

Official Journal

of the European Communities

ISSN 0378-6978

L 89

Volume 44

29 March 2001

English edition

Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 596/2001 of 28 March 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables	1
Commission Regulation (EC) No 597/2001 of 28 March 2001 fixing the maximum export refund for white sugar for the 33rd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1531/2000	3
Commission Regulation (EC) No 598/2001 of 28 March 2001 fixing the representative prices and the additional import duties for molasses in the sugar sector	4
Commission Regulation (EC) No 599/2001 of 28 March 2001 altering the export refunds on white sugar and raw sugar exported in the natural state	6
★ Commission Regulation (EC) No 600/2001 of 27 March 2001 establishing unit values for the determination of the customs value of certain perishable goods	8
★ Commission Regulation (EC) No 601/2001 of 28 March 2001 fixing the guarantee threshold quantities which may be transferred to another group of varieties for the 2001 harvest in the raw tobacco sector	14
★ Commission Regulation (EC) No 602/2001 of 28 March 2001 amending Regulation (EC) No 1501/95 with regard to the conditions for the payment of export refunds on products falling within CN codes 1001 90, 1101, 1102 and ex 2302	16
★ Commission Regulation (EC) No 603/2001 of 28 March 2001 adapting the total quantities referred to in Article 3 of Council Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector	18
Commission Regulation (EC) No 604/2001 of 28 March 2001 fixing the import duties in the rice sector	22
Commission Regulation (EC) No 605/2001 of 28 March 2001 amending the import duties in the cereals sector	25

Commission

2001/247/EC:

- ★ **Commission Decision of 29 November 2000 on the aid scheme implemented by Spain in favour of the shipping company Ferries Golfo de Vizcaya ⁽¹⁾ (notified under document number C(2000) 3931)** 28

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 380/00/COL of 18 December 2000 on the Act on temporary reimbursements in respect of film-making in Iceland (Act No 43/1999) (Iceland)** 37

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 596/2001
of 28 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 28 March 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	86,6
	204	34,6
	212	88,6
	624	85,7
	999	73,9
0707 00 05	052	140,4
	999	140,4
0709 90 70	052	114,5
	204	97,4
	624	63,1
	999	91,7
0805 10 10, 0805 10 30, 0805 10 50	052	65,7
	204	48,9
	212	47,5
	220	49,4
	600	54,5
	624	57,5
	999	53,9
0805 30 10	052	57,2
	999	57,2
0808 10 20, 0808 10 50, 0808 10 90	388	97,1
	400	77,7
	404	83,8
	508	82,7
	512	82,3
	524	92,2
	528	90,0
	720	110,4
	999	89,5
	388	71,7
0808 20 50	512	66,1
	528	79,1
	999	72,3

⁽¹⁾ 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 597/2001
of 28 March 2001**

**fixing the maximum export refund for white sugar for the 33rd partial invitation to tender issued
within the framework of the standing invitation to tender provided for in Regulation (EC) No
1531/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1531/2000 of 13 July 2000 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1531/2000 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the 33rd partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 33rd partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1531/2000 the maximum amount of the export refund is fixed at 45,166 EUR/100 kg.

Article 2

This Regulation shall enter into force on 29 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 175, 14.7.2000, p. 69.

**COMMISSION REGULATION (EC) No 598/2001
of 28 March 2001**

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation 1527/2000 ⁽²⁾,

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

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 March 2001.

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 28 March 2001 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	9,38	—	0
1703 90 00 ⁽¹⁾	11,73	—	0

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

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

COMMISSION REGULATION (EC) No 599/2001
of 28 March 2001
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the third subparagraph of Article 18(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 554/2001 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 554/2001 to the information known to the Commission that the export refunds at present in

force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 2038/1999, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 554/2001 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 82, 22.3.2001, p. 10.

ANNEX

to the Commission Regulation of 28 March 2001 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	39,35 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	35,76 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	39,35 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	35,76 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4278
1701 99 10 9100	A00	EUR/100 kg	42,78
1701 99 10 9910	A00	EUR/100 kg	42,14
1701 99 10 9950	A00	EUR/100 kg	42,14
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4278

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 19 (4) of Regulation (EC) No 2038/1999.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

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

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

COMMISSION REGULATION (EC) No 600/2001**of 27 March 2001****establishing unit values for the determination of the customs value of certain perishable goods**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 1602/2000 ⁽⁴⁾, and in particular Article 173 (1) thereof,

Whereas:

- (1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish

unit values for the products referred to in the classification in Annex 26 to that Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 30 March 2001.

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

Done at Brussels, 27 March 2001.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 188, 26.7.2000, p. 1.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 50	a) b) c)	40,47 240,59 371,60	556,81 265,43 1 632,36	79,14 31,87 25,32	302,10 78 351,36	13 788,48 89,17	6 732,83 8 112,52
1.30	Onions (other than seed) 0703 10 19	a) b) c)	35,63 211,82 327,16	490,21 233,69 1 437,12	69,68 28,06 22,29	265,96 68 980,20	12 139,32 78,51	5 927,55 7 142,23
1.40	Garlic 0703 20 00	a) b) c)	135,42 805,16 1 243,59	1 863,40 888,29 5 462,76	264,86 106,65 84,74	1 010,98 262 206,39	46 143,79 298,42	22 531,71 27 148,93
1.50	Leeks ex 0703 90 00	a) b) c)	49,72 295,63 456,61	684,19 326,15 2 005,78	97,25 39,16 31,12	371,20 96 275,22	16 942,77 109,57	8 273,04 9 968,37
1.60	Cauliflowers 0704 10 00	a) b) c)	55,28 328,68 507,65	760,67 362,61 2 229,99	108,12 43,54 34,59	412,70 107 037,01	18 836,66 121,82	9 197,82 11 082,64
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	11,01 65,48 101,14	151,54 72,24 444,27	21,54 8,67 6,89	82,22 21 324,53	3 752,75 24,27	1 832,44 2 207,95
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> <i>L. convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	74,29 441,71 682,23	1 022,25 487,31 2 996,85	145,30 58,51 46,49	554,62 143 845,50	25 314,32 163,71	12 360,82 14 893,81
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	64,53 383,70 592,62	887,99 423,31 2 603,25	126,22 50,82 40,38	481,78 124 953,12	21 989,59 142,21	10 737,37 12 937,68
1.110	Cabbage lettuce (head lettuce) 0705 11 00	a) b) c)	90,36 537,26 829,80	1 243,38 592,72 3 645,11	176,73 71,16 56,55	674,59 174 961,36	30 790,17 199,13	15 034,64 18 115,55
1.130	Carrots ex 0706 10 00	a) b) c)	58,12 345,56 533,72	799,73 381,23 2 344,49	113,67 45,77 36,37	433,89 112 533,11	19 803,88 128,08	9 670,10 11 651,71
1.140	Radishes ex 0706 90 90	a) b) c)	126,07 749,60 1 157,78	1 734,82 826,99 5 085,83	246,58 99,29 78,90	941,22 244 114,08	42 959,85 277,83	20 977,02 25 275,65
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	a) b) c)	238,54 1 418,31 2 190,60	3 282,41 1 564,73 9 622,76	466,55 187,87 149,28	1 780,86 461 881,72	81 283,19 525,68	19 690,05 47 823,38

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	a) b) c)	185,54 1 103,16 1 703,86	2 553,07 1 217,05 7 484,62	362,88 146,12 116,11	1 385,16 359 253,21	63 222,35 408,87	30 871,06 37 197,19
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	a) b) c)	194,13 1 154,24 1 782,75	2 671,29 1 273,41 7 831,18	379,69 152,89 121,49	1 449,30 375 888,10	66 149,80 427,81	32 300,51 38 919,57
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 937,88 1 448,57	2 170,55 1 034,71 6 363,22	308,51 124,23 98,71	1 177,62 305 427,23	53 749,91 347,61	26 245,73 31 624,03
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	541,34 3 218,66 4 971,28	7 449,00 3 550,95 21 837,59	1 058,77 426,34 338,77	4 041,42 1 048 179,63	184 461,47 1 192,96	90 071,33 108 528,85
1.200.2	— other ex 0709 20 00	a) b) c)	397,04 2 360,69 3 646,14	5 463,39 2 604,41 16 016,55	776,54 312,69 248,47	2 964,14 768 776,64	135 291,38 874,96	66 061,90 79 599,37
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	213,27 1 268,04 1 958,51	2 934,64 1 398,95 8 603,25	417,12 167,96 133,46	1 592,18 412 946,17	72 671,38 469,98	35 484,96 42 756,58
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	100,11 595,22 919,33	1 377,52 656,67 4 038,37	195,80 78,84 62,65	747,37 193 837,09	34 111,97 220,61	16 656,65 20 069,95
1.230	Chantarelles 0709 51 30	a) b) c)	2 154,59 12 810,61 19 786,25	29 647,80 14 133,18 86 915,95	4 214,01 1 696,88 1 348,34	16 085,31 4 171 867,98	734 176,54 4 748,09	358 493,61 431 956,51
1.240	Sweet peppers 0709 60 10	a) b) c)	221,27 1 315,60 2 031,97	3 044,71 1 451,42 8 925,92	432,76 174,26 138,47	1 651,90 428 434,20	75 397,00 487,61	36 815,86 44 360,21
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	78,09 464,29 717,10	1 074,51 512,22 3 150,06	152,73 61,50 48,87	582,97 151 199,26	26 608,45 172,08	12 992,73 15 655,22
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	176,48 1 049,30 1 620,67	2 428,42 1 157,63 7 119,19	345,16 138,99 110,44	1 317,53 341 712,93	60 135,56 388,91	29 363,80 35 381,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	84,13 500,23 772,61	1 157,69 551,87 3 393,89	164,55 66,26 52,65	628,10 162 903,04	28 668,12 185,40	13 998,45 16 867,03

