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Contents

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(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Contents (continued)

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

REGULATION (EC) No 1267/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 June 2003

amending Council Regulation (EC) No 2223/96 with respect to the time limit for transmission of the main aggregates of national accounts, to the derogations concerning the transmission of the main aggregates of national accounts and to the transmission of employment data in hours worked

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Central Bank [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community [4] contains the reference framework of common standards, definitions, classifications and accounting rules for drawing up the accounts of the Member States for the statistical requirements of the Community, in order to obtain comparable results between Member States.

(2) The report of the Monetary Committee on statistical requirements in the Economic and Monetary Union (EMU), endorsed by the Ecofin Council of 18 January 1999, underlined that, for the proper functioning of the EMU and the single market, effective surveillance and coordination of economic policies are of major importance and that this requires a comprehensive statistical information system providing policy makers with the necessary data on which to base their decisions. This report outlined the high priority in having such information available for the Community and especially for Member States participating in the euro area.

(3) The report underlined that the cross-country comparison of the labour market will demand more attention in the EMU.

(4) In order to compile quarterly statistics for the euro area, the time limit for transmission of the main aggregates of national accounts should be reduced to 70 days.

(5) Quarterly and annual derogations accorded to Member States that prevent the compilation of the main aggregates of national accounts for the euro area and the Community should be abrogated.

(6) The Action Plan on Economic and Monetary Union Statistical Requirements, endorsed by the Ecofin Council of 29 September 2000, identifies as a priority the transmission of national accounts employment data according to the unit 'hours worked'.

(7) The Statistical Programme Committee (SPC) and the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) have been consulted in accordance with Article 3 of Council Decision 89/382/EEC, Euratom [5], and Council Decision 91/115/EEC [6], respectively,

HAVE ADOPTED THIS REGULATION:

Article 1

Annex B to Regulation (EC) No 2223/96 is hereby amended as follows:

[1] OJ C 203 E, 27.8.2002, p. 258.
[2] OJ C 253, 22.10.2002, p. 14.
[3] Opinion of the European Parliament of 24 September 2002 (not yet published in the Official Journal), Council Common Position of 18 February 2003 (OJ C 125 E, 27.5.2003, p. 1) and Decision of the European Parliament of 13 May 2003 (not yet published in the Official Journal).
[4] OJ L 310, 30.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 359/2002 of the European Parliament and of the Council (OJ L 58, 28.2.2002, p. 1).
[5] OJ L 181, 28.6.1989, p. 47.
[6] OJ L 59, 6.3.1991, p. 19.

1. The text following the title: 'Transmission Programme of National Accounts Data' shall be amended as follows:

   (a) the text of the 'Overview of the tables' shall be replaced by the text in Annex I;

   (b) the text of Table 1 'Main aggregates — quarterly and annual exercise' shall be replaced by the text in Annex II.

2. The text following the title: 'Derogations concerning the tables to be supplied in the framework of the questionnaire "ESA 95" by country' shall be replaced by the text in Annex III.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

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

Done at Luxembourg, 16 June 2003.

For the European Parliament
The President
P. COX

For the Council
The President
G. PAPANDREOU

ANNEX I

Amendments to the table 'Overview of the tables' of Annex B — Transmission Programme of National Accounts Data — of Regulation (EC) No 2223/96, (ESA 95)

TRANSMISSION PROGRAMME OF NATIONAL ACCOUNTS DATA

Overview of the tables

First transmission	Delay t + month (days where specified)	Transmission for years	Subject of the tables	Table No
2002	70 days	1995-2001	Main aggregates, annual	1
2002	70 days	1995-2001	Main aggregates, quarterly	1
1999	8	1995-1998	Main aggregates general government	2
2001	3	1997-2000	Main aggregates general government	2'
2000	9	1995-1999	Tables by industry	3
2000	9	1995-1999	Exports and imports by EU/third countries	4
2000	9	1995-1999	Household final consumption expenditure by purpose	5
2000	9	1995-1999	Financial accounts by sector (transactions)	6
2000	9	1995-1999	Balance sheets for financial assets and liabilities	7
2000	12	1995-1999	Non-financial accounts by sector	8
2000	12	1995-1999	Detailed tax receipts by sector	9
2000	24	1995-1998	Tables by industry and by region, NUTS II, A17	10
2001	12	1995-2000	General government expenditure by function	11
2001	24	1995-1999	Tables by industry and by region, NUTS III, A3	12
2001	24	1995-1999	Household accounts by region, NUTS II	13
2001	24	1995-1999	Fixed assets for total economy and by product (Pi3)	14
2002	36	1995-1999	Supply table at basic prices including transformation into purchasers' prices, A60 × P60	15
2002	36	1995-1999	Use table at purchasers' prices, A60 × P60	16
2002	36	1995 (*)	Symmetric input-output table at basic prices, P60 × P60, five yearly	17
2002	36	1995 (*)	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	18
2002	36	1995 (*)	Symmetric input-output table for imports at basic prices P60 × P60, five yearly	19
2003	36	2000	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	20
2003	36	2000	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	21
2003	36	2000	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five yearly	22
see table	see table	see table	Backward calculations	23

t: reference period (year or quarter).
(*) The five yearly table for the year 2000 has to be delivered in 2003.

ANNEX II

Amendments to Table 1 — Main aggregates, quarterly and annual exercise — of Annex B — Transmission Programme of National Accounts Data — of Regulation (EC) No 2223/96, (ESA 95)

Table 1 — Main aggregates — quarterly and annual exercise

Code	List of variables	Breakdown +	Current prices	Constant prices
Value added and gross domestic product				
B.1g	1. Gross value added at basic prices	A6	x	x
D.21-D.31	2. Taxes less subsidies on products		x	x
P.119	3. FISIM		x	x
B.1*g	4. Gross domestic product at market prices		x	x
Expenditure of the gross domestic product				
P.3	5. Total final consumption expenditure		x	x
P.3	6. (a) Household final consumption expenditure (domestic concept)		x	x
P.3	6. (b) Household final consumption expenditure (national concept)		x	x
P.3	7. Final consumption expenditure of NPISHs		x	x
P.3	8. Government final consumption expenditure		x	x
P.31	(a) Individual consumption expenditure		x	x
P.32	(b) Collective consumption expenditure		x	x
P.4	9. Actual final consumption of households		x	x
P.41	(a) Actual individual consumption		x	x
P.5	10. Gross capital formation		x	x
P.51	(a) Gross fixed capital formation	Pi 6	x	x
P.52	(b) Changes in inventories		x	x
P.53	(c) Acquisitions less disposals of valuables		x	x
P.6	11. Exports of goods (fob) and services		x	x
P.7	12. Imports of goods (fob) and services		x	x
Income, saving and net lending				
B.5	13. Balance of primary income with the rest of the world		x	x
B.5*g	14. Gross national income at market prices		x	(x)
K.1	15. Consumption of fixed capital		x	x
B.5*n	16. Net national income at market prices		x	x
D.5, D.6, D.7	17. Net current transfers with the rest of the world		x	
B.6n	18. Disposable income, net		x	(x)
B.8n	19. National saving, net		x	
D.9	20. Net capital transfers with the rest of the world		x	
B.9	21. Net lending or net borrowing of the nation		x	

Code	List of variables	Breakdown +	Current prices	Constant prices
Population, employment, compensation of employees				
	22. Population and employment data			
	(a) Total population (1 000)			
	(b) Unemployed persons (1 000)			
	(c) Employment in resident production units (thousands of persons employed and thousands of hours worked) and employment of residents (thousands of persons)			
	Self employed	A6 (**)		
	Employees	A6 (**)		
D.1	23. Compensation of employees working in resident production units and compensation of resident employees	A6 (**)	x	
D.11	(a) Gross wages and salaries	A6 (**)	x	

\+ If no breakdown is indicated that means total economy.
(**) A6 only for self employed and employees in resident production units.
(x) At real terms.

ANNEX III

Amendments to the tables by country of Annex B — Derogations concerning the tables to be supplied in the framework of the questionnaire 'ESA 95' by country — of Regulation (EC) No 2223/96, (ESA 95)

DEROGATIONS CONCERNING THE TABLES TO BE SUPPLIED IN THE FRAMEWORK OF THE QUESTIONNAIRE 'ESA 95' BY COUNTRY

1. AUSTRIA

1.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Delay: t + 9 months	1999
2	Main aggregates general government	Backward calculations: recalculation only years 1988 to 1994	2005
3	Tables by industry	Delay: t + 12 months	1999
3	Tables by industry	Backward calculations: recalculation only years 1988 to 1994	2005
5	Household final consumption expenditure by purpose	Backward calculations: recalculation only years 1988 to 1994	2005
11	General government expenditure by function	Backward calculations: years 1990 to 1994 not to be recalculated	2005
12	Tables by industry and by region, NUTS III, A3	First transmission 2002	2002
13	Household accounts by region, NUTS II	First transmission 2005	2005
15	Supply table at basic prices including transformation into purchasers' prices, A60 × P60	First transmission 2003 and only two-yearly	2003
16	Use table at purchasers' prices, A60 × P60	First transmission 2003 and only two-yearly	2003
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	First transmission 2003	2003
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly	First transmission 2003	2003
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly	First transmission 2003	2003

1.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
1	Main aggregates, annual and quarterly	Employment data according to the unit hours worked	First transmission 2005	2005
3 8	Tables by industry Non-financial accounts by sector	Consumption of fixed capital by industry or sector	First transmission 2002	2002
8	Non-financial accounts by sector	Breakdown of corporations by owner	First transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of private households by groups	First transmission 2005	2005
16 18	Use table at purchasers' prices, A60 × P60 Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly	Consumption of fixed capital by industry	First transmission 2003	2003

2. DENMARK

2.1. Derogations for tables

Table No	Table	Derogation	Until
6	Financial accounts by sectors (transactions)	Delay: t + 13 months	2005
7	Balance sheets for financial assets and liabilities	Delay: t + 13 months	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five-yearly	First transmission 2005	2005

2.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Wages and salaries by industry	Not to be reported	2005
3	Tables by industry	Consumption of fixed capital by industry	Delay: t + 36 months	2005
3	Tables by industry	Gross fixed capital formation by industry	Delay: t + 36 months	2005

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Changes in inventories by industry	Delay: t + 36 months	2005
3	Tables by industry	Acquisitions less disposals of valuables by industry	Delay: t + 36 months	2005
3	Tables by industry	Self employed by industry	Delay: t + 36 months	2005
3	Tables by industry	Employees by industry	Delay: t + 36 months	2005
3	Tables by industry	Hours worked by industry	Delay: t + 36 months	2005
3	Tables by industry	Compensation of employees by industry	Delay: t + 36 months	2005
9	Detailed tax receipts by sector	General sales or turnover taxes (taxes on imports) General sales or turnover taxes (taxes on products)	Both variables together	2005
9	Detailed tax receipts by sector	Excise duties (taxes on imports) Excise duties (taxes on products)	Both variables together	2005
9	Detailed tax receipts by sector	Taxes on specific services (taxes on imports) Taxes on specific services (taxes on products)	Both variables together	2005
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	Consumption of fixed capital, operating surplus, net	Both variables together at P60	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five-yearly			

Table No	Table	Variable/Sector	Derogation	Until
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	Fixed capital formation	Only P31	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly			
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	Fixed capital stock	Not to be reported	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five-yearly	Sector private households Sector NPISHs	Both sectors together	2005

3. GERMANY

3.1. Derogations for tables

Table No	Table	Derogation	Until
3	Tables by industry	t + 9 months only A17, A31 only at t + 21 months delay	2005
5	Household final consumption expenditure by purpose	Partly only 1-digit positions	2005
9	Detailed tax receipts by sector	No letter positions at the end of the code	2005
10	Tables by industry and by region, NUTS II, A17	Only NUTS I and A6	2005
12	Tables by industry and by region, NUTS III, A3	Delay: t + 30 months, only two-yearly	2005
13	Household accounts by region, NUTS II	Delay: t + 30 months, only NUTS I	2005

