

English edition

Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 782/2001 of 23 April 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 783/2001 of 23 April 2001 amending Regulation (EC) No 2705/2000 derogating from Regulation (EC) No 2799/1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder and repealing Regulation (EC) No 1492/2000** 3

★ **Commission Regulation (EC) No 784/2001 of 23 April 2001 amending Regulation (EC) No 1227/2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential** 4

★ **Commission Directive 2001/28/EC of 20 April 2001 amending Annex I to Council Directive 91/414/EEC concerning the placing of plant protection products on the market to include KBR 2738 (fenhexamid) as an active substance** 5

II Acts whose publication is not obligatory

Commission

2001/323/ECSC:

★ **Commission Decision of 29 November 2000 on the State aid which Italy is planning to grant to five ECSC steel undertakings ⁽¹⁾ (notified under document number C(2000) 3933)** 8

2001/324/EC:

★ **Commission Decision of 23 April 2001 amending for the fourth time Decision 2001/223/EC concerning certain protection measures with regard to foot-and-mouth disease in the Netherlands ⁽¹⁾ (notified under document number C(2001) 1147)** 14

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 782/2001
of 23 April 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 24 April 2001.

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

Done at Brussels, 23 April 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 23 April 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	137,2
	204	77,9
	212	114,4
	999	109,8
0707 00 05	052	101,1
	999	101,1
0709 90 70	052	88,3
	204	46,2
	999	67,3
0805 10 10, 0805 10 30, 0805 10 50	052	74,5
	204	48,2
	212	49,2
	220	57,2
	600	65,4
	624	58,3
	999	58,8
0808 10 20, 0808 10 50, 0808 10 90	388	87,9
	400	75,5
	404	74,7
	508	75,4
	512	82,3
	524	90,8
	528	84,1
	720	113,9
	804	108,2
	999	88,1
0808 20 50	388	82,4
	512	85,9
	528	79,2
	999	82,5

⁽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 783/2001
of 23 April 2001**

amending Regulation (EC) No 2705/2000 derogating from Regulation (EC) No 2799/1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder and repealing Regulation (EC) No 1492/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Articles 10 and 15 thereof,

Whereas:

- (1) Pursuant to Article 5(1) of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder ⁽³⁾, as last amended by Regulation (EC) No 213/2001 ⁽⁴⁾, aid is granted for skimmed milk and skimmed-milk powder processed into compound feedingstuffs provided that at least 50 kg of powder is incorporated into every 100 kg of finished product. In the light of the development of the situation on the market for skimmed-milk powder,

Commission Regulation (EC) No 2705/2000 ⁽⁵⁾ reduces the abovementioned rate of incorporation temporarily for the period 17 December 2000 to 30 April 2001. For the same reason, that derogation should be extended by two months.

- (2) 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

In Article 1 of Regulation (EC) No 2705/2000 '30 April 2001' is replaced by '30 June 2001'.

Article 2

This Regulation shall enter into force on the fifth 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, 23 April 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 340, 31.12.1999, p. 3.

⁽⁴⁾ OJ L 37, 7.2.2001, p. 1.

⁽⁵⁾ OJ L 311, 12.12.2000, p. 34.

**COMMISSION REGULATION (EC) No 784/2001
of 23 April 2001**

**amending Regulation (EC) No 1227/2000 laying down detailed rules for the application of Council
Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards
production potential**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as amended by Regulation (EC) No 2826/2000 ⁽²⁾, and in particular Article 11 thereof,

Whereas:

- (1) Articles 11 and 13 of Regulation (EC) No 1493/1999 lay down that the restructuring and conversion of vineyards involves the grubbing-up and replanting of wine-growing areas covered by plans drawn up by the Member States. However, in certain cases the structural situation requires that new planting rights be allocated. The allocation of such rights must be limited to the area strictly necessary from the technical point of view to achieve the objective of restructuring. Account should therefore be taken of that possibility and the provisions concerned supplemented accordingly.
- (2) In practice, the agricultural tasks involved in restructuring and converting a vineyard are carried out at parcel level. In order to facilitate the implementation of plans, the conditions on which producers are eligible for advance payment of aid before a particular measure has been carried out should be stipulated.
- (3) The wording of Article 16(1)(a) is not correctly reproduced in Table 4.1 in the Annex (except in the Portuguese, English, German and Finnish versions). In order to avoid any confusion, the two texts should be aligned.

