sum normally payable by the debtor. Since 1991 the agreement also provides for 'incentive remuneration' of CFF for optimum operation of the subsidised loans guarantee fund.
- (23) By letter of 16 April 1999 the Commission requested the French authorities to clarify the reasons that had prompted the supervisory authority, the Commission Bancaire, to refrain from requiring CFF promptly to restore its own funds to the appropriate level. The French authorities replied in their letter of 30 April 1999 that they were not aware of the grounds on which the decision of the Commission Bancaire was based, but they considered it likely that the supervisory authority had preferred the approach of looking actively for a buyer while restoring CFF's viability rather than putting it into liquidation.
- ## 5. ASSESSMENT OF THE AID MEASURES CONCERNED
- ### 5.1. Involvement of State aid in the measures concerned
- (24) In its appraisal of financial assistance provided by Member States, the Commission applies the 'market economy investor principle', as set out in its communication on public undertakings<sup>(4)</sup>. That communication states that aid is involved in an operation where a private investor, operating under normal market economy conditions, would not have undertaken it.
- #### 5.1.1. The credit line provided by CDC
- (25) Under a protocol signed on 23 January 1996, CDC granted CFF, until 31 March 1997, an overdraft facility in the form of a renewable credit line, guaranteed through the assignment of loans granted to local authorities. The credit line of FRF 20 to 25 billion granted by CDC for a period of 18 months was used for an average amount of FRF 7,9 billion between 31 January and 30 August 1996, with a maximum drawing of FRF 12,4 billion made on 2 April 1996, the date on which it was reimbursed. As regards the terms on which this overdraft facility was granted, the average effective margin was 31 basis points compared with the reference interbank rate specified in the loan terms, rising from 27 basis points in February to 41 basis points in August 1996.
- (26) The credit line was intended to maintain CFF's liquidity during a transitional phase in which it was unable to borrow on the financial markets on normal commercial terms. Since the beginning of 1996 and in the second week of January 1996, CFF's 10-year bond issues were quoted on the secondary market with a record yield gap of almost 200 basis points (i.e. two percentage points of interest) above the yields on Government issues of the same duration. Faced with the deterioration in CFF's financial situation, the Government, without being a direct shareholder and through CDC (a public credit institution which at the time had an interest of approximately 4 % in CFF), was alone in assisting CFF, the private shareholders refusing to provide any support at that stage.

<sup>(3)</sup> By CFF as security for the loan.

<sup>(4)</sup> Commission communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 2).

(27) To determine whether the overdraft facility granted by CDC should be regarded as state aid, it has to be compared with other loans normally granted on the market by credit institutions. In particular, it has to be established whether:

- (a) other private institutions would have granted it; and
- (b) the terms on which the loan was granted (duration, interest rate and guarantees) were in line with those prevailing on the market.

In assessing these factors, account also has to be taken of the specific conditions in which the credit line was granted, and in particular the financial situation in which CFF found itself in early 1996.

(28) Looking at CFF's situation at that time, it should first be stressed that — given its dependence on the capital markets for financing its activities — CFF was also dependent, as regards determination of the rates at which it could borrow, on the assessments of its financial soundness made by the rating agencies. The rating agencies had begun to downgrade CFF's rating in 1993, but the situation deteriorated in 1995 when Moody's gave CFF a D rating, which indicates uncertain financial soundness. That rating was revised downwards in January 1996 (to E +) to indicate very uncertain financial soundness. By contrast, CFF's long-term rating, which is the most important since it takes account not only of financial soundness but also of any form of support or protection from other parties, in particular the public authorities, remained at a proportionately higher level (Baa1), which shows that the market was anticipating government support for CFF.

(29) The fact that an institution is under the dominant influence and protection of the government, as in the case of CFF, is reflected in the abnormal evolution of its rating. Although certain institutions may be in serious financial and economic difficulty, where the government retains some form of control over them the rating assigned to their borrowings does not deteriorate. To demonstrate this process, Moody's has developed a system of bank financial strength ratings which give an assessment of the stand-alone financial soundness of an institution, i.e. without any potential outside support<sup>(5)</sup>. The evolution of CFF's ratings are highly indicative in this respect. Its bank financial strength was downgraded by Moody's between 30 August 1995 and 1 May 1996 from C + to E (the lowest possible rating) despite the French Government's intervention to support it between January and

April 1996. By contrast, Moody's did not modify CFF's long-term debt rating, which it gave as Baa1 in early 1996, and confined itself to changing its forecast from negative to positive after the statements made by the Government at the end of April.

(30) As part of the procedure the Commission assessed the information provided by the French authorities, and in particular its comments on the duration of the overdraft facility, the interest rates applied and the guarantees required.

(31) The Commission found that CFF used the credit line for only eight months in view of the penalising terms on which it was granted, which deterred use of the credit over and above the minimum necessary through premiums on the basic rates that varied with the timing of drawings<sup>(6)</sup>. CFF took advantage of this respite in order rapidly to find solutions to its debt problem on the market and to improve its asset-liability management. The loan therefore supported the ailing institution at a critical moment in its financial restructuring, for a limited period and in respect of a limited amount.

(32) As regards the collateral for the loan, the Commission requested additional information in order to enable it to check more effectively the soundness of the loans granted by CFF to local authorities and assigned as a guarantee to CDC. The Commission found that the total value of the claims provided as collateral exceeded the total amount of the loan granted by CDC<sup>(7)</sup> and that the claims assigned were exclusively loans to metropolitan local authorities with a maturity of more than two years and free from any arrears or risks of dispute.

(33) The guarantee offered to CDC is in line with usual banking practice and due diligence in concluding contracts. It is standard banking practice to require as collateral claims worth more than the amount loaned: the extra amount also comprises a further guarantee for the creditor to cover the statistical risk of incomplete fulfilment of the debtor's obligations. Furthermore, the greater the risks involved in the loan, the more the guarantees provided must be readily and surely realisable. Given their high quality, the assets assigned as collateral by CFF to CDC can be regarded as a proportionate guarantee, despite the particularly high risk normally attached to a loan to an institution in difficulty, as was CFF at that time.

(34) As far as the rates applied by CDC to the loan are concerned, the Commission notes that CFF had to pay a premium over and above the average French interbank market rate. That rate is reserved for intermediaries with the best risk rating. The extent of the spread determined in line with the risk of default by the borrower, the existence of penalties linked to the amounts drawn, and the duration of the credit line are factors to be taken into account in determining whether the contractual conditions linked to the rates applied to CFF can be regarded as consistent with banking practice or whether,

<sup>(5)</sup> See the publication *Moody's assigns bank financial strength ratings to 540 banks*, Moody's, New York, September 1995.

<sup>(6)</sup> On average, the rates applicable were as follows: TIOP (Paris average interbank offered rate) + 0,25 % for drawings before 3 June 1996; TIOP + 0,40 % for drawings between 3 June and 1 October 1996; TIOP + 0,675 % for drawings between 1 October 1996 and 31 March 1997.

<sup>(7)</sup> The net excess was FRF 27,8 billion at 31 December 1995, excluding doubtful claims and arrears, out of total outstanding claims of FRF 37,6 billion on that date.

on the contrary, they involve preferential treatment and could possibly not be accepted as compatible with the competition rules. In view of the fact that, as a result of the spread, the total cost to CFF was approximately FRF 2 billion more than it would have been if the interbank reference rate had been applied, and that the contractual terms of the loan comprised penalties designed to prevent the overdraft facility being turned *de facto* into long-term financing, the rate conditions applied to CFF can be regarded as being in line with banking practice.

- (35) By way of conclusion, the Commission has found that the conditions attached to the credit line granted by CDC to CFF were in line with banking practice for a loan in a risk category similar to that of CFF in January 1996 and comprised penalties aimed at encouraging the institution quickly to find other less costly sources of finance or solutions to its liquidity imbalance at the earliest opportunity, in particular through the assignment of claims on its portfolio of loans to local authorities. On that basis, the overdraft facility does not constitute aid.

#### 5.1.2. *The government guarantee covering CFF's debts*

- (36) On 29 April 1996 the French authorities announced that CFF had recorded a loss of FRF 10,8 billion for 1995, which placed it in an extremely serious situation, with more than FRF 2 billion of negative own funds. In a statement issued on the same date, the Minister for Economic Affairs and Finance announced that the Government had given an assurance that all CFF debt represented by securities would be honoured in terms of principal and interest over the whole maturity range. At the time, the guarantee covered approximately FRF 260 billion of CFF borrowings.
- (37) The guarantee was confirmed a few months later. In his statement of 26 July 1996 the Minister further indicated that 'the institution's situation has therefore prompted the Government to intervene, in accordance with the undertakings given on 29 April, in keeping with the interests of public finances, the employees of Crédit Foncier de France, the holders of shares and bonds issued by it and the Paris stock exchange'. Being addressed to the public, the Minister's statement was therefore intended to reassure CFF's counterparties, who were concerned about the serious financial difficulties of

their debtor, as to the quality of its debt; since CFF was also highly active on international markets, those counterparties were largely foreign investors. Nevertheless, the statement by the Minister for Economic Affairs and Finance did not specify the duration of the guarantee, the amount covered or any remuneration required in return.

- (38) On the grounds that the Government guarantee covering all of CFF's debt could constitute restructuring aid, the Commission requested further information on the public guarantees or any other Government protection enjoyed by CFF.
- (39) The Commission has assessed the comments submitted by the French authorities concerning the guarantee covering CFF's liabilities, and it takes the view that the statement by the Minister cannot be regarded — as suggested by the French authorities — simply as a non-legally binding political commitment. The arguments put forward underestimate the considerable impact of a statement of this kind by a minister responsible for economic affairs and finance.
- (40) Looking not merely at the aims but, as stressed by the Court of Justice, above all at the effects <sup>(8)</sup> of Government support measures, it can only be concluded that, by reassuring creditors as to the quality of their claims, the statement in question had the effect of averting demand for reimbursement of CFF securities during a serious liquidity crisis, at a time when the institution was unable to obtain finance on the market on normal terms. The Commission considers that it also had the following effects. Firstly, it avoided the need for CFF to use the credit line granted by CDC for extraordinary transactions resulting from possible demand for reimbursement of loans from creditors anxious at the bank's financial situation, which would have diverted funds away from measures to restore its economic and financial viability. Secondly, it enabled the bank's management to draw up and subsequently implement a restructuring plan from a long-term perspective given the security afforded by the Government support. Thirdly, it enabled CFF to obtain permission from the Commission Bancaire to continue in business despite having an inadequate solvency ratio.
- (41) It should be stressed that the Commission Bancaire allowed CFF to operate for a long period with a solvency ratio well below that required under the Community prudential rules. Although the Government undertook to raise the ratio to the statutory minimum, effective public involvement was not announced until March 1999. It is highly likely that, in allowing CFF to continue in business outside the prudential rules, the Commission Bancaire did not consider the forthcoming recapitalisation by the Government to be adequate but had ascertained that, if CFF's difficulties were to worsen further, the Government guarantee announced by the Minister would be called upon.

