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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 752/2003
of 29 April 2003
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 1947/2002 ⁽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 30 April 2003.

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

Done at Brussels, 29 April 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 29 April 2003 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	74,2
	204	91,4
	212	120,5
	999	95,4
0707 00 05	052	138,6
	068	110,0
	096	51,8
	204	97,2
	628	143,3
	999	108,2
0709 90 70	052	100,2
	204	95,7
	999	98,0
0805 10 10, 0805 10 30, 0805 10 50	052	98,8
	204	39,7
	220	29,4
	600	43,1
	624	62,6
	999	54,7
0805 50 10	400	65,0
	999	65,0
0808 10 20, 0808 10 50, 0808 10 90	060	64,5
	388	78,2
	400	107,2
	404	112,7
	508	80,7
	512	85,5
	524	72,9
	528	79,6
	720	130,1
	804	111,2
	999	92,3
0808 20 50	388	76,1
	512	81,1
	528	69,5
	999	75,6

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 753/2003
of 29 April 2003
amending Regulation (EC) No 98/2003 as regards the number of pigs intended to support livestock
farming in the French overseas departments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom) ⁽¹⁾, and in particular Article 6(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 98/2003 of 20 January 2003 establishing the supply balances and Community aid for the supply of certain essential products for human consumption, for processing and for agricultural inputs and for the supply of live animals and eggs to the outermost regions under Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 ⁽²⁾, as last amended by Regulation (EC) No 457/2003 ⁽³⁾, establishes the number of animals qualifying for aid based on the provisional forecasts for 2003.

- (2) In order to develop the production potential of the French overseas departments and satisfy the increase in local demand, the number of breeding pigs should be increased.

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

HAS ADOPTED THIS REGULATION:

Article 1

Part 3 of Annex II to Regulation (EC) No 98/2003 is replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 29 April 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 198, 21.7.2001, p. 11.

⁽²⁾ OJ L 14, 21.1.2003, p. 32.

⁽³⁾ OJ L 69, 13.3.2003, p. 21.

ANNEX

Part 3*Pig farming*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Department	Quantity	Aid (EUR/animal)
Breeding pigs:				
— female animals	0103 10 00, ex 0103 91 10, ex 0103 92 19	Total	228	380
— male animals	0103 10 00, ex 0103 91 10, ex 0103 92 19	Total	35	440'

COMMISSION REGULATION (EC) No 754/2003**of 29 April 2003****amending Regulation (EC) No 174/1999 laying down detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 31(3) thereof,

Whereas:

- (1) The Memorandum of Understanding concluded between the European Community and the Dominican Republic, approved by Council Decision 98/486/EC ⁽³⁾, provides for a quota for milk powder exported to the Dominican Republic. As the products exported under this quota are subject to a reduced rate of import duty by virtue of the Memorandum of Understanding, and the operators involved benefit from special arrangements ensuring them some price stability, Commission Regulation (EC) No 174/1999 ⁽⁴⁾, as last amended by Regulation (EC) No 186/2003 ⁽⁵⁾, lays down a lower refund rate for these products than that applicable to the products exported outside this quota.
- (2) The growing difference in the market price for milk powder on the internal and external markets and the growth in demand and prices in the Dominican Republic require the refund rates applying to this scheme to be amended.

(3) Regulation (EC) No 174/1999 should be amended as a result.

(4) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Article 20a(8) of Regulation (EC) No 174/1999 is hereby replaced by the following:

‘8. The refund rate for products intended for export to the Dominican Republic under the quota referred to in paragraph 1 shall be the following percentages of the rate fixed by the Commission in accordance with Article 31(3) of Regulation (EC) No 1255/1999 and applicable on the first day of the lodgement period for the licence applications referred to in paragraph 7:

- (a) 65 % for products falling within CN code 0402 10;
- (b) 80 % for products falling within CN codes 0402 21 and 0402 29.’

Article 2

This Regulation shall enter into force on 1 May 2003.

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

Done at Brussels, 29 April 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 218, 6.8.1998, p. 45.

⁽⁴⁾ OJ L 20, 27.1.1999, p. 8.

⁽⁵⁾ OJ L 27, 1.2.2003, p. 11.

COMMISSION REGULATION (EC) No 755/2003
of 29 April 2003
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

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⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, 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 711/2003 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 711/2003 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,

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 711/2003 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 2003.

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

Done at Brussels, 29 April 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 104, 25.4.2003, p. 5.

ANNEX

REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	41,35 ⁽¹⁾
1701 11 90 9910	S00	EUR/100 kg	41,35 ⁽¹⁾
1701 12 90 9100	S00	EUR/100 kg	41,35 ⁽¹⁾
1701 12 90 9910	S00	EUR/100 kg	41,35 ⁽¹⁾
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,4495
1701 99 10 9100	S00	EUR/100 kg	44,95
1701 99 10 9910	S00	EUR/100 kg	44,95
1701 99 10 9950	S00	EUR/100 kg	44,95
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,4495

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.).

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999) and the former Yugoslav Republic of Macedonia, save for sugar incorporated in the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

⁽¹⁾ This amount is applicable to raw sugar with a yield of 92 %. Where the yield for exported raw sugar differs from 92 %, the refund amount applicable shall be calculated in accordance with Article 28(4) of Regulation (EC) No 1260/2001.

COMMISSION REGULATION (EC) No 756/2003**of 29 April 2003****fixing the export refunds on syrups and certain other sugar products 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⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(d) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Article 3 of Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽³⁾, provides that the export refund on 100 kilograms of the products listed in Article 1(1)(d) of Regulation (EC) No 1260/2001 is equal to the basic amount multiplied by the sucrose content, including, where appropriate, other sugars expressed as sucrose; the sucrose content of the product in question is determined in accordance with Article 3 of Commission Regulation (EC) No 2135/95.
- (3) Article 30(3) of Regulation (EC) No 1260/2001 provides that the basic amount of the refund on sorbose exported in the natural state must be equal to the basic amount of the refund less one hundredth of the production refund applicable, pursuant to Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry ⁽⁴⁾ to the products listed in the Annex to the last mentioned Regulation;
- (4) According to the terms of Article 30(1) of Regulation (EC) No 1260/2001, the basic amount of the refund on the other products listed in Article 1(1)(d) of the said Regulation exported in the natural state must be equal to one-hundredth of an amount which takes account, on

the one hand, of the difference between the intervention price for white sugar for the Community areas without deficit for the month for which the basic amount is fixed and quotations or prices for white sugar on the world market and, on the other, of the need to establish a balance between the use of Community basic products in the manufacture of processed goods for export to third countries and the use of third country products brought in under inward-processing arrangements.

- (5) According to the terms of Article 30(4) of Regulation (EC) No 1260/2001, the application of the basic amount may be limited to some of the products listed in Article 1(1)(d) of the said Regulation.
- (6) Article 27 of Regulation (EC) No 1260/2001 makes provision for setting refunds for export in the natural state of products referred to in Article 1(1)(f) and (g) and (h) of that Regulation; the refund must be fixed per 100 kilograms of dry matter, taking account of the export refund for products falling within CN code 1702 30 91 and for products referred to in Article 1(1)(d) of Regulation (EC) No 1260/2001 and of the economic aspects of the intended exports; in the case of the products referred to in the said Article 1(1)(f) and (g), the refund is to be granted only for products complying with the conditions in Article 5 of Regulation (EC) No 2135/95; for the products referred to in Article 1(1)(h), the refund shall be granted only for products complying with the conditions in Article 6 of Regulation (EC) No 2135/95.
- (7) The abovementioned refunds must be fixed every month; they may be altered in the intervening period.
- (8) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (9) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial in nature.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 214, 8.9.1995, p. 16.

⁽⁴⁾ OJ L 178, 30.6.2001, p. 63.

- (10) In order to prevent any abuses associated with the reimportation into the Community of sugar sector products that have qualified for export refunds, refunds for the products covered by this Regulation should not be fixed for all the countries of the western Balkans.
- (11) In view of the above, refunds for the products in question should be fixed at the appropriate amounts.
- (12) 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 export refunds on the products listed in Article 1(1)(d)(f)(g) and (h) of Regulation (EC) No 1260/2001, exported in the natural state, shall be set out in the Annex hereto to this Regulation.

Article 2

This Regulation shall enter into force on 1 May 2003.

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

Done at Brussels, 29 April 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

EXPORT REFUNDS ON SYRUPS AND CERTAIN OTHER SUGAR PRODUCTS EXPORTED WITHOUT FURTHER PROCESSING

Product code	Destination	Unit of measurement	Amount of refund
1702 40 10 9100	S00	EUR/100 kg dry matter	44,95 ⁽¹⁾
1702 60 10 9000	S00	EUR/100 kg dry matter	44,95 ⁽¹⁾
1702 60 80 9100	S00	EUR/100 kg dry matter	85,41 ⁽²⁾
1702 60 95 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4495 ⁽³⁾
1702 90 30 9000	S00	EUR/100 kg dry matter	44,95 ⁽¹⁾
1702 90 60 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4495 ⁽³⁾
1702 90 71 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4495 ⁽³⁾
1702 90 99 9900	S00	EUR/1 % sucrose × net 100 kg of product	0,4495 ⁽³⁾ ⁽⁴⁾
2106 90 30 9000	S00	EUR/100 kg dry matter	44,95 ⁽¹⁾
2106 90 59 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4495 ⁽³⁾

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).

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are defined as follows:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999) and the former Yugoslav Republic of Macedonia, except for sugar incorporated into the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

⁽¹⁾ Applicable only to products referred to in Article 5 of Regulation (EC) No 2135/95.

⁽²⁾ Applicable only to products referred to in Article 6 of Regulation (EC) No 2135/95.

⁽³⁾ The basic amount is not applicable to syrups which are less than 85 % pure (Regulation (EC) No 2135/95). Sucrose content is determined in accordance with Article 3 of Regulation (EC) No 2135/95.

⁽⁴⁾ The basic amount is not applicable to the product defined under point 2 of the Annex to Commission Regulation (EEC) No 3513/92 (OJ L 355, 5.12.1992, p. 12).

COMMISSION REGULATION (EC) No 757/2003**of 29 April 2003****fixing the production refund on white sugar used in the chemical industry**

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⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 7(5) thereof,

Whereas:

- (1) Pursuant to Article 7(3) of Regulation (EC) No 1260/2001, production refunds may be granted on the products listed in Article 1(1)(a) and (f) of that Regulation, on syrups listed in Article 1(1)(d) thereof and on chemically pure fructose covered by CN code 1702 50 00 as an intermediate product, that are in one of the situations referred to in Article 23(2) of the Treaty and are used in the manufacture of certain products of the chemical industry.
- (2) Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry ⁽³⁾ lays down the rules for determining the production refunds and specifies the chemical products the basic products used in the manufacture of which attract a production refund. Articles 5, 6 and 7 of Regulation (EC) No 1265/2001 provide that the production refund applying to raw sugar, sucrose syrups and unprocessed isoglucose is to be derived from the refund fixed for white sugar in accordance with a method of calculation specific to each basic product.
- (3) Article 9 of Regulation (EC) No 1265/2001 provides that the production refund on white sugar is to be fixed at monthly intervals commencing on the first day of

each month. It may be adjusted in the intervening period where there is a significant change in the prices for sugar on the Community and/or world markets. The application of those provisions results in the production refund fixed in Article 1 of this Regulation for the period shown.

- (4) As a result of the amendment to the definition of white sugar and raw sugar in Article 1(2)(a) and (b) of Regulation (EC) No 1260/2001, flavoured or coloured sugars or sugars containing any other added substances are no longer deemed to meet those definitions and should thus be regarded as 'other sugar'. However, in accordance with Article 1 of Regulation (EC) No 1265/2001, they attract the production refund as basic products. A method should accordingly be laid down for calculating the production refund on these products by reference to their sucrose content.
- (5) 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 production refund on white sugar referred to in Article 4 of Regulation (EC) No 1265/2001 shall be equal to 41,622 EUR/100 kg net.

Article 2

This Regulation shall enter into force on 1 May 2003.

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

Done at Brussels, 29 April 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 178, 30.6.2001, p. 63.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 April 2003

on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions

(2003/298/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300(2), first subparagraph, first sentence, thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part⁽¹⁾ (hereinafter referred to as 'the Europe Agreement'), provides for certain reciprocal trade concessions for certain agricultural products.
- (2) Article 21(5) of the Europe Agreement provides that the Community and the Czech Republic shall examine product by product and on an orderly and reciprocal basis the possibilities of granting each other further concessions.
- (3) The first improvements to the preferential arrangements of the Europe Agreement were provided for in the Protocol adjusting trade aspects of the Europe Agreement to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential arrangements, approved by Council Decision 98/707/EC⁽²⁾.
- (4) Improvements to the preferential arrangements were also provided for as a result of negotiations to liberalise agricultural trade concluded in 2000. On the Community side, these improvements were implemented from 1 July

2000 by Council Regulation (EC) No 2433/2000 of 17 October 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with the Czech Republic⁽³⁾. This second adjustment of the preferential arrangements has not yet been incorporated in the Europe Agreement in the form of an Additional Protocol.

- (5) Negotiations for further improvements to the preferential arrangements of the Europe Agreement were concluded on 3 May 2000 and on 6 June 2002.
- (6) The new Additional Protocol to the Europe Agreement adjusting the trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part (hereinafter referred to as 'the Protocol'), should be approved with a view to consolidating all concessions in agricultural trade between the two sides, including the results of the negotiations concluded in 2000 and 2002.
- (7) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽⁴⁾ has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Certain tariff quotas under this Decision should therefore be administered in accordance with those rules.

⁽¹⁾ OJ L 360, 31.12.1994, p. 2.

⁽²⁾ OJ L 341, 16.12.1998, p. 2.

⁽³⁾ OJ L 280, 4.11.2000, p. 1.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1; Regulation last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).

- (8) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (9) As a result of the aforementioned negotiations, Regulation (EC) No 2433/2000 has effectively lost its substance and should therefore be repealed,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions, is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Protocol on behalf of the Community and give the notification of approval provided for in Article 3 of the Protocol.

Article 3

1. Upon this Decision taking effect, the arrangements provided for in the Annexes of the Protocol shall replace those referred to in Annexes XI and XII as referred to in Article 21(2) and (4), as amended, of the Europe Agreement.

2. The Commission shall adopt rules for the application of the Protocol in accordance with the procedure referred to in Article 6(2).

Article 4

1. The order numbers as attributed to the tariff quotas in the Annex to this Decision may be changed by the Commission in accordance with the procedure referred to in Article 6(2). Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

2. Quantities of goods subject to tariff quotas and released for free circulation as from 1 July 2002 under the concessions provided for in Annex A(b) to Regulation (EC) No 2433/2000 shall be fully counted against the quantities provided for in the fourth column in Annex A(b) to the Protocol, except for quantities for which import licences were issued before 1 July 2002.

Article 5

Entitlement to the benefit from the Community tariff quota for wine referred to in the Annex to this Decision and in Annex C to the Protocol shall be subject to the presentation of a V I 1 document or a V I 2 extract in accordance with Commission Regulation (EC) No 883/2001 of 24 April 2001 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector ⁽²⁾.

Article 6

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽³⁾ or, where appropriate, by the committee instituted by the relevant provisions of the other regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its Rules of Procedure.

Article 7

Regulation (EC) No 2433/2000 is hereby repealed from the entry into force of the Protocol.

Done at Brussels, 14 April 2003.

For the Council

The President

A. GIANNITSIS

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 128, 10.5.2001, p. 1; Regulation as last amended by Regulation (EC) No 2380/2002 (OJ L 358, 31.12.2002, p. 117).

⁽³⁾ OJ L 181, 1.7.1992, p. 21.

ANNEX

Order Nos for EU tariff quotas for products originating in the Czech Republic

(as referred to in Article 4)

Quota order No	CN code	Description
09.4598	0102 90 05	Live bovine animals of a live weight not exceeding 80 kg
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg
09.4563	ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau
09.4625	0103 91 10 0103 92 19	Live swine, domestic species
09.4575	0104 10 30 0104 10 80 0104 20 90 0204	Live sheep or goats Meat of sheep or goats
09.4623	0201 0202	Meat of bovines, fresh, chilled or frozen
09.4626	ex 0203 0210 11 to 0210 19	Meat of domestic swine, fresh, chilled or frozen Meat of swine, salted, in brine, dried or smoked
09.5851	0207	Poultry, fresh, chilled or frozen
09.4611	0402	Milk powder and condensed milk
09.4636	0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Buttermilk and yoghurts and other fermented or acidified milk and cream
09.4637	0404	Whey and products consisting of natural milk constituents
09.4612	ex 0405	Butter and other fats and oils derived from milk excluding CN codes 0405 20 10 and 0405 20 30
09.4613	0406	Cheese and curd
09.5875	0408 11 80 0408 19 81 0408 19 89	Egg yolks, dried Egg yolks, liquid Egg yolks, frozen

Quota order No	CN code	Description
09.5876	0408 91 80	Birds' eggs, dried
	0408 99 80	Birds' eggs, other
09.5645	0603 10 10	Cut flowers and flower buds, fresh
	0603 10 20	
	0603 10 40	
	0603 10 50	
	0603 10 80	
09.5286	0808 10 20	Apples, fresh
	0808 10 50	
	0808 10 90	
09.5287	0811 10 11	Fruit and nuts
	0811 20 11	
	0811 90 11	
	0811 90 19	
	0811 90 85	
09.4638	1001	Wheat and meslin
09.5877	1002	Rye
09.5878	1003	Barley
09.5879	1004	Oats
09.4639	1005 10 90	Maize
	1005 90 00	
09.5880	1008	Buckwheat, millet and canary seed, other cereals
09.4618	1101 00	Wheat and meslin flour
09.4619	1107	Malt
09.5289	1512 11 10	Sunflower seed or safflower oil and fractions thereof
		Crude oil, for technical and industrial uses
09.5579	1514 11 10	Crude rapeseed, colza or mustard oil other than for human consumption
	1514 91 10	
09.4629	1601 00	Sausages and similar products
	1602 41 to 1602 49	Prepared or preserved meat of swine
09.5852	1602 31 to 1602 39	Prepared or preserved meat of poultry
09.5537	2001 10 00	Cucumbers, preserved
09.5763	2007 10 10	Homogenised preparations with a sugar content exceeding 13 % by weight

Quota order No	CN code	Description
09.5765	2009 11 19	Fruit juices
	2009 11 99	
	2009 12 00	
	2009 19 19	
	2009 19 98	
	2009 21 00	
	2009 29 19	
	2009 29 99	
	2009 31 19	
	2009 31 51	
	2009 31 59	
	2009 31 91	
	2009 31 99	
	2009 39 19	
	2009 39 39	
	2009 39 55	
	2009 39 59	
	2009 39 95	
	2009 39 99	
	2009 41 91	
	2009 41 99	
	2009 49 19	
	2009 49 93	
	2009 49 99	
	2009 61 10	
	2009 61 90	
	2009 69 11	
	2009 69 19	
	2009 69 51	
	2009 69 59	
	2009 69 90	
09.5539	2009 79 11	Apple juice
	2009 79 91	
09.5851	ex 2204 10 ⁽¹⁾	Sparkling wine
	ex 2204 21 ⁽¹⁾	Wine of fresh grapes
	ex 2204 29 ⁽¹⁾	

⁽¹⁾ TARIC codes: 2204 10 19 91; 2204 10 19 99; 2204 10 99 91; 2204 10 99 99; 2204 21 10 00; 2204 21 79 79; 2204 21 79 80; 2204 21 80 79; 2204 21 80 80; 2204 21 83 10; 2204 21 83 79; 2204 21 83 80; 2204 21 84 10; 2204 21 84 79; 2204 21 84 80; 2204 21 94 10; 2204 21 94 30; 2204 21 98 10; 2204 21 98 30; 2204 21 99 10; 2204 29 65 00; 2204 29 75 10; 2204 29 83 10; 2204 29 83 80; 2204 29 84 10; 2204 29 84 30; 2204 29 94 10; 2204 29 94 30; 2204 29 98 10; 2204 29 98 30; 2204 29 99 10.

PROTOCOL

adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE CZECH REPUBLIC,

of the other part,

Whereas:

- (1) The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part (hereinafter referred to as 'the Europe Agreement' was signed in Luxembourg on 4 October 1993 and entered into force on 1 February 1995 ⁽¹⁾).
- (2) Article 21(5) of the Europe Agreement provides that the Community and the Czech Republic shall examine in the Association Council, product by product and on an orderly and reciprocal basis, the possibility of granting each other additional agricultural concessions. On this basis negotiations have been undertaken and were concluded between the parties.
- (3) For the first time, improvements to the preferential agricultural regime of the Europe Agreement were provided for in the Protocol adjusting trade aspects of the Europe Agreement ⁽²⁾ to take account of the last enlargement of the Community and the outcome of the GATT Uruguay Round.
- (4) Two further rounds of negotiations for improved agricultural trade concessions were concluded on 4 May 2000 and 6 June 2002.
- (5) From the one side, the Council decided, by virtue of Council Regulation (EC) No 2433/2000 of 17 October 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with the Czech Republic ⁽³⁾, to apply on a provisional basis, as from 1 July 2000, the Community concessions resulting from the 2000 round of negotiations and from the other side the Government of the Czech Republic took legislative provisions to apply, as from the same date, the equivalent Czech concessions.
- (6) The abovementioned concessions will be supplemented and replaced on the date of entry into force of this Protocol by the concessions provided for herein,

HAVE AGREED AS FOLLOWS:

Article 1

The arrangements for import into the Community applicable to certain agricultural products originating in the Czech Republic as set out in Annexes A(a) and A(b) to this Protocol and the arrangements for import into the Czech Republic applicable to certain agricultural products originating in the Community as set out in Annexes B(a) and B(b) to this Protocol shall replace those set out in Annexes XI and XII as referred to in Article 21(2) and (4), as amended, of the Europe Agreement. The agreement between the Community and the Czech Republic on reciprocal preferential trade concessions for certain wines, set out in Annex C, shall form an integral part of this Protocol.