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 00	a) b) c)	174,19 1 035,69 1 599,65	2 396,92 1 142,62 7 026,84	340,69 137,19 109,01	1 300,44 337 280,42	59 355,52 383,87	28 982,91 34 922,12
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	106,51 633,26 978,08	1 465,57 698,64 4 296,48	208,31 83,88 66,65	795,14 206 226,12	36 292,23 234,71	17 721,26 21 352,72
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:							
2.70.1	— Clementines ex 0805 20 10	a) b) c)	147,86 879,14 1 357,84	2 034,60 969,90 5 964,66	289,19 116,45 92,53	1 103,86 286 296,88	50 383,30 325,84	24 601,83 29 643,27
2.70.2	— Monreales and satsumas ex 0805 20 30	a) b) c)	165,60 984,60 1 520,74	2 278,68 1 086,25 6 680,21	323,88 130,42 103,63	1 236,29 320 642,44	56 427,52 364,93	27 553,19 33 199,42
2.70.3	— Mandarines and wilkings ex 0805 20 50	a) b) c)	71,02 422,25 652,18	977,22 465,84 2 864,84	138,90 55,93 44,44	530,19 137 509,25	24 199,25 156,50	11 816,33 14 237,25
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	81,15 482,47 745,19	1 116,59 532,28 3 273,42	158,71 63,91 50,78	605,80 157 120,37	27 650,47 178,82	13 501,54 16 268,29
2.85	Limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh ex 0805 30 90 ex 0805 90 00	a) b) c)	128,61 764,66 1 181,03	1 769,66 843,60 5 187,96	251,53 101,29 80,48	960,12 249 016,33	43 822,56 283,41	21 398,27 25 783,23
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 00	a) b) c)	49,53 294,51 454,87	681,58 324,91 1 998,14	96,88 39,01 31,00	369,79 95 908,49	16 878,23 109,16	8 241,53 9 930,39
2.90.2	— pink ex 0805 40 00	a) b) c)	54,96 326,76 504,69	756,23 360,50 2 216,97	107,49 43,28 34,39	410,29 106 411,98	18 726,67 121,11	9 144,11 11 017,93
2.100	Table grapes 0806 10 10	a) b) c)	161,51 960,27 1 483,15	2 222,36 1 059,41 6 515,11	315,88 127,20 101,07	1 205,73 312 717,87	55 032,93 355,91	26 872,22 32 378,91

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	73,16 434,98 671,83	1 006,68 479,89 2 951,19	143,08 57,62 45,78	546,17 141 653,83	24 928,62 161,22	12 172,48 14 666,88
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	80,22 476,99 736,71	1 103,90 526,23 3 236,20	156,90 63,18 50,20	598,92 155 333,97	27 336,09 176,79	13 348,03 16 083,33
2.120.2	— other ex 0807 19 00	a) b) c)	157,46 936,20 1 445,97	2 166,66 1 032,85 6 351,80	307,96 124,01 98,54	1 175,51 304 879,27	53 653,47 346,99	26 198,64 31 567,29
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>), Pears — Ya (<i>Pyrus bretschneideri</i>) ex 0808 20 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.140.2	Other ex 0808 20 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.150	Apricots 0809 10 00	a) b) c)	666,67 3 963,85 6 122,24	9 173,60 4 373,08 26 893,45	1 303,90 525,05 417,20	4 977,10 1 290 855,44	227 168,21 1 469,15	110 924,75 133 655,58
2.160	Cherries 0809 20 95 0809 20 05	a) b) c)	443,51 2 636,99 4 072,89	6 102,83 2 909,23 17 891,15	867,43 349,29 277,55	3 311,07 858 755,11	151 126,03 977,37	73 793,85 88 915,77
2.170	Peaches 0809 30 90	a) b) c)	268,39 1 595,79 2 464,73	3 693,17 1 760,54 10 826,95	524,93 211,38 167,96	2 003,71 519 681,31	91 454,91 591,46	44 656,84 53 807,97
2.180	Nectarines ex 0809 30 10	a) b) c)	153,93 915,21 1 413,57	2 118,10 1 009,70 6 209,44	301,06 121,23 96,33	1 149,16 298 046,17	52 450,97 339,21	25 611,46 30 859,79
2.190	Plums 0809 40 05	a) b) c)	135,74 807,10 1 246,58	1 867,88 890,42 5 475,91	265,49 106,91 84,95	1 013,41 262 837,62	46 254,87 299,14	22 585,95 27 214,29
2.200	Strawberries 0810 10 00	a) b) c)	258,77 1 538,61 2 376,41	3 560,82 1 697,45 10 438,95	506,12 203,80 161,94	1 931,91 501 057,88	88 177,51 570,26	43 056,50 51 879,69
2.205	Raspberries 0810 20 10	a) b) c)	1 632,79 9 708,13 14 994,40	22 467,68 10 710,40 65 866,59	3 193,46 1 285,93 1 021,80	12 189,76 3 161 522,29	556 373,19 3 598,20	271 673,40 327 345,00
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	1 982,34 11 786,43 18 204,38	27 277,53 13 003,27 79 967,22	3 877,11 1 561,22 1 240,55	14 799,32 3 838 336,76	675 480,82 4 368,49	329 832,87 397 422,59
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	a) b) c)	85,34 507,41 783,70	1 174,30 559,79 3 442,61	166,91 67,21 53,41	637,11 165 241,28	29 079,60 188,06	14 199,38 17 109,13

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a)	206,64	2 843,43	404,15	1 542,69	70 412,58	34 382,00
		b)	1 228,63	1 355,47	162,74	400 110,83	455,37	41 427,60
		c)	1 897,64	8 335,84	129,32			
2.240	Khakis (including sharon fruit) ex 0810 90 85	a)	436,51	6 006,55	853,75	3 258,83	148 741,91	72 629,70
		b)	2 595,39	2 863,34	343,78	845 207,61	961,95	87 513,06
		c)	4 008,63	17 608,90	273,17			
2.250	Lychees ex 0810 90 30	a)	265,12	3 648,07	518,52	1 979,25	90 338,21	44 111,56
		b)	1 576,31	1 739,05	208,80	513 335,77	584,24	53 150,95
		c)	2 434,64	10 694,74	165,91			

**COMMISSION REGULATION (EC) No 601/2001
of 28 March 2001**

**fixing the guarantee threshold quantities which may be transferred to another group of varieties
for the 2001 harvest in the raw tobacco sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco ⁽¹⁾, as last amended by Regulation (EC) No 1336/2000 ⁽²⁾, and in particular Article 9(4) thereof,

Whereas:

- (1) Article 9 of Regulation (EEC) No 2075/92 introduced production quotas for the different groups of varieties of tobacco. The individual quotas were divided between producers on the basis of the guarantee thresholds for the 2001 harvest fixed in Article 3 of Council Regulation (EC) No 660/1999 of 22 March 1999 amending Regulation (EEC) No 2075/92 and fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 1999, 2000 and 2001 harvests ⁽³⁾. Under Article 9(4) of Regulation (EEC) No 2075/92 the Commission may authorise Member States to transfer parts of their guarantee threshold allocations between groups of varieties. These transfers do not give rise to additional costs between groups of varieties for the EAGGF and do not involve any increase in Member States' overall guarantee threshold allocations.

- (2) This Regulation should apply as soon as possible, well before the deadline for the conclusion of cultivation contracts laid down in Article 10(1) of Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector ⁽⁴⁾, as last amended by Regulation (EC) No 385/2001 ⁽⁵⁾.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

For the 2001 harvest, before the deadline for the conclusion of cultivation contracts laid down in Article 10(1) of Regulation (EC) No 2848/98, Member States shall be authorised to transfer guarantee threshold quantities from one group of varieties to another in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 215, 30.7.1992, p. 70.

⁽²⁾ OJ L 154, 27.6.2000, p. 2.

⁽³⁾ OJ L 83, 27.3.1999, p. 10.

⁽⁴⁾ OJ L 358, 31.12.1998, p. 17.

⁽⁵⁾ OJ L 57, 27.2.2001, p. 18.

ANNEX

Guarantee threshold quantities which each Member State is authorised to transfer from one group of varieties to another

Member State	Group of varieties from which transfer is made	Group of varieties to which transfer is made
Greece	1 518 t Kaba Koulak classic (group VIII)	920 t Basmas (group VI)
	1 211 t Kaba Koulak classic (group VIII)	865 t Katerini (group VII)
	1 279 t Kaba Koulak classic (group VIII)	1 074 t flue-cured (group I)
	2 840 t sun-cured (group V)	2 271 t flue-cured (group I)
Italy	1 467,3 t dark air-cured (group III)	1 467,3 t light air-cured (group II)
	498,6 t fire-cured (group IV)	498,6 t light air-cured (group II)
	605,3 t sun-cured (group V)	605,3 t light air-cured (group II)
	447 t fire-cured (group IV)	393,2 t flue-cured (group I)
Germany	1 416,7 t light air-cured (group II)	1 326 t flue-cured (group I)
	577,6 t dark air-cured (group III)	486,6 t flue-cured (group I)

**COMMISSION REGULATION (EC) No 602/2001
of 28 March 2001**

**amending Regulation (EC) No 1501/95 with regard to the conditions for the payment of export
refunds on products falling within CN codes 1001 90, 1101, 1102 and ex 2302**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Article 3 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽³⁾, as last amended by Regulation (EC) No 90/2001 ⁽⁴⁾, lays down that, when a differentiated refund applies for a specific third country, entitlement to the refund is acquired on importation into that third country. Articles 14, 15 and 16 of that Regulation lay down the conditions for the payment of the refund when a differentiated refund applies and in particular the documents to be presented to prove the arrival of the product at destination.
- (2) When a differentiated refund applies, Article 18(1) and (2) of Regulation (EC) No 800/1999 lays down that part of the refund, calculated using the lowest refund rate, is to be paid on application by the exporter once proof is furnished that the product has left the customs territory of the Community.
- (3) Council Regulation (EC) No 2851/2000 ⁽⁵⁾ establishes certain concessions in the form of Community tariff quotas for certain agricultural products and provides for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with the Republic of Poland. One of those concessions is the abolition of refunds for common wheat, flour and bran exported to Poland.
- (4) Article 7a of Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export

licences for cereals and rice ⁽⁶⁾, as last amended by Regulation (EC) No 409/2001 ⁽⁷⁾, lays down the operators must present to the competent authorities on import into Poland of certain products falling within CN codes 1001 90, 1101, 1102 and ex 2302 certified copies of the export licence and of the relevant export declaration. The export licence includes specific information guaranteeing that no export refund has been granted on the products concerned. The Polish authorities have undertaken to check compliance with Article 7a of Regulation (EC) No 1162/95.

- (5) Account must therefore be taken of those special arrangements, which entered into force on 1 March 2001, when applying the above provisions of Regulation (EC) No 800/1999 so as not to impose unnecessary costs on exporters trading with third countries. To that end, no account should be taken of the fact that no refund has been fixed for the destination concerned in determining the lowest rate of refund.
- (6) Commission Regulation (EC) No 1501/95 ⁽⁸⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁹⁾, lays down certain detailed rules for the application of Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals and should therefore be amended to insert the derogations required for Regulation (EC) No 800/1999.
- (7) This Regulation should enter into force immediately.
- (8) 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 following Article 13a is added to Regulation (EC) No 1501/95:

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 102, 17.4.1999, p. 11.

⁽⁴⁾ OJ L 14, 18.1.2001, p. 22.

⁽⁵⁾ OJ L 332, 28.12.2000, p. 7.

⁽⁶⁾ OJ L 117, 24.5.1995, p. 2.

⁽⁷⁾ OJ L 60, 1.3.2001, p. 27.

⁽⁸⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁹⁾ OJ L 313, 21.11.1998, p. 16.

'Article 13a

1. Where the differentiation of the refund is the result solely of a refund not having been fixed for Poland, and notwithstanding Article 16 of Regulation (EC) No 800/1999, proof that customs formalities for importation have been completed shall not be required for payment of the refund for products falling within CN codes 1001 90, 1101, 1102 and ex 2302.