<sup>(8)</sup> According to the Court of Justice, Article 87(1) of the Treaty does not distinguish between measures of state intervention by reference to their causes or aims but defines them in relation to their effects (see in particular its judgment of 26 September 1996 in Case C-241/94 *France v Commission* [1996] ECR I-4551).

- (42) Indirect confirmation of the awkward position in which the Commission Bancaire was placed by the uncertainty surrounding recapitalisation of CFF by the Government is given by the fact that in 1997 the Commission Bancaire apparently invited CDC, which since the takeover bid in late 1996 held more than 90 % of CFF's capital, to recapitalise CFF so that it would comply with the prudential ratios. CDC is thought to have replied that its intervention in favour of CFF was limited to granting the overdraft facility and that it controlled CFF only on behalf of the Government, and it therefore refused to provide it with fresh resources that would give it the requisite own funds.
- (43) Although the Government's pledge did not specify in formal terms the technical arrangements for its support, it was nevertheless followed by concrete steps to assist CFF by the Government, which formally took control of the bank via CDC. Following the statement issued on 29 April 1996 and confirmed on 26 July 1996, CDC, which had already granted the emergency loan to CFF in January 1996, bought on the market in October 1996 on behalf of the Government 90,6 % of CFF's capital for much more than the market price at the time: until the takeover bid was announced at a price of FRF 70 per share, CFF shares were being quoted at between FRF 29 and FRF 40, although it was known that a purchaser was being sought. The fact that the Treasury bank took control of CFF, albeit temporarily with a view to subsequently selling it off, therefore confirmed in the eyes of the public that the Government was determined to ensure its survival.
- (44) The Commission takes the view that, although the statement issued by the Minister in April 1996 was not legally formalised, it nevertheless had substantial effects and should therefore be deemed equivalent to a guarantee and assessed in the light of the market economy investor principle as set out by the Commission in its communication to the Member States of 13 November 1993 <sup>(9)</sup>.
- (45) When the Commission applies the market economy investor principle to government guarantees, it has to assess the existence of aid by comparing the terms of the guarantee with those which the beneficiary would have obtained on the market at the time when the decision to support it was taken and which normally depend on the assessment of the beneficiary company's financial situation and future prospects. In particular, where Government support is provided by means of a guarantee, it has to be established whether it is not subject to specific conditions. Aid is involved, for example, where the guarantee covers a firm's debts and there are no quantitative or time limits on its use by the beneficiary and/or if the remuneration is not in line with conditions prevailing on the market for similar transactions.
- (46) In the case in point the Commission notes that the Government guarantee was unlimited both in time and in terms of the amount involved, and that it was in no way remunerated. The Minister's general statement related to all the bank's liabilities represented by securities, without specifying the nature or amount of those liabilities; it did not make it clear, in particular, whether this meant only debt represented by a security or also other debts, for example subordinated debts.
- (47) The guarantee that all CFF's debt liabilities falling due would be honoured could have covered different types of debt. If it related only to 'debt represented by a security' as shown on the 1995 balance sheet, it covered an amount of nearly FRF 268 billion; otherwise an extra FRF 9,2 billion in subordinated loans and securities would have to be included. However, on the basis of the clarifications provided by the French authorities concerning the existence of a system of statutory guarantees, in determining the amount of the State aid the Commission has considered that the Government guarantee does not cover the total nominal amount of CFF's debt represented by securities. Given the specific status of building societies (*sociétés de crédit foncier*), loans distributed by these institutions enjoy a special privilege provided for by the Act of 28 February 1852 and confirmed by the Act of 4 January 1993, which lays down a link between financing and loans whereby the amount of outstanding loans granted in accordance with the articles of association must always be at least equal to that of the guaranteed financing. Otherwise, the building society has to redeem some of its borrowings in order to fulfil the condition. Claims arising from loans are affected to some extent by the value of the property on which the creditors have a first mortgage: the amount of property loans is at the outset equal to not more than 62 % of the value of the property or, alternatively, is covered by a guarantee granted by a public authority or a specific statutory procedure. Given the system described, then, the Government guarantee covering borrowings by building societies would appear to be additional to the special claim on the property or the guarantee granted by a public authority, which improves the liquidity of CFF's claims. CFF's creditors are thus reassured as to the reimbursement on maturity of the amounts they have loaned to it, without having to take legal action to call on the mortgage security. Moreover, if the Government has to honour the guarantee it will, thanks to the mortgage security, be likely to recover a substantial proportion of the amount paid. This is not the case of the abovementioned subordinated debts which, by definition, do not have any priority and are not much more likely to be recovered than shareholders' equity.

<sup>(9)</sup> See footnote 4.

- (48) In conclusion, as far as the terms of the guarantee are concerned it should be noted that no limit was placed on its duration and no remuneration or *quid pro quo* for the Government was stipulated. Furthermore, as already pointed out, at the time the guarantee was granted CFF's situation was so serious that it was unable to obtain a guarantee on comparable terms from a market economy investor: only the Government was prepared to provide support. The Government guarantee therefore constitute State aid. It enabled CFF to continue carrying out its activities for nearly three years in conditions in which it would normally have been impossible to grant any other institution the same authorisation to carry on banking and financial business.
- (49) In order to determine the amount of the aid, an estimate can be made of the price that CFF would have had to pay if it had had to purchase the guarantee on the market. To that end it is necessary to estimate the probability of reimbursement of a financial instrument (loan, bond, guarantee) with characteristics similar to those of the government guarantee granted to CFF, and in particular indefinite duration, the probability of recovery of mortgage loans and the theoretical probability of failure of institutions with the same rating as that assigned to CFF at the time the guarantee was granted (Moody's: Baa1; S & P: A1). That probability, in conjunction with the above factors, makes it possible to calculate the premium (spread) on the risk-free rate for a banking product with the same characteristics as the guarantee in question. On this basis, the remuneration that the Government should have demanded for this support can be calculated at FRF 14,6 billion.
- (50) The government guarantee in respect of CFF's debt also constitutes indirect support for the bank's creditors. Following the Government's decision to guarantee all of CFF's debt, the value of its creditors' claims rose as a result of the greater certainty of reimbursement provided by the public guarantee. Most of CFF's debt is represented by bonds that are held anonymously and can be transferred without written formality.

5.1.3. *The Government's undertaking that CFF would comply with the prudential rules*

- (51) The same press statement issued on 29 April 1996 by the Minister for Economic Affairs and Finance announcing the government guarantee for CFF's debt also contained a pledge on the part of the French Government that CFF would comply with the prudential rules. As already mentioned in connection with the debt guarantee, the statement was intended to reassure CFF's counterparties. The specific objective in this case was to restore confidence among the bank's staff, who were anxious about its future and had on 22 March 1996 already sounded the alarm as they were entitled to do under the Act of 1 March 1984 on prevention of company failures.
- (52) However, since an adequate level of own funds is a basic and necessary condition for carrying on banking business, the Minister's statement implied that the Government was prepared to provide the financial resources necessary for ensuring the institution's survival and viability. At the time of the Minister's statement CFF's own funds requirements were considerable: substantial losses had caused the solvency ratio to fall to 0,5 %. When proceedings were initiated under Article 88(2) of the Treaty the Commission did not have sufficient information to quantify the extent of such possible public assistance; press reports referred at the time to a minimum tier-one own funds requirement of FRF 8 billion in order to achieve a solvency ratio of 8 %.
- (53) In accordance with Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions <sup>(10)</sup>, as last amended by Directive 92/30/EEC <sup>(11)</sup>, the banking supervisory authorities must ensure that a bank whose solvency ratio drops below 8 % takes the necessary steps to restore the ratio to the appropriate level as quickly as possible, through recapitalisation or by reducing its liabilities, failing which its banking licence is to be withdrawn and it is to cease its activity. As already stated in other Commission Decisions concerning banks, such recapitalisation operations constitute aid if they are not carried out by the Government under normal market conditions, even if the amount incurred in recapitalising the assisted institution is less than it would have cost to wind it up. The minimum solvency requirement is one of the criteria for determining the viability of a bank and at the same time ensures that there is a level playing-field since, in theory, banks can always reduce their liabilities in order to meet the solvency requirement rather than increasing their capital.

<sup>(10)</sup> OJ L 336, 30.12.1989, p. 14.

<sup>(11)</sup> OJ L 110, 28.4.1992, p. 52.

- (54) Since the liquidation option is always open, a recapitalisation operation of this nature constitutes aid if it is not performed under normal conditions that are acceptable in terms of remuneration to a private investor. When comparing the action by the Government with the behaviour of a market economy investor, the assessment of the amount of the aid must be based on a comparison between the cost of the operation and its correctly discounted value.
- (55) Since 1996, despite creative accounting and the sale of property assets, CFF was unable to comply with the prudential requirements without recapitalisation measures. By letter of 24 March 1999 the Minister for Economic Affairs and Finance informed the Commission that on the basis of the accounts for 1998 the amount of the recapitalisation had been fixed at FRF 1,85 billion. The operation was to be carried out by means of a shareholder's advance by CDC, remunerated at a short-term market rate. When CFF was sold, the advance would be repaid and then consolidated into CFF's capital by the buyer. Nevertheless, a recapitalisation limited to FRF 1,85 billion anticipates and presupposes deconsolidation of the subsidiary Crédit Logement (CLog), which has not so far been effected, and compliance with the objective set by the Commission Bancaire of a tier-one own funds ratio for CFF of at least 6 %.
- (56) Expansion of CLog's business due to recovery of the housing market, combined with rapid development of the secured loans sector, caused a steep increase in the weighted total of CLog's outstanding loans which CFF, given the size of its stake in CLog (71 %), consolidates in its accounts. CLog's loans are economically more risky and therefore carry a higher prudential weighting, resulting in a greater own funds requirement for CFF. In their letter of 24 December 1998 the French authorities informed the Commission that discussions had begun with the other CLog shareholders on reducing CFF's interest in CLog from 71 % to less than 20 % in order to alleviate over the ensuing months the own funds burden carried by CFF <sup>(12)</sup>. On the basis of the information provided by the French authorities the Commission estimates CFF's own funds requirements at between FRF 1,357 billion and FRF 5,914 billion according to various assumptions regarding the tier-one own funds ratio required by the Commission Bancaire and the extent of CFF's interest in CLog ultimately decided on.