⁽¹⁾ OJ L 360, 31.12.1994, p. 2.

⁽²⁾ OJ L 341, 16.12.1998, p. 3.

⁽³⁾ OJ L 280, 4.11.2000, p. 1.

Article 2

This Protocol shall form an integral part of the Europe Agreement. The Annexes to this Protocol shall form an integral part thereof.

Article 3

This Protocol shall be approved by the Community and the Czech Republic in accordance with their corresponding procedures. The Contracting Parties shall take the necessary measures to implement this Protocol.

The Contracting Parties shall notify each other of the accomplishment of the abovementioned procedures.

Article 4

Subject to completion of the procedures provided for in Article 3, this Protocol shall enter into force on 1 January 2003. Should these procedures not be completed in time, it shall enter into force on the first day of the first month following the Contracting Parties' notification of the accomplishment of the procedures.

Article 5

This Protocol shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Czech languages, each of these texts being equally authentic.

Hecho en Bruselas, el veintitrés de abril del dos mil tres.

Udfærdiget i Bruxelles den treogtyvende april to tusind og tre.

Geschehen zu Brüssel am dreiundzwanzigsten April zweitausendunddrei.

Έγινε στις Βρυξέλλες, στις είκοσι τρεις Απριλίου δύο χιλιάδες τρία.

Done at Brussels on the twenty-third day of April in the year two thousand and three.

Fait à Bruxelles, le vingt-trois avril deux mille trois.

Fatto a Bruxelles, addì ventitré aprile duemilatre.

Gedaan te Brussel, de drieëntwintigste april tweeduizenddrie.

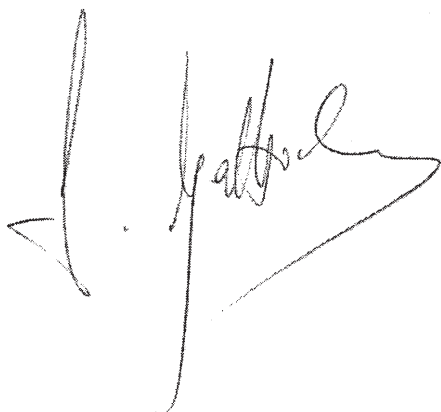
Feito em Bruxelas, em vinte e três de Abril de dois mil e três.

Tehty Brysselissä kahdentenakymmenentenäkolmantena päivänä huhtikuuta vuonna kaksituhattakolme.

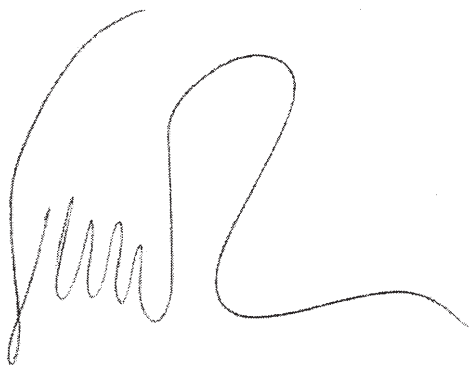
Som skedde i Bryssel den tjugotredje april tjugohundratre.

Dáno v Bruselu dne dvacátého třetího dubna roku dva tisíce tři.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar

A handwritten signature in black ink, appearing to read 'J. P. Kallio', with a long horizontal stroke extending to the right.

za Českou republiku

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

ANNEX A(a)

Custom duties on imports applicable in the Community to products originating in the Czech Republic and listed below shall be abolished

CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾
0101 10 90	0709 59	0807 11 00	0904 12 00	1518 00 31	2009 31 11
0101 90 30	0709 60 10	0807 19 00	0904 20	1518 00 39	2009 39 31
0101 90 90	0709 60 99	0808 10 10	0905 00 00	1603 00 10	2009 41 10
0104 20 10	0709 90 10	0808 20 90	0907 00 00	1605 90 30	2009 49 30
0105 19	0709 90 20	0809 40 90	0910 40 13	1703	2009 50
0106 19 10	0709 90 40	0810 20 90	0910 40 19	2001 90 20	2009 71
0106 39 10	0709 90 50	0810 30 90	0910 40 90	2001 90 50	2009 79 19
0205 00	0709 90 60	0810 40	0910 91 90	2001 90 70	2009 79 30
0206 80 91	0709 90 90	0810 60 00	0910 99 99	2001 90 75	2009 79 93
0206 90 91	0710 10 00	0810 90 95	1105 20 00	2001 90 85	2009 79 99
0208 10 11	0710 80 59	0811 10 19	1106 10 00	2001 90 91	2009 80 19
0208 10 19	0710 80 61	0811 20 59	1106 30	2002	2009 80 36
0208 20 00	0710 80 69	0811 20 90	1208 10 00	2003	2009 80 38
0208 30 00	0710 80 70	0811 90 31	1209 10 00	2005 90 10	2009 80 50
0208 40	0710 80 80	0811 90 39	1209 21 00	2005 90 50	2009 80 63
0208 50 00	0710 80 85	0811 90 50	1209 23 80	2006 00 91	2009 80 69
0208 90 10	0710 80 95	0811 90 70	1209 29 50	2006 00 99	2009 80 71
0208 90 55	0710 90 00	0811 90 75	1209 29 60	2007 91 90	2009 80 73
0208 90 60	0711 30 00	0811 90 80	1209 29 80	2007 99 10	2009 80 79
0208 90 95	0711 40 00	0811 90 95	1209 30 00	2008 11 92	2009 80 88
0210 99 31	0711 51 00	0812 10 00	1209 91	2008 11 94	2009 80 89
0307 91 00	0711 59 00	0812 90 10	1209 99 91	2008 11 96	2009 80 95
0407 00	0711 90 10	0812 90 20	1209 99 99	2008 11 98	2009 80 96
0409 00 00	0711 90 50	0812 90 40	1210	2008 19 19	2009 80 97
0410 00 00	0711 90 80	0812 90 50	1211 90 30	2008 19 93	2009 80 99
0601	0712 20 00	0812 90 60	1212 10 10	2008 19 95	2009 90 19
0602	0712 31 00	0812 90 70	1212 10 99	2008 19 99	2009 90 29
0603 10 30	0712 32 00	0812 90 99	1214 90 10	2008 20 19	2009 90 39
0603 90 00	0712 33 00	0813 10 00	1302 19 05	2008 20 39	2009 90 41
0604	0712 39 00	0813 20 00	1502 00 90	2008 20 51	2009 90 49
0701 10 00	0712 90 05	0813 30 00	1503 00 19	2008 20 59	2009 90 51
0703 10 11	0712 90 30	0813 40 10	1503 00 90	2008 20 71	2009 90 59
0703 10 90	0712 90 50	0813 40 30	1511 10 90	2008 20 79	2009 90 73
0703 20 00	0712 90 90	0813 40 95	1511 90 19	2008 20 91	2009 90 79
0704 90 10	0713 50 00	0813 50 15	1511 90 91	2008 20 99	2009 90 95
0705 19 00	0713 90	0813 50 19	1511 90 99	2008 30 11	2009 90 96
0705 21 00	0802 12 90	0813 50 31	1512 11 91	2008 30 31	2009 90 97
0705 29 00	0802 21 00	0813 50 39	1512 19 91	2008 30 39	2009 90 98
0708 10 00	0802 22 00	0813 50 91	1513 29 19	2008 30 51	2302 50 00
0708 90 00	0802 31 00	0813 50 99	1513 29 91	2008 30 55	2306 90 19
0709 10 00	0802 32 00	0814 00 00	1513 29 99	2008 30 59	2308 00 90
0709 20 00	0802 40 00	0901 12 00	1515 11 00	2008 30 71	
0709 30 00	0802 90 85	0901 21 00	1515 19	2008 30 75	
0709 40 00	0805 10 80	0901 22 00	1515 21	2008 30 79	
0709 51 00	0805 50 90	0901 90 90	1515 29	2008 30 90	
0709 52 00	0806 20	0902 10 00	1515 90 59	2008 92 72	

⁽¹⁾ As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001).

ANNEX A(b)

Imports into the Community of the following products originating in the Czech Republic shall be subject to the concessions set out below

(MFN = most-favoured-nation duty)

CN code ⁽¹⁾	Description ⁽²⁾	Applicable duty ⁽³⁾ ⁽⁴⁾ (% of MFN)	Quantity ⁽⁵⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0101 90 19	Live horses, other than for slaughter	67	Unlimited	Unlimited		
0102 90 05	Live bovine animals of a live weight not exceeding 80 kg	20	178 000 heads	178 000 heads	0	⁽⁵⁾ ⁽¹¹⁾
0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg	20	153 000 heads	153 000 heads	0	⁽⁵⁾ ⁽¹¹⁾
ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau	6 % <i>ad valorem</i>	7 000 heads	7 000 heads	0	⁽⁶⁾ ⁽¹¹⁾
0103 91 10 0103 92 19	Live swine, domestic species	20	1 500	1 500	0	⁽¹¹⁾
0104 10 30 0104 10 80 0104 20 90 0204	Live sheep or goats Meat of sheep or goats	Free	2 150	2 150	0	⁽⁷⁾ ⁽¹¹⁾
0201 0202	Meat of bovines, fresh, chilled or frozen	20	3 500	3 500	0	⁽¹¹⁾
ex 0203	Meat of domestic swine, fresh, chilled or frozen	Free	13 000	14 500	1 500	⁽¹⁰⁾ ⁽¹¹⁾ ⁽¹⁴⁾
0210 11 to 0210 19	Meat of swine, salted, in brine, dried or smoked					⁽¹⁰⁾ ⁽¹¹⁾
0207	Poultry, fresh, chilled or frozen	Free	11 700	13 050	1 350	⁽¹⁰⁾ ⁽¹¹⁾
0402	Milk powder and condensed milk	Free	4 188	5 500	0	⁽¹⁰⁾ ⁽¹¹⁾
0403 10 11 to 0403 10 39 to 0403 90 11 to 0403 90 69	Buttermilk and yoghurts and other fermented or acidified milk and cream	Free	150	300	0	⁽¹⁰⁾
0404	Whey and products consisting of natural milk constituents	Free	300	600	0	⁽¹⁰⁾
ex 0405	Butter and other fats and oils derived from milk excluding CN codes 0405 20 10 and 0405 20 30	Free	1 375	1 500	0	⁽¹⁰⁾ ⁽¹¹⁾
0406	Cheese and curd	Free	6 630	7 395	765	⁽¹⁰⁾ ⁽¹¹⁾

CN code ⁽¹⁾	Description ⁽²⁾	Applicable duty ⁽³⁾ ⁽⁴⁾ (% of MFN)	Quantity ⁽⁵⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0408 11 80	Egg yolks, dried	20	375	375	0	⁽¹¹⁾ ⁽¹²⁾
0408 19 81	Egg yolks, liquid					
0408 19 89	Egg yolks, frozen					
0408 91 80	Birds' eggs, dried	20	2 750	2 750	0	⁽¹¹⁾ ⁽¹³⁾
0408 99 80	Birds' eggs, other					
ex 0603 10 10 ex 0603 10 20 ex 0603 10 40 ex 0603 10 50 ex 0603 10 80	Cut flowers and flower buds, fresh (from 1 November to 31 May)	2 % <i>ad valorem</i>	Unlimited	Unlimited		
0603 10 10 0603 10 20 0603 10 40 0603 10 50 0603 10 80	Cut flowers and flower buds, fresh	20	250	250	0	⁽¹¹⁾
ex 0707 00 05	Cucumbers, fresh or chilled (from 16 May to 31 October)	80	Unlimited	Unlimited		⁽⁹⁾
0709 90 70	Fresh or chilled courgettes	Free	Unlimited	Unlimited		⁽⁹⁾
0805 10 10 0805 10 30 0805 10 50	Sweet oranges, fresh	Free	Unlimited	Unlimited		⁽⁹⁾
0808 10 20 0808 10 50 0808 10 90	Apples, fresh	Free	500	500	0	⁽¹¹⁾
0809 20 05 0809 20 95	Cherries	Free	Unlimited	Unlimited		⁽⁹⁾
0809 40 05	Plums	Free	Unlimited	Unlimited		⁽⁹⁾
0810 20 10	Raspberries, fresh	Free	Unlimited	Unlimited		⁽⁸⁾
0810 30 10	Blackcurrants, fresh	Free	Unlimited	Unlimited		⁽⁸⁾
0810 30 30	Redcurrants, fresh	Free	Unlimited	Unlimited		⁽⁸⁾
0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter	Free	Unlimited	Unlimited		⁽⁸⁾
0811 20 19	Frozen raspberries, containing added sugar or other sweetening, with a sugar content not exceeding 13 % by weight	Free	Unlimited	Unlimited		⁽⁸⁾
0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter	Free	Unlimited	Unlimited		⁽⁸⁾

CN code ⁽¹⁾	Description ⁽²⁾	Applicable duty ⁽³⁾ ⁽⁴⁾ (% of MFN)	Quantity ⁽⁵⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter	Free	Unlimited	Unlimited		⁽⁸⁾
0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter	Free	Unlimited	Unlimited		⁽⁸⁾
0811 10 11 0811 20 11 0811 90 11 0811 90 19 0811 90 85	Fruit and nuts	20	500	500	0	
1001	Wheat and meslin	Free	100 000	200 000	0	⁽¹⁰⁾
1002	Rye	Free	5 000	10 000	0	⁽¹⁰⁾
1003	Barley	Free	42 125	50 000	0	⁽¹⁰⁾ ⁽¹¹⁾
1004	Oats	Free	5 000	10 000	0	⁽¹⁰⁾
1005 10 90 1005 90 00	Maize	Free	10 000	20 000	0	⁽¹⁰⁾
1008	Buckwheat, millet and canary seed, other cereals	Free	5 000	10 000	0	⁽¹⁰⁾
1101 00	Wheat and meslin flour	20	16 875	16 875	0	
1107	Malt	Free	45 250	45 250	0	⁽¹⁰⁾ ⁽¹¹⁾
1512 11 10	Sunflower seed or safflower oil and fractions thereof Crude oil, for technical and industrial uses	Free	875	875	0	⁽¹¹⁾
1514 11 10 1514 91 10	Crude rapeseed, colza or mustard oil other than for human consumption	Free	11 375	11 375	0	⁽¹¹⁾
1601 00	Sausages and similar products	Free	3 680	4 370	690	⁽¹⁰⁾ ⁽¹¹⁾
1602 41 to 1602 49	Prepared or preserved meat of swine					
1602 31 to 1602 39	Prepared or preserved meat of poultry	Free	1 300	1 450	150	⁽¹⁰⁾ ⁽¹¹⁾

CN code ⁽¹⁾	Description ⁽²⁾	Applicable duty ⁽³⁾ ⁽⁴⁾ (% of MFN)	Quantity ⁽⁵⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
1602 50 31	Other prepared or preserved meat	65	Unlimited	Unlimited		
1602 50 39	Meat offal or blood of bovine animal, other	65				
1602 50 80		65				
2001 10 00	Cucumbers, preserved	Free	1 300	1 450	150	⁽¹¹⁾
2007 10 10	Homogenised preparations with a sugar content exceeding 13 % by weight	Free	445	500	0	⁽¹⁰⁾ ⁽¹¹⁾
2007 99 31	Cherry jams, jellies, marmalades, purées and pastes with a sugar content exceeding 30 % by weight	83	Unlimited	Unlimited		⁽⁹⁾
2009 11 19	Fruit juices	Free	1 000	1 200	200	⁽¹¹⁾
2009 11 99						
2009 12 00						
2009 19 19						
2009 19 98						
2009 21 00						
2009 29 19						
2009 29 99						
2009 31 19						
2009 31 51						
2009 31 59						
2009 31 91						
2009 31 99						
2009 39 19						
2009 39 39						
2009 39 55						
2009 39 59						
2009 39 95						
2009 39 99						
2009 41 91						
2009 41 99						
2009 49 19						
2009 49 93						
2009 49 99						
2009 61 10						⁽⁹⁾
2009 61 90						
2009 69 11						

CN code ⁽¹⁾	Description ⁽²⁾	Applicable duty ⁽³⁾ ⁽⁴⁾ (% of MFN)	Quantity ⁽⁵⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
2009 69 19 2009 69 51 2009 69 59 2009 69 90						⁽⁹⁾ ⁽⁹⁾ ⁽⁹⁾
2009 79 11 2009 79 91	Apple juice	Free	250	250		⁽⁹⁾

⁽¹⁾ As defined in Commission Regulation (EC) No 2031/2001 of 6 August amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, (OJ L 279, 23.10.2001).

⁽²⁾ Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

⁽³⁾ In cases where a MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

⁽⁴⁾ Only applicable with effect from the date of entry into force of this Protocol.

⁽⁵⁾ The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic. Where it appears likely that total Community imports of live bovine animals may exceed 500 000 heads in a given marketing year the Community may take the management measures needed to protect its market, notwithstanding any other rights given under the Agreement.

⁽⁶⁾ The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic.

⁽⁷⁾ The Community may take into account, in the framework of its legislation and when appropriate the supply needs of its market and the need to maintain its market balance

⁽⁸⁾ Subject to minimum import price arrangements contained in the Annex to the present Annex.

⁽⁹⁾ Applies only to the *ad valorem* part of the duty.

⁽¹⁰⁾ This concession is only applicable to products non-benefiting from any kind of export subsidies.

⁽¹¹⁾ Quantities of goods subject to this existing tariff quota and released for free circulation as from 1 July 2002 before the entry into force of this Protocol shall be fully counted against the quantity provided for in the fourth column and should be submitted to the duty applicable at the moment of import.

⁽¹²⁾ As liquid egg-yolk equivalent: 1 kg dried egg yolks = 2,12 kg liquid eggs.

⁽¹³⁾ As liquid equivalent: 1 kg dried eggs = 3,9 liquid eggs.

⁽¹⁴⁾ Excluding tenderloin presented alone.

ANNEX TO ANNEX A(b)

Minimum import price arrangement for certain soft fruit for processing

1. Minimum import prices are fixed as follows for the following products for processing originating in the Czech Republic:

CN code	Description	Minimum import price (EUR/100 kg net)
ex 0810 20 10	Raspberries, fresh	63,1
ex 0810 30 10	Blackcurrants, fresh	38,5
ex 0810 30 30	Redcurrants, fresh	23,3
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	75,0
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	57,6
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	99,5
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	79,6
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	99,5
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	79,6
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	62,8
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	44,8
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	39,0
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	29,5

2. The minimum import prices, as set out in Article 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.
3. If the import prices of a given product covered by this Annex show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Czech authorities in order to enable them to correct the situation.
4. At the request of either the Community or the Czech Republic, the Association Committee shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Committee shall take the necessary decisions.
5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting will be organised three months before the beginning of each marketing year in the Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, of the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, of the other part.