- (4) The Management Committee for Wine has not issued an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EC) No 1227/2000 ⁽³⁾ is amended as follows:

1. In Article 13(c), the following subparagraph is added:

‘Those rules shall cover the use of new planting rights. They shall lay down that such rights may be used only where technically necessary and may not exceed 10 % of the total area covered by the plan. The rules shall also provide for an appropriate reduction in the aid granted for the areas concerned.’

2. In Article 15(c), after the words ‘in respect of another measure’, the following is added:

‘on the same parcel’.

3. In Table 4.1 in the Annex, (except in the Portuguese, English, German and Finnish versions) note (2) below is replaced:

‘Expenditure incurred up to date shown (Article 16(1)(a) of this Regulation).’

Article 2

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

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

Done at Brussels, 23 April 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 328, 23.12.2000, p. 2.

⁽³⁾ OJ L 143, 16.6.2000, p. 1.

COMMISSION DIRECTIVE 2001/28/EC**of 20 April 2001****amending Annex I to Council Directive 91/414/EEC concerning the placing of plant protection products on the market to include KBR 2738 (fenhexamid) as an active substance**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, as last amended by Commission Directive 2001/21/EC ⁽²⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) In accordance with Article 6(2) of Directive 91/414/EEC (hereinafter referred to as 'the Directive') the United Kingdom received on 8 May 1997 an application from Bayer plc ('the applicant') for the inclusion of the active substance KBR 2738 (fenhexamid) in Annex I to the Directive.
- (2) In accordance with the provisions of Article 6(3) of the Directive the Commission confirmed in its Decision 98/398/EC ⁽³⁾ that the dossier submitted for KBR 2738 (fenhexamid) could be considered as satisfying, in principle, the data and information requirements of Annex II and for a plant protection product containing this active substance, of Annex III to the Directive.
- (3) In accordance with Article 5(1) of the Directive, an active substance should be included in Annex I for a period not exceeding 10 years if it may be expected that neither the use of, or residues from, plant protection products containing the active substance will have any harmful effects on human or animal health or on groundwater or any unacceptable influence on the environment.
- (4) For KBR 2738 (fenhexamid), the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of the Directive, for the uses proposed by the applicant. The United Kingdom acting as nominated rapporteur Member State, submitted a draft assessment report concerning the substance to the Commission on 15 October 1998.
- (5) That assessment report has been reviewed by the Member States and the Commission within the Standing Committee on Plant Health. The review was finalised on 19 October 2000 in the format of the Commission review report for KBR 2738 (fenhexamid). If the review report has to be updated to take account of technical and scientific developments, the conditions for the inclusion of KBR 2738 (fenhexamid) in Annex I to the

Directive will also need to be amended in accordance with the Directive.

- (6) The dossier and the information from the review were submitted to the Scientific Committee on Plants for opinion on 31 March 2000. This Committee has given its opinion on 20 July 2000 in the minutes of the meeting (SCP/REPT/021 final) ⁽⁴⁾ where it was stated that the Committee did not wish to raise any issues with regard to this active substance. The Committee also noted that national authorisations would involve specific risk management in line with Annex VI ⁽⁵⁾ (Uniform principles) of the Directive.
- (7) It has appeared from the various examinations made that plant protection products containing the active substance concerned may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a), (b) and (3) of the Directive, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to include the active substance concerned in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing the active substance concerned can be granted in accordance with the provisions of the said Directive.
- (8) After inclusion, a reasonable period is necessary to permit Member States to implement the provisions of the Directive on plant protection products containing KBR 2738 (fenhexamid) and in particular to review, within this period, existing provisional authorisations or to grant, by the end of this period at the latest, new authorisations in accordance with the provisions of the Directive. A longer period may also be required for plant protection products containing KBR 2738 (fenhexamid) and other active substances included in Annex I.
- (9) It is appropriate to provide that the finalised review report (except for confidential information in the meaning of Article 14 of the Directive) is kept available or made available by the Member States for consultation by any interested parties.
- (10) The review report is required for the proper implementation by the Member States, of several sections of the uniform principles laid down in Annex VI to the Directive, where those principles refer to the evaluation of the data which were submitted for the purpose of the inclusion of the active substance in Annex I to the Directive.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 69, 10.3.2001, p. 17.