2. The fact that a refund has not been fixed for the export of products falling within CN codes 1001 90, 1101, 1102 and ex 2302 to Poland shall not be taken into account in determining the lowest rate of refund within the meaning of Article 18(2) of Regulation (EC) No 800/1999.'

Article 2

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

It shall apply to export declarations accepted from 1 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 603/2001
of 28 March 2001**

**adapting the total quantities referred to in Article 3 of Council Regulation (EEC) No 3950/92
establishing an additional levy in the milk and milk products sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector ⁽¹⁾, as last amended by Commission Regulation (EC) No 749/2000 ⁽²⁾, and in particular Article 3(2) and Article 4(2) thereof,

Whereas:

- (1) Article 3(2) of Regulation (EEC) No 3950/92 lays down that the guaranteed total quantities for Finland may be increased to compensate 'SLOM' producers, up to a maximum of 200 000 tonnes. In accordance with Article 6 of Commission Regulation (EC) No 671/95 ⁽³⁾, as amended by Regulation (EC) No 1390/95 ⁽⁴⁾, Finland has notified the quantities concerned for the 2000/01 marketing year.
- (2) Article 4(2) of Regulation (EEC) No 3950/92 lays down that the individual reference quantities are increased or established at the duly justified request of producers to take account of changes affecting their deliveries and/or direct sales and that the increase or establishment of such a reference quantity is subject to a corresponding reduction or cancellation of the other reference quantity the producer owns.
- (3) Such adjustments may not lead to an increase, for the Member State concerned, in the sum of the deliveries and direct sales referred to in Article 3 of Regulation (EEC) No 3950/92. Where the individual reference quantities undergo a definitive change, the quantities referred to in Article 3 are adjusted accordingly.

- (4) In accordance with the third indent of Article 8 of Commission Regulation (EEC) No 536/93 ⁽⁵⁾, as last amended by Regulation (EC) No 1255/98 ⁽⁶⁾, Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and the United Kingdom have notified quantities which have undergone a definitive change in accordance with the second subparagraph of Article 4(2) of Regulation (EEC) No 3950/92.
- (5) The total quantities applicable for the period from 1 April 2000 to 31 March 2001 laid down in point (a) of the Annex to Regulation (EEC) No 3950/92 and consequently those applicable for subsequent periods laid down in points (b) to (f) of that same Annex should therefore be adjusted.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 3950/92 is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 405, 31.12.1992, p. 1.

⁽²⁾ OJ L 90, 12.4.2000, p. 4.

⁽³⁾ OJ L 70, 30.3.1995, p. 2.

⁽⁴⁾ OJ L 135, 21.6.1995, p. 4.

⁽⁵⁾ OJ L 57, 10.3.1993, p. 12.

⁽⁶⁾ OJ L 173, 18.6.1998, p. 14.

ANNEX

'ANNEX

(a) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2000 to 31 March 2001

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	674 471,000	842,000
Spain	5 828 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 332 448,840	9 315,160
Italy	10 100 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal	1 863 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom ⁽¹⁾	14 420 829,479	181 825,521

⁽¹⁾ Specific quota increase for allocation to Northern Ireland.

(b) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2001 to 31 March 2002

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal	1 863 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom ⁽¹⁾	14 427 921,479	181 825,521

⁽¹⁾ Specific quota increase for allocation to Northern Ireland.

(c) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2002 to 31 March 2005

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal	1 863 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom	14 427 921,479	181 825,521

(d) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2005 to 31 March 2006

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 187 831,539	139 151,461
Denmark	4 476 893,417	731,583
Germany	27 908 010,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 953 411,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	269 599,000	795,000
Netherlands	11 048 274,000	81 791,000
Austria	2 596 998,804	166 149,196
Portugal	1 872 528,000	9 295,000
Finland	2 409 550,921	9 120,645
Sweden	3 316 515,000	3 000,000
United Kingdom	14 500 871,479	181 825,521

(e) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2006 to 31 March 2007

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 204 383,539	139 151,461
Denmark	4 499 169,417	731,583
Germany	28 047 334,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	24 074 590,240	403 565,760

(tonnes)

Member State	Deliveries	Direct sales
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	270 944,000	795,000
Netherlands	11 103 648,000	81 791,000
Austria	2 610 745,804	166 149,196
Portugal	1 881 891,000	9 295,000
Finland	2 421 572,921	9 120,645
Sweden	3 333 030,000	3 000,000
United Kingdom	14 573 821,479	181 825,521

(f) Total reference quantities referred to in Article 3(2) as applicable from 1 April 2007 to 31 March 2008

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 220 935,539	139 151,461
Denmark	4 521 446,417	731,583
Germany	28 186 658,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	24 195 769,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	272 290,000	795,000
Netherlands	11 159 021,000	81 791,000
Austria	2 624 492,804	166 149,196
Portugal	1 891 253,000	9 295,000
Finland	2 433 595,921	9 120,645
Sweden	3 349 545,000	3 000,000
United Kingdom	14 646 772,479	181 825,521'

COMMISSION REGULATION (EC) No 604/2001
of 28 March 2001
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	208,11	68,50	99,72	0,00	156,09
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	208,11	68,50	99,72	0,00	156,09
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

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

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

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

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

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

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

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

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

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	208,11	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	328,92	264,48	245,76	267,47	—
(b) fob price (EUR/tonne)	—	—	—	212,25	233,96	—
(c) Sea freight (EUR/tonne)	—	—	—	33,51	33,51	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 605/2001
of 28 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

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

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 518/2001 ⁽⁵⁾.

- (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 518/2001,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 518/2001 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 29 March 2001.

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

Done at Brussels, 28 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 256, 10.10.2000, p. 13.

⁽⁵⁾ OJ L 76, 16.3.2001, p. 26.

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 ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00	0,00
	medium quality ⁽¹⁾	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 ⁽³⁾	0,00	0,00
	medium quality	23,95	13,95
	low quality	49,95	39,95
1002 00 00	Rye	43,01	33,01
1003 00 10	Barley, seed	43,01	33,01
1003 00 90	Barley, other ⁽³⁾	43,01	33,01
1005 10 90	Maize seed other than hybrid	68,59	58,59
1005 90 00	Maize other than seed ⁽³⁾	68,59	58,59
1007 00 90	Grain sorghum other than hybrids for sowing	43,01	33,01

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

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

- EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 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 15 March to 27 March 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)	129,57	128,76	110,73	93,20	213,50 (**)	203,50 (**)	126,13 (**)
Gulf premium (EUR/t)	44,98	17,56	9,60	8,49	—	—	—
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: 19,51 EUR/t; Great Lakes — Rotterdam: 28,81 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 29 November 2000

on the aid scheme implemented by Spain in favour of the shipping company Ferries Golfo de Vizcaya

(notified under document number C(2000) 3931)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2001/247/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having, in accordance with the abovementioned Articles, called on interested parties to submit their comments ⁽¹⁾, and having regard to those comments,

Whereas:

suspended. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid. The Commission received comments from interested parties. The Spanish authorities submitted their arguments by letter dated 25 January 1994.

- (3) The lawyers of Ferries Golfo de Vizcaya informed the Commission on 27 March 1995 that the aid scheme had been amended on 7 March 1995. On 7 June 1995 the Commission decided to close the procedure concluding that no aid was involved. It informed the Spanish Government of its decision by letter of 11 July 1995 ⁽³⁾.

I. PROCEDURE

- (1) By complaint lodged on 21 September 1992, the Commission was informed that Spain had introduced an aid scheme in favour of the shipping company Ferries Golfo de Vizcaya (letter of intent of 9 July 1992). Three further complaints were made on 16 March, 13 April and 19 April 1993. By letter dated 1 April 1993, Spain furnished the Commission with additional information.
- (2) By letter dated 13 October 1993, the Commission informed Spain of its decision to initiate the procedure laid down in Article 93(2) (now Article 88(2)) of the Treaty in respect of this aid (case C 32/93). On 10 November 1993 Spain indicated that the aid would be

- (4) In its judgment of 28 January 1999 in Case T-14/96, *Bretagne Angleterre Irlande (BAI) v Commission* ⁽⁴⁾, the Court of First Instance of the European Communities annulled the Commission Decision of 7 June 1995.

- (5) Following the Court judgment, the Commission decided on 26 May 1999 to extend the procedure initiated in 1993 in respect of the Agreement of 9 July 1992 (the first Agreement) to include the Agreement concluded between the District Council of Vizcaya and Ferries Golfo de Vizcaya on 7 March 1995 (the second Agreement) and informed Spain of its decision by letter of 16 June 1999.

⁽²⁾ See first reference in footnote 1.

⁽³⁾ OJ C 321, 1.12.1995, p. 4.

⁽⁴⁾ 1999 ECR II-139.

⁽¹⁾ OJ C 70, 8.3.1994, p. 5; OJ C 233, 14.8.1999, p. 22.

- (6) This decision was published in the *Official Journal of the European Communities* ⁽⁵⁾. The Commission invited interested parties to submit their comments on the aid. The Commission received comments from interested parties and forwarded them to Spain, which was given the opportunity to react.
- (7) The Spanish authorities submitted their arguments by letter dated 21 October 1999 and some further observations on 8 February 2000 and 6 June 2000.

II. DETAILED DESCRIPTION OF THE AID

- (8) The original Agreement of 9 July 1992 between the District Council of Vizcaya and the Department of Commerce, Consumption and Tourism of the Basque Government of the one part and Ferries Golfo de Vizcaya of the other part was suspended and replaced by the Agreement between the District Council of Vizcaya and Ferries Golfo de Vizcaya of 7 March 1995.

II.1. The original Agreement (letter of intent of 9 July 1992) between the District Council of Vizcaya and the Department of Commerce, Consumption and Tourism of the Basque Government of the one part and Ferries Golfo de Vizcaya of the other part

- (9) The Agreement concluded in 1992 by the autonomous Basque authorities and the shipping company Ferries Golfo de Vizcaya ⁽⁶⁾ provided that the latter would start to operate a scheduled service between Bilbao and Portsmouth at the rate of two round trips per week (except for three weeks in the low season) and would ensure that, when choosing the crew and the goods and catering services on board the vessel, preference would be given to people and companies from the territory of Vizcaya and the autonomous Community of the Basque Country. The Agreement also stipulated that Ferries Golfo de Vizcaya would install tourist information offices in each of its berthing points.
- (10) The Agreement also provided that the District Council of Vizcaya and the Basque Government would undertake to buy a number of travel vouchers from the company between 1993 and 1996. The autonomous Basque authorities intended to distribute these vouchers, exchangeable for tickets within the same month, among low-income groups as part of a cultural and social policy. In total, the autonomous Basque authorities' commitment amounted to ESP 911 800 000 for 26 000 vouchers over the period from March 1993 to March 1996. The said authorities undertook to pay for the vouchers even if voyages were not made for reasons beyond the control of Ferries Golfo de Vizcaya.

