

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC, ECSC, EURATOM) No 1986/2001
of 8 October 2001
correcting with effect from 1 July 2000 the remuneration and pensions of officials and other
servants of the European Communities**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 13 thereof,

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾, as last amended by Regulation (EC, ECSC, Euratom) No 2805/2000 ⁽²⁾, and in particular Articles 63, 64, 65, 65a and 82 of the Staff Regulations, Annex XI thereto, and the first subparagraph of Article 20 and Article 64 of the Conditions of Employment,

Having regard to the proposal from the Commission,

Whereas:

- (1) Regulation (EC, ECSC, Euratom) No 2804/2000 ⁽³⁾ was unable to take account of the real trend in the net remuneration of Italian civil servants.
- (2) The figures showing this trend are now available and demonstrate that an additional adjustment should be carried out.
- (3) As a result, the amounts in that Regulation should be corrected,

HAS ADOPTED THIS REGULATION:

Article 1

With effect from 1 July 2000:

- (a) the table of basic monthly salaries in Article 66 of the Staff Regulations shall be replaced by the following:

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

⁽²⁾ OJ L 326, 22.12.2000, p. 7.

⁽³⁾ OJ L 326, 22.12.2000, p. 3.

'Grade	Step							
	1	2	3	4	5	6	7	8
A 1	11 514,67	12 126,34	12 738,01	13 349,68	13 961,35	14 573,02		
A 2	10 218,32	10 801,99	11 385,66	11 969,33	12 553,00	13 136,67		
A 3/LA 3	8 462,62	8 973,17	9 483,72	9 994,27	10 504,82	11 015,37	11 525,92	12 036,47
A 4/LA 4	7 109,50	7 508,00	7 906,50	8 305,00	8 703,50	9 102,00	9 500,50	9 899,00
A 5/LA 5	5 861,43	6 208,68	6 555,93	6 903,18	7 250,43	7 597,68	7 944,93	8 292,18
A 6/LA 6	5 065,37	5 341,74	5 618,11	5 894,48	6 170,85	6 447,22	6 723,59	6 999,96
A 7/LA 7	4 360,26	4 577,22	4 794,18	5 011,14	5 228,10	5 445,06		
A 8/LA 8	3 856,26	4 011,78						
B 1	5 065,37	5 341,74	5 618,11	5 894,48	6 170,85	6 447,22	6 723,59	6 999,96
B 2	4 388,76	4 594,52	4 800,28	5 006,04	5 211,80	5 417,56	5 623,32	5 829,08
B 3	3 681,25	3 852,34	4 023,43	4 194,52	4 365,61	4 536,70	4 707,79	4 878,88
B 4	3 183,95	3 332,32	3 480,69	3 629,06	3 777,43	3 925,80	4 074,17	4 222,54
B 5	2 846,04	2 966,11	3 086,18	3 206,25				
C 1	3 247,50	3 378,45	3 509,40	3 640,35	3 771,30	3 902,25	4 033,20	4 164,15
C 2	2 824,65	2 944,66	3 064,67	3 184,68	3 304,69	3 424,70	3 544,71	3 664,72
C 3	2 634,86	2 737,68	2 840,50	2 943,32	3 046,14	3 148,96	3 251,78	3 354,60
C 4	2 380,80	2 477,24	2 573,68	2 670,12	2 766,56	2 863,00	2 959,44	3 055,88
C 5	2 195,25	2 285,20	2 375,15	2 465,10				
D 1	2 480,95	2 589,43	2 697,91	2 806,39	2 914,87	3 023,35	3 131,83	3 240,31
D 2	2 262,15	2 358,50	2 454,85	2 551,20	2 647,55	2 743,90	2 840,25	2 936,60
D 3	2 105,47	2 195,59	2 285,71	2 375,83	2 465,95	2 556,07	2 646,19	2 736,31
D 4	1 985,17	2 066,58	2 147,99	2 229,40'				

- (b) — EUR 173,93 shall be replaced by EUR 174,27 in Article 1(1) of Annex VII to the Staff Regulations,
- EUR 223,99 shall be replaced by EUR 224,43 in Article 2(1) of Annex VII to the Staff Regulations,
- EUR 400,14 shall be replaced by EUR 400,92 in the second sentence of Article 69 of the Staff Regulations and in the second subparagraph of Article 4(1) of Annex VII thereto,
- EUR 200,17 shall be replaced by EUR 200,56 in the first subparagraph of Article 3 of Annex VII to the Staff Regulations.

Article 2

With effect from 1 July 2000, the table of basic monthly salaries in Article 63 of the Conditions of Employment of Other Servants shall be replaced by the following:

'Category	Group	Step			
		1	2	3	4
A	I	5 406,15	6 075,80	6 745,45	7 415,10
	II	3 923,70	4 306,04	4 688,38	5 070,72
	III	3 297,25	3 444,13	3 591,01	3 737,89
B	IV	3 167,44	3 477,52	3 787,60	4 097,68
	V	2 487,98	2 651,98	2 815,98	2 979,98
C	VI	2 366,25	2 505,56	2 644,87	2 784,18
	VII	2 117,87	2 189,93	2 261,99	2 334,05
D	VIII	1 914,22	2 026,96	2 139,70	2 252,44
	IX	1 843,47	1 869,15	1 894,83	1 920,51'

Article 3

With effect from 1 July 2000 the fixed allowance referred to in Article 4a of Annex VII to the Staff Regulations shall be:

- EUR 104,59 per month for officials in Grade C 4 or C 5,
- EUR 160,36 per month for officials in Grade C 1, C 2 or C 3.

Article 4

Pensions for which entitlement has accrued by 1 July 2000 shall be calculated from that date by reference to the table of basic monthly salaries laid down in Article 66 of the Staff Regulations, as amended by Article 1(a) of this Regulation.

Article 5

With effect from 16 May 2000, the weighting applicable to the remuneration of officials and other servants employed in the following country shall be:

- Ireland 119,2.

With effect from 1 July 2000, the weighting applicable to the remuneration of officials and other servants employed in the following country shall be:

- Ireland 116,5.

Article 6

With effect from 1 July 2000, the table in Article 10(1) of Annex VII to the Staff Regulations shall be replaced by the following:

	Entitled to household allowance		Not entitled to household allowance	
	1st to 15th day	from 16th day	1st to 15th day	from 16th day
	EUR per calendar day			
A 1 to A 3 and LA 3	67,98	32,03	46,67	26,82
A 4 to A 8 and LA 4 to LA 8 and category B	65,97	29,87	44,77	23,37
Other grades	59,86	27,87	38,52	19,27'

Article 7

With effect from 1 July 2000, the allowances for shiftwork laid down in Article 1 of Regulation (ECSC, EEC, Euratom) No 300/76 ⁽¹⁾ shall be EUR 303,16, EUR 457,57, EUR 500,31 and EUR 682,08.

Article 8

With effect from 1 July 2000, the amounts in Article 4 of Regulation (EEC, Euratom, ECSC) No 260/68 ⁽²⁾ shall be subject to a weighting of 4,376269.

Article 9

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

⁽¹⁾ OJ L 38, 13.2.1976, p. 1. This Regulation was supplemented by Regulation (Euratom, ECSC, EEC) No 1307/87 (OJ L 124, 13.5.1987, p. 6) and last amended by Regulation (EC, ECSC, Euratom) No 2461/98 (OJ L 307, 17.11. 1998, p. 1).

⁽²⁾ OJ L 56, 4.3.1968, p. 8. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 2804/2000 (OJ L 326, 22.12.2000, p. 3).

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

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. ONKELINX

COUNCIL REGULATION (EC) No 1987/2001
of 8 October 2001
amending Regulation (EC) No 3072/95 on the common organisation of the market in rice

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

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

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

Having regard to the Opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) The final subparagraph of Article 6(3) of Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽⁴⁾ lays down that compensatory payments are to be paid between 16 October and 31 December following the beginning of the current marketing year.
- (2) Article 8(1) of Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops ⁽⁵⁾ lays down that payments are to be made between 16 November and 31 January.

(3) Article 6(10) of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes ⁽⁶⁾ provides for a single application for area aid.

(4) Article 7 of Regulation (EEC) No 3508/92 lays down that the integrated control system covers all aid applications submitted. In order to simplify the administration of payments by the Member States, the payment periods for area aid should be aligned,

HAS ADOPTED THIS REGULATION:

Article 1

In the final subparagraph of Article 6(3) of Regulation (EC) No 3072/95, the dates '16 October' and '31 December' shall be replaced by '16 November' and '31 January' respectively.

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 from 1 January 2001.

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

Done at Luxembourg, 8 October 2001.

For the Council
The President
L. ONKELINX

⁽¹⁾ OJ C 213 E, 31.7.2001, p. 248.

⁽²⁾ Opinion delivered on 2 October 2001 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 12 September 2001 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Regulation (EC) No 1667/2000 (OJ L 193, 29.7.2000, p. 3).

⁽⁵⁾ OJ L 160, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1672/2000 (OJ L 193, 29.7.2000, p. 13).

⁽⁶⁾ OJ L 355, 5.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 1593/2000 (OJ L 182, 21.7.2000, p. 11).

COMMISSION REGULATION (EC) No 1988/2001
of 11 October 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 12 October 2001.

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

Done at Brussels, 11 October 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 11 October 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	111,8
	999	111,8
0707 00 05	052	104,2
	999	104,2
0709 90 70	052	90,2
	999	90,2
0805 30 10	052	69,9
	388	59,7
	512	46,9
	524	55,6
	528	50,2
0806 10 10	999	56,5
	052	89,1
	064	96,6
	388	113,3
	400	190,8
	512	76,0
	624	111,6
	999	112,9
0808 10 20, 0808 10 50, 0808 10 90	060	39,7
	066	60,9
	388	77,7
	400	66,1
	512	92,2
	800	181,1
	804	74,8
	999	84,6
0808 20 50	052	111,0
	999	111,0

⁽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 1989/2001
of 11 October 2001**

**fixing the maximum export refund for white sugar for the 11th partial invitation to tender issued
within the framework of the standing invitation to tender provided for in Regulation (EC) No
1430/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular Article 27(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1430/2001 of 13 July 2001 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽²⁾ requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1430/2001 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 11th 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 11th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1430/2001 the maximum amount of the export refund is fixed at 45,528 EUR/100 kg.

Article 2

This Regulation shall enter into force on 12 October 2001.

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

Done at Brussels, 11 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 192, 14.7.2001, p. 3.