⁽³⁾ OJ L 176, 20.6.1998, p. 34.

⁽⁴⁾ Minutes of the 21st meeting of the Scientific Committee on Plants, Brussels, 20 July 2000.

⁽⁵⁾ OJ L 265, 27.9.1997, p. 87.

- (11) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health delivered on 19 October 2000,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The table in Annex I to Directive 91/414/EEC shall be amended to include the entry in respect of KBR 2738 (fenhexamid) set out in the Annex hereto.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, at the latest by 1 August 2001. They shall forthwith inform the Commission thereof.

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

2. However, with regard to evaluation and decision-making pursuant to the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III thereto, the period laid down in the first paragraph is extended for existing provisional author-

isations of plant protection products containing KBR 2738 (fenhexamid) to 1 August 2002.

3. However for plant protection products containing KBR 2738 (fenhexamid) together with another active substance which is in Annex I to Directive 91/414/EEC, the period referred to in paragraph 1 is extended to the extent that a longer implementation period is provided for by the provisions laid down in the Directive amending Annex I to Directive 91/414/EEC to include the substance in the Annex.

4. Member States shall keep available the review report for KBR 2738 (fenhexamid) (except for confidential information within the meaning of Article 14 of the Directive) for consultation by any interested parties or shall make it available to them on specific request.

Article 3

This Directive shall enter into force on 1 June 2001.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 20 April 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX

ENTRY TO BE INSERTED IN THE TABLE IN ANNEX I TO DIRECTIVE 91/414/EEC

No	Common name, identification numbers	IUPAC name	Purity ⁽¹⁾	Entry into force	Expiration of inclusion	Specific provisions
'13	(fenhexamid) CAS No 126833-17-8 CIPAC No 603	N-(2,3-dichloro-4-hydroxyphenyl)-1-methyl-cyclohexanecarboxamide	≥ 950 g/kg	1 June 2001	31 May 2011	Only uses as a fungicide may be authorised. In decision making according to the Uniform Principles Member States must pay particular attention to the potential impact on aquatic organisms and must ensure that the conditions of authorisation include, where appropriate, risk mitigation measures. Date of Standing Committee on Plant Health at which the review report was finalised: 19 October 2000

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report (doc. 6797/VI/99 rev. 2).'

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 November 2000

on the State aid which Italy is planning to grant to five ECSC steel undertakings

(notified under document number C(2000) 3933)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/323/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof read in conjunction with Protocol 14,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (hereinafter referred to as the 'steel aid code' ⁽¹⁾),

Having called on interested parties to submit their comments pursuant to the provisions referred to above ⁽²⁾ and having regard to those comments,

Whereas:

I. Procedure

- (1) By letter dated 27 September 1999, Italy notified the Commission of five plans to grant aid to ECSC undertakings in respect of investments in energy conservation made by the latter in the period 1986 to 1994. By letter dated 23 November 1999, received by the Commission on 20 January 2000, Italy submitted further details.
- (2) By letter dated 13 March 2000, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 6(5) of the steel aid code in respect of the abovementioned aid.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid.

- (4) The Commission received comments from the UK Steel Association and from the UK Permanent Representation to the European Union. It forwarded them to Italy for its reaction, a response being received by letter dated 6 September 2000.

II. Detailed description of the aid

- (5) The aid relates to investments made by five ECSC companies between 1986 and 1994. The investments in the five notified aid projects can be summarised as follows.

5.1. *Acciaierie e Ferriere Leali SpA*: The investments concern the replacement of an existing oil-fired reheating and normalising furnace with a new natural gas-fired furnace featuring a radiant-roof combustion chamber fitted with highly insulating refractors and heat recovery from the fumes for preheating the combustion air. The total cost amounts to ITL 1,44 billion (EUR 0,745 million) and the proposed aid to ITL 273 million (EUR 0,141 million). The aid intensity is 19 %. The investments were made in 1986 and the company applied for aid in 1992.

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 148, 27.5.2000, p. 10.

⁽³⁾ See footnote 2.