Table 1 — Capital requirements of Crédit Foncier de France

(in FRF million)

|                                   | Stake in Crédit Logement |       |       |       |       |
|-----------------------------------|--------------------------|-------|-------|-------|-------|
|                                   | 71 %                     | 51 %  | 20 %  | 10 %  | 0 %   |
| Tier-one own funds solvency ratio |                          |       |       |       |       |
|                                   | (unchanged)              |       |       |       |       |
| 4 %                               | 1 849                    | 1 321 | 1 646 | 1 357 | 1 357 |
| 5 %                               | 3 857                    | 3 329 | 1 646 | 1 357 | 1 357 |
| 6 %                               | 5 914                    | 5 385 | 1 801 | 1 801 | 1 801 |

Source: French authorities

- (57) On the basis of the information available, the Commission concludes that the Government's pledge that CFF would comply with the prudential rules constitutes aid whose compatibility must be assessed in the light of the measures to restructure CFF. The Commission bases its assessment of the aid on the scenario of a capital increase limited to FRF 1,85 billion (FRF 1,4 billion discounted to 1996), as notified by the French authorities, assuming that the reduction of CFF's interest in CLog will be sufficient for that purpose (see Table 1).

<sup>(12)</sup> The denominator of the solvency ratio comprises risk-adjusted assets.

- (58) In conclusion, the total aid granted to CFF amounts to FRF 16 billion as set out in the following summary table.

**Table 2 — Summary of aid measures (discounted to 31 December 1996)**

| (in FRF billion)       |               |
|------------------------|---------------|
| Measures concerned     | Amount of aid |
| Restructuring aid      |               |
| — Government guarantee | 14,6          |
| — own funds            | 1,4           |
| Total                  | 16,0          |

## 5.2. Effect on trade between Member States

- (59) The liberalisation of financial services and the integration of financial markets are making intra-Community trade increasingly sensitive to distortions of competition.

### 5.2.1. Distortion of competition

- (60) When aid is granted to a banking group such as CFF, which supplies loans and other financial services to businesses and collects resources from a wide range of customers, it is liable to distort competition with other credit institutions. Aid to the weakest institutions has a harmful effect and contributes to downward pressures on banking margins. Aid encourages inefficiency and defeats market discipline. Protection by a government which is ready to intervene should credit institutions run into difficulties removes the incentive for creditors to monitor the behaviour of their debtors. Institutions are no longer subject to the supervision and verdict of the markets. Not only is protection of this nature unjustified and excessive, it also acts as an incentive to poor management on the part of credit institutions.
- (61) In terms of the collection of resources, an area where the degree of competition is also high, the distortion of competition caused by the aid was considerable since CFF was a fairly major borrower on international financial markets. The Government guarantee conferred on CFF a substantial competitive advantage in that area.

### 5.2.2. Effect on trade between Member States

- (62) Although banks can in principle offer their services freely and without restriction across frontiers, principally by taking deposits and granting loans, they encounter obstacles to their expansion abroad.
- (63) These obstacles are frequently linked to the firm local rooting of domestic banks, which makes market entry more expensive for foreign competitors. Since completion of the single market has given banks the opportunity of offering their services in other Member States, any aid granted to a bank, whether it operates nationally or internationally, is liable to restrict these opportunities.
- (64) Aid designed to secure the survival of banks, even operating only at local level, which would otherwise have been forced out of the market as a result of their lower profitability and their lack of competitiveness, may therefore distort competition at Community level since it makes it more difficult for foreign banks to enter the French market.
- (65) Without the aid in question, CFF would probably have had to be wound up. Under such circumstances, CFF's assets could have been purchased by foreign competitors wishing to acquire a significant commercial presence in France. CFF's customers would have had to turn to another bank, possibly from another Member State.
- (66) The aid to CFF must consequently be deemed to be caught by Article 87(1) of the EC Treaty since it distorts competition to an extent likely to affect intra-Community trade.

### 5.3. Examination of the compatibility with the Treaty of the aid to CFF

- (67) Having established that the financial support measures granted to CFF involve State aid, the Commission has to examine whether that aid can be declared compatible with the common market in accordance with Article 87(2) and (3) of the EC Treaty.
- (68) It should first be noted that the aid under examination is not aid of a social character granted to individual consumers, or aid to promote the development of certain areas of France. Neither is it aid designed to remedy a serious economic disturbance since it is intended to remedy the difficulties of a single recipient, CFF, and not those of all operators in the sector.
- (69) The Commission considers that CFF's problems do not stem from a systemic banking crisis in France. CFF is not the only French credit institution in difficulty, and a number of other banks, particularly State-owned ones, are also encountering difficulties; however, the causes of CFF's losses are specific to itself and seem to be linked largely to a poorly conducted policy towards lending in the competitive property sector by its subsidiaries and insufficiently strict monitoring of the risks involved. Neither can the aid therefore be justified in the Community interest on the grounds of the development of a generalised banking crisis.
- (70) Only the derogation provided for in the second part of Article 87(3)(c) can possibly be taken into consideration. The compatibility of the aid measures must be assessed on the basis of the specific rules governing rescue and restructuring aid<sup>(13)</sup>. The general principle is that State aid to firms in difficulty is compatible if a number of conditions are met, and in particular in the case of restructuring aid:
1. full implementation of a restructuring plan based on realistic assumptions and making it possible to restore within a reasonable timescale the required minimum return on capital invested and thus to secure the firm's long-term viability;
  2. provision of sufficient *quid pro quos* to offset the distortion of competition and therefore make it possible to conclude that the aid is not contrary to the common interest;
  3. proportionality of the aid to the aims pursued and limitation of the amount of the aid to the minimum necessary for restructuring, to ensure that the recovery effort receives maximum support from the firm itself;
  4. full implementation of the restructuring plan and compliance with any other obligation laid down by the Commission in its final decision;
  5. establishment of arrangements for monitoring fulfilment of the preceding condition.

In accordance with the guidelines on restructuring aid, the Commission considers that such aid should normally be necessary once only.

#### 5.3.1.1. Viability of the enterprise

- (71) In a letter dated 21 March 1996 the French authorities informed the Commission that CFF's new Governor was preparing a restructuring and strategic redeployment plan for the bank. The plan was to place CFF on a sound footing and restore its viability with a view to linking it to a partner. The plan did not initially provide for an increase in the bank's capital by the Government, which hoped that the measures included in the plan would be sufficient to generate the necessary resources for recapitalising CFF.
- (72) While it was looking for a reference shareholder, and especially from 1996 onwards, CFF embarked on an internal restructuring process based on realignment on its core business, namely loans for owner-occupied or rented housing, granted chiefly to private individuals. The business strategy hinged on five activities around which the new organisational structure was devised. The internal restructuring rationalised the organisation chart by grouping together activities of the same type with a view to clarifying responsibilities and achieving economies of scale.

<sup>(13)</sup> Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12).

- (73) Marketing was the priority of CFF staff and management, with significant results in terms of turnover in loans in the competitive sector, which grew from FRF 6,1 billion in 1995 to FRF 11,5 billion in 1998. Thanks to the efforts of its commercial network, CFF gained market shares in its traditional area of activity, regulated loans. It improved its commercial methods with the introduction of sales training in early 1998.
- (74) The policy of restructuring and divestment in the context of refocusing on the core business helped at the same time to improve the group's liquidity and restore its own funds. In 1996 CFF sold non-strategic assets and holdings worth FRF 23 billion and finalised transactions involving the securitisation and direct sale of claims on local authorities amounting to FRF 22 billion, of which FRF 11 billion by securitisation. These transactions enabled CFF first to reimburse the advance provided by CDC and, by introducing asset-liability management tools, to refrain after the January 1996 crisis from raising funds on the capital market.
- (75) CFF's cash position is now positive by a substantial margin, not only owing to the disposal of considerable amounts of local-authority loans and the sale of other assets, but above all thanks to early repayments by its customers in response to the fall in market rates. In 1996 early repayments were made in respect of nearly all outstanding loans, generating FRF 26 billion in addition to the FRF 9 billion in contractual amortisations and the FRF 21 billion from disposals of local-authority loans. This made it possible to cope with the production and redemption of maturing securities and other debts and to add FRF 10 billion to the securities portfolio. Since high levels of early repayment continued in 1997 and 1998, CFF fulfilled all its commitments until 1999 while maintaining the turnover envisaged in the business plan; if necessary the bank can carry out securitisation transactions or realise assets in its bond portfolio in order to raise funds.
- (76) As regards the evolution of bad debts and provisions, the total amount of doubtful outstanding claims was lowered in parallel with the fall in total loans outstanding. Provisions for doubtful claims fell from FRF 9,7 billion in 1995 to FRF 5,2 billion in 1998, a significant improvement achieved through the strict risk selection policy pursued in connection with the grant of loans (risk management) as a direct consequence of the refocusing of the bank's activities on low-risk sectors (housing credit). As regards the system for monitoring the risks and liabilities entered into by its subsidiaries, CFF recognised that risk monitoring tools existed generally within the group, but that they had previously not been upgraded quantitatively and qualitatively in line with the needs of modern management, especially in the context of the diversification which CFF had undertaken. Since 1996, therefore, CFF has endeavoured to improve the control of the parent company over its subsidiaries: a group committee is responsible for constantly checking that the strategy pursued by subsidiaries is consistent with that of the parent company and provides a forum for discussing common problems. The monitoring of subsidiaries comprises quarterly reporting of results and of the main financial indicators of the cash position, as well as updating of the annual results forecasts. The reporting is supplemented by monitoring of the business results. As far as risk control is concerned there are two committees, one responsible for authorising commitments totalling more than FRF 5 billion by CFF subsidiaries in respect of entities outside the group, and the other for dealing with large risks of which the aggregate amount per client amounts within the group to at least FRF 5 billion.
- (77) The following table gives the balance-sheet data for the CFF group from 1995 to 1998.