During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

ANNEX B(a)

Custom duties on imports applicable in the Czech Republic to products originating in the Community and listed below shall be abolished

Czech customs code ⁽¹⁾	Czech customs code ⁽¹⁾	Czech customs code ⁽¹⁾	Czech customs code ⁽¹⁾	Czech customs code ⁽¹⁾	Czech customs code ⁽¹⁾
0101 90 11	0604 91 21	0809 10	0904 20 30	1515 19 90	2008 30 55
0105 19 20	0604 91 29	0809 20 05	0904 20 90	1515 21 10	2008 30 59
0105 19 90	0604 91 41	0809 20 95	0909 30 00	1515 21 90	2008 30 71
0206 10 10	0604 91 49	0809 30	0909 40 00	1515 29 10	2008 30 75
0206 10 91	0604 91 90	0809 40 05	1001 10 00	1515 29 90	2008 30 79
0206 10 99	0604 99 10	0810 20 10	1105 20 00	1515 90 59	2008 30 90
0206 21 00	0604 99 90	0810 20 90	1204 00 90	1518 00 31	2008 50
0206 22 00	0701 10 00	0810 30 10	1206 00 10	1518 00 39	2008 70
0206 29 10	0703 10 11	0810 30 30	1207 50 10	1703 10 00	2008 92 72
0206 29 99	0703 10 90	0810 30 90	1207 50 90	1703 90 00	2008 99 41
0206 30 20	0703 20 00	0810 40 10	1207 91 10	2001 90 20	2008 99 51
0206 30 30	0704 90 10	0810 40 30	1207 91 90	2001 90 50	2009 50 10
0206 30 80	0705 19 00	0810 40 50	1209 10 00	2001 90 65	2009 50 90
0206 41 20	0705 21 00	0810 40 90	1209 21 00	2001 90 70	2009 61
0206 41 80	0705 29 00	0811 10 19	1209 22 10	2001 90 75	2009 71
0206 49 20	0708 10 00	0811 10 90	1209 22 80	2001 90 85	2009 79 19
0206 49 80	0708 90 00	0811 20 19	1209 23 11	2001 90 91	2009 79 30
0206 80 10	0709 51 00	0811 20 31	1209 23 15	2002 10 10	2009 79 93
0206 80 91	0709 60 10	0811 20 39	1209 23 80	2002 10 90	2009 79 99
0206 80 99	0709 60 99	0811 20 51	1209 24 00	2002 90 11	2009 80 19
0206 90 10	0709 90 10	0811 20 59	1209 25 10	2002 90 19	2009 80 36
0206 90 91	0709 90 60	0811 20 90	1209 25 90	2002 90 31	2009 80 38
0206 90 99	0709 90 90	0811 90 31	1209 26 00	2002 90 39	2009 80 50
0407 00 11	0710 80 59	0811 90 39	1209 29 10	2002 90 91	2009 80 63
0407 00 19	0710 80 70	0811 90 50	1209 29 50	2002 90 99	2009 80 69
0407 00 30	0710 80 95	0811 90 70	1209 29 60	2005 60 00	2009 80 71
0407 00 90	0710 90 00	0811 90 75	1209 29 80	2005 90 10	2009 80 73
0409 00 00	0711 40 00	0811 90 80	1210 10 00	2005 90 60	2009 80 79
0410 00 00	0711 90 10	0811 90 85	1210 20 10	2005 90 70	2009 80 88
0601 20 10	0711 90 50	0811 90 95	1210 20 90	2005 90 80	2009 80 89
0601 20 30	0711 90 80	0812 10 00	1302 19 05	2006 00 91	2009 80 96
0601 20 90	0712 20 00	0812 90 10	1502 00 10	2006 00 99	2009 80 97
0602 10 10	0712 90 05	0812 90 40	1502 00 90	2007 99 10	2009 90 19
0602 10 90	0712 90 11	0812 90 50	1503 00	2008 20 19	2009 90 29
0602 20 10	0712 90 30	0812 90 60	1511 90 19	2008 20 39	2009 90 39
0602 20 90	0712 90 50	0812 90 70	1511 90 91	2008 20 51	2009 90 51
0602 30 00	0712 90 90	0812 90 99	1511 90 99	2008 20 59	2009 90 59
0602 40 10	0713 10 10	0813	1512 11 91	2008 20 71	2009 90 95
0602 40 90	0713 10 90	0901 11 00	1512 19 91	2008 20 79	2009 90 96
0602 90 10	0713 40 00	0901 12 00	1513 19 11	2008 20 91	2009 90 97
0602 90 30	0806 20	0901 21 00	1513 29 19	2008 20 99	2009 90 98
0602 90 91	0807 11 00	0901 22 00	1513 29 91	2008 30 11	
0602 90 99	0807 19 00	0901 90 10	1513 29 99	2008 30 31	
0603 90 00	0808 10 10	0901 90 90	1515 11 00	2008 30 39	
0604 10 90	0808 20 90	0904 20 10	1515 19 10	2008 30 51	

⁽¹⁾ As defined in Decree of the Government of the Czech Republic No 480/2001 on the Customs Tariff of the Czech Republic.

ANNEX B(b)

Imports into the Czech Republic of the following products originating in the Community shall be subject to the concessions set out below

Czech customs code ⁽¹⁾	Description ⁽²⁾	Applicable <i>ad valorem</i> duty ⁽³⁾	Quantity ⁽³⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
ex 0203	Meat of domestic swine, fresh, chilled or frozen	Free	13 000	14 500	1 500	(4) (5)
0210 11 to 0210 19	Meat of swine, salted, in brine, dried or smoked	Free				
0203 19 55 0203 29 55	Meat of swine, other	15	Unlimited	Unlimited		
0204	Sheep meat	Free	150	300	0	
0207	Poultry, fresh, chilled or frozen	Free	5 200	5 800	600	(4) (5)
0402	Milk powder and condensed milk	Free	1 000	1 000	0	(4) (5)
0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Buttermilk and yoghurts and other fermented or acidified milk and cream	Free	250	500	0	(4)
0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Buttermilk and yoghurts and other fermented or acidified milk and cream	5 12,5	Unlimited Unlimited	Unlimited Unlimited		
0404	Whey and products consisting of natural milk constituents	Free	300	600	0	(4)
ex 0405	Butter and other fats and oils derived from milk excluding CN codes 0405 20 10 and 0405 20 30	Free	573	800	0	(4) (5)
0406	Cheese and curd	Free	6 630	7 395	765	(4) (5)
0408 11 0408 91	Birds' egg yolks, dried Birds' eggs, dried	14,5 14,5	Unlimited Unlimited	Unlimited Unlimited		
ex 0603 10 10 ex 0603 10 20 ex 0603 10 40 ex 0603 10 50 ex 0603 10 80	Cut flowers and flower buds, fresh (from 1 January to 31 May) (from 1 November to 31 December)	2 2 2 2 2	Unlimited Unlimited Unlimited Unlimited Unlimited	Unlimited Unlimited Unlimited Unlimited Unlimited		
ex 0603 10 10 ex 0603 10 20 ex 0603 10 40 ex 0603 10 50 ex 0603 10 80	Cut flowers and flower buds, fresh (from 1 June to 31 October)	14,5 14,5 14,5 14,5 14,5	Unlimited Unlimited Unlimited Unlimited Unlimited	Unlimited Unlimited Unlimited Unlimited Unlimited		
0701 90 10 0701 90 90	Potatoes, other	6	15 000	15 000	0	

Czech customs code ⁽¹⁾	Description ⁽²⁾	Applicable <i>ad valorem</i> duty ⁽³⁾	Quantity ⁽³⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
ex 0702 00	Fresh tomatoes	8	2 000	2 000	0	
ex 0704 10 00	Cauliflowers and headed broccoli (from 15 April to 30 November)	6	Unlimited	Unlimited		
0704 90 90	Other	6	Unlimited	Unlimited		
ex 0705 11 00	Cabbage lettuce from 1 April to 30 November)	5,9	Unlimited	Unlimited		
0710 21 00	Peas, frozen	4,5	Unlimited	Unlimited		
ex 0806 10 10	Table grapes (from 1 January to 14 July) (from 1 November to 31 December)	Free	Unlimited	Unlimited		
ex 0808 10 20	Golden delicious (from 1 August to 31 December	10	Unlimited	Unlimited		
ex 0808 10 50	Granny Smith (from 1 August to 31 December)	10	Unlimited	Unlimited		
ex 0808 10 90	Other (from 1 August to 31 December)	10	Unlimited	Unlimited		
1001 90	Wheat and meslin	Free	25 000	50 000	0	⁽⁴⁾
1002	Rye	Free	5 000	10 000	0	⁽⁴⁾
1003	Barley	Free	20 000	40 000	0	⁽⁴⁾
1004	Oats	Free	5 000	10 000	0	⁽⁴⁾
1005 90 00	Maize, other	Free	42 150	10 000	0	⁽⁴⁾ ⁽⁵⁾
1008	Buckwheat, millet and canary seed, other cereals	Free	5 000	10 000	0	⁽⁴⁾
1107	Malt	Free	2 500	5 000	0	⁽⁴⁾
1515 90 51	Other fixed vegetable fats and oils, other	12,7	Unlimited	Unlimited		
1515 90 91		12,7	Unlimited	Unlimited		
1515 90 99		12,7	Unlimited	Unlimited		
1516 10	Animal fats and oils	10	400	400	0	
1516 20	Vegetable fats and oils	9	1 000	1 000	0	
1516 20 95	Vegetable fats and oils	Free	2 000	2 000	0	
1516 20 96		Free				
1516 20 98		Free				
1517 10 90	Margarine	10	530	530	0	
1601 00	Sausages and similar products	Free	3 680	4 370	690	⁽⁴⁾
1602 41 to 1602 49	Prepared or preserved meat of swine					
1602 31 to 1602 39	Prepared or preserved meat of poultry	Free	1 300	1 450	150	⁽⁴⁾
ex 1602 20 90	Pâtés, different sizes	9	479	479	0	
1602 50	Prepared or preserved meat, meat offal or blood of bovine animal, other	9				

Czech customs code ⁽¹⁾	Description ⁽²⁾	Applicable <i>ad valorem</i> duty ⁽³⁾	Quantity ⁽³⁾ from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
2001 10 00	Cucumbers, preserved	Free	1 300	1 450	150	
2007 10 10	Homogenised preparations with a sugar content exceeding 13 % by weight	Free	445	500	0	⁽⁴⁾ ⁽⁵⁾
2008 92	Mixtures of fruits	4	Unlimited	Unlimited		
2009 69	Grape juice, other	2	Unlimited	Unlimited		
2009 79 11 2009 79 91	Apple juice	10	Unlimited	Unlimited		
2309 90	Animal feed	1,2	Unlimited	Unlimited		
2401	Unmanufactured tobacco	2,4	2 000	2 000	0	

⁽¹⁾ As defined in Decree of the Government of the Czech Republic No 480/2001 on the Customs Tariff of the Czech Republic.

⁽²⁾ The wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the code. Where ex codes are indicated, the preferential scheme is to be determined by application to the code and corresponding description taken together.

⁽³⁾ Only applicable with effect from the date of entry into force of this Protocol.

⁽⁴⁾ This concession is only applicable to products non-benefiting from any kind of export subsidies and accompanied by a certificate (see Annex) indicating that no export refunds have been paid.

⁽⁵⁾ Quantities of goods subject to this existing tariff quota and released for free circulation as from 1 July 2002 before the entry into force of this Protocol shall be fully counted against the quantity provided for in the fourth column and should be submitted to the duty applicable at the moment of import.

⁽¹⁾ To be completed if the signature and the stamp do not appear in box 23.
⁽²⁾ Net mass or other unit of measurement indicating unit.

27. ATTRIBUTIONS Indicate the quantity available in part 1 of column 29 and the quantity attributed in part 2 thereof			
28. Net quantity (mass weight or other unit of measure stating the unit)		31. Customs document (form and No) or extract No and date of attribution	32. Name, Member State, stamp and signature of the attributing authority
29. In figures	30. In words for the quantity attributed		
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			

33. Extension pages to be attached hereto.

ANNEX C

AGREEMENT

between the European Community and the Czech Republic on reciprocal preferential trade concessions for certain wines

1. Imports into the Community of the following products originating in the Czech Republic shall be subject to the concessions set out below:

CN code	Description	Applicable duty	Yearly quantities (hl)
ex 2204 10	Sparkling wine	Exemption	13 000
ex 2204 21	Wine of fresh grapes		
ex 2204 29			

2. The Community shall grant a preferential zero duty within tariff quotas as mentioned under point 1, subject to the condition that no export subsidies shall be paid for exports of these quantities by the Czech Republic.

3. Imports into the Czech Republic of the following products originating in the Community shall be subject to the concessions set out below:

Czech customs tariff code	Description	Applicable duty	Yearly quantities (hl)
2204 10 11	Quality sparkling wine	Exemption	20 000
ex 2204 10 19	Quality sparkling wine (1)		
2204 2111-78	Quality wine of fresh grapes		
2204 2181-82			
2204 2187-98			
2204 2912-75			
2204 2981-82			
2204 2987-98			
2204 29	Wine of fresh grapes	25%	300 000

⁽¹⁾ Excluding sparkling wine made with the addition of CO₂.

4. The Czech Republic shall grant a preferential zero duty within tariff quotas as mentioned under point 3, subject to the condition that no export subsidies shall be paid for exports of these quantities by the Community.

5. This Agreement shall cover wine

- (a) which has been produced from fresh grapes wholly produced and harvested in the territory of the Contracting Party in question; and
- (b) (i) originating in the Community, which has been produced in accordance with the rules governing the oenological practices and processes referred to in Title V of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾;
- (ii) originating in the Czech Republic, which has been produced in accordance with the rules governing the oenological practices and processes in conformity with the Czech law. These oenological rules referred to shall be in conformity with the Community legislation.

6. Imports of wine under the concessions provided in this Agreement will be subject to the presentation of a certificate issued by a mutually recognised official body appearing on the lists drawn up jointly, to the effect that the wine in question complies with point 5(b).

7. The Contracting Parties shall examine the opportunities for granting each other further concessions taking into account the development of wine trade between the Contracting Parties.

8. The Contracting Parties shall ensure that the benefits granted reciprocally are not called into question by other measures.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1; Regulation as last amended by Regulation (EC) No 2585/2001 (OJ L 345, 29.12.2001, p. 10).

9. Consultations are to take place at the request of either Contracting Party on any problem relating to the way this Agreement operates.
 10. This Agreement shall apply, on the one hand, in the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, in the territory of the Czech Republic.
-

Information relating to the entry into force of the Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions

The Protocol adjusting the trade aspects of the Europe Agreement with the Czech Republic, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions, which the Council decided to conclude on 14 April 2003, enters into force on 1 May 2003, since notification of the accomplishment of the procedures specified in Article 4 of that Protocol was completed on 23 April 2003.

COUNCIL DECISION

of 14 April 2003

on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions

(2003/299/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300(2), first subparagraph, first sentence thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part⁽¹⁾ (hereinafter referred to as 'the Europe Agreement'), provides for certain reciprocal trade concessions for certain agricultural products.
- (2) Article 21(5) of the Europe Agreement provides that the Community and the Slovak Republic are to examine product by product and on an orderly and reciprocal basis the possibilities of granting each other further concessions.
- (3) The first improvements to the preferential arrangements of the Europe Agreement were provided for in the Protocol adjusting trade aspects of the Europe Agreement to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential arrangements, approved by Decision 98/638/EC⁽²⁾.
- (4) Improvements to the preferential arrangements were also provided for as a result of negotiations to liberalise agricultural trade concluded in 2000. On the Community side, these were implemented from 1 July 2000 by Regulation (EC) No 2434/2000 of 17 October 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with the Slovak Republic⁽³⁾. This second adjustment of the preferential arrangements has not yet been incorporated in the Europe Agreement in the form of an Additional Protocol.
- (5) Negotiations for further improvements to the preferential arrangements of the Europe Agreement were concluded on 3 May 2000 and on 25 June 2002.
- (6) The new Additional Protocol to the Europe Agreement adjusting the trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part (hereinafter referred to as 'the Protocol') should be approved with a view to consolidating all concessions in agricultural trade between the two sides, including the results of the negotiations concluded in 2000 and 2002.
- (7) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽⁴⁾ has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Certain tariff quotas under this Decision should therefore be administered in accordance with those rules.
- (8) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁵⁾.
- (9) As a result of the aforementioned negotiations, Regulation (EC) No 2434/2000 has effectively lost its substance and should therefore be repealed.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions, is hereby approved on behalf of the Community.

⁽¹⁾ OJ L 359, 31.12.1994, p. 2.

⁽²⁾ OJ L 306, 16.11.1998, p. 2.

⁽³⁾ OJ L 280, 4.11.2000, p. 9.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1; Regulation as last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002 p. 11).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Protocol on behalf of the Community and give the notification of approval provided for in Article 3 of the Protocol.

Article 3

1. Upon this Decision taking effect, the arrangements provided for in the Annexes of the Protocol attached to this Decision shall replace those referred to in Annexes XI and XII as referred to in Article 21(2) and (4), as amended, of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part.

2. The Commission shall adopt rules for the application of the Protocol in accordance with the procedure referred to in Article 6(2).

Article 4

1. The order numbers as attributed to the tariff quotas in the Annex to this Decision may be changed by the Commission in accordance with the procedure referred to in Article 6(2). Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

2. Quantities of goods subject to tariff quotas and released for free circulation as from 1 July 2002 under the concessions provided for in Annex A(b) to Regulation (EC) No 2434/2000 shall be fully counted against the quantities provided for in the fourth column in Annex A(b) to the attached Protocol, except for quantities for which import licences were issued before 1 July 2002.

Article 5

Entitlement to the benefits from the Community tariff quota for wine referred to in Annex to this Decision and in Annex C of the protocol shall be subject to the presentation of a VI 1 document or a V I 2 extract in accordance with Commission Regulation (EC) No 883/2001 of 24 April 2001 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector ⁽¹⁾.

Article 6

1. The Commission shall be assisted by the Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽²⁾ or, where appropriate, by the committee instituted by the relevant provisions of the other regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

3. The Committee shall adopt its Rules of Procedure.

Article 7

Regulation (EC) No 2434/2000 shall be repealed from the entry into force of the Protocol.

Done at Brussels, 14 April 2003.

For the Council

The President

A. GIANNITSIS

⁽¹⁾ OJ L 128, 10.5.2001, p. 1; Regulation as last amended by Regulation (EC) No 2380/2002 (OJ L 358, 31.12.2002, p. 117).

⁽²⁾ OJ L 181, 1.7.1992, p. 21; Regulation as last amended by Regulation (EC) No 1666/2000 (OJ L 193, 29.7.2000, p. 1).

ANNEX

Order numbers for EU tariff quotas for products originating in the Slovak Republic (as referred to in Article 4)

Quota order No.	CN code	Description
09.4598	0102 90 05	Live bovine animals of a live weight not exceeding 80 kg
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg
09.4563	ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau
09.4575	0104 10 30 0104 10 80 0104 20 90	Live sheep or goats
09.4624	0201 0202	Meat of bovines, fresh, chilled or frozen
09.4632	ex 0203 0210 11 to 0210 19	Meat of domestic swine, fresh, chilled or frozen Meat of swine, salted, in brine, dried or smoked
09.4644	0206 10 to 29 0210 20	Meat of bovine animals (offal)
09.5853	ex 0207 1602 31 to 1602 39	Poultry, fresh, chilled or frozen (other than 0207 13 91, 0207 14 91, 0207 26 91, 0207 27 91, 0207 35 91, 0207 36 89) Prepared or preserved meat of poultry
09.4641	0402	Milk powder and condensed milk
09.4645	0403 10 11 to 39 0403 90 11 to 69 0404	Buttermilks, yoghurts and other fermented or acidified milk and cream Whey and products consisting of natural milk constituents
09.4642	ex 0405	Butter and other fats and oils derived from milk except CN codes 0405 20 10 and 0405 20 30
09.4643	0406	Cheese and curd
09.5883	0407 00 11 0407 00 19 0407 00 30	Eggs of poultry in shell
09.5884	0408 11 80 0408 19 81 0408 19 89	Egg yolks, dried Egg yolks, liquid Egg yolks, frozen
09.5885	0408 91 80 0408 99 80	Birds' eggs, dried Birds' eggs, other
09.5771	0702 00 00	Tomatoes, fresh or chilled
09.5773	ex 0708 10 00	Fresh or chilled peas, from 1 June to 31 August
09.5286	0808 10	Apples, fresh
09.5535	0810 20	Raspberries, blackberries, mulberries and loganberries
09.5781	0810 30 10	Blackcurrants, fresh

Quota order No.	CN code	Description
09.5783	0810 30 30	Redcurrants, fresh
09.5789	0811 20 39	Blackcurrants, frozen
09.5791	0811 20 51	Redcurrants, frozen
09.5287	ex 0811	Other than 0811 10 90, 0811 20 19, 0811 20 31, 0811 20 39, 0811 20 51, 0811 20 59, 0811 20 90, 0811 90 50, 0811 90 70, 0811 90 75, 0811 90 80, 0811 90 85, 0811 90 95
09.4646	1001	Wheat and meslin
09.5886	1002	Rye
09.5887	1003	Barley
09.5888	1004	Oats
09.4647	1005 10 90 1005 90 00	Maize
09.5889	1008	Buckwheat, millet and canary seed, other cereals
09.4618	1101 00	Wheat and meslin flour
09.4619	1107 10 99	Malt, not roasted, other than of wheat
09.4634	1601 00 1602 41 to 1602 49	Sausages and similar products Prepared or preserved meat of swine
09.4648	1602 50	Other prepared or preserved meat, meat offal or blood of bovine animal
09.5296	2001 10 00	Cucumbers, preserved
09.5799	ex 2001 90 96	Asparagus
09.5601	2002	Tomatoes, prepared or preserved
09.5803	2009 12 00 2009 19 98 2009 21 00 2009 31 19 2009 31 51 2009 31 59 2009 31 91 2009 31 99 2009 39 19 2009 39 39 2009 39 55 2009 39 59 2009 39 95 2009 39 99 2009 61 10 2009 61 90 2009 69 11 2009 69 19 2009 69 51 2009 69 59 2009 69 90	Fruit juices
09.5539	2009 71 2009 79	Apple juice
09.5890	ex 2204 ⁽¹⁾	Wine of fresh grapes

⁽¹⁾ TARIC codes: 2204 10 19 91; 2204 10 19 99; 2204 10 99 91; 2204 10 99 99; 2204 21 10 00; 2204 21 79 79; 2204 21 79 80; 2204 21 80 79; 2204 21 80 80; 2204 21 83 10; 2204 21 83 79; 2204 21 83 80; 2204 21 84 10; 2204 21 84 79; 2204 21 84 80; 2204 21 94 10; 2204 21 94 30; 2204 21 98 10; 2204 21 98 30; 2204 21 99 10; 2204 29 65 00; 2204 29 75 10; 2204 29 83 10; 2204 29 83 80; 2204 29 84 10; 2204 29 84 30; 2204 29 94 10; 2204 29 94 30; 2204 29 98 10; 2204 29 98 30; 2204 29 99 10.