5.2. *Acciaierie e Ferriere Beltrame, Vicenza SpA*: The investments relate to the installation of a new continuous casting line alongside and in parallel with the existing one, which remained in operation in order to produce semi-finished products for other plants belonging to the group. The new line is designed and built to allow direct charging of the semi-products into the reheating furnaces for the plant's rolling mills. It is also suitable for producing special sections for rolling wide-flanged beams with better yields than before the investment. The total cost amounts to ITL 10,23 billion (EUR 5,3 million) and the proposed aid to ITL 1,8 billion (EUR 0,93 million). The aid intensity is 18 %. The investments were made in 1991 and the company applied for aid in 1992.

5.3. *Acciaierie e Ferriere Beltrame, S. Giorgio Nogaro SpA*: The investments concern the replacement of a pusher-type oil-fired reheating furnace with a new natural gas-fired furnace with lateral discharging and heat recovery from the fumes for preheating the combustion air to 400 to 450°. They also include some new auxiliary equipment for the roughing mill, such as the fixed and vibrating front and back roller tables and a feed conveyor. The total cost amounts to ITL 2,3 billion (EUR 1,2 million) and the proposed aid to ITL 450 million (EUR 0,23 million). The aid intensity is 20 %. The investments were made in 1989 and the company applied for aid in 1992.

5.4. *Lucchini, Mura SpA*: The investments concern the replacement of two existing oil-fired reheating furnaces with a new natural gas-fired furnace featuring a combustion chamber with radiant burners, high automation and control, heat recovery from the fumes for preheating the combustion air to high temperatures, and refractory linings with ceramic fibres. The total cost amounts to ITL 5,5 billion (EUR 2,8 million) and the proposed aid to ITL 0,93 billion (EUR 0,48 million). The aid is 17 %. The investments were made in 1990 and the company applied for aid in 1991.

5.5. *Lucchini, Lovere SpA*: The investments relate to the conversion to natural gas of the oil-fired furnaces for reheating slabs for forging; the replacement of the control systems for the heat treatment furnaces; heat-insulating hoods for the transfer of hot slabs; modification of the circuit for tipping and slagging the electric furnace; automation of the injection of inert gases into the vacuum ladle; and a system for continuous slab measurement and control of final shearing. The total cost amounts to ITL 0,8 billion (EUR 0,41 million) and the proposed aid to ITL 0,1 billion (EUR 0,1 million). The aid intensity

is 23 %. The investments were made in 1994 and the company applied for aid in 1992.

- (6) The national legal basis for the aid is Italian Law No 10/1991 laying down rules for implementing the national energy plan in the field of the national use of energy.

III. Comments from interested parties

- (7) In their comments, the UK Steel Association and the UK Representation to the EU consider that the aid proposed by the Italian authorities is incompatible with the rules on environmental aid set out in the steel aid code. They point out that the investments appear to relate to 'new installations', which would constitute an infringement of Community legislation, and that the replacements were made for economic and not environmental reasons. The UK Steel Association further points out that the continuous casting line was installed by Beltrame alongside the existing casting line, and this would represent an increase in production capacity, which also goes against Community legislation on environmental aid.

IV. Comments from Italy

- (8) In its comments Italy contests the Commission's views in its decision to initiate the procedure. The Italian authorities' arguments may be summarised as follows.

8.1. Regarding the legal basis on which the Commission assesses the aid, the Italian authorities insist that the Commission should use not only the rules applicable, but also the interpretation of criteria, information and data in its possession at the time it takes its decision.

8.2. The investments and their specific characteristics, together with the reduction in energy consumption, make it possible to achieve, in comparison with the pre-existing situation, a significant reduction in pollutant emissions into the atmosphere (sulphur oxides, nitrogen oxides, dust) and a significant reduction in carbon dioxide emissions. The Italian authorities deny that they have failed to prove that the investments were not general investments and that the effect on the environment is not secondary to the economic objective. According to the Italian authorities, the primary environmental objective of the investments was confirmed by the Ministry of Industry's examination of the aid applications, carried out in conjunction with independent experts. Further evidence that the investments were not made as general investments pursuing economic objectives is the fact that, for each of the five projects, the ratio between the advantage in terms of annual production costs and the investment is lower than the interest rate in force at the time.