**Table 3 — Consolidated balance sheet of the CFF Group**

(in FRF billion)

|                                | 1998         | 1997         | 1996         | 1995         |
|--------------------------------|--------------|--------------|--------------|--------------|
| <i>Assets (net)</i>            |              |              |              |              |
| Government paper               | 14,4         | 12,4         | 3,1          | 3,7          |
| Claims on banks                | 21,1         | 36,8         | 45,5         | 51,4         |
| Claims on customers            | 193,8        | 228,2        | 257,4        | 299,3        |
| Securities portfolio           | 33,6         | 16,6         | 15,6         | 9,9          |
| Other assets                   | 13,0         | 4,8          | 5,0          | 6,3          |
| Prepayments and accrued income | 10,6         | 10,7         | 14,0         | 11,4         |
| <b>Total</b>                   | <b>286,5</b> | <b>309,5</b> | <b>340,6</b> | <b>382,0</b> |

|                                                      | (in FRF billion) |              |              |              |
|------------------------------------------------------|------------------|--------------|--------------|--------------|
|                                                      | 1998             | 1997         | 1996         | 1995         |
| <i>Liabilities</i>                                   |                  |              |              |              |
| Banks                                                | 39,4             | 44,1         | 47,3         | 60,9         |
| Customers                                            | 5,4              | 5,3          | 4,9          | 5,2          |
| Securities                                           | 194,4            | 215,9        | 241,4        | 266,0        |
| Other liabilities                                    | 14,0             | 15,3         | 16,5         | 19,5         |
| Accruals and deferred income                         | 12,6             | 11,2         | 13,1         | 13,0         |
| Provisions for risks                                 | 5,2              | 5,5          | 7,1          | 9,7          |
| EGBR                                                 | 1,3              | 0,9          | 0,7          | 0,7          |
| Subordinated debt                                    | 11,7             | 11,2         | 10,3         | 9,2          |
| Minority interests                                   | 0,8              | 0,7          | 0,7          | 0,3          |
| Consolidated own funds                               | 0,5              | - 1,5        | - 2,3        | 8,3          |
| Consolidated result                                  | 1,2              | 0,9          | 0,9          | - 10,8       |
| <b>Total</b>                                         | <b>286,5</b>     | <b>309,5</b> | <b>340,6</b> | <b>382,0</b> |
| <i>Off-balance-sheet items</i>                       |                  |              |              |              |
| Commitments given                                    | 142,0            | 122,3        | 114,4        | 112,8        |
| Commitments received                                 | 0,9              | 1,4          | 20,5         | 1,0          |
| Forward foreign-exchange transactions                | 69,7             | 78,8         | 67,2         | 75,1         |
| Transactions involving forward financial instruments | 107,7            | 102,6        | 73,9         | 75,4         |

- (78) Since 1996 margins have been increased in line with the objectives of the business plan. The greatest efforts have focused on structural costs, with a view to adjusting resources to the fall in the level of activity. Between 1995 and 1998 the workforce was reduced by approximately 30 % (from 3 287 to 2 371), enabling staff costs to be cut by 25 %. Total operating charges were reduced by 22 % over the same period. Since the exceptional loss sustained in 1995 the group has accumulated profits which, albeit still on a modest scale, have led to an improvement in consolidated own funds. The contraction in net receipts from banking resulting from the reduction in the overall interest margin (foreseen in the business plan) has been neutralised not only by the reduction in general operating charges but also by the capital gains realised on disposals of local-authority loans and by the reduction in value adjustments in respect of claims and financial assets (thanks to improved risk management) and in depreciation and provisions.

- (79) The following table shows the evolution of the CFF group's consolidated results.

**Table 4 — Profit and loss account of the CFF Group**

|                                                            | (in FRF billion) |            |            |               |
|------------------------------------------------------------|------------------|------------|------------|---------------|
|                                                            | 1998             | 1997       | 1996       | 1995          |
| Banking operating income                                   | 25,2             | 28,3       | 31,2       | 34,2          |
| Banking operating charges                                  | - 22,2           | - 24,5     | - 26,8     | - 29,4        |
| Other income and charges                                   | 0,5              | 0,3        | 0,1        | 0,1           |
| <i>Net receipts from banking</i>                           | <b>3,5</b>       | <b>4,1</b> | <b>4,5</b> | <b>4,9</b>    |
| Operating and administrative charges including staff costs | - 2,0            | - 2,3      | - 2,3      | - 2,8         |
|                                                            | - 1,2            | - 1,5      | - 1,5      | 1,7           |
| <i>Gross operating result</i>                              | <b>1,5</b>       | <b>1,8</b> | <b>2,2</b> | <b>2,1</b>    |
| Risk charges                                               | - 0,6            | - 0,9      | - 1,7      | - 13,6        |
| Exceptional income/charges                                 | - 0,1            | - 0,1      | 0,2        | 1,2           |
| Other accounts                                             | 0,4              | 0,1        | 0,2        | - 0,4         |
| <i>Consolidated net result</i>                             | <b>1,2</b>       | <b>0,9</b> | <b>0,9</b> | <b>- 10,7</b> |

- (80) The validity of the restructuring plan implemented by CFF, which by virtue of the consolidation measures carried out generated the liquid resources the bank needed during the period of difficulty it underwent, and the resulting return to profitability, did not however suffice to restore its solvency ratio to the appropriate level. Although the French authorities initially stated that, despite the Government's pledge, they did not intend to carry out any prior recapitalisation of CFF or to give it any other support, the size of the profits made did not enable the bank's own funds to be restored to the level required by the Community prudential rules. That was to be done by the bank's buyer as part of the sell-off of CFF.

**Table 5 — Own funds of the CFF Group**

(in FRF million)

|                                          | 1998      | 1997      | 1996      | 1995      |
|------------------------------------------|-----------|-----------|-----------|-----------|
| Tier-one own funds                       | 6 424,0   | 3 304,0   | 1 990,0   | 557,0     |
| Additional own funds                     | 6 424,0   | 3 304,0   | 1 990,0   | 557,0     |
| Deduction                                | - 96,0    | - 126,0   | - 183,0   | - 194,0   |
| Consolidated own funds                   | 12 752,0  | 6 482,0   | 3 797,0   | 920,0     |
| Weighted risks                           | 205 600,0 | 188 000,0 | 185 550,0 | 183 600,0 |
| Solvency ratio                           | 6,20 %    | 3,45 %    | 2,05 %    | 0,50 %    |
| Solvency ratio (tier-one) <sup>(1)</sup> | 3,12 %    | 1,76 %    | 1,07 %    | 0,30 %    |

<sup>(1)</sup> The tier-one ratio should normally, in accordance with the prudential rules, be at least 4 %.

- (81) In September 1998, however, the discussions being held with the candidate for taking over CFF, the US consortium GMAC-Bass, were broken off as a result of the latter's unwillingness to take over the whole of CFF. According to the press, GMAC-Bass feared that, if it were to take over CFF's entire balance sheet (amounting at that stage to around FRF 310 billion) without any Government guarantee, its own rating would be downgraded by the rating agencies. GMAC-Bass therefore requested the French Government to split CFF's balance sheet in two and to keep for itself all the outstanding liabilities covered by a public guarantee.
- (82) The new plan presented by the French authorities on 24 December 1998 is a three-stage operation: financial restructuring, recapitalisation and initiation of a new procedure for linking CFF to a partner.
- (83) The financial restructuring is intended to solve the difficulties identified during the previous search for a partner, in particular the guaranteeing of CFF's debt, problems of corporate governance, transparency of the accounts and the increasing need for own funds. These problems were addressed, respectively, by setting up a building society as a subsidiary, giving CFF ordinary bank status, clarifying its balance sheet and reducing its holding in CLog.
- (84) The mortgage bonds and corresponding assets will be transferred to a specialised subsidiary with the status of a building society (société de crédit foncier — SCF). Given the standing of these societies, this will provide CFF with a new, secure source of finance enabling the government guarantee to be withdrawn. Implementation of this plan is subject to approval by the French Parliament of the savings and financial security act, scheduled for the end of this year. The Commission is favourably disposed towards those legislative provisions and creation of the SCF by CFF, since such an organisational structure will provide a definitive solution to the problem of the government guarantee.
- (85) The Commission attaches great importance to the reduction of CFF's interest in Clog, in view of the effects of consolidating CLog's accounts on the solvency ratio of the group, as shown by Table 1.

- (86) Following a letter of 24 March 1999 from the Minister for Finance and Industry communicating the amount which the Government intended to provide for recapitalising CFF, the Commission requested information with a view to ascertaining that there was an industrial plan that could carry the bank's recovery to completion and establishing that the planned aid measure corresponded to the strict minimum necessary. The information requested was also to confirm the planned dates for giving CFF ordinary bank status and creating the SCF subsidiary. The Commission received the full information requested on 12 May 1999.
- (87) The new plan takes the results posted for 1998 as a basis for developing future strategy and forecasting the group's future results, and forms part of the effort to find a buyer. It aims to restore the bank's profitability in the areas of highest risk and to avoid contraction of the net receipts from banking by finding other sources of income to offset the fall in traditional receipts. The plan tackles the bank's underlying problems and all aspects of its day-to-day management (staff, organisation, marketing), strategic development and financial structure (own funds, quality of claims, profitability, liquidity) with a view to enabling it to confirm its viability.
- (88) The aims of the strategic plan are twofold: to complete the refocusing on mortgage lending and to develop turnover in housing credit, the sale of services and the distribution of savings products. As far as the first objective is concerned, the chief measures are concentration on loans for low-cost housing, reorganisation of the network and strengthening of the marketing function. CFF intends to continue its redeployment in three directions: loans for owner-occupied or rented housing, granted chiefly to private individuals, coupled with a strategy for marketing a corresponding range of savings products; increasing lending activity in sectors under control, such as loans to property firms and specialised loans; and developing the marketing of services with high value added, such as property valuations, administration of estates, low-cost housing and the management of property, areas in which it already has considerable professional experience.
- (89) On the basis of the documents submitted, the strategic plan appears adequate on the whole; albeit optimistic in some respects. The fall in income from the assisted sector has not yet been sufficiently counterbalanced by growth of the competitive sector, in which CFF still has only a small market share. Projections regarding the growth of market share in that area appear optimistic, given that no growth of the market as a whole is forecast in the business plan. Switching to a new product line in this way is not easy for CFF, which is emerging from a deep crisis, and will demand great efforts from its staff, whose commercial skills had not been greatly developed in the past.
- (90) Furthermore, although the increase in loan renegotiations and early repayments prompted by the fall in interest rates and the development of a policy of loan repurchases by banking networks has initially had a favourable impact on CFF's cash position, it can lead to a drop in banking operating income, particularly in the assisted sector, which remains at the heart of CFF's lending activities.
- (91) Lastly, analysis of the evolution of these costs beyond 1999 reveals the absence of any further adjustment to take account of the fall in outstanding PAP loans and the continuing slow growth of net receipts from banking. The evolution of operating charges does not reflect a continuation of the trend observed over the last three years and the forecasts for the banking sector as a whole.

#### 5.3.1.2. Compensatory measures

- (92) It should be borne in mind first of all that, without the aid it received, CFF would have had to be put into liquidation. As stated in the guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(14)</sup>, it has to be seen whether the solution causing the least distortion of competition for competitors has been sought. If major distortion of competition is unavoidable, substantial compensatory measures, or *quid pro quos*, must be required that benefit other operators in the sector in order to mitigate the harmful effects of the aid.

<sup>(14)</sup> See footnote 13.