- (11) The Agreement further stated that, should the results of the operation of the service be positive, the amount corresponding to such positive results would be deducted from the monthly payments that the autonomous Basque authorities would make. On the contrary, if a negative result were shown, the said authorities agreed to pay Ferries Golfo de Vizcaya the difference between the partial sums of the payments made and the total value of the global amount agreed.
- (12) Following the initiation of the procedure, the original Agreement was suspended and Ferries Golfo de Vizcaya was asked to establish a provision of the amounts it had received plus interest. On 7 March 1995; the District Council of Vizcaya concluded a new agreement with Ferries Golfo de Vizcaya.

II.2. The Agreement of 7 March 1995 between the District Council of Vizcaya and Ferries Golfo de Vizcaya

- (13) The second Agreement covered a period of four years (January 1995 to December 1998). It provided that the Ferries Golfo de Vizcaya company would maintain and promote a scheduled service between Bilbao and Portsmouth at the rate of two round trips per week (except for three weeks in the low season) using a mixed British/Spanish crew and local British and Spanish sources for goods and services.
- (14) It also provided that the District Council of Vizcaya would buy vouchers from the company and would distribute them among disadvantaged groups in order to provide them with foreign travel opportunities. The vouchers were exchangeable for tickets, even outside their prescribed conversion period provided that the conversion took place during the low season and that there was sufficient capacity. In total, the autonomous Basque authorities undertook to buy 46 500 vouchers between January 1995 and December 1998 for ESP 985 500 000. The price was calculated on the basis of the estimated low-season commercial price of the tickets for the years concerned and discounted in order to reflect the District Council's long-term purchasing commitment.

II.3. Grounds for initiating the procedure

- (15) The Commission took the view on 29 September 1993 that the first Agreement involved aid because the shipping company was being financed by the autonomous Basque authorities under conditions not available on the market and that the element of commercial risk was eliminated for Ferries Golfo de Vizcaya. The following four points were emphasised:

- (a) the fact that the autonomous authorities had agreed to purchase a set number of vouchers over a three-year period rather than on the basis of need;

⁽⁵⁾ See second reference in footnote 1.

⁽⁶⁾ Ferries Golfo de Vizcaya was a subsidiary of P & O European Ferries of the United Kingdom and Vapores Suardiaz of Spain. Since 1994, Ferries Golfo de Vizcaya has been 100 % owned by P & O European Ferries.

- (b) the fact that they guaranteed for these vouchers a price higher than the agreed commercial price;
- (c) the fact that the autonomous authorities had undertaken to pay for the vouchers even if voyages were not carried out or were diverted to other ports for reasons beyond the control of Ferries Golfo de Vizcaya;
- (d) the fact that they had undertaken to cover the company's losses.
- (16) The Commission also stated that the aid scheme did not seem to qualify for exemption under any of the categories of Article 92(2) and (3) (now Article 87(2) and (3)) of the Treaty.
- (17) As far as the second Agreement is concerned, following the judgment of the Court of First Instance of 28 January 1999, the Commission considered, in its decision of 26 May 1999 extending the procedure, that this Agreement also appeared to fall within the scope of Article 92(1) (now Article 87(1)) of the Treaty.
- (18) The Commission pointed out that the autonomous Basque authorities had not demonstrated why they needed more vouchers within the framework of the second Agreement than within that of the first (46 500 instead of 26 000). It assumed that the number of vouchers had been artificially increased to offset the decrease in the price of the vouchers and so maintain the public financial contribution at the level originally agreed, and it concluded that the Agreement did not constitute a normal commercial transaction. It also emphasised that the number of vouchers actually distributed did not correspond, even approximately, to the number of vouchers pre-purchased by the public authorities. It added that the fact that Ferries Golfo de Vizcaya had been allowed to keep the money it had received under the first Agreement until the entry into force of the second Agreement also suggested the 'non-commercial' nature of the Agreement.
- (19) The Commission also stated that the aid granted by the autonomous Basque authorities to Ferries Golfo de Vizcaya was likely to affect trade between Member States and to distort competition since the company operated between two Member States and competed with other Community operators. Finally, it indicated that it was of the preliminary view that the scheme did not qualify for any of the exemptions provided for by Article 92(2) and (3) (now Article 87(2) and (3)) of the Treaty.
- III. COMMENTS FROM INTERESTED PARTIES**
- (20) After the procedure was initiated, comments were received from Ferries Golfo de Vizcaya, the recipient of the aid, in favour of both the Agreements, and from Brittany Ferries, a competitor operating on the Plymouth/Santander route, against the two Agreements.
- The Association of Pensioners Evacuated during the Civil War and the Automobile Association Services indicated their support for the first Agreement.
- (21) The following comments were made on the second Agreement.
- Brittany Ferries*
- (22) Brittany Ferries argued that the 1995 Agreement did not constitute a normal commercial transaction and that the aid affected trade between Member States.
- (23) In addition to supporting the analysis the Commission presented when initiating the procedure, it pointed out the following peculiar features of the Agreement which clearly indicate that it does not constitute a normal commercial transaction:
- (a) the uneven purchase of vouchers between different months and years;
 - (b) the provision according to which the tariffs would be revised if the vessel used by Ferries Golfo de Vizcaya was changed;
 - (c) the fact that the autonomous Basque authorities were not obliged to convert the purchased vouchers into tickets;
 - (d) the conditions relating to the nationality of the crew and the regularity of the service.
- (24) Brittany Ferries further claimed that the aid did not qualify for any of the exemptions provided for by Article 92 (now Article 87) of the Treaty.
- Ferries Golfo de Vizcaya*
- (25) Ferries Golfo de Vizcaya argued that the 1995 Agreement did have a commercial nature and did not involve aid. It claimed that the advance bulk purchase of tickets by the District Council of Vizcaya at a volume discount price was no different from the practice of commercial bulk tourist ticket purchasers. It explained the increase in the number of vouchers by:
- (a) the discount in their price,
 - (b) the expectations of the District Council, based on its experience with the national Insero programme, and
 - (c) the fact that its budget had already been allocated.

As far as the incomplete conversion of vouchers is concerned, the shipping company emphasised that the process was not yet over and would be pursued (the Agreement allows vouchers to be converted beyond the period covered by the Agreement).

- (26) Furthermore, Ferries Golfo de Vizcaya submitted that it derived no financial benefit from the retention of the monies which were to be repaid following the cancellation of the Agreement because it had repaid them with interest.
- (27) Ferries Golfo de Vizcaya also submitted that if the Commission were to find that the 1995 Agreement was not an arm's length commercial transaction and involved State aid, such aid should nevertheless be approved.
- (28) As far as Article 87(2)(a) of the Treaty is concerned (aid having a social character), Ferries Golfo de Vizcaya argues that, to its knowledge, the District Council of Vizcaya had approached other international ferry service operators with a view to establishing their interest in running the service.
- (29) As far as Article 87(3)(c) of the Treaty is concerned, Ferries Golfo de Vizcaya submits that the aid should be approved because it facilitated the development of the Vizcaya region without distorting competition. The company argues that 'Ferries Golfo de Vizcaya's operation "doubled" the size of the market for ferry services between Spain and the United Kingdom without any negative impact on Brittany Ferries' carryings'.
- (30) Finally, Ferries Golfo de Vizcaya argued that if the Commission were to find that the 1995 Agreement involved State aid that could not be approved, the Commission should not make a recovery order as the aid was granted lawfully at that time. It states that the 1995 Agreement had been notified to the Commission in due time and that the aid had been granted only after the Commission's favourable decision of 7 June 1995.
- (32) The autonomous Basque authorities further indicated that there was no aid element in the 1995 Agreement with Ferries Golfo de Vizcaya, which was intended to meet the genuine need to provide subsidised trips for Vizcaya's senior citizens and facilitate access to transport for the people and institutions of Vizcaya.
- (33) On the first point, they explained that the District Council of Vizcaya had participated since 1988 in the national Insero programme of subsidised travel, but had decided to terminate its arrangement with Insero in 1993 (1995 in practice) owing to problems that had arisen in the implementation of the programme. The autonomous Basque authorities explained that the arrangement with Insero had to be terminated on account of the way places were distributed and the limited number of destinations. To replace the Insero programme, the District Council of Vizcaya set up its own travel programme, 'Adineko', in 1996. The District Council of Vizcaya stated that its estimate of the quantity of vouchers needed was based on data from the Insero programme and indicated that the fact that Adineko had enjoyed only limited success had no bearing on the genuine need to conclude the Agreement. The District Council of Vizcaya also emphasised that it would continue to implement the Agreement, after its termination date, as there was no limitation on the period for converting the vouchers.
- (34) On the second point, the autonomous Basque authorities referred to their obligation to help people whose particular requirements, income level or social background meant that special arrangements were needed for them to travel. In practice, transport vouchers were distributed to a wide range of people and institutions (e.g. local authorities, associations, vocational schools and universities).

IV. COMMENTS FROM SPAIN

- (31) The autonomous Basque authorities claimed they were pursuing two goals when they concluded the 1992 Agreement with Ferries Golfo de Vizcaya (the first Agreement, which was cancelled). Firstly, they acted like a private investor by financing a company and expecting a reasonable return on their investment. They stated that they had chosen a reliable company and that their agreement with Ferries Golfo de Vizcaya included a provision according to which they were entitled to 10 % of the profits made by the company after the first three years of operation. Secondly, they wanted to promote trade and tourism and help the regional development of the Basque Country. In their view, the Basque Government authorities' participation in the Agreement did not fall under Article 92(1) (now Article 87(1)) of the Treaty. However, they argued that if it were considered to fall under that Article, the aid would qualify for an exemption under Article 92(3) (now Article 87(3)) of the Treaty.
- (35) The autonomous Basque authorities also submitted that if the Commission were to find that the 1995 Agreement involved State aid, such aid should be approved because the agreement facilitated economic development in the Historic Territory of Vizcaya as provided for by Article 87(3)(c) of the Treaty and/or because it was conceived with social objectives, as provided for by Article 87(2)(a) of the Treaty.
- (36) In justifying their first argument, the autonomous Basque authorities explained that in the early 1990s Vizcaya was suffering serious economic problems. The District Council decided to promote a ferry service between Bilbao and Portsmouth in order to stimulate the tourism-related sectors of the Vizcaya economy. The District Council ordered a viability study from KPMG and decided to purchase vouchers as an incentive to get a new high quality, regular, mixed ferry service.

(37) The autonomous Basque authorities claimed that their contribution was in the nature of an investment aid and did not constitute an operating aid. They explained that they wanted to make a minimum contribution to the initial investment costs borne by Ferries Golfo de Vizcaya and that when the 1992 voucher scheme was cancelled, the District Council sought to conclude a new agreement with Ferries Golfo de Vizcaya in order to meet its undertaking to contribute to the initial investment costs for the ferry service. They also pointed out that the aid was not linked to the annual costs of Ferries Golfo de Vizcaya and that the service was viable.

