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I

(Acts whose publication is obligatory)

**REGULATION (EC) No 804/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 April 2002
amending Council Regulation (EEC) No 3528/86 on the protection of the Community's forests
against atmospheric pollution**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

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

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Following consultation of the Committee of the Regions,

Acting in accordance with Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The period of application of the Community scheme introduced by Council Regulation (EEC) No 3528/86 ⁽⁴⁾ expired on 31 December 2001.
- (2) Under Article 11(3) of Regulation (EEC) No 3528/86, the Commission is required to submit a revision proposal to the European Parliament and the Council before the end of the application period, covering in particular the ecological, economic and social aspects and the results of a cost-benefit analysis.
- (3) Since preparation of the proposal is still under way, no proposal can be presented at this stage, and the European Parliament and the Council are consequently not in a position to adopt any new arrangements for continuing the Community scheme for the protection of forests against atmospheric pollution before it reaches the end of its application period.
- (4) Continuation of the said Community scheme in 2002 therefore calls for a transitional measure extending its duration for a year.
- (5) The financial allocation for the implementation of the said Community scheme, which constitutes the prime reference for the budgetary authority within the

meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁵⁾, fixed at EUR 35,1 million in Article 11(2) of Regulation (EEC) No 3528/86 should be adjusted in line with the amount entered in the budget for 2002.

- (6) Regulation (EEC) No 3528/86 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 11 of Regulation (EEC) No 3528/86 shall be replaced by the following:

'Article 11

1. The scheme shall run for 16 years from 1 January 1987.
2. The financial allocation for the implementation of the scheme shall be EUR 42,6 million for the period 1997 to 2002.

Annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

3. Before 30 June 2002, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation and a proposal for revision covering in particular the ecological, economic and social aspects (qualitative assessment) and the results of a cost-benefit analysis (quantitative assessment).'

Article 2

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

⁽¹⁾ OJ C 51 E, 26.2.2002, p. 342.

⁽²⁾ Opinion delivered on 16 January 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 12 March 2002 (not yet published in the Official Journal), and Council Decision of 18 March 2002.

⁽⁴⁾ OJ L 326, 21.11.1986, p. 2. Regulation as last amended by Regulation (EC) No 1484/2001 of the European Parliament and of the Council (OJ L 196, 20.7.2001, p. 1).

⁽⁵⁾ OJ C 172, 18.6.1999, p. 1.

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

Done at Luxembourg, 15 April 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. PIQUÉ I CAMPS

**REGULATION (EC) No 805/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 April 2002
amending Council Regulation (EEC) No 2158/92 on protection of the Community's forests against
fire**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 175(1) thereof,

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

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Following consultation of the Committee of the Regions,

Acting in accordance with Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The period of applications of the Community scheme referred to in Council Regulation (EEC) No 2158/92 ⁽⁴⁾ expired on 31 December 2001.
- (2) Under Article 10(3) of Regulation (EEC) No 2158/92, the Commission is required to submit a revision proposal to the European Parliament and the Council before the end of the application period, covering in particular the ecological, economic and social aspects and the results of a cost-benefit analysis.
- (3) Since preparation of the proposal is still under way, no proposal can be presented at this stage, and the European Parliament and the Council are consequently not in a position to adopt any new arrangements for continuing the Community scheme for the protection of forests against fire before it reaches the end of its application period.
- (4) Continuation of the said Community scheme in 2002 therefore calls for a transitional measure extending its duration for a year.
- (5) The financial allocation for the implementation of the said Community scheme, which constitutes the prime reference for the budgetary authority within the

meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁵⁾, fixed at EUR 49,4 million in Article 10(2) of Regulation (EEC) No 2158/92 should be adjusted in line with the amount entered in the budget for 2002.

- (6) Regulation (EEC) No 2158/92 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 10 of Regulation (EEC) No 2158/92 shall be replaced by the following:

'Article 10

1. The scheme shall run for 11 years from 1 January 1992.
2. The financial allocation for the implementation of the scheme shall be EUR 59,9 million for the period 1997 to 2002.

Annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

3. Before 30 June 2002, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation and a proposal for revision covering in particular the ecological, economic and social aspects (qualitative assessment) and the results of a cost-benefit analysis (quantitative assessment).'

Article 2

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

⁽¹⁾ OJ C 51 E, 26.2.2002, p. 343.

⁽²⁾ Opinion delivered on 16 January 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 12 March 2002 (not yet published in the Official Journal), and Council Decision of 18 March 2002.

⁽⁴⁾ OJ L 217, 31.7.1992, p. 3. Regulation as last amended by Regulation (EC) No 1485/2001 of the European Parliament and of the Council (OJ L 196, 20.7.2001, p. 4).

⁽⁵⁾ OJ C 172, 18.6.1999, p. 1.

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

Done at Luxembourg, 15 April 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. PIQUÉ I CAMPS

COMMISSION REGULATION (EC) No 806/2002
of 16 May 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

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

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 16 May 2002 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	72,8
	204	26,6
	212	101,5
	999	67,0
0707 00 05	052	101,1
	220	149,6
	628	150,5
	999	133,7
0709 90 70	052	84,0
	999	84,0
0805 10 10, 0805 10 30, 0805 10 50	052	70,8
	204	44,9
	212	64,5
	220	86,8
	388	49,5
	600	63,8
	624	67,9
	999	64,0
0805 50 10	388	67,1
	528	76,2
	999	71,7
0808 10 20, 0808 10 50, 0808 10 90	060	29,0
	388	95,1
	400	118,0
	404	111,4
	508	84,6
	512	91,8
	524	72,9
	528	74,4
	720	134,1
	804	101,8
	999	91,3

⁽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 807/2002**of 16 May 2002****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 May 2002.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 16 May 2002.

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

ANNEX

to the Commission Regulation of 16 May 2002 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,40	—	0
1703 90 00 ⁽¹⁾	13,07	—	0

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

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

COMMISSION REGULATION (EC) No 808/2002**of 16 May 2002****altering the export refunds on white sugar and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, 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 772/2002 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 772/2002 to the information known to the Commission that the export refunds at present in

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 772/2002 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

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 123, 9.5.2002, p. 14.

ANNEX

to the Commission Regulation of 16 May 2002 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	40,56 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	39,58 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	40,56 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	39,58 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4409
1701 99 10 9100	A00	EUR/100 kg	44,09
1701 99 10 9910	A00	EUR/100 kg	43,03
1701 99 10 9950	A00	EUR/100 kg	43,03
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4409

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 28(4) of Council Regulation (EC) No 1260/2001.

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

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

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

COMMISSION REGULATION (EC) No 809/2002**of 16 May 2002****fixing the maximum export refund for white sugar for the 38th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1430/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 27(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1430/2001 of 13 July 2001 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, as amended by Regulation (EC) No 693/2002 ⁽⁴⁾, for the 2001/2002 marketing year, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1430/2001 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

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

- (3) Following an examination of the tenders submitted in response to the 38th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 38th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1430/2001 the maximum amount of the export refund is fixed at 46,042 EUR/100 kg.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

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 192, 14.7.2001, p. 3.

⁽⁴⁾ OJ L 107, 24.4.2002, p. 5.

COMMISSION REGULATION (EC) No 810/2002**of 15 May 2002****applying a reduction coefficient to refund certificates for goods not covered by Annex I to the Treaty, as provided for by Article 8(5) of Regulation (EC) No 1520/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2580/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty and the criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EC) No 595/2002 ⁽⁴⁾, and in particular Article 8(5),

Whereas:

- (1) The total amount of applications for refund certificates valid from 1 June 2002 exceeds the maximum referred to in Article 8(4) of Regulation (EC) No 1520/2000.

- (2) A reduction coefficient shall be calculated on the basis of Article 8(3) and (4) of Regulation (EC) No 1520/2000. Such coefficient should therefore be applied to amounts requested in the form of refund certificates valid from 1 June 2002 as established in Article 8(6) of Regulation (EC) No 1520/2000,

HAS ADOPTED THIS REGULATION:

Article 1

The amounts for applications of refund certificates valid from 1 June 2002 are subject to a reduction coefficient of 0,27.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 15 May 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 318, 20.12.1993, p. 18.

⁽²⁾ OJ L 298, 25.11.2000, p. 5.

⁽³⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁴⁾ OJ L 91, 6.4.2002, p. 5.

COMMISSION REGULATION (EC) No 811/2002**of 16 May 2002****amending Council Regulation (EC) No 32/2000 to take account of Commission Regulation (EC) No 2031/2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 32/2000 of 17 December 1999 opening and providing for the administration of Community tariff quotas bound in GATT and certain other Community tariff quotas and establishing detailed rules for adjusting the quotas, and repealing Regulation (EC) No 1808/95 ⁽¹⁾, as amended by Commission Regulation (EC) No 2511/2001 ⁽²⁾, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) 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 ⁽³⁾ made changes to the nomenclature for certain products covered by Annexes I, II and IV to Regulation (EC) No 32/2000. Those Annexes should therefore be adjusted accordingly.
- (2) Under Regulation (EC) No 2031/2001, newsprint (CN code 4801 00 00) has been exempt from customs duties since 1 January 2002. Tariff quotas for this product have therefore become superfluous and should be closed as at 31 December 2001.
- (3) The above adjustments should apply from the date of entry into force of Regulation (EC) No 2031/2001.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 32/2000 is amended as follows:

1. Annex I is amended as follows:

- (a) serial Nos 09.0015 and 09.0017 are deleted;
- (b) for serial No 09.0091, in the seventh column, the figure '20' is deleted.

2. In Annex II, for serial No 09.2501, in the second column, CN code '6002' is replaced by CN codes '6002 to 6006'.

3. In Annex IV, for serial No 09.0106, in the second column, CN code 'ex 6110 10 35' is replaced by CN code 'ex 6110 12 10', CN code 'ex 6110 10 38' is replaced by CN code 'ex 6110 19 10', CN code 'ex 6110 10 95' is replaced by CN code 'ex 6110 12 90' and CN code 'ex 6110 10 98' is replaced by CN code 'ex 6110 19 90'.

In Annex IV, for serial No 09.0106, in the list of TARIC codes, for serial No 09.0106, in the column 'CN code', CN code 'ex 6110 10 35' is replaced by the CN code 'ex 6110 12 10', CN code 'ex 6110 10 38' is replaced by CN code 'ex 6110 19 10', CN code 'ex 6110 10 95' is replaced by CN code 'ex 6110 12 90' and CN code 'ex 6110 10 98' is replaced by CN code 'ex 6110 19 90'.

Article 2

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

It shall apply from 1 January 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Frederik BOLKESTEIN

Member of the Commission⁽¹⁾ OJ L 5, 8.1.2000, p. 1.⁽²⁾ OJ L 339, 21.12.2001, p. 17.⁽³⁾ OJ L 279, 23.10.2001, p. 1.

COMMISSION REGULATION (EC) No 812/2002**of 16 May 2002****amending Regulation (EC) No 883/2001 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector**

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 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2585/2001 ⁽²⁾, and in particular Articles 63 and 72 thereof,

Whereas:

- (1) Wine imports under concessions provided for in agreements with certain third countries are subject to the presentation of attestations, issued by official bodies or bodies officially recognised by both contracting parties and appearing on lists drawn up jointly, to the effect that the wine in question meets the conditions for access to the concessions.
- (2) The Member States should send the Commission the lists of official or officially recognised bodies that they propose should issue such attestations, so that the Commission can draw up and exchange those lists with the third countries concerned. To facilitate the tasks of such bodies, the lists should be provided in a suitable form and on a suitable medium.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

Article 1

The following Chapter is hereby inserted in Commission Regulation (EC) No 883/2001 ⁽³⁾:

‘CHAPTER VIIa

SPECIFIC PROVISIONS ON EXPORTS*Article 34a*

1. The Member States shall send the Commission the lists of official or officially recognised bodies that they propose should issue attestations proving that the wine in question meets the conditions for access to the concessions provided for in the agreements with third countries.
2. The Commission shall act on behalf of the Community in drawing up and exchanging, jointly with the third country concerned, the list of official bodies authorised to draw up the attestations referred to in paragraph 1 and the equivalent certificate issued by the third country concerned.
3. The Commission shall provide the list referred to in paragraph 2 in a form and on a medium that it deems suitable.’

Article 2

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

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 10.

⁽³⁾ OJ L 128, 10.5.2001, p. 1.

COMMISSION REGULATION (EC) No 813/2002**of 16 May 2002****fixing the export refunds on products processed from cereals and rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽³⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund.

(2) Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other. The same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market.

(3) Article 4 of Commission Regulation (EC) No 1518/95 ⁽⁵⁾, as amended by Regulation (EC) No 2993/95 ⁽⁶⁾, on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated.

(4) The refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tegument, protein, fat and starch content of the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product.

(5) There is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products. For certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time.

(6) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(7) The refund must be fixed once a month. It may be altered in the intervening period.

(8) Certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted.

(9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(d) of Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 62, 5.3.2002, p. 27.

⁽⁵⁾ OJ L 147, 30.6.1995, p. 55.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 25.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 16 May 2002 fixing the export refunds on products processed from cereals and rice

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
1102 20 10 9200 ⁽¹⁾	C01	EUR/t	28,39	1104 23 10 9100	A00	EUR/t	30,42
1102 20 10 9400 ⁽¹⁾	C01	EUR/t	24,34	1104 23 10 9300	A00	EUR/t	23,32
1102 20 90 9200 ⁽¹⁾	C01	EUR/t	24,34	1104 29 11 9000	A00	EUR/t	0,00
1102 90 10 9100	C01	EUR/t	0,00	1104 29 51 9000	A00	EUR/t	0,00
1102 90 10 9900	C01	EUR/t	0,00	1104 29 55 9000	A00	EUR/t	0,00
1102 90 30 9100	C01	EUR/t	0,00	1104 30 10 9000	A00	EUR/t	0,00
1103 19 40 9100	A00	EUR/t	0,00	1104 30 90 9000	A00	EUR/t	5,07
1103 13 10 9100 ⁽¹⁾	A00	EUR/t	36,50	1107 10 11 9000	A00	EUR/t	0,00
1103 13 10 9300 ⁽¹⁾	A00	EUR/t	28,39	1107 10 91 9000	A00	EUR/t	0,00
1103 13 10 9500 ⁽¹⁾	A00	EUR/t	24,34	1108 11 00 9200	A00	EUR/t	0,00
1103 13 90 9100 ⁽¹⁾	A00	EUR/t	24,34	1108 11 00 9300	A00	EUR/t	0,00
1103 19 10 9000	A00	EUR/t	20,38	1108 12 00 9200	A00	EUR/t	32,45
1103 19 30 9100	A00	EUR/t	0,00	1108 12 00 9300	A00	EUR/t	32,45
1103 20 60 9000	A00	EUR/t	0,00	1108 13 00 9200	A00	EUR/t	32,45
1103 20 20 9000	A00	EUR/t	0,00	1108 13 00 9300	A00	EUR/t	32,45
1104 19 69 9100	A00	EUR/t	0,00	1108 19 10 9200	A00	EUR/t	59,28
1104 12 90 9100	A00	EUR/t	0,00	1108 19 10 9300	A00	EUR/t	59,28
1104 12 90 9300	A00	EUR/t	0,00	1109 00 00 9100	A00	EUR/t	0,00
1104 19 10 9000	A00	EUR/t	0,00	1702 30 51 9000 ⁽²⁾	A00	EUR/t	31,79
1104 19 50 9110	A00	EUR/t	32,45	1702 30 59 9000 ⁽²⁾	A00	EUR/t	24,34
1104 19 50 9130	A00	EUR/t	26,36	1702 30 91 9000	A00	EUR/t	31,79
1104 29 01 9100	A00	EUR/t	0,00	1702 30 99 9000	A00	EUR/t	24,34
1104 29 03 9100	A00	EUR/t	0,00	1702 40 90 9000	A00	EUR/t	24,34
1104 29 05 9100	A00	EUR/t	0,00	1702 90 50 9100	A00	EUR/t	31,79
1104 29 05 9300	A00	EUR/t	0,00	1702 90 50 9900	A00	EUR/t	24,34
1104 22 20 9100	A00	EUR/t	0,00	1702 90 75 9000	A00	EUR/t	33,31
1104 22 30 9100	A00	EUR/t	0,00	1702 90 79 9000	A00	EUR/t	23,12
				2106 90 55 9000	A00	EUR/t	24,34

⁽¹⁾ No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

⁽²⁾ Refunds are granted in accordance with Council Regulation (EEC) No 2730/75 (OJ L 281, 1.11.1975, p. 20), amended.

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

The numeric destination codes are set out in Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

C01: All destinations except Poland.

COMMISSION REGULATION (EC) No 814/2002**of 16 May 2002****fixing the export refunds on cereal-based compound feedingstuffs**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1517/95 of 29 June 1995 laying down detailed rules for the application of Regulation (EEC) No 1766/92 as regards the arrangements for the export and import of compound feedingstuffs based on cereals and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽³⁾ in Article 2 lays down general rules for fixing the amount of such refunds.
- (3) That calculation must also take account of the cereal products content. In the interest of simplification, the refund should be paid in respect of two categories of 'cereal products', namely for maize, the most commonly used cereal in exported compound feeds and maize products, and for 'other cereals', these being eligible cereal products excluding maize and maize products. A

refund should be granted in respect of the quantity of cereal products present in the compound feedingstuff.

- (4) Furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export.
- (5) However, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported.
- (6) The refund must be fixed once a month; whereas it may be altered in the intervening period.
- (7) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the compound feedingstuffs covered by Regulation (EEC) No 1766/92 and subject to Regulation (EC) No 1517/95 are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 51.

ANNEX

to the Commission Regulation of 16 May 2002 fixing the export refunds on cereal-based compound feeding-stuffs

Product codes benefiting from export refund:

2309 10 11 9000, 2309 10 13 9000, 2309 10 31 9000,
2309 10 33 9000, 2309 10 51 9000, 2309 10 53 9000,
2309 90 31 9000, 2309 90 33 9000, 2309 90 41 9000,
2309 90 43 9000, 2309 90 51 9000, 2309 90 53 9000.

Cereal products	Destination	Unit of measurement	Amount of refunds
Maize and maize products: CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10	A00	EUR/t	20,28
Cereal products excluding maize and maize products	A00	EUR/t	0,00

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

COMMISSION REGULATION (EC) No 815/2002
of 16 May 2002
fixing production refunds on cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992, on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 7(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽³⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽⁴⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the arrangements concerning production refunds in the cereals and rice sectors ⁽⁵⁾, as last amended by Regulation (EC) No 1786/2001 ⁽⁶⁾, and in particular Article 3 thereof,

Whereas:

- (1) Regulation (EEC) No 1722/93 establishes the conditions for granting the production refund. The basis for the calculation is established in Article 3 of the said Regulation. The refund thus calculated must be fixed once a

month and may be altered if the price of maize and/or wheat changes significantly.

- (2) The production refunds to be fixed in this Regulation should be adjusted by the coefficients listed in the Annex II to Regulation (EEC) No 1722/93 to establish the exact amount payable.
- (3) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The refund referred to in Article 3(2) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from maize, wheat, barley, oats, potatoes, rice or broken rice, shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 62, 5.3.2002, p. 27.