PROTOCOL

adjusting the trade aspects of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take account of the outcome of negotiations between the parties on new mutual agricultural concessions

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE SLOVAK REPUBLIC,

of the other part,

Whereas:

- (1) The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part (hereinafter referred to as 'the Europe Agreement') was signed in Luxembourg on 4 October 1993 and entered into force on 1 February 1995 ⁽¹⁾.
- (2) Article 21(5) of the Europe Agreement provides that the Community and the Slovak Republic shall examine in the Association Council, product by product and on an orderly and reciprocal basis, the possibility of granting each other additional agricultural concessions. On this basis negotiations have been undertaken and were concluded between the parties.
- (3) For the first time, improvements to the preferential agricultural regime of the Europe Agreement were provided for in the Protocol adjusting trade aspects of the Europe Agreement ⁽²⁾ to take account of the last enlargement of the Community and the outcome of the GATT Uruguay Round.
- (4) Two further rounds of negotiations for improved agricultural trade concessions were concluded on 3 May 2000 and 21 June 2002.
- (5) From the one side, the Council decided, by virtue of Council Regulation (EC) No 2434/2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with the Slovak Republic ⁽³⁾, to apply on a provisional basis, as from 1 July 2000, the Community concessions resulting from the 2000 round of negotiations and from the other side the Government of the Slovak Republic took legislative provisions to apply, as from the same date, the equivalent Slovak concessions.
- (6) The abovementioned concessions will be supplemented and replaced on the date of entry into force of this Protocol by the concessions provided for herein,

HAVE AGREED AS FOLLOWS:

Article 1

The arrangements for import into the Community applicable to certain agricultural products originating in the Slovak Republic as set out in Annexes A(a) and A(b) and the arrangements for import into the Slovak Republic applicable to certain agricultural products originating in the Community as set out in Annexes B(a) and B(b) to this Protocol shall replace those set out in Annexes XI and XII as referred to in Article 21(2) and (4), as amended, of the Europe Agreement. The agreement between the Community and the Slovak Republic on reciprocal preferential trade concessions for certain wines, set out in Annex C, shall form an integral part of this Protocol.

⁽¹⁾ OJ L 359, 31.12.1994, p. 2.

⁽²⁾ OJ L 306, 16.11.1998, p. 3.

⁽³⁾ OJ L 280, 4.11.2000, p. 9.

Article 2

This Protocol shall form an integral part of the Europe Agreement. The Annexes to this Protocol shall form an integral part thereof.

Article 3

This Protocol shall be approved by the Community and the Slovak Republic in accordance with their corresponding procedures. The Contracting Parties shall take the necessary measures to implement this Protocol.

The Contracting Parties shall notify each other of the accomplishment of the abovementioned procedures.

Article 4

Subject to completion of the procedures provided for in Article 3, this Protocol shall enter into force on 1 January 2003. Should these procedures not be completed in time, it shall enter into force on the first day of the first month following the Contracting Parties' notification of the accomplishment of the procedures.

Article 5

This Protocol shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Slovak languages, each of these texts being equally authentic.

Hecho en Bruselas, el veinticuatro de abril del dos mil tres.

Udfærdiget i Bruxelles den fireogtyvende april to tusind og tre.

Geschehen zu Brüssel am vierundzwanzigsten April zweitausendunddrei.

Έγινε στις Βρυξέλλες, στις είκοσι τέσσερις Απριλίου δύο χιλιάδες τρία.

Done at Brussels on the twenty-fourth day of April in the year two thousand and three.

Fait à Bruxelles, le vingt-quatre avril deux mille trois.

Fatto a Bruxelles, addì ventiquattro aprile duemilatre.

Gedaan te Brussel, de vierentwintigste april tweeduizenddrie.

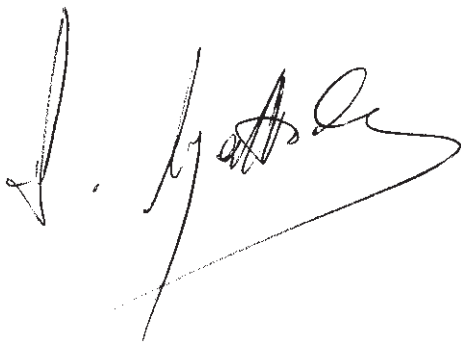
Feito em Bruxelas, em vinte e quatro de Abril de dois mil e três.

Tehty Brysselissä kahdentenakymmenentenäneljäntenä päivänä huhtikuuta vuonna kaksituhattakolme.

Som skedde i Bryssel den tjugofjärde april tjugohundratre.

V Bruseli dvadsiatchoštvrtého apríla dvetisíetri.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Za Slovenskú republiku



ANNEX A(a)

Customs duties on imports applicable in the Community to products originating in the Slovak Republic and listed below shall be abolished

CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾
0101 10 90	0709 40 00	0802 12 90	0904 12 00	1512 11 91	2008 92 38
0101 90 19	0709 51 00	0802 21 00	0904 20	1512 19 91	2008 92 59
0101 90 30	0709 52 00	0802 22 00	0905 00 00	1512 21	2008 92 72
0101 90 90	0709 59	0802 31 00	0907 00 00	1512 29	2008 92 74
0104 20 10	0709 70 00	0802 32 00	0910 20 90	1513	2008 92 78
0106 19 10	0709 90 10	0802 40 00	0910 40	1515	2008 92 93
0106 39 10	0709 90 20	0802 50 00	0910 91 90	1516 20 95	2008 92 98
0205 00	0709 90 40	0802 90 50	0910 99 99	1516 20 96	2008 99 11
0206 80 91	0709 90 50	0802 90 60	1006 10 10	1516 20 98	2008 99 19
0206 90 91	0709 90 90	0802 90 85	1007 00 10	1518 00 31	2008 99 23
0207 13 91	0710 10 00	0806 20	1105 20 00	1518 00 39	2008 99 28
0207 14 91	0710 21 00	0808 20 90	1106 10 00	1518 00 91	2008 99 37
0207 26 91	0710 22 00	0809 40 90	1106 30 90	1518 00 95	2008 99 40
0207 27 91	0710 29 00	0810 40 30	1208 10 00	1518 00 99	2008 99 43
0207 35 91	0710 30 00	0810 40 50	1209 10 00	1522 00 91	2008 99 45
0207 36 89	0710 80 51	0810 40 90	1209 21 00	1602 90 10	2008 99 49
0208 10 11	0710 80 59	0810 50 00	1209 23 80	1602 90 31	2008 99 68
0208 10 19	0710 80 61	0810 60 00	1209 29 50	1602 90 41	2008 99 99
0208 20 00	0710 80 69	0810 90 95	1209 29 60	1602 90 72	2009 11 19
0208 30 00	0710 80 70	0811 20 59	1209 29 80	1602 90 74	2009 11 99
0208 40	0710 80 85	0811 20 90	1209 30 00	1602 90 76	2009 19 19
0208 50 00	0710 80 95	0811 90 50	1209 91	1602 90 78	2009 29 11
0208 90 10	0710 90 00	0811 90 70	1209 99 91	1602 90 98	2009 29 19
0208 90 55	0711 30 00	0811 90 75	1209 99 99	1603 00 10	2009 29 91
0208 90 60	0711 40 00	0811 90 80	1210	2001 90 20	2009 29 99
0208 90 95	0711 59 00	0811 90 85	1211 90 30	2001 90 50	2009 31 11
0210 99 10	0711 90 10	0811 90 95	1212 10 10	2003 20 00	2009 39 31
0210 99 39	0711 90 50	0812 10 00	1212 10 99	2003 90 00	2009 41
0210 99 59	0711 90 80	0812 90 10	1214 90 10	2005 60 00	2009 49 19
0210 99 79	0711 90 90	0812 90 30	1302 19 05	2005 90 10	2009 49 30
0210 99 80	0712 20 00	0812 90 40	1503 00 19	2005 90 50	2009 49 93
0407 00 90	0712 31 00	0812 90 50	1503 00 90	2007 91 90	2009 49 99
0409 00 00	0712 32 00	0812 90 60	1504 10 10	2007 99 10	2009 80 19
0410 00 00	0712 33 00	0812 90 70	1504 10 99	2007 99 91	2009 80 38
06	0712 39 00	0812 90 99	1504 20 10	2007 99 93	2009 80 50
0701 10 00	0712 90 05	0813	1504 30 10	2008 19 11	2009 80 63
0701 90 50	0712 90 30	0814 00 00	1507	2008 19 19	2009 80 69
0703 10 11	0712 90 50	0901 12 00	1508	2008 19 51	2009 80 71
0703 20 00	0712 90 90	0901 21 00	1511 10 90	2008 19 95	2302 50 00
0703 90 00	0713 50 00	0901 22 00	1511 90 19	2008 19 99	2306 90 19
0709 20 00	0713 90	0901 90 90	1511 90 91	2008 92 14	2308 00 90
0709 30 00	0714 90 90	0902 10 00	1511 90 99	2008 92 34	2309

⁽¹⁾ As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001).

ANNEX A(b)

Imports into the Community of the following products originating in the Slovak Republic shall be subject to the concessions set out below

(MFN = most-favoured-nation duty)

CN code	Description ⁽¹⁾	Applicable duty ⁽²⁾ (% of MFN)	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0102 90 05	Live bovine animals of a live weight not exceeding 80 kg	20	178 000 heads	178 000 heads	0	⁽³⁾ ⁽⁹⁾
0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg	20	153 000 heads	153 000 heads	0	⁽³⁾ ⁽⁹⁾
ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau	6 % <i>ad valorem</i>	7 000 heads	7 000 heads	0	⁽⁴⁾ ⁽⁹⁾
0104 10 30 0104 10 80 0104 20 90	Live sheep or goats	free	4 300	4 300	0	⁽⁵⁾ ⁽⁹⁾
0201 0202	Meat of bovines, fresh, chilled or frozen	free	3 500	3 500	0	⁽⁸⁾ ⁽⁹⁾
ex 0203	Meat of domestic swine, fresh, chilled or frozen	free	2 800	3 000	300	⁽⁸⁾ ⁽⁹⁾ ⁽¹²⁾
0210 11 to 0210 19	Meat of swine, salted, in brine, dried or smoked	free				⁽⁸⁾ ⁽⁹⁾
0204	Meat of sheep or goats	free	Unlimited	Unlimited		⁽⁸⁾
0206 10 to 29 0210 20	Meat of bovine animals (offal)	free	500	1 000	0	⁽⁸⁾
ex 0207	Poultry, fresh, chilled or frozen (other than 0207 13 91, 0207 14 91, 0207 26 91, 0207 27 91, 0207 35 91, 0207 36 89)	free	1 560	1 740	180	⁽⁸⁾ ⁽⁹⁾
1602 31 to 1602 39	Prepared or preserved meat of poultry					
0402	Milk powder and condensed milk	free	2 500	3 500	0	⁽⁸⁾ ⁽⁹⁾
0403 10 11 to 39 0403 90 11 to 69	Buttermilks, yoghurts and other fermented or acidified milk and cream					
0404	Whey and products consisting of natural milk constituents	free	250	500	0	⁽⁸⁾ ⁽⁹⁾

CN code	Description ⁽¹⁾	Applicable duty ⁽²⁾ (% of MFN)	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
ex 0405	Butter and other fats and oils derived from milk except CN codes 0405 20 10 and 0405 20 30	free	750	750	0	⁽⁸⁾ ⁽⁹⁾
0406	Cheese and curd	free	2 930	3 000	300	⁽⁸⁾ ⁽⁹⁾
0407 00 11 0407 00 19 0407 00 30	Eggs of poultry in shell	20	3 125	3 125	0	⁽⁹⁾
0408 11 80	Egg yolks, dried	20	250	250	0	⁽⁹⁾ ⁽¹⁰⁾
0408 19 81	Egg yolks, liquid					
0408 19 89	Egg yolks, frozen					
0408 91 80	Birds' eggs, dried	20	1 250	1 250	0	⁽⁹⁾ ⁽¹¹⁾
0408 99 80	Birds' eggs, other					
0702 00 00	Tomatoes, fresh or chilled	free	2 600	2 900	300	⁽⁷⁾ ⁽⁸⁾ ⁽⁹⁾
ex 0707 00 05	Cucumbers, fresh or chilled (from 16 May to 31 October)	80	Unlimited	Unlimited		⁽⁷⁾
ex 0708 10 00	Fresh or chilled peas, from 1 September to 31 May	free	Unlimited	Unlimited		
ex 0708 10 00	Fresh or chilled peas, from 1 June to 31 August	free	130	145	15	⁽⁹⁾
0709 90 70	Courgettes	free	Unlimited	Unlimited		⁽⁷⁾
0806 10 10	Table grapes	free	Unlimited	Unlimited		⁽⁷⁾
0808 10	Apples, fresh	free	7 625	15 000	0	⁽⁷⁾ ⁽⁸⁾ ⁽⁹⁾
0809 20	Cherries	free	Unlimited	Unlimited		⁽⁷⁾
0809 30 90	Peaches	free	Unlimited	Unlimited		⁽⁷⁾
0809 40 05	Plums	free	Unlimited	Unlimited		⁽⁷⁾
0810 20	Raspberries, blackberries, mulberries and loganberries	free	250	250	0	⁽⁶⁾ ⁽⁹⁾
0810 20 10	Raspberries, fresh	41	Unlimited	Unlimited		⁽⁶⁾
0810 30 10	Blackcurrants, fresh	free	130	145	15	⁽⁶⁾ ⁽⁹⁾
0810 30 10	Blackcurrants, fresh	41	Unlimited	Unlimited		⁽⁶⁾
0810 30 30	Redcurrants, fresh	free	130	145	15	⁽⁶⁾ ⁽⁹⁾
0810 30 30	Redcurrants, fresh	41	Unlimited	Unlimited		⁽⁶⁾
0810 30 90	Other berries	24	Unlimited	Unlimited		

CN code	Description ⁽¹⁾	Applicable duty ⁽²⁾ (% of MFN)	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0811 10 90	Strawberries, frozen	36	Unlimited	Unlimited		⁽⁶⁾
0811 20 19	Berries, containing added sugar, frozen	free	Unlimited	Unlimited		⁽⁶⁾
0811 20 31	Raspberries, not containing added sugar, frozen	free	Unlimited	Unlimited		⁽⁶⁾
0811 20 39	Blackcurrants, frozen	free	330	370	40	⁽⁶⁾ ⁽⁹⁾
0811 20 39	Blackcurrants, frozen	28	Unlimited	Unlimited		⁽⁶⁾
0811 20 51	Redcurrants, frozen	free	350	390	40	⁽⁶⁾ ⁽⁹⁾
0811 20 51	Redcurrants, frozen	33	Unlimited	Unlimited		⁽⁶⁾
ex 0811	Other than 0811 10 90, 0811 20 19, 0811 20 31, 0811 20 39, 0811 20 51, 0811 20 59, 0811 20 90, 0811 90 50, 0811 90 70, 0811 90 75, 0811 90 80, 0811 90 85, 0811 90 95	20	250	250	0	⁽⁹⁾
1001	Wheat and meslin	free	50 000	100 000	0	⁽⁸⁾
1002	Rye	free	1 000	2 000	0	⁽⁸⁾
1003	Barley	free	16 000	15 000	0	⁽⁸⁾ ⁽⁹⁾
1004	Oats	free	500	1 000	0	⁽⁸⁾
1005 10 90 1005 90 00	Maize	free	35 000	70 000	0	⁽⁸⁾
1008	Buckwheat, millet and canary seed, other cereals	free	500	1 000	0	⁽⁸⁾
1101 00	Wheat and meslin flour	20	16 875	16 875	0	⁽⁹⁾
1107 10 99	Malt, not roasted, other than of wheat	free	18 125	18 125	0	⁽⁹⁾
1601 00 1602 41 to 1602 49	Sausages and similar products Prepared or preserved meat of swine	free	300	350	50	⁽⁸⁾ ⁽⁹⁾
1602 50	Other prepared or preserved meat, meat offal or blood of bovine animal	free	100	200	0	⁽⁸⁾
1703	Molasses	free	Unlimited	Unlimited		⁽⁸⁾
2001 10 00	Cucumbers, preserved	free	125	125	0	⁽⁹⁾
ex 2001 90 96	Asparagus	free	130	145	15	⁽⁹⁾
2002	Tomatoes, prepared or preserved	free	1 300	1 450	150	⁽⁸⁾ ⁽⁹⁾
2007 99 31	Cherry jams, jellies, marmalades, purées and pastes with a sugar content exceeding 30 % by weight	83	Unlimited	Unlimited		⁽⁷⁾

- (1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.
- (2) In cases where a MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.
- (3) The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic. Where it appears likely that total Community imports of live bovine animals may exceed 500 000 heads in a given marketing year the Community may take the management measures needed to protect its market, not withstanding any other rights given under the Agreement.
- (4) The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic.
- (5) The Community may take into account, in the framework of its legislation and when appropriate the supply needs of its market and the need to maintain its market balance.
- (6) Subject to minimum import price arrangements contained in the Annex to the present Annex.
- (7) The reduction applies only to the *ad valorem* part of the duty.
- (8) This concession is only applicable to products non-benefiting from any kind of export subsidies.
- (9) Quantities of goods subject to this existing tariff quota and released for free circulation as from 1 July 2002 before the entry into force of this Protocol shall be fully counted against the quantity provided for in the fourth column and should be submitted to the duty applicable at the moment of import.
- (10) As liquid egg-yolk equivalent: 1 kg dried egg yolks = 2,12 kg liquid eggs.
- (11) As liquid equivalent: 1 kg dried eggs = 3,9 liquid eggs.
- (12) Excluding tenderloin presented alone.

ANNEX TO ANNEX A(b)

Minimum import price arrangement for certain soft fruit for processing

1. Minimum import prices are fixed as follows for the following products for processing originating in the Slovak Republic:

CN Code	Description	Minimum import price (EUR/100 kg net)
ex 0810 20 10	Raspberries, fresh	63,1
ex 0810 30 10	Blackcurrants, fresh	38,5
ex 0810 30 30	Redcurrants, fresh	23,3
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	75,0
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	57,6
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	99,5
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	79,6
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	99,5
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	79,6
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	62,8
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	44,8
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	39,0
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	29,5

2. The minimum import prices, as set out in Article 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.
3. If the import prices of a given product covered by this Annex show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Slovak authorities in order to enable them to correct the situation.
4. At the request of either the Community or the Slovak Republic, the Association Committee shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Committee shall take the necessary decisions.
5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting will be organised three months before the beginning of each marketing year in the Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, of the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, of the other part.