Table No	Table	Derogation	Until
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	Only two-yearly	2005
16	Use table at purchasers' prices, A60 × P60	Only two-yearly	2005

3.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables by industry, changes in inventories by industry	Both variables together, not by industry	2005
6	Financial accounts by sector (transactions)	Sector general government	S.1311/S.1312 and S.1313 only together	2005
7	Balance sheets for financial assets and liabilities			
10	Tables by industry and by region, NUTS II, A17	Gross fixed capital formation	Delay: t + 30 months	2005

4. GREECE

4.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Delay: t + 9 months	2005
3	Tables by industry	Backward calculations: recalculation only years 1988 to 1994	2005
5	Household final consumption expenditure by purpose	Backward calculations: recalculation only years 1988 to 1994	2005
6	Financial accounts by sector (transactions)	First transmission: (p.m.)	2005
6	Financial accounts by sector (transactions)	Delay: (p.m.)	2005
7	Balance sheets for financial assets and liabilities	First transmission 2005	2005

Table No	Table	Derogation	Until
8	Non-financial accounts by sector	Backward calculations: recalculation only years 1988 to 1994	2005
8	Non-financial accounts by sector	Backward calculations: years 1980 to 1989 not to be recalculated	2005
11	General government expenditure by function	Backward calculations: recalculation only years 1988 to 1994	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five-yearly	First transmission 2005	2005

4.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	First transmission 2005	2005
3	Tables by industry	Hours worked by industry	First transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of corporations by owner	First transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of private households by groups	First transmission 2005	2005

5. SPAIN

5.1. Derogations for tables

Table No	Table	Derogation	Until
11	General government expenditure by function	Delay: t + 21 months	2005

5.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
1	Main aggregates, quarterly	Acquisitions less disposals of valuables	First transmission 2005	2005
1	Main aggregates, annual	Acquisitions less disposals of valuables	First transmission 2005	2005
3	Tables by industry	Consumption of fixed capital by industry	First transmission 2005	2005

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables by industry	First transmission 2005	2005
3	Tables by industry	Hours worked by industry	First transmission 2005	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables	First transmission 2005	2005
9	Detailed tax receipts by sector	Breakdown of current taxes on income, wealth etc., taxes and duties on imports excluding VAT and other taxes on production for the subsectors State government (S1312) and local government (S1313)	Delay: t + 21 months	2005
16	Use table at purchasers' prices, A60 × P60	Consumption of fixed capital by industry (A60)	First transmission 2005	2005
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	Consumption of fixed capital (P60)	First transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly			
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	Stocks of fixed assets (P60)	First transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly			

6. FRANCE

6.1. Derogations for tables

Table No	Table	Derogation	Until
10	Tables by industry and by region, NUTS II, A17	Delay: t + 36 months	2005
12	Tables by industry and by region, NUTS III, A3	Delay: t + 36 months	2005
13	Household accounts by region, NUTS II	Delay: t + 42 months	2005

6.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	All variables	Breakdown by branches to be calculated for homogenous branches	2005
10	Tables by industry and by region, NUTS II, A17			
12	Tables by industry and by region, NUTS III, A3			
15	Supply table at basic prices incl. transformation into purchasers' prices A60 × P60			
16	Use table at purchasers' prices, A60 × P60			
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five-yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five-yearly			
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P6, five-yearly			

7. IRELAND

7.1. Derogations for tables

Table No	Table	Derogation	Until
1	Main aggregates, annual and quarterly	First transmission at t + 90 days 2004	2004
1	Main aggregates, annual and quarterly	First transmission at t + 70 days 2008	2008
2	Main aggregates general government	Backward calculations: recalculation only years 1985 to 1994	2005
2'	Main aggregates of general government	Transmission at t + 3	2002
3	Tables by industry	First transmission 2005	2005
3	Tables by industry	Backward calculations: years 1970 to 1994 not to be recalculated	2005
5	Household final consumption expenditure by purpose	Backward calculations: recalculation only years 1985 to 1994	2005
6	Financial accounts by sector (transactions)	First transmission 2005	2005
7	Balance sheets for financial assets and liabilities	First transmission 2005	2005
8	Non-financial accounts by sector	First transmission 2005	2005
8	Non-financial accounts by sector	Backward calculations: years 1990 to 1994 not to be recalculated	2005
8	Non-financial accounts by sector	Backward calculations: years 1980 to 1989 not to be recalculated	2005
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	First transmission 2005	2005
16	Use table at purchasers' prices, A60 × P60	First transmission 2005	2005
17	Symmetric input-output table at basic prices, P60 × P60, five-yearly	First transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly	First transmission 2005	2005

Table No	Table	Derogation	Until
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly	First transmission 2005	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five-yearly	First transmission 2005	2005
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14 + S15), five-yearly	First transmission 2005	2005
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five-yearly	First transmission 2005	2005

7.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
1	Main aggregates, annual and quarterly	Final consumption expenditure of NPISHs	Not to be supplied	2005
2	Main aggregates general government	P52 + P53 + K2	Not to be supplied	2003

8. ITALY

8.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Backward calculations: years 1970 to 1994 not to be supplied	2005
2	Main aggregates general government	Backward calculations: years 1980 to 1994 to be supplied in December 2001	2001
2	Main aggregates general government	Delay: t + 9 months	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five-yearly	Not to be calculated	2005
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five-yearly	First transmission 2005	2005

8.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
1	Main aggregates, annual and quarterly	Employment data according to the unit hours worked	First transmission 2004	2004
3	Tables by industry	Consumption of fixed capital by industry	Breakdown A17, first transmission 2002	2002
3	Tables by industry	Consumption of fixed capital by industry	Breakdown A31, first transmission 2005	2005
3	Tables by industry	Acquisitions less disposals of valuables by industry	Together with changes in inventories	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables by industry	Together with changes in inventories	2005

9. LUXEMBOURG

9.1. Derogations for tables

Table No	Table	Derogation	Until
1	Main aggregates, annual and quarterly	First transmission at t + 90 days 2003	2003
1	Main aggregates, annual and quarterly	First transmission at t + 70 days 2010	2010
2	Main aggregates general government	Backward calculations: recalculation only years 1990 to 1994	2005
3	Tables by industry	Backward calculations: recalculation only years 1980 to 1994	2005
6	Financial accounts by sector (transactions)	First transmission 2005	2005
7	Balance sheets for financial assets and liabilities	First transmission 2005	2005
8	Non-financial accounts by sector	Backward calculations: years 1990 to 1994 not to be recalculated	2005
8	Non-financial accounts by sector	Backward calculations: years 1980 to 1989 not to be recalculated	2005
10	Tables by industry and by region, NUTS II, A17	Not to be calculated	2005

Table No	Table	Derogation	Until
11	General government expenditure by function	Backward calculations: years 1990 to 1994 not to be recalculated	2005
12	Tables by industry and by region, NUTS III, A3	Not to be calculated	2005
13	Household accounts by region, NUTS II	Not to be calculated	2005

9.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Gross fixed capital formation by industry	Delay: t + 36 months	2005
3	Tables by industry	Acquisitions less disposals of valuables	First transmission 2005	2005
8	Non-financial accounts by sector	S11, S12, S14 + 45, S211, S212	First transmission 2005	2005
20	Cross classification of fixed assets by industry and by sector, A60 × (S11, S12, S13, S14, S15), five-yearly	Table at historic cost values	First transmission 2005	2005

10. NETHERLANDS

10.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Backward calculations: years 1986 to 1994 to be supplied in July 2001	2001
2	Main aggregates general government	Backward calculations: years 1970 to 1985 to be supplied in December 2001	2001
2'	Main aggregates general government	transmission at t + 3	2003
3	Tables by industry	Backward calculations: years 1986 to 1994 to be supplied in July 2001	2001
3	Tables by industry	Backward calculations: years 1970 to 1985 to be supplied in December 2001	2001

Table No	Table	Derogation	Until
5	Household final consumption expenditure by purpose	Backward calculations: years 1986 to 1994 to be supplied in July 2001	2001
5	Household final consumption expenditure by purpose	Backward calculations: years 1980 to 1985 to be supplied in December 2001	2001
7	Balance sheets for financial assets and liabilities	Delay: t + 19 months	2003
8	Non-financial accounts by sector	Backward calculations: years 1986 to 1994 to be supplied in July 2001 years 1980 to 1985 to be supplied in December 2001	2001
10	Tables by industry and by region, NUTS II, A17	Delay: t + 30 months	2005
13	Household accounts by region, NUTS II	Delay: t + 36 months	2005

10.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
10	Tables by industry and by region, NUTS II, A17	Gross fixed capital formation by region	Not to be calculated	2005
10 12	Tables by industry and by region, NUTS II, A17 Tables by industry and by region, NUTS III, A3	Total employment by region	Not to be calculated	2005

11. PORTUGAL

11.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Backward calculations: recalculation only years 1977 to 1994, to be supplied in December 2000	2005/ 2000
3	Tables by industry	Backward calculations: recalculation only years 1977 to 1994	2005

Table No	Table	Derogation	Until
5	Household final consumption expenditure by purpose	Delay: t + 12 months	2005
5	Household final consumption expenditure by purpose	Backward calculations: not to be recalculated	2005
6	Financial accounts by sector (transactions)	Delay: t + 12 months	2005
7	Balance sheets for financial assets and liabilities	Delay: t + 12 months	2005
8	Non-financial accounts by sector	Backward calculations: years 1990 to 1994 to be supplied in December 1999	1999
11	General government expenditure by function	Backward calculations: not to be recalculated	2005

11.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
1	Main aggregates, annual and quarterly	Employment data according to the unit hours worked	First transmission 2007	2007

12. FINLAND

12.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Backward calculations: recalculation only years 1975 to 1994	2005
3	Tables by industry	Backward calculations: recalculation only years 1975 to 1994	2005

12.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	Not to be calculated	2005
15	Supply table at basic prices including transformation into purchasers' prices, A60 × P60	All	Breakdown A31 and P31 Only at current prices	2005
16	Use table at purchasers' prices, A60 × P60	All		
17	Symmetric input-output table at basic prices P60 × P60, five-yearly	All		
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five-yearly	All		
19	Symmetric input-output table for imports at basic prices, P60 × P60, five-yearly	All		
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five-yearly	All	Breakdown A31	2005

13. SWEDEN

13.1. Derogations for tables

Table No	Table	Derogation	Until
2	Main aggregates general government	Backward calculations: recalculation only years 1980 to 1994	2005
3	Tables by industry	Delay: t + 12 months	2005
3	Tables by industry	Backward calculations: recalculation only years 1980 to 1994	2005
6	Financial accounts by sector (transactions)	Delay: t + 12 months	2005
7	Balance sheets for financial assets and liabilities	Delay: t + 12 months	2005
11	General government expenditure by function	Delay: t + 16 months	2005

13.2. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
2	Main aggregates general government	Acquisitions less disposals of valuables	First transmission 2005	2005
2	Main aggregates general government	Breakdown of government final consumption expenditure into individual and collective	Delay t + 16 months	2005
2	Main aggregates general government	Actual final consumption of households	Delay t + 16 months	2005
2	Main aggregates general government	Actual individual consumption	Delay t + 16 months	2005
3	Tables by industry	Acquisitions less disposals of valuables	First transmission 2005	2005
3	Tables by industry	Breakdown A31	Delay: t + 12 months	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables	First transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of government final consumption expenditure into individual and collective	Delay t + 16 months	2005
8	Non-financial accounts by sector	Actual final consumption of households	Delay t + 16 months	2005
8	Non-financial accounts by sector	Actual individual consumption	Delay t + 16 months	2005

14. UNITED KINGDOM

14.1. Derogations for single variables/sectors in the tables

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	Exclude transactions by MFIs in gold as a store of wealth	2005
4	Exports and imports by EU/third countries	Exports and imports by EU/third countries	Exclude transactions by MFIs in gold as a store of wealth	2005

Table No	Table	Variable/Sector	Derogation	Until
6	Financial accounts by sector (transactions)	Monetary gold and SDRs	Include transactions by MFIs in gold as a store of wealth	2005
6	Financial accounts by sector (transactions)	Financial auxiliaries	To be included in non-financial corporations	2002
7	Balance sheets for financial assets and liabilities	Monetary gold and SDRs	Include transactions by MFIs in gold as a store of wealth	2005
7	Balance sheets for financial assets and liabilities	Financial auxiliaries	To be included in non-financial corporations	2002
8	Non-financial accounts by sector	Acquisitions less disposals of valuables and exports and imports of goods and services	Exclude transactions by MFIs in gold as a store of wealth	2005
10	Tables by industry and by region, NUTS II, A17	GDP	For NUTS II only A17	2001

COUNCIL REGULATION (EC) No 1268/2003

of 15 July 2003

amending Regulation (EC) No 1601/2001 imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 8 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) On 5 May 2000, the Commission initiated an anti-dumping proceeding [2] on imports of certain iron or steel ropes and cables (the product concerned) originating, *inter alia*, in Turkey.