⁽⁵⁾ OJ L 159, 1.7.1993, p. 112.

⁽⁶⁾ OJ L 242, 12.9.2001, p. 3.

COMMISSION REGULATION (EC) No 816/2002
of 16 May 2002
providing for the rejection of applications for export licences in relation to certain processed
products and cereal-based compound feedingstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽³⁾, as last amended by Regulation (EC) No 2298/2001 ⁽⁴⁾, and in particular Article 7(3) thereof,

Whereas:

The quantity covered by applications for advance fixing of refunds on potato starch and maize-based products is of great importance and could give rise to speculation. It has therefore

been decided to reject all applications for export licences of such products made on 14, 15 and 16 May 2002,

HAS ADOPTED THIS REGULATION:

Article 1

In accordance with Article 7(3) of Regulation (EC) No 1162/95, applications for export licences with advance fixing of refunds for products falling within CN codes 1102 20 10, 1102 20 90, 1103 13 10, 1103 13 90, 1104 23 10, 1108 12 00, 1108 13 00, 1702 30 51, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 79, 2309 10 11, 2309 10 13, 2309 10 31, 2309 10 33, 2309 10 51, 2309 10 53, 2309 90 31, 2309 90 33, 2309 90 41, 2309 90 43, 2309 90 51 and 2309 90 53 made on 14, 15 and 16 May 2002 shall be rejected.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 117, 24.5.1995, p. 2.

⁽⁴⁾ OJ L 308, 27.11.2001, p. 16.

COMMISSION REGULATION (EC) No 817/2002**of 16 May 2002****fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽³⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.
- (2) Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽⁵⁾, as last amended by Regulation (EC) No 595/2002 ⁽⁶⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.
- (3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.
- (4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

- (5) Now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC ⁽⁷⁾, it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.
- (6) Pursuant to Article 4(3) and (5) of Regulation (EC) No 1520/2000 provides that a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Council Regulation (EEC) No 1722/93 ⁽⁸⁾, as last amended by Commission Regulation (EC) No 1786/2001 ⁽⁹⁾, for the basic product in question, used during the assumed period of manufacture of the goods.
- (7) Spirituous beverages are considered less sensitive to the price of the cereals used in their manufacture. However, Protocol 19 of the Act of Accession of the United Kingdom, Ireland and Denmark stipulates that the necessary measures must be decided to facilitate the use of Community cereals in the manufacture of spirituous beverages obtained from cereals. Accordingly, it is necessary to adapt the refund rate applying to cereals exported in the form of spirituous beverages.
- (8) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.
- (9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 May 2002.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 62, 5.3.2002, p. 27.

⁽⁵⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁶⁾ OJ L 91, 6.4.2002, p. 5.

⁽⁷⁾ OJ L 275, 29.9.1987, p. 36.

⁽⁸⁾ OJ L 159, 1.7.1993, p. 112.

⁽⁹⁾ OJ L 242, 12.9.2001, p. 3.

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

Done at Brussels, 16 May 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

to the Commission Regulation of 16 May 2002 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty

CN code	Description of products ⁽¹⁾	(EUR/100 kg) Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
1001 10 00	Durum wheat: – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America – in other cases	— —	— —
1001 90 99	Common wheat and meslin: – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America – in other cases: – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases	— — — — —	— — — — —
1002 00 00	Rye	2,038	2,038
1003 00 90	Barley – where goods falling within subheading 2208 ⁽³⁾ are exported – in other cases	— —	— —
1004 00 00	Oats	—	—
1005 90 00	Maize (corn) used in the form of: – starch: – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases – glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 ⁽⁴⁾ : – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases – where goods falling within subheading 2208 ⁽³⁾ are exported – other (including unprocessed) Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize: – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where goods falling within subheading 2208 ⁽³⁾ are exported – in other cases	1,493 0,145 2,028 0,986 0,109 1,521 0,145 2,028 1,493 0,145 2,028	1,493 0,145 2,028 0,986 0,109 1,521 0,145 2,028 1,493 0,145 2,028

(EUR/100 kg)			
CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
ex 1006 30	Wholly-milled rice:		
	– round grain	16,500	16,500
	– medium grain	16,500	16,500
	– long grain	16,500	16,500
1006 40 00	Broken rice	3,900	3,900
1007 00 90	Sorghum	—	—

⁽¹⁾ As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1520/2000 shall be applied (OJ L 177, 15.7.2000, p. 1).

⁽²⁾ The goods concerned fall under CN code 3505 10 50.

⁽³⁾ Goods listed in Annex B of Council Regulation (EEC) No 1766/92 or referred to in Article 2 of Regulation (EEC) No 2825/93.

⁽⁴⁾ For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

COMMISSION REGULATION (EC) No 818/2002
of 16 May 2002
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 597/2002 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 802/2002 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 802/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 802/2002 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 91, 6.4.2002, p. 9.

⁽⁵⁾ OJ L 131, 16.5.2002, p. 7.

ANNEX I

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

CN code	Description	Import duty ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality ⁽¹⁾	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00
	medium quality	7,82
	low quality	15,03
1002 00 00	Rye	31,45
1003 00 10	Barley, seed	31,45
1003 00 90	Barley, other ⁽⁴⁾	31,45
1005 10 90	Maize seed other than hybrid	41,36
1005 90 00	Maize other than seed ⁽⁵⁾	41,36
1007 00 90	Grain sorghum other than hybrids for sowing	31,45

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

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

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

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

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

⁽⁴⁾ The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

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

ANNEX II

Factors for calculating duties

(for 15 May 2002)

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

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	119,47	117,80	115,36	94,29	193,18 (**)	183,18 (**)	109,53 (**)
Gulf premium (EUR/t)	—	22,68	17,91	12,65	—	—	—
Great Lakes premium (EUR/t)	25,72	—	—	—	—	—	—

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

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: 18,83 EUR/t; Great Lakes — Rotterdam: 26,14 EUR/t.

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

COMMISSION REGULATION (EC) No 819/2002
of 16 May 2002
fixing the export refunds on 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) Article 31 of Regulation (EC) No 1255/1999 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(2) Regulation (EC) No 1255/1999 provides that when the refunds on the products listed in Article 1 of the above-mentioned Regulation, exported in the natural state, are being fixed, account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organisation of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,
- the limits resulting from agreements concluded in accordance with Article 300 of the Treaty, and
- the need to avoid disturbances on the Community market, and
- the economic aspect of the proposed exports.

(3) Article 31(5) of Regulation (EC) No 1255/1999 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that

when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third country markets;
- (b) the most favourable prices in third countries of destination for third country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices.

(4) Article 31(3) of Regulation (EC) No 1255/1999 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of the abovementioned Regulation according to destination.

(5) Article 31(3) of Regulation (EC) No 1255/1999 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; the amount of the refund may, however, remain at the same level for more than four weeks.

(6) In accordance with Article 16 of Commission Regulation (EC) No 174/1999 of 26 January 1999 on specific detailed rules for the application of Council Regulation (EC) No 804/68 as regards export licences and export refunds on milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 787/2002 ⁽⁴⁾, the refund granted for milk products containing added sugar is equal to the sum of the two components; one is intended to take account of the quantity of milk products and is calculated by multiplying the basic amount by the milk products content in the product concerned; the other is intended to take account of the quantity of added sucrose and is calculated by multiplying the sucrose content of the entire product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1(1)(d) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽⁵⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽⁶⁾, however, this second component is applied only if the added sucrose has been produced using sugar beet or cane harvested in the Community.

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 20, 27.1.1999, p. 8.

⁽⁴⁾ OJ L 127, 14.5.2002, p. 6.

⁽⁵⁾ OJ L 178, 30.6.2001, p. 1.

⁽⁶⁾ OJ L 104, 20.4.2002, p. 26.

- (7) Commission Regulation (EEC) No 896/84 ⁽¹⁾, as last amended by Regulation (EEC) No 222/88 ⁽²⁾, laid down additional provisions concerning the granting of refunds on the change from one milk year to another; those provisions provide for the possibility of varying refunds according to the date of manufacture of the products.
- (8) For the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account.
- (9) It follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation.

- (10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds referred to in Article 31 of Regulation (EC) No 1255/1999 on products exported in the natural state shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 91, 1.4.1984, p. 71.

⁽²⁾ OJ L 28, 1.2.1988, p. 1.

ANNEX

to the Commission Regulation of 16 May 2002 fixing the export refunds on milk and milk products

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0401 10 10 9000	970	EUR/100 kg	2,048	0402 29 91 9000	A02	EUR/kg	1,0369
0401 10 90 9000	970	EUR/100 kg	2,048	0402 29 99 9100	A02	EUR/kg	1,0369
0401 20 11 9100	970	EUR/100 kg	2,048	0402 29 99 9500	A02	EUR/kg	1,1278
0401 20 11 9500	970	EUR/100 kg	3,165	0402 91 11 9370	A02	EUR/100 kg	5,670
0401 20 19 9100	970	EUR/100 kg	2,048	0402 91 19 9370	A02	EUR/100 kg	5,670
0401 20 19 9500	970	EUR/100 kg	3,165	0402 91 31 9300	A02	EUR/100 kg	6,715
0401 20 91 9000	970	EUR/100 kg	4,005	0402 91 39 9300	A02	EUR/100 kg	6,715
0401 20 99 9000	970	EUR/100 kg	4,005	0402 91 99 9000	A02	EUR/100 kg	36,61
0401 30 11 9400	970	EUR/100 kg	9,24	0402 99 11 9350	A02	EUR/kg	0,1445
0401 30 11 9700	970	EUR/100 kg	13,88	0402 99 19 9350	A02	EUR/kg	0,1445
0401 30 19 9700	970	EUR/100 kg	13,88	0402 99 31 9150	A02	EUR/kg	0,1513
0401 30 31 9100	A02	EUR/100 kg	33,72	0402 99 31 9300	A02	EUR/kg	0,2191
0401 30 31 9400	A02	EUR/100 kg	52,67	0402 99 31 9500	A02	EUR/kg	0,3775
0401 30 31 9700	A02	EUR/100 kg	58,08	0402 99 39 9150	A02	EUR/kg	0,1513
0401 30 39 9100	A02	EUR/100 kg	33,72	0403 90 11 9000	A02	EUR/100 kg	64,09
0401 30 39 9400	A02	EUR/100 kg	52,67	0403 90 13 9200	A02	EUR/100 kg	64,09
0401 30 39 9700	A02	EUR/100 kg	58,08	0403 90 13 9300	A02	EUR/100 kg	90,10
0401 30 91 9100	A02	EUR/100 kg	66,19	0403 90 13 9500	A02	EUR/100 kg	94,76
0401 30 91 9500	A02	EUR/100 kg	97,28	0403 90 13 9900	A02	EUR/100 kg	102,08
0401 30 99 9100	A02	EUR/100 kg	66,19	0403 90 19 9000	A02	EUR/100 kg	102,62
0401 30 99 9500	A02	EUR/100 kg	97,28	0403 90 33 9400	A02	EUR/kg	0,9010
0402 10 11 9000	A02	EUR/100 kg	65,00	0403 90 33 9900	A02	EUR/kg	1,0208
0402 10 19 9000	A02	EUR/100 kg	65,00	0403 90 51 9100	970	EUR/100 kg	2,048
0402 10 91 9000	A02	EUR/kg	0,6500	0403 90 59 9170	970	EUR/100 kg	13,88
0402 10 99 9000	A02	EUR/kg	0,6500	0403 90 59 9310	A02	EUR/100 kg	33,72
0402 21 11 9200	A02	EUR/100 kg	65,00	0403 90 59 9340	A02	EUR/100 kg	52,10
0402 21 11 9300	A02	EUR/100 kg	90,64	0403 90 59 9370	A02	EUR/100 kg	52,10
0402 21 11 9500	A02	EUR/100 kg	95,68	0403 90 59 9510	A02	EUR/100 kg	52,10
0402 21 11 9900	A02	EUR/100 kg	103,00	0404 90 21 9120	A02	EUR/100 kg	55,45
0402 21 17 9000	A02	EUR/100 kg	65,00	0404 90 21 9160	A02	EUR/100 kg	65,00
0402 21 19 9300	A02	EUR/100 kg	90,64	0404 90 23 9120	A02	EUR/100 kg	65,00
0402 21 19 9500	A02	EUR/100 kg	95,68	0404 90 23 9130	A02	EUR/100 kg	90,64
0402 21 19 9900	A02	EUR/100 kg	103,00	0404 90 23 9140	A02	EUR/100 kg	95,68
0402 21 91 9100	A02	EUR/100 kg	103,69	0404 90 23 9150	A02	EUR/100 kg	103,00
0402 21 91 9200	A02	EUR/100 kg	104,53	0404 90 29 9110	A02	EUR/100 kg	103,74
0402 21 91 9350	A02	EUR/100 kg	105,54	0404 90 29 9115	A02	EUR/100 kg	104,52
0402 21 91 9500	A02	EUR/100 kg	115,48	0404 90 29 9125	A02	EUR/100 kg	105,60
0402 21 99 9100	A02	EUR/100 kg	103,69	0404 90 29 9140	A02	EUR/100 kg	115,54
0402 21 99 9200	A02	EUR/100 kg	104,53	0404 90 81 9100	A02	EUR/kg	0,6500
0402 21 99 9300	A02	EUR/100 kg	105,54	0404 90 83 9110	A02	EUR/kg	0,6500
0402 21 99 9400	A02	EUR/100 kg	112,78	0404 90 83 9130	A02	EUR/kg	0,9064
0402 21 99 9500	A02	EUR/100 kg	115,48	0404 90 83 9150	A02	EUR/kg	0,9568
0402 21 99 9600	A02	EUR/100 kg	125,28	0404 90 83 9170	A02	EUR/kg	1,0300
0402 21 99 9700	A02	EUR/100 kg	130,70	0404 90 83 9936	A02	EUR/kg	0,1445
0402 21 99 9900	A02	EUR/100 kg	137,10	0405 10 11 9500	L05	EUR/100 kg	170,73
0402 29 15 9200	A02	EUR/kg	0,6500	0405 10 11 9700	L05	EUR/100 kg	175,00
0402 29 15 9300	A02	EUR/kg	0,9066	0405 10 19 9500	L05	EUR/100 kg	170,73
0402 29 15 9500	A02	EUR/kg	0,9571	0405 10 19 9700	L05	EUR/100 kg	175,00
0402 29 15 9900	A02	EUR/kg	1,0300	0405 10 30 9100	L05	EUR/100 kg	170,73
0402 29 19 9300	A02	EUR/kg	0,9066	0405 10 30 9300	L05	EUR/100 kg	175,00
0402 29 19 9500	A02	EUR/kg	0,9571	0405 10 30 9700	L05	EUR/100 kg	175,00
0402 29 19 9900	A02	EUR/kg	1,0300	0405 10 50 9300	L05	EUR/100 kg	175,00

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0405 10 50 9500	L05	EUR/100 kg	170,73	0406 10 20 9850	L03	EUR/100 kg	—
0405 10 50 9700	L05	EUR/100 kg	175,00		A24	EUR/100 kg	31,15
0405 10 90 9000	L05	EUR/100 kg	181,41		L04	EUR/100 kg	31,15
0405 20 90 9500	L05	EUR/100 kg	160,07		400	EUR/100 kg	—
0405 20 90 9700	L05	EUR/100 kg	166,47		A01	EUR/100 kg	31,15
0405 90 10 9000	L05	EUR/100 kg	222,36	0406 10 20 9870	A00	EUR/100 kg	—
0405 90 90 9000	L05	EUR/100 kg	175,00	0406 10 20 9900	A00	EUR/100 kg	—
0406 10 20 9100	A00	EUR/100 kg	—	0406 20 90 9100	A00	EUR/100 kg	—
0406 10 20 9230	L03	EUR/100 kg	—	0406 20 90 9913	L03	EUR/100 kg	—
	A24	EUR/100 kg	36,83		A24	EUR/100 kg	57,44
	L04	EUR/100 kg	36,83		L04	EUR/100 kg	57,44
	400	EUR/100 kg	—		400	EUR/100 kg	16,18
	A01	EUR/100 kg	36,83		A01	EUR/100 kg	57,44
0406 10 20 9290	L03	EUR/100 kg	—	0406 20 90 9915	L03	EUR/100 kg	—
	A24	EUR/100 kg	34,26		A24	EUR/100 kg	75,82
	L04	EUR/100 kg	34,26		L04	EUR/100 kg	75,82
	400	EUR/100 kg	—		400	EUR/100 kg	21,56
	A01	EUR/100 kg	34,26		A01	EUR/100 kg	75,82
0406 10 20 9300	L03	EUR/100 kg	—	0406 20 90 9917	L03	EUR/100 kg	—
	A24	EUR/100 kg	15,04		A24	EUR/100 kg	80,56
	L04	EUR/100 kg	15,04		L04	EUR/100 kg	80,56
	400	EUR/100 kg	—		400	EUR/100 kg	22,92
	A01	EUR/100 kg	15,04		A01	EUR/100 kg	80,56
0406 10 20 9610	L03	EUR/100 kg	—	0406 20 90 9919	L03	EUR/100 kg	—
	A24	EUR/100 kg	49,96		A24	EUR/100 kg	90,03
	L04	EUR/100 kg	49,96		L04	EUR/100 kg	90,03
	400	EUR/100 kg	—		400	EUR/100 kg	25,57
	A01	EUR/100 kg	49,96		A01	EUR/100 kg	90,03
0406 10 20 9620	L03	EUR/100 kg	—	0406 20 90 9990	A00	EUR/100 kg	—
	A24	EUR/100 kg	50,67	0406 30 31 9710	L03	EUR/100 kg	—
	L04	EUR/100 kg	50,67		A24	EUR/100 kg	14,18
	400	EUR/100 kg	—		L04	EUR/100 kg	7,57
	A01	EUR/100 kg	50,67		400	EUR/100 kg	—
0406 10 20 9630	L03	EUR/100 kg	—		A01	EUR/100 kg	14,18
	A24	EUR/100 kg	56,56	0406 30 31 9730	L03	EUR/100 kg	—
	L04	EUR/100 kg	56,56		A24	EUR/100 kg	20,80
	400	EUR/100 kg	—		L04	EUR/100 kg	11,09
	A01	EUR/100 kg	56,56		400	EUR/100 kg	—
0406 10 20 9640	L03	EUR/100 kg	—		A01	EUR/100 kg	20,80
	A24	EUR/100 kg	83,12	0406 30 31 9910	L03	EUR/100 kg	—
	L04	EUR/100 kg	83,12		A24	EUR/100 kg	14,18
	400	EUR/100 kg	—		L04	EUR/100 kg	7,57
	A01	EUR/100 kg	83,12		400	EUR/100 kg	—
0406 10 20 9650	L03	EUR/100 kg	—		A01	EUR/100 kg	14,18
	A24	EUR/100 kg	69,26	0406 30 31 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	69,26		A24	EUR/100 kg	20,80
	400	EUR/100 kg	—		L04	EUR/100 kg	11,09
	A01	EUR/100 kg	69,26		400	EUR/100 kg	—
0406 10 20 9660	A00	EUR/100 kg	—		A01	EUR/100 kg	20,80
0406 10 20 9830	L03	EUR/100 kg	—	0406 30 31 9950	L03	EUR/100 kg	—
	A24	EUR/100 kg	25,69		A24	EUR/100 kg	30,26
	L04	EUR/100 kg	25,69		L04	EUR/100 kg	16,13
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	25,69		A01	EUR/100 kg	30,26