8.3. As regards the Commission's assessment that none of the companies could claim legitimate expectations of receiving aid, the Italian authorities point out that the steel aid code in force when they applied for aid (both the 1989 and the 1991 codes) allowed aid for environmental protection. The title of Italian Law No 10/1991 is 'Rules for implementing the national energy plan in the field of the rational use of energy' and Article 1 aims amongst other things at 'improving the environmental compatibility of energy use'. Because of this, the Italian authorities concluded that it was reasonable for the companies concerned to harbour, at the time, legitimate expectations of receiving the aid requested, on the basis of recognition of the environmental purpose of the investments. The fact that for each of the five projects, the ratio between the advantage in terms of annual production costs and the investment was lower than the interest rate at the time, besides proving the environmental purpose of the investment, would be a clear demonstration of the 'necessity for the aid'.

8.4. The companies submitted their applications for aid in respect of the investments (carried out between 1986 and 1994) in 1991 and 1992, in accordance with Article 21 of Law No 10/1991, approved by the Commission on 31 July 1991. Under that Article, applications for aid already submitted under previous laws are eligible provided that they have not yet been granted or rejected. The aid was notified only in 1991 as a result of complexities in the implementing rules and subsequent legislative developments.

8.5. As regards the Commission's concern that the aid could be misused if it were approved and paid, the Italian authorities claim that the companies planned the investments concerned at the time on the assumption that they would receive the requested aid within a reasonable time. Since that has not yet happened, the financial accounts for the individual investments are still in deficit in respect of the amounts in question and the deficits will be extinguished only if the aid is paid. Thus the aid will be used for the purpose for which it is approved.

8.6. Regarding the position taken by the Commission that, if the aid were to be assessed in the light of the steel aid code, its compatibility with the rules would be highly questionable, the Italian authorities made the following additional comments.

8.6.1. As regards the inclusion of the depreciation costs of the investments in calculating the advantage in terms of production costs, they referred again to the standard accountancy practice for calculating production costs. As depreciation costs are a normal element of production costs, they consider that they must be taken into account.

8.6.2. As regards the period during which the cost advantage is calculated, the Italian authorities stated that they used annual amortisation, which was calculated in accordance with the relevant Italian rules. For the five investment projects in question the coefficients provided for in the Law yielded the corresponding periods of time during which the advantages in terms of production costs are deducted, namely, for four of the projects $100/15 = 6,67$ years and for one project $100/17,5 = 5,71$ years.

(9) In reply to the comments made by third parties, the Italian authorities made the point that the five projects involved the replacement or installation of components for the production of bars and sections designed to save energy (thereby improving the environment) and not new installations. Such replacements or installations were necessary to avoid keeping production lines idle for long periods (which would have increased fixed costs) so as to modify existing components to save energy. As regards the comments on extra capacity installed in Beltrame, Italy contests that there was an increase in the production capacity of the company because this depends on the three rolling mills, which have not been changed and constitute the system bottleneck.

V. Assessment of the aid

Legal basis

(10) The steel aid code is the legal basis to assess any aid to steel undertakings notified to the Commission between January 1997 and December 2001. Article 3 of the code provides for the possibility of steel companies receiving aid for environmental investments. The conditions for such aid to be considered compatible are set out in the Annex to the steel aid code and in the Community guidelines on State aid for environmental protection ⁽⁴⁾ (hereinafter referred to as the 'environmental guidelines').

⁽⁴⁾ OJ C 72, 10.3.1994, p. 3.

- (11) Both the steel aid code and the environmental guidelines stress the fact that aid may be considered compatible only if it is necessary to attain the objective of increased environmental protection. In this context, investment aid to a company must serve as an incentive for that company to carry out environmental-related investments. Two types of circumstances are provided for: one is when a company would not carry out such investments because it is not legally required to do so (improvement on standards), but in view of the financial support it may receive it decides to do so. The other is when such investments become necessary because of new legal standards, in which case the aid acts as an incentive for the company to carry out such investments without delay. Indeed, in the latter circumstance, the environmental guidelines specify that 'the aid may be granted only for a limited period' ⁽⁵⁾.
- (12) According to the environmental guidelines, aid ostensibly intended for environmental protection measures but which in fact is aid for general investment is not covered by the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives.
- (13) According to the Annex to the steel aid code, in the case of aid to encourage firms to contribute to significantly improved environmental protection, the investors will have to demonstrate that a clear decision was taken to opt for higher standards, which necessitated additional investment, that is, that a lower-cost solution existed which would meet the legal standards. Any advantage with regard to lower production costs will be deducted.