(2) This proceeding ultimately resulted in an anti-dumping duty being imposed by Regulation (EC) No 1601/2001 [3] of 2 August 2001 in order to eliminate the injurious effects of dumping.

(3) Provisional measures had been imposed by Commission Regulation (EC) No 230/2001 [4]. In parallel, the Commission accepted a price undertaking from, *inter alia*, the Turkish exporting producer Has Celik ve Halat San Tic AS (Has Celik) pursuant to Article 2(1) of Regulation (EC) No 230/2001. Imports of the product concerned produced and directly exported by Has Celik were exempted from the anti-dumping duty by Article 2(2) of that Regulation.

B. FAILURE TO COMPLY WITH THE UNDERTAKING

(4) The undertaking offered by Has Celik applies only to types of the product concerned which are listed in an Annex to the undertaking. In order to benefit from the duty exemption Has Celik has to issue a commercial invoice accompanying sales made subject to the undertaking (commercial invoice) as requested by Article 2(2) of Regulation (EC) No 230/2001. The commercial invoice has to meet the requirements of the Annex to the same Regulation. It also stipulates that exports to the Community of other product types not listed in that Annex are subject to anti-dumping duties. In addition, Has Celik agreed not to sell the types of the product concerned, on a weighted average half-yearly basis, below a minimum import price (MIP) which, for each product type, is also listed in an Annex to the undertaking.

(5) Following an on-spot verification visit, it was established that Has Celik had committed two types of breaches of the above obligations. First, it had sold product types other than those covered by the undertaking using a commercial invoice and therefore it allowed its importers to avoid payment of the duty; second, it was established that the company had sold certain product types covered by the undertaking, on a weighted average half-yearly basis, at prices below the relevant MIP. Commission Regulation (EC) No 1274/2003 [5] sets out in detail the nature of the breaches found.

(6) Acceptance of the undertaking has been withdrawn by the Commission by means of the above Commission Regulation and, therefore, definitive anti-dumping duties should be imposed forthwith on imports of the product concerned manufactured by Has Celik.

C. AMENDMENT OF REGULATION (EC) No 1601/2001

(7) In view of the above and pursuant to Article 8(9) of Regulation (EC) No 384/96, Article 2(1) of Regulation (EC) No 1601/2001 should be amended, and goods manufactured by Has Celik should be subject to the appropriate rate of anti-dumping duty for that company as set in Article 1(3) of Regulation (EC) No 1601/2001 (17,8 %),

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ C 127, 5.5.2000, p. 12.
[3] OJ L 211, 4.8.2001, p.1. Regulation as last amended by Regulation (EC) No 2288/2002 (OJ L 348, 21.12.2002, p. 52).
[4] OJ L 34, 3.2.2001, p. 4. Regulation as last amended by Regulation (EC) No 2303/2002 (OJ L 348, 21.12.2002, p. 80).
[5] See page 34 of this Official Journal.

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 2(1) of Council Regulation (EC) No 1601/2001 shall be replaced by the following table:

Country	Manufacturer	TARIC additional code
'Czech Republic	ŽDB a.s. Bezručova 300, 73593 Bohumín Czech Republic	A216
Russia	Open Joint Stock Company Cherepovetsky Staleprokanty Zavod, Russia, 162600 Cherepovets, Vologda Region, ul. 50-letia Oktiabria, 1/33	A217
Thailand	Usha Siam Steel Ind. Public Company Limited 888/116 Mahatun Plaza Building Ploenchit Road, Bangkok 10330 Thailand	A218'

Article 2

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

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

Done at Brussels, 15 July 2003.

For the Council

The President

G. TREMONTI

COMMISSION REGULATION (EC) No 1269/2003

of 17 July 2003

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1947/2002 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

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

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 17 July 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	48,9
	096	56,8
	999	52,8
0707 00 05	052	55,8
	999	55,8
0709 90 70	052	81,9
	999	81,9
0805 50 10	388	51,8
	524	59,5
	528	63,2
	999	58,2
0808 10 20, 0808 10 50, 0808 10 90	064	113,5
	388	76,7
	400	101,4
	508	82,7
	512	66,3
	524	28,7
	528	70,2
	720	124,2
	800	189,7
	804	104,0
	999	95,7
0808 20 50	388	84,9
	512	92,9
	528	69,0
	800	169,8
	999	104,2
0809 10 00	052	191,6
	064	118,3
	066	118,0
	094	127,0
	999	138,7
0809 20 95	052	290,4
	061	279,8
	400	252,0
	404	251,9
	999	268,5
0809 40 05	060	99,4
	064	120,7
	624	138,3
	999	119,5

(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 1270/2003

of 17 July 2003

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], as amended by Regulation (EC) No 79/2003 [4], 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 [5]. 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 18 July 2003.

[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 13, 18.1.2003, p. 4.
[5] 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, 17 July 2003.

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

ANNEX

to the Commission Regulation of 17 July 2003 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)	7,00	0,03	—
1703 90 00 (1)	9,20	—	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 1271/2003
of 17 July 2003
fixing the export refunds on white sugar and raw sugar without further processing

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and the prices for those products within the Community may be covered by an export refund.

(2) Regulation (EC) No 1260/2001 provides that when refunds on white sugar and raw sugar, non-denatured and exported without further processing, are being fixed, account must be taken of the situation on the Community and world markets in sugar, and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.

(3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of Regulation (EC) No 1260/2001. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector [3]. The refund thus calculated for sugar containing added flavour or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

(4) In special cases, the amount of the refund may be fixed by other legal instruments.

(5) The refund must be fixed every two weeks. It may be altered in the intervening period.

(6) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

(7) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial in nature.

(8) In order to prevent any abuses associated with the re-importation into the Community of sugar sector products that have qualified for export refunds, refunds for the products covered by this Regulation should not be fixed for all the countries of the western Balkans.

(9) In view of the above and of the present situation on the market in sugar, and in particular of the quotations or prices for sugar within the Community and on the world market, refunds should be fixed at the appropriate amounts.

(10) 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 refunds to be granted on exports of the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, non-denatured and without further processing, are hereby fixed in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 July 2003.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 214, 8.9.1995, p. 16.

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

Done at Brussels, 17 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	43,91 (1)
1701 11 90 9910	S00	EUR/100 kg	42,80 (1)
1701 12 90 9100	S00	EUR/100 kg	43,91 (1)
1701 12 90 9910	S00	EUR/100 kg	42,80 (1)
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,4773
1701 99 10 9100	S00	EUR/100 kg	47,73
1701 99 10 9910	S00	EUR/100 kg	46,53
1701 99 10 9950	S00	EUR/100 kg	46,53
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,4773

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

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

The other destinations are:

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

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

COMMISSION REGULATION (EC) No 1272/2003

of 17 July 2003

fixing the maximum export refund for white sugar to certain third countries for the 37th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1331/2002

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 1331/2002 of 23 July 2002 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [3], as amended by Regulation (EC) No 432/2003 [4], for the 2002/2003 marketing year, requires partial invitations to tender to be issued for the export of this sugar to certain third countries.

(2) Pursuant to Article 9(1) of Regulation (EC) No 1331/2002 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 37th 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 37th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1331/2002 the maximum amount of the export refund to certain third countries is fixed at 49,549 EUR/100 kg.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 195, 24.7.2002, p. 6.
[4] OJ L 65, 8.3.2003, p. 21.

COMMISSION REGULATION (EC) No 1273/2003
of 17 July 2003
fixing the export refunds on pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [1], as last amended by Regulation (EC) No 1365/2000 [2], and in particular the second paragraph of Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 2759/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for these products within the Community may be covered by an export refund.

(2) It follows from applying these rules and criteria to the present situation on the market in pigmeat that the refund should be fixed as set out below.

(3) In the case of products falling within CN code 0210 19 81, the refund should be limited to an amount which takes account of the qualitative characteristics of each of the products falling within these codes and of the foreseeable trend of production costs on the world market. It is important that the Community should continue to take part in international trade in the case of certain typical Italian products falling within CN code 0210 19 81.

(4) Because of the conditions of competition in certain third countries, which are traditionally importers of products falling within CN codes 1601 00 and 1602, the refund for these products should be fixed so as to take this situation into account. Steps should be taken to ensure that the refund is granted only for the net weight of the edible substances, to the exclusion of the net weight of the bones possibly contained in the said preparations.

(5) Article 13 of Regulation (EEC) No 2759/75 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(1) of Regulation (EEC) No 2759/75 according to destination.

(6) The refunds should be fixed taking account of the amendments to the refund nomenclature established by Commission Regulation (EEC) No 3846/87 [3], as last amended by Regulation (EC) No 118/2003 [4].

(7) Refunds should be granted only on products that are allowed to circulate freely within the Community. Therefore, to be eligible for a refund, products should be required to bear the health mark laid down in Council Directive 64/433/EEC [5], as last amended by Directive 95/23/EC [6], Council Directive 94/65/EC [7] and Council Directive 77/99/EEC [8], as last amended by Directive 97/76/EC [9].

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of products on which the export refund specified in Article 13 of Regulation (EEC) No 2759/75 is granted and the amount of the refund shall be as set out in the Annex hereto.

The products concerned must comply with the relevant provisions on health marks laid down in:

— Chapter XI of Annex I to Directive 64/433/EEC,

— Chapter VI of Annex I to Directive 94/65/EC,

— Chapter VI of Annex B to Directive 77/99/EEC.

Article 2

This Regulation shall enter into force on 21 July 2003.

[1] OJ L 282, 1.11.1975, p. 1.
[2] OJ L 156, 29.6.2000, p. 5.
[3] OJ L 366, 24.12.1987, p. 1.
[4] OJ L 20, 24.1.2003, p. 3.
[5] OJ 121, 29.7.1964, p. 2012/64.
[6] OJ L 243, 11.10.1995, p. 7.
[7] OJ L 368, 31.12.1994, p. 10.
[8] OJ L 26, 31.1.1977, p. 85.
[9] OJ L 10, 16.1.1998, p. 25.

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

Done at Brussels, 17 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 17 July 2003 fixing the export refunds on pigmeat

Product code	Destination	Unit of measurement	Amount of refund
0210 11 31 9110	P05	EUR/100 kg	67,50
0210 11 31 9910	P05	EUR/100 kg	67,50
0210 19 81 9100	P05	EUR/100 kg	71,50
0210 19 81 9300	P05	EUR/100 kg	56,50
1601 00 91 9120	P05	EUR/100 kg	20,50
1601 00 99 9110	P05	EUR/100 kg	15,50
1602 41 10 9110	P05	EUR/100 kg	30,50
1602 41 10 9130	P05	EUR/100 kg	18,00
1602 42 10 9110	P05	EUR/100 kg	24,00
1602 42 10 9130	P05	EUR/100 kg	18,00
1602 49 19 9130	P05	EUR/100 kg	18,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 27.3.2002, p. 1) as amended.