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 30 39 9500	L03	EUR/100 kg	—	0406 90 23 9900	400	EUR/100 kg	22,78
	A24	EUR/100 kg	20,80		A01	EUR/100 kg	114,90
	L04	EUR/100 kg	11,09		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	101,58
	A01	EUR/100 kg	20,80		L04	EUR/100 kg	88,33
0406 30 39 9700	L03	EUR/100 kg	—	0406 90 25 9900	400	EUR/100 kg	—
	A24	EUR/100 kg	30,26		A01	EUR/100 kg	101,58
	L04	EUR/100 kg	16,13		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	100,49
	A01	EUR/100 kg	30,26		L04	EUR/100 kg	87,75
0406 30 39 9930	L03	EUR/100 kg	—	0406 90 27 9900	400	EUR/100 kg	—
	A24	EUR/100 kg	30,26		A01	EUR/100 kg	100,49
	L04	EUR/100 kg	16,13		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	91,01
	A01	EUR/100 kg	30,26		L04	EUR/100 kg	79,48
0406 30 39 9950	L03	EUR/100 kg	—	0406 90 31 9119	400	EUR/100 kg	—
	A24	EUR/100 kg	34,21		A01	EUR/100 kg	91,01
	L04	EUR/100 kg	18,25		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	83,78
	A01	EUR/100 kg	34,21		L04	EUR/100 kg	73,04
0406 30 90 9000	L03	EUR/100 kg	—	0406 90 33 9119	400	EUR/100 kg	13,06
	A24	EUR/100 kg	35,89		A01	EUR/100 kg	83,78
	L04	EUR/100 kg	19,14		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	83,78
	A01	EUR/100 kg	35,89		L04	EUR/100 kg	73,04
0406 40 50 9000	L03	EUR/100 kg	—	0406 90 33 9919	400	EUR/100 kg	13,06
	A24	EUR/100 kg	87,98		A01	EUR/100 kg	83,78
	L04	EUR/100 kg	87,98		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	76,83
	A01	EUR/100 kg	87,98		L04	EUR/100 kg	66,76
0406 40 90 9000	L03	EUR/100 kg	—	0406 90 33 9951	400	EUR/100 kg	—
	A24	EUR/100 kg	90,34		A01	EUR/100 kg	76,83
	L04	EUR/100 kg	90,34		L03	EUR/100 kg	—
	400	EUR/100 kg	—		A24	EUR/100 kg	76,89
	A01	EUR/100 kg	90,34		L04	EUR/100 kg	67,42
0406 90 13 9000	L03	EUR/100 kg	—	0406 90 35 9190	400	EUR/100 kg	—
	A24	EUR/100 kg	113,75		A01	EUR/100 kg	76,89
	L04	EUR/100 kg	99,34		L03	EUR/100 kg	—
	400	EUR/100 kg	30,81		A24	EUR/100 kg	118,83
	A01	EUR/100 kg	113,75		L04	EUR/100 kg	103,33
0406 90 15 9100	L03	EUR/100 kg	—	0406 90 35 9990	400	EUR/100 kg	31,42
	A24	EUR/100 kg	117,54		A01	EUR/100 kg	118,83
	L04	EUR/100 kg	102,65		L03	EUR/100 kg	—
	400	EUR/100 kg	31,76		A24	EUR/100 kg	118,83
	A01	EUR/100 kg	117,54		L04	EUR/100 kg	103,33
0406 90 17 9100	L03	EUR/100 kg	—	0406 90 37 9000	400	EUR/100 kg	20,54
	A24	EUR/100 kg	117,54		A01	EUR/100 kg	118,83
	L04	EUR/100 kg	102,65		L03	EUR/100 kg	—
	400	EUR/100 kg	31,76		A24	EUR/100 kg	113,75
	A01	EUR/100 kg	117,54		L04	EUR/100 kg	99,34
0406 90 21 9900	L03	EUR/100 kg	—		400	EUR/100 kg	30,81
	A24	EUR/100 kg	114,90		A01	EUR/100 kg	113,75
	L04	EUR/100 kg	100,59				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 61 9000	L03	EUR/100 kg	—	0406 90 78 9500	A24	EUR/100 kg	103,59
	A24	EUR/100 kg	126,72		L04	EUR/100 kg	90,69
	L04	EUR/100 kg	109,48		400	EUR/100 kg	—
	400	EUR/100 kg	29,24		A01	EUR/100 kg	103,59
	A01	EUR/100 kg	126,72		L03	EUR/100 kg	—
0406 90 63 9100	L03	EUR/100 kg	—	0406 90 79 9900	A24	EUR/100 kg	102,01
	A24	EUR/100 kg	125,66		L04	EUR/100 kg	89,84
	L04	EUR/100 kg	108,91		400	EUR/100 kg	—
	400	EUR/100 kg	32,71		A01	EUR/100 kg	102,01
	A01	EUR/100 kg	125,66		L03	EUR/100 kg	—
0406 90 63 9900	L03	EUR/100 kg	—	0406 90 81 9900	A24	EUR/100 kg	84,33
	A24	EUR/100 kg	121,38		L04	EUR/100 kg	73,34
	L04	EUR/100 kg	104,70		400	EUR/100 kg	—
	400	EUR/100 kg	25,02		A01	EUR/100 kg	84,33
	A01	EUR/100 kg	121,38		L03	EUR/100 kg	—
0406 90 69 9100	A00	EUR/100 kg	—	0406 90 85 9930	A24	EUR/100 kg	106,18
0406 90 69 9910	L03	EUR/100 kg	—		L04	EUR/100 kg	92,71
	A24	EUR/100 kg	121,38		400	EUR/100 kg	24,34
	L04	EUR/100 kg	104,70		A01	EUR/100 kg	106,18
	400	EUR/100 kg	25,02		L03	EUR/100 kg	—
0406 90 73 9900	A01	EUR/100 kg	121,38	0406 90 85 9970	A24	EUR/100 kg	115,25
	L03	EUR/100 kg	—		L04	EUR/100 kg	100,13
	A24	EUR/100 kg	104,50		400	EUR/100 kg	30,33
	L04	EUR/100 kg	91,18		A01	EUR/100 kg	115,25
	400	EUR/100 kg	26,93		L03	EUR/100 kg	—
0406 90 75 9900	A01	EUR/100 kg	104,50	0406 90 85 9999	A24	EUR/100 kg	105,64
	L03	EUR/100 kg	—		L04	EUR/100 kg	91,79
	A24	EUR/100 kg	105,64		400	EUR/100 kg	26,54
	L04	EUR/100 kg	91,79		A01	EUR/100 kg	105,64
	400	EUR/100 kg	11,36		A00	EUR/100 kg	—
0406 90 76 9300	A01	EUR/100 kg	105,64	0406 90 86 9100	A00	EUR/100 kg	—
	L03	EUR/100 kg	—	0406 90 86 9200	L03	EUR/100 kg	—
	A24	EUR/100 kg	94,79		A24	EUR/100 kg	99,94
	L04	EUR/100 kg	82,78		L04	EUR/100 kg	84,23
	400	EUR/100 kg	—		400	EUR/100 kg	17,68
0406 90 76 9400	A01	EUR/100 kg	94,79		A01	EUR/100 kg	99,94
	L03	EUR/100 kg	—	0406 90 86 9300	L03	EUR/100 kg	—
	A24	EUR/100 kg	106,18		A24	EUR/100 kg	100,99
	L04	EUR/100 kg	92,71		L04	EUR/100 kg	85,45
	400	EUR/100 kg	11,83		400	EUR/100 kg	19,38
0406 90 76 9500	A01	EUR/100 kg	106,18		A01	EUR/100 kg	100,99
	L03	EUR/100 kg	—	0406 90 86 9400	L03	EUR/100 kg	—
	A24	EUR/100 kg	100,14		A24	EUR/100 kg	106,18
	L04	EUR/100 kg	88,21		L04	EUR/100 kg	90,78
	400	EUR/100 kg	11,83		400	EUR/100 kg	21,93
0406 90 78 9100	A01	EUR/100 kg	100,14		A01	EUR/100 kg	106,18
	L03	EUR/100 kg	—	0406 90 86 9900	L03	EUR/100 kg	—
	A24	EUR/100 kg	99,96		A24	EUR/100 kg	115,25
	L04	EUR/100 kg	85,54		L04	EUR/100 kg	100,13
	400	EUR/100 kg	—		400	EUR/100 kg	25,67
0406 90 78 9300	A01	EUR/100 kg	99,96		A01	EUR/100 kg	115,25
	L03	EUR/100 kg	—				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 87 9100	A00	EUR/100 kg	—		400	EUR/100 kg	—
0406 90 87 9200	L03	EUR/100 kg	—		A01	EUR/100 kg	44,61
	A24	EUR/100 kg	83,27	0406 90 87 9973	L03	EUR/100 kg	—
	L04	EUR/100 kg	70,20		A24	EUR/100 kg	102,38
	400	EUR/100 kg	15,81		L04	EUR/100 kg	89,40
	A01	EUR/100 kg	83,27		400	EUR/100 kg	15,39
0406 90 87 9300	L03	EUR/100 kg	—		A01	EUR/100 kg	102,38
	A24	EUR/100 kg	92,76	0406 90 87 9974	L03	EUR/100 kg	—
	L04	EUR/100 kg	78,46		A24	EUR/100 kg	110,64
	400	EUR/100 kg	17,85		L04	EUR/100 kg	97,03
	A01	EUR/100 kg	92,76		400	EUR/100 kg	15,39
0406 90 87 9400	L03	EUR/100 kg	—		A01	EUR/100 kg	110,64
	A24	EUR/100 kg	94,16	0406 90 87 9975	L03	EUR/100 kg	—
	L04	EUR/100 kg	80,51		A24	EUR/100 kg	111,87
	400	EUR/100 kg	19,55		L04	EUR/100 kg	98,97
	A01	EUR/100 kg	94,16		400	EUR/100 kg	20,40
0406 90 87 9951	L03	EUR/100 kg	—		A01	EUR/100 kg	111,87
	A24	EUR/100 kg	104,28	0406 90 87 9979	L03	EUR/100 kg	—
	L04	EUR/100 kg	91,06		A24	EUR/100 kg	101,58
	400	EUR/100 kg	27,03		L04	EUR/100 kg	88,33
	A01	EUR/100 kg	104,28		400	EUR/100 kg	15,39
0406 90 87 9971	L03	EUR/100 kg	—		A01	EUR/100 kg	101,58
	A24	EUR/100 kg	104,28	0406 90 88 9100	A00	EUR/100 kg	—
	L04	EUR/100 kg	91,06	0406 90 88 9300	L03	EUR/100 kg	—
	400	EUR/100 kg	21,93		A24	EUR/100 kg	81,63
	A01	EUR/100 kg	104,28		L04	EUR/100 kg	69,31
0406 90 87 9972	A24	EUR/100 kg	44,61		400	EUR/100 kg	19,38
	L03	EUR/100 kg	—		A01	EUR/100 kg	81,63
	L04	EUR/100 kg	38,79				

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

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

L03 Ceuta, Melilla, Iceland, Norway, Switzerland, Liechtenstein, Andorra, Gibraltar, Holy See (often referred to as Vatican City), Malta, Turkey, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Canada, Cyprus, Australia and New Zealand,

L04 Albania, Slovenia, Croatia, Bosnia and Herzegovina, Yugoslavia and the Former Yugoslav Republic of Macedonia,

L05 all destinations except Poland and the United States of America.

970 includes the exports referred to in Articles 36(1)(a) and (c) and 44(1)(a) and (b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11) and exports under contracts with armed forces stationed on the territory of a Member State which do not come under its flag.

COMMISSION REGULATION (EC) No 820/2002
of 16 May 2002
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 624/98 ⁽⁴⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1309/2001 ⁽⁵⁾, as last amended by Regulation (EC) No 788/2002 ⁽⁶⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 141, 24.6.1995, p. 16.

⁽⁴⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁵⁾ OJ L 177, 30.6.2001, p. 21.

⁽⁶⁾ OJ L 127, 14.5.2002, p. 7.

ANNEX

to the Commission Regulation of 16 May 2002 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	17,77	7,42
1701 11 90 ⁽¹⁾	17,77	13,51
1701 12 10 ⁽¹⁾	17,77	7,23
1701 12 90 ⁽¹⁾	17,77	12,99
1701 91 00 ⁽²⁾	25,81	12,34
1701 99 10 ⁽²⁾	25,81	7,81
1701 99 90 ⁽²⁾	25,81	7,81
1702 90 99 ⁽³⁾	0,26	0,39

⁽¹⁾ For the standard quality as defined in Annex I, point II to Council Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2001, p. 1).

⁽²⁾ For the standard quality as defined in Annex I, point I to Council Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2001, p. 1).

⁽³⁾ By 1 % sucrose content.

COMMISSION REGULATION (EC) No 821/2002**of 16 May 2002****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 602/2001⁽⁴⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

ANNEX

**to the Commission Regulation of 16 May 2002 fixing the export refunds on cereals and on wheat or rye flour,
groats and meal**

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 11 9000	—	EUR/t	—
1001 10 00 9400	—	EUR/t	—	1101 00 15 9100	C01	EUR/t	6,85
1001 90 91 9000	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	6,40
1001 90 99 9000	C01	EUR/t	—	1101 00 15 9150	C01	EUR/t	5,90
1002 00 00 9000	A00	EUR/t	—	1101 00 15 9170	C01	EUR/t	5,45
1003 00 10 9000	—	EUR/t	—	1101 00 15 9180	C01	EUR/t	5,10
1003 00 90 9000	A00	EUR/t	—	1101 00 15 9190	—	EUR/t	—
1004 00 00 9200	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1004 00 00 9400	A00	EUR/t	0	1102 10 00 9500	C01	EUR/t	41,00
1005 10 90 9000	—	EUR/t	—	1102 10 00 9700	C01	EUR/t	32,50
1005 90 00 9000	A00	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1007 00 90 9000	—	EUR/t	—	1103 11 10 9200	A00	EUR/t	0 ⁽¹⁾
1008 20 00 9000	—	EUR/t	—	1103 11 10 9400	A00	EUR/t	0 ⁽¹⁾
				1103 11 10 9900	—	EUR/t	—
				1103 11 90 9200	A00	EUR/t	0 ⁽¹⁾
				1103 11 90 9800	—	EUR/t	—

⁽¹⁾ No refund is granted when this product contains compressed meal.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14) as amended.

The other destinations are as follows:

C01 All destinations except for Poland.

COMMISSION REGULATION (EC) No 822/2002**of 16 May 2002****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 943/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 May 2002, pursuant to the invitation to tender issued in Regulation (EC) No 943/2001, the maximum refund on exportation of common wheat shall be EUR 5,00/t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 133, 16.5.2001, p. 3.

COMMISSION REGULATION (EC) No 823/2002**of 16 May 2002****fixing the maximum export refund on barley in connection with the invitation to tender issued in Regulation (EC) No 1558/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 May 2002, pursuant to the invitation to tender issued in Regulation (EC) No 1558/2001, the maximum refund on exportation of barley shall be EUR 4,99/t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 205, 31.7.2001, p. 33.

COMMISSION REGULATION (EC) No 824/2002**of 16 May 2002****fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 1005/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 602/2001 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 May 2002, pursuant to the invitation to tender issued in Regulation (EC) No 1005/2001, the maximum refund on exportation of rye shall be EUR 44,95/t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 140, 24.5.2001, p. 10.

**COMMISSION REGULATION (EC) No 825/2002
of 16 May 2002**

**fixing the maximum reduction in the duty on maize imported in connection with the invitation to
tender issued in Regulation (EC) No 537/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 1666/2000⁽²⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 537/2002⁽³⁾.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as last amended by Regulation (EC) No 2235/2000⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty. In fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account. A contract is

awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 May 2002, pursuant to the invitation to tender issued in Regulation (EC) No 537/2002, the maximum reduction in the duty on maize imported shall be 37,90 EUR/t and be valid for a total maximum quantity of 34 000 t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 82, 26.3.2002, p. 3.

⁽⁴⁾ OJ L 177, 28.7.1995, p. 4.

⁽⁵⁾ OJ L 256, 10.10.2000, p. 13.

**COMMISSION REGULATION (EC) No 826/2002
of 16 May 2002**

**fixing the maximum reduction in the duty on maize imported in connection with the invitation to
tender issued in Regulation (EC) No 767/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 1666/2000⁽²⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 767/2002⁽³⁾.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as last amended by Regulation (EC) No 2235/2000⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty. In fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account. A contract is

awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 May 2002, pursuant to the invitation to tender issued in Regulation (EC) No 767/2002, the maximum reduction in the duty on maize imported shall be 35,89 EUR/t and be valid for a total maximum quantity of 241 962 t.

Article 2

This Regulation shall enter into force on 17 May 2002.

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

Done at Brussels, 16 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 119, 7.5.2002, p. 3.

⁽⁴⁾ OJ L 177, 28.7.1995, p. 4.

⁽⁵⁾ OJ L 256, 10.10.2000, p. 13.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 July 2001

declaring a concentration to be compatible with the common market and the functioning of the
EEA Agreement

(Case COMP/M.2314 — BASF/Eurodiol/Pantochim)

(notified under document number C(2001) 1856)

(Only the English text is authentic)

(Text with EEA relevance)

(2002/365/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, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, and in particular Article 8(2) thereof,

Having regard to the Commission decision of 27 March 2001 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations ⁽³⁾,

Whereas:

- (1) On 12 February 2001, the Commission received notification pursuant to Article 4 of Regulation (EEC) 4064/89 ('the Merger Regulation') of a proposed concentration by which the German undertaking BASF AG (BASF) acquires control of the whole of the Belgian undertakings Pantochim SA (Pantochim) and Eurodiol SA (Eurodiol) by way of a binding purchase agreement dated 29 December 2000.
- (2) After examination of the notification, the Commission concluded that the notified operation fell within the scope of the Merger Regulation. Commitments were

offered during the initial phase of the Commission's investigation pursuant to Article 6(2) of the Merger Regulation for the purposes of a first phase clearance decision. These commitments were not sufficient to remove the competitive concerns raised by the merger. The Commission considered therefore that the operation raised serious doubts as to its compatibility with the common market. Therefore, on 27 March 2001, the Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

I. THE PARTIES

- (3) BASF is a company with world-wide activities in the production and distribution of speciality chemicals and other chemical products, health and nutrition products, oil and gas.
- (4) Eurodiol and Pantochim are Belgian companies. Both are subsidiaries of the SISAS group, based in Italy and Luxembourg. Pantochim is active in the production of a number of chemicals, mainly phthalic anhydride (PA) and phthalates. Eurodiol is active in the production of 1,4-butanediol (BDO) and BDO-related chemicals gamma-butyrolacton (GBL), N-methylpyrrolidon (NMP) and tetrahydrofuran (THF).
- (5) On 18 September 2000, Eurodiol and Pantochim were placed under a pre-bankruptcy regime (*concordat judiciaire*) by the Court of Charleroi, Court of Commerce (*Tribunal de commerce*) Belgium. In the same judgment, the Court nominated four Court Commissioners (*Commissaires au sursis*) to supervise the management of

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum OJ L 40, 13.2.1998, p. 17.