- (93) It should be added that, in accordance with Community policy, the *quid pro quos* should represent an additional effort on the part of the firm receiving aid in comparison with the restructuring operations strictly necessary for restoring its viability. In particular, they should first and foremost consist of measures that are not directly or indirectly financed by State aid. Where there is no closure of capacity, *quid pro quos* can take the form of divestments, provided that the activities concerned are profitable, or a reduction in the commercial presence of the company concerned.
- (94) In the banking sector, the solvency constraint introduced by the banking legislation (the nucleus of tier-one own funds and own funds in the broad sense must represent 4 % and 8 % respectively of risk-adjusted assets) limits credit institutions' capacity for growth. In reality there is a capitalisation requirement of this kind which applies to any form of enterprise in the medium and long term, but in the banking sector the constraint is permanent and immediate. It can be quantified according to the rules laid down and cannot be temporarily relaxed as part of a growth strategy pursued by a credit institution. A credit institution that only narrowly satisfies the solvency requirement does not have any room for growth until it can attract fresh capital or increase its own capital and reserves by achieving a high rate of profit. The growth of an inefficient institution is consequently held back, while a bank that is generating sizeable profits has potential for growth linked to its profitability. This restraint which the solvency requirement places on the growth of less efficient institutions illustrates very clearly the way in which prudential policy and competition policy complement one another.
- (95) One result of the solvency requirement is that in the case of credit institutions it is possible to arrive at a hypothetical estimate of the distortion of competition caused by State aid <sup>(15)</sup>. If the aid can be equated with a capital injection, the distortion of competition can be assessed in terms of weighted assets. A capital injection of EUR 1 million, or any measure with equivalent effect, would allow a bank to increase the weighted assets in its balance sheet (given the compulsory solvency ratio of 8 %) and thus to expand its activities. Such an operation would create a potential distortion of competition equivalent in terms of activity to around EUR 12,5 million (since, without the aid, the bank would not have been able to increase its weighted assets by EUR 12,5 million). This relationship also means that State aid to a credit institution exceeds the latter's own funds, the distortion of competition caused would be greater than the whole of the weighted assets. In such a situation the role of the compensatory measures is to limit the distortion estimated very roughly in this manner.
- (96) In the case under examination, as regards the information on the compensatory measures offered by CFF to competitors which the Commission requested when it initiated the Article 88(2) procedure, the French authorities submitted data on the efforts made. The Commission does not regard the reduction in net receipts from banking envisaged by the business plan as a compensatory measure since it is rather a result of the reduction of lending activity in the assisted sector which has not yet been counterbalanced by an increase in activity in the competitive sector.
- (97) The Commission nevertheless takes the view that the substantial reduction in the balance sheet (from FRF 392 billion at 31 December 1995 to FRF 296 billion at 31 December 1998, i.e. a 25 % reduction) cannot be regarded merely as necessary for restoring viability and as an effect of the voluntary refocusing of the bank's activities, but that it involved substantial efforts which have mitigated the distortion of competition resulting from the Government's intervention. These efforts represent in particular a very significant contribution in relation to the distortion of competition that can be hypothetically evaluated in the case in point.
- (98) In this connection the Commission regards as a positive development CFF's decision to dispose of its network abroad, particularly in view of the fact that its foreign business, albeit small, was expanding before the Government intervened (a branch had been opened in Italy).
- (99) Given the amount of the aid in relation to the compensatory measures carried out, the Commission takes the view that CFF has made a significant contribution to its restructuring costs and has provided substantial *quid pro quos* enabling the distortive effect of the aid on competition to be mitigated.

<sup>(15)</sup> See Commission Decision 98/490/EC of 20 May 1998 concerning aid granted by France to the Crédit Lyonnais group (OJ L 221, 8.8.1998, p. 72).

### 5.3.1.3. Proportionality of the aid and contribution of the bank to its recovery

- (100) In view of the foregoing and with regard to compliance with the other conditions laid down in the guidelines on restructuring aid, the Commission considers that CFF is making a significant contribution to the restructuring costs from its own resources.
- (101) Nevertheless, although CFF's recovery has already been largely achieved, the level of its own funds remains well below the statutory minimum required by the prudential rules. This problem should be solved by means of the recapitalisation notified by the French Government (limited to FRF 1,85 billion, in view of the reduction of CFF's interest in CLog <sup>(16)</sup>, the timing and details of which are still uncertain). The Commission considers that the remaining uncertainties regarding the bank's long-term viability should be dispelled once it is linked to a partner.
- (102) The return on own funds achieved by CFF in 1998, determined on the basis of the ratio of the consolidated result to consolidated own funds (including the shareholder's advance) amounts to approximately 8,4 %. This figure is not yet in line with the average profitability of the banking sector or the expectations of a private shareholder and justifies linking the bank with a strong partner as envisaged in the plan for privatising the bank in the near future in order to secure its viability.
- (103) The fact that the task of restoring the bank's own funds to an appropriate level and completing its recovery is entrusted to a major partner, which should enable it to implement its business plan, raises problems regarding its sale.
- (104) In conjunction with its examination of the compatibility of the aid measures concerned, the Commission has taken privatisation of the bank into account. In their letter of 12 May 1999 the French authorities undertook to privatise CFF by December 1999 in accordance with an open, transparent and non-discriminatory procedure. The Commission takes note of these undertakings and recalls the general principles it applies in cases of privatisation in order to determine whether there is any element of State aid, principles it set out in its *Twenty-third Report on Competition Policy* (1993) <sup>(17)</sup>. It considers that the privatisation ought to provide a definitive solution to the problem of corporate governance pointed out earlier and ensure that, in future, CFF turns to its private shareholders and to the market for any additional resources it may need.
- (105) At this stage and on the basis of the information available on the privatisation of CFF, since the choice of the buyer is to be determined by reference to market criteria as far as the price and the buyer's business plan are concerned, the Commission takes the view that the privatisation procedure does not give rise to any presumption of further State aid.
- (106) In evaluating the aid the Commission has not taken account of how much privatisation of the bank could bring in for the Government: at this stage, a selling price has not yet been determined for CFF and it does not have a valuation.

## 6. CONCLUSIONS

- (107) In view of the foregoing and on the basis of the information available, the Commission concludes that CFF's recovery plan involves substantial State aid, in particular in the form of:
- a Government guarantee covering all CFF's debt liabilities falling due, in terms of both principal and interest,
  - the Government's undertaking to take every step necessary to ensure that CFF can continue to carry out its activities in accordance with the prudential rules in force, and a capital advance to CFF.
- (108) These measures have been examined in the light of Article 87(3)(c) of the EC Treaty to determine whether they can be regarded as compatible with the common market. For the reasons set out in recitals 62 to 100, the Commission takes the view that the aid granted to CFF complies with the conditions laid down in the guidelines on State aid for rescuing and restructuring firms in difficulty, provided that the conditions specified in the latest plan notified are fulfilled.

<sup>(16)</sup> See Table 1.

<sup>(17)</sup> *Twenty-third Report on Competition Policy*, point 403. The principles to which the Commission refers in order to determine whether a privatisation involves State aid had earlier been indicated to the French authorities in a letter from the Commission's Director-General for Competition dated 14 July 1993.

- (109) It is also necessary, in view of the large amount of aid involved, for the proper implementation of the plan to be monitored, with special reference to the restructuring efforts, to ensure that the recovery plan submitted to the Commission is carried out effectively and in full. The French authorities should therefore inform the Commission, every six months following the date of approval of this Decision and until the objectives of the restructuring plan have been achieved, of progress in implementing the plan and any deviation of actual results from the forecasts. No change that could result in an increase in State aid to CFF may be made to the plan without the Commission's prior approval.
- (110) The French authorities have stated that the shareholder's advance of FRF 1,85 billion is the strict minimum needed to enable CFF to comply with the prudential requirements and that the buyer will be responsible for increasing the bank's own funds to a level that secures CFF's long-term viability. In the absence of privatisation and therefore of an increase in CFF's own funds by a buyer, the French Government would probably have to carry out a further recapitalisation. If so, the Commission could consider that such an operation constituted additional aid.
- (111) Under these conditions, the aid in question can be exempted from the prohibition laid down in Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement since it can be regarded as compatible with the common market in pursuance of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The measures intended to consolidate, restructure and privatise Crédit Foncier de France, in particular the government guarantee covering its debts announced by the Minister for Economic Affairs and Finance on 29 April 1996 and the FRF 1,85 billion increase in its capital carried out by Caisse des Dépôts et Consignations, constitute State aid within the meaning of Article 88(1) of the EC Treaty. These operations, the value of which is estimated at FRF 16 billion, are hereby declared compatible with the common market and with the EEA Agreement pursuant to Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

#### *Article 2*

Authorisation of the measures referred to in Article 1 is subject to France complying with the following conditions:

- (a) The implementation of all the recovery measures and all aspects of the restructuring plan submitted to the Commission must be guaranteed;
- (b) The conditions laid down in the restructuring plan may not be modified, after the conditions imposed by this Decision have been taken into account, without the Commission's prior agreement;
- (c) Crédit Foncier de France must not be allowed to carry over tax losses in respect of the losses covered by the notified capital increase.

#### *Article 3*

France shall cooperate fully in monitoring the implementation of this Decision and shall transmit the following documents to the Commission:

- (a) A detailed report by the French authorities on application of the Commission Decision, implementation of the restructuring plan and privatisation of the bank. The report shall in particular:
  - examine the viability of Crédit Foncier de France by presenting detailed results in relation to the estimates contained in the plan,
  - give details of any government assistance to Crédit Foncier de France (by way of recapitalisation, finance, guarantees, etc.),
  - analyse in detail developments in the process of selling Crédit Foncier de France.

This report shall be submitted to the Commission every six months following the date of notification of this Decision and for the last time after Crédit Foncier de France has been privatised;

- (b) The balance sheets, profit and loss accounts and reports (annual and half-yearly) adopted by the Board of Directors of Crédit Foncier de France.

The Commission may request that these documents and implementation of the plan be evaluated by means of specialised audits. If so, the French authorities and Crédit Foncier de France shall cooperate in the performance of those audits.

*Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 23 June 1999.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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**DECISION No 1/2000  
of 12 December 2000**

**of the Joint Committee established under the Agreement on Mutual Recognition between the European Community and the United States of America related to amending the Sectoral Annexes on telecommunication equipment, electromagnetic compatibility, pharmaceutical GMPs and medical devices**

(2001/90/EC)

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America, and in particular Article 14 and 21 thereof,

Whereas:

- (1) The Agreement should be amended to reflect changes in their respective legislation.
- (2) Pursuant to Article 21(2) any Sectoral Annex may, through the Joint Committee, be amended in writing by the Parties,

HAS DECIDED AS FOLLOWS:

**1. Amendments to the Sectoral Annex for telecommunications equipment**

The Sectoral Annex for telecommunication equipment is amended according to the following:

- (a) In Section I, under the EC column, the entire text is deleted and is replaced with the following:  
'Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity'.
- (b) In Section III, paragraph 2(c), 'Directive 98/13/EC' is deleted and replaced with 'Directive 1999/5/EC'.
- (c) In Section III, paragraph 2, the following subparagraphs are added:  
'(d) prescription of radio tests to be performed pursuant to Annexes III and IV to Directive 1999/5/EC;  
(e) issuing of an opinion on a technical file pursuant to Annex IV to Directive 1999/5/EC.'
- (d) In Appendix 1, 'ACTE Approval Committee for Terminal Equipment', 'ADLNB Association of Designated Laboratories and Notified Bodies' and 'CTR Common Technical Regulations' are deleted.