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

The other destinations are defined as follows:

P05 All destinations except the Czech Republic, the Slovak Republic, Hungary, Poland, Bulgaria, Latvia, Estonia, Lithuania.

COMMISSION REGULATION (EC) No 1274/2003

of 11 June 2003

amending Regulation (EC) No 230/2001 imposing a provisional anti-dumping duty on certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey and accepting undertakings offered by certain exporters in the Czech Republic and Turkey

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 8 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) On 5 May 2000, an anti-dumping proceeding was initiated by the Commission [3] on imports of certain iron or steel ropes and cables (the product concerned) originating, *inter alia*, in Turkey.

(2) This proceeding ultimately resulted in a definitive anti-dumping duty being imposed by Council Regulation (EC) No 1601/2001 [4], as last amended by Regulation (EC) No 2288/2002 [5], of 2 August 2001 in order to eliminate the injurious effects of dumping.

(3) Provisional measures had been imposed by Commission Regulation (EC) No 230/2001 [6], as last amended by Regulation (EC) No 2303/2002 [7]. In parallel, the Commission accepted, *inter alia*, a price undertaking from the Turkish exporting producer Has Celik ve Halat San Tic AS (Has Celik) by Article 2(1) of Commission Regulation (EC) No 230/2001. Imports of the product concerned produced and directly exported to the Community by Has Celik were exempted from the anti-dumping duty by Article 2(2) of the same Regulation. Exemption from the duty is, *inter alia*, conditional on the presentation of a commercial invoice accompanying goods subject to an undertaking (commercial invoice) as requested by Article 2(2) of Regulation (EC) No 230/2001 and containing at least the information specified in the Annex to the same Regulation.

B. FAILURE TO COMPLY WITH THE UNDERTAKING

(4) The scope of the undertaking is limited to certain types of the product concerned which are listed in an Annex to the undertaking (product covered). Each product type is identified by a Product Control Number (PCN). Product types not falling into this scope are subject to the payment of anti-dumping duties and no commercial invoice must be issued for these goods.

(5) In addition, Has Celik undertook to ensure that the prices of the product covered are not, on a weighted average semesterly basis, per product type, sold below a Minimum Import Price (MIP). Has Celik can make individual export transactions within a certain threshold below the MIP, as long as the weighted average sales price for all transactions, on a semesterly basis, per product type, is at or above the MIP.

(6) An on-spot verification visit to Has Celik revealed that it had included in the commercial invoices product types not covered by the undertaking, either by indicating no PCN at all or by indicating PCNs that were not listed in the undertaking. As a result, imports of these products into the Community unduly benefited from the exemption to the anti-dumping duty.

(7) Furthermore, the verification confirmed that sales of certain product types covered by the undertaking had been made, on a weighted average semesterly basis, at prices below the corresponding MIPs.

(8) In view of the findings set out in recitals 6 and 7 the Commission concluded that a breach of the undertaking has occurred.

(9) Has Celik was informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertaking would be withdrawn and of the recommendation to impose definitive duties on imports into the Community of the product concerned manufactured by them. It was also granted a period within which to request a hearing. Has Celik presented comments and requested a hearing which was granted by the Commission services.

(10) Has Celik argued that it had not had the intention to circumvent the provisions of the undertaking and that it had informed its customers about the obligation to pay anti-dumping duties for product types not covered by the undertaking. In addition, it claimed that the quantities unduly benefiting from the exemption of the anti-dumping duty were insignificant. Finally, regarding the non-respect of the MIPs, Has Celik argued that it had sold those products within the flexibility threshold.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 127, 5.5.2000, p. 12.
[4] OJ L 211, 4.8.2001, p. 1.
[5] OJ L 348, 21.12.2002, p. 52.
[6] OJ L 34, 3.2.2001, p. 4.
[7] OJ L 348, 21.12.2002, p. 80.

(11) The arguments presented by Has Celik did not, however, alter the Commission's initial view that a breach of the undertaking occurred. In this respect, it should be noted that intention is not a decisive criterion for assessing whether an undertaking has been breached or not. Also, Has Celik admitted that its customers had not actually paid the anti-dumping duties in respect of the product types referred to in recital 4. Moreover, the argument that the quantities were insignificant cannot be accepted: bearing in mind that any breach of an undertaking can be a sufficient ground for withdrawal of its acceptance by the Commission. Indeed, in the present case, the quantities were not insignificant and this aspect of the breach should not be considered in isolation but taking into account the fact that it is twofold. Concerning the second feature of the breach, it is not correct that the sales have been made within the flexibility threshold. Indeed as explained in recital 5 above, whilst this flexibility allows the selling of some quantities below the MIP, this is limited to the overall average per half year of such sales resulting in a price at or above the MIP. Here, Has Celik was found not to have respected this MIP on a weighted average semesterly basis for each product type.

(12) Therefore, acceptance of the undertaking offered by Has Celik should be withdrawn and definitive anti-dumping duties imposed against it.

(13) In view of the above, the table in Article 2 of Regulation (EC) No 230/2001 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The undertaking accepted from company Has Celik ve Halat Sanayi Ticaret AS is hereby withdrawn.

Article 2

1. The table in Article 2(1) of Regulation (EC) No 230/2001 is replaced by the following table.

Country	Company	TARIC additional code
Czech Republic	ŽDB as	A216

2. Article 2(2) of Regulation (EC) No 230/2001 is hereby replaced as follows:

'Imports declared for release into free circulation under TARIC additional code A216 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and directly exported (i.e. invoiced and shipped) by the company mentioned in Article 2(1) to a company acting as an importer in the Community. Such imports shall also be accompanied by a commercial invoice containing at least the elements listed in the Annex.'

Article 3

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

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

Done at Brussels, 11 June 2003.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1275/2003

of 17 July 2003

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 1706/98 [1], and in particular Article 5 thereof,

Having regard to Commission Regulation (EC) No 1918/98 of 9 September 1998 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 1706/98 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States and repealing Regulation (EC) No 589/96 [2], and in particular Article 4 thereof,

Whereas:

(1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.

(2) The applications for import licences submitted between 1 and 10 July 2003, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.

(3) The quantities in respect of which licences may be applied for from 1 August 2003 should be fixed within the scope of the total quantity of 52 100 tonnes.

(4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries [3], as last amended by Regulation (EC) No 1452/2001 [4],

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 July 2003 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Germany:

— 1 050 tonnes originating in Namibia,

— 180 tonnes originating in Botswana.

United Kingdom:

— 400 tonnes originating in Botswana,

— 750 tonnes originating in Namibia,

— 90 tonnes originating in Swaziland.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of August 2003 for the following quantities of boned beef and veal:

Botswana:	13 735,5 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	2 868 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	6 160 tonnes.

Article 3

This Regulation shall enter into force on 21 July 2003.

[1] OJ L 348, 21.12.2002, p. 5.
[2] OJ L 250, 10.9.1998, p. 16.
[3] OJ L 302, 31.12.1972, p. 28.
[4] OJ L 198, 21.7.2001, p. 11.

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

Done at Brussels, 17 July 2003.

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

COMMISSION REGULATION (EC) No 1276/2003

of 17 July 2003

determining the extent to which applications lodged in July 2003 for import rights in respect of frozen beef intended for processing may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1146/2003 of 27 June 2003 opening and providing for the administration of an import tariff quota for frozen beef intended for processing (1 July 2003 to 30 June 2004) [1], and in particular the second subparagraph of Article 5(4) thereof,

Whereas:

(1) Article 3(1) of Regulation (EC) No 1146/2003 fixes the quantities of frozen beef intended for processing which may be imported under special terms in the period from 1 July 2003 to 30 June 2004.

(2) Article 5(4) of Regulation (EC) No 1146/2003 lays down that the quantities applied for may be reduced. The applications lodged relate to total quantities which exceed the quantities available. Under these circumstances and taking care to ensure an equitable distribution of the available quantities, it is appropriate to reduce proportionally the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

Every application for import rights lodged in accordance with Regulation (EC) No 1146/2003 for the period 1 July 2003 to 30 June 2004 shall be granted to the following extent, expressed as bone-in beef:

(a) 38,9831 % of the quantity requested for beef imports intended for the manufacture of 'preserves' as defined by Article 3(1)(a) of Regulation (EC) No 1146/2003;

(b) 86,5494 % of the quantity requested for beef imports intended for the manufacture of products as defined by Article 3(1)(b) of Regulation (EC) No 1146/2003.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

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

[1] OJ L 160, 28.6.2003, p. 59.

COMMISSION REGULATION (EC) No 1277/2003

of 17 July 2003

laying down to what extent applications for issue of export licences submitted during July 2003 for beef products which may benefit from special import treatment in a third country may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef sector and repealing Regulation (EEC) No 2377/80 [1], as last amended by Regulation (EC) No 852/2003 [2], and in particular Article 12(8) thereof,

Whereas:

(1) Regulation (EC) No 1445/95 lays down, in Article 12, detailed rules for export licence applications for the products referred to in Article 1 of Commission Regulation (EEC) No 2973/79 [3], as last amended by Regulation (EEC) No 3434/87 [4].

(2) Regulation (EEC) No 2973/79 fixed the quantities of meat which might be exported on special terms for the third quarter of 2003. No applications were submitted for export licences for beef,

HAS ADOPTED THIS REGULATION:

Article 1

No applications for export licences were lodged for the beef referred to in Regulation (EEC) No 2973/79 for the third quarter of 2003.

Article 2

Applications for licences in respect of the meat referred to in Article 1 may be lodged in accordance with Article 12 of Regulation (EC) No 1445/95 during the first 10 days of the fourth quarter of 2003 the total quantity available being 5 000 t.

Article 3

This Regulation shall enter into force on 21 July 2003.

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

Done at Brussels, 17 July 2003.

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

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[1] OJ L 143, 27.6.1995, p. 35.
[2] OJ L 123, 17.5.2003, p. 9.
[3] OJ L 336, 29.12.1979, p. 44.
[4] OJ L 327, 18.11.1987, p. 7.

COMMISSION REGULATION (EC) No 1278/2003
of 17 July 2003
prohibiting fishing for cod by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [1], as last amended by Regulation (EC) No 2846/98 [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required [3], lays down quotas for cod for 2003.

(2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.

(3) According to the information received by the Commission, catches of cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain have exhausted the quota allocated for 2003. Spain has prohibited fishing for this stock from 15 July 2003. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain are hereby deemed to have exhausted the quota allocated to Spain for 2003.

Fishing for cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 15 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries

[1] OJ L 261, 20.10.1993, p. 1.
[2] OJ L 358, 31.12.1998, p. 5.
[3] OJ L 356, 31.12.2002, p. 12.

COMMISSION REGULATION (EC) No 1279/2003
of 17 July 2003
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 1104/2003 ([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 1163/2002 ([4]), as amended by Regulation (EC) No 1324/2002 ([5]).

(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 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 158, 27.6.2003, p. 1.
([3]) OJ L 147, 30.6.1995, p. 7.
([4]) OJ L 170, 29.6.2002, p. 46.
([5]) OJ L 194, 23.7.2002, p. 26.