⁽³⁾ OJ C 116, 17.5.2002.

Eurodiol and Pantochim during the period of pre-bankruptcy proceedings. In addition, the Italian parent company SISAS SPA, Milano, is in bankruptcy proceedings as well.

II. THE OPERATION AND THE CONCENTRATION

- (6) The operation consists in the acquisition of Eurodiol and Pantochim by BASF by way of a binding purchase agreement concluded on 29 December 2000 between BASF Antwerpen NV (a wholly owned affiliate of BASF) and the Commissioners acting for Pantochim and Eurodiol.
- (7) The notified operation constitutes an acquisition of sole control by BASF over Eurodiol and Pantochim and, therefore, a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

- (8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion⁽⁴⁾. In 1999, BASF achieved a world-wide turnover of EUR 29,5 billion, whereas Eurodiol and Pantochim had a combined turnover of EUR 202 million. BASF, Eurodiol and Pantochim achieved an aggregate turnover in excess of EUR 100 million in 12 Member States. In addition, BASF, as well as Pantochim and Eurodiol, achieved turnover in excess of EUR 25 million in three Member States (Belgium, Germany and Italy). None of the undertakings concerned achieves more than two thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(3) of the Merger Regulation (see Table 1).

Table 1

Turnover of BASF and of Pantochim and Eurodiol in 1999

(in million EUR)

Country	BASF	Pantochim and Eurodiol
Belgium	[...] * (*)	[...] *
Germany	[...] *	[...] *
Italy	[...] *	[...] *

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁽⁴⁾ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25). To the extent that figures include turnover for the period before 1 January 1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT MARKETS

1. PHTHALIC ANHYDRIDE (PA)
- (9) PA is a raw material mainly used for the production of phthalates as well as alkyd resins and unsaturated polyester (UP) resins. PA is sold in flakes or in molten form.
- (10) The parties submit that PA forms a relevant product market and they have provided data on this basis. This market definition has been broadly confirmed by the market investigation of the Commission.
2. PHTHALATES
- (11) Phthalates are diesters from the respective alcohol and PA. Because of their different characteristics phthalates can be further subdivided into standard phthalates and short-chain phthalates. However, the notifying parties submit, that there would be only one relevant product market, since it would be possible at least for a certain part of the European producers to switch the production process from standard to short-chain phthalates.
- (12) In particular the parties argue that the extent of the necessary adjustments would depend on the respective plant design. An esterification unit designed and used for the production of standard phthalates would have to be only adapted regarding the alcohol removal and purification section. The purification section would only require some minor modifications of the piping. The parties submit that, after these adjustments have been performed, the esterification unit would be able to produce the various types of phthalates with a shut down period of two to three days. The costs of such adjustments would amount to about 5 % of the costs of a new plant.
- (13) Most replies to the market investigation carried out by the Commission suggest that a market definition including standard and short chain phthalates would be too wide. Competitors of BASF have submitted that the ability to switch production between standard and short-chain phthalates is very limited due to the investments required to produce short-chain phthalates in their plants. In addition, standard phthalates and short chain phthalates are used in totally different applications. The parties themselves submit that, depending on the balance of polarisable/polar segments of the molecules and the length of the alkyl chain of the respective phthalates, the solubility and the compatibility with certain polymers are different. They conclude that therefore only phthalates with a short-chain length (i.e. C1 up to C4) are suitable for applications such as the production of nitrocellulose or the phlegmatising of peroxides.

(14) Due to their different chemical structures, standard and short-chain phthalates are used in different applications. Standard phthalates (defined as phthalates on the basis of C4- or longer alcohol) are often referred to as plasticisers, since about 95 % of the total consumption is used as plasticisers for PVC. The remaining 5 % of the standard phthalates is used as plasticisers in glues, coatings and colours, as inhibitors for peroxides as well as for the production of nitrocellulosis. The short-chain phthalates DMP and DEP (phthalates on the basis of C1- respectively C2-alcohol) are used as plasticisers in the production of cellulose esters, as inhibitor/stabiliser for peroxides, as fixing agent in cosmetic articles and as diluent for fragrances.

(15) For the purpose of the present case it can be left open whether standard phthalates and short-chain phthalates form two separate product markets or a single product market, because competition concerns do not arise in either case.

3. 1,4-BUTANEDIOL (BDO)

(16) BASF submits that BDO is used as a raw material for the production of BDO-based chemicals, namely the solvents gamma-butyrolacton (GBL), N-methylpyrrolidon (NMP) and tetrahydrofuran (THF) as well as N-vinylpyrrolidon (NVP), poly-vinylpyrrolidon (PVP), poly-tetramethylen-etherglycol (PTMEG), polybutylenterephthalat (PBT) and polyurethanes (PUR). According to BASF, at present, BDO is commercially produced by four different processes, on the basis of acetylene, butadiene, propylene oxide as well as butane. However, in the opinion of BASF BDO forms one single product market.

(17) Third parties have confirmed the market definition suggested by BASF. According to them BDO is, by its chemical properties and characteristics, a product of its own and cannot be substituted by other products. The alternative processes which can be used to produce BDO do not influence the basic properties of the product — the final product stays the same.

(18) On the basis of the foregoing the Commission considers BDO to be a relevant product market.

4. BDO-RELATED PRODUCTS (GBL, NMP AND THF)

(19) BASF submits in the notification that the products GBL, NMP and THF belong to a wider market of special solvents. This market definition also includes certain oxygenated solvents (propylene glycol monomethyl ether acetate (PGMEA), dimethylformamide (DMF),

dimethylacetamid (DMAC), propylenecarbonate (PC), dimethyl sulphoxide (DMSO)) as well as methylene-chloride.

(20) Special solvents represented only a small part of the total organic solvents market in the European Union (1999). The market for special solvents, BASF states, is broadly split. There are more than 20 different companies on the market, none of which can offer the complete range of the respective products. However these products are said, by BASF, to constitute one market, as significant competition arises from different solvents depending on their various applications.

(21) The applications of special solvents, as listed by BASF, are: electronic and paint stripping, process chemicals, purification/cleaning, agrochemical and pharmaceutical industry.

(22) BASF provides a list of substitution possibilities within each of these major applications identified. In the electronic sector NMP-based photo-resist strippers, for example, compete heavily against alternative strippers based on DMSO, hydroxylamine, ethylacetate, PGMEA, etc. In addition, BASF also argues that new technologies, which are under development, may lead to a future substitution of GBL, NMP and THF.

(23) For coatings and paint-stripping applications, BASF explains that NMP is for paint-stripping purposes, for example, competing against [...]*.

(24) For process chemical applications, BASF considers NMP substitutable with a wide range of alternative systems and products, e.g. [...]*. For cleaning applications, BASF states that, based on the nature of the material, which has to be cleaned, a wide range of products is used such as [...]* and so forth. For life science applications, there is competition from different technologies and ongoing reformulation. BASF highlights an example where THF was substituted [...]*.

(25) According to BASF these examples indicate that solvents of all the categories mentioned (special solvents, other oxygenated solvents, other organic solvents as well as non-organic solvents) are interchangeable to a certain degree and therefore could be regarded as one relevant product market. BASF, however, has assumed that the subsection termed 'special solvents' forms a separate relevant product market for the purpose of the notification.

- (26) The notification, however, concerns BDO-related solvents (GBL, NMP and THF) in particular, which are the products produced by Eurodiol and BASF. There are only a handful of companies active in the production of BDO-related solvents and most of these produce all the products. For BASF, Eurodiol and most other companies active in the production of BDO-related products, the production process allows the production of all three products, as well as BDO, in a joint production process. Chart 1 and chart 2 below represent a simplified outline of how the production processes operate with different technologies. Some other producers use different technologies from those shown here. BASF identified four different technologies in the notification, but generally the technologies are able to produce the full range of products.

Figure 1

The BASF-process

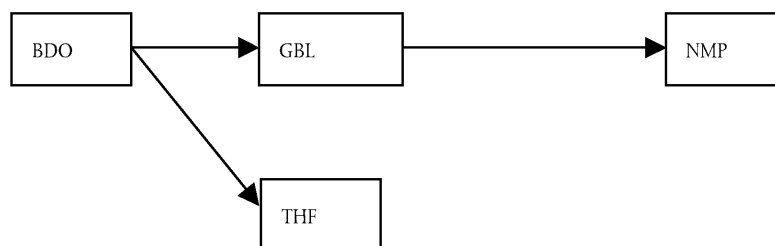
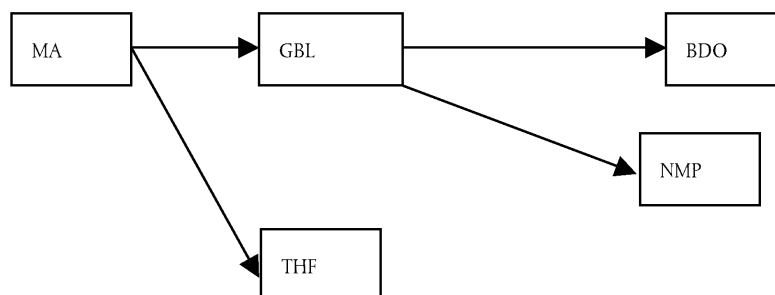


Figure 2

The Eurodiol-process



- (27) The BASF process is the 'Reppe' process, which is a relatively mature technology, based on acetylene and formaldehyde. The Eurodiol process is on the basis of a recently invented technology, using butane and MA as a raw material. Third parties have stated that this production process has to be considered as a 'low cost' technology. It can be seen from the Figures 1 and 2 that, in the BASF process, GBL and THF are derived from BDO whereas, in the Eurodiol process, BDO is derived from GBL. The term 'BDO-related products' will therefore be used in this decision when referring to GBL, NMP and THF.
- (28) The Commission has examined whether BDO-related products should be considered together with other non-BDO-related special solvents, as suggested by BASF, separately from other non-BDO-related special solvents or individually as separate product markets.
- (29) The market investigation carried out by the Commission did not confirm the market definition suggested by BASF. According to third parties the product-groups of BDO-related products are distinct from other special solvents and form separate product markets. The vast majority of customers did not support the claim that there is substitutability with regard to GBL, NMP and THF, either among the products concerned or by any other solvents. The specific technical properties and different applications do not, in practice, permit replacement of one of the products involved by other chemicals.
- (30) Third parties highlight that substitution possibilities are very restricted, in particular for the pharmaceutical and agrochemical business. A large proportion of the merchant market for BDO-related products is used in the pharmaceutical and agrochemical businesses. In Europe, production for the merchant market in these business sectors accounts for approximately [50 to 70 %]* of GBL, about [40 to 60 %]* of THF and around [10 to 30 %]* of NMP.
- (31) GBL is primarily [...] used to manufacture NMP. In this process there are no substitutes for GBL. It is also used in the manufacture of pharmaceuticals and agrochemicals and as a solvent. In these applications, according to third parties, GBL is the obvious choice because it has superior performance compared to other solvents and/or lower cost.

- (32) NMP is a powerful solvent for most commercial resins. Due to its high boiling point and excellence solvent power NMP exceeds and improves the properties of high temperature bake coatings. NMP is also used in electronics markets for stripping and cleaning. Furthermore, it is used as a reaction solvent in a wide variety of chemistries, for agrochemicals, electronics and petrochemical processing.
- (33) One of the principal applications of NMP is the production of wire enamel, and [20 to 30 %]* of NMP produced worldwide is used as a wire enamel solvent. A potential substitute for NMP in this application has been identified, by third parties, as cresols. However, the use of cresols in wire enamel applications is anticipated to decrease considerably in the near future as a result of environmental pressure. Generally, NMP is more expensive than its substitutes and is therefore only used where its performance is much better than the substitutes or health and safety issues are important.
- (34) Most [> 70 %]* of the THF production is used in the production of PTMEG, which is used in elastomers and elasthan stretch fibres. For this application THF cannot, according to third parties, be substituted for by other products. The remaining THF [< 25 %]* is used as solvent in PVC cements and coatings and as a reaction solvent in pharmaceuticals. In these applications, according to a third party, THF has superior performance to other solvents and a lower cost, and will therefore be the obvious choice for consumers.
- (35) Demand-side factors therefore suggest few, if any, substitution possibilities between GBL, NMP and THF. Third parties have said that even if substitution was generally possible from a chemical point of view, it would be very time consuming and cost intensive. Any substitution in this field would require expensive research to find and test other suitable products, it would involve industrial trial of the modified process to be undertaken and it would take a long time to obtain the necessary authorisation from administrative bodies. Furthermore, BDO-related products are generally ordered individually, and the demand structures for each product are quite different. The majority of customers consulted in the market investigation did not consume all three BDO-related products. The prices charged by BASF for the BDO-related products are also different. In 1997, for example, GBL and NMP were up to 30 % more expensive than THF. By 1999, however, price differences had narrowed to just under 5 %. Furthermore, during the period between 1997 and 2000 when the prices of BDO-related products declined quite substantially in the EEA, the prices did not decline to the same extent for all products. The price charged by BASF for THF, for example, fell by just over 25 % whereas the NMP price fell by nearly 40 %.
- (36) Besides different specific properties and performances of the individual substances, third parties have pointed to the regulatory requirements imposed by national or Community health authorities⁽⁹⁾, which make reformulation and substitution cumbersome.
- (37) No third party consulted in the market investigation was aware of any ongoing development of technologies for future substitution of GBL, THF and NMP.
- (38) It is therefore concluded that GBL, NMP and THF form separate and distinct product markets.
- B. RELEVANT GEOGRAPHIC MARKETS**
- 1. PA**
- (39) The notifying parties submit that the relevant geographic market for PA is at least EEA wide. They further believe that the adjacent east European countries (Poland, Hungary, Slovenia, the Czech and Slovak Republics) form part of this relevant geographic market. For these countries there are no barriers to trade with the EEA, and the prices tend to follow EEA prices. This definition has been largely confirmed by the Commission's investigation.
- (40) It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part thereof.
- 2. PHTHALATES**
- (41) The notifying parties submit that the relevant geographic market for all phthalates is at least EEA wide. They further believe that the adjacent east European countries (Poland, Hungary, Slovenia, the Czech and Slovak Republics) form part of this relevant geographic market. For these countries there are no barriers to trade with the EEA, and the prices tend to follow EEA prices. This definition has been largely confirmed by the Commission's investigation.
- (42) It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part thereof.
- ⁽⁹⁾ See for example Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ L 147, 9.6.1975, p. 13). Directive as last amended by Directive 2000/38/EC (OJ L 139, 10.6.2000, p. 28).

3. BDO AND BDO-RELATED PRODUCTS (GBL, NMP AND THF)

- (43) BASF considers that the relevant geographic markets for the manufacture and sale of BDO and special solvents include at least western Europe (EEA plus Switzerland). This is because customers purchase BDO and special solvents from suppliers which are located in different Member States. In addition, transportation costs are not considered to represent a material barrier to trade. BASF therefore believes that the relevant geographical markets are broader than western Europe, and include eastern Europe, owing to the absence of trade barriers with western Europe and limited transportation costs. Furthermore, storage of BDO and special solvents does not, due to its unlimited durability, represent an obstacle to trade within the European market. Finally, BASF states that prices for comparable quantities within the relevant market are comparable with only small differences.
- (44) Third parties confirmed the submission of BASF in so far that there are no special customer preferences as to the geographic origin of the products. Quality is comparable for all suppliers, except for the east European suppliers, and durability seems not to be a particular problem of the concerned markets.

(a) *The main producers and trade flows*

- (45) SISAS produces BDO, GBL, NMP and THF in Belgium at Eurodiol, and BASF produces all four products in Germany and in the United States, but also produces BDO in Japan and Korea and THF in Japan. The competitors are located either in Europe or in the United States. International Speciality Products Inc. ('ISP') produces all four products in the United States, and also produces BDO and THF in Germany. Lyondell Chemical Company ('Lyondell') produces all four products in the United States. In addition, DuPont de Nemours International SA ('DuPont') has facilities in Spain for THF and GBL (only for captive use) and in the United States for BDO and THF.
- (46) In 2000 there were, according to BASF, significant exports of BDO to the United States [20 kt to 40 kt]* and only limited imports [1 kt to 5 kt]*. There were significant imports of GBL [1 kt to 10 kt]* and NMP [5 kt to 20 kt]* to Europe from the United States, but exports were negligible from Europe to the United States. For THF there was a trade flow of about [1 kt to 5 kt]* in both directions. Not all of the imported goods, however, were sold on the merchant market; some were used captively in intra-company transfers.
- (47) Exports from Europe to Asia during 2000 were estimated by BASF as follows: [1 kt to 5 kt]* for BDO, [1 kt to 5 kt]* for GBL, [1 kt to 10 kt]* for NMP and [1 kt to 10 kt]* for THF. During the same period [...]*. In addition, third parties have said that products from

Asia are not competitive on price, which further suggests that these producers do not constitute a competitive restraint. Asian producers were therefore not considered further in the analysis.

- (48) Despite the absence of any obvious import barriers between eastern Europe and the EEA only limited imports have been identified either by BASF or in the market investigation carried out by the Commission. In eastern Europe there are three producers, namely [...]*. Several customers stated in the market investigation that the products produced in eastern Europe are of inferior quality and that manufacturers are not able to supply on a reliable basis. Furthermore, most of the customers did not know of any eastern European suppliers or said that they had not been approached by any such suppliers. Up to now there have only been minimal imports of GBL and NMP [...]*. BASF claims that there are [...]* some quantities of THF from eastern Europe sold on the EEA market, but the market investigation did not reveal a single THF customer using THF from eastern Europe.
- (49) Whilst there may technically be few barriers to trade, the Commission has little evidence to suggest that eastern European producers have any restraining influence on the EEA markets for BDO, GBL, NMP and THF. The Commission therefore does not consider eastern Europe as part of the relevant market. Instead, owing to the high level of trade flow from the United States to the EEA the Commission has considered whether the market may be wider than the EEA. The extent to which the conditions of competition are appreciably different in the United States as compared to the EEA has therefore been considered in detail.
- (50) In 1999 and 2000 the EEA markets for BDO, GBL, NMP and THF were characterised by four players BASF, Sisas, ISP and Lyondell. The same four players were present on the United States markets. For GBL and NMP, a substantial proportion of the EEA market [> 30 %]* is produced in the United States whereas for BDO and THF only [1 to 10 %]* originate from the United States.
- (51) During 1999, when the Eurodiol plant in Feluy became fully operational for producing all four products (BDO, GBL, NMP and THF), prices in the EEA fell sharply. Importers were unable to meet this sharp decline in prices, their products became less competitive and sales of United States producers fell during 1999. In 2000, GBL importers' prices were between [1 % and 30 %]* higher than BASF, for THF the prices were [5 % to 15 %]* higher and for NMP they were [1 % to 10 %]* higher. For BDO no significant price differences between European producers and importers could be found.