During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

ANNEX B(a)

Customs duties on imports applicable in the Slovak Republic to products originating in the Community and listed below shall be abolished

SLK customs code ⁽¹⁾	SLK customs code ⁽¹⁾	SLK customs code ⁽¹⁾	SLK customs code ⁽¹⁾	SLK customs code ⁽¹⁾	SLK customs code ⁽¹⁾
0101 90 11	0407 00 90	0809 40 05	1209 21 00	1516 20 98	2008 92 92
0101 90 19	0408 11 20	0810 40 10	1209 22 10	1518 00 31	2008 92 93
0102 90 90	0408 19 20	0810 40 30	1209 22 80	1518 00 39	2008 92 94
0103 91 90	0408 91 20	0810 40 50	1209 23 11	1518 00 91	2008 92 97
0103 92 90	0408 99 20	0810 40 90	1209 23 15	1518 00 95	2008 92 98
	0409 00 00	0811 20 19	1209 23 80	1518 00 99	
0206 10 10	0410 00 00	0811 20 31	1209 24 00		2008 99 11
0206 10 91		0811 20 59	1209 25 10	1602 90 10	2008 99 19
0206 10 99	06	0811 20 90	1209 25 90	1602 90 31	2008 99 23
0206 21 00		0811 90 31	1209 26 00	1602 90 41	2008 99 25
0206 22 00	0701 10 00	0811 90 50	1209 29 10	1602 90 72	2008 99 26
0206 29 10	0703 10 11	0811 90 70	1209 29 50	1602 90 74	2008 99 28
0206 29 99	0703 90 00	0811 90 75	1209 29 80	1602 90 76	2008 99 36
0206 30 20	0709 51 00	0811 90 80	1210 10 00	1602 90 78	2008 99 37
0206 30 31	0709 70 00	0811 90 85	1210 20 10	1602 90 98	2008 99 38
0206 30 80	0709 90 10	0811 90 95	1210 20 90	2001 90 20	2008 99 40
0206 41 20	0709 90 90	0812 10 00		2001 90 50	2008 99 41
0206 41 80	0710 21 00	0812 90 10	1302 19 05	2001 90 65	2008 99 43
0206 49 20	0710 22 00	0812 90 40		2001 90 91	2008 99 45
0206 49 80	0710 29 00	0812 90 50	1502 00 10		2008 99 46
0206 80 10	0710 30 00	0812 90 60	1503 00 11	2005 60 00	2008 99 47
0206 80 91	0710 80 51	0812 90 70	1503 00 19	2005 90 10	2008 99 49
0206 80 99	0710 80 59	0812 90 99	1503 00 30		2008 99 51
0206 90 10	0710 80 70	0813	1503 00 90	2007 91 90	2008 99 61
0206 90 91	0710 80 85		1510 00 90	2007 99 10	2008 99 62
0206 90 99	0710 80 95	0901 11 00	1511 90 19	2007 99 91	2008 99 68
0207 13 91	0710 90 00	0901 12 00	1511 90 91	2007 99 93	2008 99 99
0207 14 91	0711 40 00	0901 21 00	1511 90 99		
0207 26 91	0711 90 10	0901 22 00	1512 11 91	2008 20 19	2009 61 10
0207 27 91	0711 90 50	0901 90 10	1512 19 91	2008 20 39	2009 61 90
0207 34 10	0711 90 80	0901 90 90	1513 19 11	2008 20 51	2009 69 11
0207 34 90	0711 90 90	0904 20 10	1513 29 19	2008 20 59	2009 69 19
0207 35 91	0712 20 00	0904 20 30	1513 29 50	2008 20 71	2009 69 51
0207 36 81	0712 90 05	0904 20 90	1513 29 91	2008 20 79	2009 69 59
0207 36 85	0712 90 11		1513 29 99	2008 20 91	2009 69 90
0207 36 89	0712 90 30	1001 10 00	1515 11 00	2008 20 99	2009 80 19
0209 00 11	0712 90 50	1105 20 00	1515 19 10	2008 30	2009 80 36
0209 00 19	0712 90 90		1515 19 90	2008 92 12	2009 80 38
0209 00 30	0713 10 10	1204 00 90	1515 21 10	2008 92 14	2009 80 50
0210 99 10	0713 10 90	1205 10 10	1515 21 90	2008 92 32	2009 80 63
0210 99 71	0713 40 00	1205 90 00	1515 29 10	2008 92 34	2009 80 69
0210 99 79		1206 00 10	1515 29 90	2008 92 36	2009 80 71
0210 91 00	0806 10 10	1207 50 10	1515 90 51	2008 92 38	
0210 92 00	0806 20	1207 50 90	1515 90 59	2008 92 51	
0210 93 00	0808 20 90	1207 91 10	1515 90 91	2008 92 59	
0210 99 39	0809 20 05	1207 91 90	1515 90 99	2008 92 72	
0210 99 59	0809 20 95	1209 10 00	1516 20 95	2008 92 74	
0210 99 80	0809 30 90	1209 29 60	1516 20 96	2008 92 76	
				2008 92 78	2309

⁽¹⁾ As defined in Decree of the Government of the Slovak Republic No 598/2001 on the Customs Tariff of the Slovak Republic.

ANNEX B(b)

Imports into the Slovak Republic of the following products originating in the Community shall be subject to the concessions set out below

Slovak customs code	Description ⁽¹⁾	Applicable <i>ad valorem</i> duty	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0201 0202	Meat of bovines, fresh, chilled or frozen	free	1 750	3 500	0	⁽²⁾
0206 10 to 29 0210	Meat of bovine animals (offal)	free	500	1 000	0	⁽²⁾
0204	Sheep meat	free	Unlimited	Unlimited		⁽²⁾
ex 0203	Meat of domestic swine, fresh, chilled or frozen	free	2 800	3 000	300	⁽²⁾ ⁽³⁾ ⁽⁴⁾
0210 11 to 0210 19	Meat of swine, salted, in brine, dried or smoked					
0207 1602 31 to 1602 39	Poultry, fresh, chilled or frozen Prepared or preserved meat of poultry	free	650	725	75	⁽²⁾ ⁽³⁾
0402	Milk powder and condensed milk	free	350	500	0	⁽²⁾ ⁽³⁾
0403 10 11 to 39 0403 90 11 to 69	Buttermilks, yoghurts and other fermented or acidified milk and cream					
0404	Whey and products consisting of natural milk constituents	free	250	500	0	⁽²⁾ ⁽³⁾
ex 0405	Butter and other fats and oils derived from milk except CN codes 0405 20 10 and 0405 20 30	free	252	300	0	⁽²⁾ ⁽³⁾
0406	Cheese and curd	free	1 895	2 100	195	⁽²⁾ ⁽³⁾
0408 11 80 0408 91 80	Birds' egg yolks, dried Birds' eggs, dried	14,5 14,5	Unlimited Unlimited	Unlimited Unlimited		
0701 90 50	Potatoes, new, from 1 January to 30 June	free	Unlimited	Unlimited		
0701 90 10 0701 90 90	Potatoes, other	6	500	500	0	⁽³⁾
0702 00 00	Fresh tomatoes	free	2 600	2 900	300	⁽²⁾ ⁽³⁾
ex 0704 10 00	Cauliflowers and headed broccoli (from 15 April to 30 November)	6	Unlimited	Unlimited		
0704 90 10	White cabbages and red cabbages	6	Unlimited	Unlimited		
0704 90 90	Other	6	Unlimited	Unlimited		
ex 0705 11 00	Cabbage lettuce (from 1 April to 30 November)	5,9	Unlimited	Unlimited		

Slovak customs code	Description ⁽¹⁾	Applicable <i>ad valorem</i> duty	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
0708 10 90	Fresh or chilled peas (from 1 June to 31 August)	free	130	145	15	⁽³⁾
0708 90 00	Leguminous vegetables	5,9	Unlimited	Unlimited		
0709 60 10	Sweet peppers	4,3	Unlimited	Unlimited		
0709 60 99	Other	4,3	Unlimited	Unlimited		
0807 11 00	Water melons	4	Unlimited	Unlimited		
0809 10 00	Apricots	4,2	Unlimited	Unlimited		
0809 30 10	Nectarines	4	Unlimited	Unlimited		
0808 10	Apples, fresh	free	7 500	15 000	0	⁽²⁾ ⁽³⁾
1001	Wheat and meslin	free	15 000	30 000	0	⁽²⁾
1002	Rye	free	1 000	2 000	0	⁽²⁾
1003	Barley	free	15 000	30 000	0	⁽²⁾
1004	Oats	free	500	1 000	0	⁽²⁾
1005 10 90 1005 90 00	Maize	free	5 350	10 000	0	⁽²⁾
1006	Rice	free	Unlimited	Unlimited		
1008	Buckwheat, millet and canary seed, other cereals	free	500	1 000	0	⁽²⁾
1107 10 99	Malt	free	1 500	3 000	0	⁽²⁾
1516 10	Animal fats and oils	10	1 000	1 000	0	⁽³⁾
1516 20	Vegetable fats and oils	9	1 000	1 000	0	⁽³⁾ ⁽⁵⁾
1517 10 90	Margarine	10	270	270	0	⁽³⁾
1601 00 1602 41 to 1602 49	Sausages and similar products Prepared or preserved meat of swine	free	300	350	50	⁽²⁾ ⁽³⁾
ex 1602 20 90	Pâtés, different sizes	9	265	265	0	⁽³⁾
1602 50	Other prepared or preserved meat, meat offal or blood of bovine animal	free	100	200	0	⁽²⁾
1703	Molasses	free	Unlimited	Unlimited		⁽²⁾
ex 2001 90 96	Asparagus	free	130	145	15	⁽³⁾
2002	Tomatoes prepared or preserved	free	1 300	1 450	150	⁽²⁾ ⁽³⁾
2005 90 60	Carrots	5	Unlimited	Unlimited		
2005 90 70	Mixtures of vegetables	5	Unlimited	Unlimited		
2005 90 80	Other	5	Unlimited	Unlimited		
2008 50	Apricots	4	Unlimited	Unlimited		
2008 70	Peaches	4	Unlimited	Unlimited		
2008 92 16 2008 92 16 2008 92 16	Mixtures of fruits	4	Unlimited	Unlimited		

Slovak customs code	Description ⁽¹⁾	Applicable <i>ad valorem</i> duty	Quantity from 1.7.2002 to 30.6.2003 (tonnes)	Annual quantity from 1.7.2003 (tonnes)	Subsequent yearly quota increase (tonnes)	Specific provisions
2009 69 71	Grape juice	2	Unlimited	Unlimited		
2009 69 79		2	Unlimited	Unlimited		
2009 71	Apple juice	10	Unlimited	Unlimited		
2009 79		10	Unlimited	Unlimited		
2401	Unmanufactured tobacco	2,4	1 000	1 000	0	⁽³⁾

⁽¹⁾ The wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the code. Where ex codes are indicated, the preferential scheme is to be determined by application to the code and corresponding description taken together.

⁽²⁾ This concession is only applicable to products non-benefiting from any kind of export subsidies and accompanied by a certificate (see Annex) indicating that no export refunds have been paid.

⁽³⁾ Quantities of goods subject to this existing tariff quota and released for free circulation as from 1 July 2002 before the entry into force of this Protocol shall be fully counted against the quantity provided for in the fourth column and should be submitted to the duty applicable at the moment of import.

⁽⁴⁾ Excluding tenderloin presented alone.

⁽⁵⁾ Excluding 1516 20 95, 1516 20 96 and 1516 20 98.

27. ATTRIBUTIONS Indicate the quantity available in part 1 of column 29 and the quantity attributed in part 2 thereof			
28. Net quantity (mass weight or other unit of measure stating the unit)		31. Customs document (form and No) or extract No and date of attribution	32. Name, Member State, stamp and signature of the attributing authority
29. In figures	30. In words for the quantity attributed		
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			

33. Extension pages to be attached hereto

ANNEX C

AGREEMENT

between the European Community and the Slovak Republic on reciprocal preferential trade concessions for certain wines

1. Imports into the Community of the following products originating in the Slovak Republic shall be subject to the concessions set out below:

CN code	Description	Applicable duty	Yearly quantities (hl)
ex 2204	Wine of fresh grapes	Exemption	2 500

2. The Community shall grant a preferential zero duty within tariff quotas as mentioned under point 1, subject to the condition that no export subsidies shall be paid for exports of these quantities by the Slovak Republic.

3. Imports into the Slovak Republic of the following products originating in the Community shall be subject to the concessions set out below:

Slovak customs tariff code	Description	Applicable duty	Yearly quantities (hl)
ex 2204 10	Quality sparkling wine	Exemption	10 000
ex 2204 21	Quality wine of fresh grapes in containers holding 2 litres or less		
2204 29	Other wine of fresh grapes in containers holding more than 2 litres	25 %	20 000

4. The Slovak Republic shall grant a preferential zero duty within tariff quotas as mentioned under point 3, subject to the condition that no export subsidies shall be paid for exports of these quantities by the Community.

5. This Agreement shall cover wine

- (a) which has been produced from fresh grapes wholly produced and harvested in the territory of the Contracting Party in question, and
- (b) (i) originating in the Community, which has been produced in accordance with the rules governing the oenological practices and processes referred to in Title V of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾;
- (ii) originating in the Slovak Republic, which has been produced in accordance with the rules governing the oenological practices and processes in conformity with the Slovak law. These oenological rules referred to shall be in conformity with the Community legislation.

6. Imports of wine under the concessions provided in this Agreement will be subject to the presentation of a certificate issued by a mutually recognised official body appearing on the lists drawn up jointly, to the effect that the wine in question complies with point 5(b).

7. The Contracting Parties shall examine the opportunities for granting each other further concessions taking into account the development of wine trade between the Contracting Parties.

8. The Contracting Parties agreed to continue immediately with the already started negotiations with the aim to conclude rapidly an agreement on the reciprocal recognition, protection and control of spirits and wine names, including 'Slovenske Tokajske Vино' originating in the Slovak part of the Tokaj Wine Growing Region.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2585/2001 (OJ L 345, 29.12.2001, p. 10).

9. The Contracting Parties shall ensure that the benefits granted reciprocally are not called into question by other measures.
 10. Consultations are to take place at the request of either Contracting Party on any problem relating to the way this Agreement operates.
 11. This Agreement shall apply, on the one hand, in the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, in the territory of the Slovak Republic.
-

Information relating to the entry into force of the Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions

The Protocol adjusting the trade aspects of the Europe Agreement with the Slovak Republic, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions, which the Council decided to conclude on 14 April 2003, enters into force on 1 May 2003, since notification of the accomplishment of the procedures specified in Article 4 of that Protocol was completed on 24 April 2003.

COMMISSION

COMMISSION DECISION

of 8 October 2002

**relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case No COMP/C2/38.014 — IFPI ‘Simulcasting’)**

(notified under document number C(2002) 3639)

(Only the English text is authentic)

(Text with EEA relevance)

(2003/300/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1/2003 ⁽²⁾, and in particular Article 2 thereof,

Having regard to the application for negative clearance pursuant to Article 2 of Regulation No 17 and the notification pursuant to Article 4(1) of that Regulation registered on 16 November 2000 and as amended on 21 June 2001 and 22 May 2002 pursuant to Article 4(3) of Commission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17 ⁽³⁾,

Having regard to the summary of the notification published ⁽⁴⁾ pursuant to Article 19(3) of Regulation No 17,

Having regard to the final report of the Hearing Officer in this case ⁽⁵⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

A. INTRODUCTION

- (1) On 16 November 2000 the International Federation of the Phonographic Industry (IFPI) applied to the Commission, pursuant to Articles 2 and 4(1) of Regulation No 17 for negative clearance or, alternatively, for exemption under Article 81(3) of the Treaty, in respect of a model reciprocal agreement (hereinafter the Reciprocal Agreement) between record producers' rights administration societies for the licensing of 'simulcasting'.

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ OJ L 1, 4.1.2003, p. 1.

⁽³⁾ OJ L 377, 31.12.1994, p. 28.

⁽⁴⁾ OJ C 231, 17.8.2001, p. 18.

⁽⁵⁾ OJ C 104, 30.4.2003.

- (2) Simulcasting, as defined by the notifying parties, is the simultaneous transmission by radio and TV stations via the Internet of sound recordings included in their broadcasts of radio and/or TV signals ⁽⁶⁾. The Reciprocal Agreement is intended to facilitate the grant of international licences to radio and TV broadcasters who wish to engage in simulcasting.
- (3) On 21 June 2001 the IFPI submitted an amended version of the Reciprocal Agreement. The effect of the amendment is that simulcasters located in the European Economic Area (EEA) are able to seek and obtain a multi-territorial license from any one of the rights administration societies (hereinafter collecting societies) established in the EEA which are party to the Reciprocal Agreement to simulcast into the signatories' territories.
- (4) On 22 May 2002 the IFPI notified a second amendment to the Reciprocal Agreement pursuant to which the Agreement was renewed between the parties until 31 December 2004. The second amendment also provides for the parties to introduce a mechanism whereby the collecting societies in the EEA which are party to the Reciprocal Agreement will specify which part of the tariff to simulcasters obtaining a multi-territorial and multi-repertoire license corresponds to the administration fee charged to the user.
- (5) The IFPI submitted the notification on behalf of a number of collecting societies which administer the rights of their record company members for the purposes of broadcasting and public performance.

B. PARTIES

IFPI

- (6) The IFPI is an international trade association incorporated in Switzerland and with its principal place of management in London, whose members comprise a large number of record and music video producers. Those record and music video producers are members of national collecting societies which administer on their behalf the rights of which they are the legitimate holders. These rights are generally referred to as 'neighbouring rights' to copyright or 'related rights'.
- (7) The IFPI submitted the notification on behalf of the record producers' collecting societies which are party to the agreement but is not itself party to the agreement, since it is not mandated to collect revenues on behalf of its members. The IFPI assisted the collecting societies to set up the arrangements that are the subject of the notification as the international representative of its record producer members.

The collecting societies

- (8) The parties to the Reciprocal Agreement as lastly notified on 22 May 2002 are the following record producers' collecting societies: Wahrnehmung von Leistungsschutzrechten GesmbH (LSG), from Austria; Société de l'Industrie Musicale Muziek Industrie Maatschappij (SIMIM), from Belgium; Gramex, from Denmark; Gramex, from Finland; Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL), from Germany; Grammo, from Greece; Samband Flítjenda og Hljómplötuframleidanda (SFH/IFPI), from Iceland; Società Consortile Fonografici Per Azioni (SCF Scpa), from Italy; Phonographic Performance Ireland (PPI), from Ireland; Stichting ter Exploitatie van Naburige Rechten (SENA), from the Netherlands; GRAMO, from Norway; Associação Fonográfica Portuguesa (AFP), from Portugal; IFPI Svenska Gruppen, from Sweden; IFPI Schweiz, from Switzerland; Phonographic Performance Limited (PPL), from the United Kingdom; Intergram, from the Czech Republic; Eesti Fonogrammitootjate Ühing (EFU), from Estonia; Związek Producentów Audio Video (ZPAV), from Poland; Phonographic Performance Ltd, South East Asia, from Hong Kong; Phonographic Performance Limited (PPL), from India; Public Performance Malaysia Sdn Bhd (PPM), from Malaysia; Recording Industry Performance Singapore Pte Ltd (RIPS), from Singapore; The Association of Recording Copyright Owners (ARCO), from Taiwan; Phonorights Ltd, from Thailand; Cámara Argentina de Productores de Fonogramas y Videograma (CAPIF), from Argentina; Sociedad Mexicana de Productores de Fonogramas, Videogramas y Multimedia S.G.C. (Somexfon SGC), from Mexico; Unión Peruana de Productores Fonográficos (Unimpro), from Peru; Cámara Uruguaya del Disco (CUD), from Uruguay; Recording Industry Association New Zealand (RIANZ), from New Zealand.

⁽⁶⁾ The parties define it more precisely as 'the simultaneous transmission by radio and TV stations via the Internet of sound recordings included in their single channel and free-to-air broadcasts of radio and/or TV signals, in compliance with the respective regulations on provision of broadcasting services'.

- (9) The main function of these collecting societies is the administration of the neighbouring rights of their record producer members for the purposes of broadcasting and public performance. This includes the licensing of rights in the sound recordings of their members to users, determining tariffs for that use, collecting and distributing royalties, monitoring the use of the protected material and enforcing their members' rights.

- (10) The collective management system offered by collecting societies enables right-holders to commercially exploit their rights to a multitude of users even in circumstances where it is difficult for users to obtain individual clearance. For large-scale users of musical works, having to seek individual clearance from each right-holder would be hardly feasible in most circumstances. Furthermore, it is often difficult to obtain all the relevant clearances with respect to a certain work given the need to clear rights between different co-right-holders. Collecting societies provide users with a 'one-stop shop' for the clearance of certain rights, traditionally on a national basis.

C. REGULATORY CONTEXT

- (11) The protection of the rights of phonogram producers at the international level is afforded by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (the Rome Convention), by the TRIPS Agreement of 15 April 1994 ⁽⁷⁾ and by the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty, adopted on 29 December 1996 by the Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions ⁽⁸⁾. These international treaties recognise the following rights of phonogram producers: the right of reproduction ⁽⁹⁾, as well as the right of distribution, of rental and of making their phonograms available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them ⁽¹⁰⁾. The Rome Convention also provides for the right to remuneration with respect to the secondary use of phonograms, where a phonogram published for commercial purposes is used directly for broadcasting or for any communication to the public.

- (12) At Community level, the protection of copyright and related rights is provided through a number of Directives ⁽¹¹⁾. Mandatory collective administration of copyright and related rights has been acknowledged for cable retransmission by Community legislation, namely by Directive 93/83/EEC, where a 'collecting society' is defined as 'any organisation which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes.' ⁽¹²⁾ Article 13 of the same Directive expressly leaves the regulation of the activities of collecting societies to Member States at national level. Article 8(2) of Directive 92/100/EEC provides for the right of phonogram producers (as well as performers) to obtain an equitable remuneration when a phonogram is used for broadcasting and communication to the public.

⁽⁷⁾ The TRIPS Agreement corresponds to Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh on 15 April 1994. It came into effect on 1 January 1995.

⁽⁸⁾ The Treaty entered into force on 20 May 2002.

⁽⁹⁾ All the international treaties previously referred to.

⁽¹⁰⁾ WIPO Treaty.

⁽¹¹⁾ Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ L 122, 17.5.1991, p. 42), as amended by Directive 93/98/EEC (OJ L 29, 24.11.1993, p. 9); Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 346, 27.11.1992, p. 61), as last amended by Directive 2001/29/EC of the European Parliament and of the Council (OJ L 167, 22.6.2001, p. 10); Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15); Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights (OJ L 290, 24.11.1993, p. 9) as amended by Directive 2001/29/EC; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20); Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10); Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13.10.2001, p. 32).

⁽¹²⁾ Article 1(4).

- (13) As regards the application of Community competition law to collecting societies, the interventions by the Court of Justice of the European Communities and by the Commission up to now have addressed three broad issues: the relationship between collecting societies and users, the relationship between collecting societies and their members and, lastly, the reciprocal relationship between different collecting societies. The present case concerns directly the reciprocal relationship between collecting societies and indirectly the relationship between collecting societies and users. In the particular context of copyright licensing of physical premises like discothèques, the Court of Justice has addressed these issues in the cases *Ministère Public v. Tournier* ⁽¹³⁾ and *Lucazeau v. Sacem* ⁽¹⁴⁾.