ANNEX

to the Commission Regulation of 17 July 2003 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—
1001 10 00 9400	—	EUR/t	—
1001 90 91 9000	—	EUR/t	—
1001 90 99 9000	A00	EUR/t	0
1002 00 00 9000	A00	EUR/t	0
1003 00 10 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	0
1004 00 00 9200	—	EUR/t	—
1004 00 00 9400	A00	EUR/t	0
1005 10 90 9000	—	EUR/t	—
1005 90 00 9000	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—
1101 00 11 9000	—	EUR/t	—
1101 00 15 9100	A00	EUR/t	0
1101 00 15 9130	A00	EUR/t	0
1101 00 15 9150	A00	EUR/t	0
1101 00 15 9170	A00	EUR/t	0
1101 00 15 9180	A00	EUR/t	0
1101 00 15 9190	—	EUR/t	—
1101 00 90 9000	—	EUR/t	—
1102 10 00 9500	C14	EUR/t	38,25
1102 10 00 9700	C14	EUR/t	30,25
1102 10 00 9900	—	EUR/t	—
1103 11 10 9200	A00	EUR/t	0 (1)
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 (EC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The other destinations are as follows:

C14 All destinations except for Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Romania, Slovakia and Slovenia.

COMMISSION REGULATION (EC) No 1280/2003
of 17 July 2003
fixing the export refunds on malt

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 1104/2003 ([2]), and in particular the third subparagraph of 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 within 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 1163/2002 ([4]), as amended by Regulation (EC) No 1324/2002 ([5]).

(3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down 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 these rules to the present situation on markets 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 malt listed in Article 1(1)(c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 158, 27.6.2003, p. 1.
([3]) OJ L 147, 30.6.1995, p. 7.
([4]) OJ L 170, 29.6.2002, p. 46.
([5]) OJ L 194, 23.7.2002, p. 26.

ANNEX

to the Commission Regulation of 17 July 2003 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	A00	EUR/t	0,00
1107 10 99 9000	A00	EUR/t	0,00
1107 20 00 9000	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.

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

COMMISSION REGULATION (EC) No 1281/2003

of 17 July 2003

concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 936/2003

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 1104/2003 [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 1163/2002 [4], as amended by Regulation (EC) No 1324/2002 [5], and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of barley to certain third countries was opened pursuant to Commission Regulation (EC) No 936/2003 [6].

(2) Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

(3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 11 to 17 July 2003 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 936/2003.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 158, 27.6.2003, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 170, 29.6.2002, p. 46.
[5] OJ L 194, 23.7.2002, p. 26.
[6] OJ L 127, 9.5.2002, p. 11.

COMMISSION REGULATION (EC) No 1282/2003

of 17 July 2003

concerning tenders notified in response to the invitation to tender for the export of rye issued in Regulation (EC) No 935/2003

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 1104/2003 ([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 1163/2002 ([4]), as amended by Regulation (EC) No 1324/2002 ([5]), and in particular Article 7 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of rye to certain third countries was opened pursuant to Commission Regulation (EC) No 935/2003 ([6]).

(2) Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

(3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 11 to 17 July 2003 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 935/2003.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 158, 27.6.2003, p. 1.
([3]) OJ L 147, 30.6.1995, p. 7.
([4]) OJ L 170, 29.6.2002, p. 46.
([5]) OJ L 194, 23.7.2002, p. 26.
([6]) OJ L 133, 29.5.2003, p. 45.

COMMISSION REGULATION (EC) No 1283/2003

of 17 July 2003

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 934/2003

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 1104/2003 [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 1163/2002 [4], as amended by Regulation (EC) No 1324/2002 [5], and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund on exportation of common wheat to certain third countries was opened pursuant to Commission Regulation (EC) No 934/2003 [6].

(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 11 to 17 July 2003, pursuant to the invitation to tender issued in Regulation (EC) No 934/2003, the maximum refund on exportation of common wheat shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 158, 27.6.2003, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 170, 29.6.2002, p. 46.
[5] OJ L 194, 23.7.2002, p. 26.
[6] OJ L 133, 29.5.2003, p. 42.

COMMISSION REGULATION (EC) No 1284/2003

of 17 July 2003

concerning tenders notified in response to the invitation to tender for the import of sorghum issued in Regulation (EC) No 699/2003

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 Commission Regulation (EC) No 1104/2003 ([2]), and in particular Article 12(1) thereof,

Whereas:

(1) An invitation to tender for the maximum reduction in the duty on sorghum imported into Spain was opened pursuant to Commission Regulation (EC) No 699/2003 ([3]).

(2) Article 5 of Commission Regulation (EC) No 1839/95 ([4]), as last amended by Regulation (EC) No 2235/2000 ([5]), allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified to make no award.

(3) On the basis of the criteria laid down in Articles 6 and 7 of Regulation (EC) No 1839/95 a maximum reduction in the duty should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 11 to 17 July 2003 in response to the invitation to tender for the reduction in the duty on imported sorghum issued in Regulation (EC) No 699/2003.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 158, 27.6.2003, p. 1.
([3]) OJ L 99, 17.4.2003, p. 29.
([4]) OJ L 177, 28.7.1995, p. 4.
([5]) OJ L 256, 10.10.2000, p. 13.

COMMISSION REGULATION (EC) No 1285/2003

of 17 July 2003

determining to what extent applications for import rights for calves not exceeding 80 kilograms lodged pursuant to Regulation (EC) No 1128/1999 can be met

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1128/1999 of 28 May 1999 laying down detailed rules of application for a tariff quota for calves weighing not more than 80 kilograms originating in certain third countries [1], as last amended by Regulation (EC) No 1144/2003 [2], and in particular Article 5(1) thereof,

Whereas:

(1) Article 2(4) of Regulation (EC) No 1128/1999 provides for the quantities reserved for traditional importers to be allocated in proportion to their imports during the period 1 July 2000 to 30 June 2003.

(2) Allocation of the quantities available to operators covered by Article 2(3)(b) of that Regulation is to be made in proportion to the quantities applied for. Since the quantities applied for exceed the quantities available, a fixed percentage reduction should be set,

HAS ADOPTED THIS REGULATION:

Article 1

Every application for an import right for live animals of the bovine species not exceeding 80 kilograms shall be granted to the following extent:

(a) 25,0150 % of the quantities imported within the meaning of Article 2(3)(a) of Regulation (EC) No 1128/1999;

(b) 0,8525 % of the quantities applied for within the meaning of Article 2(3)(b) of Regulation (EC) No 1128/1999.

Article 2

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

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

[1] OJ L 135, 29.5.1999, p. 50.
[2] OJ L 160, 28.6.2003, p. 45.

COMMISSION REGULATION (EC) No 1286/2003

of 17 July 2003

on the issue of licences for the import of garlic in the quarter from 1 September to 30 November 2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], as last amended by Regulation (EC) No 47/2003 [2],

Having regard to Commission Regulation (EC) No 565/2002 of 2 April 2002 establishing the method for managing the tariff quotas and introducing a system of certificates of origin for garlic imported from third countries [3], and in particular Article 8(2) thereof,

Whereas:

(1) The quantities for which licence applications have been lodged by traditional importers and by new importers on 14 and 15 July 2003, under Article 5(2) of Regulation (EC) No 565/2002 exceed the quantities available for products originating in China and in all third countries other than China and Argentina.

(2) It is now necessary to establish the extent to which the licence applications sent to the Commission on 17 July 2003 can be met and to fix, for each category of importer and product origin, the dates until which the issue of certificates must be suspended,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences lodged under Article 3(1) of Regulation (EC) No 565/2002 on 14 and 15 July 2003 and sent to the Commission on 17 July 2003, shall be met at a percentage rate of the quantities applied for as set out in Annex I hereto.

Article 2

For each category of importer and the origin involved, applications for import licences under Article 3(1) of Regulation (EC) No 565/2002 relating to the quarter from 1 September to 30 November 2003 and lodged after 15 July 2003 but before the date in Annex II hereto, shall be rejected.

Article 3

This Regulation shall enter into force on 18 July 2003.

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

Done at Brussels, 17 July 2003.

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

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[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 7, 11.1.2003, p. 64.
[3] OJ L 86, 3.4.2002, p. 11.

ANNEX I

Origin of the products	Percentage allocations		
	China	Third countries other than China or Argentina	Argentina
— traditional importers (Article 2(c) of Regulation (EC) No 565/2002)	22,355 %	49,382 %	X
— new importers (Article 2(e) of Regulation (EC) No 565/2002)	0,839 %	13,742 %	X

X: No quota for this origin for the quarter in question.
—: No application for a licence has been sent to the Commission.

ANNEX II

Origin of the products	Dates		
	China	Third countries other than China or Argentina	Argentina
— traditional importers (Article 2(c) of Regulation (EC) No 565/2002)	30.11.2003	30.11.2003	—
— new importers (Article 2(e) of Regulation (EC) No 565/2002)	30.11.2003	30.11.2003	—

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 17 February 2003
on the State aid implemented by the Netherlands for international financing activities

(notified under document number C(2003) 568)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2003/515/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) In 1997, with a view to tackling harmful tax competition, the Ecofin Council approved a code of conduct for business taxation [2] and set up an ad hoc group to assess the tax measures that might be covered by it. In accordance with the code of conduct, in 1998 the Commission issued a notice on the application of the State aid rules to measures relating to direct business taxation [3] in which it emphasised its commitment to the strict application of the rules, subject to the principle of equal treatment. The Commission has begun investigating those measures regarded as harmful by the code of conduct group on the basis of the State aid rules. The Commission points out that the activities of the code of conduct group serve the same purpose as the European Union's State aid policy: both are designed to bring an end to measures which distort or threaten to distort competition in the internal market. The Commission has also taken note of progress in combating harmful tax competition, and in particular the steps taken by the Member States to abolish the measures identified by the code of conduct group or to deal with the harmful aspects thereof.

(2) By letter dated 12 February 1999 the Commission asked the Dutch authorities for information on the scheme concerning international financing activities (group financing activities, hereinafter referred to as the 'gfa scheme'). The Netherlands provided the requested information by letter dated 8 March 1999.

(3) The Commission notified the Dutch authorities by letter dated 11 July 2001 of its decision to institute the procedure laid down in Article 88(2) of the EC Treaty.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [4]. The Commission invited interested parties to submit their comments on the aid measure.

(5) The Commission received comments from interested parties and forwarded them to the Netherlands for comments. The Dutch authorities responded by letter dated 30 January 2002.

[1] OJ C 306, 31.10.2001, p. 6.
[2] OJ C 2, 6.1.1998, p. 1.
[3] OJ C 384, 10.12.1998, p. 3.
[4] See footnote 1.

(6) The Dutch authorities sent further information to the Commission by letters dated 18 July and 3 October 2002. In the course of the procedure the Commission and the Dutch authorities met on numerous occasions.

2. DETAILED DESCRIPTION OF THE AID

(7) The rules governing the establishment of a reserve to cover the risks associated with group financing activities are laid down in Article 15b of the 1969 Corporate Tax Act. That article was incorporated by the law of 13 December 1996, which also includes provisions restricting the scope for using artificial loan schemes to deduct interest associated with internationally active groups' financing activities from taxable corporate income. These provisions are designed to counter the artificial erosion of the tax base of Dutch corporate income tax.

2.1. **Purpose**

(8) According to the Dutch authorities, the Dutch Parliament's aim in passing this legislation was to prevent internationally active Dutch companies sheltering their group financing activities in companies situated abroad, including in tax havens.

2.2. **Conditions**

(9) Requests to establish a risk reserve are dealt with by a coordinating committee specially set up for the purpose. Neither the committee, the minister nor the Government have discretionary powers. A decree (published on 2 October 1997) contains a number of provisions to ensure correct application of the law and prevent abuse.

(10) Any company liable to tax, irrespective of whether the company is of Dutch or foreign origin, is entitled to constitute a risk reserve, subject to compliance with the law.

(11) A risk reserve can be set up by any company that carries out financing activities for parts of the group in at least four countries or on at least two continents. A company is regarded as belonging to the same group as a Dutch company where the two are linked through a shareholding of over 33,33 % of capital. Shares not entitling the shareholder to a percentage of the company's liquidation proceeds are not taken into account in determining whether this condition is complied with.

(12) Under Article 15b, the term 'financial activities' covers the following: the financing of group companies' operating resources and activities, including the financing of participations, and the use of, or the right to use, operating resources within the group and investments.