COMMISSION REGULATION (EC) No 1990/2001**of 11 October 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 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾,

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 ⁽²⁾, 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 ⁽³⁾. 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 12 October 2001.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 12.

⁽³⁾ 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, 11 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 11 October 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⁾	9,25	—	0
1703 90 00 ⁽¹⁾	13,13	—	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 1991/2001
of 11 October 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 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the third subparagraph of Article 27(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1951/2001 ⁽²⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 1951/2001 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 1260/2001, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1951/2001 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 October 2001.

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

Done at Brussels, 11 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 265, 5.10.2001, p. 10.

ANNEX

to the Commission Regulation of 11 October 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	39,06 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	39,07 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	39,06 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	39,07 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4246
1701 99 10 9100	A00	EUR/100 kg	42,46
1701 99 10 9910	A00	EUR/100 kg	42,47
1701 99 10 9950	A00	EUR/100 kg	42,47
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4246

⁽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 Council Regulation (EC) No 1260/2001.

⁽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 1992/2001
of 11 October 2001**

determining, for the 2001 marketing year, the estimated loss of income and the estimated level of premium payable per ewe and per female goat and fixing the second advance payment for this premium

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat ⁽¹⁾, as amended by Regulation (EC) No 1669/2000 ⁽²⁾, and in particular Article 5(6) thereof,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽³⁾, and in particular Article 6 thereof,

Whereas:

(1) Article 5(1) and (5) of Regulation (EC) No 2467/98 provides for the grant of a premium to compensate for any loss of income sustained by producers of sheepmeat and, in certain areas, of goatmeat. Those areas are defined in Annex I to Regulation (EC) No 2467/98 and in Article 1 of Commission Regulation (EC) No 2738/1999 of 21 December 1999 determining the mountain areas in which the premium for goatmeat is granted ⁽⁴⁾.

(2) Pursuant to Article 5(6) of Regulation (EC) No 2467/98 and to enable an advance payment to be made to sheepmeat and goatmeat producers, the foreseeable loss of income should be estimated in the light of the foreseeable trend in market prices.

(3) Pursuant to Article 5(2) of Regulation (EC) No 2467/98, the amount of the premium per ewe for producers of heavy lambs is obtained by multiplying the loss of income referred to in the second subparagraph of paragraph 1 of that Article by a coefficient expressing the annual average production of heavy lamb meat per ewe producing these lambs expressed per 100 kg of carcass weight. The coefficient for 2001 has not yet been fixed in view of the lack of full Community statistics. Pending the fixing of that coefficient, a provisional coefficient should be used. Article 5(3) and (5) of that Regulation also fix the amount per ewe for producers of light lambs and per female of the caprine species, respectively, at 80 % of the premium per ewe for producers of heavy lambs.

(4) Pursuant to Article 13 of Regulation (EC) No 2467/98, the premium must be reduced by the impact on the basic price of the coefficient provided for in paragraph 2 of that Article. That coefficient is fixed by Article 13(4) at 7 %.

(5) In accordance with Article 5(6) of Regulation (EC) No 2467/98, the half-yearly advance payment is fixed at 30 % of the expected premium. In accordance with Article 4(3) of Commission Regulation (EEC) No 2700/93 ⁽⁵⁾, as last amended by Regulation (EC) No 1458/2001 ⁽⁶⁾, the advance payment is to be paid only if it is equal to or greater than EUR 1.

(6) Regulation (EC) No 1454/2001 provides for the application of specific measures relating to agricultural production in the Canary Islands. Those measures entail the grant of a supplement to the ewe premium payable to producers of light lambs and she-goats on the same conditions as those governing the grant of the premium referred to in Article 5 of Regulation (EC) No 2467/98. Those conditions provide that Spain is authorised to pay an advance on the said supplementary premium.

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

HAS ADOPTED THIS REGULATION:

Article 1

The difference, which is hereby estimated between the basic price, reduced by the impact of the coefficient laid down in Article 13(2) of Regulation (EC) No 2467/98, and the foreseeable market price for 2001, is EUR 68,785 per 100 kg.

Article 2

The estimated amount of the premium payable in respect of the 2001 marketing year shall be as follows:

- per ewe in case of producers of heavy lambs: EUR 10,779,
- per ewe in case of producers of light lambs: EUR 8,623,
- per she-goat in the areas designated in Annex I to Regulation (EC) No 2467/98 and in Article 1 of Regulation (EC) No 2738/1999: EUR 8,623.

⁽¹⁾ OJ L 312, 20.11.1998, p. 1.

⁽²⁾ OJ L 193, 29.7.2000, p. 8.

⁽³⁾ OJ L 198, 21.7.2001, p. 45.

⁽⁴⁾ OJ L 328, 22.12.1999, p. 59.

⁽⁵⁾ OJ L 245, 1.10.1993, p. 99.

⁽⁶⁾ OJ L 194, 18.7.2001, p. 4.

Article 3

Pursuant to Article 5(6) of Regulation (EC) No 2467/98, the second advance that the Member States are authorised to pay to producers shall be as follows:

- per ewe in case of producers of heavy lambs: EUR 3,234,
- per ewe in case of producers of light lambs: EUR 2,587,
- per she-goat in the areas designated in Annex I to Regulation (EC) No 2467/98 and in Article 1 of Regulation (EC) No 2738/1999: EUR 2,587.

Article 4

Pursuant to Article 6 of Regulation (EC) No 1454/2001, the second advance on the supplementary premium for the 2001 marketing year for producers of light lambs and she-goats in the Canary Islands within the limits provided for in Article 1(1) of Council Regulation (EEC) No 3493/90 ⁽¹⁾ shall be EUR 0,647 per ewe and/or she-goat.

Article 5

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, 11 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 4.12.1990, p. 7.

COMMISSION REGULATION (EC) No 1993/2001**of 11 October 2001****fixing the production levies in the sugar sector for the 2000/01 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

levy in accordance with Article 33(4) and (5) of the same Regulation.

Having regard to the Treaty establishing the European Community,

(4) The total loss recorded on the basis of the information available and in application of Article 33(1) and (2) of Regulation (EC) No 2038/1999 is covered in its entirety by the receipts from the basic production levy and the B levy. The coefficient referred to in Article 34(2) of the said Regulation should not as a consequence be fixed for the 2000/01 marketing year.

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 last amended by Commission Regulation (EC) No 906/2001 ⁽²⁾, and in particular Article 33(8) and Article 34(5) thereof,

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

Whereas:

HAS ADOPTED THIS REGULATION:

(1) Article 7(1) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector ⁽³⁾, as last amended by Regulation (EC) No 392/94 ⁽⁴⁾, provides that the basic production levy and the B levy together with, if required, the coefficient referred to in Article 34(2) of Regulation (EC) No 2038/1999 for sugar, isoglucose and inulin syrup are to be fixed before 15 October in respect of the preceding marketing year.

Article 1

The production levies in the sugar sector for the 2000/01 marketing year shall be as follows:

(2) Commission Regulation (EC) No 1930/2000 of 12 September 2000 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2000/01 marketing year ⁽⁵⁾ increased, for the 2000/01 marketing year, the maximum amount referred to in the first indent of Article 33(4) of Regulation (EC) No 2038/1999 to 37,5 % of the intervention price for white sugar.

(a) EUR 1,2638 per 100 kilograms of white sugar as the basic production levy on A sugar and B sugar;

(b) EUR 13,0998 per 100 kilograms of white sugar as the B levy on B sugar;

(c) EUR 0,5330 per 100 kilograms of dry matter as the basic production levy on A isoglucose and B isoglucose;

(d) EUR 5,4980 per 100 kilograms of dry matter as the B levy on B isoglucose;

(e) EUR 1,2638 per 100 kilograms of dry matter equivalent sugar/isoglucose as the basic production levy on A inulin syrup and B inulin syrup;

(f) EUR 13,0998 per 100 kilograms of dry matter equivalent sugar/isoglucose as the B levy on B inulin syrup.

(3) The estimated total loss recorded in accordance with Article 33(1) and (2) of Regulation (EC) No 2038/1999 necessitates, in respect of the 2000/01 marketing year, the retention of the maximum amounts referred to in Article 33(3) of the said Regulation in so far as the basic production levy is concerned and the taking into account of an amount equal to 20,7308 % of the intervention price for white sugar for the calculation of the B

Article 2

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

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 127, 9.5.2001, p. 28.

⁽³⁾ OJ L 158, 9.6.1982, p. 17.

⁽⁴⁾ OJ L 53, 24.2.1994, p. 7.

⁽⁵⁾ OJ L 231, 13.9.2000, p. 6.

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

Done at Brussels, 11 October 2001.

For the Commission
Franz FISCHLER
Member of the Commission

**COMMISSION REGULATION (EC) No 1994/2001
of 11 October 2001**

fixing, for the 2000/01 marketing year, the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum amount of the B levy and the amount of that levy to be charged

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 last amended by Commission Regulation (EC) No 906/2001 ⁽²⁾, and in particular Article 36(5) thereof,

Whereas:

- (1) Article 36(2) of Regulation (EC) No 2038/1999 provides in particular that when the amount of the B levy is less than the maximum amount referred to in Article 33(4) of the said Regulation, revised, where necessary, in accordance with paragraph 5 of that same Article, sugar manufacturers shall be required to pay beet sellers 60 % of the difference between the maximum amount of the levy in question and the amount of the levy to be charged. Article 8(1) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector ⁽³⁾, as last amended by Regulation (EC) No 392/94 ⁽⁴⁾, provides that the amount referred to in Article 36(2) of Regulation (EC) No 2038/1999 shall be fixed at the same time as the production levies and in accordance with the same procedure.

- (2) For the 2000/01 marketing year, the maximum amount of the B levy has been fixed for sugar at 37,5 % of the intervention price for white sugar. It has transpired that the amount of the B levy for sugar to be charged for the said marketing year is only 20,7308 % of the intervention price for white sugar. This difference requires, in accordance with Article 36(2) of Regulation (EC) No 2038/1999, that the amount to be paid by sugar manufacturers to beet sellers should be fixed per tonne of beet of the standard quality and at the rate of 60 % of the said difference.
- (3) 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 amount referred to in Article 36(2) of Regulation (EC) No 2038/1999 to be paid by sugar manufacturers to beet sellers in respect of the B levy shall be fixed for the 2000/01 marketing year at EUR 8,27 per tonne of beet of the standard quality.

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, 11 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 127, 9.5.2001, p. 28.