(38) The autonomous Basque authorities concluded that any hypothetical element of State aid which the Commission could see in the 1995 Agreement should be considered State aid for investment in Vizcaya granted on an ad hoc basis ⁽⁷⁾ [...] but as a fundamental part of the District Council's policy for development of the Vizcaya economy. According to them, the 'aid' meets the conditions laid down by Article 87(3)(c) of the Treaty since:

(a) it is substantially below the maximum rate of State aid allowed for Vizcaya in 1995 (the amount paid by the District Council is equivalent to approximately 6,7 % of Ferries Golfo de Vizcaya's investment costs in relation to the service),

(b) the aid contributed to economic development in Vizcaya (they claimed that, to date, the service had led to the creation of 706 jobs in Vizcaya and the Basque Country),

(c) the aid is of interest to the Community (the Commission promotes short sea shipping and co-finances transport projects within the framework of its regional policy), and

(d) the scheme has had no adverse effect on trade and competition (every operator potentially interested in the service was approached by the District Council; the autonomous Basque authorities claimed that the Bilbao/Portsmouth service had led to no reduction in activity on the Santander/Plymouth route operated by Brittany Ferries).

(39) With respect to their second argument, the autonomous Basque authorities submitted that Article 87(2)(a) of the Treaty (aid having a social character) provides an alternative legal basis for approval of any element of State aid the Commission could hypothetically see in the 1995 Agreement. They stated that the vouchers purchased were distributed to citizens applying under specific social programmes run by the District Council. In addition,

they explained that the Agreement entailed no discrimination against other ferry operators since no other operator showed interest in establishing the Bilbao/Portsmouth service. They also pointed out that the KPMG viability study had been forwarded to all operators potentially interested in establishing the service and that contact had been maintained with them between 1989 and 1991.

(40) Lastly, the autonomous Basque authorities argued that if, despite all their arguments, the Commission were to find that the 1995 Agreement involved State aid that could not be approved, the Commission should not make a recovery order as this would be contrary to the principles of legal certainty and legitimate expectation. They insisted on the fact that the 1995 Agreement had been implemented lawfully at that time.

V. ASSESSMENT OF THE AID

V.1. Legal basis for the assessment

(41) The only Agreement that was fully implemented, the second Agreement concluded on 7 March 1995, covered the period 1995 to 1998. It was concluded at a time when the Guidelines for the examination of State aids to Community shipping companies of 3 August 1989 were in force ⁽⁸⁾. These guidelines were revised in 1997 following the publication of the Community guidelines on State aid to maritime transport on 5 July 1997 ⁽⁹⁾.

V.2. Existence and compatibility of the aid

V.2.1. Existence of aid

(42) Article 92(1) of the Treaty (now Article 87(1)) prohibits aid granted through State resources which distorts or threatens to distort competition by favouring certain undertakings, in so far as it affects trade between Member States.

(43) The first Agreement concluded by the autonomous Basque authorities and Ferries Golfo de Vizcaya was repealed and the monies received by Ferries Golfo de Vizcaya reimbursed. Therefore the case became devoid of purpose.

(44) As far as the second Agreement is concerned, the Commission takes the view that it falls under Article 92(1) of the Treaty (now Article 87(1)).

⁽⁷⁾ They referred to the judgment of the Court of First Instance of the European Communities of 14 September 1994 in Cases C-278/92, C-279/92 and C-280/92, *Spain v Commission* (1994 ECR I-4103).

⁽⁸⁾ Annex 1 to 'Financial and fiscal measures concerning shipping operations with ships registered in the Community', SEC(89)921 final.

⁽⁹⁾ OJ C 205, 5.7.1997, p. 5.

(45) As a preliminary point, it must be recalled that, in its judgment of 28 January 1999 on the case, the Court of First Instance ruled that 'a State measure in favour of an undertaking, which takes the form of an agreement to purchase travel vouchers cannot be excluded in principle from the concept of State aid in the sense contemplated in Article 92 of the Treaty, merely because the parties undertake reciprocal commitments' (ground 71). To determine whether the 1995 Agreement falls within the scope of Article 92(1) of the Treaty (now Article 87(1)), it must be considered whether it constitutes a 'normal commercial transaction' (see, for instance, ground 75 of the Court of First Instance's judgment).

(46) The autonomous Basque authorities argued that the number of vouchers provided for in the Agreement (15 000 in 1995 and in 1996, 9 000 in 1997 and 7 500 in 1998) had been calculated on the basis of the annual number of beneficiaries of the Inerso programme in Vizcaya (around 15 000 in practice), i.e. the programme which they wanted to terminate and replace with their own Adineko programme.

(47) On the basis of the data submitted, the Commission upholds its view that the total number of vouchers purchased by the District Council of Vizcaya was not fixed by reference to the District Council's actual needs and that the second Agreement does not constitute a normal commercial transaction but was designed to maintain at its original level the aid contained in the first Agreement, as is shown below.

V.2.1.1. Subsidised holiday trips

(48) It cannot be asserted that the needs of the District Council of Vizcaya in this field were derived from the Inerso figures (around 15 000 beneficiaries per year in Vizcaya) as the following shows.

(49) The District Council of Vizcaya decided to purchase 15 000 vouchers from Ferries Golfo de Vizcaya in 1995 while it was still participating in the Inerso programme, itself designed to benefit approximately 15 000 people of Vizcaya in 1995. The autonomous Basque authorities did not explain why Vizcaya's needs were double in that particular year. Nor did they indicate why the scheme only provided for 9 000 and 7 500 vouchers (instead of 15 000) in 1997 and 1998. When the District Council of Vizcaya decided to commit itself to buying this number of vouchers, it did not know that the Inerso programme would continue to benefit people from the

area⁽¹⁰⁾ and that its own scheme would not be successful. Furthermore, no indication was given by the autonomous Basque authorities of why the number of vouchers purchased had to differ significantly from month to month (e.g. 750 vouchers were purchased in January 1995 compared with 3 000 in February 1995).

(50) The District Council of Vizcaya's own Adineko travel programme was not adopted until 1996 and thus post-dates the conclusion of the 1995 Agreement. Furthermore, it appears from the data supplied by the autonomous Basque authorities that this programme, which was supposed to replace the Inerso programme and to make use of the vouchers bought by the District Council of Vizcaya, only offered a very limited number of trips to the United Kingdom: 2 132 in 1996 (i.e. 14 % of the total number of vouchers purchased that year), 1 000 (11 %) in 1997, 400 (5 %) in 1998 — 3 532 in total.

V.2.1.2. Access to transport for the people and institutions of Vizcaya

(51) No indication was given by the autonomous Basque authorities of how the needs relating to the other part of the scheme (facilitation of access to transport for the people and institutions of Vizcaya, which is different from the made-to-measure holiday packages provided through Inerso and Adineko) had been estimated. In practice, according to the said authorities, 12 520 travel vouchers were distributed under the scheme between 1995 and 1998.

(52) In addition, the Agreement contains several provisions that a normal commercial agreement to purchase travel vouchers would not include, such as the following:

(a) it specifies the weekly and annual number of crossings to be made by Ferries Golfo de Vizcaya, and indicates the days when vessels should operate (see Article 3b of the Agreement)⁽¹¹⁾, it also stipulates that the consent of the District Council of Vizcaya is needed for Ferries Golfo de Vizcaya to change the vessel providing the service (see Article 1 — Article 3a specifies the level of amenities required on board);

(b) Article 3a of the Agreement lays down certain conditions, such as the nationality of the crew and the sources of goods and services.

(53) The Commission concludes from the above that the purchase of vouchers from Ferries Golfo de Vizcaya under the second Agreement did not correspond to the autonomous Basque authorities' genuine social needs and did not constitute a normal commercial transaction but rather constituted aid to the shipping company. The fact that the amount of money provided for under the first and the second Agreements remained at approximately the same level⁽¹²⁾ reinforces this conclusion. The autonomous authorities managed to design a second scheme allowing the ferry company to keep the amount of aid promised in 1992.

⁽¹⁰⁾ Even though the District Council of Vizcaya had stopped contributing to this programme.

⁽¹¹⁾ Ferries Golfo de Vizcaya may alter its sailing schedule for commercial reasons only after notifying the District Council of Vizcaya.

⁽¹²⁾ ESP 911 800 000 under the first Agreement and ESP 985 500 000 under the second Agreement.

- (54) Finally, the money granted by the District Council of Vizcaya to Ferries Golfo de Vizcaya was likely to affect trade between Member States and distort competition, as the company operates between two Member States (the United Kingdom and Spain) and competes with other Community operators. International maritime transport services have long since been liberalised (see, in particular, Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ⁽¹³⁾). Ferries Golfo de Vizcaya competes directly with at least one other company, Brittany Ferries, which provides services between Plymouth (United Kingdom) and Santander (Spain). It should also be pointed out that Ferries Golfo de Vizcaya's parent company, P & O, operates and competes with other Community operators on various intra-Community routes. The fact that Brittany Ferries' passenger carryings increased over the period does not mean that the aid did not distort competition, as that increase might have been greater had the aid not existed.
- (55) As the Court of First Instance points out in its judgment of 28 January 1999, 'as the travel vouchers purchased by the Spanish authorities can be used only in the low season, the improved service supplied by the undertaking does not in principle entail significant additional costs for it and, consequently, the effects of the new Agreement on competition and trade between Member States are the same as those which could be attributed to the 1992 agreement. It is settled case law that the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Community trade may be affected' (grounds 76 and 77).
- V.2.2. Article 92(2) and (3) (now Article 87(2) and (3)) of the Treaty*
- (56) As a derogation from the prohibition laid down by Article 92(1) of the Treaty (now Article 87), paragraphs 2 and 3 of the Article provide that certain types of aid are compatible or may be considered compatible with the common market. The Commission takes the view that none of the exceptions listed in these paragraphs can be invoked in the present case.
- (57) Points (b) and (c) of Article 92(2) (now Article 87(2)) concerning natural disasters and the Federal Republic of Germany are manifestly not applicable in the present case.
- (58) Article 92(2)(a) (now Article 87(2)(a)) provides that 'aid having a social character, granted to individual consumers' is compatible with the common market 'provided that such aid is granted without discrimination related to the origin of the products concerned'. The aid granted by the autonomous Basque authorities benefits individual consumers with special needs and might therefore have been considered an 'aid having a social character, granted to individual consumers'. However, the condition laid down by the Treaty (the absence of discrimination related to the origin of the products concerned) is not met in the present case. Vouchers have only been purchased from Ferries Golfo de Vizcaya and the autonomous authorities have failed to prove that the company was selected in a transparent manner.
- (59) The autonomous Basque authorities argued that the scheme is not discriminatory. However, the evidence submitted is weak: they explained that they had sent the viability study produced by KPMG to all possible operators and that they had been in contact with them between 1989 and 1991 in order to see whether they would be willing to start to operate a regular service between Bilbao and Portsmouth. However, they never claimed or demonstrated that they had contacted companies other than Ferries Golfo de Vizcaya when they decided to purchase vouchers in 1995 as part of their social scheme. In view of all the above, it may be concluded that the aid favoured Ferries Golfo de Vizcaya.
- (60) Furthermore, other companies might have been willing to carry these passengers to the United Kingdom via a different route. The autonomous Basque authorities might have achieved identical social goals with a diversified travel offer (for instance, to other regions of Spain or, if it had to be international, by organising trips to other neighbouring countries such as France or Portugal).
- (61) Therefore, the aid cannot qualify under Article 92(2)(a) of the Treaty (now Article 87(2)(a)).
- (62) Article 92(3) of the Treaty (now Article 87(3)) provides that some other types of aid may be considered to be compatible with the common market. Points (a), (b), (d) and (e) are not applicable to the present case.
- (63) Point (c) provides that 'aid to facilitate the development of certain activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered compatible with the common market.