D. THE NOTIFIED AGREEMENT

Scope

- (14) Digital technology and the worldwide web have enabled broadcasters, who traditionally operate on a national or regional basis under limited territorial licences, to exploit globally the sound recordings administered by the collecting societies by simulcasting their programming onto the global digital network of the Internet. According to the parties, the Reciprocal Agreement is intended to facilitate the grant of a multi-territorial licence for the simulcasting activity.
- (15) By virtue of the territorially limited way licensing has been carried out, each collecting society has pursued its activity on its own territory only. Accordingly, the licenses which societies traditionally grant to users for exploitation of sound recordings are limited to their individual national territories. Therefore, the right to simulcast on the Internet, given that it necessarily involves the transmission of signals into several territories at the same time, is not covered by the existing 'mono-territory' licenses granted by collecting societies to broadcasters where the simulcast includes the repertoires of several collecting societies. According to the parties, the Reciprocal Agreement is intended to facilitate the creation of a new category of licence which is simultaneously multi-repertoire and multi-territorial.
- (16) Another consequence of the territorially limited way licensing has traditionally been carried out is that the existing reciprocal representation agreements between collecting societies do not provide for the possibility of a society granting a multi-territory license to a user including, besides its own, the repertoire of a represented sister-society (multi-repertoire license). The existing representation agreements allow a collecting society to grant a license to a user, where it includes the repertoire of a represented sister-society, for its own national territory only. This means that the existing agreements between collecting societies allow for the grant of both mono- or multi-repertoire licenses but, in the case of multi-repertoire licenses, these must always be mono-territory. Given that the applicable model for Internet simulcasting licensing is determined by the country-of-destination principle, a multi-territory mandate between collecting societies is required in order to allow for a collecting society to grant licenses which are both multi-territory and multi-repertoire. Therefore, the right to license simulcast on the Internet, given that simulcasting necessarily involves the transmission of signals into several territories at the same time, is not covered by the current mono-territory inter-society mandates resulting from the existing reciprocal representation agreements.
- (17) The notified Reciprocal Agreement intends to establish a framework to ensure effective administration and protection of producers' rights in the face of global Internet exploitation. It reflects the new possibilities offered by digital technology, namely the ability to carry out the monitoring of copyright exploitation from a distance, and it is designed such as to enable collecting societies to grant 'one-stop' licences covering all the territories in which the local producers' collecting society is a party to the Reciprocal Agreement. In this way, simulcasters will have a simple alternative to obtaining a licence from the local society in every country in which their Internet transmissions are accessed, although this latter approach will still be available to them.
- (18) The Reciprocal Agreement is intended to operate for an experimental period after which its nature, scope and operation will be reviewed. The amended version of the agreement will expire on 31 December 2004.

⁽¹³⁾ Case 395/87 *Ministère Public v. Tournier*, [1989] ECR 2521.

⁽¹⁴⁾ Joined cases 110/88, 241/88 and 242/88 *Lucazeau v. SACEM*, [1989] ECR 2811.

Content

- (19) The Reciprocal Agreement provides for each participating collecting society to grant to the other participating societies the right (in respect of its members' repertoire) to authorise simulcasting, or to claim equitable remuneration in its territory (as appropriate) on a non-exclusive basis. Each party to the Reciprocal Agreement will enter into bilateral contracts individually and separately with each other party in terms following the model of the Reciprocal Agreement.
- (20) More specifically, the Reciprocal Agreement will enable each participating collecting society:
- (a) in the case of an exclusive right, to authorise, whether in its own name or in the name of the right holder concerned, simulcasting of sound recordings pertaining to the repertoire of the other contracting party and, where claiming equitable remuneration, to collect all remuneration, to receive all sums due as indemnification or damages and to give due and valid receipt for the aforementioned collections;
 - (b) to collect all licence fees required in return for the authorisations, and to receive all sums due as indemnification or damages for unauthorised simulcasts;
 - (c) to commence and pursue, either in its own name or in that of the right holder concerned, upon request and with explicit consent, any legal action against any person or corporate body and any administrative or other authority responsible for an illegal simulcast.

Remuneration of rights

- (21) With respect to the remuneration of rights, the general principle underlying the Reciprocal Agreement is the country-of-destination principle. According to this principle, which appears to reflect the current legal situation in copyright law, the act of communication to the public of a copyright protected work takes place not only in the country of origin (emission-State) but also in all the States where the signals can be received (reception-States). It is opposed to the country-of-origin principle according to which the act of communication to the public of a copyright protected work takes place in the emission-state only. The application of the country-of-destination principle in the framework of the Reciprocal Agreement means that rights clearance is done in one country but that remuneration is due in all countries where the simulcast signal can be received.
- (22) The Reciprocal Agreement is conditioned on the application in each of the countries concerned of such country-of-destination principle. Article 10(2) of the amended version of the Reciprocal Agreement (as notified on 21 June 2001) holds: 'The reciprocal agreement is entered into subject to the existence of a right to prohibit/authorise or claim for an equitable remuneration under the relevant national laws in the countries where the signals are transmitted to. In case a court or other judicial or legislative authority determines, or a Contracting Party considers, that besides clearance in the country from which the signals originates, clearance in the country to which the signal is transmitted is not required under its national law — so that such party is not entitled to collect license fees in respect of simulcasts transmitted into its territory — that Contracting Party shall no longer exercise any Simulcast rights on behalf of the other Contracting Party.'

- (23) According to Article 5(2) of the Reciprocal Agreement, the country-of-destination principle will apply in respect of the amount to be charged by a collecting society to a user for a simulcast license ⁽¹⁵⁾. This means that each collecting society will take in consideration the tariffs applied in the territories into which the user simulcasts its services, and will charge the user accordingly.
- (24) Given that the envisaged 'one-stop' simulcast license comprises several repertoires and is valid in multiple territories, the tariff for a simulcast license will be an aggregate tariff composed of the relevant individual tariffs charged by each participating collecting society for simulcasting on its own territory. This means that the society granting a multi-repertoire and multi-territory license will have to take into account all the relevant national tariffs, including its own, for the determination of a global licence fee.
- (25) Article 5(3) of the Reciprocal Agreement states that 'the Contracting Parties shall each apply reasonable endeavours in discussion with the other party to reflect Article 5(2) as it is an experimental period.' In the light of the experimental nature of the Reciprocal Agreement, the parties declare that the individual collecting societies have not yet definitively decided how to structure the aggregate tariff. They indicate that, by virtue of the fact that there is little revenue generation from simulcasting activity at present, collecting societies have thus far tended to seek a lump sum payment for a simulcast licence. Nevertheless, the parties foresee two main possibilities:
- (a) an aggregate tariff based on a percentage of the revenue generated from the simulcast in the territory of each collecting society;
 - (b) an aggregate tariff corresponding to a rate per track per stream (i.e. linked to repertoire use and number of hits on a site).
- (26) While laying down the general principle for the determination of the global licence fee, the Reciprocal Agreement does not determine the national tariffs to be established by each of the collecting societies. The calculation of an appropriate and equitable remuneration level is therefore a matter for each individual collecting society. According to the parties, the structure and level of the national simulcasting tariffs remains a matter for individual collecting societies, who will set their national tariffs in accordance with respective national legislation and commercial needs.

Clearance of rights

- (27) Under the originally notified agreement, a collecting society was empowered to grant an international simulcasting license only to broadcasting stations whose signals originated in its territory. This meant that broadcasters were required to approach the producer's collecting society in their own Member State in order to be granted a multi-territory simulcasting license, according to Article 3.1 of the Reciprocal Agreement:

'By virtue of the present contract each Contracting Party individually agrees that the right referred to in Article 2 for Simulcasting in and into its own territory is conferred on a non-exclusive basis on the other contracting party (...) with regard to those broadcasting stations whose signals originate in the other Contracting Party's territory and are licensed for Simulcasting by the other Contracting Party.'

⁽¹⁵⁾ 'Each Contracting party shall apply to the simulcasters the license fees which apply in the other Contracting Party's territory for those simulcasts received in the latter's territory'.

- (28) On 21 June 2001 IFPI notified to the Commission an amended version of the Reciprocal Agreement allowing broadcasters whose signals originate in the EEA to approach any collecting society established in the EEA which is party to the Reciprocal Agreement in order to seek and obtain a multi-territorial and multi-repertoire simulcasting license, further to a new subparagraph under Article 3.1 ('reciprocal authorisation to administer'):

'Notwithstanding the provisions of the previous paragraph, each Contracting Party agrees that the right referred to in Article 2 for Simulcasting in and into its own territory is conferred on a non-exclusive basis on any Contracting Party established in the European Economic Area (EEA) with regard to those broadcasting stations whose signals originate in the EEA. For the avoidance of doubt, any broadcasting station whose signals originate in the EEA shall therefore be entitled to approach any Contracting Party established in the EEA for its multi-territorial simulcast license.'

Commercial terms

- (29) The Reciprocal Agreement does not deal with the concrete commercial terms of the licence. The commercial terms (payment terms, rebates, discounts) will have to be negotiated between the user and the individual collecting society granting the licence, in a rather similar way to what has been the practice in the field of central licensing agreements for mechanical reproduction rights during the past years.
- (30) The Reciprocal Agreement determines that disputes between participating collecting societies and broadcasters relating to royalties will be subject to national arbitration procedures where such exist. In circumstances where the national arbitration system does not exist or is unlikely to be effective, the parties will refer to a forum for International Arbitration, such as the WIPO Arbitration and Mediation Centre.

Benefits to right-holders and users

- (31) According to the parties, the main advantage of the system envisaged by the agreement is the possibility of each collecting society functioning as a 'one stop-shop'. The advantages of the agreement can be summarised as follows:
- (a) the societies function as a 'one-stop-shop' because each collecting society is in a position to grant a multi-territorial simulcast licence, which will include the repertoire of other collecting societies;
 - (b) all protected recordings, of whatever origin, are subject to the same conditions for all users in the same country, in accordance with the principle of national treatment;
 - (c) as a result, administration costs will be lower and these efficiencies can be passed on both to the rights-holder and to the user.

E. THE RELEVANT MARKETS

1. Product markets

- (32) Collective management of copyright and/or neighbouring rights concerns different activities corresponding to as many different relevant product markets: administration services of rights for right holders, administration services of rights for other collecting societies and licensing services for users. The Reciprocal Agreement affects directly two relevant markets:
- (a) multi-territorial simulcasting rights administration services between record producers' collecting societies;
 - (b) multi-territorial and multi-repertoire licensing of the record producers' simulcasting right.

- (33) As regards the relevant product markets, the preliminary question to be answered, from the point of view of demand, is whether the parties' customers would switch to readily available substitute products in response to a hypothetical small permanent relative price increase in the products and areas considered ⁽¹⁶⁾.
- (34) In the present case, both product markets are restricted to simulcasting rights because the Reciprocal Agreement only covers simulcasting and simulcasting presents distinct features, both legal and technical, from other activities that also require the clearance of rights, such as pure mechanical reproduction or public performance. The grant of a license for the clearing of and the provision of inter-collecting society administration services with respect to record producers' simulcasting rights, now made possible by means of the Reciprocal Agreement, are therefore not substitutable by other services.

Simulcasting rights administration services between collecting societies

- (35) The first relevant product market covered by the Reciprocal Agreement is the market for multi-territorial simulcasting rights administration services between record producers' collecting societies.
- (36) The market is characterised on the supply side by record producers' collecting societies willing and capable of administering on a multi-territorial basis for simulcast use the repertoires of other societies located in territories other than the one where the former are established. On the demand side, it is characterised by record producers' collecting societies wishing to have their repertoires administered on a multi-territorial basis for simulcast use by another society located in a different territory.

Licensing of the record producers' simulcasting right

- (37) The Reciprocal Agreement creates a second relevant product market which is the downstream market for the multi-territorial and multi-repertoire licensing of the simulcasting right.
- (38) The market for multi-territorial and multi-repertoire simulcast licensing is characterised on the supply side by the record producers' collecting societies which have been mandated the necessary rights by their record company members to grant licences to users. On the demand side it is characterised by user TV and radio broadcasters who wish to make the conventional radio/TV signal simultaneously available via the Internet. Since mono-territorial or mono-repertoire simulcasting licences do not represent a viable alternative service for such users, multi-territorial and multi-repertoire licensing of the simulcasting right constitutes the relevant product market.

2. Geographic markets

Simulcasting rights administration services between collecting societies

- (39) The relevant geographic market for multi-territorial simulcasting rights administration services between record producers' collecting societies will comprise at least all the EEA countries where the local collecting society is a party to the Reciprocal Agreement, i.e. all EEA countries except for France and Spain ⁽¹⁷⁾. Pursuant to the new paragraph added to the Reciprocal Agreement by means of the amendment notified to the Commission on 21 June 2001, the right to license a collecting society's (EEA or non-EEA) repertoire will be granted to EEA societies which are party to the Reciprocal Agreement for all the EEA countries where these societies are established, provided the signal of the prospective licensee originates in the EEA.

⁽¹⁶⁾ See Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5, point 17).

⁽¹⁷⁾ Given the absence of a phonogram producers' collecting society in Luxembourg and Liechtenstein, producers' simulcasting rights for these territories will be administered by other societies that are party to the Reciprocal Agreement. Simulcast licences for Liechtenstein will be administered by IFPI Schweiz. The territory of Luxembourg is covered by the Reciprocal Agreement and any participating EEA society will be able to issue licences to simulcasters based in Luxembourg, consistent with the principles set out in the Agreement.

- (40) The framework resulting from the Reciprocal Agreement renders the conditions of competition in the EEA countries where the local collecting society is a party to the Reciprocal Agreement sufficiently homogeneous to distinguish this area from other areas ⁽¹⁸⁾. Therefore, collecting societies in the EEA which are party to the Reciprocal Agreement will constitute among each other real alternative sources of provision of this service.

Licensing of the record producers' simulcasting right

- (41) As regards the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing, the preliminary question to be answered, from the point of view of demand, is whether the parties' customers would switch to suppliers located elsewhere in response to a hypothetical small permanent relative price increase in the products and areas considered ⁽¹⁹⁾. In defining the relevant geographic market, the Commission identifies possible obstacles and barriers isolating undertakings located in a given area from the competitive pressure of undertakings located outside that area ⁽²⁰⁾.
- (42) Pursuant to Article 3(1) of the Reciprocal Agreement, a broadcaster whose signal originates in the EEA is able to obtain a multi-territorial/multi-repertoire license valid throughout the relevant EEA countries from any one of the collecting societies established in the EEA which are a party to the Agreement. The same broadcaster, however, cannot in principle obtain a multi-territorial/multi-repertoire license valid throughout the relevant EEA territories from either a non-EEA society or from an EEA society which is not party to the Agreement.
- (43) The Reciprocal Agreement does not require EEA societies to empower non-EEA societies on the basis of the bilateral representation agreements to grant multi-territorial/multi-repertoire licences to broadcasters located in the EEA. Consequently, broadcasters whose broadcasting signal originates in the EEA, even if faced with a hypothetical small permanent relative price increase in multi-repertoire/multi-territory licenses granted by an EEA-society which is party to the Reciprocal Agreement, will not in principle be able to switch to an alternative source of supply located outside the EEA. On the other hand, EEA collecting societies which are not party to the Reciprocal Agreement are by definition not subject to any of its provisions, and therefore Article 3(1) of the Reciprocal Agreement is not applicable to them. Accordingly, EEA societies which are not party to the Reciprocal Agreement are not an alternative source of supply either and the territories where they are located are excluded from the relevant geographic market.
- (44) In the light of the foregoing, the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing comprises all the EEA countries except for Spain and France.

F. STRUCTURE OF THE MARKET

- (45) Within the traditional (off-line) copyright and related rights licensing market, and as the parties themselves acknowledge in the notification, EEA collecting societies enjoy a dominant, and in most cases even monopolistic, position in their respective markets ⁽²¹⁾, the market being characterised on the supply side by minimal actual competition. It follows that collecting societies have a virtual 100 % share of the market in their respective territories, given that nearly all the individual holders of rights in sound recordings entrust them in each Member State to one collecting society. The Court of Justice has recognised the dominant position of collecting societies arising from their *de facto* monopolies in national territories in the cases BRT v. SABAM ⁽²²⁾ and GVL v. Commission ⁽²³⁾.
- (46) As a result of the market structure in the market for the licensing of copyright and related rights, the collecting societies have an identical market position as regards the inter-society provision of rights administration services in each of the national territories.

⁽¹⁸⁾ See Commission notice on the definition of relevant market for the purposes of Community competition law, point 8.

⁽¹⁹⁾ See Commission notice on the definition of relevant market for the purposes of Community competition law, point 17.

⁽²⁰⁾ See Commission notice on the definition of relevant market for the purposes of Community competition law, point 30.

⁽²¹⁾ Under certain circumstances, national legislation in some Member States confers to collecting societies a legal monopoly for the exploitation of rights.

⁽²²⁾ Case 127/73, BRT v. SV SABAM et NV Fonior [1974] ECR 313.

⁽²³⁾ Case 7/82, GVL v. Commission [1983] ECR 483.

- (47) In the framework of simulcasting licensing, the situation is different in that the amended Reciprocal Agreement will allow for competition between EEA-based collecting societies which are party to the Agreement for the granting of multi-territorial/multi-repertoire simulcast licenses to broadcasters whose signal originates in the EEA. The same applies as regards the market for inter-society multi-territorial administration services concerning simulcasting rights.
- (48) Given that the markets for simulcasting rights administration and licensing are new markets, no data are yet available as regards the position of each of the parties in the relevant markets. However, the envisaged structure for reciprocal administration and neighbouring rights licensing is based on certain elements that already currently exist in the off-line administration and licensing markets. In fact, the licensing entities are the same, which means that the structures, the people and the means that are going to be used are mostly the same. Furthermore, the legal basis under which such entities operate (national and international law) are the same.

G. THIRD PARTY OBSERVATIONS

- (49) On 17 August 2001, the Commission published a Notice ⁽²⁴⁾ pursuant to Article 19(3) of Regulation No 17, stating that it intended to take a favourable view in respect of the notified agreement and inviting third parties to submit their observations before adopting a favourable opinion.
- (50) Six associations have submitted observations further to the publication of the Notice: ACT (Association of Commercial Television in Europe), EBU (European Broadcasting Union), EDIMA (European Digital Media Association), FIM (International Federation of Musicians), UTECA (Unión de Televisiones Comerciales Asociadas) and VPRT (Verband Privater Rundfunk und Telekommunikation E.V.).
- (51) Five of the associations strongly support the 'one-stop shop' principle enshrined in the Reciprocal Agreement. FIM says that such principle may be appropriate if it is implemented with the agreement of all right-holders.
- (52) ACT and VPRT submit definitions of three relevant markets:
- (a) the market for administration services provided by neighbouring rights societies with respect to the licensing of rights to simulcast;
 - (b) the market for the licensing of the neighbouring rights societies' aggregate repertoire to broadcasters for simulcast use; and
 - (c) the market for music content distributed by Content Providers over the Internet and similar networks.
- (53) ACT and VPRT consider that collecting societies are competitors in those markets where they are active. Accordingly, they consider Article 81(1) of the Treaty to apply to the Reciprocal Agreement, particularly in the light of the Commission Notice concerning guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements ⁽²⁵⁾. However, these associations, as well as UTECA, also consider the four criteria contained in Article 81(3) of the Treaty to be fulfilled such as to render an exemption for the Reciprocal Agreement possible.
- (54) Five of the respondent associations ask the Commission to guarantee that the licensor collecting society determines individually the tariff to be charged for a multi-repertoire/multi-territory license, so as to ensure that the competition allowed for by the amendment to the Reciprocal Agreement extends to pricing and that it is not undermined in practice by, for example, a concerted behaviour of the collecting societies party to the agreement.

⁽²⁴⁾ OJ C 231, 17.8.2001, p. 18.

⁽²⁵⁾ OJ C 3, 6.1.2001, p. 2.

- (55) Three of the respondent associations call the Commission's attention to the very limited material scope of the Reciprocal Agreement and ask the Commission to encourage the collecting societies party to the agreement, as well as other societies, to extend the same type of agreements to other forms of exploitation of rights (for example, webcasting, broadcasting, pay-TV services), to other transmission modes (cable systems and satellite transmissions) and to 'other categories of copyright (for example, authors' rights).'
- (56) FIM expresses their concern that rights of performers are not duly taken in consideration in the framework of the Reciprocal Agreement and that record producers societies, which in some cases also have performers as their members, may unduly collect and administer monies on behalf of performers. The notifying parties have confirmed to the Commission that the Reciprocal Agreement only covers phonogram producers' rights ⁽²⁶⁾ given that it only mandates the societies to administer the rights of phonogram producers. However, the parties also clarified that a number of the collecting societies who are party to the Reciprocal Agreement also administer the rights of performers and that, in practice, such societies may be able to issue licences to simulcasters that also cover performers' rights, where such societies have been mandated with performers' rights either directly by performers or as a result of reciprocal agreements between societies representing performers' rights. The parties say that where this is the case, the collected sums will be divided between the right holders according to the society's distribution rules. Insofar as this issue concerns exclusively the internal relations between the collecting societies and their performer members, it is not relevant for the purposes of this decision.
- (57) The EBU and FIM express their doubts as to the legal grounds of the simulcasting licenses envisaged by the Reciprocal Agreement. The EBU doubts whether simulcast licenses are legally required at all. FIM says that no contractual license is required where the law provides for a system of compulsory licensing due to which the act of communication to the public of phonograms is subject only to the payment of equitable remuneration. In this respect the doubts raised by both associations fall outside the scope of the present procedure and the Commission's analysis in this case is strictly limited to the assessment of the notified agreement under the relevant Community and EEA competition rules. Accordingly, this decision in no way prejudices any other legal question which may arise from national copyright or general civil law and that would fall within the competence of national authorities and/or national courts.
- (58) After examining the comments in detail, and further to the amendments to the Reciprocal Agreement, there are no grounds for the Commission to depart from its provisionally favourable position, for the reasons further explained in the following sections of the present decision.