⁽³⁾ OJ L 158, 9.6.1982, p. 17.

⁽⁴⁾ OJ L 53, 24.2.1994, p. 7.

**COMMISSION REGULATION (EC) No 1995/2001
of 11 October 2001**

**establishing the quantities to be allocated to importers from the 2002 Community quantitative
quotas on certain products originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas ⁽¹⁾, as last amended by Regulation (EC) No 138/96 ⁽²⁾, and in particular Articles 9 and 13 thereof,

Having regard to Commission Regulation (EC) No 1394/2001 of 9 July 2001 establishing administration procedures for the 2002 quantitative quotas for certain products originating in the People's Republic of China ⁽³⁾, and in particular Article 6 thereof,

Whereas:

- (1) Regulation (EC) No 1394/2001 established the portion of each of the quotas concerned reserved for traditional and other importers and the conditions and methods for participating in the allocation of the quantities available. Importers have lodged applications for import licences with the competent national authorities between 11 July and 3 p.m., Brussels time, on 7 September, in accordance with Article 3 of Regulation (EC) No 1394/2001.
- (2) The Commission has received from the Member States, pursuant to Article 5 of Regulation (EC) No 1394/2001, particulars of the numbers and aggregate volume of import licence applications submitted and the total volume imported by traditional importers in 1998 or 1999, the reference years.
- (3) The Commission is now able, on the basis of that information, to establish uniform quantitative criteria by which the competent national authorities may satisfy licence applications submitted by importers in the Member States for the 2002 quantitative quotas.
- (4) Examination of the figures supplied by Member States shows that the aggregate volume of applications submitted by traditional importers for the products listed in Annex I to this Regulation exceeds the portion of the quota set aside for them. The applications must

therefore be met by applying the uniform rate of reduction/increase shown in Annex I to the volume of each importer's imports, expressed in quantity or value terms, over the reference period.

- (5) Examination of the figures supplied by Member States shows that the aggregate volume of applications submitted by non-traditional importers for the products listed in Annex II to this Regulation exceeds the portion of the quota set aside for them. The applications must therefore be met by applying the uniform rate of reduction shown in Annex II to the amounts requested by each importer, as limited by Regulation (EC) No 1394/2001,

HAS ADOPTED THIS REGULATION:

Article 1

In response to licence applications in respect of the products listed in Annex I duly submitted by traditional importers, the competent national authorities shall allocate each importer a quantity or value equal to his imports for 1998 or 1999, as indicated by the importer, adjusted by the rate of reduction/increase specified in the said Annex for each quota.

Where the use of this quantitative criterion would entail allocating an amount greater than that applied for, the quantity or value allocated shall be limited to that specified in the application.

Article 2

In response to licence applications in respect of the products listed in Annex II duly submitted by non-traditional importers, the competent national authorities shall allocate each importer a quantity or value equal to the amount requested within the limits set by Regulation (EC) No 1394/2001, adjusted by the rate of reduction specified in the said Annex for each quota.

Article 3

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

⁽¹⁾ OJ L 66, 10.3.1994, p. 1.

⁽²⁾ OJ L 21, 27.1.1996, p. 6.

⁽³⁾ OJ L 187, 10.7.2001, p. 31.

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

Done at Brussels, 11 October 2001.

For the Commission
Pascal LAMY
Member of the Commission

ANNEX I

Rate of reduction/increase applicable to imports in 1998 or 1999 (traditional importers)

Product description	HS/CN code	Rate of reduction/increase (%)
Footwear	ex 6402 99 ⁽¹⁾	- 29,45
	6403 51 6403 59	+ 7,66
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	- 37,88
	ex 6404 11 ⁽²⁾	- 28,51
	6404 19 10	+ 15,79
Tableware, kitchenware of porcelain or china	6911 10	- 35,17
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china	6912 00	- 23,77

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low density polymers.

⁽²⁾ Excluding:

- (a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;
- (b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low density polymers.

ANNEX II

**Rate of reduction applicable to the volume requested within the limits of the maximum amounts fixed by
Regulation (EC) No 1394/2001
(non-traditional importers)**

Product description	HS/CN code	Rate of reduction/increase (%)
Footwear	ex 6402 99 ⁽¹⁾	- 7,89
	6403 51 6403 59	- 89,34
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	- 71,52
	ex 6404 11 ⁽²⁾	- 54,05
	6404 19 10	- 6,77
Tableware, kitchenware of porcelain or china	6911 10	0
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china	6912 00	- 12,75

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low density polymers.

⁽²⁾ Excluding:

- a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;
- b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low density polymers.

**COMMISSION REGULATION (EC) No 1996/2001
of 11 October 2001**

amending, for the second time, Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) No 337/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) No 337/2000 ⁽¹⁾, as amended by Commission Regulation (EC) No 1354/2001 ⁽²⁾, and in particular Article 10(1), second indent, thereof,

Whereas:

- (1) Article 10 of Regulation (EC) No 467/2001 empowers the Commission to amend Annexes I and VI on the basis of determinations by either the United Nations Security Council or the Taliban Sanctions Committee.
- (2) Annex I to Regulation (EC) No 467/2001 lays down the list of persons and entities covered by the freeze of funds under that Regulation. Annex VI lists the organisations and agencies exempted from the flight ban under that Regulation.
- (3) On 20 August and 6 October 2001 the Taliban Sanctions Committee determined to amend the list of persons and entities to whom the freeze of funds shall apply and to amend the list of humanitarian organisations, and therefore Annexes I and VI to Regulation (EC) No 467/2001 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 467/2001 is amended as follows:

1. The following persons and entities shall be added to Annex I:

- The Afghan Export Bank
- Al Qaida/Islamic Army
(aka 'The Base', Al Qaeda, Islamic Salvation Foundation, The Group for the Preservation of the Holy Sites, The Islamic Army for the Liberation of Holy Places, The World Islamic Front for Jihad Against Jews and Crusaders, Usama Bin Laden Network, Usama Bin Laden Organisation)

- Abu Sayyaf Group
(aka Al Harakat Al Islamiyya)
- Armed Islamic Group (GIA)
(aka Al Jamm'ah Al Islamiah Al-Musallah, GIA, Groupe-ment Islamique Armé)
- Harakat Ul-Mujahidin/HUM
(aka Al-Faran, Al-Hadid, Al-Hadith, Harakat Ul-Ansar, HUA, Harakat Ul-Mujahideen)
- Al-Jihad/Egyptian Islamic Jihad
(aka Egyptian Al-Jihad, Egyptian Islamic Jihad, Jihad Group, New Jihad)
- Islamic Movement of Uzbekistan (IMU)
(aka IMU)
- Asbat al-Ansar
- Salafist group for Call and Combat (GSPC)
(aka Le Groupe Salafiste pour la Prédiction et le Combat)
- Libyan Islamic Fighting Group
- Al-Itihaad Al-Islamiya (AIAI)
- Islamic Army of Aden
- Usama Bin laden (individual)
(aka Usama Bin Muhammed Bin Awad, Osama Bin Laden). Born 30.7.1957, Jeddah, Saudi Arabia; alternative place of birth Yemen
- Muhammad Atif (individual)
(aka Subhi Abu Sitta, Abu Hafs Al Masri, Sheik Taysir Abdullah, Mohamed Atef, Abu Hafs Al Masri el Khabir, Taysir). Born 1956, Alexandria, Egypt; alternative date of birth 1951
- Sayf al-Adl (individual)
(aka Saif Al-'Adil). Born 1963, Egypt
- Shaykh Sai'id (individual)
(aka Mustafa Muhammad Ahmad). Born Egypt
- Abu Hafs the Mauritanian (individual)
(aka Mahfouz Ould al-Walid, Khalid Al-Shanqiti, Mafouz Walad Al-Walid, Mahamedou Ouid Slahi). Born 1.1.1975
- Ibn Al-Shaykh Al-Libi (individual)
- Abu Zubaydah (individual)
(aka Abu Zubaida, Abd Al-Hadi Al Wahab, Zain Al-Abidin Muhahhad Husain, Zayn Al-Abidin Muhammad Husain, Tariq). Born 12.3.1971, Riyadh, Saudi Arabia
- Abd al-Hadi al-Iraqi (individual)
(aka Abu Abdallah, Abdal Al-Hadi Al-Iraqi)

⁽¹⁾ OJ L 67, 9.3.2001, p. 1.

⁽²⁾ OJ L 182, 5.7.2001, p. 15.

- Ayman Al-Zawahari (individual)
(aka Ahmed Fuad Salim) Operational and Military Leader of Jihad Group. Born 19.6.1951, Giza, Egypt; passport No 1084010 (Egypt); alternative No 19820215
 - Thirwat Salah Shihata (individual)
(aka Tarwat Salah Abdallah, Salah Shihata Thirwat, Shahata Thirwat). Born 29.6.1960, Egypt
 - Tariq Anwar Al-Sayyid Ahmad (individual)
(aka Hamdi Ahmad Farag, Amr al-Fatih Fathi). Born 15.3.1963, Alexandria, Egypt
 - Muhammad Salah (individual)
(aka Nasr Fahmi Nasr Hasanayn)
 - Makhtab Al-Khidamat/Al Kifah (individual)
 - Wafa Humanitarian Organisation
(aka Al Wafa, Al Wafa Organisation, Wafa Al-Igatha Al-Islamia) Jordan house No 125, Street 54, Phase II, Hayatabad, Peshawar, Pakistan. Offices in Saudi Arabia, Kuwait and United Arab Emirates
 - Al Rashid Trust
(aka Al-Rasheed Trust)
Kitas Ghar, Nazimabad 4, Dahgel-Iftah, Karachi, Pakistan.
Jamia Maajid, Sulalman Park, Melgium Pura, Lahore, Pakistan.
Office Dha'rbi M'unin, Opposite Khyber Bank, Abbotabad Road, Mansehra, Pakistan.
Office Dhar'bi M'unin ZR Brothers, Katcherry Road, Chowk Yadgaar, Peshawar, Pakistan.
 - Office Dha'rbi-M'unin, Rm No 3 Moti Plaza, Near Liaquat Bagh, Muree Road, Rawalpindi, Pakistan.
Office Dha'rbi-M'unin, Top floor, Dr Dawa Khan Dental Clinic Surgeon, Main Baxae, Mingora, Swat, Pakistan.
Operations in Afghanistan: Heart, Jalalabad, Kabul, Kandahar, Mazar Sherif.
Also operations in Kosovo, Chechnya.
 - Mamoun Darkazanli Import-Export Company
(aka Darkazanli Company, Darkazanli Export-Import Sonderposten). Uhlenhorsterweg 34 11, Hamburg, Germany.
2. The following organisations shall be added to Annex VI:
- International Medical Corps (IMC), 11500 West Olympic Blvd, Suite 506, Los Angeles, California 90064-1524, USA.
 - Goal, PO Box 19, Dun Laoghaire, Co. Dublin, Ireland.
 - Drug Control Community (DCC), No 21 Shahid Mehdi-zadeh St, South Karegar Ave., Teheran, Iran.
 - Aftab Society, No 3 South Sohrevardi St, Teheran, Iran.
 - International Green PODNGO, No 10 11th St Shahid Sarafray St, Shahid Beheshti Ave., Teheran, Iran.
 - HOPE Worldwide, 163 Tooting High St, London SW17 OSY, United Kingdom.
 - Red Crescent Society of the Islamic Republic of Iran, Ostad Nejatollahi St, 159893315 Teheran, Iran.