(13) Beneficiaries must be able to demonstrate that they are regularly engaged in lending and placing funds and that they are able to operate independently. Management must have the resources and powers to take the necessary measures to that end. The activities must be conducted exclusively from the Netherlands, without any material interference from elsewhere. The company must be involved in arranging and implementing financial transactions on behalf of group companies on a non-incidental basis.

(14) Lastly, companies in the four countries must contribute at least 5 % of taxable income from their financing activities. Each of the two continents must also contribute at least 10 %. Furthermore, to reinforce the international spread of activities, no more than 10 % of total capital (debt and equity) used by the company for its financial activities may be applied, directly or indirectly, in group companies based in the Netherlands.

(15) Companies which do not meet the legal requirements may not establish a risk reserve. Equally, as soon as they cease to comply with these requirements, the risk reserve is liberated and is liable to corporate tax at the full rate.

(16) Company applications for the gfa scheme are handled by the tax authorities. Permission is given for 10 years.

2.3. **Tax repercussions**

(17) On condition that all requirements are met, the company is entitled to form a reserve for the special risks associated with the group's international financing activities. The yearly contribution to the reserve is limited to a maximum of 80 % of profits from financing activities (primarily interest and royalties) and income from short-term portfolio investments kept with a view to financing possible takeovers (hereinafter referred to as 'finance profit').

(18) By law, investments as a share of finance profit must amount to no more than whichever of the following values is smaller: either 25 % of the net value of the group or the sum of all existing participations and outstanding intra-group loans (Dutch participations up to a maximum of 1/9 of the foreign participations). All other business income is excluded.

(19) Net finance profit is calculated after deduction of costs relating to financing activities, including interest and a proportionate share of general costs. Profits exempted under the participation exemption and tax credits to prevent double taxation of subsidiaries' revenue are not regarded as finance profit. Nor are releases from the risk reserve.

(20) In addition, the annual contribution to the reserve is limited by law to a maximum of 80 % of total taxable income (including income that is not related to financial activities). In this way, losses in other activities decrease the proportion of the finance profit used to calculate the maximum reserve to less than 80 %. For the purpose of the 80 % rule, the taxable profit of the company is calculated before taking into account any contributions to or releases from the reserve. In addition, losses carried forward from previous years must be deducted.

(21) Companies with an acquisition fund which have demonstrated to the tax authorities that they intend to acquire one or more companies may, subject to certain limits, add the income from that fund to the net finance profit, which forms the basis for calculating contributions to the reserve. The fund, to which the aforementioned conditions apply, should be kept in liquid asset form so that it can be accessed at short notice. Acquisitions should take the form of share capital purchases.

(22) The reserve can be released voluntarily or compulsorily.

(23) In the event of the acquisition of shares or a capital contribution to a Dutch or foreign company, an amount equal to 50 % of the acquisition price or the capital contribution may be deducted from the reserve without immediate taxation. However, the yield value of the participations thus acquired is reduced by 50 %, thus enabling possible liquidation losses to be anticipated in fiscal terms. In the event of liquidation losses actually occurring, they are reduced in fiscal terms by the extent to which the reserve has already been decreased to cover this risk.

(24) If the Dutch Ministry of Finance deems that the company's activities or the place in which it is based entail extraordinary risks (e.g. political or climatic), the percentage of costs which can be deducted from the risk reserve on a tax-free basis is increased to 100 %. Thus, the reduction in the yield value of the participations acquired. In such cases any future liquidation losses are also reduced by the same amount. Although this has never occurred in practice, the same tax treatment applies for capital contributions enabling a group subsidiary to meet obligations imposed on it by the courts where it would be unable to comply using its own resources. However, capital contributions of this type will not qualify if they are in the form of loan conversions (into share capital) or result in a permanent establishment being converted into a subsidiary. The group must hold the shares of the subsidiary in question for at least five years, except in so far as alienation is based predominantly on commercial grounds.

(25) The risk reserve can be terminated voluntarily at any time by filing a request to this effect even when no acquisition or capital contribution has taken place. This must take place in five equal instalments, all subject to tax at a special rate of 10 %. During the five-year period no further contributions to the reserve will be allowed but releases in the context of capital contributions will remain possible. However, the requirement that business must be conducted exclusively from the Netherlands and the foreign country conditions will continue to apply unchanged. Any income during this period will be taxed at the normal corporate tax rate and may not be added to the reserve.

(26) Losses associated with the risks for which the reserve was set up (loan write-offs, liquidation losses and operating losses by permanent establishments of the company or group companies) give rise to a taxable release from the reserve of an amount equivalent to the losses incurred. If the reserve is insufficient, the amount of losses in excess of the reserve is offset against profits. The following risks/losses give rise to a release:

— risks in excess of losses in the value of the share capital in a participation,

— including loan write-offs, liquidation losses and operating losses offset against profits in the Netherlands,

— losses linked to writing off interests in associated bodies not covered by the participation exemption,

— losses associated with managing a foreign company via a permanent establishment abroad, in so far as they were incurred anywhere within the Dutch part of the group,

— forex losses.

(27) Lastly, compulsory release, taxable at the corporate tax rate, will take place when the company is no longer subject to tax in the Netherlands (liquidation or transfer of its fiscal domicile to another country). This taxable release is excluded from the finance profits and cannot be used to create a new reserve. Equally, failure to comply with the requirement that transactions should be effected from the Netherlands, the foreign country conditions or any other statutory conditions will result in compulsory release with the same tax consequences.

(28) In the case of compulsory release within the five-year voluntary release period, additional tax of 25 % will be levied on all annual instalments which have been subject to the special 10 % tax rate, thereby effectively raising it to 35 %.

2.4. **Cost of the scheme**

(29) According to the Dutch Government, the gfa scheme is budget neutral.

3. **GROUNDS FOR INITIATING THE PROCEDURE**

(30) Because the gfa scheme provides temporary or permanent tax breaks only to multinationals operating in four countries or on two continents, the Commission took the view that the position of those multinationals had been strengthened and that the scheme might constitute State aid within the meaning of Article 86(1) of the Treaty. Because the advantages offered by the gfa scheme are not linked to employment-generating investments or specific projects, their sole effect would appear to be reducing overheads. The Commission therefore took the view that they could be regarded as constituting operating aid and that none of the derogations enshrined in Article 88(2) and (3) applied.

4. **COMMENTS FROM INTERESTED PARTIES**

(31) 59 companies and the VNO-NCW ([5]) submitted comments before the deadline expired. Most of the interested parties are companies which use or have used the gfa scheme. The comments of three companies were not forwarded to the Netherlands because they were submitted after the deadline had expired. However, on the whole they tally with the observations submitted before the deadline. Almost all the companies which submitted comments endorsed the arguments put forward by the VNO-NCW, which are summarised below.

4.1. **The gfa scheme is not an aid measure**

(32) First, the gfa scheme was introduced with a view to combating capital flight from the Netherlands. The aim was to deal with tax competition between different countries, not to influence competition on the market between different companies. Whether the scheme is compatible with the Treaty should therefore be determined on the basis of Articles 96 and 97 rather than on the basis of the State aid rules.

([5]) Verbond van Nederlandse Ondernemingen — Nederlands Christelijk Werkgeversverbond.

(33) Second, the gfa scheme is not an aid measure because the companies which make use of it have not derived any advantage. Obviously, in view of the mobility of international financing activities, companies move to the place where the most favourable tax arrangements apply. Because the applicable rate in the Netherlands was 35 % at the time, companies were tempted to transfer their financing activities to other countries with more favourable arrangements. The Dutch authorities attempted to stem this flight of capital by establishing the gfa scheme. Therefore it cannot be argued that the companies which make use of the scheme have an advantage, because if the scheme had not existed they would have transferred their financing activities to another country. Whether there is an economic advantage or not therefore depends on the actual tax burden on financing activities in the country concerned. It is not the case that the scheme reduces these companies' normal overheads.

(34) Third, the scheme has yielded additional revenue, so it cannot be said that public funds have had to be used to fund its implementation.

(35) Fourth, it is not a measure which favours certain companies or the production of certain goods, it is a general measure. Any company operating in the Netherlands, irrespective of its economic activity, can make use of it, on condition that it is involved in international group financing activities. In addition, the gfa scheme does not comprise conditions concerning the company's size or nationality. Contrary to what the Commission claims, the scheme is not primarily intended for large Dutch groups. It can therefore be compared with an Italian tax scheme designed to promote the regularisation of businesses in the informal economy ([6]), which the Commission has long regarded as a general measure.

(36) Fifth, the requirement for companies to be active in four countries or on two continents does not detract from the general nature of the measure. It is precisely the companies which meet that criterion which incur the greatest international financing risks, the risks that the gfa scheme is designed to cover. Such risks are unlikely to be incurred by companies operating in only one or two countries. Whether the line should be drawn at three, four or five countries is irrelevant, because the limit set in Dutch law is reasonable in the light of the objective pursued, and is therefore in keeping with the nature and aims of the scheme.

(37) Sixth, the criteria used are objective and the Dutch authorities have no discretionary powers to allow companies to participate in the gfa scheme or not.

([6]) N 674/01.

(38) Seventh, even before the gfa scheme was introduced, it was possible in certain circumstances under the Dutch tax system to exempt reserves for specific risks from tax. According to the VNO-NCW, this is true in particular of the export risk reserve, which does not comprise any element of State aid.

4.2. **If the scheme constitutes State aid, then it is existing aid**

(39) First, the Commission made known its view that comparable measures did not constitute aid on numerous occasions before the gfa scheme was introduced in 1997. If the Commission changes its policy, the general principles of legal certainty and care require it to make this known in due time. If such notification is not forthcoming, the Commission must take account of the legitimate expectation that its action has created in the Member States and companies concerned. First and foremost, it should realise that a company's tax accounts cannot be restructured with retroactive effect.

(40) Second, the principle of equal treatment enshrined in point J of the Resolution of the Council of 1 December 1997 on a code of conduct for business taxation [7] (hereinafter referred to as the code of conduct) prevents the Commission from regarding the gfa scheme as new aid after classifying the Belgian coordination centres scheme as existing aid. This is all the more true because of the far-reaching legal consequences associated with the procedure for new aid. The inevitable conclusion must be that the Commission should process the gfa scheme under the procedure for existing aid, and that the decision of 11 July 2001 to institute the formal investigation procedure cannot be maintained.

(41) Third, from 17 July 2000 the Commission investigated the coordination centres scheme again as existing aid on the basis of Article 1(b)(v) of Council Regulation (EC) No 659/1999 [8] (hereinafter, procedural regulation). That Article states that existing aid is understood as meaning aid for which 'it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the common market and without having been altered by the Member State.' In its letter dated 17 July 2000 the Commission gives no indication of developments on the internal market prior to 10 December 1998, the date of publication of the Commission notice on the application of the State aid rules to measures relating to direct business taxation [9] (hereinafter, the notice). However, the scheme was introduced on 1 January 1997, i.e. two years before the notice was published. The gfa scheme must therefore be regarded as existing aid because, like the Belgian scheme, it did not constitute aid when it came into effect, but subsequently became aid as a result of developments on the internal market.

4.3. **In so far as the aid constitutes new aid, recovery is incompatible with the general principles of Community law**

(42) First, on the basis of Commission decisions concerning the Belgian coordination centres in the 1980s, the answer given by Commissioner Brittan to a parliamentary question in 1990 and the Commission's failure to take action on similar measures in other Member States, the Dutch Government and a diligent operator could be confident that the gfa scheme would not be regarded as constituting State aid. This legitimate expectation that the gfa scheme is compatible with the internal market constitutes an obstacle to recovery of the aid up to the date of the final decision. The Commission has itself pointed out that initiating the procedure merely entails a provisional assessment of whether the measure in question should be regarded as constituting State aid.