⁽¹³⁾ OJ L 378, 31.12.1986, p. 1.

- (64) For the reasons given above, the Commission takes the view that the aid the autonomous Basque authorities granted to Ferries Golfo de Vizcaya cannot be considered to be aid of a regional or sectoral nature compatible with the common market, as it is operating aid ⁽¹⁴⁾ with no incentive effect, having been granted well after the service began to operate ⁽¹⁵⁾.
- (65) From the regional policy perspective, the autonomous Basque authorities and Ferries Golfo de Vizcaya argue that the aid could be authorised as it facilitates the economic development of Vizcaya without any distorting effect on competition on British-Spanish ferry routes.
- (66) The Commission takes the view that the aid, granted to a specific company, cannot be considered to be an aid to the Vizcaya region even though it may have had an impact on the region's economy ⁽¹⁶⁾. Any activity carried out in a region has an impact on that region's economy. Any aid to a company in a given region will necessarily have some kind of impact but that does not make it a proper regional aid.
- (67) The figures provided by the Spanish authorities refer to the impact of the new ferry service on the economy. However, the aid that is being examined was granted between 1995 and 1998, well after the date when Ferries Golfo de Vizcaya started its service. The autonomous authorities did not explain what the impact of the aid might have been nor did they show that the impact of the ferry service on the economy would have been very different in the absence of the aid. It is therefore difficult to argue that the aid facilitated the development of the region.
- (68) In any case, even if the aid were a 'regional' aid, it could not be considered compatible with the common market as it is an operating aid and not an investment aid as the autonomous Basque authorities have argued.
- (69) The aid was not linked to any specific investment made by the company. Besides, it cannot be maintained that the autonomous Basque authorities contributed in 1995 to investments made by Ferries Golfo de Vizcaya around 1992 for starting the service. The autonomous authorities merely raised the company's income by buying tickets. Therefore, the aid is clearly an operating aid.
- (70) From the sectoral policy perspective, the Commission takes the view that the aid cannot be considered compatible with the common market on the grounds that it would 'facilitate the development of certain activities' without 'adversely affecting trading conditions to an extent contrary to the common interest'.
- (71) The aid does not fulfil the criteria laid down by the Commission in its Guidelines for the examination of State aids to Community shipping companies of 3 August 1989 and its Community guidelines on State aid to maritime transport of 5 July 1997, as referred to in recital 41.
- (72) The 1989 Guidelines stated that whereas certain types of aid listed therein, such as the special taxation of certain shipping activities, could be considered compatible with the common market, 'any other kind of operating aid ... is in principle incompatible with the common market'. This basic principle is upheld in the 1997 Guidelines. The type of aid granted to Ferries Golfo de Vizcaya does not correspond to the types of aid authorised in the Guidelines (relief of taxation and social charges for shipping companies and seafarers).
- (73) The fact that the service was viable and that the aid was not linked to the annual costs or losses of Ferries Golfo de Vizcaya has no bearing on this conclusion.

V.3. Recovery of the aid

- (74) The autonomous Basque authorities and Ferries Golfo de Vizcaya argued that even if the Commission were to find that the 1995 Agreement involved State aid that could not be approved, the Commission should not make a recovery order as this would frustrate their legitimate expectations. The Commission cannot share this view. As the Court of First Instance held in its judgment of 14 January 1997 in case C-169/95 *Kingdom of Spain v Commission* ⁽¹⁷⁾, 'in view of the mandatory nature of the supervision of State aid by the Commission under Article 93 of the Treaty, undertakings to which an aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that Article. A diligent operator should normally be able to determine whether that procedure has been followed. In this case, it is not contested that, contrary to the obligations imposed on the Member States by Article 93(3) of the Treaty, the aid in question was granted without prior notification. The fact that the Commission initially decided not to raise any objections to the aid at issue cannot be regarded as capable of having caused the recipient undertaking to entertain any legitimate expectation since that decision was challenged in due time

⁽¹⁴⁾ See the judgment of 8 June 1995 of the Court of First Instance in Case T-459/93, *Siemens v Commission*, 1995 ECR II-1675.

⁽¹⁵⁾ See judgment of 17 September 1980 of the Court of Justice in Case 730/79, *Philip Morris Holland BV v Commission*, 1980 ECR 2671.

⁽¹⁶⁾ See point 2 of the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

⁽¹⁷⁾ 1997 ECR I-0135.

before the Court, which annulled it. However regrettable it may be, the Commission's error cannot erase the consequences of the unlawful conduct of the Kingdom of Spain. The contested Decision cannot therefore be regarded, either in so far as it requires repayment of the aid in issue or in so far as it requires payment of interest thereon, as frustrating the legitimate expectations of the recipient undertaking' (grounds 51 to 54).

- (75) Generally speaking, for an aid to be granted in accordance with Article 93(3) (now Article 88(3)) of the Treaty, it has to be notified by the Member State concerned and cannot be put into effect before the Commission has reached a final decision on the case. These conditions have not been fulfilled in the present case.
- (76) The Commission's 1995 Decision regarding Ferries Golfo de Vizcaya was challenged in the Court of First Instance in due time and was subsequently annulled by the Court. It follows from the jurisprudence that annulment of authorisation deprives the aid of its basis in Community law and should in principle render it unlawful from the outset.
- (77) In any event, even if the payments to Ferries Golfo de Vizcaya were effectively made only after the Commission's positive Decision of 7 June 1995, the Agreement, which provides for payments as from January 1995, was concluded on 7 March 1995, a few months before the Commission adopted its Decision. The aid was therefore implemented before the Commission reached its Decision⁽¹⁸⁾. In accordance with the aforementioned judgment of 14 January 1997, the Commission's error cannot erase the consequences of the unlawful conduct of the autonomous Basque authorities.
- (78) The Commission also observes that the aid was not formally notified. The Guide to procedures in State aid cases and Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁹⁾ clearly set out that notifications should be made by the Member States themselves (at central government level, even if the aid is granted by regional authorities). The Commission takes the view that the 1995 Agreement was not formally notified as it was only sent to the Commission by the lawyers of the recipient of the aid on 27 March 1995.

VI. CONCLUSIONS

- (79) The Commission finds that Spain has unlawfully implemented aid to Ferries Golfo de Vizcaya in breach of Article 93(3) (now Article 88(3)) of the Treaty. The aid, for a total sum of ESP 985 500 000, will have to be recovered from the recipient,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain has implemented in favour of Ferries Golfo de Vizcaya, to the sum of ESP 985 500 000, is incompatible with the common market.

Article 2

1. Spain shall take all the necessary measures to recover from the recipient the aid referred to in Article 1 made available to it unlawfully.

2. Recovery shall be effected without delay in accordance with the procedures of national law, provided these allow the immediate and effective execution of this Decision. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aids.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 29 November 2000.

For the Commission

Loyola DE PALACIO

Vice-President

⁽¹⁸⁾ This notion was explained by the Commission in its letter to the Member States of 27 April 1989 (ref. SG(89)D/5521).

⁽¹⁹⁾ OJ L 83, 27.3.1999, p. 1.

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION
No 380/00/COL
of 18 December 2000
on the Act on temporary reimbursements in respect of film-making in Iceland
(Act No 43/1999)
(Iceland)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular Article 24 and Article 1 of Protocol 3 thereto,

Having regard to the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾,

Having regard to the Authority's Decision of 4 June 1999, by which the Authority initiated proceedings in accordance with Article 1(2) of Protocol 3 to the Surveillance and Court Agreement,

Having called on interested parties to submit their comments pursuant to those provisions ⁽⁴⁾,

Whereas:

I. FACTS

Procedure

By letter from the Ministry of Industry and Commerce dated 10 March 1999 received and registered by the Authority on 7 April 1999 (Doc. No 99/2531-A), the Icelandic authorities notified, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, support measures in favour of film production in Iceland. As the Authority subsequently learned, the Government bill on these support measures had been adopted by the Icelandic Parliament on 11 March 1999 (Act No 43/1999 on the temporary repayment of costs of films produced in Iceland; hereinafter referred to as the 'Act'). By Decision of 4 June 1999 (No 114/99/COL), the Authority decided to initiate a formal investigation procedure regarding the aid measures provided for in the Act. In a letter of the same date, the Icelandic authorities were informed of the Decision to open the formal investigation procedure and were requested to submit their comments within one month of receipt of the communication of that Decision. After several extensions of the deadline, written comments were submitted by letter dated 15 October 1999, registered by the Authority on 26 October 1999 (Doc. No 99-7966-A).

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, EEA Supplements No 32, 3.9.1994 last amended by the Authority's Decision No 78/00/COL of 12 April 2000, not yet published; hereinafter referred to as State Aid Guidelines.

⁽⁴⁾ The opening Decision was published in the OJ C 223, 5.8.1999 (in the EU languages) and in the EEA Supplement No 40, 16.9.1999 (in the EFTA languages)

The opening Decision was published in the *Official Journal of the European Communities* C 223 of 5 August 1999 (in the EU languages) and in the EEA Supplement No 40 of 16 September 1999 (in the EFTA languages). Interested parties had the opportunity to submit their observations within one month of the publication in the *Official Journal of the European Communities/EEA Supplement*. No comments were submitted to the Authority.

In the opening Decision, the Authority expressed doubts as to the compatibility of the aid measures under the Act with Article 61(3)(c) of the EEA Agreement. These doubts were based on the grounds that the reimbursement of film production costs constituted operating aid not normally accepted by the Authority, and that the Act did not have the promotion of activities of specific cultural value as an objective. The Authority's concerns were further explained in a letter dated 9 September 1999 to the Icelandic authorities (Doc. No 99/6620-D). With reference to the practice of the European Commission, and in particular the 'French' ⁽¹⁾ and the 'Irish' ⁽²⁾ Decisions, the Competition and State Aid Directorate of the Authority emphasised specifically that the scheme did not provide for mechanisms ensuring that eligible films were selected according to cultural criteria, and that by requiring film producers to spend the totality of production costs in Iceland, the scheme had the effect of restricting the provision of services within the EEA.

The issues of concern were discussed at bilateral meetings in Brussels on 30 June 1999 and 7 October 1999, at a package meeting on 26 November 1999 in Reykjavik, as well as at a multilateral meeting held on 21 March 2000 in Brussels. At this last meeting the consequences and implications of applying the criteria developed by the Commission for the assessment of film support schemes under Article 61(3)(c) of the EEA Agreement were discussed with the EFTA States.