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, 11 October 2001.

For the Commission

Christopher PATTEN

Member of the Commission

**COMMISSION REGULATION (EC) No 1997/2001
of 11 October 2001
concerning tenders notified in response to the invitation to tender for the export of rye issued in
Regulation (EC) No 1005/2001**

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 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council 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 ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1005/2001 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92

and on the basis of the tenders notified, to make no award.

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 5 to 11 October 2001 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 1005/2001.

Article 2

This Regulation shall enter into force on 12 October 2001.

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

Done at Brussels, 11 October 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 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 140, 24.5.2001, p. 10.

COMMISSION REGULATION (EC) No 1998/2001
of 11 October 2001
concerning tenders notified in response to the invitation to tender for the export of barley issued
in Regulation (EC) No 1558/2001

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 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council 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 ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of barley to all third countries except the United States of America and Canada was opened pursuant to Commission Regulation (EC) No 1558/2001 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92

and on the basis of the tenders notified, to make no award.

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 5 to 11 October 2001 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 1558/2001.

Article 2

This Regulation shall enter into force on 12 October 2001.

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

Done at Brussels, 11 October 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 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 205, 31.7.2001, p. 33.

COMMISSION REGULATION (EC) No 1999/2001**of 11 October 2001****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 943/2001**

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 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council 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 ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of common wheat to all third countries except for Poland was opened pursuant to Commission Regulation (EC) No 943/2001 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 October 2001, pursuant to the invitation to tender issued in Regulation (EC) No 943/2001, the maximum refund on exportation of common wheat shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 12 October 2001.

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

Done at Brussels, 11 October 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 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 133, 16.5.2001, p. 3.

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 5/2001 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part,

of 12 June 2001

establishing the financial contribution of Estonia for participation in the Socrates II and Youth programmes in the years 2001 to 2006

(2001/722/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other ⁽¹⁾, and in particular Article 108 thereof,

Whereas:

- (1) Decision No 1/2000 of 24 July 2000 of the EU-Estonia Association Council ⁽²⁾ adopted the terms and conditions for the participation of the Republic of Estonia in the second phase of the Leonardo da Vinci and Socrates programmes, and it applies for the duration of these programmes.
- (2) Decision No 2/2000 of 20 September 2000 of the EU-Estonia Association Council ⁽³⁾ adopted the terms and conditions for the participation of the Republic of Estonia in the Youth programme, and it applies for the duration of this programme.
- (3) Annex II(2) of Decision No 1/2000, and Annex II(1) of Decision No 2/2000 provide that the financial contribution to be paid by Estonia to the budget of the European Union to participate in the Socrates II and Youth programmes respectively in the years 2001 to 2006 will be decided by the Association Council in the course of the year 2000,

HAS DECIDED AS FOLLOWS:

Article 1

The financial contribution to be paid by Estonia to the budget of the European Union to participate in the Socrates II programme in the years 2001 to 2006 shall be the following:

(in euro)

2001	2002	2003	2004	2005	2006
737 000	755 000	771 000	792 000	815 000	846 000

⁽¹⁾ OJ L 68, 9.3.1998, p. 3.

⁽²⁾ OJ L 236, 20.9.2000, p. 18.

⁽³⁾ OJ L 273, 26.10.2000, p. 26.

Article 2

The financial contribution to be paid by Estonia to the budget of the European Union to participate in the Youth programme in the years 2001 to 2006 shall be the following:

(in euro)

2001	2002	2003	2004	2005	2006
478 000	507 000	536 000	562 000	589 000	625 000

Article 3

PHARE funds shall be requested according to the following schedule:

— for the financial contribution to the Socrates II programme, the following yearly amounts:

(in euro)

2001	2002	2003	2004	2005	2006
337 000	355 000	321 000	292 000	265 000	246 000

— for the financial contribution to the Youth programme, the following yearly amounts:

(in euro)

2001	2002	2003	2004	2005	2006
178 000	207 000	186 000	162 000	189 000	175 000

The remaining part of Estonia's contribution shall be covered from the Estonian State budget.

Article 4

This Decision shall enter into force the day of its adoption by the Association Council.

Done at Brussels, 12 June 2001.

For the Association Council

The President

T. H. ILVES

COMMISSION

COMMISSION DECISION

of 18 July 2001

concerning the recapitalisation of the company Alitalia

(notified under document number C(2001) 2349)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/723/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62(1)(a) and Protocol No 27 thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾,

Having given the parties concerned notice, in accordance with the provisions of the aforementioned Articles, to submit their observations, and having regard to these observations,

Whereas:

THE FACTS

- (1) By Decision 97/789/EC ⁽²⁾ (hereinafter referred to as the '1997 Decision'), the Commission authorised the Italian authorities to grant State aid for restructuring in the form of a capital injection totalling ITL 2 750 billion to the Italian company Alitalia Linee Aeree Italiane SpA (hereinafter referred to as 'Alitalia'). The aid was intended to support a restructuring plan (hereinafter referred to as the 'plan') which was completed on 31 December 2000. Articles 1, 2 and 3 of the Decision state:

'Article 1

The aid granted by Italy to the company called Alitalia Linee Aeree Italiane SpA (hereinafter: Alitalia), in the form of a capital injection totalling ITL 2 750 billion for the restructuring of the company in conformity with the plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997, is deemed to be compatible with the common market and the EEA Agreement pursuant to Article 92(3)(c) of the Treaty and Article 61(3)(c) of the Agreement provided that Italy fulfils the following undertakings:

1. to adopt the behaviour of a normal shareholder towards Alitalia; to enable it to be managed in accordance with commercial principles only and not to become involved in its management for reasons other than those strictly related to the Italian State's status as a shareholder;

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ L 322, 25.11.1997, p. 44.

2. not to grant Alitalia any further capital payment or any other aid in any form, including loan guarantees;
3. that, until 31 December 2000, the aid shall be used by Alitalia solely for the purposes of restructuring the company and not for acquiring new shareholdings in other air carriers;
4. not to give Alitalia priority in any way over other Community companies, in particular as regards the allocation of traffic rights (including those for third countries in the European Economic Area), slot allocation, ground-handling assistance and access to airport facilities where preferential treatment would be contrary to Community law. In particular, Italy confirms that it will not apply any measure that is contrary to Community law and guarantees that:
 - (a) it shall immediately start and by 31 December 1998 at the latest shall have completed the procedure of revising Agreement No 4372 of 15 April 1992, as approved by Decree of 16 April 1992 (hereinafter: "the Agreement"), in order to bring that Agreement into line with Community regulations, in particular as regards the "right of priority", "government interference", "compatibility with the regulations on the liberalisation of air transport" and "airport privileges";
 - (b) a de facto revision of the Agreement has already taken place with regard to the above points following the exchange of Letters with Alitalia on the basis of Article 50 of the Agreement, the exchange making it clear that the Agreement applies only if it is compatible with Community law;
 - (c) Alitalia renounces its right of priority pursuant to Article 3 of the above Agreement;
 - (d) in coordinated or fully-coordinated Italian airports, it will, before the start of the 1997/98 winter season, appoint a coordinator who does not have any link whatsoever with Alitalia and acts completely independently of it;
5. until 31 December 2000 the available capacity of aircraft operated by Alitalia or by other carriers under agreements whereby Alitalia assumes the commercial risk for such capacity (wet-leasing, block-space, joint venture agreements, etc.) shall not exceed the following limits:
 - (a) the number of seats available shall not exceed 28 985, of which 26 350 shall be for Alitalia's own fleet;
 - (b) the increase in the number of available seat-kilometres for each calendar year:
 - within the European Economic Area excluding Italy, and
 - within Italy,shall not exceed 2,7 %, on the understanding that no growth is to be authorised if the growth in the corresponding markets remains lower than 2,7 %. However, if the growth rate in the corresponding markets exceeds 5 %, supply may be increased above 2,7 %, by the margin of the increase beyond 5 %;
6. Alitalia shall have an analytical accounting system that makes it possible to determine, in the short term and for each route, the profitability ratio defined as the ratio between the full revenue and the full costs (the full cost being equivalent to the sum of the variable costs and fixed costs) for a particular route;
7. until 31 December 2000 Alitalia shall refrain from offering fares lower than those offered by its competitors for an equivalent service supplied on the routes which it operates;
8. Alitalia shall dispose of its shareholding in Malev by [...] (*) at the latest;

(*) Business secret.

9. Alitalia shall continue with the full implementation of the restructuring plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997, in particular as regards meeting the productivity, profitability and financial restructuring objectives set out in paragraph VI;
10. to submit to the Commission, by the end of the months of March 1998, March 1999, March 2000 and March 2001, an annual report on the progress of the restructuring plan, Alitalia's economic and financial situation, and the compliance with these requirements. The report shall include a description (giving the particulars of co-contractors) of the commercial or operational cooperation agreements concluded by Alitalia during the previous year. The Commission shall, if necessary, have the information given in each of the reports checked by an independent consultant chosen by the Commission in agreement with the Italian Government.

Article 2

The payment of a second instalment of ITL 500 billion and a third instalment of ITL 250 billion shall be subject to compliance with the commitments under Article 1 and the actual implementation of the restructuring plan and achievement of the expected results (in particular as regards the cost and productivity ratios set out in paragraph VI).

At least 10 weeks before the release of the second and third instalments, planned for May 1998 and May 1999 respectively, Italy shall submit a report to the Commission to enable it to express comments with the assistance of an independent consultant chosen by the Commission after consulting the Italian authorities. The instalments shall not be released if the objectives of the restructuring plan are not met or if the undertakings are not met.