(43) Second, under the procedural regulation the Commission is required to take action without delay if it receives information concerning aid which may have been granted unlawfully. As early as 1997 the Commission received all the information it required from the Dutch authorities. That is also demonstrated by the fact that all the arguments put forward against the gfa scheme in the notification of 11 July 2001 were derived from information received previously. Therefore the Commission cannot claim that it acted with the requisite speed. That is reinforced by case-law in the RSV case [10], in which the Court ruled that the Commission's abnormal delay in taking action was one which could establish, on the part of the beneficiary of the aid, a legitimate expectation that no objection would be raised to the aid in question.

4.4. **Other comments**

(44) Some companies have stated that they used to benefit from the Belgian tax scheme for coordination centres and that, in their view, strong similarities exist between the two regimes. Others argue that the choice of the gfa scheme was not based solely on tax considerations because at the time there were other tax regimes within or outside the Community which were more advantageous. They maintain that their decision was based on a whole range of factors, including the quality of economic infrastructure in the Netherlands.

[7] See footnote 2.
[8] OJ L 83, 27.3.1999, p. 1.
[9] See footnote 3.
[10] Case 223/85 *RSV* v *Commission* [1987] ECR 4617.

5. COMMENTS FROM THE NETHERLANDS

(45) First, the Dutch authorities point out that the Commission initiated the procedure on the basis of information provided further to its request dated 12 February 1999, whereas that information had already been sent to the Commission by letters dated 21 March 1997 and 6 January 1998, further to the Commission's request of 5 March 1997.

5.1. Background to the introduction of the scheme

(46) According to the Dutch authorities, the scheme was introduced in response to the fact that international groups were moving their financing activities abroad for tax-related reasons. The tax authorities estimated that assets in excess of NLG 15 billion had left the country and were no longer subject to Dutch corporate tax. They therefore decided to legislate to make it more attractive for international groups based in the Netherlands to bring their financing activities back to the country or keep them there. The type of measure adopted reflects the nature and aims of the 1969 Corporate Tax Act. It concerns a reserve to cover certain risks, namely specific risks related to international groups' activities, focusing on financing activities and the holding of participations. The Dutch authorities maintain that it does not constitute a tax exemption because there is a real tax claim on the reserve. The measure is not designed to attract the group financing activities of internationally active companies to the Netherlands. However, companies of that type can also benefit from it under exactly the same conditions.

(47) The Dutch authorities also stress that the scheme is transparent and does not vest discretionary powers in the inspector or any other executive body. The one restriction to which the scheme is subject, namely that companies must be active in at least four countries or on two continents, is solely designed to ensure that only companies which incur the risks for which the reserve option was established make use of the scheme.

(48) The Netherlands has also declared that the measure forms part of a package which clarifies the conditions that a group financing company based abroad must meet in order to qualify as a participation in the Netherlands within the meaning of the 'participation exemption', and which limits or otherwise curbs erosion of the tax base by means of certain unjustified interest deductions within groups.

(49) Lastly, the Dutch authorities assert that the scheme serves its intended purpose because if it did not exist the group financing assets in question would be abroad rather than concentrated in the Netherlands. Companies which decided to remain or set up in the Netherlands cannot be regarded as having received favourable treatment, because they gave up secure, low rates of taxation in other countries. The actual tax burden in the Netherlands depends on trends in group financing profits and the losses which the reserve was established to cover.

5.2. The scheme as aid within the meaning of Article 87 of the EC Treaty

(50) First, the Dutch authorities take the view that the gfa scheme, as per Article 15b of the 1969 Corporate Tax Act, is not aid within the meaning of Article 87 of the EC Treaty. In particular, they consider that the scheme is not financed through State resources, that it is a general measure and that it accords with the nature and aims of the system enshrined in the aforementioned law.

5.2.1. *The gfa scheme is not financed through State resources*

(51) It follows from Court of Justice case-law that only advantages funded through State resources should be regarded as aid within the meaning of Article 87 of the EC Treaty ([11]). However, the gfa scheme is not funded with State resources because it was designed to be at least budget neutral when it was set up. The scheme involves assets and liabilities.

(52) After the gfa scheme was introduced, an amount of almost EUR 10 billion which had previously been invested outside the country and did not contribute anything to the Dutch treasury was transferred to the Netherlands in 1998. The scheme's introduction halted the trend for financing activities to be moved abroad. To that extent, it had a positive impact on Dutch tax revenue. As regards the advantage which the scheme represents, the Dutch authorities have estimated the average tax burden on financing activities under the scheme at 15 %, to which must be added tax on the risk reserve and on profits from other activities taxed at the standard rate. It is therefore difficult to determine whether the scheme is more or less advantageous than the tax arrangements from which the companies benefited abroad before the scheme was introduced in 1997.

5.2.2. *The scheme is a general measure*

(53) The scheme is not limited to specific sectors or regions and does not have a time limit either ([12]). Nor does it attribute discretionary powers to the State.

([11]) Case C-379/98 *Preussen Elektra* v *Schleswag* [2001] ECR I-2099, paragraph 59.

([12]) See Commission Decision 96/369/EC of 13 March 1996 (OJ L 146, 20.6.1996, p. 42).

(54) As the Commission acknowledges in its notice, the fact that some firms benefit more than others from a tax measure does not necessarily mean that they are caught by the State aid rules ([13]). According to the Netherlands, the Commission's view that the scheme is designed for large Dutch groups is incorrect as regards the alleged selectivity. In practice, there are at least 16 companies whose worldwide workforce is less than 1 000 (10 of them have fewer than 500 employees) and, at the same time, at least 16 companies whose assets used for group financing activities amount to less than EUR 27 million (for nine of those companies these assets amount to less than EUR 7 million). Of the 87 companies approved under the scheme, only 20 are listed on the Amsterdam stock exchange as AEX or Midkap funds.

(55) The two continents/four countries requirement cannot be regarded as a selectivity criterion but is a reasonable instrument for identifying the kind of activities for which risks are sufficiently real. An objective legal instrument which provides sufficient certainty for the kind of activities in question is a much better option than, for instance, discretionary powers for inspectors, subject to supervision by the national courts. It is a necessary implementing provision which fits with the system enshrined in Article 15b of the 1969 Corporate Tax Act and which, in addition, cuts administrative costs.

5.2.3. *The gfa scheme is in keeping with the nature and aims of the system enshrined in the 1969 Corporate Tax Act*

(56) In terms of its purpose, namely to prevent further erosion of the tax base, the scheme is necessary for and operational within the system enshrined in the 1969 Corporate Tax Act and is justified by the nature and aims of the system. The requirements governing implementation of the gfa scheme (concerning substance, the two continents/four countries and distribution respectively) are necessary to ensure the efficiency of the gfa scheme, to realise its objectives (authorisation of a reserve for risks associated with international group activities) and to prevent discretionary powers. What is more, these requirements cannot be regarded as selective or extremely strict.

(57) The Dutch Government also argues that a system in which a reserve is constituted to cover future losses is characteristic of the Dutch system for calculating annual tax revenue. As such, this system is barely different from the reserve to cover costs referred to in Article 13 of the Income Tax Act, which also applies to the corporate tax system.

([13]) See point 14 of the notice.

(58) Another characteristic of the Dutch income tax system is the freedom of choice usually available to companies within the framework of determining (annual) profits (albeit always subject to certain conditions and within certain limits). In certain circumstances, for stock valuation purposes, companies can choose between different systems with various fiscal repercussions (cost price or lower market value; minimum stock; last-in-first-out). This freedom of choice exists because it is not possible to draft legislation covering all the situations which occur in practice and because the executive bodies are not fully equipped to deal with them either. Taxation as a single entity within the context of corporate tax is also relevant here: companies can opt for it under certain conditions. The rules governing the size of grants must also be seen in this light: companies can determine the size of grants themselves subject to the specified ceiling.

(59) The Dutch system also provides for the reserve to be liberated at a nominal rate (lower than the normal rate), subject to certain conditions. A reduced rate of 15 % was applied to certain organisations which, following changes in the law, no longer qualified as investment companies and therefore had to be taxed on the reinvestment reserve set up.

(60) Lastly, when the group financing reserve is liberated every five years at 10 %, whether or not this is necessary for business-related reasons, the company in question faces a number of disadvantages: it can no longer provide grants and it is obliged to maintain the substance. If it cannot or will not accept these disadvantages the reserve must be liberated at the normal rate.

5.3. **Articles 96 and 97 of the Treaty**

(61) On the grounds set out above, the Dutch Government takes the view that the gfa scheme does not constitute aid within the meaning of Article 87 and that, if there is a disparity between the legislation of the Member States which distorts competition in the internal market, it should be possible to implement the Article 96 procedure. In so far as the Spaak report ([14]) distinguishes between general and specific distortions, the gfa scheme could perhaps be viewed as a general distortion rather than a specific one. In the Dutch Government's opinion, the discussions carried out within the framework of the code of conduct for business taxation should be regarded as consultation of the Member States within the meaning of Article 96 EC.

([14]) Report of the Heads of Delegation to the Foreign Ministers, Brussels 1956, pp. 60 and 61.

(62) In any event, the Dutch authorities take the view that Article 87 of the Treaty refers solely to specific distortions and that its scope cannot be extended to include general measures.

5.4. **The scheme is existing aid**

(63) If the gfa scheme is to be regarded as existing aid, the Netherlands takes the view that it should be regarded as existing aid within the meaning of Article 1(b)(v) of the procedural regulation. The Dutch Government drew this conclusion on the basis of the state of play of the Belgian scheme for coordination centres and the discussions on harmful tax competition.

(64) In 1984 the Commission took the view that the Belgian scheme for coordination centres ([15]) did not constitute aid. It subsequently took the view that the scheme became aid due to evolution of the common market within the meaning of Article 1(b)(v) of the procedural regulation. In the Dutch Government's view, there are therefore good reasons for regarding the gfa scheme, which has fundamental similarities to the Belgian coordination centres scheme, as existing aid. Both schemes are targeted on companies operating internationally which carry out highly mobile activities and are therefore extremely tax sensitive.

(65) The Dutch authorities believe that this viewpoint is endorsed by the answers given by the Commission to parliamentary questions on Belgian coordination centres and in particular the answer given in 1990 to the written question submitted by Mr Gijs de Vries ([16]), which indicated that the Commission took the view that the Belgian coordination centres scheme and similar schemes in other Member States were not caught by the State aid rules.

(66) In the Dutch Government's view, the evolution of the common market in question took place at the end of the 1990s. During those years the common market developed further as the third phase of economic and monetary union was launched and the pace of globalisation increased. Differences between the Member States' taxation systems, particularly in the area of business taxation, crystallised as a result. Internationally active companies increasingly sought to minimise tax costs. These developments gave rise to various calls, from the Commission amongst others, for action to be taken at European level on business taxation.

(67) According to the Dutch Government, this resulted in the code of conduct to prevent harmful tax competition, which was agreed on 1 December 1997 as part of the so-called tax package. The code of conduct expressly acknowledges the link with the State aid rules in the EC Treaty, and the Commission undertook to publish guidelines clarifying the application of the State aid rules to measures relating to direct business taxation. This clarification was provided by the Commission notice. The code of conduct also indicates that the Commission intends to examine or re-examine existing tax arrangements and proposed new legislation in the Member States in the light of EC Treaty rules. The Dutch Government believes that the Commission's plans, and in particular its intention to re-examine certain measures, was partly inspired by the idea that re-examination of tax measures was needed because the development of the common market might result in a change of view.

5.5. **Recovery**

(68) If, contrary to the view of the Dutch Government, the gfa scheme were to be classified as aid and not as existing aid, the Dutch Government believes that there would be grounds for not recovering the amounts disbursed.

(69) Article 14 of the procedural regulation indicates that the Commission does not require recovery of aid if this would be contrary to a general principle of Community law. In such cases recovery would be incompatible with the general principle of the protection of legitimate expectations ([17]). The Dutch standpoint is based specifically on the conclusions of the Advocate General in Case 223/85 ([18]), which state that the Commission must act with diligence in respect of non-notified aid as well.