**2. Amendments to the Sectoral Annex for electromagnetic compatibility (EMC)**

In Section IV, under the 'US' column, 'Federal Aviation Administration (FAA)' is deleted.

**3. Amendments to the Sectoral Annex for pharmaceutical good manufacturing practices (GMPs)**

Article 1, paragraph 3 is deleted in its entirety and is replaced with the following text:

**'3. Good Manufacturing Practices (GMPs)**

In the United States, GMPs means the requirements found in the legislation, regulations and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

In the EC, GMPs are the part of quality assurance which ensures that products are consistently produced and controlled to a quality standard. GMPs include, therefore, the system whereby the manufacturer receives the specifications of the products and/or process from the marketing authorisation/product authorisation or license holder or applicant and ensures the product is made in compliance with its specifications (qualified person certification).

Because equivalence is the cornerstone of this Annex, the authorities of the Parties will maintain their respective requirements and will carry out the inspections against their own requirements.'

#### **4. Amendments to the Sectoral Annex for medical devices**

The Sectoral Annex for medical devices is amended according to the following:

- (a) Table 1 is deleted in its entirety and is replaced with the revised Table 1, annexed hereto.
- (b) Table 2 is deleted in its entirety and is replaced with the revised Table 2, annexed hereto.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorised to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

Done at Washington DC, 12 December 2000.

Done at Brussels, 21 November 2000.

*On behalf of the United States of America*  
Charlene BARSHEFSKY

*On behalf of the European Community*  
Pascal LAMY

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## ANNEX

TABLE 1

**Class I products requiring premarket evaluations in the United States, included in scope of product coverage at beginning of transition period**

**DENTAL PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                             |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 872.4200   | DENTAL HANDPIECES AND ACCESSORIES<br>EBW — CONTROLLER, FOOT, HANDPIECE AND CORD<br>EFB — HANDPIECE, AIR-POWERED, DENTAL<br>EFA — HANDPIECE, BELT AND/OR GEAR DRIVEN, DENTAL<br>EGS — HANDPIECE, CONTRA- AND RIGHT-ANGLE ATTACHMENT, DENTAL<br>EKX — HANDPIECE, DIRECT DRIVE, AC-POWERED<br>EKY — HANDPIECE, WATER-POWERED |
| 872.6250   | DENTAL CHAIR AND ACCESSORIES<br>KLC — CHAIR WITH A UNIT                                                                                                                                                                                                                                                                   |
| 872.6640   | DENTAL OPERATIVE UNIT AND ACCESSORIES<br>DYN — MOUTHPIECE, SALIVA EJECTOR<br>EBR — UNIT, SUCTION OPERATORY<br>EHZ — EVACUATOR, ORAL CAVITY<br>EIA — UNIT, OPERATIVE DENTAL                                                                                                                                                |
| 872.6710   | BOILING WATER STERILISER<br>ECG — STERILISER, BOILING WATER                                                                                                                                                                                                                                                               |

**1.1. GASTROENTEROLOGY / UROLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME      |
|------------|----------------------------------------------------|
| 876.5160   | UROLOGICAL CLAMPS FOR MALES<br>FHA — CLAMP, PENILE |

**GENERAL AND PLASTIC SURGERY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME |
|------------|-----------------------------------------------|
| 878.4460   | SURGEON'S GLOVES<br>KGO — SURGEON'S GLOVES    |
| 880.5090   | LIQUID BANDAGE<br>KMF — BANDAGE, LIQUID       |

**GENERAL HOSPITAL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                     |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 880.5680   | PEDIATRIC POSITION HOLDER<br>FRP — HOLDER, INFANT POSITION                                                                                                                                                                                                        |
| 880.6250   | PATIENT EXAMINATION GLOVE<br>LZB — FINGER COT<br>FMC — GLOVE, PATIENT EXAMINATION<br>LYY — GLOVE, PATIENT EXAMINATION, LATEX<br>LZA — GLOVE, PATIENT EXAMINATION, POLY<br>LZC — GLOVE, PATIENT EXAMINATION, SPECIALITY<br>LYZ — GLOVE, PATIENT EXAMINATION, VINYL |
| 880.6375   | PATIENT LUBRICANT<br>KMJ — LUBRICANT, PATIENT<br>MMS — LUBRICANT, VAGINAL, PATIENT                                                                                                                                                                                |
| 880.6760   | PROTECTIVE RESTRAINT<br>BRT — RESTRAINT, PATIENT, CONDUCTIVE<br>FMQ — RESTRAINT, PROTECTIVE                                                                                                                                                                       |

**NEUROLOGY PANEL**

| SECTION No | REGULATION NAME,<br>PRODUCT CODE — DEVICE NAME                                                                 |
|------------|----------------------------------------------------------------------------------------------------------------|
| 882.1030   | ATAXIAGRAPH<br>GWW — ATAXIAGRAPH                                                                               |
| 882.1420   | ELECTROENCEPHALOGRAPH (EEG) SIGNAL SPECTRUM ANALYSER<br>GWS — ANALYSER, SPECTRUM, ELECTROENCEPHALOGRAPH SIGNAL |
| 882.4060   | VENTRICULAR CANNULA<br>HCD — CANNULA, VENTRICULAR                                                              |
| 882.4545   | SHUNT SYSTEM IMPLANTATION INSTRUMENT<br>GYK — INSTRUMENT, SHUNT SYSTEM IMPLANTATION                            |

**OBSTETRICS AND GYNECOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                  |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 884.2980   | THERMOGRAPHIC SYSTEM<br>LHQ — SYSTEM, TELETHERMOGRAPHIC (ADJUNCTIVE USE)                                                                                                       |
| 884.2982   | LIQUID CRYSTAL TELETHERMOGRAPHIC SYSTEM<br>LHM — SYSTEM, TELETHERMOGRAPHIC, LIQUID CRYSTAL<br>KYA — SYSTEM, TELETHERMOGRAPHIC, LIQUID CRYSTAL, NON-POWERED<br>(ADJUNCTIVE USE) |

**OPHTHALMOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                  |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 886.4070   | POWERED CORNEAL BURR<br>HQS — BURR, CORNEAL, AC-POWERED<br>HOG — BURR, CORNEAL, BATTERY-POWERED<br>HRG — ENGINE, TREPHINE, ACCESSORIES, AC-POWERED<br>HRF — ENGINE, TREPHINE, ACCESSORIES, BATTERY-POWERED<br>HLD — ENGINE, TREPHINE, ACCESSORIES, GAS-POWERED |
| 886.4300   | INTRAOCULAR LENS GUIDE<br>KYB — LENS, GUIDE, INTRAOCULAR                                                                                                                                                                                                       |
| 886.4370   | KERATOME<br>HNO — KERATOME, AC-POWERED<br>HMY — KERATOME, BATTERY-POWERED                                                                                                                                                                                      |

**ORTHOPAEDIC PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME |
|------------|-----------------------------------------------|
| 888.1500   | GONIOMETER<br>KQX — GONIOMETER, AC-POWERED    |

**PHYSICAL MEDICINE PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                     |
|------------|-----------------------------------------------------------------------------------|
| 890.3850   | MECHANICAL WHEELCHAIR<br>LBE — STROLLER, ADAPTIVE<br>IOR — WHEELCHAIR, MECHANICAL |
| 890.5710   | HOT OR COLD DISPOSABLE PACK<br>IMD — PACK, HOT OR COLD, DISPOSABLE                |

**RADIOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                       |
|------------|---------------------------------------------------------------------|
| 892.1100   | SCINTILLATION (GAMMA) CAMERA<br>IYX — CAMERA, SCINTILLATION (GAMMA) |
| 892.1110   | POSITRON CAMERA<br>IZC — CAMERA, POSITRON                           |

TABLE 2

**Class II medical devices included in the scope of product coverage at beginning of transitional period**

(United States of America to develop guidance documents identifying US requirements and EC to identify standards needed to meet European Union requirements)

**ANESTHESIOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME           |
|------------|---------------------------------------------------------|
| 868.5630   | NEBULISER<br>CAF — NEBULISER (DIRECT PATIENT INTERFACE) |

**CARDIOVASCULAR PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                        |
|------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 870.1120   | BLOOD PRESSURE CUFF<br>DXQ — CUFF, BLOOD-PRESSURE                                                                                    |
| 870.1130   | NON-INVASIVE BLOOD PRESSURE MEASUREMENT SYSTEM (except non-oscillometric)<br>DXN — SYSTEM, MEASUREMENT, BLOOD-PRESSURE, NON-INVASIVE |
| 870.2300   | CARDIAC MONITOR (INCLUDING CARDIOTACHOMETER AND RATE ALARM)<br>DRT — MONITOR, CARDIAC (INCLUDING CARDIOTACHOMETER AND RATE ALARM)    |
| 870.2330   | ECHOCARDIOGRAPH<br>DXK — ECHOCARDIOGRAPH                                                                                             |
| 870.2340   | ELEKROCARDIOGRAPH<br>DPS — ELECTROCARDIOGRAPH<br>MLC — MONITOR, ST SEGMENT (without alarm)                                           |
| 870.2350   | ELECTROCARDIOGRAPH LEAD SWITCHING ADAPTOR<br>DRW — ADAPTOR, LEAD SWITCHING, ELECTROCARDIOGRAPH                                       |
| 870.2360   | ELEKTRCARDIOGRAPH ELECTRODE<br>DRX — ELECTRODE, ELECTROCARDIOGRAPH                                                                   |
| 870.2370   | ELECTROCARDIOGRAPH SURFACE ELECTRODE TESTER<br>KRC — TESTER, ELECTRODE, SURFACE, ELECTROCARDIOGRAPHIC                                |
| 870.2880   | ULTRASONIC TRANSDUCER<br>JOP — TRANSDUCER, ULTRASONIC                                                                                |

**DENTAL PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                              |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 872.3060   | GOLD BASED ALLOYS AND PRECIOUS METAL ALLOYS FOR CLINICAL USE<br>EJT — ALLOY, GOLD BASED, FOR CLINICAL USE<br>EJS — ALLOY, PRECIOUS METAL, FOR CLINICAL USE |
| 872.3200   | RESIN TOOTH BONDING AGENT<br>KLE — AGENT, TOOTH BONDING, RESIN                                                                                             |