Article 3

The undertakings and requirements set out in Article 1 shall bind both the company Alitalia Linee Aeree Italiane SpA and its subsidiary Alitalia Team.'

- (2) The 1997 Decision was challenged by Alitalia, which brought Case T-296/97 before the Court of First Instance. In its judgment of 12 December 2000, the Court of First Instance ruled on the case and annulled the 1997 decision. The Court of First Instance gave the following reason for its judgment (point 171):

'Having regard to the failure to state reasons established in paragraph 137 above and to the manifest errors of assessment established in points 150 and 169 above, the Court must grant the form of order sought by the applicant and annul the contested decision, without its being necessary to adjudicate on the other arguments relating to the first plea and on the other pleas in the application.'

- (3) The three reasons for annulling the 1997 decision are all related to the second part of the first plea in law put forward by Alitalia. The first plea refers to the misapplication of the principle of a private investor in a market economy. Alitalia submitted to the Court that in the 1997 decision the Commission erred in classifying the capital injection of ITL 2 750 billion into Alitalia by IRI, the Italian State finance company, as State aid. The plea consisted of three parts. In the first part, which was rejected by the Court of First Instance in point 94 of the judgment, the applicant, Alitalia, claimed that IRI's investment in itself satisfied the private investor test because private investors have participated in its capital. In the second part, Alitalia maintained that the Commission made manifest errors of appreciation in calculating the minimum rate and the internal rate, thus infringing Article 92(1) of the Treaty and the principle of equal treatment, and that it did not provide an adequate statement of the reasons for its decision in that respect. In the third part, which the Court did not take into consideration, Alitalia criticised the purely mathematical approach taken by the Commission to the private investor test.

- (4) In examining the second part of the first plea in law, the Court in the first instance examined the method which the Commission had employed in the 1997 decision to determine whether IRI's investment satisfied the private investor test, namely comparing the internal rate of return with the minimum rate which a private investor would require, and found that the method which the Commission employed in the contested decision could not be criticised as such (point 99 of the judgment). The Court rejected the claims brought by Alitalia with regard to the factors taken into consideration by the Commission and its consultants when establishing the minimum rate (points 115 and 123 of the judgment). It then ruled that the 1997 decision was vitiated:

- by an error of reasoning 'in so far as it adopts for IRI's investment the same minimum rate as that determined in the Iberia Decision', Commission Decision 96/278/EC of 31 January 1996 ⁽³⁾ (point 137 of the judgment);
- by a manifest error of assessment 'in considering, on the basis of the reasons put forward in the contested decision, that the insolvency costs relating to the loans granted by Cofiri should be excluded from the calculation of the internal rate' (point 150); and
- by a manifest error of assessment 'in considering that the adjustments made to the restructuring plan in June 1997, which, on its own admission, reduced the risks inherent in that plan and further increased the profitability of the undertaking, had no impact on the calculation of the minimum rate and the internal rate and, accordingly, on the appraisal of whether IRI's investment satisfied the private investor test' (point 169 of the judgment).

- (5) Firstly, to be more precise with regard to the error of reasoning identified in point 137 of the judgment, the Court referred to the factors which the Commission had taken into consideration when determining the minimum rate of 30 % in the Iberia decision and pointed out that 'the Iberia decision was clearly a suitable precedent for the calculation of the minimum rate in the present case' (point 130 of the judgment) on the grounds that, at the time when the 1997 decision was adopted, this was the only decision in which the Commission had applied the criterion of comparing the internal rate and the minimum rate in order to determine whether an investor in an airline met the criterion for a private investor. The Court further pointed out that, this being the case, the Commission was bound to respond, in the 1997 decision, to Alitalia's claim throughout the administrative procedure that its own situation was completely different from Iberia's situation as detailed in the Iberia decision and that, consequently, the high minimum rate applied in the Iberia case could not be applied in its own. The Court then looked in detail at some specific aspects of Alitalia's situation which the Commission had taken into consideration in the 1997 decision and which Alitalia had highlighted as illustrating the differences between its own situation and Iberia's. The Court found that 'the Commission did not explain (...) why it considered it necessary to apply to IRI's investment the same minimum rate of 30 % as it had adopted in the Iberia decision although the findings made in the contested decision give the impression, in particular, that a number of the risk factors which led the Commission, in the Iberia decision, to fix the minimum rate at that level, which was "very high and far higher than market rates", were not present, or were present to a lesser extent, in the Alitalia case (...)' (point 136 of the judgment).

- (6) The risk factors to which the Court refers in the above extract relate to the following aspects:

- the failure to complete the adaptation programme properly and delays in carrying out staff reductions,
- social problems detrimental to the company's image and to making it difficult to achieve the envisaged productivity gains,

⁽³⁾ OJ L 104, 27.4.1996, p. 25.

- the low level of productivity and the need to draw up a new cost-reduction plan in negotiation with the two sides of industry,
 - doubts regarding the selection of future external partners,
 - uncertainty regarding the effects of the liberalisation of air transport and ground handling activities on long-term profitability.
- (7) Secondly, with regard to the manifest error of assessment noted in point 150 of the judgment, the Court quotes the section of the 1997 decision relating to the insolvency costs and notes, firstly, that 'it is not disputed that the main part of the capital injection of ITL 1 000 billion made in 1996 was used to repay to IRI loans amounting to approximately ITL 900 billion and that that operation can be regarded as a conversion of loans into capital' (point 145 of the judgment). The Court points out that the conversion of loans into capital is wholly consistent with one of the aims of the applicant's restructuring plan, namely to reduce the ratio of 'debt to equity'. The Court of First Instance then rejected the Commission's argument that the conversion into capital would bring only an immediate advantage, as well as the argument that the loans granted by Cofiri to Alitalia might constitute State aid. With regard to the second claim, the Court specifies that the 1997 decision puts forward no such reason and is not justified by any information provided by the Commission's consultants. The Court concludes that the Commission's reasoning concerning the insolvency costs is circular since, in order to determine whether a private investor would have made an investment of ITL 2 750 billion in the applicant's capital, the Commission started from the premiss that a private investor would not make the investment in question (point 149 of the judgment).
- (8) Thirdly, with regard to the manifest error of assessment criticised in point 169 of the judgment, the Court opens by stating that 'the Commission did not reassess the minimum rate and the internal rate on the basis of the final version of the applicant's restructuring plan' (point 162) and so dismissed the Commission's argument relating to events occurring after the 1997 decision was adopted. The Court then notes that the method applied by the Commission to assess whether IRI's investment met the private investor test involves comparing the internal rate and the minimum rate of return on the investment and highlights the fact that the most recent amendments to the restructuring plan in June 1997 'are of such a kind as to cause the internal rate to rise (increased profitability) and the minimum rate to fall (reduced risks)' (point 167). The Court therefore finds that 'the Commission should have reassessed the minimum rate and the internal rate on the basis of the final version of the restructuring plan in order to be able to make an accurate assessment of whether IRI's investment satisfied the private investor test' (point 168 of the judgment).
- (9) It should also be noted that the Court rejected Alitalia's claim based on the alleged miscalculation of the internal rate due to the fact that the Commission had obliged it to bear the costs of the early retirement programme for 700 of its employees. The Court records that the legal assessment and the operative part of the contested decision contain no trace of the applicant's decision to bear those costs, since the Commission only takes note of them in the part of the contested decision entitled 'The Facts'. The Court points out that as the commitment became irrevocable when Alitalia placed the relevant funds in escrow in July 1997, the Commission 'should therefore have ascertained whether the investment satisfied the private investor test in the light of that new situation' (point 154 of the judgment).
- (10) In order to be in a position to respond fully to the requirements arising from the judgment of the Court, the Commission called upon independent consultants, Ernst & Young, who had previously assisted in the Alitalia case in 1996 and 1997 before the 1997 decision was adopted, and the quality of whose work was never challenged by the Court. Their main task was to supply the Commission with all the information it required in this instance to reapply the principle of the private investor in a market economy and, in particular, to calculate either the internal rate of return on the capital injection or the appropriate minimum rate taking account of the terms of the judgment of the Court

of First Instance. The Commission's decision to appoint Ernst & Young to complete this work was natural, since it was the only agency capable of providing the necessary assistance in short order given its knowledge of the Alitalia case from 1996 and 1997 as well as the complexity of the necessary techniques and financial assessments. The consultants presented their report on 1 June 2001. It should be pointed out that the consultants appointed only provided the Commission with technical assistance and clearly cannot appropriate the Commission's own power of discretion to assess the character of the aid based on the de facto elements available to it.

LEGAL ASSESSMENT

- (11) Pursuant to Article 233 of the Treaty, 'The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.'
- (12) This clause was clarified by the Court of Justice as follows: 'Where a measure adopted by an institution has been annulled by the court, the institution is required, in order to comply with the judgment and implement it fully, to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary in order to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure' ⁽⁴⁾. The Court of Justice furthermore indicated that it was the responsibility of the institution issuing the measure which had been annulled to determine what measures were necessary in order to comply with a judgment on annulment ⁽⁵⁾.
- (13) In the case in point, in order to take the Court of First Instance judgment into due consideration, the Commission is required to adopt a new decision revising the reasoning in the paragraph criticised by the Court as containing an error of reasoning and correcting the two manifest errors of assessment identified by the Court.
- (14) As regards the procedure to be adopted in order to take this decision, Article 233 does not in this case require the Commission to reopen the procedure which led up to the 1997 decision or to repeat the entire procedure for adopting a new decision. In this respect, it is useful to draw a distinction between the error of reasoning, which is a formal error, and the two manifest errors of assessment, which are substantive errors. With regard to the error of reasoning, it appears from the established case law that when an act has been annulled because of formal or procedural flaws, the institution which issued the act may take up the procedure from the stage at which the flaw occurred ⁽⁶⁾. For example, on 22 July 1998, the Commission adopted the decision on the capital injection received by Air France, as notified, without reopening the procedure ⁽⁷⁾. As for the two manifest errors of assessment, the Commission considers that there are two reasons why it is not necessary to reopen the procedure: firstly, the new decision must be based on the factual evidence that existed at the time when the 1997 decision was adopted ⁽⁸⁾ and, secondly, the two errors identified by the Court of First Instance relate only to the assessment of facts which are themselves not in dispute. Moreover, the corrections which the Commission must make to the two paragraphs concerned are very clearly set out and specifically identified in the Court judgment. The Commission

⁽⁴⁾ Judgment of the Court of Justice of 26 April 1988, *Astéris and others v Commission*, joined cases 97/86, 193/86, 99/86 and 215/86, ECR 1988, p. 2181, point 27 and summary, point 3.