H. ARTICLE 81(1) OF THE TREATY (AND ARTICLE 53(1) OF THE EEA AGREEMENT)

1. Agreement between undertakings

- (59) Collecting societies are undertakings within the meaning of Article 81(1) of the Treaty because they participate in the commercial exchange of services ⁽²⁷⁾ and are therefore engaged in the exercise of economic activities. The Court of Justice does not consider collecting societies to be undertakings entrusted with the operation of services of general economic interest in the sense of Article 86 of the Treaty ⁽²⁸⁾.
- (60) The notified Reciprocal Agreement is a formal contractual arrangement entered into by the collecting societies and is therefore an agreement between undertakings within the meaning of Article 81(1).

⁽²⁶⁾ 'Memorandum concerning issues arising from the country of destination principle and the tariff structure in the simulcasting agreement', submitted on 5 November 2001.

⁽²⁷⁾ See, for example, the Court judgments in Case 127/73 BRT v. SABAM; Joined cases 55/80 and 57/80 *MV membran et K-tel International v. GEMA* [1981] ECR 147; Case 7/82 *GVL v. Commission*; Joined cases C92/92 and C326/92 *Phil Collins v. Imtrat and Patricia Im- und Export v. EMI*, [1993] ECR I-5145.

⁽²⁸⁾ See *GVL v. Commission*, paragraph 32, and *BRT v. SABAM*, point 23.

2. Restriction of competition

- (61) The licensing of copyrights and related rights in the online environment is significantly different from the traditional offline licensing, in that no physical monitoring of licensed premises is required. The monitoring task must necessarily be carried out directly on the Internet. The crucial requirements in order to be able to monitor the use of copyrights and related rights are therefore a computer and an Internet connection. This means that monitoring can take place from a distance. In this context, the traditional economic justification for collecting societies not to compete in cross-border provision of services does not seem to apply.
- (62) Insofar as the Reciprocal Agreement creates a new product (multi-territorial and multi-repertoire licensing of the simulcasting right) that could not be realistically created without some cooperation among collecting societies, only certain particular clauses of the Reciprocal Agreement, namely Articles 5(2), 5(3) and 7⁽²⁹⁾, deserve closer attention, since they may constitute restrictions of competition.
- (63) The parties, supported by an expert opinion by Dr Thomas Dreier of the Max Planck Institut⁽³⁰⁾, state their belief that the country-of-destination principle provides the correct licensing model for Internet simulcasting⁽³¹⁾. According to the parties, if right holders were to implement a system of licensing on a country-of-origin basis, then phonogram producers' rights could remain unrecognised or weakened in cases where the jurisdiction of origin of the simulcast did not offer adequate legal protection. Even in cases where adequate legal protection is in place, the parties emphasise the risk of proper remuneration of right-holders being endangered or weakened by means of 'forum-shopping' throughout jurisdictions offering the lowest possible remuneration level.
- (64) Starting from the assumption, as the parties do, that remuneration is due in every country where the act of communication to the public is undertaken, it follows that a particular use of a phonogram should be assessed under the legal, economic and commercial conditions of each of the countries where the use takes place. It also follows that the value of the rights for each territory should be determined according to exploitation in such territory. Article 5(2) of the Reciprocal Agreement therefore sets out the principle that the tariff to be applied to the clearance of rights is that of the country of destination. However, the Reciprocal Agreement does not determine the tariff structure or level. According to the parties, this will remain a matter for individual collecting societies, who will set their national simulcasting tariffs in accordance with respective national legislation and commercial needs.
- (65) In any event, the global tariff to be charged by a society granting a multi-repertoire/multi-territory license will reflect, in addition to its own tariff, the different national tariffs determined by each of the participating societies. The global tariff to be charged by the grantor society will therefore have to be an aggregate of all the relevant national tariffs. Assuming that either of the two envisaged possibilities in respect of the tariff structure is adopted⁽³²⁾, the aggregate will not be a mere accumulation of fixed tariffs. Rather, the aggregate will take into account factors such as the advertising revenue stream generated in each jurisdiction or the intensity of the use in each country, insofar as the relevant national percentage tariff is applied in proportion to the amount of such revenue or to the number of users that can be attributed to each territory⁽³³⁾.
- (66) The Commission acknowledges the need for proper remuneration of right-holders, be it phonogram producers, as in the present case, or performers or authors, in other cases, and endorses the efforts made to protect and to encourage the productive or creative effort underlying the final act of

⁽²⁹⁾ Article 7 reads:

'During the experimental period the Contracting Parties shall undertake to use their best efforts to exchange information for which they may be asked for the purpose of this agreement concerning:

- the license fees they apply to the simulcasts in their own territory,
- the number and origin of hits of the Simulcaster's website licensed by the parties,
- their repertoire.'

⁽³⁰⁾ Annex 11 to the application submitted on 16 November 2000.

⁽³¹⁾ See recitals 21, 22 and 23.

⁽³²⁾ Number of users or intensity of use, see recital 25.

⁽³³⁾ See recital 25.

communication to the public of a work protected by copyright or neighbouring rights legislation. The right to remuneration of a right-holder for the public performance of a copyright protected work has been recognised by the Court of Justice as part of the essential function of copyright ⁽³⁴⁾. However, it is settled case law that although the existence of an intellectual property right under national law is not prejudiced, pursuant to Article 295 of the Treaty, by the other Treaty provisions, its exercise may be affected by the prohibitions of the Treaty ⁽³⁵⁾ and may accordingly be limited to the extent necessary to give effect to the prohibition under Article 81(1) ⁽³⁶⁾. Given that collective administration of copyright and neighbouring rights clearly corresponds to the exercise of those rights, and not to their existence, the way in which collecting societies put in practice the administration of the rights they are entrusted with may, under certain circumstances, infringe Article 81(1) of the Treaty.

- (67) In the present case, the model chosen by the parties for the simulcasting licensing structure results in the society granting a multi-repertoire/multi-territory license being limited in its freedom as to the amount of the global license fee it will charge to a user. In fact, the individual national tariffs determined by each of the participating collecting societies that contribute to the bundle of repertoires and territories being offered to a user through a single license will be imposed on the grantor society. This means that the global fee charged by the grantor society for a multi-repertoire/multi-territory license is to a large extent determined *ab initio*, which significantly reduces the competition in terms of price between EEA-based collecting societies. In this respect the participating EEA-based collecting societies will be offering exactly the same product, i.e. a neighbouring rights license covering the same repertoires and the same territories. As most of the third parties that submitted observations further to the publication of the Commission Notice pursuant to Article 19(3) of Regulation No 17 have emphasised ⁽³⁷⁾, the degree of competition between the participating EEA-based collecting societies allowed for by the amendment to the Reciprocal Agreement could be undermined in practice if such competition did not extend to pricing and if all the participating societies ended up charging the same tariff for an identical license.
- (68) In this case, a collecting society's freedom of action as regards the grant and the administration of a multi-territory/multi-repertoire license is limited to three elements: the amount of its national simulcasting tariff (to be subsequently aggregated with all other national tariffs determined by the other participating societies), the terms to be agreed with other societies, including commissions, for the administration of their repertoires in the framework of subsequent bilateral agreements, and the commercial terms to be agreed with individual licensees as regards, for example, payment terms, rebates or discounts. In this context, the non-exclusive character of the reciprocal mandates to be granted by and between societies in the framework of subsequent bilateral agreements dissipates the most serious concerns in respect of the market for simulcasting rights administration services. The same, however, cannot be said in respect of the downstream licensing market.
- (69) The fact that a collecting society is free to determine its national simulcasting tariff does not translate into actual price competition between societies because all the national tariffs will be aggregated such as to result in a unique global simulcasting tariff for a multi-territorial/multi-repertoire license, and this unique global tariff will be the same no matter which of the participating societies grants the license. Such freedom does therefore not translate into any useful advantage to a prospective user in terms of its ability to choose one provider on the basis of price differences. On the other hand, the fact that a society is free to negotiate with a prospective user on an individual basis the commercial terms of a license (apart from the global fee) may certainly, in some cases, introduce an element of price competition between societies. However, this will not always be the case. The possibility of enjoying rebates or discounts or advantageous payment terms will necessarily depend on the profile of the user. This means that for large-scale users a certain degree of price competition

⁽³⁴⁾ Case 62/79, *SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v Ciné Vog Films and others* [1980] ECR 881, point 14.

⁽³⁵⁾ Case 15/74, *Centrafarm BV and Adriaan de Peijper v. Sterling Drug Inc* [1974] ECR 1147, point. 7.

⁽³⁶⁾ Joined cases 56/64 and 58/64, *Établissements Consten SàRL and Grundig-Verkaufs-GmbH v. Commission*, [1966] ECR English special Edition p.382. See also joined cases 55/80 and 57/80, *Musik-Vertrieb membran GmbH et K-tel International v GEMA - Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte*, point 12, where the Court states that, in respect of Article 36 of the Treaty, 'there is no reason to make a distinction between copyright and other industrial and commercial property rights'.

⁽³⁷⁾ See Section G, Third party observations.

between societies may exist, depending on the different commercial terms offered to them by the various societies ⁽³⁸⁾. However, this also means that for small- or medium-scale users no other terms besides the standard terms may be available. Given that the standard terms correspond to the undifferentiated simulcasting global tariff, the end result of the Reciprocal Agreement is that in most cases no price competition exists between the participating societies. Accordingly, a vast universe of users will be prevented from choosing a society on the basis of price differences for a multi-territory/multi-repertoire license.

- (70) The need for a collecting society to guarantee an appropriate level of remuneration for its own repertoire certainly results from the essential function of copyright and neighbouring rights, and consequently it is only natural that agreements between collecting societies will contain provisions on this issue. However, Article 5(2) of the Reciprocal Agreement goes beyond the mere recognition that collecting societies must earn enough revenue to honour their financial commitments to each other, because it states how it is to be done, by obliging them to respect the tariffs of the country-of-destination. This provision is, thus, not objectively necessary for the existence of the Reciprocal Agreement.
- (71) What renders this mechanism particularly restrictive is the fact that the lack of price competition as it results from the envisaged system occurs not only in respect of the royalty proper due for the use of protected works but also as regards that part of the license fee which is meant to cover the administration costs of the grantor society. In fact, no distinction is made between the two elements the sum of which necessarily constitutes the total amount of the license fee. By not distinguishing the copyright royalty from the administration fee, the notifying parties significantly reduce the prospects of competition between them as regards pricing for the provision of the licensing service. The confusion between the two elements of the license fee prevents prospective users from assessing the efficiency of each one of the participating societies and from benefiting from the licensing services from the society capable of providing them at the lower cost. Indeed, the Court of Justice has already found that operating expenses account for the most marked differences between collecting societies and that competition may have a role to play in order to limit the heavy burden of administration and hence the level of royalties ⁽³⁹⁾.
- (72) The amalgamation of copyright royalty and administrative fee that results in an undifferentiated global license fee to be charged to a user cannot be considered as directly related to the notified agreement or objectively necessary for the existence of the Reciprocal Agreement.
- (73) First, the amalgamation of copyright royalty and administration fee bears no direct relation with the object of the notified agreement. There is no logical link that can be established between the reciprocal representation service between collecting societies envisaged in the notified agreement and the practice of confusing two distinct elements of a license fee to be charged downstream to a user.
- (74) Secondly, it is self-evident that the service provided by a collecting society to a right-holder member and the service provided by the same society to a (prospective) licensee are different services which require different activities, involve different counter-parties and imply different costs. The service provided to a right-holder member is a service based on a membership agreement pursuant to which the collecting society commits to license the works of which the member is the legitimate right-holder and to collect on its behalf the revenues derived from the exploitation of its works by third parties. This service responds to the demand of right-holders to have their works administered by a specialised entity and implies the collection and distribution of monies, as well as the monitoring of the usage of the members' works by third parties. In contrast, the service provided to a (prospective) licensee responds to the demand of an operator wishing to use a copyright protected

⁽³⁸⁾ Experience shows, for example in the field of central licensing agreements for mechanical reproduction rights, that differences in commercial terms are a crucial factor in the choice of a collecting society where the user has the possibility to choose the grantor-society from a number of different societies. In the field of mechanical rights, however, experience also shows that only large, multinational companies enter into central licensing agreements.

⁽³⁹⁾ Case 395/87 *Ministère Public v. Tournier*, point 42.

work and is based on a licensing agreement. Above all, it provides the user with a centralised service that avoids the lengthy, cumbersome and in most circumstances unfeasible task of seeking copyright clearance from all the individual right-holders. The service to the user involves the grant of the license, the reception of monies and the definition of a framework pursuant to which reporting, accounting and monitoring can take place.

- (75) An undertaking is expected to be able to identify its costs (as well as its revenues) in relation to the different products or services it supplies to different customers. Collecting societies should therefore be able to identify the costs inherent to the services they provide to right-holder members, on the one hand, and to licensees, on the other, and charge separate prices accordingly.
- (76) The effect of the provision in the Reciprocal Agreement determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory is that the same product is offered to the market in the relevant EEA countries at a price which is to a large extent pre-determined as a result of a network of bilateral agreements between the different providers of the said product, such network of bilateral agreements being itself a result of the notified Reciprocal Agreement entered into by the different providers of the product. In the light of the foregoing, it must be concluded that Article 5(2) of the Reciprocal Agreement, determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory, restricts competition within the meaning of Article 81(1) of the Treaty.
- (77) The parties to the Reciprocal Agreement are the vast majority of record producer rights collecting societies in the EEA, in addition to collecting societies from Central and Eastern Europe, Asia, Latin America and New Zealand ⁽⁴⁰⁾. A significant proportion of the record producers that are members of the EEA-based collecting societies party to the Reciprocal Agreement are affiliated with the IFPI, which is the largest international trade association in the music industry, representing more than 1 300 record and music video producers in over 70 countries, in addition to national trade associations representing local record companies in 39 countries (IFPI national groups). The five major record companies (EMI, BMG, Vivendi/Universal, AOL/Time Warner and Sony) are members of all EEA-based collecting societies party to the Reciprocal Agreement, which, given the fact that those five companies are publicly known to have a market share of well above 50 % in the market for recorded music, means that a vast majority of the recorded music repertoire available for commercial exploitation through licensing for the purposes of, for example, simulcasting, is affected by the Reciprocal Agreement. Furthermore, as the parties themselves acknowledge in the notification, EEA collecting societies function as virtual monopolies. It follows that collecting societies have a virtual 100 % share of the market in their respective territories, given that nearly all the individual holders of rights in sound recordings entrust them in each Member State to one collecting society. Finally, to the knowledge of the Commission, the collecting societies party to the Reciprocal Agreement are the only entities in the world able to grant a 'one-stop shop' multi-territory/multi-repertoire license for the purposes of simulcasting protected musical works.
- (78) A restriction of competition affecting, in terms of pricing, the licensing terms for such a significant part of the recorded music repertoire held by the vast majority of the administrators of record producers' rights in the EEA, themselves part of the group of the only entities in the world able to grant a 'one-stop shop' multi-territory/multi-repertoire license for the purposes of simulcasting,

⁽⁴⁰⁾ See recital 8.

is clearly appreciable. Therefore, Article 5(2) of the Reciprocal Agreement, determining that each contracting party shall apply to simulcasters the license fees which apply in the other contracting party's territory for those simulcasts received in the latter's territory, appreciably restricts competition within the meaning of Article 81(1) of the Treaty.

- (79) As regards Articles 5(3) and 7 of the Reciprocal Agreement, the parties have explained that these provisions are designed to provide an element of flexibility in the arrangements during the experimental period due to the uncertainty surrounding the development of this new market. According to the parties, the envisaged discussions strictly concern the elements necessary to ensure the effective implementation of the Reciprocal Agreement and, in particular, the distribution of royalties between the participating societies. Such discussions would not restrict the collecting societies in their autonomy to decide the level of their own national tariff. The understanding of the Commission in this respect is that any discussions between the parties pursuant to Articles 5(3) and 7 of the Reciprocal Agreement must have a strict technical nature and be aimed at achieving technical improvements or technical cooperation, covering, for example, the determination of criteria for the establishment of the tariffs or the determination of the mechanisms to re-distribute royalties. Therefore, it appears that such discussions fall outside the scope of Article 81(1) of the Treaty provided that they do not result in joint price fixing practices or agreements.
- (80) The independent determination by each economic operator of its commercial policy, and in particular of its pricing policy, corresponds to the concept inherent in the competition provisions of the Treaty ⁽⁴¹⁾, and, in this case, the discussions between the participating societies must not result in the loss of their autonomy to determine the level of their national tariffs and administration fees. The obvious reason for this is that the joint fixing of prices restricts competition, in particular by enabling every participant to predict with a reasonable degree of certainty what the pricing policy pursued by its competitors will be ⁽⁴²⁾. Any discussion, practice or agreement between the parties pursuant to Article 5(3), or a result thereof, that goes beyond its intended strict technical character and which is restrictive of competition, is not covered by the notification, namely for the purposes of Article 15(5) of Regulation No 17.

3. Effect on trade between Member States

- (81) In order to ascertain if an agreement may affect trade between Member States it must be determined whether such agreement 'may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, such as might prejudice the realisation of the aim of a single market in all Member States' ⁽⁴³⁾. For the purposes of this analysis, 'account must be taken of the consequences for the effective competitive structure in the common market' ⁽⁴⁴⁾.
- (82) The Court has already adopted the view that the activities of undertakings managing copyrights are capable of affecting trade between Member States ⁽⁴⁵⁾. Besides, the relevant geographic market for multi-territorial/multi-repertoire simulcasting licensing comprises most of the EEA ⁽⁴⁶⁾. In this case, the need to aggregate a number of pre-determined national tariffs and the confusion between the element of the copyright royalty and the element of the administration fee result in the grantor society having a strictly limited margin of manoeuvre in the determination of the global license fee. This circumstance diminishes (although it does not eliminate) the economic incentive, and therefore the likelihood, of a prospective licensee seeking a license from a society located in a Member State different from that in which he sought it in the first place.
- (83) In the light of the foregoing, the Reciprocal Agreement is clearly capable of affecting trade between Member States.

⁽⁴¹⁾ Case 26/76, *Metro v. Commission*, [1977] ECR 1875, paragraph 21; Case T-1/89, *Rhône-Poulenc v. Commission* [1991] ECR II-867, point 121; Case T-229/94 *Deutsche Bahn AG v. Commission* [1997] ECR II-1689, point 38.

⁽⁴²⁾ Case 8/72 *Cementhandelaren v. Commission* [1972] ECR 977, point 21; *Deutsche Bahn AG v. Commission*, point 36.

⁽⁴³⁾ Case 42/84 *Remia BV and others v. Commission* [1985] ECR 2545.

⁽⁴⁴⁾ Joined cases 6/73 and 7/73, *Istituto Chemioterapico Italiano Spa and Commercial Solvents Corporation v. Commission* [1974] ECR 223.

⁽⁴⁵⁾ Case 22/79 *Greenwich Film Production v. SACEM and Société des Éditions Labrador* [1979] ECR 3275; and Case 7/82, *GVL v. Commission*, point 38.

⁽⁴⁶⁾ See recitals 41 to 44.

I. ARTICLE 81(3) OF THE TREATY (AND ARTICLE 53(3) OF THE EEA AGREEMENT)

1. Promotion of technical and economic progress

- (84) The Commission has previously stated that in certain circumstances cooperation may be justified and can lead to substantial economic benefits, namely where companies need to respond to increasing competitive pressure and to a changing market driven by globalisation, the speed of technological progress and the generally more dynamic nature of markets ⁽⁴⁷⁾. The Reciprocal Agreement appears to be a product of such a response, given the technological developments which lead to the simulcasting technology. It presents a number of pro-competitive elements which may significantly contribute to technical and economic progress in the field of collective management of copyright and neighbouring rights.
- (85) First, simulcasting as such had not been yet the object of an agreement between collecting societies. The Reciprocal Agreement reduces substantially the legal uncertainty surrounding simulcasting licensing in that the agreement is based on a common understanding of the relevant legal framework by a significant number of the licensing entities in the EEA. The agreement will therefore allow collecting societies to supply users with simulcasting licenses covering the repertoires of all societies reciprocally represented by means of the reciprocal agreements in an environment of greater legal certainty.
- (86) Secondly, the simulcasting licenses to users as they result from the Reciprocal Agreement present a new feature, which did not previously exist in the traditional copyright and neighbouring rights licenses. As opposed to traditional rights licenses, simulcasting licenses will allow for the use of the licensed rights in more than one territory. In fact, the notified structure will allow for a wide spread legitimate use of the rights, in accordance with the global reach of the Internet. By reciprocally granting the right to license simulcasting 'in and into its own territory', collecting societies enable each other to grant a 'one-stop shop' license to simulcasters which covers all the repertoires of the societies which are party to the agreement and which is valid in all the territories where the sound recording is made available. A simulcaster will therefore not need to seek a license from each collecting society in every territory where its simulcast is accessed to through the Internet.
- (87) The two elements highlighted above indicate that the Reciprocal Agreement gives rise to a new product: a multi-territorial, multi-repertoire simulcasting license, covering the repertoires of a number of collecting societies, enabling a simulcaster to obtain a single license from a single collecting society for its simulcast which is accessible from virtually anywhere in the world via the Internet.
- (88) One of the main concerns in relation to cooperation agreements, as regards both horizontal agreements and vertical agreements between competitors, are restrictions of competition by means of output limitation ⁽⁴⁸⁾. In this case, however, the fact that a new product is created by means of the Reciprocal Agreement, in response to a clear demand, increases output. As long as the grant of licenses by collecting societies is carried out under normal circumstances, as foreseen in the Reciprocal Agreement, there seems to be no reason to fear an output limitation, mainly given the fact that competition in the EEA countries where the local collecting society is a party to the agreement will be reinforced as a result of the agreement.