Assessment of the comments from the Italian authorities

- (14) As shown above, for aid to fall under Article 3 of the steel aid code, on one hand, it has to act as an incentive for the investments to be made and, on the other hand, the investments must have been made for environmental purposes.
- (15) In the present case, the investments were made and applied for under the 1985, 1989 and 1991 steel aid codes ⁽⁶⁾, which stated that only investments made in order to comply with new mandatory environmental standards were compatible. Italy never claimed that this was why the companies carried out the investments.

Although the firms were aware that they did not qualify for aid under the law that applied to them, they still carried out the said investments. The eventual possibility of receiving the aid was therefore not a decisive factor in their decisions.

- (16) Italy considered, however, that the companies were justified in having legitimate expectations of receiving the aid requested because the steel aid code at the time allowed for environmental aid and so did Italian Law No 10/1991. However, expectations cannot be legitimately founded on the general principle of a law that allows for environmental aid, when the specific rules applicable clearly state the only conditions under which aid may be granted and make no provision for the investments in question.
- (17) The Italian authorities then endeavoured to justify the legitimate expectation of aid on the part of the companies on the grounds of both the delay with which they applied for the aid and the delay with which the authorities notified the aid to the Commission. It is difficult to understand how such delays could justify expectations that could not exist if the delays had not taken place. The companies cannot claim that they decided to carry out investments in the period 1986 to 1994 because they legitimately expected to receive aid not under the existing rules but under rules that would come into force 5 to 13 years later. The only reason for verifying the justification for such delays would be if the old rules could be applied to the current notifications. However, as also agreed by the Italian authorities, the aid notified in 1999 can be assessed only under the current State aid code.
- (18) Italy also stated that the five companies opened financial accounts for the individual investments, which are still in deficit in respect of the amounts in question and will be closed only when a decision on the aid is made. According to the Italian authorities, that proves that if the aid were paid now, it would be used for the purpose for which it was approved. The purpose of environmental aid is to give an incentive to steel companies to improve on environmental standards or to apply new standards more rapidly. The fact that the companies have accounts left open since the period 1986 to 1994, in relation to the aid they requested, is not evidence of such an incentive effect, but is merely an accountancy operation.

⁽⁵⁾ Community guidelines on State aid for environmental protection, point 3.2.3.A, first paragraph.

⁽⁶⁾ OJ L 340, 18.12.1985, p. 1; OJ L 38, 10.2.1989, p. 8; OJ L 362, 31.12.1991, p. 57.