- (52) There are also substantial freight costs and duties for import from the United States and Asia which limit imports into the Community. At present the duty on BDO is 7,8 % while it is 6,5 % for GBL, NMP and THF. The market investigation has shown that the additional costs as a result of both transport and duties can reach up to 20 % of the final product price (clearly this proportion has increased when prices declined). In addition, the EUR-USD exchange rate also moved to make imports into Europe more expensive in recent years.
- (53) Despite the price differences of imported goods, the level of imports recovered in 2000. Customers have indicated that they prefer to have dual sources of supply as this allows them greater flexibility and secures supply in the event that one producer is unable to supply on a regular basis. The present shortage of BDO and all BDO-related products in addition to some stickiness in switching suppliers caused by long-term contracts and supply relationships in other product markets, may have prevented the sharp decrease in imports which one would otherwise have expected.

(b) Prices

- (54) The decline in the price level in the EEA was not mirrored to the same extent as in the United States. Table 2 highlights in percentage terms the price changes for BDO, GBL, NMP and THF in the different locations from 1998 to 2000.

Table 2

The relative change in prices in the EEA and in the United States between 1998 and 2000

	Price fall in the EEA	Price fall in United States
BDO	[30 %-50 %] *	Changed between [-30 % and +20 %] *
GBL	[40 %-60 %] *	Unaffected
NMP	[30 %-50 %] *	[10 %-30 %] *
THF	[20 %-50 %] *	[< 20 %] *

- (55) As shown in Table 2, the price changes in the United States were only to a limited extent, if at all, influenced by prices in the EEA. This provides a strong indication that prices in the EEA for BDO and related products are not restrained by prices charged in the United States.
- (56) Furthermore, before the prices for BDO and related products began to fall in the EEA there were negligible price differentials between the EEA and the United States in the product markets for NMP and GBL, while for THF the price difference was in the range of 10 % to 20 %. By 2000 the price differentials became wider with the largest price differential [...] * observed in the GBL market whereas the smallest price differentials were in the BDO [...] * and THF [...] * markets.

- (57) The Commission considers the evidence that the sharp price decline in the EEA was not mirrored in the United States, to a substantial degree, in any of the four markets indicates that the geographical scope of these markets are not subject to conditions of competition which are sufficiently homogenous in the United States and in the EEA. Therefore, the United States markets should be distinguished from the EEA markets and should not be considered further in this analysis. This conclusion is supported by the widening price differentials for all four products and the barriers to importing between the United States and the EEA-markets.

(c) Conclusion

- (58) It may therefore be concluded that the EEA is the relevant geographic market for BDO, GBL, NMP and THF.

C. ASSESSMENT

- (59) For the purpose of this decision the data used for the assessment of the competitive situation is mainly from 1999. This is because Pantochim and Eurodiol experienced financial difficulties in the second half of 2000, which severely limited their output as shown in Table 3.

Table 3

Eurodiol production 2000 in tonnes

	January-June 2000	July-December 2000	% decline
BDO	[...] *	[...] *	[...] *
GBL	[...] *	[...] *	[...] *
NMP	[...] *	[...] *	[...] *
THF	[...] *	[...] *	[...] *

- (60) The decline in output from the first half of 2000 to the second half was most extreme for NMP but the production of GBL and THF also decreased significantly. Therefore, it would be misleading to use the year 2000 sales figures, given that it would not fully reflect the market position Eurodiol had.

1. PA

- (61) The activities of the parties overlap in the production of PA, which is mainly used for the production of phthalates as well as for saturated and unsaturated polyester resins. Some of the big producers of PA are vertically integrated in the downstream markets. Thus, approximately 50 % of the overall production in the EEA goes into captive use. In 1999 BASF used about 87 % of its PA production as a raw material for other products, whereas Sisas used 36 % of its output for the production of downstream products.

- (62) On the free market for PA, the parties would hold a post-merger market share of 14 % (BASF 4 %, Pantochim 10 %). The notifying parties face competition from Atofina (15 %), Atmos (11 %) and Lonza (11 %).
- (63) In view of the relatively low market share of BASF following the operation and the existence of substantial competition by a number of major manufacturers, it may be concluded that the operation does not rise competition concerns as to its compatibility with the Common Market in the market for PA.

2. PHTHALATES

(a) *Market for phthalates*

- (64) BASF produces both short-chain phthalates as well as standard phthalates, while Pantochim only produces standard phthalates. Therefore, the only overlap of the activities of the parties is in the area of standard phthalates.
- (65) On an overall market comprising both standard and short-chain phthalates BASF will have an EEA-wide market share of 26 % (BASF 19 %/Pantochim 7 %) after the merger. It faces competition mainly from Exxon (28 %) and Oxeno/Degussa (10 %), while a number of other manufacturers (Atofina, BP, Lonza and Neste) have market shares between 5 % and 7 %.
- (66) After the merger, BASF will have a market share roughly equal to Exxon on a market for all phthalates. Additionally, there is a number of large international companies like Atofina, Degussa, Lonza and Neste active in the market to ensure competition after the merger.
- (67) Therefore, in view of the foregoing, it may be concluded that competition concerns are unlikely to arise on a market of all phthalates.

(b) *Market for standard phthalates*

- (68) The activities of the parties overlap in the area of standard phthalates. Since some 98 % of all phthalates are standard phthalates the market situation is very similar to the situation of the broader market for all phthalates.
- (69) On a narrower market of standard phthalates BASF will have an EEA-wide market share of 26 % (BASF 19 %/Pantochim 7 %) after the merger. They face competition mainly from Exxon (28 %) and Oxeno/Degussa (10 %), while a number of other manufacturers (Atofina, BP, Lonza and Neste) have market shares between 5 % and 7 %. Given the particular strength of Exxon and Oxeno/Degussa BASF will face strong competition after the merger.
- (70) In view of the foregoing, it may be concluded that competition concerns are unlikely to arise on a market for standard phthalates.

(c) *Market for short-chain phthalates*

- (71) On the narrower market for short-chain phthalates, BASF has a market share of 18 %. In addition, the parties submitted that their activities do not overlap since in Feluy only standard phthalates are produced.
- (72) On the basis of the foregoing it may be concluded that competition concerns do not exist on a narrower market for short-chain phthalates.

3. BDO

- (73) Following the operation the parties will attain a market share of [35 % to 45 %]* in the EEA (BASF [20 % to 30 %]*; SISAS [15 % to 25 %]*). The market leader with the highest market share ([45 % to 55 %]*) remains ISP. Lyondell ([5 % to 15 %]*) and Du Pont ([< 5 %]*) are also active in the market. Given the strength of ISP, the operation would be unlikely to lead to single dominance of BASF.
- (74) The operation is also unlikely to lead to the creation of a collectively dominant position, although BASF and ISP will have an aggregated market share of > 80 % after the merger and the takeover of SISAS will reduce the number of key players on the market from four to three. Several features of the BDO market militate against the likelihood of collective dominance of BASF and ISP.
- (75) Market prices have come down significantly within the last three years due to strong price competition and the market entry of SISAS in 1998. The market shares of BASF and ISP have changed continuously, showing declining shares for ISP ([...]*) and high volatility for BASF ([...]*). Following price competition the margins in the BDO market have been depressed significantly and SISAS had to exit the market facing heavy losses.
- (76) Third parties have submitted to the Commission that prices depend strongly on the quantities available for the market. Although the market is expected to grow considerably it is difficult for the producers to adapt to short term changes in demand for BDO. The minimum size of a (new) plant is considerable. Given that the production capacities are concentrated in a few production plants any intermediate shut down of capacity, for example, in case of an accident, induces enormous effects on prices. On the other hand, third parties expect that the creation of new capacity in the market would lead to strong price competition. Third parties have confirmed the parties' submission that a new production plant, built up by Lyondell in the Netherlands with a capacity of about 125 kt, will be operational in the first half of 2002. The market investigation has shown that customers expect continuous price competition induced by the increase of capacity following the investment of Lyondell.

(77) BDO is commercially produced by four different processes: ISP and BASF (in Ludwigshafen) both apply the condensation of acetylene with formaldehyde and following hydrogenation. In Feluy BDO is produced [...] (in a different way).

(78) On the basis of the foregoing, it may be concluded that the notified merger would not lead to competition concerns for the market of BDO.

4. BDO-RELATED PRODUCTS (GBL, NMP AND THF)

(79) BASF and Eurodiol are both active in the production of GBL, NMP and THF and have significant sales on the merchant markets. Prior to the proposed concentration BASF was the strongest player in the EEA markets for GBL, NMP and THF.

(80) The BDO market is in short supply owing to growing demand coinciding with lower levels of production than expected by Eurodiol [...]. This shortage, however, does not appear to have influenced the production of GBL, NMP or THF to any significant extent. Although GBL is derived from BDO, in most processes, there is little indication that BDO intended for GBL or THF production has been diverted onto the BDO merchant market.

(81) GBL and NMP are both solvents, they are relatively non-toxic and almost 100 % recoverable and recyclable. Both solvents offer broad solubility for resins with good chemical and thermal stability combined with complete water solubility. THF is a solvent with a high solvency for PVC and polyurethanes. It is, like GBL and NMP, also almost 100 % recoverable and recyclable.

(a) GBL

(82) BASF estimates that the main GBL applications on a worldwide basis in 1999 were in agrochemicals and pharmaceuticals [...] and electronics [...]. In Europe the importance of GBL for specific segments was different with pharmaceuticals accounting for the main application [...]. This is because the electronics market is heavily concentrated in Asia and the United States and the production of specific pharmaceuticals and agrochemicals is mainly done in Europe.

(83) GBL is primarily used [...] in the manufacture of pyrrolidones (VP, PVP and particularly NMP). [...] (6) (7)

(84) In the notification BASF estimates that the merchant market in the EEA for GBL was worth EUR [10 to 20 million]* in 1999, accounting for [5 kt to 10 kt]*. According to BASF, the worldwide GBL capacity, merchant sales in the EEA and market shares (volume based) in 1999 were as shown in Table 4.

Table 4

World GBL (capacity, EEA sales and market shares on the merchant market (BASF estimates for 1999))

GBL	Capacity kt/year	EEA merchant sales in kt	EEA market share
BASF (Germany)	30	[...] *	[...] *
BASF (United States)	30		
Eurodiol (Belgium)	40	[...] *	[...] *
Combined	100	[...] *	[...] *
ISP (United States)	41	[...] *	[...] *
Lyondell (United States)	20	[...] *	[...] *
DuPont (Spain)	45		[...] *
Mitsubishi (Japan)	10		[...] *
[...] * [others]	5		[...] *
[...] * [others]	5		[...] *
Total	226	[...] *	[...] *

(6) [...] *
(7) [...] *.

- (85) BASF estimates its market share in 1999 to be [35 % to 45 %]* (in terms of volume) and [35 % to 45 %]* (in terms of value). Eurodiol's market share accounted for [25 % to 35 %]* (in terms of volume) and [20 % to 30 %]* (in terms of value). Based on these estimates the merger would combine the two leading companies in the market for GBL achieving [60 % to 70 %]* of the market shares (in terms of volume and value).
- (86) The market investigation carried out by the Commission has broadly confirmed the GBL capacity figures outlined in Table 4. Furthermore, capacity has been stable and has not increased in the past three years. With respect to market shares, however, BASF have slightly overstated the sales of Eurodiol, the combined market share, estimated by the Commission, was therefore around [50 % to 60 %]* (in volume terms) in 1999. Figures for 2000 indicate a slight fall in market share bringing the combined share closer to [50 % to 60 %]*. The next largest competitor sells less than half the amount in the GBL merchant market. Information on sales over time (1997 to 2000) has according to BASF seen Eurodiol gaining market share at the expense of BASF's competitors, and the market investigation has broadly confirmed this trend.
- (87) Following the proposed merger the new entity would be the only producer in the EEA selling GBL on the merchant market. BASF would control [40 % to 50 %]* of world GBL capacity with its main competitors producing for the merchant markets located in the United States. Whilst there are some small capacities in eastern Europe [...] the Commission has not received any evidence that GBL has been imported into the EEA. BASF has not identified any sales from eastern Europe into the EEA nor has it been able to indicate the extent to which the GBL produced is used captively for NMP production. None of the customers consulted in the market investigation have claimed to be buying GBL from eastern European producers. Furthermore, customers have stated that east European products are of inferior quality and the producers are not able to provide a timely and reliable supply.
- (88) The market investigation has also indicated that all producers, except for Eurodiol, are producing at or near full capacity. In addition, there is no indication of new capacity being built in Europe for GBL in the foreseeable future. [...]*, which is due to start BDO production in the beginning of 2002. However, it has been publicly stated that Lyondell has postponed its plans to extend this plant for the production of the BDO-related products. Furthermore, Lyondell estimates that once the decision to enter has been taken it would take a significant time to enter into real commercial production.
- Lyondell's potential entry can therefore not be relied on to represent a competitive restraint on the merged entity.
- (89) BASF also expects the Mitsubishi plant in Japan to undertake a de-bottleneck of its GBL capacity in the beginning of 2002. This, according to BASF, would increase capacity at the Mitsubishi plant from [...]*. There were, however, in 2000 no imports from Asia, and during this period Europe and America were net exporters to Asia. Furthermore, it is not known to what extent this capacity is captive or intended for sale in the Asian merchant market. Finally, BASF has also suggested that DuPont could enter the GBL market. However, DuPont is not producing GBL for the merchant market. There is no evidence to support that DuPont is likely to enter the GBL merchant market in the near future.
- (90) In the market investigation, producers have stated that they are not able to quickly raise production without incurring substantial additional capital cost. The extent to which producers are willing to switch their captive production to the merchant market has therefore been examined. None of the producers stated that they would switch from captive production to sale on the merchant market in response to a 10 % increase in permanent relative prices, nor would they change their production mixes (the extent to which this is possible would also be limited by the lack of excess capacity). It seems reasonable to conclude therefore that products, which are at present used in captive production, are unlikely to be placed for sale on the merchant market. Captive production does therefore not represent a competitive restraint on the prices of GBL in the merchant market.
- (91) In February and March 2001 Eurodiol was using just over [50 % to 70 %]* of capacity available for GBL production. BASF predicts that by 2003 it will produce [35 kt to 50 kt per annum]* at the Feluy plant which is equivalent to full capacity. Of this production [20 kt to 30 kt per annum]* will be for captive use for NMP and the remainder will be used at Ludwigshafen for captive use for Pyrrolidone, which indicates that all production is expected to be for captive use.
- (92) The Commission has during the investigation explored the extent to which BASF may change its production mix at its plants post merger. The production process at Eurodiol, if operated efficiently, should be able to produce GBL more cheaply than at BASF's other plants. [...]*. Similarly, BDO production would be more expensive using the Eurodiol process than at Ludwigshafen. It is therefore possible that, after the merger, BASF would concentrate on the BDO-related products at the Feluy

plant and BDO production at Ludwigshafen. [...]*, irrespective of its future plans BASF would by acquiring a different technology become more flexible to respond to changes in demand of BDO and BDO-related products.

(93) The market investigation carried out by the Commission has shown that, with the exception of eastern European producers, there are no consumer preferences regarding the origin of GBL. Moreover, the EEA market is currently said to be very short of GBL. BASF estimates that imports into Europe arose only from America, and amounted to [1 kt to 10 kt]* in 2000. BASF was responsible for [1 kt to 5 kt]* of these imports which was used for captive production of NMP and Pyrrolidone at the Ludwigshafen plant. BASF's own sales on the merchant market were [1 kt to 5 kt]* in 2000.

(94) Imports from the United States and Asia are, however, subject to significant duties for importing and according to third parties, transportation and duties account for up to 20 % of the actual product price. Nevertheless, price data provided by importers indicated that their products were at most 15 % more expensive in 1999 than BASF's prices for GBL. This price difference was virtually eliminated by 2000.

(95) Third parties have also stated, however, that market entry is difficult and risky, and that the construction of a new production facility requires considerable investment and is subject to proven technology that is cost effective. Moreover, to make a production facility profitable high capacity utilisation is needed. Since most key customers require certification of their suppliers, building a customer base is a time consuming process. In the last five years Eurodiol has been the only market entrant in the EEA. According to third parties, Eurodiol's troubles were caused by its failure to gain market share to enable it to cover its costs.

(96) BASF states that customers for special solvents are broadly split with some important customers being large international players. It segments its customers into A/B/C-type customers. Type A customers are active on a global basis, have various production sites in Europe/worldwide and require large bulk deliveries. For special solvents type A customers consume more than [...]*. In 1999 type A customers represented only [...]* of BASF's customer base. Type B customers have regional activities and require bulk deliveries and most have more than one production site. For special solvents this type of customer consumes [...]* and in 1999 represented [...]* of BASF's customer structure. The remaining [...]* of customers were type C which purchase less than [...]*.

These have national activities, one production site and require bulk and/or drum deliveries.

(97) The GBL customer structure on its own appears similar with only a few very large customers (type A and B) which together represented around [40 % to 60 %]* of total sales. Customers, in the market investigation, considered that they do not have buyer power because GBL has been in short supply for some time and there is little choice of whom to buy from. Should supply become more abundant, however, some key customers do believe that they would have bargaining power. These customers in particular purchase other non-related products from BASF and their GBL expenditure is likely to be small in relation to these expenditures on other products.

(98) [...]*. The Commission's market investigation has forecasted a market growth of between 3 % and 5 % per year. With most manufacturers producing at or near full capacity and not having an economic incentive to sell capacities used captively on the merchant market, it is unlikely that the growth in demand can be satisfied by BASF's competitors (see recitals 90 and 95).

(99) It would therefore appear that the new entity would be in a better position than its competitors to meet the demand growth. Although BASF indicates that it intends to use the [...]*. BASF would therefore be able to divert volume onto the merchant market once production increased at the Eurodiol plant. In addition, given that the GBL merchant market is very small compared to the capacity available, only a small proportion (less than 1 %) of capacity would need to be diverted onto the merchant market to meet demand growth. Despite this it would be very difficult for competitors to increase their sales further given their present captive demand, since they have no economic incentive to switch from captive production to sales on the merchant market. This is not the case for BASF, which will have the flexibility, obtained by acquiring new capacity and a different technology.

Conclusion for GBL

(100) The proposed operation would, therefore, combine the only two EEA-wide producers, selling GBL on the merchant market, resulting in a strong market position. Customers will have little choice of where to buy their future increasing GBL requirements. It may therefore be concluded that the proposed operation is likely to result in the creation of a dominant position of the parties in the market GBL in the EEA.

(b) **NMP**

States and the wire coatings market is dominated by European producers.