⁽⁵⁾ Judgment of the Court of Justice of 5 March 1980, *Könecké v Commission*, Case 76/79, ECR 1980, p. 665, points 13, 14 and 15.

⁽⁶⁾ Judgment of the Court of Justice of 13 November 1990, *Fedescsa c.a.*, Case No C-331/88, ECR 1990 p. I-4023, and the judgment of the Court of First Instance of 17 October 1991, *De Compte v European Parliament*, Case T-26/89, ECR 1991 p. II-781 point 70.

⁽⁷⁾ OJ L 63, 12.3.1999, p. 66.

⁽⁸⁾ See the judgment of the Court of First Instance of 25 June 1998, *British Airways and others v Commission*, Joined Cases T-371/94 and T-394/94, ECR 1998 p. II-2405.

thus has sufficient access to the information it needs regarding the facts and the financial methods associated with these two points to satisfy the requirements of the Court of First Instance and does not consider it useful to invite Member States or interested third parties to submit their comments. It should also be noted that the Member States and the other interested parties have already had the opportunity to express their opinions under the administrative procedure leading up to the adoption of the 1997 decision and that their procedural rights have therefore been respected. The Commission thus has access to all the information it needs in order to adopt a new decision without the need to reopen the procedure laid down in Article 88(2) of the Treaty.

On the criterion of the private investor in a market economy

- (15) The Commission points out that as part of the process of opening up the internal air transport sector market to competition, it published a notice concerning the application of ex Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector⁽⁹⁾. The manner in which the Commission should apply the principle of the private investor in a market economy is clarified in detail in points 27 to 31 of these guidelines. This principle or criterion is a test which, when applied to a specific measure, is used to determine whether the beneficiary derives some advantage and may thus be considered as 'favoured' within the meaning of Article 87(1) of the EC Treaty. The test is based on the objective definition of State aid given in the Treaty and, unlike the assessment which the Commission has to make of the compatibility of aid under the terms of Article 87(3) of the Treaty, its application by the Commission is mandatory and non-discretionary. Indeed the Commission has systematically applied the principle of the investor in a market economy in examining the aid for restructuring granted to the following airlines: to Sabena in 1991⁽¹⁰⁾, Iberia in 1992⁽¹¹⁾, Aer Lingus in 1993⁽¹²⁾, TAP⁽¹³⁾, Air France⁽¹⁴⁾ and Olympic Airways⁽¹⁵⁾ in 1994. In all those cases, however, the existence of State aid was not seriously challenged by the Member States concerned. When considering the capital injection received by Iberia in 1996, the Commission, in the process of applying the principle of the private investor in a market economy, employed a sophisticated method of financial analysis which in particular featured the minimum rate of return or 'hurdle rate' which an investor acting according to commercial principles would require of an investment. This was the analysis which the Commission applied to the capital injection of ITL 2 750 billion received by Alitalia as presented in the 1997 decision, which was subsequently annulled.
- (16) The reasons for the annulment of the 1997 decision are attributable exclusively to the misapplication of the criterion of the private investor in a market economy: the remedy is therefore to reapply this criterion without committing the errors criticised by the Court of First Instance.
- (17) It should first be noted that the Court rejected Alitalia's claim that private investor participation in the recapitalisation would in itself prove that the operation met the private investor criterion (point 92 of the judgment). Consequently, failing substantial participation by private investors in the operation, the Commission must employ a theoretical analysis. In this respect, the Court confirmed the validity of the method selected by the Commission, involving a comparison of the amount invested by IRI with the value of the anticipated future cash flows for the project, updating by means of the minimum rate (hurdle rate) required by a private investor (points 99 and 100 of the judgment). This method is tantamount to comparing the internal rate of return for the operation with the minimum rate which a private investor would require. Accordingly, the recalculation which the Commission is obliged to perform is limited to determining the internal rate of return for the operation and the minimum rate required by a private investor.

⁽⁹⁾ OJ C 350, 10.12.1994, p. 5.

⁽¹⁰⁾ Commission Decision of 24 July 1991. OJ L 300, 31.10.1991, p. 48.

⁽¹¹⁾ Commission Decision of 22 July 1992. Not yet published.

⁽¹²⁾ Commission Decision of 21 December 1993. OJ L 54, 25.2.1994, p. 30.

⁽¹³⁾ Commission Decision of 6 July 1994. OJ L 279, 28.10.1994, p. 29.

⁽¹⁴⁾ Commission Decision of 27 July 1994. OJ L 254, 30.9.1994, p. 73.

⁽¹⁵⁾ Commission Decision of 7 October 1994. OJ L 273, 25.10.1994, p. 22.

- (18) The reassessment required in order to correct the manifest error of assessment which the Court of First Instance penalised by annulling the 1997 decision must take due consideration of the latest amendments made to Alitalia's restructuring plan in June 1997. Subject to pressure from the Italian authorities, calling upon the Commission to adopt a decision by the end of July 1997 (and acknowledging, moreover, the existence of elements of State aid), the Commission had not in fact considered it worthwhile recalculating the internal rate of return and the minimum rate to take account of the latest amendments to the restructuring plan before adopting the 1997 decision. It is true, moreover, that the later amendments were rather minor compared with those made to the plan in February 1997, which had been duly taken into consideration.
- (19) Firstly, as regards the internal rate of return, it should be noted that the internal rate of return of a financial operation is the discount rate at which the amount invested is equal to the amount of the revenue generated by that investment. In the case in point, the future revenue to be taken into consideration is that forecast up to the end of 2000, the year in which the plan would be completed. Indeed, the company has valid financial projections up to this date, which is, on the one hand, far enough away in time to allow the capital increase in question to produce effects in the context of restructuring yet, on the other hand, near enough to offset the uncertainties inherent in the viability of the financial forecasts. The revenue generated by Alitalia comprises, in the main, the added value acquired by the company until 2000 but also the dividends which Alitalia paid IRI until 2000.
- (20) Furthermore, as the Court of First Instance stated in its judgment of 12 December 2000, the calculation of anticipated revenue should include the insolvency costs which IRI would have to bear if Alitalia were to go into liquidation, which would mainly be losses due to short term loans to Alitalia by Cofiri, an IRI subsidiary company, prior to June 1996. In this specific instance, such costs ought to be included given that the Commission had not shown that issuing such loans was in itself a form of State aid. As far as IRI is concerned, Alitalia's failure to pay back these short-term loans if the company were to be wound up, would be a cash flow loss. However, the total insolvency costs would not exceed ITL 1 000 billion, as the Italian authorities maintain in their letters to the Commission dated 29 July and 9 September 1996, and may be estimated at approximately ITL 750 billion. Indeed, the consultants' report of 18 June 1997 shows that the amount suggested by the Italian authorities overestimates the risk of losses on the short-term receivables, underestimates the sales value of the Alitalia fleet, overestimates the costs of liquidation and does not take account of the advance payments already made by Alitalia for the procurement of new equipment. However, in its reply dated 29 March 1997 filed with the Court in the course of the preparatory inquiry for Case T-296/97, Alitalia accepted the figure of ITL 750 billion for the total insolvency costs.
- (21) The added value acquired by Alitalia by 2000 compared with 1997, when the capital injection covered by this decision was actually made, is actually equal to the value of IRI's participation in the company in 2000 given that, in the opinion of the experts consulted both by the Commission and by Alitalia, in 1997 Alitalia's value was to be considered as zero. Some uncertainty remains, however, as to the percentage of IRI's participation in Alitalia capital until 2000 and also in that year since in 1997 it was not clear which tax provisions would apply to the transfer of Alitalia shares to its own employees when this operation was executed. The percentage of IRI's participation in Alitalia capital in the year 2000 therefore amounts to either 79 % or 86 % according to which of the two forms of taxation is applied. Obviously, the amount of IRI's participation in Alitalia capital and the value of the dividends collected vary according to which of these two percentage values applies. There is, however, no uncertainty regarding Alitalia's bearing the costs of early retirement payments as taken into consideration in the Commission's approach, since the Court of First Instance raised no objections (point 153 of the judgment). Alitalia's decision to bear the costs became irrevocable in July 1997 and therefore must be taken into consideration in the necessary calculation (points 154 and 156 of the judgment).

- (22) In order to determine the value of Alitalia at the end of 2000 and hence the value of IRI's participation in the company at that time, the Commission used a method similar to that employed in the Iberia case ⁽¹⁶⁾. It involves multiplying Alitalia's estimated cash flow in a typical year following 2000 by a coefficient updating all future cash flows. Subtracting any debts outstanding in 2000 from the value of the asset calculated in this way gives the value of equity on that date. The multiplier coefficient applied to profit in a typical year is a function of both the average rate of cash flow growth for all the years following 2000 and the updating rate used for 2000. This value is no other than Alitalia's weighted average cost of capital on that date, which is equal to 9,53 %, the weighted average of the estimated cost of its debt (7,2 %) and the cost of equity (14 %) evaluated using the Capital Asset Pricing Model. It should be stressed at this juncture that the weighted average cost of capital defined in this way does not take Alitalia's specific risk situation into account. The company's average rate of cash flow growth following 2000 may reasonably be set at 4,5 % at current prices. This value is calculated on the basis of the rate of long-term growth in the economy, the multiplier of this specific rate for the air transport sector and the predicted development of unit earnings and the rate of inflation. IRI's participation in Alitalia in December 2000 thus comes to either ITL 4 206 billion or ITL 4 330 billion, depending on the tax provisions applied.
- (23) Based on this data, the internal rate of return for IRI on its investment of ITL 2 750 billion in Alitalia capital is either 25,2 % or 26,1 % for 1997, according to the taxation applicable, as mentioned above.
- (24) Secondly, with regard to calculating the minimum rate (hurdle rate) required by an investor operating according to commercial laws in order to undertake this kind of financial operation (capital injection) it should first be pointed out that a decision of this kind, for all that it takes hard facts into consideration, is not based purely on precise mathematical calculations but is also the product of assessment based on experience. Its empirical nature notwithstanding, the value of the hurdle rate can still be estimated to a fair degree of accuracy as is evidenced by the fact that financial institutions and investors taking an empirical approach generally all arrive at very similar conclusions for any given situation.
- (25) In this case, on the basis of the information in its possession and, in particular, the consultants' report, the Commission considers the minimum rate to be around 30 % in view of the size of the sum involved and, more especially, the risks inherent in the operation. This rate of at least 30 % allows for the possibility that the restructuring plan will not develop as planned and that the actual return on the investment will, in the final analysis, be significantly less. Indeed, the rate cannot fail to be higher than the cost of equity capital since the latter does not take account of all the risks associated with the company, for, despite the improvements following adjustments to the restructuring plan in February and June 1997, as notified to the Commission on 26 June 1997, Alitalia must still be considered a company with a very high specific risk. In this respect, it should be noted that:
- traditionally, margins in the air transport sector are generally limited, with extreme variations in profits and losses,

⁽¹⁶⁾ Iberia Decision (see footnote 3), paragraph VII.