⁽⁴⁷⁾ Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Commission, point 3.

⁽⁴⁸⁾ Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Commission, points 11 and 18.

2. Improvement in the distribution of goods

- (89) The fact that the use of simulcasting technology is enhanced by the Reciprocal Agreement results in more sound/video recordings being made available to more consumers. Music records and videos broadcast via terrestrial means, satellite and/or cable necessarily have a limited reach due to technical reasons. By making such music records and videos available through Internet by means of simulcasting, simulcasters will allow virtually anyone from anywhere in the world to access such products.
- (90) The notified arrangements avoid the necessity for a multiplicity of individual lengthy negotiations by users across the EEA with each collecting society. Consequently, the reciprocal framework should reduce transaction costs significantly and contribute to the creation of an almost EEA-wide market ⁽⁴⁹⁾ for the licensing of simulcast transmissions. Under the reciprocal simulcasting licences system, broadcasters will obtain the comfort that, by obtaining one simulcast licence from a single collecting society, they will be able to simulcast in any participating territory without fear of being sued for infringement of the relevant rights ⁽⁵⁰⁾.
- (91) Small record companies tend to provide opportunities for new and untried artists and often concentrate their efforts in producing specialist repertoire. The reciprocal licences will ensure that they have the same level of remuneration for simulcasting their works as their more powerful rivals, since their repertoire will be available for licensing to users as easily as that of the international companies.
- (92) The distribution of music included in records and videos is therefore improved.

3. Benefits for the consumer

- (93) The creation of a legitimate marketplace for simulcasting will benefit consumers both in the short-term and in the long-term.
- (94) In the short-term, consumers will get easier and wider access to a range of music by means of the available simulcasts. Furthermore, through the Internet they will be able to access their favourite radio and/or TV music programmes without the technical constraints inherent to traditional broadcasting and they will be able to access such programmes from virtually anywhere in the world.
- (95) In the long-term, the fact that simulcasting is now put in place within a legitimate framework which ensures the proper remuneration of right-holders ensures that the effort of music producers is duly rewarded and that therefore a wide range of music will still be available in the future.

4. Indispensability

- (96) The parties have presented their choice of the country-of-destination principle in respect of tariff determination, and the resulting application of pre-determined national tariffs, as indispensable for the preservation of right-holders rights, in terms of proper remuneration and adequate legal enforcement. The model chosen by the parties is completed by the envisaged combination of the country-of-destination principle with the criteria of generated revenue and/or intensity of use.

⁽⁴⁹⁾ With the exceptions of France and Spain.

⁽⁵⁰⁾ This consideration is valid for phonogram producers rights only. Simulcasters will still have to seek different licenses from different societies where different copyright or right-holder categories are at stake.

- (97) In order to assess the indispensability of the restriction introduced by Article 5(2) of the Reciprocal Agreement, the Commission must consider if a less restrictive alternative is available to the parties. In doing this, the Commission must take into consideration the legitimate objectives sought by the parties, namely the concerns for adequate legal protection, for proper remuneration of right-holders and for remuneration schemes that reflect the level of exploitation of protected works, and balance them against one of the main concerns in relation to cooperation agreements, as regards both horizontal agreements and vertical agreements between competitors: restrictions of competition by means of price fixing ⁽⁵¹⁾.
- (98) The model proposed by the parties raises two issues. The first one concerns the fact that neither the national tariffs, as proposed by the parties, nor the global license fee distinguish between copyright royalty and administration fee, i.e. the amount meant to remunerate the right holder, on the one hand, and the amount meant to cover the administrations costs of the grantor society, on the other. The second issue concerns the pre-determination of national tariffs the aggregate of which constitutes the global license fee to be charged by every one of the participating societies for a multi-territory/multi-repertoire license.

The amalgamation of copyright royalty and administration fee

- (99) With respect to the first issue, the confusion between copyright royalty and administration fee (the amalgamation of which results in the global license fee) restricts competition between collecting societies as regards the pricing for the licensing service provided to users ⁽⁵²⁾. Where no distinction is made between those two elements, it becomes impossible to know which part of the license fee will be used to remunerate the right holder and which part thereof will serve to cover the administration costs incurred by the grantor society when providing and administering a multi-territory/multi-repertoire license. Among other things, this confusion shows that under the envisaged structure the societies would not take in consideration their actual administration costs when determining their administration fee vis-à-vis the users. This means that the part of the license fee that was meant to cover the administration costs of the grantor society would be arbitrarily determined and, as such, potentially excessive. In a scenario where the societies faced price competition, the concern would be somehow dissipated by the fact that the marginal cost of the service would tend to zero due to existence of competition between different societies. However, under the envisaged structure no price competition is made possible due to the obligation of aggregating all pre-determined national tariffs so as to arrive at a fixed global license fee.
- (100) The agreement between the societies to amalgamate administration fee and copyright royalty, thereby jointly determining a global license fee, clearly goes beyond what is required to pursue the legitimate concerns of the parties in respect of adequate legal protection, proper remuneration of right-holders and remuneration schemes that reflect the level of exploitation of protected works.
- (101) The parties say that administration fee and copyright royalty are amalgamated because the administration costs are borne exclusively by their right-holder members by means of a commission charged on the collected revenues, and not by the users who obtain a copyright license. The amount paid by a user for a license is considered by the parties in its entirety as remuneration for the usage of copyright and not, even partially, as the payment of administration costs. However, the explanation given by the parties ignores economic reality and corresponds rather to a financial fiction. It is known that the remuneration of the societies corresponds to a commission charged to their right-holder members in respect of collected revenues. This commission is claimed to serve the purpose of covering the administrative costs of the societies. It is also known that the amounts charged by

⁽⁵¹⁾ Guidelines on the applicability of Article 81 of the EC Treaty to horizontal co-operation agreements, Commission, points 11 and 18.

⁽⁵²⁾ See recital 76.

collecting societies to users for copyright licenses are their sole source of revenue. Logically then, part of the license fee paid by a user is allocated to cover the administration costs of a grantor society, reflecting the costs of granting and administering that very same license⁽⁵³⁾. If national tariffs reflect different costs, there is no logic, as regards a 'one-stop shop' system, in simply adding national tariffs that correspond to other collecting societies' costs. Since the 'one-stop shop' system will inevitably lead to savings of administrative costs, maintaining a tariff structure that simply reflects the sum of different national tariffs structures is at odds with one of the major advantages of the proposed simulcasting multi-repertoire/multi-territory licensing system.

(102) It is in respect of the 'one-stop shop' service that the different societies must necessarily have different costs, depending on each one's efficiency (salaries, rents, communications, etc). The Commission sees no justification for the amount of the fee charged to users for this service to be agreed upon by the notifying parties.

(103) In order to resolve the concern expressed by the Commission in respect of the agreement between the societies to determine the amount of the administration fee, the parties changed the notified agreement such as to separate the copyright royalty from the administration fee and to identify them separately when charging a license fee to a user. Another change introduced in the Reciprocal Agreement is aimed at determining the administration fee with reference to the actual administration costs incurred by the grantor society in respect of the granting of multi-territorial/multi-repertoire licenses. Annex 1 to Schedule A of the amended agreement as notified on 22 May 2002, which extends to all signatories the terms set out in a letter sent to the Commission on 19 April 2002, reads as follows:

'(...) IFPI and the record producers' collecting societies within the EEA will examine how, consistent with applicable national and European laws and regulations governing the simulcasting of sound recordings and/or the operation of producers' collecting societies, to introduce a mechanism whereby collecting societies in the EEA will specify which part of the tariff to simulcasters obtaining a multi-territorial and multi-repertoire licence pursuant to the notified agreement corresponds to the administration fee to the user. This administration fee will then be indicated separately from the royalty proper paid for the use of phonogram producers' rights by simulcasters obtaining a multi-territorial and multi-repertoire licence pursuant to the notified agreement. Accordingly, the envisaged mechanism will result in the two elements of the fee to be charged to simulcasters in the EEA being separately identified: the royalty for the use of phonogram producers' rights and the administrative fee to cover the administration costs related to the granting of multi-territorial simulcasting licenses.

The determination of the element of the administrative fee shall be made independently by each and every grantor collecting society according to the costs of the administration of the collecting society's service to multi-territorial users. Furthermore, the parties acknowledge that whilst the determination of the element of the tariff for the use of phonogram producers' rights may be carried out according to the country-of-destination principle, pursuant to Article 5(2)

⁽⁵³⁾ On the link between high administrative costs and high level of royalties, see Case 395/87 *Ministère Public v. Tourner*, point 42.

of the notified Agreement, the determination of the element of the administrative fee shall be made according to the administrative costs incurred by the grantor society.'

- (104) The parties acknowledged the importance attached by the Commission to the principles referred to in their letter by modifying the Reciprocal Agreement such as to implement the separation of the copyright royalty from the administration fee at the latest by the date on which the current experimental period of the notified agreement expires. In the amended version of the Reciprocal Agreement, as notified on 22 May 2002, the parties agree to present to the Commission by the end of 2003 a set of proposals for the implementation of the required mechanisms and to implement it as soon as possible after that date. More precisely, the Reciprocal Agreement reads:

'The collecting society signatories undertake to use their best efforts to submit to the Commission proposals for the above-referred mechanism by 31 December 2003 and to implement such a mechanism as soon as possible after that. In any event the collecting society signatories undertake to implement the mechanism described in this letter by 31 December 2004 and acknowledge that such implementation is a crucial element to be taken into consideration by the Commission in the assessment of any future arrangement concerning the management and licensing of phonogram producers' rights for the purposes of multi-territorial and multi-repertoire simulcasting.'

- (105) The parties have explained the need to enter into discussions in respect of the scope of the services they will provide to each other under the reciprocal agreements. Such discussions may not, however, lead to a loss of autonomy of each of the societies in respect of the determination of their individual administration fees and/or to any kind of price-fixing practices or agreements. Where this is the case, such discussions are understood not to be covered by the notification. Accordingly, the Reciprocal Agreement reads as follows:

'As a result of the principles set out above, the signatories hereto acknowledge that any agreements or concerted practices entered into by the notifying parties in relation to the determination of their individual administrative fees are not covered by the notification of the notified agreement, namely for the purposes of Article 15(6) of Regulation No 17. The notification should however be understood to include necessary discussions between participating societies in order to specify the scope of the administration services the participating societies are required to provide to each other under the reciprocal agreements.'

- (106) The parties have demonstrated that the collecting societies do not currently have in place the administrative and accounting structures allowing them to implement immediately the separation of the copyright royalty from the administration fee. Accordingly, even if the parties were required to implement such separation immediately, since they would not be able to do so, they would have to abandon the Reciprocal Agreement and therefore the advantages resulting therefrom would not be achieved. The parties also demonstrated that a certain period of time will be required for studying the various possibilities to put in practice the envisaged separation and for the subsequent implementation of the chosen mechanism. Furthermore, the Commission acknowledges the fact that such separation introduces a significant change in the way collective management is carried out, evidenced, *inter alia*, by the fact that no other group of collecting societies has put such separation in place and that, in fact, collective management of copyright has been carried out along the same lines for many decades now.
- (107) The change introduced by the parties into the notified agreement will induce an important degree of transparency in their relationship with users ⁽⁵⁴⁾. Moreover, it will allow for actual, although limited, price competition between collecting societies in respect of the licensing service in the market for the licensing of the record producers' simulcasting right. In the light of the foregoing, the Commission considers that the changes introduced into the Reciprocal Agreement are adequate in order to solve the competition concerns previously expressed in this respect. Lastly, in view of the elements put forward to the Commission by the parties, the Commission considers the time period required for the assessment and implementation of the mechanisms directed at separating the copyright royalty from the administration fee as indispensable within the meaning of Article 81(3)(a) of the Treaty.

Pre-determination of national copyright royalties

- (108) Regardless of the question of the amalgamation of the royalty proper with the administrative fee, the global simulcasting tariff to be charged to a user for a multi-repertoire/multi-territory license will include a royalty element which results from the aggregation of all the copyright royalties determined at national level. The model proposed by the parties therefore implies that, even if the administration fee is split, the copyright-royalty element will remain pre-determined and unchangeable by the society that grants a simulcasting license. This results from the aggregation of the national royalty determined by each and every one of the participating societies (including the grantor society) for the use of their repertoires on their own territory.
- (109) The alternatives to the model proposed by the parties (pre-determination of different national royalty levels) correspond to different degrees of autonomy by the grantor society in the determination of the royalty-element of the license fee. The first alternative would be the complete freedom by the grantor society in determining the royalty level. The second alternative, in contrast, would be an agreement between all societies determining a unique royalty level for the use of every one's repertoire on all territories.
- (110) The less restrictive option is clearly the free determination of the royalty level by the grantor society. However, the notifying parties have demonstrated that the maintenance of a certain degree of control by the individual collecting societies over the licensing terms of their own repertoire so as to ensure a minimum level of remuneration for their right-holder members is in the present circumstances indispensable for the conclusion of the Reciprocal Agreement, in that the absence of such minimum degree of control would jeopardise the willingness of a collecting society to contribute with its own repertoire to the licensing framework allowed for by the Reciprocal Agreement and, more concretely, by the set of bilateral agreements to follow.

⁽⁵⁴⁾ However, the change introduced by the parties does not necessarily lead to a modification of the current arrangements between collecting societies and their members.

- (111) By contributing with its own repertoire to the 'package' of repertoires to be included in a 'one-stop' simulcasting license, and given that any participating collecting society in the EEA may grant such a license to a user no matter where it is located in the EEA, a society potentially puts in the hands of all other societies the act of granting a license covering its own repertoire, in what entails a significant and yet to a large extent untested change as regards the traditional way licensing has been carried out. In the absence of a minimum degree of control over the licensing terms, a society which contributed with its members' repertoire to the 'one-stop' package of repertoires would incur the risk that another participating society, in order to attract users, lowered the global royalty fee below the level considered to be acceptable by the former society and/or its members. In this situation, such society (and its members) would lose revenues when compared with the scenario where it did not participate in the Reciprocal Agreement arrangement. Therefore, the absence of a certain degree of control over the licensing terms as regards the royalty level would cause the economic incentive to participate in the Reciprocal Agreement to disappear.
- (112) Furthermore, the determination at national level of the royalty to be applied to the exploitation of a society's repertoire on its own territory seems to adequately meet the parties' concern of ensuring a proper remuneration of the right-holders according the commercial realities of the territory where the copyright is exploited.
- (113) In conclusion, the option for the pre-determination of national copyright royalty levels appears to correspond to the least restrictive of the alternatives in the present circumstances so as to create and distribute a new product.
- (114) The Court has acknowledged the entitlement to remuneration of a right-holder for any showing of the respective literary or artistic work as part of the essential function of copyright ⁽⁵⁵⁾. It is also relevant in this respect that the Court has considered as legitimate the interest in calculating the fees in respect of the authorisation to exhibit an audiovisual work on the basis of the actual or probable number of performances ⁽⁵⁶⁾, where the placing of such work at the disposal of the public is separate from a material support ⁽⁵⁷⁾. Furthermore, the practical result of the other alternatives at the disposal of parties at present would not safeguard in the same degree the legitimate rights of the parties, or would only safeguard them by means of even more restrictive practices that would be unlikely to qualify for exemption under Article 81(3).
- (115) In the light of the foregoing, and given that all elements in the possession of the Commission indicate that the restriction of competition resulting from Article 5(2) of the Reciprocal Agreement represents in the present circumstances a guarantee without which the participating societies would not contribute with their individual inputs so as to create and distribute a multi-territory/multi-repertoire simulcasting license, the Commission considers such restriction to be indispensable within the meaning of Article 81(3)(a) of the Treaty.

5. Non-elimination of competition

- (116) The exclusion of reciprocal vertical agreements between competitors from the scope of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices ⁽⁵⁸⁾ and the explicit reference made in the Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements ⁽⁵⁹⁾ illustrate the concern that reciprocal agreements raise in relation to possible market partitioning. In the case of the Reciprocal Agreement, however, a number of different factors will lead to competition between EEA collecting societies being actually created and, accordingly, dissipate the concern regarding possible market or customer sharing.

⁽⁵⁵⁾ Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 14.

⁽⁵⁶⁾ Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 13.

⁽⁵⁷⁾ Case 62/79, SA Compagnie Générale pour la diffusion de la télévision, Coditel, and others v. Ciné Vog Films and others, point 12.

⁽⁵⁸⁾ OJ L 336, 29.12.1999, p. 21.

⁽⁵⁹⁾ Point 140. See also point 147.

- (117) First, it should be recalled that within the traditional framework of copyright and neighbouring rights licensing, actual competition between collecting societies in Europe has been virtually non-existent in a number of the relevant markets, except as regards central licensing arrangements between authors' collecting societies and major record companies for mechanical reproduction rights.
- (118) In the present case, whilst the establishment of the Reciprocal Agreement will require a degree of cooperation between the collecting societies, it will not be replacing any existing competition, since it is geared to the development of an entirely new service.
- (119) Moreover, the amendment to the Reciprocal Agreement notified by the parties on 21 June 2001 ⁽⁶⁰⁾ encourages competition between record producers' collecting societies. The collecting societies will be able to actually compete and to differentiate themselves in terms of efficiency, quality of service and commercial terms. From the point of view of the prospective licensees, this fact in itself is already a positive development from the original notified agreement, pursuant to which a user would have been confronted with a single supplier of the required licenses. This also represents a major evolution from the situation concerning traditional rights licensing where, given the *de facto* monopoly enjoyed by all collecting societies in their national territories, actual competition between societies does not occur in most relevant markets.
- (120) Furthermore, the changes introduced by the parties in the Reciprocal Agreement as notified on 22 May 2002 will ensure that, after an initial adaptation period, the competition between collecting societies will extend to pricing. The fact that, when granting a license, each society will have to determine independently the administration fee to be added to the copyright royalty and that such determination will have to be made with reference to the actual costs incurred by the grantor society, will create actual competition between the participating societies as regards the amount of the license fee. Accordingly, the participating EEA societies will have to increase their efficiency as regards their administration costs in such a way as to be able to provide a 'one-stop' simulcasting license at the lowest cost possible to EEA users.
- (121) In addition, the split between copyright royalty and administration fee that the parties undertook to implement will bring about an increased degree of transparency in the relationship between collecting societies and users. This will allow users (as well as members of the societies) to better assess the efficiency of each of the societies and have a better understanding of their management costs.
- (122) Finally, by creating and encouraging competition between participating collecting societies in the EEA, the Reciprocal Agreement furthers the goal of creating and sustaining a single market, in this case a single market for the provision of inter-society administration services and a single market for the licensing of simulcasting.
- (123) In conclusion, the Commission considers that the Reciprocal Agreement, and in particular Article 5(2) thereof, does not eliminate competition in respect of a substantial part of the relevant products in the meaning of Article 81(3)(b) of the Treaty.

6. Conclusion

- (124) In the light of the foregoing, it can be concluded that the cumulative conditions of Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement are fulfilled.

⁽⁶⁰⁾ See recital 3.

J. DURATION OF THE EXEMPTION

- (125) Pursuant to Article 8(1) of Regulation No 17, a decision in application of Article 81(3) is to be issued for a specified period. The notified Reciprocal Agreement is intended to operate for an experimental period, after which it will be reviewed. It is therefore appropriate to define the duration of this exemption accordingly. Exemption should therefore be granted pursuant to Article 8(1) of Regulation No 17 from 22 May 2002, date of notification of the last version of the Reciprocal Agreement, until 31 December 2004, its expiry date,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement, the provisions of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement are hereby declared inapplicable for the period from 22 May 2002 to 31 December 2004 to the 'Agreement on reciprocal representation to license simulcasts' entered into by the collecting societies identified in Article 2 of this Decision, as lastly notified to the Commission on 22 May 2002.

Article 2

This Decision is addressed to the following undertakings:

Wahrnehmung von Leistungsschutzrechten GesmbH
Schreyvogelgasse 2/5
A-1010 Vienna

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For the Commission
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