- (101) On a worldwide basis BASF estimates that NMP was used in 1999 mainly for electronics [10 % to 30 %]*, coatings [10 % to 30 %]*, and process chemicals [10 to 30 %]*, cleaning [10 % to 30 %]* and agrochemicals [10 % to 30 %]*. Within Europe the main areas of application were slightly different with coatings accounting for [10 % to 30 %]* and process chemicals and agrochemicals accounting for just below [10 % to 30 %]* each. The difference arose because the electronics market is heavily concentrated in Asia and the United
- (102) NMP is produced from GBL and in all processes, BASF estimates that one tonne of GBL can produce approximately [0,5 t to 2 t]* of NMP.
- (103) BASF estimates, in the notification, that the merchant market for NMP was worth [EUR 40 million to EUR 60 million]* in 1999 in the EEA, accounting for [20 kt to 40 kt]*. According to BASF, the worldwide NMP capacity, merchant sales in the EEA and market shares (volume based) in 1999 were as shown in Table 5.

Table 5

World NMP capacity, EEA sales and market shares on the merchant market (BASF estimates for 1999)

NMP	Capacity kt/year	EEA merchant sales in kt	EEA market share
BASF (Germany)	15	[...] *	[...] *
BASF (United States)	25		
Eurodiol (Belgium)	25	[...] *	[...] *
Combined	65	[...] *	[...] *
ISP (United States)	23	[...] *	[...] *
Lyondell (United States)	18	[...] *	[...] *
Mitsubishi (Japan)	8		[...] *
[...] * ([...] *) [others]	3		[...] *
[...] * ([...] *) [others]	5		[...] *
Others		[...] *	[...] *
Total	122	[...] *	[...] *

- (104) BASF estimates its market share in 1999 to be [35 % to 45 %]* (in terms of volume) and [35 % to 45 %]* (in terms of value). Eurodiol's market share was estimated to account for [10 % to 20 %]* (in terms of volume) and [10 % to 20 %]* (in terms of value). Based on these estimates the operation would result in a combined market share in the market for NMP of [50 % to 60 %]* (in terms of volume and value). The figure for 'other' includes NMP recyclers which purchase used NMP from customers and recycle the material by a running and distillation step. Afterwards the recycled NMP is according to BASF sold into the NMP merchant market.
- (105) The market investigation carried out by the Commission has broadly confirmed the capacity figures outlined above. Furthermore, capacity has been stable and has not increased in the past three years. With respect to market shares, however, BASF has slightly overstated the size of the market and the sales of Eurodiol. In addition, the Commission believes that the significance of recyclers may also have been overstated. The market investigation has shown that there are no relevant sales of recycled NMP on the merchant market in Europe. Most recycle firms will treat the used NMP for companies and return it back to them and as such it is not available on the merchant market. The Commission therefore considers, based on 1999 figures that the market share of BASF is [35 % to 45 %]* and the combined market share is [50 % to 60 %]* (in volume terms). The latest figures for 2000 show a slight decline in the market share although the combined share is still [50 % to 60 %]*. The next largest competitor has less than half the sales on the merchant market. Information of sales over time (1997 to 2000) has according to BASF seen Eurodiol gaining market share [...]*. The market investigation has broadly confirmed this trend.

- (106) Following the proposed merger the new entity would be the only EEA-wide producer selling on the merchant market. BASF would control over 50 % of world NMP capacity with its main competitors producing for the merchant markets located in the United States. Whilst there are some small capacities in eastern Europe [...] there is no evidence that significant amounts of NMP have been imported into the EEA. Although BASF estimates that approximately [< 2 kt]* have been imported into the EEA from Eastern Europe in 2000, no customers have claimed to be buying NMP from eastern European producers. Furthermore, many stated that Eastern European products are of inferior quality, more expensive than alternative supplies and that the producers are not able to provide a timely and reliable supply.
- (107) The market investigation has also indicated that all producers except for Eurodiol are producing at or near full capacity. In addition, there is no indication of new capacity being built in Europe for NMP in the foreseeable future. [...] which is due to start BDO production in the beginning of 2002. However, it has been publicly stated that Lyondell has postponed its plans to extend this plant for the production of the BDO-related products. Furthermore, Lyondell estimates that once the decision to enter has been taken it would take a significant time to enter into real commercial production. Lyondell's potential entry can therefore not be relied on to represent a competitive constraint on the merged entity.
- (108) BASF also states that the Mitsubishi plant in Japan is building new NMP capacity to come on stream in the beginning of 2002. This, according to BASF, would increase capacity at the Mitsubishi plant [...]*. However, there were no imports from Asia in 2000, and Europe and the United States were net exporters to Asia. Furthermore, it is not known to what extent this capacity is captive or intended for sale on the Asian merchant market.
- (109) Producers have, in the market investigation, stated that they are not able to quickly raise production without incurring substantial additional capital cost. The extent to which producers are willing to change the production mix has therefore been examined. Most producers stated that they would not change their production mix in response to a 10 % increase in permanent relative prices for NMP in the EEA. Furthermore, the extent to which a change in production mix would be possible is also limited by the lack of excess capacity. Moreover, it is unlikely that products intended for the United States market would be switched to the EEA market given that the price differential was around 50 % in 2000.
- (110) In February and March 2001 Eurodiol was using [20 % to 40 %]* of capacity available of NMP production. BASF predicts that by 2003 it will produce [20 kt to 35 kt/a]* at the Feluy plant, which is equivalent to full capacity. Given the production processes at Eurodiol, if operated efficiently, BASF should be able to produce NMP more cheaply at Eurodiol after the merger than at its other plant. [...]*. It is therefore possible that BASF would concentrate on the BDO-related products at the Feluy plant and BDO production at Ludwigshafen. [...]*. However, irrespective of its future plans BASF would by acquiring a different technology become more flexible to respond to changes in demand of BDO and BDO-related products.
- (111) The market investigation carried out by the Commission has shown that, with the exception of east European producers, there are no consumer preferences regarding the origin of NMP. Moreover, the EEA market is very short of NMP. BASF estimates that imports into Europe amounted to [5 kt to 15 kt]* in 2000 from the United States and nothing from elsewhere. BASF was responsible for only [< 2 kt]* of this, which was sold on the merchant market.
- (112) Imports from the United States and Asia are however subject to significant duties. According to third parties, transportation and duties account for up to 20 % of the actual product price. Nevertheless, price data provided by importers indicated that their products were at most 10 % more expensive than NMP sold by BASF.
- (113) Third parties have also stated that market entry is difficult and risky. This is because the construction of a new production facility requires considerable investment and is subject to a proven technology that is cost effective. Moreover, to make a production facility profitable high capacity utilisation is needed. Since most key customers require certification of their suppliers building a customer base is a time-consuming process. In the last five years Eurodiol has been the only market entrant in the EEA. According to third parties, Eurodiol troubles were caused by its failure to gain market share to enable it to cover its costs.
- (114) BASF states that its customers for special solvents are broadly split with some important customers being large international players. It segments its customers into A/B/C-type customers. Type A customers are active on a global basis, have various production sites in Europe/worldwide and require large bulk deliveries. For special solvents type A customers consume more than [...]*. In 1999 type A customers represented only [...] of BASF's customer base. Type B customers have regional activities and require bulk deliveries and most have more than one production site. For special solvents this type of customer consumes [...] and in 1999 represented [...] of BASF's customer structure. The remaining [...] of customers were type C which purchase less than [...]*. These have national activities, one production site and require bulk and/or drum deliveries.

(115) The NMP customer structure on its own appears different from that of special solvents with customers more widely dispersed, each representing only a small proportion of BASF's sales. Given this, there is, little evidence of buyer power. Customers in the market investigation consider that they have no buyer power, because NMP is in short supply and there is little choice of whom to buy from. Should supply become more abundant, however, some key customers do believe that they would have bargaining power. These customers in particular purchase other non-related products from BASF and their NMP expenditure is likely to be small in relation to expenditure on these other products.

(116) [...]*. The Commission's market investigation has forecasted a market growth for NMP of 3 % to 4 % per year. With most producers producing at or near full capacity, it is unlikely that the growth in demand can be satisfied by BASF's competitors.

(117) On the basis of this it would appear that the new entity would be in a better position than its competitors to meet the demand growth. [...]*. It is expected that these volumes are already sold on the merchant market and that any future increasing capacity would also be destined for the merchant market.

Conclusion for NMP

(118) The proposed operation would, therefore, combine the only two producers in the EEA, selling NMP on the merchant market, resulting in a strong market position. Customers will have little choice of where to buy their increasing NMP requirements. It is therefore concluded that the proposed operation is likely to result in the creation of a dominant position of the parties in the market NMP on the EEA market.

(c) THF

(119) BASF estimates that the main uses for THF sold on the merchant market are pharmaceuticals [40 % to 60 %]*, industrial solvents, especially PVC and coatings [20 to 40 %]* and electronics [< 20 %]*. The vast majority of the THF is however used captively by the producers, mainly in the production of PTMEG.

(120) BASF estimates in the notification that the merchant market in the EEA for THF was worth [EUR 50 million to 60 million]* in 1999, accounting for [25 kt to 35 kt]*. According to BASF, the worldwide THF capacity, merchant sales in the EEA and market shares (volume based) in 1999 were as shown in Table 6.

Table 6

World THF capacity, EEA sales and market shares on the merchant market (BASF estimates for 1999)

THF	Capacity kt/year	EEA merchant sales in kt	EEA market share
BASF (Germany)	30	[...] *	[...] *
BASF (United States)	20		
BASF (Japan)	20		
Eurodiol (Belgium)	33	[...] *	[...] *
Combined	103	[...] *	[...] *
ISP (Germany)	12	[...] *	[...] *
Lyondell (United States)	16	[...] *	[...] *
DuPont (Spain)	45	[...] *	[...] *
DuPont (United States)	82		
Others		[...] *	[...] *
Penn Chem (United States)	54		
Mitsubishi (Japan)	20		
PTG (Republic of Korea)	10		
Tonen (Japan)	9		
[...] * [others]	5		
Quihar Qianjin (People's Republic of China)	3		
Total	359		[...] *

- (121) BASF estimates its market share in 1999 to be [25 % to 35 %]* (in terms of volume) and [25 % to 35 %]* (in terms of value). Eurodiol's market share accounted for [10 %-20 %]* (in terms of volume) and [10 % to 20 %]* (in terms of value). Based on these estimates the operation would result in a combined market share in the market for THF of [40 % to 50 %]* (in terms of volume and value).
- (122) The market investigation carried out by the Commission has broadly confirmed the capacity figures outlined in Table 6. Furthermore, capacity has been stable and has not increased in the past three years. The market shares have also been confirmed by the market investigation. According to the Commission's investigation, the parties' market shares in 1999 in the EEA accounted for around [25 % to 35 %]* (BASF) and around [10 % to 20 %]* (Eurodiol) resulting in a post-merger market share of about [40 % to 50 %]*. BASF appears to have underestimated the position of its strongest competitor in the market, ISP, slightly but the market shares of DuPont and Lyondell have been broadly confirmed at the levels estimated by BASF. BASF did not identify the origin of the remaining [1 kt to 10 kt]* sold on the EEA merchant market, nor did the market investigation identify the source of this volume. The concentration would therefore result in the market leader merging with the third largest producer, thereby increasing the gap to the largest remaining competitor substantially.
- (123) In 2000 the situation significantly changed on the market for THF. The parties' combined market share increased to around [45 % to 55 %]* (BASF around [25 % to 35 %]*, Eurodiol around [20 % to 30 %]*). During this period there were significant sales from Eurodiol to BASF totalling [1 kt to 5 kt]* which have not been taken into account when calculating the market shares, as this would result in an inflated post-merger position. These sales, however, enabled BASF to increase its sales on the merchant market by [30 % to 40 %]* from 1999 to 2000, an increase from [5 kt to 15 kt]* to [5 kt to 15 kt]*. By 2000 the market share of the next largest competitor, ISP, had also slightly declined. Therefore, since 1999 BASF has improved its market position considerably and its position after the merger would be about twice that of its next largest competitor.
- (124) Following the proposed merger the number of producers in the EEA selling THF on the merchant market will decline from four to three. BASF would own slightly less than 50 % of the EEA-wide production capacities for THF and 45 % of worldwide capacity. Its main competitors would be ISP and Lyondell. DuPont, whilst active in the merchant market, is using most of its production captively and is only selling small quantities on the merchant market⁽⁸⁾. There are also some small capacities in eastern Europe (for example, the Russian Federation, with approximately 5 kt) although there is no evidence that THF has been imported into the EEA. BASF estimated that sales from eastern Europe into the EEA accounted to [1 kt to 5 kt]*, about [< 3 kt]* of the THF produced in eastern Europe being used captively. None of the customers consulted in the market investigation has claimed to be buying THF from east European producers. Furthermore, customers have stated that eastern European products are of inferior quality and the producers are not able to provide a timely and reliable supply.
- (125) The market investigation has indicated that all producers except for Eurodiol are producing at or near full capacity. In addition, there is no indication of new capacity being built in Europe for THF in the foreseeable future. [...]*, which is due to start BDO production in the beginning of 2002. However, it has been publicly stated that Lyondell has postponed its plans to extend this plant for the production of the BDO-related products. Furthermore, Lyondell estimates that once the decision to enter has been taken it would take a significant time to enter into real commercial production. Lyondell's potential entry can therefore not be relied on to represent a competitive constraint on the merged entity.
- (126) BASF has also stated that new THF capacities are presently under construction by Mitsubishi in Japan (capacity [...]*) coming online in 2002; TCC in Taiwan (capacity [...]*) with an expected start up in 2001; Dairen in Taiwan (capacity [...]*) expected to start in 2002, Nan Ya in Taiwan (capacity [...]*) with the start up in 2001 and finally Quihar Qianjin in China (capacity [...]*) with the start up in 2001. However, there were no imports from Asia in 2000, and Europe was a net exporter to Asia. Furthermore, it is not known to what extent this capacity is captive or intended for sale on the Asian merchant market.
- (127) The market investigation carried out by the Commission has shown that there are few consumer preferences regarding the origin of THF⁽⁹⁾. Because of high production volumes and low prices in Europe, imports to Europe were nevertheless limited. BASF estimates that imports into Europe amounted to [1 kt to 5 kt]* (including [1 kt to 2 kt]* by BASF) in 2000 from the United States. No imports were reported from other regions of the world. With exports of [5 kt to 10 kt]* ([...]*) Europe is a net exporter of THF.

⁽⁸⁾ DuPont is producing THF in its plant in Asturias (Spain).

⁽⁹⁾ The sole exception is that THF produced by Russian manufacturers is not generally accepted, because west European standards for quality and supply reliability are currently not met.

- (128) Producers have stated in the market investigation that they are not able to quickly raise production without incurring substantial additional capital cost. The Commission has, therefore, examined the extent to which producers are willing to switch their captive production to the merchant market. None of the producers stated that they would switch from captive production to sale on the merchant market in response to a 10 % increase in permanent relative prices, nor would they change their production mixes (the extent to which this is possible would also be limited by the lack of excess capacity). It seems reasonable to assume therefore that products, which are at present used in captive production, are unlikely to be placed for sale on the merchant market. Captive production does therefore not represent a competitive restraint on the prices off THF in the merchant market.
- (129) Eurodiol was, in February and March 2001, using about [70 % to 90 %]* of capacity available for THF production. BASF predicts that by 2003 it will produce [35 kt-45 kt/a]* at the Feluy plant, [...] (10) of the current capacity. Given the production processes at Eurodiol, if operated efficiently, BASF should be able to produce THF more cheaply at Eurodiol after the merger than in Ludwigshafen. [...]*
- (130) Third parties have stated that market entry is difficult and risky. This is because the construction of a new production facility requires considerable investment and is subject to a proven technology that is cost effective. Moreover to make a production facility profitable, high capacity utilisation is needed. Since most key customers require certification of their suppliers building a customer base is a time consuming process. In the last five years Eurodiol has been the only market entrant in the EEA and according to third parties, Eurodiol troubles were caused by its failure to gain market share to enable it to cover its costs.
- (131) BASF states that its customers for special solvents are broadly split with some important customers being large international players. It segments its customers into A/B/C type customers. Type A customers are active on a global basis, have various production sites in Europe/worldwide and require large bulk deliveries. For special solvents type A customers consume more than [...]*. In 1999 type A customers represented only [...]* of BASF's customer base. Type B customers have regional activities and require bulk deliveries and the majority have more than one production site. For special solvents, this type of customer consumes [...]* and in 1999 represented [...]* of BASF's customer structure. The remaining customers were type C which purchase less than [...]*. These have national activities, one production site and require bulk and/or drum deliveries.
- (132) The THF customer structure appears different from that of special solvents with no Type A customers, few type B customers and many very small type C customers. There is little evidence of buyer power. Customers, in the market investigation consider that they have no buyer power because THF has been in short supply for some time and there is little choice of whom to buy from. Should supply become more abundant, however, some key customers do believe that they would have bargaining power. These customers in particular purchase other non-related products from BASF and their THF expenditure is likely to be small in relation to the expenditure on these other products.
- (133) [...]*. The Commission's market investigation has forecasted a market growth of THF of 3 % to 7 % per year. With most manufacturers producing at or near full capacity, it is unlikely that the growth in demand can be satisfied by BASF's competitors.
- Conclusion for THF**
- (134) The proposed operation will, therefore, combine two of the three THF producers in the EEA, selling significant quantities on the merchant market (11) resulting in a strong market position. Customers will have little choice of where to buy their increasing THF requirements. It may therefore be concluded that the proposed merger is likely to result in the creation of a dominant position by the parties in the EEA market for THF.
- D. APPLICATION OF THE CONCEPT OF THE 'RESCUE MERGER'**
- (135) In its reply to the Commissions Statement of Objections, BASF argued that the conditions for a failing company defence were met in this case, namely that BASF would gain a comparable position even in the absence of the merger and that in any event the assets of the business in question would exit definitively the market.

(10) [...]*

(11) DuPont is producing THF in their plant in Asturias (Spain) mostly for captive use, and sales to the merchant market have been limited.

1. THE COMMISSION'S DECISION IN CASE KALI + SALZ

- (136) So far, the Commission has only once based a merger decision on the concept of the rescue merger, commonly referred to as 'failing company defence'. Indeed, in its decision in Case *Kali + Salz/MDK/Treuhand* (hereinafter: '*Kali+Salz*')⁽¹²⁾, the Commission stated that the creation of a dominant position was not the consequence of the merger since the acquiring undertaking would gain a dominant position even in the absence of the merger. The lack of causality between the merger and the creation of a dominant position means that the latter would result from the disappearance of the failing company, which would be unavoidable even in the event of the concentration being prohibited and not from the concentration itself which creates or strengthens the dominant position as a result of which competition would be significantly impeded.
- (137) In that decision, the Commission applied the concept of the rescue merger on the basis of the following three criteria⁽¹³⁾:
- (a) the acquired undertaking would in the near future have been forced out of the market if not taken over by another undertaking;
 - (b) there was no less anti-competitive alternative purchase; and
 - (c) the acquiring undertaking would have taken over the market share of the acquired undertaking, if it had been forced out of the market.
- (138) The Court of Justice confirmed the Commission's approach regarding the rescue merger concept in its judgment of 31 March 1998⁽¹⁴⁾, ('the *Kali+ Salz* judgment').