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                     |
|------------|-------------------------------------------------------------------|
| 872.3275   | DENTAL CEMENT<br>EMA — CEMENT, DENTAL<br>EMB — ZINC OXIDE EUGENOL |
| 872.3660   | IMPRESSION MATERIAL<br>ELW — MATERIAL, IMPRESSION                 |
| 872.3690   | TOOTH SHADE RESIN MATERIAL<br>EBF — MATERIAL, TOOTH SHADE, RESIN  |
| 872.3710   | BASE METAL ALLOY<br>EJH — METAL, BASE                             |

**GASTROENTEROLOGY/UROLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 876.1075   | GASTROENTEROLOGY-UROLOGY BIOPSY INSTRUMENT<br>KNW — INSTRUMENT, BIOPSY<br>FCF — INSTRUMENT, BIOPSY, MECHANICAL, GASTROINTESTINAL<br>FCK — INSTRUMENT, BIOPSY, SUCTION<br>FCI — PUNCH, BIOPSY<br>FCG — SET, BIOPSY NEEDLE AND NEEDLE, GASTRO-UROLOGY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| #876.1500  | ENDOSCOPE AND ACCESSORIES<br>FEB — ACCESSORIES, CLEANING FOR ENDOSCOPE<br>FER — ANOSCOPE, NON-POWERED<br>FDP — APPARATUS, PNEUMOPERITONEUM, AUTOMATIC<br>FDX — BRUSH, CYTOLOGY, FOR ENDOSCOPE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|            | FGS — CARRIER, SPONGE, ENDOSCOPIC<br>FBN — CHOLEDOCHOSCOPE, FLEXIBLE OR RIGID<br>FDF — COLONOSCOPE, GASTRO-UROLOGY<br>FTJ — COLONOSCOPE, GENERAL AND PLASTIC SURGERY<br>FFZ — CORD, ELECTRIC, FOR ENDOSCOPE<br>FAJ — CYTOSCOPE, DIAGNOSTIC<br>FBO — CYSTOURETHROSCOPE<br>FDT — DUODEDOSCOPE, ESOPHAGO GASTRO<br>KOG — ENDOSCOPE AND/OR ACCESSORIES<br>GCP — ENDOSCOPE, AC-POWERED AND ACCESSORIES<br>GCS — ENDOSCOPE, BATTERY-POWERED AND ACCESSORIES<br>GCR — ENDOSCOPE, DIRECT VISION<br>GDB — ENDOSCOPE, FIBER OPTIC<br>GCQ — ENDOSCOPE, FLEXIBLE<br>GCO — ENDOSCOPE, MIRROR<br>GCN — ENDOSCOPE, PRISM<br>GCM — ENDOSCOPE, RIGID<br>FDA — ENTEROSCOPE<br>GCL — ESOPHAGOSCOPE, GENERAL AND PLASTIC SURGERY<br>FDW — ESOPHAGOSCOPE, RIGID, GASTRO-UROLOGY<br>FDS — GASTROSCOPE, GASTRO-UROLOGY<br>GCK — GASTROSCOPE, GENERAL AND PLASTIC SURGERY |

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | FFS — ILLUMINATOR, FIBEROPTIC, FOR ENDOSCOPE<br>FCX — INSUFFLATOR, AUTOMATIC CARBON-DIOXIDE FOR ENDOSCOPE<br>FHX — JELLY, LUBRICATING, FOR TRANSURETHRAL SURGICAL INSTRUMENT<br>FTI — LAMP, ENDOSCOPE, INCANDESCENT<br>GCI — LARYNGOSCOPE<br>GCT — LIGHT SOURCE, ENDOSCOPIC, XENON ARC<br>FCW — LIGHT SOURCE, FIBEROPTIC, ROUTINE<br>FCQ — LIGHT SOURCE, INCANDESCENT, DIAGNOSTIC<br>FCR — LIGHT SOURCE, PHOTOGRAPHIC, FIBEROPTIC<br>GCH — MEDIASTINOSCOPE<br>FBK — NEEDLE, ENDOSCOPIC<br>FHP — NEEDLE, PNEUMOPERITONEUM, SIMPLE                                                                                                                                                                                                                                                                                                                                                                                             |
|            | FHO — NEEDLE, PNEUMOPERITONEUM, SPRING LOADED<br>FEC — OBTURATOR, FOR ENDOSCOPE<br>FTK — PANCREATOSCOPE, BILIARY<br>FAK — PANENDOSCOPE (GASTRODUODENOSCOPE)<br>FAL — PANENDOSCOPE (URETHROSCOPE)<br>GCG — PERITONEOSCOPE<br>GCF — PROCTOSCOPE<br>FEQ — PUMP, AIR, NON-MANUAL, FOR ENDOSCOPE<br>FJL — RESECTOSCOPE<br>FDC — RESECTOSCOPE, WORKING ELEMENT<br>FCC — RETRIEVER, ENDOMAGNETIC<br>FBI — RONGEUR, CYTOSCOPIC<br>KDO — RONGEUR, CYSTOSCOPIC, HOT<br>KGD — SCISSORS FOR CYTOSCOPE<br>FDE — SET, LAPAROSCOPY<br>FGA — SET, NEPHROSCOPE<br>FED — SHEATH, FOR ENDOSCOPE<br>FAM — SIGMOIDOSCOPE, FLEXIBLE<br>FAN — SIGMOIDOSCOPE, RIGID, ELECTRICAL<br>KDM — SIGMOIDOSCOPE, RIGID, NON-ELECTRICAL<br>FDR — SPHYNCTEROSCOPE<br>FET — TAPE, TELEVISION AND VIDEO, CLOSED-CIRCUIT, USED DURING ENDOSCOPIC<br>FBP — TELESCOPE, RIGID, ENDOSCOPIC<br>GCW — TRANSFORMER, ENDOSCOPE<br>FGB — URETEROSCOPE<br>FGC — URETHROSCOPE |
| 876.4500   | MECHANICAL LITHOTRIPTER<br>LQC — LITHOTRIPTER, BILIARY MECHANICAL<br>FGK — TRIPSOR, STONE, BLADDER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 876.5010   | BILIARY CATHETER AND ACCESSORIES (biliary stone dislodger only)<br>LQR — DISLODGER, STONE, BILIARY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 876.5320   | NONIMPLANTED ELECTRICAL CONTINENCE DEVICE<br>KPI — STIMULATOR, ELECTRICAL FOR INCONTINENCE (NON-IMPLANTABLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 876.5665   | WATER PURIFICATION SYSTEM FOR HEMODIALYSIS<br>FIP — SUBSYSTEM, WATER PURIFICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

**GENERAL HOSPITAL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 880.2910   | CLINICAL ELECTRONIC THERMOMETER (except tympanic or pacifier)<br>FLL — THERMOMETER, ELECTRONIC, CLINICAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 880.5400   | NEONATAL INCUBATOR<br>FMZ — INCUBATOR, NEONATAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 880.5410   | NEONATAL TRANSPORT INCUBATOR<br>FPL — INCUBATOR, NEONATAL TRANSPORT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 880.5570   | HYPODERMIC SINGLE LUMEN NEEDLE<br>MMK — CONTAINER, SHARPS<br>FMI — NEEDLE, HYPODERMIC, SINGLE LUMEN (except anti-stick and self-destruct)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 880.5725   | INFUSION PUMP (external only)<br>MRZ — ACCESSORIES, PUMP, INFUSION<br>FRN — PUMP, INFUSION<br>LZF — PUMP, INFUSION, ANALYTICAL SAMPLING<br>MEB — PUMP, INFUSION, ELASTOMERIC<br>LZH — PUMP, INFUSION, ENTERAL<br>MHD — PUMP, INFUSION, GALLSTONE DISSOLUTION<br>MEA — PUMP, INFUSION, PCA<br>(except for combination products regulated under the InterCenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health, or the InterCenter Agreement Between the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health.) |
| 880.5860   | PISTON SYRINGE<br>FMF — SYRINGE, PISTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 880.6880   | STEAM STERILISER (greater than 2 cubic feet ( $\pm 0,056\text{m}^3$ ))<br>FLE — STERILISER, STEAM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

**NEUROLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                          |
|------------|------------------------------------------------------------------------------------------------------------------------|
| 882.1240   | ECHOENCEPHALOGRAPH<br>GXW — ECHOENCEPHALOGRAPH                                                                         |
| 882.1320   | CUTANEOUS ELECTRODE<br>GXY — ELECTRODE, CUTANEOUS                                                                      |
| 882.1400   | ELECTROENCEPHALOGRAPH<br>GWQ — ELECTROENCEPHALOGRAPH                                                                   |
| 882.1480   | NEUROLOGICAL ENDOSCOPE<br>GWG — ENDOSCOPE, NEUROLOGICAL                                                                |
| 882.5890   | TRANSCUTANEOUS ELECTRICAL NERVE STIMULATOR FOR PAIN RELIEF<br>GZJ — STIMULATOR, NERVE, TRANSCUTANEOUS, FOR PAIN RELIEF |

**OBSTETRICS AND GYNECOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                                                            |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 884.1690   | HYSTEROSCOPE AND ACCESSORIES<br>HHH — HYSTEROSCOPE (AND ACCESSORIES)                                                                                                                                                                                                                                                                                                                     |
| 884.1720   | GYNECOLOGIC LAPAROSCOPE AND ACCESSORIES<br>HET — LAPAROSCOPE, GYNECOLOGIC (AND ACCESSORIES)                                                                                                                                                                                                                                                                                              |
| 884.2225   | OBSTETRIC-GYNECOLOGIC ULTRASONIC IMAGER<br>HEN — CALIPER, FOETAL HEAD, ULTRASONIC<br>HHX — HOLOGRAPH, FOETAL ACOUSTICAL<br>HEM — IMAGER, ULTRASONIC OBSTETRIC-GYNECOLOGIC<br>HHJ — LOCATOR, INTRACORPOREAL DEVICE, ULTRASONIC                                                                                                                                                            |
| #884.2660  | FOETAL ULTRASONIC MONITOR AND ACCESSORIES<br>HEP — MONITOR, BLOOD-FLOW, ULTRASONIC<br>HEL — MONITOR, HEART RATE, FOETAL, ULTRASONIC<br>HEK — MONITOR, HEART SOUND, FOETAL, ULTRASONIC<br>HEI — MONITOR, HEART-VALVE MOVEMENT, FOETAL, ULTRASONIC<br>HEJ — MONITOR, HEMIC SOUND, ULTRASONIC<br>HEQ — MONITOR, PRESSURE, ARTERIAL, FOETAL, ULTRASONIC<br>KNG — MONITOR, ULTRASONIC, FOETAL |
| 884.2960   | OBSTETRIC ULTRASONIC TRANSDUCER AND ACCESSORIES<br>HGL — TRANSDUCER, ULTRASONIC, OBSTETRIC                                                                                                                                                                                                                                                                                               |
| 884.5300   | CONDOM<br>HIS — CONDOM                                                                                                                                                                                                                                                                                                                                                                   |

**OPHTHALMOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                          |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 886.1570   | OPHTHALMOSCOPE<br>HLI — OPHTHALMOSCOPE, AC-POWERED<br>HLJ — OPHTHALMOSCOPE, BATTERY-POWERED                                                                                                                                                                            |
| 886.1780   | RETINOSCOPE<br>HKL — RETINOSCOPE, AC-POWERED                                                                                                                                                                                                                           |
| 886.1850   | AC-POWERED SLIT-LAMP BIOMICROSCOPE<br>HJO — BIOMICROSCOPE, SLIT-LAMP, AC-POWERED                                                                                                                                                                                       |
| 886.4150   | VITREOUS ASPIRATION AND CUTTING INSTRUMENT<br>MMC — DILATOR, EXPANSIVE, IRIS (ACCESSORY)<br>HQE — INSTRUMENT, VITREOUS ASPIRATION AND CUTTING, AC-POWERED<br>HKP — INSTRUMENT, VITREOUS ASPIRATION AND CUTTING, BATTERY-POWERED<br>MLZ — VITRECTOMY, INSTRUMENT CUTTER |
| 886.4670   | PHACOFRAGMENTATION SYSTEM<br>HQC — UNIT, PHACOFRAGMENTATION                                                                                                                                                                                                            |

**ORTHOPAEDIC PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME    |
|------------|--------------------------------------------------|
| 888.1100   | ARTHROSCOPE<br>HRX — ARTHROSCOPE AND ACCESSORIES |

**RADIOLOGY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                             |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| #884.2660  | FOETAL ULTRASONIC MONITOR AND ACCESSORIES<br>LXE — DOPPLER, FOETAL ULTRASOUND<br>MAA — MONITOR, FOETAL DOPPLER ULTRASOUND                                                                                                                 |
| 892.1000   | MAGNETIC RESONANCE DIAGNOSTIC DEVICE<br>MOS — COIL, MAGNETIC RESONANCE, SPECIALITY<br>LNH — SYSTEM, NUCLEAR MAGNETIC RESONANCE IMAGING<br>LNI — SYSTEM, NUCLEAR MAGNETIC RESONANCE SPECTROSCOPIC                                          |
| 892.1200   | EMISSION COMPUTED TOMOGRAPHY SYSTEM<br>KPS — SYSTEM, TOMOGRAPHY, COMPUTED, EMISSION                                                                                                                                                       |
| 892.1310   | NUCLEAR TOMOGRAPHY SYSTEM<br>JWM — SYSTEM, TOMOGRAPHY, COMPUTED, EMISSION                                                                                                                                                                 |
| 892.1360   | RADIONUCLIDE DOSE CALIBRATOR<br>KPT — CALIBRATOR, DOSE, RADIONUCLIDE                                                                                                                                                                      |
| 892.1540   | NONFOETAL ULTRASONIC MONITOR<br>JAF — MONITOR, ULTRASONIC, NONFOETAL                                                                                                                                                                      |
| 892.1550   | ULTRASONIC PULSED DOPPLER IMAGING SYSTEM<br>IYN — SYSTEM, IMAGING, PULSED DOPPLER, ULTRASONIC                                                                                                                                             |
| 892.1560   | ULTRASONIC PULSED ECHO IMAGING SYSTEM<br>IYO — SYSTEM, IMAGING, PULSED ECHO, ULTRASONIC                                                                                                                                                   |
| 892.1570   | DIAGNOSTIC ULTRASONIC TRANSDUCER<br>ITX — TRANSDUCER, ULTRASONIC, DIAGNOSTIC                                                                                                                                                              |
| 892.1600   | ANGIOGRAPHIC X-RAY SYSTEM<br>IZI — SYSTEM, X-RAY, ANGIOGRAPHIC                                                                                                                                                                            |
| 892.1610   | DIAGNOSTIC X-RAY BEAM LIMITING DEVICE<br>IZS — APERTURE, RADIOGRAPHIC<br>IZW — COLLIMATOR, AUTOMATIC, RADIOGRAPHIC<br>IZX — COLLIMATOR, MANUAL, RADIOGRAPHIC<br>IZT — CONE, RADIOGRAPHIC<br>KPW — DEVICE BEAM LIMITING, X-RAY, DIAGNOSTIC |
| 892.1620   | CINE OR SPOT FLUOROGRAPHIC X-RAY CAMERA<br>IZJ — CAMERA, X-RAY, FLUOROGRAPHIC, CINE OR SPOT                                                                                                                                               |

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                   |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 892.1630   | ELECTROSTATIC X-RAY IMAGING SYSTEM<br>IXK — SYSTEM, IMAGING, X-RAY, ELECTROSTATIC                                                                                                                                                                               |
| 892.1650   | IMAGE-INTENSIFIED FLUOROSCOPIC X-RAY SYSTEM (except solid state)<br>JAA — SYSTEM, X-RAY, FLUOROSCOPIC, IMAGE-INTENSIFIED                                                                                                                                        |
| 892.1670   | SPOT FILM DEVICE<br>IXL — DEVICE, SPOT-FILM                                                                                                                                                                                                                     |
| 892.1680   | STATIONARY X-RAY SYSTEM<br>KPR — SYSTEM, X-RAY, STATIONARY                                                                                                                                                                                                      |
| 892.1720   | MOBILE X-RAY SYSTEM<br>IZL — SYSTEM, X-RAY, MOBILE                                                                                                                                                                                                              |
| 892.1740   | TOMOGRAPHIC X-RAY SYSTEM<br>IZF — SYSTEM, X-RAY, TOMOGRAPHIC                                                                                                                                                                                                    |
| 892.1750   | COMPUTED TOMOGRAPHY X-RAY SYSTEM<br>JAK — SYSTEM, X-RAY, TOMOGRAPHY, COMPUTED                                                                                                                                                                                   |
| 892.1820   | PNEUMOENCEPHALOGRAPHIC CHAIR<br>HBK — CHAIR, PNEUMOENCEPHALOGRAPHIC                                                                                                                                                                                             |
| 892.1850   | RADIOGRAPHIC FILM CASSETTE<br>IXA — CASSETTE, RADIOGRAPHIC FILM                                                                                                                                                                                                 |
| 892.1860   | RADIOGRAPHIC FILM/CASSETTE CHANGER<br>KPX — CHANGER, RADIOGRAPHIC FILM/CASSETTE                                                                                                                                                                                 |
| 892.1870   | RADIOGRAPHIC FILM/CASSETTE CHANGER PROGRAMMER<br>IZP — PROGRAMMER, CHANGER, FILM/CASSETTE, RADIOGRAPHIC                                                                                                                                                         |
| 892.1900   | AUTOMATIC RADIOGRAPHIC FILM PROCESSOR<br>EGT — CONTROLLER, TEMPERATURE, RADIOGRAPHIC<br>EGW — DRYER, FILM, RADIOGRAPHIC<br>IXX — PROCESSOR, CINE FILM<br>IXW — PROCESSOR, RADIOGRAPHIC-FILM, AUTOMATIC<br>EGY — PROCESSOR, RADIOGRAPHIC-FILM, AUTOMATIC, DENTAL |

**GENERAL AND PLASTIC SURGERY PANEL**

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                              |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| #876.1500  | ENDOSCOPE AND ACCESSORIES<br>GCJ — LAPAROSCOPE, GENERAL AND PLASTIC SURGERY                                                                                                                                                                                                                                                                                |
| 878.4400   | ELECTROSURGICAL CUTTING AND COAGULATION DEVICE AND ACCESSORIES<br>HAM — APPARATUS, ELECTROSURGICAL<br>GEI — DEVICE, ELECTROSURGICAL, CUTTING AND COAGULATION AND ACCESSORIES<br>JOS — ELECTRODE, ELECTROSURGICAL<br>JOT — ELECTRODE, GEL, ELECTROSURGICAL<br>DWG — ELECTROSURGICAL DEVICE<br>BWA — UNIT, ELECTROSURGICAL AND COAGULATION, WITH ACCESSORIES |

| SECTION No | REGULATION NAME<br>PRODUCT CODE — DEVICE NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 878.4580   | SURGICAL LAMP<br>HBI — ILLUMINATOR, FIBEROPTIC, SURGICAL FIELD<br>FTF — ILLUMINATOR, NON-REMOTE<br>FTG — ILLUMINATOR, REMOTE<br>HJE — LAMP, FLUORESCEN, AC-POWERED<br>FQP — LAMP, OPERATING-ROOM<br>FTD — LAMP, SURGICAL<br>GBC — LAMP, SURGICAL, INCANDESCENT<br>FTA — LIGHT, SURGICAL, ACCESSORIES<br>FSZ — LIGHT, SURGICAL, CARRIER<br>FSY — LIGHT, SURGICAL, CEILING MOUNTED<br>FSX — LIGHT, SURGICAL, CONNECTOR<br>FSW — LIGHT, SURGICAL, ENDOSCOPIC<br>FST — LIGHT, SURGICAL, FIBEROPTIC<br>FSS — LIGHT, SURGICAL, FLOOR STANDING<br>FSQ — LIGHT, SURGICAL, INSTRUMENT |
| 878.4780   | POWERED SUCTION PUMP<br>JCY — APPARATUS, SUCTION, WARD USE, PORTABLE, AC-POWERED<br>BTA — PUMP, PORTABLE, ASPIRATION (MANUAL OR POWERED)                                                                                                                                                                                                                                                                                                                                                                                                                                     |

**DECISION No 2/2000****of 4 December 2000**

**of the Joint Committee established under the Agreement on Mutual Recognition between the European Community and the United States of America related to amending the transitional arrangements of the Sectoral Annexes on electromagnetic compatibility and telecommunication equipment**

(2001/91/EC)

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America, and in particular Articles 14 and 21 thereof,

Whereas:

- (1) The transitional arrangements of the Sectoral Annexes for electromagnetic compatibility and telecommunication equipment in relation to the Sectoral Annex for electrical safety should be amended.
- (2) Pursuant to Article 21(2), any Sectoral Annex may, through the Joint Committee, be amended in writing by the Parties,

HAS DECIDED AS FOLLOWS:

1. In the Sectoral Annex for electromagnetic compatibility (EMC), paragraph 9 in Section VIII is deleted in its entirety.
2. In the Sectoral Annex for telecommunication equipment, paragraph 9 in Section VIII is deleted in its entirety.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorised to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

Done at Washington DC, 4 December 2000.

Done at Brussels, 4 December 2000.

*On behalf of the United States of America*

Susan ESSERMAN

*On behalf of the European Community*

Peter CARL