- (19) As demonstrated above, the aid was not necessary for the companies to carry out the investments and does not have an incentive effect. Accordingly, the aid is not covered by the steel aid code. Another requirement for the aid to be covered by the steel aid code is that the investments must be aimed at significantly improving on environmental standards. Italy did not demonstrate that a clear decision was taken by the investors to opt for environmental standards higher than the legal ones then in force. No information is given on the statutory level of pollution that the investments would have reduced and how far those standards were exceeded as a result of the investment. The only declared aim of the investments is a reduction in energy consumption, which incidentally resulted in lower levels of pollution.
- (20) The Italian authorities also reaffirmed that the investments were made for environmental reasons and that the aid was necessary because the ratio between the advantage in terms of annual production costs and the investment cost was lower than the interest rate at the time. Regardless of the accuracy of the calculation of the ratio, which the Commission challenges, the question of whether or not an investment pays for itself during the tax depreciation period is not a valid criterion for determining the reasons for the investment or for determining whether the aid was to provide an incentive effect.
- (21) Italy also challenges the Commission's view, set out in the opening of procedure, that the aid does not satisfy the requirements of the steel aid code for approval of environmental aid. However, the arguments put forward by the Italian authorities cannot be accepted; even if the investments had been made for environmental purposes and the aid was proven to be necessary, the measures would still not be compatible under the Community rules.
- 21.1. The Italian authorities reiterate that the calculation of the cost advantage obtained from the investment is made according to the standard accountancy rules on production cost elements. The Commission, however, is not challenging the calculation of the standard elements of production costs of an undertaking. What it cannot accept is that the depreciation costs of an investment are included in the calculation of the advantage enjoyed by an undertaking from that investment. As indicated in the decision opening the procedure, this corresponds in practice to counting the same investment cost twice and would ensure that the investment was always eligible for aid because it forms part of the costs. The objective is, on the contrary, to ensure that the company will not use for its own advantage subsidised investments in environmental protection.
- 21.2. Italy also insists on the period used to deduct the cost savings obtained by the company. The Commission does not, however, agree that the tax depreciation period used by the Italian authorities in the present case ensures that all the economic advantages are excluded. Italy makes no such claims but only justifies the length of its depreciation period as being in accordance with the law. The steel aid code requires that all advantages be deducted. The Commission considers that this can be ensured only if the economic life of the equipment is taken into account and, in the present case, the tax depreciation period certainly cannot be used as a substitute for the life of the equipment. If that were the case, most of the equipment would by now be obsolete.
- (22) As regards the response of the Italian authorities to the comments of other interested parties and, in particular, to the comments from the UK Steel Association regarding the increase in capacity, the Commission notes that Italy does not deny that the new installation brings about an increase in production capacity. It considers, however, that only the overall production capacity of the undertaking counts, the latter being restricted by the rolling mills capacity, which remains unchanged. The environmental guidelines and the steel aid code do not, however, refer to the overall production capacity of the undertaking, but to the plant to be replaced or adapted. The investment cost eligible for aid should relate only to the equipment's initial capacity where the new equipment has a higher production capacity.
- Compatibility of the notified aid*
- (23) As stated above, Italy did not provide any new information in the course of the procedure that would allow the Commission to change its assessment of the notified aid as set out in its decision opening the procedure. The aid is not covered by the provisions of the steel aid code.
- (24) As regards the possibility of assessing the aid under the steel aid code, if hypothetically the investments were to be considered eligible, Italy has also failed to demonstrate that the requirements of the code, in particular those of the Annex, have been fulfilled, as stated above.

- (25) The notified aid which Italy plans to grant to the five steel companies is accordingly incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid totalling ITL 3,6 billion (EUR 1,9 million) that Italy plans to grant to the steel companies Acciaierie e Ferriere Leali SpA, Acciaierie e Ferriere Beltrame Vicenza SpA, Acciaierie e Ferriere Beltrame S. Giorgio Nogaro SpA, Lucchini Mura SpA and Lucchini Lovre SpA in respect of investments they made between 1989 and 1994 for energy savings is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply herewith.

Article 3

This Decision is addressed to the Republic of Italy.

Done at Brussels, 29 November 2000.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 23 April 2001
amending for the fourth time Decision 2001/223/EC concerning certain protection measures with
regard to foot-and-mouth disease in the Netherlands

(notified under document number C(2001) 1147)

(Text with EEA relevance)

(2001/324/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, as last amended by Directive 92/118/EEC ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽³⁾, as last amended by Directive 92/118/EEC, and in particular Article 9 thereof,

Whereas:

- (1) Following the reports of outbreaks of foot-and-mouth disease in the Netherlands, the Commission adopted Decision 2001/223/EC concerning certain protection measures with regard to foot-and-mouth disease in the Netherlands ⁽⁴⁾, as last amended by Decision 2001/306/EC ⁽⁵⁾.
- (2) The foot-and-mouth disease situation in certain parts of the Netherlands is liable to endanger the herds in other parts of the territory of the Netherlands and in other Member States in view of the placing on the market and trade in live biungulate animals and certain of their products.
- (3) It appears therefore appropriate to adjust the regionalisation in the light of the disease evolution.
- (4) Furthermore it is necessary to provide for the production of fresh meat of susceptible animals from the areas listed in Annex I of Decision 2001/223/EC and meat products produced from such meat for the local market under certain controlled conditions.
- (5) Commission Decision 2001/305/EC ⁽⁶⁾ lays down the marking and use of certain animal products in relation to Decision 2001/223/EC concerning certain protection

measures with regard to foot-and-mouth disease in the Netherlands.