2. THE GENERAL FRAMEWORK OF THE CONCEPT OF THE 'RESCUE MERGER'

- (139) The approach taken by the Court of Justice⁽¹⁵⁾ is wider than the criteria set out in the Commission's decision in *Kali + Salz*. According to the Court of Justice, a merger can be regarded as a rescue merger if the competitive structure resulting from the concentration would deteriorate in similar fashion even if the concentration did not proceed⁽¹⁶⁾, that is to say, even if the concentration was prohibited.
- (140) In general terms, the concept of the 'rescue merger' requires that the undertakings to be acquired can be regarded as 'failing firms' and that the merger is not the cause of the deterioration of the competitive structure. Thus, for the application of the rescue merger, two conditions must be satisfied:
- (a) the acquired undertaking would in the near future be forced out of the market if not taken over by another undertaking; and

(b) there is no less anti-competitive alternative purchase.

- (141) However, the application of these two criteria does not completely rule out the possibility of a takeover by third parties of the assets of the undertakings concerned in the event of their bankruptcy. If such assets were taken over by competitors in the course of bankruptcy proceedings, the economic effects would be similar to a takeover of the failing firms themselves by an alternative purchaser.

Thus it needs to be established in addition to the first two criteria, that the assets to be purchased would inevitably disappear from the market in the absence of the merger.

- (142) Given this general framework, the Commission regards the following criteria as relevant for the application of the concept of the 'rescue merger':
- (a) the acquired undertaking would in the near future be forced out of the market if not taken over by another undertaking;
 - (b) there is no less anti-competitive alternative purchase; and
 - (c) the assets to be acquired would inevitably exit the market if not taken over by another undertaking.
- (143) In any event, the application of the concept of the 'rescue merger' requires that the deterioration of the competitive structure through the merger is at least no worse than in the absence of the merger.

3. THE CONCEPT OF THE 'RESCUE MERGER' APPLIED TO THE PRESENT CASE

(a) ***Eurodiol and Pantochim would have been forced out of the market if not taken over by another undertaking***

- (144) As BASF argues, Eurodiol and Pantochim would be forced out of the market if they were not acquired by it. These companies are heavily indebted as is their Italian parent company SISAS SPA, Milano, which is also in bankruptcy proceedings. Both Eurodiol and Pantochim were subject to a pre-bankruptcy regime under Belgian law⁽¹⁷⁾ and placed under the administration of four Court Commissioners (*Commissaires au sursis*). The observation period (*période d'observation*) under this pre-bankruptcy regime (*concordat judiciaire*), during which the Court of Commerce (*Tribunal de commerce*) ordered the provisional postponement of debts (*sursis provisoire*), that is to say, a preliminary suspension of the rights of the creditors, ended on 16 June 2001⁽¹⁸⁾. Due to the lack of liquidity and the significant amount of the companies' debts, a restructuring plan (*plan de redressement*) which would theoretically have allowed the Charleroi Tribunal

⁽¹²⁾ Commission Decision 94/449/EC in Case IV/M.308 — *Kali+Salz/MDK/Treuhand* (OJ L 186, 21.7.1994, p. 38).

⁽¹³⁾ Recital 71.

⁽¹⁴⁾ Joined Cases C-68/94 and C-30/95 — *French Republic/Commission and SCPA/Commission*, [1998] ECR I-1375.

⁽¹⁵⁾ *Kali+Salz* judgment, recitals 112 to 116.

⁽¹⁶⁾ *Kali+Salz* judgment, recitals 112 to 116, in particular recital 115.

⁽¹⁷⁾ *Loi relative au concordat judiciaire/Wet betreffende het gerechtelijk akkoord* of 17 July 1997, *Moniteur Belge/Belgisch Staatsblad*, 28.10.1997, p. 28550.

⁽¹⁸⁾ Judgment of the Charleroi Tribunal de Commerce — Case B/00/00079, of 21 February 2001.

de commerce to prolong the *concordat judiciaire* and the suspension of the rights of the creditors by means of a *sursis définitif* ⁽¹⁹⁾, was not proposed in this case. Therefore, the danger of bankruptcy of both Eurodiol and Pantochim was clear-cut. Indeed, the *Tribunal de commerce* of Charleroi, responsible for the pre-bankruptcy proceedings, has confirmed to the Commission that both undertakings would have to be declared bankrupt if a buyer for Eurodiol and Pantochim were not approved before the expiry of the deadline on 16 June 2001. Once BASF had terminated financial support they would have inevitably been forced out of the market.

- (145) Thus the first of the three conditions identified in the *Kali + Salz* Decision is met.

(b) No less anti-competitive alternative purchase option for Eurodiol and Pantochim

- (146) BASF also argues that there is no alternative buyer of these companies. Since a restructuring plan could be excluded as a realistic option in the present case, the *Tribunal de commerce* of Charleroi authorised the *Commissaires au sursis* in charge of the administration of the plants to find a suitable buyer for the assets of Eurodiol and Pantochim immediately after the decision to open pre-bankruptcy proceedings ⁽²⁰⁾. Subsequently, a number of competitors were contacted. However, whilst some companies took a close look at the businesses, including due diligence, apart from BASF, no other company approached by the Court Commissioners was ready to submit a viable offer for these companies. Already on this basis, it could have been concluded that there was no alternative purchaser.

- (147) Nevertheless, to exclude any doubt as to the existence of an alternative purchaser, the Commission decided to further inquire as to the possibility of an acquisition by an alternative purchaser. In fact, the South African company Sasol Chemical Industries, which belongs to the Sasol Limited Group ('Sasol'), had initially shown interest in acquiring Eurodiol and Pantochim. However, after having carried out a full due diligence procedure, Sasol informed the Commission by letter of 25 May 2001 that they had decided not to pursue their plans mainly because the financial investment to be raised was

considered to go beyond the limits of the international strategy of the company.

- (148) On the basis of the foregoing, it is concluded that, within the time framework set by the Belgian pre-bankruptcy-regime, no less anti-competitive solution was available. Thus, the second condition identified in the *Kali+Salz* Decision is met.

(c) Inevitable exit from the market of the assets to be acquired

- (149) BASF argues that the third condition of the *Kali+Salz* Decision, namely the accrual to the acquiring company of the entire market share of the acquired undertaking, has not been recognised by the Court of Justice as a necessary prerequisite for the application of the failing company defence theory. It argues that it is sufficient that only a part of the market share is accrued to the acquiring company.

- (150) The Commission recalls that under the particular circumstances of the *Kali + Salz* case, the Commission's approach to establish whether the acquiring undertaking would take over the market share of the acquired undertaking if it were forced out of the market seemed the most obvious method to prove that the concept of the 'rescue merger' could be applied to that case. Indeed, it should be noted that the *Kali + Salz* case had specific economic features, since only two companies, the acquiring and the failing firm, had been active on the market. Given this situation of a duopoly it was clear that the acquirer would have absorbed the market share of the acquired firm, independent from whether the merger was to take place or not.

- (151) In the present case, such a monopoly situation would not be created after Eurodiol's exit from the market. Nor can it be expected that BASF would absorb merely all of Eurodiol's ⁽²¹⁾ market share since their main competitors are likely to gain significant parts of this share as well. However, the Commission recognises that the assets of the failing firm would definitely exit from the market in this case. This exit would most probably lead to a considerable deterioration of market conditions, to the disadvantage of the customers. The Commission considers that these elements are equally relevant for the application of the rescue merger concept.

⁽¹⁹⁾ Articles 29 and 34 of the *Loi relative au concordat judiciaire/Wet betreffende het gerechtelijk akkoord*.

⁽²⁰⁾ The observation period under the *concordat judiciaire* can be extended to a maximum of six months. It can be prolonged once for another three months. After that date the court does not have any alternative but to transform the *concordat judiciaire* into bankruptcy. In this case the observation period started on 16 September 2000 and ended on 16 June 2001.

⁽²¹⁾ Pantochim does not manufacture GBL, NMP and THF (see recital 4).

(152) Consequently, the Commission has examined whether there would be any likelihood that Eurodiol's capacity for the relevant products might be kept on the market after bankruptcy. The Commission's investigation has established some particular economic conditions linked with special features of chemical plants of this type as well as some features of the Belgian bankruptcy proceedings.

(153) Firstly, an immediate takeover of Eurodiol and Pantochim, after bankruptcy, by a third party seems to be unlikely. Indeed, the operation of the two plants involves not only high costs but also considerable environmental risks, resulting from the sensitive production process used at Eurodiol and Pantochim. Another obstacle to an immediate restart of the plants is the fact that any company taking over the business within six months after bankruptcy would be legally obliged to take over the entire workforce.

(154) Secondly, a restart of the plants at a later stage, after the expiry of six months, would be relatively expensive compared with an immediate takeover. The necessary maintenance work over the last years has been, due to the dense economic situation of Sisas, largely neglected. A shutdown of production would cause additional costs for new catalysts when the plant is restarted. BASF reports that, during their toll-manufacturing agreement ⁽²²⁾, Pantochim and Eurodiol had not been able to meet the agreed quantities due to frequent shutdowns caused by technical problems. [...]*. The operation of the two plants involves not only high costs but also considerable environmental risks ⁽²³⁾, resulting from the sensitive production process. Furthermore, the availability of a qualified workforce is also crucial for the operation of a chemical plant of this type. As parts of the qualified workforce have already left and others will certainly do so after bankruptcy is declared, the incentives for any investor to take up business after bankruptcy of Eurodiol are fairly low.

(155) Finally, it is not likely that a third party would buy specific assets of the two companies after their shutdown following a bankruptcy judgment. The plants of Eurodiol and Pantochim can only be economically operated as a whole as they use a highly integrated produc-

tion process ⁽²⁴⁾ which does not make it possible to purchase isolated assets.

(156) On the basis of the foregoing, it is concluded that it is very likely that the assets of Eurodiol, as well as those of Pantochim, including the capacities for the BDO-related products GBL, NMP and THF would definitely exit from the market.

(d) Assessment of the competitive structure resulting from the concentration

(157) The Commission notes that the exit of the assets and production capacities of Eurodiol and Pantochim would cause a significant capacity shortage for products which are already offered on the market under very tight capacity constraints. At least for a considerable period of time, compensation for this capacity reduction would be impossible. BASF and Lyondell have both indicated to the Commission that they are considering building new plants in Europe for the manufacturing of BDO-related products. However, whereas Lyondell has never committed itself in detail to proceed with an extension of its BDO project in the Netherlands to BDO-related products, BASF has already stated that it will immediately expand its plants in Ludwigshafen (Germany) and Geismar (USA), should it not succeed in acquiring Eurodiol and Pantochim ⁽²⁵⁾. In any event, additional capacities would probably not be operational before [2002 to 2005]*.

(158) Given this reduction in capacity, at least for a considerable transitional period of time, market conditions would be adversely affected as a direct consequence of the exit of Eurodiol's capacity. The quantities available on the merchant market would be immediately reduced by [10 % to 15 %]* for NMP, by [25 % to 35 %]* for GBL and by [20 % to 30 %]* for THF. Both BASF and its competitors (ISP, Lyondell and DuPont) already today face serious capacity constraints. None of them would therefore be in a position to satisfy the increasing demand in these markets, at least in the medium term. Furthermore, the Commission's market investigation has shown that a price increase of 10 % would not create an incentive for the current market players to place additional quantities of the products concerned on the EEA merchant market, either by selling quantities which are today in captive use on the merchant market, or by an increase of imports from third countries, since the price levels for these products is in general considerably higher outside the EEA.

⁽²²⁾ During the pre-bankruptcy period Eurodiol entered into a toll-manufacturing agreement with BASF in which BASF agreed to buy the part of the production which could not be sold to third parties.

⁽²³⁾ Note that the plants involved fall within the scope of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ L 10, 14.1.1997, p. 13).

⁽²⁴⁾ Including a common energy system (central boiler, steam system), waste-water treatment plant, logistic units.

⁽²⁵⁾ It should be noted that BASF will not expand their capacities in Ludwigshafen if they acquire the Feluy plant.

- (159) During the significant price decrease between 1998 and 2000 there was no evidence that the demand of either GBL, NMP or THF significantly increased except for the long-term market growth of approximately [2,5 % to 10 %]*. This leads to the conclusion that the demand for these products can be considered inelastic. Given the inelastic demand and the capacity constraints described, a very considerable price increase has to be assumed as an immediate consequence of a loss of Eurodiol's production capacity for the BDO-related products.
- (160) By contrast, the Commission considers that the market conditions would be more favourable for the customers after the merger.
- (161) The non-appearance of a sharp shortfall of capacity will be beneficial for the availability of the products in question. In their responses to the Commission's market investigation, third parties have made it very clear that the worst case scenario for customers would be the exit from the market of Eurodiol's⁽²⁶⁾ capacities which would inevitably be followed by supply problems and price increases. In such a situation it is likely that price competition would cease and be replaced by a massive increase of prices.
- (162) On the other hand, the economics of the case do not suggest that BASF is likely to enforce major price increases after the merger. Eurodiol's key economic problem, which led to its financial difficulties, has been its underused capacity for BDO and BDO-related products. According to BASF's business plans for the time after the take over of Eurodiol and Pantochim, these plants have to be operated at almost full capacity in order to achieve profitability and to make use of the full cost reduction potential of the technology. It can therefore be assumed that BASF will attempt to decrease costs after the merger by increased efforts to market THF, GBL and NMP. Given these circumstances the customer may expect better supply conditions and prices from the market after the merger than under a bankruptcy scenario where the assets of Eurodiol are taken off the market. Thus, the Commission considers that the deterioration of the competitive structure through the merger in the specific circumstances is less significant than in the absence of the merger.

4. CONCLUSION

- (163) Under the particular and exceptional circumstances of the case at this specific moment in time, which is characterised by the imminent bankruptcy of the failing companies in the absence of the merger, the absence of a timely alternative offer under the Belgian bankruptcy

proceedings, and the inevitable exit from the market of the assets to be acquired, combined with tight capacity constraints in the industry and demand inelasticity, the Commission concludes that the deterioration of the competitive structure resulting from the notified operation will be less significant than in the absence of the merger. Under these conditions, considered cumulatively under the particular circumstances of this specific case, the market conditions can be expected to be more favourable than in case of the market exit of the assets to be acquired.

V. OVERALL CONCLUSION

- (164) For the reasons set out above it is concluded that the proposed concentration does neither create nor strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. The concentration is therefore to be declared compatible with the common market and the functioning of the EEA Agreement, pursuant to Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby BASF Aktiengesellschaft will acquire sole control of the undertakings Eurodiol SA and Pantochim SA is declared compatible with the common market and with the EEA Agreement.

Article 2

This Decision is addressed to:

BASF Aktiengesellschaft
Carl-Bosch-Straße 38
D-67056 Ludwigshafen.

Done at Brussels, 11 July 2001.

For the Commission

Mario MONTI

Member of the Commission

⁽²⁶⁾ Pantochim does not manufacture GBL, NMP and THF (see recital 4).

COMMISSION DECISION
of 15 May 2002
on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty
concerning the maximum admissible content of cadmium in fertilizers

(notified under document number C(2002) 1850)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/366/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, in particular Article 95(6) thereof,

Whereas:

I. FACTS

1. COMMUNITY LEGISLATION

- (1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers ⁽¹⁾, as last amended by Directive 98/97/EC ⁽²⁾, lays down the requirements that fertilisers must fulfil in order to be placed on the market with the designation 'EC fertilisers' ⁽³⁾.
- (2) Annex I of Directive 76/116/EEC sets out the type designation and the corresponding requirements, e.g. with respect to its composition, that each EC-designated fertiliser must fulfil. EC-designated fertilisers included in this list are grouped into categories, depending on the content of the primary nutrients, i.e. the elements nitrogen, phosphorus and potassium.
- (3) Directive 76/116/EEC has been amended and adapted to technical progress several times in order, *inter alia*, to include new fertiliser-types in Annex I.
- (4) The amendments to Directive 76/116/EEC have been introduced by the following Directives:
 - Directive 88/183/EEC ⁽⁴⁾ has extended the scope of Directive 76/116/EEC to include in Annex I straight and compound fluids fertilisers,
 - Directive 89/284/EEC ⁽⁵⁾ has extended the scope of Directive 76/116/EEC to include in Annex I fertilisers containing calcium, magnesium, sodium and sulphur,
 - Directive 89/530/EEC ⁽⁶⁾ has extended the scope of Directive 76/116/EEC to include in Annex I solid or liquid fertilisers containing:
 - one of the following trace elements: boron, cobalt, copper, iron, manganese, molybdenum and zinc,
 - mixtures of such fertilisers containing at least two of these trace elements,
 - a list of authorised organic chelating agents for trace elements.

⁽¹⁾ OJ L 24, 30.1.1976, p. 21.

⁽²⁾ OJ L 18, 23.1.1999, p. 60.

⁽³⁾ The term 'EEC fertiliser' provided for by Directive 76/116/EEC was replaced by the term 'EC fertiliser' by Directive 97/63/EC (OJ L 335, 6.12.1997, p. 15).

⁽⁴⁾ OJ L 83, 29.3.1988, p. 33.

⁽⁵⁾ OJ L 111, 22.4.1989, p. 34.

⁽⁶⁾ OJ L 281, 30.9.1989, p. 116.

- (5) The adaptations to technical progress to Directive 76/116/EEC have been introduced by Commission Directive 93/69/EEC ⁽⁷⁾, Commission Directive 96/28/EC ⁽⁸⁾ and Commission Directive 98/3/EC ⁽⁹⁾. Under these Directives, new fertilisers are added to the Annexes of Directive 76/116/EEC.
- (6) For the purposes of this Decision, the term 'Directive 76/116/EEC' shall be construed as referring to that Directive as amended by the Directives mentioned in paragraphs 4 and 5 above.
- (7) The rules governing the composition of fertilisers covered by Directive 76/116/EEC do not provide for a limit value for the cadmium content of EC-designated fertilisers.
- (8) According to Article 7 of Directive 76/116/EEC, Member States may not on grounds of composition, identification, labelling or packaging, prohibit, restrict or hinder the marketing of fertilisers marked 'EC fertiliser' which comply with the provisions of this Directive and the Annexes thereto.

2. THE ACCESSION OF AUSTRIA

- (9) Austria acceded to the European Union on 1 January 1995. The Act of Accession ⁽¹⁰⁾ lays down transitional provisions concerning the use and marketing of cadmium in that State. Article 69(1) provides that during a period of four years from the date of accession, the provisions referred to in Annex VIII of the Act shall, in accordance with that Annex and subject to the conditions set out therein, not apply to Austria. Article 69 and point 4 of Annex VIII of the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to Austria before 1 January 1999 and that the provisions of Directive 76/116/EEC will be reviewed in accordance with Community procedures by 31 December 1998.
- (10) Article 2 of the Act of Accession provides that 'from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act'. Article 168 of the Act of Accession stipulates that 'the new Member States shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of directives and decisions within the meaning of Article 189 (now Article 249) of the EC Treaty [...], unless a time-limit is provided for in the list of Annex XIX or in any other provisions of this Act'.
- (11) Directive 98/97/EC of the European Parliament and of the Council ⁽¹¹⁾ subsequently amended Directive 76/116/EEC as regards the marketing in Austria, Finland and Sweden of fertilisers containing cadmium. Article 1 provides that, *inter alia*, Austria may prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which were fixed nationally at the date of accession and that this derogation applies for the period from 1 January 1999 until 31 December 2001.