In a letter dated 24 July 2000 (Doc. No 00-5245-D), the Authority expressed the view that, in the light of the criteria developed by the European Union Commission with respect to film support schemes in the European Union and of the written comments submitted by the Icelandic authorities, the aid measures provided for under the Act could not be exempted under Article 61(3)(c) of the EEA Agreement, and were therefore considered to be incompatible with this Agreement. Against this background, the Authority called on the Icelandic authorities to submit their comments within two months of the receipt of the said letter. In their response, the Icelandic authorities informed the Authority by fax of 8 September 2000, registered by the Authority on 14 September 2000 (Doc. No 00-6356-A), that the Icelandic Government was in the process of initiating work on a bill of law, taking into account the concerns raised by the Authority regarding the compatibility of the Act under Article 61(3)(c) of the EEA Agreement. In addition, the Icelandic Government confirmed that it refrained from applying the provisions of the law, as requested in the Authority's Decision of 4 June 1999. A meeting was held on 11 October 2000 between the Icelandic authorities and representatives from the Authority's Competition and State Aid Directorate, on the occasion of which the amendments as envisaged by the Icelandic Government were discussed in more detail. At this meeting, the Icelandic authorities also confirmed that no payments had been made under the Act. The final draft of the bill amending Act No 43/1999 on temporary reimbursement in respect of film making in Iceland ⁽³⁾, was submitted to the Authority by letter of the Ministry of Finance dated 28 November 2000, registered by the Authority on 4 December 2000 (Doc. No 00-8857-A).

Description of the aid measures under the bill amending Act No 43/1999

According to Article 1 of the bill amending the Act on the temporary reimbursements in respect of film making in Iceland, No 43/1999 (hereinafter referred to as the 'proposed amending Act'), the objective of film support under the proposed amending Act is 'to enhance domestic culture and promote the history and nature of Iceland' by temporarily supporting motion pictures and television programmes produced in Iceland.

Pursuant to Article 2 of the proposed amending Act, reimbursement is granted for a proportion of the production costs incurred in the production of films and television programmes in Iceland. This provision further clarifies that 'when more than 80 % of the total production cost of a motion picture or television

⁽¹⁾ State aid No 3/98 — France

⁽²⁾ State aid NN 49/97 and N 357/99 — Ireland; this Decision can also be found on the Internet: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/industrie/nn049-97.pdf

⁽³⁾ The Authority notes that the title of the bill amending Act No 43/1999 is slightly different compared to the title of the original Act No 43/1999. However, the Act to be amended is obviously the same.

programme is incurred in Iceland, reimbursement shall be calculated from the total production cost incurred within the European Economic Area'. Production costs refer to all costs incurred in Iceland deductible from the revenues of enterprises pursuant to the provisions of the Act on income and net wealth tax. Payments pertaining to employees and contractors are only to be included in the production costs if they are verifiably taxable in Iceland.

Articles 3 and 4 of the proposed amending Act refer to the application procedure and the establishment of a committee responsible for the assessment of applications for reimbursement. The Committee shall take into consideration whether the motion picture or television programme promotes Icelandic culture, and, as applicable, contains references to Icelandic history and nature. When assessing an application for reimbursement, the Committee may also ask for an expert opinion regarding the presumed artistic value of the relevant production.

The conditions for reimbursement are laid down in Article 4 of the proposed amending Act. These conditions include, in particular, the requirement that the production be suited to promoting Icelandic culture and the history and nature of Iceland, and that a specific company shall be established in Iceland for the production (a company is also considered to be established in Iceland, if a company registered in another Member State of the European Economic Area has an Icelandic branch or agency).

Article 5 of the proposed amending Act determines the permissible aid intensity under the scheme: 'The proportion of reimbursed production costs shall be 12 % of the production cost pursuant to Article 2.' The Minister for Industry shall determine the reimbursement based on a recommendation of the Committee pursuant to Article 3 of the proposed amending Act. Article 7 of the proposed amending Act ensures that 'in the event that an applicant has received a grant from the Icelandic Film Fund for the production of the same motion picture or television programme, the grant shall be deducted from the amount that is considered domestic production cost. The total of a grant from the Icelandic Film Fund and a reimbursement pursuant to Article 5 shall not exceed 50 % of the total production costs of the same motion picture or television programme'.

Pursuant to Article 8 of the proposed amending Act, 'the Minister for Industry shall issue a regulation on the implementation of this Act. It shall, *inter alia*, contain provisions on procedures for reimbursements as stipulated in this Act, the right of the Minister to defer reimbursements in excess of the amount allocated in the government budget, conditions for reimbursements, applications, responses to applications and decisions on reimbursements'.

In accordance with Article 9 of the proposed amending Act, the scheme shall enter into force immediately and shall cease to be effective on 31 December, 2006. Reimbursement requests that have been approved before that time shall remain valid.

II. APPRECIATION

Standstill obligation

Pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final Decision'.

In the opening Decision, the Authority considered the aid to be unlawful on procedural grounds since the Act had been notified late and implemented without awaiting a decision of the Authority. However, in the course of the proceedings the Icelandic authorities have confirmed that no aid had been paid out under Act No 43/1999.

The Authority can, therefore, conclude that the Icelandic authorities have respected the standstill obligation under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

State aid within the meaning of Article 61 of the EEA Agreement

Article 61 of the EEA Agreement stipulates: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties, be incompatible with the functioning of the Agreement'.

The aid measures provided for under the proposed amending Act are financed through the State budget. The proposed amending Act grants film producers a financial benefit they would not have obtained in the normal course of business. Consequently, the aid strengthens the recipient's position compared with that of competing firms. In general, support measures will affect competition and trade between the Contracting Parties, provided that the recipient firm carries on an economic activity involving trade between the Contracting Parties. Film productions may be shot in different locations within the EEA. Furthermore, film productions are subsequently traded between the Contracting Parties and may compete between them to attract audiences. Consequently, production aid granted under the proposed amending Act may alter competition between different locations for the production of a film and may influence the trading conditions of films for their commercialisation. Therefore, the proposed amending Act on the temporary repayment of production costs contains aid within the meaning of Article 61(1) of the EEA Agreement.

Compatibility of aid measures under Article 61(3)(c) of the EEA Agreement

The Authority has examined whether the aid measures under the proposed amending Act may be approved on cultural grounds. It should be mentioned that, unlike in several other areas, the Authority has not adopted interpretative guidelines in the field of aid to film and television industries yet. Therefore, the assessment of the compatibility of aid to film producers has to be based directly on Article 61 of the EEA Agreement, interpreted in particular in the light of relevant Commission practice.

In its decision-making practice the Commission has historically adopted a favourable approach to aid for television programmes and film production. Aid schemes were considered compatible with the EC Treaty provided that the aid was necessary for and proportional to the promotion and/or the preservation of European culture and was in accordance with the basic principles of the EC Treaty, such as non-discrimination and freedom to provide services ⁽¹⁾.

The Commission has recognised in various policy papers that the production and distribution of films and programmes plays a major role in European cultural identity. In its most recent paper, 'A strategy for the Community's audiovisual policy in the digital age' ⁽²⁾, the Commission recognised that, in the light of the special importance of this industry, it would — define the fundamental goals of the audiovisual policy as being 'to encourage the production and distribution of European works', by establishing a secure and stable legal framework to guarantee the freedom to provide audiovisual services on the one hand, and through appropriate support mechanisms on the other ⁽³⁾.

With the Maastricht Treaty, a cultural derogation was added to the State aid rules of the EC Treaty. This cultural exemption under Article 92(3)(d) of the EC Treaty (now Article 87(3)(d) ⁽⁴⁾) provides that the Commission may consider compatible with the common market 'aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest'. This exemption is not included in the EEA Agreement.

⁽¹⁾ See first report on the consideration of cultural aspects in the European Community action, COM(96) 160 final, 17 April 1996, see: <http://europa.eu.int/comm/dg10/culture/cult-asp/en/index.html>; see also Commission Decision 89/441/EEC of 21 December 1988 on aid granted by the Greek Government to the film industry for the production of Greek films (OJ L 208, 20.7.1989, p. 38).

⁽²⁾ COM 1999 657 of 14 December 1999.

⁽³⁾ Audiovisual Policy (quoted above), p. 8/9.

⁽⁴⁾ Citation according to 'Note on the citation of articles of the Treaties in the publications of the Court of Justice and the Court of First Instance' (see: <http://curia.eu.int/en/juris/remnot.htm>).

Nevertheless, the Authority considers that film support measures may be approved on cultural grounds on the basis of Article 61(3)(c) of the EEA Agreement, to the extent that Commission Decisions based on Article 92(3)(d) of the EC Treaty (now Article 87(3)(d)) do not deviate from its previous practice under Article 92(3)(c) of the EC Treaty (now Article 87(3)(c)). In this respect, the Authority would like to refer to the Commission's Decision regarding aid to film production in Ireland, where the Commission stated that 'it should be stressed that the introduction by the 1992 Treaty on European Union of Articles 151(1) and 87(3)(d) did not necessarily reflect a change in the Commission's policy towards the cultural sector because the considerations set out in the said Articles had previously been taken into account by the Commission when assessing the compatibility of aid to cultural activities ⁽¹⁾'.

The Authority is aware that, in recent Decisions regarding film support measures, the Commission has excluded the application of Article 87(3)(c) (equivalent to Article 61(3)(c) of the EEA Agreement) and based its approval on Article 87(3)(d). According to the Commission Article 87(3)(c) of the EC Treaty was not applicable since the film support measures at issue constituted operating aid not normally allowed under this provision. Furthermore, film support measures would not have as their primary objective the development of an economic activity but rather the creation of a cultural product (film). In the Authority's view, the Commission's approach does not prevent the recourse to Article 61(3)(c) of the EEA Agreement as a legal basis for the approval of film support measures in the EFTA States, provided that the criteria developed by the Commission under Article 87(3)(d) of the EC Treaty are sufficiently taken into consideration.

Against this background, the Authority has examined whether the proposed amending Act can be approved under Article 61(3)(c) of the EEA Agreement. According to Article 61(3)(c) of the EEA Agreement 'aid to facilitate the development of certain economic activities or of certain economic areas ...' may be considered to be compatible with the EEA Agreement '... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

According to Commission practice in the field of State support measures for the film industry ⁽²⁾, operating aid to the film industry may be declared compatible provided that the following criteria are fulfilled:

- the cultural content of the film receiving aid must be ensured in some way,
- the aid intensity must not exceed 50 % of the production costs,
- the producer must be free to spend at least 20 % of the film budget in other EEA States without losing aid on this part of the production costs,
- the aid must satisfy the general principles regarding compatibility of State aid (necessity, proportionality and transparency) as well as the fundamental principles of the EEA Agreement.

The Authority is of the opinion that these criteria strike a balance between the aims of cultural creation and the development of audiovisual industries on the one hand, and competition concerns on the other. They adapt the general conditions underlying Article 61(3)(c) of the EEA Agreement, namely necessity and proportionality of the aid, to the specific circumstances and requirements in the field of film production.