- (6) At the meeting of the Standing Veterinary Committee of 18 April 2001 the Netherlands declared in relation to the proposed amendments of Decision 2001/223/EC that:
 - continuous controls will be carried out on traffic crossing from the areas listed in Annex I to the areas listed in Annex II in order to prevent movement of live susceptible animals,
 - clinical inspection will be carried out at slaughterhouses for symptoms of foot-and-mouth disease, including control of body temperature of animals of susceptible species for slaughter,
 - it will be ensured that no meat will be removed from a slaughterhouse within 24 hours after slaughter of the animals,
 - meat destined for intra-Community trade and export will be completely separated from meat bearing the health mark provided for in Decision 2001/305/EC, and will come from establishments where no meat bearing the health mark provided for in Decision 2001/305/EC is present,
 - due to the long lasting movement restrictions the animal welfare problems in holdings with pigs, fattening calves and sheep are increasing and have reached a state which is no longer tenable.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision 2001/223/EC is amended as follows:

1. A new point is added to Article 2(2) as follows:

‘(e) fresh meat destined for placing on the market in the Netherlands and obtained from cutting plants situated in the areas listed in Annexes I or II under the following conditions:

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 62, 15.3.1993, p. 49.

⁽³⁾ OJ L 395, 30.12.1989, p. 13.

⁽⁴⁾ OJ L 82, 22.3.2001, p. 29.

⁽⁵⁾ OJ L 104, 13.4.2001, p. 12.

⁽⁶⁾ OJ L 104, 13.4.2001, p. 9.

- the meat is derived from animals of susceptible species originating in the areas listed in Annex I but outside the zones established in accordance with Article 9 of Directive 85/511/EEC,
 - the meat remained in the slaughterhouse situated in the areas listed in Annex I for at least 24 hours after slaughter,
 - the cutting plants are approved by the competent authorities exclusively for the production of fresh meat destined for dispatch to the areas listed in Annexes I and II,
 - all such meat shall bear the health mark in accordance with Decision 2001/305/EC,
 - the plants will be operated under strict veterinary control,
 - the control of the compliance with the above listed conditions shall be carried out by the competent veterinary authority under the supervision of the central veterinary authorities who will communicate to the other Member States and the Commission a list of those establishments which they have approved in application of these provisions.'
2. A new point is added to Article 3(3) as follows:
- '(d) meat products destined for the placing on the market in the Netherlands and prepared in establishments situated in the areas listed in Annexes I or II under the following conditions:
- all fresh meat used in the establishment must conform to the conditions in Article 2(2),
 - the establishment is approved by the competent authorities exclusively for the production of meat products destined for dispatch to the areas listed in Annexes I and II,
 - all such meat products shall bear the health mark in accordance with Decision 2001/305/EC,
 - the plant will be operated under strict veterinary control,
- the control of the compliance with the above listed conditions shall be carried out by the competent veterinary authority under the supervision of the central veterinary authorities who will communicate to the other Member States and the Commission a list of those establishments which they have approved in application of these provisions.'
3. The date in Article 14 is replaced by '10 May 2001'.
4. In Annex I the words 'The provinces of Groningen, Friesland, Drenthe, Noord-Holland, Flevoland, Overijssel, Gelderland, Utrecht, Zuid-Holland, Limburg, Noord-Brabant and Zeeland' are replaced by 'The provinces of Groningen, Friesland, Drenthe, Flevoland, Overijssel, the areas in the province of Gelderland situated north of the river Rijn-Waal-Merwede between the border with Germany and the border with the province of Zuid-Holland and the areas in the province of Utrecht east of the highway A27.'
5. In Annex II the words 'The provinces of Groningen, Friesland, Drenthe, Noord-Holland, Flevoland, Overijssel, Gelderland, Utrecht, Zuid-Holland, Limburg, Noord-Brabant and Zeeland' are replaced by 'The province of Noord-Holland, Zuid-Holland, Zeeland, Noord-Brabant and Limburg, the areas in the province of Gelderland situated south of the river Rijn-Waal-Merwede between the border with Germany and the border with the province of Zuid-Holland and the areas in the province of Utrecht situated west of the highway A27.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 23 April 2001.

For the Commission

David BYRNE

Member of the Commission