3. NATIONAL PROVISIONS

- (12) Austria's 1994 Ordinance on Fertilisers ⁽¹²⁾, *inter alia*, lays down a limit value for the cadmium content in fertilisers, including EC-designated fertilisers. According to Article 2, paragraph 2, in conjunction with paragraph 1, it is prohibited to place on the Austrian market phosphorous mineral fertilisers (containing 5 % P₂O₅ or more) with a cadmium content exceeding 75 mg/kg P₂O₅.

II. PROCEDURE

- (13) By letter of 16 November 2001, the Austrian authorities notified the Commission that Austria, in accordance with Article 95(4) of the EC Treaty, intends to continue to apply from 1 January 2002 national provisions concerning the cadmium content in fertilisers.

⁽⁷⁾ OJ L 185, 28.7.1993, p. 30.

⁽⁸⁾ OJ L 140, 13.6.1996, p. 30.

⁽⁹⁾ OJ L 18, 23.1.1998, p. 25.

⁽¹⁰⁾ OJ C 241, 29.8.1994, p. 35 and p. 305.

⁽¹¹⁾ OJ L 18, 23.1.1999, p. 60.

⁽¹²⁾ Federal Law Gazette for the Republic of Austria, No 1007/1994, Series Issue 309 of 21 December 1994, p. 7235.

- (14) By letter of 8 January 2002, the Commission informed the Austrian authorities that it had received the notification under Article 95(4) and that the six months period for its examination according to Article 95(6) started on 17 November 2001, the day following the one when the notification was received.
- (15) By letter of 23 January 2002, the Commission informed the other Member States about the request received from Austria. The Commission also published a notice regarding the request in the *Official Journal of the European Communities* ⁽¹³⁾ in order to inform other interested parties of the national measures that Austria intends to maintain.

III. ASSESSMENT

1. CONSIDERATION OF ADMISSIBILITY

- (16) Article 95(4) of the EC Treaty provides that, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
- (17) The notification submitted by the Austrian authorities on 16 November 2001 intends to obtain authorisation to maintain national provisions incompatible with those concerning the composition of EC-denominated fertilisers contained in Directive 76/116/EEC.
- (18) As indicated above, Article 7 of Directive 76/116/EEC prevents Member States from restricting the marketing of EC-denominated fertilisers because of their composition, but the rules governing composition do not set any limit value for cadmium content. This means that pursuant to Article 7 of Directive 76/116/EEC, EC-denominated fertilisers complying with the requirements of that Directive can be placed on the market regardless of their cadmium content.
- (19) In the light of the above, it is clear that the national provisions notified by Austria, in so far as they prohibit the placing on the market of phosphorus-based EC-denominated fertilisers with a cadmium content exceeding 75 mg/kg P₂O₅, are more restrictive than those contained in Directive 76/116/EEC.
- (20) The national provisions notified by the Austrian authorities were adopted before Austria acceded to the European Union. As indicated above, the Act of Accession lays down transitional provisions allowing Austria to continue to apply its national provisions concerning the cadmium content of fertilisers to products covered by Directive 76/116/EEC for a period of four years. By Directive 98/97/EC Austria was authorised to continue to apply the above national provisions until 31 December 2001.
- (21) As required by Article 95(4) as interpreted in the light of Article 2 and 168 of the Act of Accession, Austria notified the Commission of the actual wording of the national provisions adopted before the accession to the European Union that it intends to maintain, accompanying the request by an explanation of the reasons which, in its opinion, justify the maintenance of those provisions.
- (22) The notification submitted by Austria on 16 November 2001 in order to obtain approval for maintaining national provisions derogating from the provisions of Directive 76/116/EEC is therefore to be considered admissible under Article 95(4) as interpreted in the light of Article 2 and 168 of the Act of Accession.

2. ASSESSMENT OF MERITS

- (23) In accordance with Article 95 of the EC Treaty, the Commission has to ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this article are fulfilled.

⁽¹³⁾ OJ C 23, 25.1.2002, p. 4.

- (24) In particular, the Commission has to assess whether the provisions notified by the Member State are justified on grounds of major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment.
- (25) In addition, pursuant to Article 95(6) of the Treaty, where it considers that the national provisions are justified, the Commission must check whether or not those national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.
- (26) Austria has based its request on the need of protection of human health and the environment. Cadmium in fertilisers is deemed to pose a threat to the environment and human health. In support of its request, Austria makes reference to the conclusions of an Austrian study published on 10 October 2000 ⁽¹⁴⁾, which contains an assessment of the risks posed by cadmium-containing fertilisers.

2.1. JUSTIFICATION ON GROUNDS OF MAJOR NEEDS

2.1.1. *General information on cadmium*

- (27) Cadmium is a heavy metal naturally present in the environment, but most emissions of this metal are due to various human activities (production of non-ferrous metals, incineration of fossil fuels, application of fertiliser, etc.).
- (28) A general risk assessment on cadmium metal and cadmium oxide is currently being carried out under Council Regulation (EEC) No 793/93/EEC of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽¹⁵⁾ with Belgium acting as rapporteur. This risk assessment will address all important uses and emissions of cadmium. At present only a partial draft report is available for discussions at the technical level.
- (29) From the scientific data available up to now, it can be concluded that cadmium metal and cadmium oxide in general can be considered to pose serious risks to health. In particular, cadmium oxide has been classified as a carcinogen, mutagen or substance toxic for reproduction, category 2 ⁽¹⁶⁾. It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain.

2.1.2. *Cadmium in fertilisers*

- (30) Cadmium is present in the natural state in the phosphate mineral rocks which are mined for use as raw material to manufacture phosphatic mineral fertilisers. In the finished state, these fertilisers always contain certain amounts of cadmium, depending on the original content of the phosphate rocks.
- (31) Cadmium is regarded as harmful both to the environment and to human health. Phosphate fertilisers have been identified as a major source of cadmium on arable land, where it tends to accumulate over time. Crops tend to absorb cadmium from the soil, and the cadmium content of food, which is the main source of human intake of cadmium, has become an issue of concern for human health. When ingested in food, cadmium tends to accumulate in the kidneys and may eventually lead to kidney dysfunction in vulnerable groups.
- (32) The environmental concerns raised by cadmium in fertilisers were first raised at Community level during the negotiations for the Accession of Austria, Finland and Sweden to the European Union. As indicated above, those three Member States were granted temporary derogations from Community legislation on fertilisers in order to allow a careful evaluation of the risks from cadmium in fertilisers at Community level.

⁽¹⁴⁾ Austrian Federal Environment Agency, 'A Risk assessment for cadmium in Austria based on the recommendations of ERM', 10 October 2000 (ERM (Environmental Resources Management) is the consultant who developed the methodology for the risk assessment).

⁽¹⁵⁾ OJ L 84, 5.4.1993, p. 1.

⁽¹⁶⁾ See Annex I to Directive 67/548/EEC and Annex I to Directive 76/769/EEC as amended.

- (33) In this context, the Commission first gathered all available data and information on the exposure situation in the European Community from cadmium in fertilisers. As not enough data were available in all Member States, the Commission mandated two studies to elaborate a methodology and procedures with a view to assessing the risks to health and the environment from cadmium in fertilisers ⁽¹⁷⁾. Member States were subsequently invited to carry out nation-wide risk assessments by making use of the above methodology and procedures.
- (34) Nine Member States have completed risk assessments concerning cadmium in fertilisers. These risk assessments have been made available to the public since September 2001 on the Commission's web-site ⁽¹⁸⁾. In addition, a separate study which analyses these risk assessments has been published and various options for risk management of cadmium in fertilisers at a Community wide scale have been developed ⁽¹⁹⁾.
- (35) The above risk assessments have also been submitted to the SCTEE (Scientific Committee for Toxicity, Ecotoxicity and the Environment) and are currently under evaluation. In particular, the Sctee has been asked to indicate what is the highest cadmium concentration in fertilisers that can be tolerated in order to avoid a significant increase in the cadmium content of cultivated soil due to the application of phosphate fertilisers.
- (36) The completion of the risk assessments took a relatively long time. Moreover, the SCTEE needs time in order to assess the scientific material thoroughly. It was therefore not possible to present a proposal for a Regulation on cadmium limits in fertilisers by 31 December 2001.

2.1.3. *The risk assessment carried out by Austria*

- (37) The risk assessment submitted by the Austrian authorities is part of the above process of information-gathering based on common methodology and procedures. The framework used by Austria for conducting its risk assessment is built around three modules:

2.1.3.1. **The accumulation module**

- (38) According to this module, the net accumulation of cadmium in soil and soil solution (or pore water) ⁽²⁰⁾, resulting from the application of fertiliser, is computed over time and at steady state. The accumulation module allows for a range of inputs, for example average and extreme rates of application. The Austrian risk assessment shows that with this module, the following parameters have been considered:
- the present day cadmium concentration,
 - the cadmium input rate (due to mineral fertilisers but also to atmospheric deposition, livestock manure, sewage sludge and solid organic waste),
 - the cadmium off-take rate concerning plants,
 - the cadmium leaching rate, depending on the annual precipitation excess and the concentration of cadmium in the pore water leachate,
 - the concentration of cadmium in the soil and leaching rates at intervals of one and one hundred years respectively.

⁽¹⁷⁾ ERM, Study on data requirements and programme for data production and gathering to support a future evaluation of the risks to health and the environment from cadmium in fertilisers, March 1999, and A study to establish a programme of detailed procedures for the assessment of risks to health and the environment from cadmium in fertilisers, February 2000.

⁽¹⁸⁾ <http://europa.eu.int/comm/enterprise/chemicals/fertilizers/riskassess/reports.htm>

⁽¹⁹⁾ ERM, Analysis and conclusions from Member States' assessment of the risk to health and the environment from cadmium in fertilisers, October 2001.

⁽²⁰⁾ Pore water means that part of the water contained in the soil which is maintained by capillarity between the solid particles of the soil.

2.1.3.2. The exposure module

- (39) According to this module, the uptake of cadmium from soil into cultivated plants and the subsequent intake of cadmium by humans are computed, using exposure parameters characterising both average and extreme exposure scenarios. Environmental exposure is also characterised for vulnerable environments and is taken to be the predicted cadmium concentration in a particular environmental compartment.

2.1.3.3. The risk characterisation module

- (40) This module allows Austria to estimate the incidence and severity of the adverse effects likely to occur due to actual or predicted exposure to cadmium.

2.1.4. The results of the risk assessment

- (41) The application of the modules has produced the following results:
- concerning water, the report states that 'when fertiliser is applied with an average concentration of 25 mg Cd/kg P_2O_5 , the PNEC ⁽²¹⁾ value is exceeded both now and in one hundred years',
 - concerning the soil, the report states that 'when fertiliser is applied with an average concentration of 25 mg Cd/kg P_2O_5 or of 90 mg Cd/kg P_2O_5 , the PNEC value is exceeded both now and in one hundred years'.
- (42) It is clear that these conclusions refer to the specific situation of the Austrian soil as well as the climatic conditions prevailing in Austria.
- (43) In conclusion, the risk assessment carried out by Austria shows that the PEC value (Predicted Environmental Concentration) from cadmium in mineral fertilisers in Austria, exceeds the PNEC value ⁽²²⁾ (Predicted No Effect Concentration) for water in most investigated regions. This also applies to soil in 5 % of the 52 Austrian arable regions if bioavailable values are used. In the view of the Austrian authorities, this means that, according to the European Community risk assessment methodology, the substance is of concern and there is a need to take further steps.

2.1.5. Evaluation of the position of Austria

- (44) The risk assessment submitted by the Austrian authorities has been carried out according to the procedures and the methodology established at Community level, which are considered to ensure a high degree of reliability of the information obtained.
- (45) The Commission already examined the information contained in this risk assessment in the context of the preparatory work of the proposal for a new Regulation relating to fertilisers ⁽²³⁾. At that time, the Commission considered that the information available provided sufficient indication of a risk for the environment and human health arising from the application to the Austrian soil of cadmium-containing fertilisers. The Commission therefore proposed in Article 33 of its proposal an extension of the derogation already granted to Austria, Finland and Sweden in the Accession Treaty. As the proposed Regulation could not be adopted in time, Austria has applied for an individual Decision under Article 95(6).
- (46) After having re-examined the scientific evidence in the light of the Austrian request, the Commission considers that the Austrian authorities have shown that cadmium-containing fertilisers pose environmental and human health risks, and that the national provisions notified by the Austrian authorities aiming to limit to the minimum the exposure of the Austrian environment to cadmium-containing fertilisers are justified.

⁽²¹⁾ PNEC: Predictable No Effect Concentration.

⁽²²⁾ This indicates that there will be adverse effects.

⁽²³⁾ Commission proposal for a European Parliament and Council Regulation relating to fertilisers [COM(2001)508 final, 14.9.2001].

2.2. ABSENCE OF ARBITRARY DISCRIMINATION

- (47) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the ruling of the Court of Justice, the absence of discrimination means that national restrictions on trade cannot be used in such a way as to create discrimination in respect of goods originating in other Member States.
- (48) The envisaged national provisions are general and apply to national and imported phosphorous-based EC-designated fertilisers alike. As a result, there is no evidence that they can be used as a means of arbitrary discrimination between economic operators in the Community.

2.3. ABSENCE OF A DISGUISED RESTRICTION ON TRADE

- (49) More restrictive national measures governing the composition of EC-designated fertilisers that derogate from the provisions of a Community Directive normally constitute a barrier to trade. Products that can be legally placed on the market in the rest of the Community cannot be placed on the market in the Member State concerned. The concept enshrined in Article 95(6) is intended to prevent the national provisions based on the criteria set out in paragraphs 4 and 5 being applied for inappropriate reasons, and in reality constituting economic measures to be introduced to impede the import of products from other Member States in order to indirectly protect national production.
- (50) As established above, there is concern with regard to the protection of the environment and human health due to the application on soil of cadmium-containing fertilisers. Therefore, the protection of the environment and human health appears to be the goal of maintaining the national provisions and not the creation of disguised barriers to trade.

2.4. ABSENCE OF OBSTACLES TO THE FUNCTIONING OF THE INTERNAL MARKET

- (51) This condition cannot be interpreted in such a way that it prohibits the approval of any national measure likely to affect the establishment of the Internal Market. In fact, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the Internal Market, constitutes in substance a measure that is likely to affect the Internal Market. Consequently, to preserve the useful character of the procedure for derogation provided for by Article 95 of the Treaty, the Commission considers that, in the context of the Article 95(6), the concept of obstacle to the functioning of the Internal Market has to be understood as a disproportionate effect in relation to the pursued objective.
- (52) In view of the risks for both the environment and human health resulting from the application of cadmium-containing fertilisers to the Austrian soil and taking into account that:
- as indicated above, the Act of Accession and Directive 98/97/EC allowed Austria to continue to apply its national provisions concerning the cadmium content in fertilisers awaiting the completion of the review of Directive 76/116/EEC as regards the issue of the cadmium content in fertilisers and;
 - the opinion of the SCTEE was not available in time to be considered for this Decision in order to provide a sufficient scientific basis for the Commission to propose an approximation of Community limit values for the cadmium content in fertilisers, or to determine whether there would be a less restrictive measure.

The Commission considers that, at this stage of the review, there is no evidence indicating that the national provisions do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

2.5. LIMITATION IN TIME

- (53) Austria asked the Commission to take a decision under Article 95(6) of the Treaty before 31 December 2001. Should the Commission approve the request for a derogation, Austria asked that the Decision shall take effect from 1 January 2002.

- (54) It should first be noted that given the procedural framework established in Article 95 of the Treaty and in particular the six-month deadline for a Decision to be adopted, it is incumbent on Member States to submit a notification in time so that the Commission is able to adopt a decision on the notification before the relevant Community harmonisation measure becomes enforceable ⁽²⁴⁾.
- (55) It should be recalled that the principle of legal certainty, which is a general principle of Community law, excludes, for the most part, retroactive application of Community measures, except where the objective to be achieved requires it and then only on condition that the legitimate expectations of the parties concerned are respected ⁽²⁵⁾.
- (56) In the light of the foregoing, the Commission does not consider that in the present case the conditions exist for giving a retroactive effect to the Decision approving the national provisions. In fact, although there is a need to protect human health and the environment from the risks posed by cadmium in fertilisers, to render the more stringent national measures applicable retroactively would, in effect, be tantamount to undermining the legitimate expectations of those economic operators who acted in the belief that the rules in force after 31 December 2001 were the more liberal ones deriving from Directive 76/116/EEC.
- (57) The period for which the derogation is granted should allow sufficient time for the Commission to propose and for the Council and the European Parliament to adopt a legislation concerning cadmium in fertilisers at Community level. It is estimated that such a legislation could enter into force in 2005. The derogation of Austria should therefore expire on 31 December 2005.

IV. CONCLUSION

- (58) In the light of the foregoing, it can be concluded that the request by Austria for maintaining national provisions that are more restrictive than the provisions of Directive 76/116/EEC with regard to the cadmium content of fertilisers, as submitted on 16 November 2001, is admissible.

Moreover, the Commission finds that the national provisions:

- meet needs on grounds of protection of human health and the environment,
- are proportionate to the objectives pursued,
- are not a means of arbitrary discrimination and,
- do not constitute a disguised restriction on trade between Member States.

The Commission therefore considers that they can be approved,

HAS ADOPTED THIS DECISION:

Article 1

In derogation from Directive 76/116/EEC, the Austrian provisions which prohibit the placing on the Austrian market of phosphorous mineral fertilisers (containing 5 % P_2O_5 or more) with a cadmium content exceeding 75 mg/kg P_2O_5 are approved.

The derogation shall apply until 31 December 2005.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 15 May 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽²⁴⁾ In this connection, it is pointed out that the European Court of Justice, in paragraph 35 of its judgment of 1 June 1999 delivered in case C-319/97, states that 'it is incumbent on Member States under Article 10 on the EC Treaty (ex Article 5) to notify as soon as possible the provisions of national law which are incompatible with a harmonisation measure and which they intend to maintain in force'.

⁽²⁵⁾ European Court of Justice's judgment of 25 January 1979 delivered in case C-98/78 Racke [1979] ECR 69, paragraph 20. See also the judgments delivered in the following cases: C-110/97 The Netherlands v Council, [2001] ECR 000, paragraph 151; C-99/78 Decker [1979] ECR 101, paragraph 8; C-258/80 Rummy v Commission [1982] ECR 487, paragraph 11; and C-337/88 SAFA [1990] ECR I-1, paragraph 13.