⁽¹⁾ State aid NN 49/97 and N 357/99 — Ireland; this Decision can also be found on the Internet: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/industrie/nn049-97.pdf

⁽²⁾ State aid N 3/98 — France; State aid N 486/97 — Netherlands; State aid N 4/98 — Germany; State aid NN 49/97 and N 357/99 — Ireland; State aid N 748/99 — Sweden.

The cultural content of the film receiving aid must be ensured

The Authority would like to emphasise that this criterion does not aim at restricting the EFTA States' competence regarding cultural affairs, nor does it intend to determine what kind of film productions should be considered of cultural value under the national film support scheme. However, to be exempted from the general prohibition of operating aid on cultural grounds, and in the light of the Commission's practice requiring that aid should be primarily aimed at promoting the creation of a film as a cultural product, rather than promoting the film industry as such, the Authority takes the view that the scheme must clearly pursue the objective of promoting the production of films, rather than the development of the film production-related industry. Furthermore, it must be designed in such a way that the promotion of culture is secured under the provisions of the aid scheme. This means that the national bodies responsible for awarding film support must assess the application for aid on artistic/cultural grounds. Furthermore, the requirement regarding the cultural content excludes aid to non-cultural productions, such as commercials.

In the course of the formal investigation procedure, the Authority had expressed concerns regarding various provisions of the Act adopted on 11 March 1999. In the Authority's view, these provisions were mainly aiming at supporting the film industry in Iceland by attracting foreign capital, without however placing sufficient emphasis on the selection of eligible films on cultural criteria. Under the proposed amending Act, it is now explicitly stated that the support measures pursue cultural objectives, such as to enhance domestic culture and promote the history and nature of Iceland. Furthermore, the applications for reimbursements of film production costs are assessed by a Committee under cultural criteria. The Authority is satisfied that these provisions ensure the appraisal of eligible film projects on quality and artistic grounds.

The aid intensity must not exceed 50 % of the production costs

In order to strike a balance between the objectives of promoting film production and maintaining conditions of undistorted competition, it is appropriate to limit State support for individual productions. The respect of a maximum ceiling of aid for film production is necessary to stimulate normal commercial initiatives inherent in a market economy and to avoid a bidding contest between the Contracting Parties. Furthermore, the threshold of 50 % of the production budget is also in line with thresholds set by other supra-national film support mechanisms, such as aid provided through the EC programme MEDIA II (1996 to 2000) ⁽¹⁾ and the Council of Europe Eurimage programme. Considering that, since 1998, all film support schemes approved by the Commission respect the maximum ceiling of 50 % without exception ⁽²⁾, and in order to ensure a level playing field between film producers within the EEA, the Authority is of the opinion that it is important to restrict the allowable aid intensity to 50 % of the production budget.

The aid intensity fixed pursuant to Article 5 of the proposed amending Act, with a maximum support of 12 % of the production costs, respects the 50 % aid ceiling. Furthermore, cumulation rules inserted into Article 7 of the proposed amending Act ensure that, when the same film project receives aid from the Icelandic Film fund, this amount should be deducted from the amount that is considered domestic production costs under the proposed amending Act. In no case can the cumulated aid granted to the same film exceed 50 % of the total production budget.

⁽¹⁾ For example Article 3 of Council Decision 95/563/EC of 10 July 1995 on the implementation of a programme encouraging the development and distribution of European audiovisual works (OJ L 321, 30.12.1995).

⁽²⁾ State aid N 3/98 — France; State aid N 486/97 — Netherlands; State aid N 4/98 — Germany; State aid NN 49/97 and N 357/99 — Ireland; State aid N 748/99 — Sweden.

The producer must be free to spend at least 20 % of the film budget in other EEA States with the full benefit of the aid

Although the aid measure should be primarily aimed at promoting the production of a film as a cultural product, the Authority acknowledges that without a sufficiently well-developed human and technical environment film producers will not be able to express their creativity. Therefore, and to the extent necessary to foster the continued presence if not the development of a human and technical environment required for cultural creation in the EFTA State concerned, EFTA States are allowed to provide support to the film industry going beyond the support for the production of a particular film, by obliging film producers to spend part of their production budget in the aid-awarding country. However, this possibility is not without limitations. In this respect, it would appear that certain purely technical services, which do not form part of the necessary cultural environment, should not be subject to such an obligation. Against this background, the Commission has developed, the '80 %/20 % rule', which allows EC Member States to 'territorialise' up to 80 % of a total production budget in their country: This requirement implies that, when less than 80 % of total production costs are spent in the aid-awarding country, only production costs incurred in that country will be eligible for aid. If the ratio is 80 % or higher, all costs incurred in the EEA must be eligible for aid.

Even where a film support scheme does not contain an explicit obligation for film producers to spend the total or part of the production budget in the aid-awarding country other provisions, in particular those related to the calculation of the aid, may have the same effect. As regards the Act adopted on 11 March 1999, the Authority had taken the view that certain provisions (in particular Article 2 of the Act) might induce a film producer to spend a larger part of the production budget in Iceland than he would otherwise have contemplated. In this context, the '80 %/20 % rule' requires that the amount of the reimbursement must be calculated on the basis of the total production costs irrespective of where these costs were incurred if the producer spends 80 % or more of the total production budget in the country concerned. However, whenever film producers spend less than 80 % of the production budget in Iceland, the interests of the other Contracting Parties to the EEA Agreement are considered to be sufficiently taken care of. In such cases, the amount of the reimbursement may be calculated on the basis of the costs incurred in Iceland.

Under the provisions of the proposed amending Act (see Article 2) reimbursement is granted for a proportion of the production costs incurred in the production of films and television programmes in Iceland. However, it is stressed that 'when more than 80 % of the total production costs of a motion picture or television programme is incurred in Iceland, reimbursement shall be calculated from the total production costs incurred within the European Economic Area'. This means that a film producer is free to spend up to 20 % of the production budget outside Iceland without losing aid on this amount. On the other hand, where a producer spends less than 80 % in Iceland, the aid will be calculated on the basis of the costs incurred in Iceland. This territorialisation of the aid is in accordance with the criteria established by the Commission in its practice regarding film support schemes in the Community. It further strikes a balance between the justified concern to provide support for the film industry in Iceland and concerns related to the freedom to provide services within the EEA. The Authority can, therefore, conclude that the provisions inserted in the proposed amending Act fully comply with the criteria set out above.

The aid must satisfy the general principles regarding compatibility of State aid (necessity, proportionality and transparency)

As to the necessity of the aid, it is common knowledge that film production in Europe requires substantial State support in order to ensure that Europe's own culture and creative capacity has the opportunity to be expressed. This support is required for ensuring the European presence in a market dominated by audiovisual products from outside the EEA. The fostering of audiovisual production by individual EFTA States allows the promotion of cultural diversity that would not, otherwise, have been possible⁽¹⁾. Without State support, it could be expected that to limited markets and audiences for European films, and in particular those in languages not widely spoken in Europe, film producers would not be able to cover their production costs with revenues from the distribution of films in cinemas, television and video. It is widely recognised that market forces alone do not ensure the desired level of production. In the light of these circumstances, the Icelandic film support scheme can be considered to be necessary.

⁽¹⁾ This was most recently confirmed by the report from the high level group on audiovisual policy http://europa.eu.int/comm/dg10/avpolicy/key_doc/hlg_en.html

Previous concerns regarding the proportionality of the aid have been dispelled under the proposed amending Act. Under the proposed provisions, the aid intensity no longer increases with the size of the film budget. Furthermore, the proposed amending Act has abolished the requirement of a minimum budget of ISK 80 million for film productions to be eligible under the aid scheme. With these amendments the film support scheme can be considered proportional to its objectives, namely to enhance Icelandic culture irrespective of the film production budget. Finally, the Authority notes that the aid scheme is limited in time to five years (until December 2006).

The aid must satisfy the fundamental principles of the EEA Agreement

Under the Act adopted on 11 March 1999, reimbursement was dependent upon the film producer having a fixed establishment in Iceland. The Authority regarded this requirement as constituting a restriction to the freedom to provide services which could not be justified on cultural grounds. Pursuant to Article 4(c) of the proposed amending Act, film producers no longer have to be established in Iceland to be eligible under the scheme. For companies having their registered office within the EEA it is sufficient to have a branch or agency in Iceland. Furthermore, the territory-related provision for determining the amount of reimbursement has been limited to the extent required under the '80 %/20 % rule'. The Authority can, therefore, conclude that the provisions under the proposed amending Act are in compliance with the basic freedoms of the EEA Agreement.

Conclusions

The film support measures contained in the bill amending the Act on temporary reimbursements in respect of film-making in Iceland can be considered compatible with Article 61(3)(c) of the EEA Agreement. Therefore, the Authority is in a position to close the proceedings against the original Act No 43/1999 initiated under Article 1(2) of Protocol 3 to the Surveillance and Court Agreement. The Authority would, however, emphasise that this conclusion is based on the bill to amend Act No 43/1999 as communicated to the Authority by letter of the Ministry of Finance dated 28 November 2000, registered by the Authority on 4 December 2000 (Doc. No 00-8857-A). Amendments to this bill, which may affect the assessment of the aid measures under Article 61(3)(c) of the EEA Agreement, are not covered by this decision. Such amendments would have to be notified to the Authority and could only be put into effect after the Authority has given its approval.

Finally, in order to allow the Authority to keep the application of the scheme under constant review, the Icelandic authorities are requested, pursuant to Chapter 32 of the Authority's State aid guidelines, to submit simplified annual reports regarding the implementation of this scheme in the form shown in Annex IV to the Authority's State aid guidelines. The Icelandic authorities are reminded that pursuant to point 5 of Chapter 32 of the Authority's State aid guidelines, 'for each scheme, the first report should be sent to the EFTA Surveillance Authority not later than six months after the end of the financial year in which the scheme was approved by the EFTA'.

Finally, in accordance with point 6 of Chapter 32 of the Authority's State aid guidelines, 'Failure to comply with the obligation to provide the reports within the deadline may oblige the EFTA Surveillance Authority to initiate proceedings under Article 1(2) of Protocol 3 to the Surveillance and Court Agreement' in respect to the aid scheme in question,

HAS ADOPTED THIS DECISION:

1. The aid measures provided for in the bill amending Act No 43/1999 on temporary reimbursements in respect of film making in Iceland are compatible with the EEA Agreement.
2. The formal investigation procedure against the original Act No 43/1999 on temporary repayment of costs of films produced in Iceland, as adopted by the Icelandic Parliament on 11 March 1999, is closed.

3. The Icelandic authorities are requested to submit simplified annual reports regarding the implementation of the scheme in accordance with Chapter 32 of the Authority's State aid guidelines.

Done at Brussels, 18 December 2000.

For the EFTA Surveillance Authority

Knut ALMESTAD

President

Hannes HAFSTEIN

College Member