- Alitalia's accounts have not shown significant profits since the end of the 1980s, despite the improvement in the economic situation from 1994 onwards. In fact, in 1996, the first year in which the restructuring plan was implemented, the company actually recorded losses of ITL 24 billion in contrast to the expected ITL 70 billion profits. It is true that in the letter to the Commission dated 15 April 1997 Alitalia supplied an estimate of its results for the first quarter of 1997 showing that the company's recovery was stronger than was anticipated in the restructuring plan, but it should be borne in mind, firstly, that these results are based on unrevised provisional data and, secondly, that six months is too short a time period to draw any significant conclusions,
 - the company is in an extremely difficult and precarious financial situation. With its own resources at virtually zero at the beginning of 1996 and a high level of indebtedness, the company only avoided bankruptcy thanks to a capital injection of ITL 1 000 billion in June 1996. Considering the size of the company and the anticipated amount of the investment, this insecure financial situation is a factor which may in itself discourage any investor operating according to the principles of the market economy.
- (26) There are other risk factors affecting the proper implementation of the plan, the long-term profitability of the company and the financial forecasts for 2000 which are the basis for calculation of the rate of return on the capital injection, to wit:
- the hypotheses regarding the future development of the company's productivity, operating expenditure, seat occupancy levels and unit earnings on which the plan is based are rather optimistic,
 - the company's anticipated recovery is dependent to a great extent on the opening of the Malpensa airport after 1998. Yet, although the new Malpensa airport will offer far more slots than are currently available at Linate airport, which is already completely saturated, the slots will also be available to Alitalia's competitors. It should also be noted that the Malpensa airport facilities are located 55 kilometres away from the centre of Milan and that no other European airport infrastructure is located at a similar distance from the conurbation which it serves. The specific potential of the new airport and the details of how the hub will be put into service are in fact still largely unknown,
 - the Italian domestic market, which is Alitalia's main market, was not liberalised until the end of 1999 and there is still major uncertainty as to how Alitalia, which previously enjoyed monopoly status, will be capable of handling competition. In this respect, it should be noted that the operating deficit recorded in 1996 is attributable to an appreciable drop in the company's unit earnings,
 - Alitalia's unit costs continue to be higher than those of its main competitors in Europe, a situation attributable in the main to staffing costs which are too high compared with unit earnings which, by contrast, are somewhat lower than those of its European competitors,
 - the company was affected by serious social disputes in 1995 and 1996, before the restructuring plan was adopted. There is uncertainty, too, regarding employees' attitudes to the additional measures to bring costs down and improve productivity which may be proposed in coming years. In general, the change in 'business culture' involved in the transition from a public institution with a monopoly to a company with no government backing operating in a market economy is likely to be hard to manage.

- (27) The latest amendments made by the Italian authorities to the restructuring plan in June 1997, as notified to the Commission on 26 June, are not such as to invalidate the calculation of the hurdle rate. In addition to the Italian authorities' decision that Alitalia should bear employees' early retirement costs, the amendments include taking faster action to cut company expenditure by transferring Alitalia personnel to Alitalia Team more quickly than anticipated, reducing the total amount of the capital injection from ITL 2 800 to ITL 2 750 billion, and releasing Alitalia's shares in the Hungarian company, Malev, and in six regional Italian airports. While they undoubtedly reduce the inherent risks of the operation and increase the rate of return on the capital injection, these amendments are nonetheless not very significant and have far less impact than the earlier amendments by the Italian authorities to the restructuring plan in February 1997. Indeed, the June 1997 amendments have very little impact on the main results of the plan and on the expected share dividends. Financial forecasts updated to take account of these amendments show that their effects may be summed up as follows:

	1997	1998	1999	2000
Annual results	—	+ 8,9 %	+ 3,4 %	+ 2,5 %
Gross operating profit ⁽¹⁾	+ 34,2 % ⁽²⁾	– 1 %	+ 1 %	+ 1,8 %
Net profit	+ 6,7 %	– 1 %	+ 1,4 %	+ 1,9 %
Dividends	+ 6,3 %	– 1 %	+ 1,2 %	+ 1,9 %

⁽¹⁾ Result before tax and before extraordinary income and expenditure.

⁽²⁾ The deficit was reduced from ITL 38 billion to just ITL 25 billion, a 34,5 % improvement.

- (28) In this respect, it is worth adding that in 2000 Alitalia's indebtedness, and the ratio of debt to equity (gearing ratio), is not significantly different. This, however, is precisely the data which an investor would see as crucially important when assessing the risks he would be incurring by financing the operation. The changes made to the restructuring plan in June 1997 thus have a virtually negligible impact on any assessment made by an investor guided purely by commercial criteria, considering that the inherent risks of the operation, as described above, continue to exist.
- (29) The amendments to the restructuring plan made by the Italian authorities in June 1997 and, more especially, in February 1997, suggest instead, as the Commission concluded in paragraph VIII of the 1997 decision, that the restructuring plan now is such as to enable Alitalia within a reasonable time period to become viable in the economic context in which it has to operate, particularly in view of the fact that the restructuring plan, as amended, is based on more modest growth predictions than those first notified to the Commission on 29 July 1996. In this respect, it is worth pointing out that the issue of the firm's long-term financial and economic profitability is quite distinct from the type of profitability sought by an investor.

- (30) The 30 % rate determined for Alitalia is identical to the rate established by the Commission in the Iberia case, which, as the Court of First Instance rightly pointed out, is bound to set a precedent. In this respect, the Commission considers that the risks inherent in the capital injection to Alitalia in July 1997 are at least as high as those involved in the capital injection received by Iberia in January 1996 for, while Alitalia and Iberia do not share exactly identical situations, both firms display very similar characteristics: they are comparable in scale, with a turnover of approximately EUR 4 billion in 1995, they operate in the same sector of the economy in a context of ongoing liberalisation within the Community, their internal market is not at the geographical centre of Europe and they have recorded systematic losses throughout the years prior to the capital injection. Furthermore, at the time of the capital injection, both Iberia and Alitalia are in dire financial straits characterised by high indebtedness and a virtually zero level of capital assets. The amounts of the capital injections in question are different, however, with Alitalia receiving EUR 1,42 billion and Iberia EUR 0,522 billion, a point which only adds to the inherent risks of the Alitalia recapitalisation plan from an investor's point of view.
- (31) If the comparison between the Alitalia and Iberia restructuring plans notified to the Commission is pursued further, it becomes apparent that Iberia's productivity is less than Alitalia's and the Spanish company experiences uncertainties inherent in the effects of liberalisation of the ground handling market in Spain, a sector in which the company is prominent. However, ground handling operations account for only 13 % of Iberia's turnover, a proportion which is still less if the whole group is taken into account. Moreover, a hypothetical investor would see the risk factors involved in Iberia's situation as being more than outweighed by the twofold uncertainty of Alitalia's situation with regard to the conditions of the company's development at Malpensa Airport (a key part of the plan) and with regard to the effects of the liberalisation of Italy's internal civil aviation market. The Spanish internal civil aviation market was actually liberalised several years before the Italian internal market and, in 1996, it is already possible to see its impact on Iberia, whilst in 1997 the effects of the liberalisation of the Italian internal market on Alitalia are still very hard to identify. It should be added that Iberia has a privileged position in the market for routes between Europe and Latin America, whilst Alitalia has no such advantage. Another feature the two companies have in common, from an investor's point of view, is their social situation. The investor would no doubt observe that, in both cases, both sides of industry have made commitments to a certain extent to accepting improvements in productivity and reductions in production costs, but would consider more importantly the social disputes experienced by both airlines in the years leading up to the capital injection as well as the challenge facing both companies of transforming their business culture, adapting the characteristics of a public body that has enjoyed a long period of monopoly to the new market conditions. It should also be noted that, in both cases, doubts remain as to the existence and the arrangements for intervention in future by outside partners which still have to be selected.
- (32) Finally, it is worth pointing out that in the air transport sector, historically, the very high rate of return of 30 % per year is justified in the experience of firms which have dealt with situations analogous to those which Alitalia faced in 1996 and 1997. For example, a number of the most important American airlines have had to face up to serious problems in the early 1990s before producing sizeable profits after 1995 and seeing their value increase considerably at the same time. The most spectacular example of this was the company Continental Airlines which between 1990 and 1993 took advantage of chapter 11 of the American law on bankruptcy and in which Air Partners and Air Canada invested USD 450 million in November 1992. Following the success of the firm's restructuring plans, particularly the 'Go Forward Plan', the company's share price increased fifteen-fold between December 1994 and May 1998, rewarding investors with an annual return of

considerably more than 30 % over that period. In November 1998 Air Partners sold off the shares in Continental Airlines which it had purchased for USD 55 million at a price of USD 430 million, thus gaining, even without dividend payments, an annual return on the investment over a six-year period in excess of 40 %.

- (33) In conclusion, the Commission decided that the annual minimum rate of return (hurdle rate) which an investor acting according to commercial principles would require in such circumstances in order to give Alitalia a capital injection of ITL 2 750 billion was higher than the internal rate of return for such an operation as already defined (recital 23). Indeed this conclusion is confirmed by the fact that no private investor agreed to take part in the operation.
- (34) It should also be pointed out that the bulk of the capital input, or ITL 2 000 billion of the total ITL 2 750 billion, had to be made over as early as summer 1997, when implementation of the restructuring plan was scheduled to start. This factor increases the specific risks of the operation, since a private investor faced with a comparable situation would at an initial stage tend instead to input only the minimum capital necessary to keeping the company afloat and would pay the remainder only in due course when tangible evidence of a lasting recovery was forthcoming.

CONCLUSION

- (35) The above considerations comply with the requirements of the Court of First Instance for clear reasoning and the three reasons that it gave for the annulment of the decision. Firstly, the manifest error of assessment consisting of the failure to include insolvency costs in the calculation has been remedied now that the insolvency costs are considered as positive cash flow (see recital 20). Secondly, the manifest error of assessment consisting of the failure to take account of the latest amendments to the plan in June 1997 in calculating the internal rate of return and assessing the minimum rate has been remedied, as those amendments have now been duly incorporated into the new calculation of the internal rate of return and the new assessment of the minimum rate which the Commission has carried out (see recitals 19 to 23 and 24 to 32, respectively). Thirdly, this decision complies with the requirement to present a clear statement of reasons on the point where the 1997 decision was deficient, namely determination of the minimum rate, since all the factors that led the Commission to set the value of the minimum rate at 30 %, as in the Iberia case, have now been explained in detail (recitals 24 to 32). In addition, the Commission's reasoning is presented in a clear and unambiguous manner so as to enable the European judge to exercise due judicial control and to enable interested parties to identify the reasons for the Commission's assessment for the purpose of defending their own rights.
- (36) As to the remaining reasoning for this decision, particularly with regard to the compatibility of the aid, the Commission makes reference to the relevant paragraphs of the statement of reasons in the 1997 Decision, which should be deemed to form an integral part of this decision without the need to reproduce them in their entirety.
- (37) The Commission further notes that the annulment of the 1997 decision eliminates the legal basis for the Commission Decision adopted on 3 June 1998 concerning the payment of the second instalment of restructuring aid to Alitalia. It is logical, therefore, not to object in this instance to the payment of the instalment in question. In this respect, the Commission makes reference to the reasons given in the letter sent to the Italian authorities on 16 June 1998 ⁽¹⁷⁾, which should also be deemed to form an integral part of this decision without the need to reproduce it in its entirety,

⁽¹⁷⁾ OJ C 290, 18.9.1998, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by Italy to the company Alitalia Linee Aeree Italiane SpA in the form of a capital injection of ITL 2 750 billion, payable in three instalments, intended to cover the restructuring of the company in accordance with the plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997, is compatible with the common market and the EEA Agreement pursuant to Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement, subject to compliance with the obligations and conditions laid down in Articles 1, 2 and 3 of Decision 97/789/EC, as quoted in recital 1 of this Decision.

Article 2

The Commission has no objection to the payment of the second instalment of the capital injection to the company Alitalia Linee Aeree Italiane SpA.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 July 2001.

For the Commission

Loyola DE PALACIO

Vice-President

COMMISSION DECISION**of 11 October 2001****terminating the review of Council Regulation (EC) No 1599/1999 imposing a definitive countervailing duty on imports of stainless steel wires with a diameter of 1 mm or more originating in India**

(notified under document number C(2001) 3041)

(2001/724/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 20 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EC) No 1599/1999 ⁽²⁾, the Council imposed a definitive countervailing duty on imports of stainless steel wires with a diameter of 1 mm and more ('the product concerned') falling within CN code ex 7223 00 19, originating in India. The measures took the form of *ad valorem* duties of between 0 and 48,8 % on individual exporters, with a residual duty of 48,8 %.

B. CURRENT PROCEDURE**1. Request for review**

- (2) Subsequent to the imposition of definitive measures, the Commission received a request for the initiation of an accelerated review of Regulation (EC) No 1599/1999, pursuant to Article 20 of Regulation (EC) No 2026/97 ('the basic Regulation'), from two Indian producers based in Bombay, Capico Trading Private Limited and Atlas Stainless Corporation Limited. The companies concerned claimed that they were not related to any other exporters of the product concerned in India and that they had not exported the product concerned during the original period of investigation (1 April 1997 to 31 March 1998). They have further stated that they began exporting the product concerned to the Community after the end of the investigation period, or intended to do so.

2. Initiation of an accelerated review

- (3) The Commission examined the evidence submitted by the Indian exporting producers concerned and considered it sufficient to justify the initiation of a review in

accordance with the provisions of Article 20 of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by a notice in the *Official Journal of the European Communities* ⁽³⁾, an accelerated review of Regulation (EC) No 1599/1999 with regard to the companies concerned and commenced its investigation.

3. Product concerned

- (4) The product covered by the current review is the same product as that under consideration in Regulation (EC) No 1599/1999.

4. Parties concerned

- (5) The Commission officially advised the companies concerned and the Government of India of the initiation of the procedure. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing.

The Commission sent a questionnaire to the companies concerned and received a full reply within the required deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verification visits at the premises of the companies concerned.

5. Investigation period

- (6) The investigation of subsidisation covered the period from 1 January to 31 December 1999 ('the investigation period').

6. Methodology

- (7) The same methodology as that used in the original investigation was applied in the current investigation.

C. RESULTS OF THE INVESTIGATION

- (8) The Commission first examined the status of the companies under investigation in terms of Article 20 of the basic Regulation.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 189, 22.7.1999, p. 1.

⁽³⁾ OJ C 61, 3.3.2000, p. 2.

1. Capico Trading Private Ltd

- (9) On 20 July 2000, Capico Trading Private Ltd reported to the Commission that it was withdrawing its request for review. The company based this on the fact, which was verified in the investigation, that it had not exported the product concerned to the Community and that its intention to export to the Community had not been realised. The Commission therefore considers it appropriate to terminate this review in relation to Capico Trading Private Ltd.

2. Atlas Stainless Corporation

- (10) Atlas Stainless Corporation was established around the time of the imposition of definitive measures and registered for sales tax at around the same time. The investigation revealed that the company itself did not produce the product concerned. In fact, its involvement with this product was via a company called Venus Wire Industries Ltd, which produced small quantities on behalf of Atlas Stainless Corporation. Atlas Stainless Corporation has a 'job worker' contract with Venus Wire Industries Ltd, whereby Venus Wire Industries Ltd processes raw material into the product concerned on behalf of Atlas Stainless Corporation for receiving a fee. This contract was agreed on 25 July 1999, i.e. three days after the imposition of definitive measures. Venus Wire Industries Ltd. itself was investigated during the original investigation and is subject to an individual countervailing duty rate of 35,4 %.
- (11) The agreement between Venus Wire Industries Ltd and Atlas Stainless Corporation stipulates a fixed price per kilogram of finished product for processing raw material into the product concerned. As regards payment of excise duty on goods domestically sold, Venus Wire Industries Ltd is, unlike Atlas Stainless Corporation, registered as a manufacturer and can claim an indirect tax 'Modvat' back on its purchases of for example raw materials. There is an agreement between the two companies, whereby Venus Wire Industries Ltd claims back the Madvat on the domestically bought raw materials on behalf of Atlas Stainless Corporation. Moreover, the founder of Atlas Stainless Corporation previously worked as the President of Venus Wire Industries Ltd looking into production at the plant.
- (12) In addition, Atlas Stainless Corporation only exported one shipment, of around 1 500 kg, to the EU during the investigation period. The shipment concerned was made solely for trial purposes for an importer in the EU, who stated that he only intended to try out the product concerned to test its quality. The importer was a previous customer of Venus Wire Industries Ltd.
- (13) Based on the facts verified during the investigation, it was considered that Atlas Stainless Corporation cannot be granted newcomer status since it is not an 'exporter' in the meaning of Article 20 of the basic Regulation. While Atlas Stainless Corporation was the owner of the product exported to the EU, its one and only export transaction during the investigation period does not

constitute true 'export' in the meaning of Article 20 of the basic Regulation. In addition, Atlas Stainless Corporation made the job worker agreement with Venus Wire Industries Ltd just after the imposition of definitive measures, and the fact that this arrangement was set up at this time by the former President of Venus Wire Industries Ltd gives rise to serious doubts about the true motives of the operation; in fact, the investigation established that Atlas Stainless Corporation has no production facilities and, even more importantly, no significant commercial activities on either the domestic or any other export markets. On the basis of all the evidence, the Commission considered that Atlas Stainless Corporation has not demonstrated that it is an 'exporter' eligible for an individual duty under Article 20 of the basic Regulation.

Comments from interested parties and Commission's response

- (14) Having been informed of the facts and considerations on the basis of which it is intended to terminate this review, Atlas Stainless Corporation and the Government of India gave the following arguments:
- (15) Atlas Stainless Corporation argued that although it does not own a manufacturing plant, it owns the raw materials and has a job worker contract with Venus Wire, where it paid the conversion charges to job workers as per contract. For this reason, it claimed it should be considered as manufacturer of the exported product. Moreover, Atlas Stainless Corporation argued that it used the plant facilities of Venus Wire Industries Ltd for specific purposes, and that it had a normal commercial business relationship with Venus Wire Industries Ltd.
- (16) As explained above, the Commission does not contest that Atlas was the owner of one shipment of the product exported to the EU. However, it has concluded that the nature of Atlas' operation during the investigation period does not lend itself to a conclusion that it is a genuine producer/exporter which should have an individual duty. Additionally, countervailing measures would be rendered completely ineffective if it were possible for companies (such as Atlas Stainless Corporation), which operate through job worker contracts, to have an individual duty, without reference to the original producer of the product, which may itself be subject to an individual duty. Atlas Stainless Corporation's relationship with Venus Wire Industries Ltd, which includes certain operational links between the companies, and the timing of the establishment of Atlas Stainless Corporation, merely strengthen this conclusion.
- (17) The Government of India (GOI) referred to a review request in an anti-dumping proceeding carried out by the US Department of Commerce (DOC) in favour of Atlas Stainless Corporation as regards imports of stainless steel bars. In this regard, the Commission notes that actions of investigating authorities in non-member countries have, by themselves, no bearing on this proceeding.

- (18) Moreover, the GOI claimed that the company had offered a price undertaking and that, in the light of Article 15 of the WTO Agreement on the Implementation of Article VI of GATT 1994, special regard must be given to developing country members. In this respect, it is noted that the WTO Agreement on subsidies and countervailing measures does not contain a provision corresponding to Article 15 of the WTO Agreement on the implementation of Article VI of GATT 1994. In any case, no such undertaking has been offered by Atlas Stainless Corporation.
- (19) Therefore it is considered fitting to reject the application for newcomer status and to terminate this review without amending the measures in force,

HAS ADOPTED THIS DECISION:

Sole Article

The accelerated review of Regulation (EC) No 1599/1999 concerning imports of stainless steel wires with a diameter of 1 mm or more originating in India is hereby terminated.

Done at Brussels, 11 October 2001.

For the Commission

Pascal LAMY

Member of the Commission