(70) This principle that the Commission must act with diligence is also laid down in Article 10 of the procedural regulation.

(71) In addition, as indicated above, the Commission sent a request for information to the Netherlands by letter dated 5 March 1997 ([19]), to which the Dutch authorities provided a detailed reply by letter dated 21 March 1997. The Commission did not return to the matter until its letter of 12 February 1999 ([20]), which contained no reference to the correspondence of 1997 and did not

([15]) 14th Report on Competition Policy (1984), p. 271.
([16]) Written Question No 1735/90 (OJ C 63,11.3.1991, p. 37). See also the questions submitted previously by Belgian MEPs Radoux No 2381/82 (OJ C 170, 26.6.1983, p. 9) and Van Rompuy No 1817/83 (OJ C 148, 6.6.1984, p. 14).

([17]) This principle is recognised in Court of Justice case-law: judgment of 14 May 1975, Case 74/74 *CNTA* v *Commission* [1975] ECR 533; judgment of 25 January 1979, Case 98/78, *Racke* v *Mainz* [1979] ECR 69.
([18]) See footnote 10.
([19]) Letter D/51112 dated 5 March 1997.
([20]) Letter D/50716 dated 12 February 1999.

raise any other questions. The Dutch Government answered by letter dated 30 April 1999 ([21]). The Article 88(2) procedure was not instituted until 11 July 2001 ([22]). The Netherlands takes the view that there are no justifications in law for this delay of more than four years, especially in view of the fact that the gfa scheme was not amended in the intervening period. On that basis the Netherlands considers that, in accordance with the aforementioned case-law and the Commission's previous decisions ([23]), an excessive delay in the administrative procedure constitutes grounds for not proceeding with recovery.

(72) The Netherlands also takes the view that the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its powers ([24]). Replying to the questions raised by the Dutch Second Chamber (Parliament) in 1997 as to whether the scheme was compatible with Community law, the Dutch Government indicated that the Commission had asked for information and that after its questions had been answered nothing more had been heard from it. In addition, the information in question was made public. Not a single company had taken advantage of the gfa scheme in spring 1997, because no provisions had been issued. If the Commission had been more diligent at the time and made its objections known, things would have turned out differently and the damage to the companies in question could have been avoided.

(73) Lastly, in view of the fact that the gfa scheme forms part of a interrelated package of measures to prevent the tax base being eroded, the Dutch authorities believe that the Commission is wrong in highlighting a single element of the package. Even if the Commission could demonstrate that, in some cases, an advantage had been bestowed on certain companies, in these circumstances and against this background, recovering the funds would be a disproportionate measure.

6. OBSERVATIONS FROM THE NETHERLANDS ON THE COMMENTS FROM INTERESTED PARTIES

(74) In response to the comments submitted by interested parties, the Dutch authorities point out that the large number of answers reflects the importance of the issue and that the opinions put forward support and reinforce their own viewpoint. In addition, two aspects should be considered.

(75) First, the wide variety of companies which submitted comments demonstrates that the gfa scheme is open to all companies carrying out international financing activities, irrespective of the sector in which they operate.

(76) Second, in view of the letter from the Commission dated 17 July 2000, the gfa scheme should be classified as 'existing aid' only in so far as the Commission takes the view that it constitutes aid.

7. ASSESSMENT OF THE AID

(77) The Commission confirms its view that the gfa scheme constitutes aid within the meaning of Article 87(1) of the Treaty. This is because it cannot accept the arguments put forward by the Netherlands and the interested parties for the following reasons.

(78) The fact that the scheme was introduced with a view to combating capital flight from the Netherlands does not mean that its compatibility with the Treaty should be assessed purely on the basis of Articles 96 and 97. Investigations into whether fiscal or other measures are compatible with the State aid rules focus on the consequences of such measures rather than their objectives. In so far as a measure meets all four criteria of Article 87(1) of the Treaty, it constitutes aid and the provisions of Article 88 apply. Following the investigation described below, the Commission has concluded that the measure meets the four criteria.

7.1. Advantage

(79) First, the measure must bestow an advantage that reduces the charges normally borne by the company. As indicated in point 9 of the notice, this advantage may take the form of a reduction in the tax burden by including reserves in the balance.

(80) With the risk reserve, which is tax-exempt, the tax pressure can therefore be reduced immediately. This reduction may be significant (up to 80 % of taxable profits from the group's financing activities). This substantial, immediate reduction in tax favours, within the meaning of Article 87(1), both those companies which benefit directly from the scheme and the groups to which they belong. This advantage results from the tax deferral on the amounts included in the reserve; in some cases these amounts are taxed at a lower rate or not at all.

(81) Releases from the risk reserve are generally subject to the standard corporate tax rate in the Netherlands, i.e. 35 %. However, this is not always the case. In certain circumstances, funds released from the reserve may be taxed at a rate of 10 %. Funds may be released from the risk reserve for share purchases without being immediately subject to tax. Depending on the case in point, if

([21]) No 9596.
([22]) Reference D/289741.
([23]) See Decisions 92/329/EEC and 2001/168/ECSC.
([24]) See Case 48/69, *ICI* v *Commission* [1972] ECR 619, paragraph 49.

the government takes the view that a particular risk is involved, between 50 and 100 % of the purchase price may be released from the reserve. On the other hand, amounts included on the company's balance sheet are diminished accordingly. This mechanism enables the company's tax burden to be reduced immediately without the risk covered by the reserve actually arising in practice. Admittedly, where acquired assets are liquidated or sold, the loss in tax revenue will be less if the value of assets entered to the balance sheet is reduced by the amount released from the reserve with a view to acquisition. However, liquidation of the said assets remains an uncertain element, even completely hypothetical in certain cases. No deadline has yet been fixed for offsetting this advantage in terms of taxation.

(82) The Commission cannot accept that the gfa scheme does not bestow any advantage whatsoever in comparison with other countries' schemes for international group financing activities. The advantage must be assessed, within the framework of the State aid investigation, purely at national level, in this instance with reference to Dutch companies which are excluded from the gfa scheme by virtue of the strict conditions which apply to it. In this case, it is therefore not relevant whether the gfa scheme is less attractive than other schemes applied outside the Netherlands.

(83) In conclusion, the Commission takes the view that the establishment of the reserve bestows an advantage in the form of an indefinite tax deferral. In addition, the fact that lower tax rates apply for certain uses of the reserve also comprises an advantage within the meaning of Article 87(1) of the EC Treaty, both for the companies concerned and the groups to which they belong.

7.2. **Use of State resources**

(84) Second, the advantage must be granted through State resources. In this case, the Commission takes the view that the measure is granted through State resources because the tax reduction awarded, irrespective of whether it takes the form of exemption or a lower rate, leads to a reduction in State revenue. As the Netherlands has stated in its capacity as an interested party, the measure has not given rise to a loss of revenue for the State but, on the contrary, has prevented companies leaving the Netherlands and has helped to entice them back or to set up there, which compensated for the loss of revenue resulting from the reduction in the tax burden. The Commission cannot share this assessment, which is based on a cost-benefit analysis. The fact that a reduction in revenue can be compensated for subsequently by an increase in the number of taxpayers as a result of the measure does not mean that the measure is not financed from State resources. Whether a measure constitutes aid must be assessed at a given time at the level of individual companies with a view to determining whether some companies receive more State aid or contribute less to financing public goods and services. Otherwise any type of aid would be justified in so far as it enticed a company to set up in a given Member State, enabled it to increase its future taxable revenue or prevented it from leaving the country.

7.3. **Negative impact on competition and trade between Member States**

(85) According to Court of Justice case-law ([25]) and point 11 of the aforementioned notice, 'the mere fact that the aid strengthens the firm's position compared with that of other firms which are competitors in intra-Community trade is enough to allow the conclusion to be drawn that intra-Community trade is affected'. This condition is met because the recipients are companies belonging to multinational groups, most of which, if not all, are active on the intra-Community market. The granting of special advantages to these companies operating in at least four countries or on two continents reinforces their financial position. In addition, the Commission notes that the scheme has a negative impact on intra-Community trade and competition given that, as the Netherlands and the interested parties have stressed, it is open to all sectors of economic activity, including sectors where there is intense intra-Community trade

7.4. **Selectivity**

(86) Lastly, the measure must be specific or selective in the sense that it favours certain companies or certain goods.

(87) To start with, the fact that the scheme is not selective in terms of companies' nationality, size or the sector in which they operate, is not sufficient to demonstrate that the gfa scheme is a general measure. Given that the gfa scheme is solely targeted on the financing activities of internationally active groups operating in at least four countries or on two continents, it can be argued with justification that the selectivity criterion has been met. As indicated in point 20 of the notice, some tax benefits are restricted to certain functions (i.e. intra-group services). If such tax benefits favour certain companies or goods, they may constitute aid. Not only does the gfa scheme apply purely to intra-group financial transactions, but on top of that only some of those transactions are eligible.

([25]) Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671.

(88) Companies which may qualify for the scheme have to meet supplementary requirements. Only financing operations which can be conducted independently from the Netherlands are eligible, and financial activities for Netherlands-based entities should be limited to 10 % of total activities. These criteria confirm the expressed aim of the Dutch authorities to reserve the scheme for internationally active groups whose financial centre is in the Netherlands but which conduct financing activities chiefly focused on the group's entities abroad. As such, the measure is selective, if only because it does not apply to groups which are mainly based on Dutch territory or to multinationals with operations in fewer than four countries. In addition, as the Dutch Government has emphasised, the measure's purpose is to halt the flight of multinationals' financing activities and to entice them back to the Netherlands. Right from the outset, then, the measure was targeted on a limited number of companies.

(89) Nor can it be accepted that the measure is a general measure on the basis that it is comparable with other Dutch tax provisions concerning the establishment of risk reserves and with the Italian scheme for the black economy. Those two measures have different characteristics to the gfa scheme. The Commission points out that the Italian scheme is open to all companies, irrespective of the activity in question and whether it is conducted within a group or not, and irrespective of where it is carried out, at national or international level.

(90) In addition, it should be noted that the aforementioned benefits, which may significantly reduce the tax burden, apply to only a very limited number of companies, i.e. 87. Clearly, this number is particularly small in comparison with the total number of companies subject to corporate tax ([26]). Furthermore, even if it were to be accepted that this number should be compared against the total number of multinationals in the Netherlands, the following needs to be established. Only a minority of these groups can meet the requirements set out in the gfa scheme, irrespective of the nature or importance of the risks incurred as a result of their international activities.

Justification by the nature or aims of the system

(91) As indicated in point 23 of the notice, 'the differential nature of some measures does not necessarily mean that they must be considered to be State aid.' Measures which resemble State aid can be justified by the nature or aims of the system. Given that the present case concerns the establishment of a reserve for the risks associated with certain activities, the Dutch authorities have put forward the following arguments.

(92) First, international transactions entail specific risks in comparison with national transactions for which the political or commercial risks are less important or can be forecast more easily. In addition, as the Dutch authorities have stated, additions to the risk reserve must be proportionate to actual risks.

(93) Referring to the arguments put forward as part of the procedure, the Commission recognises that amounts included in the risk reserve may cover very real risks, as is demonstrated by the notification given to it by various interested parties to the effect that they had released amounts from the reserve after certain risks had actually arisen in practice. However, the fact that the reserve can be justified, albeit in certain cases, from the accounting and financial perspective, does not mean that limiting it to certain categories is also justified.

(94) The Commission cannot endorse the argument that the sole purpose of the minimum four countries/two continents requirement is to provide objective criteria which can be used to assess whether the basic requirements are met. Although it is logical to set certain limits or thresholds in a tax structure to ensure that it works properly, this should not result in excessive demands being made which are not proportionate to the desired aims. Objectively speaking, groups which are active in only three countries or on one continent are no less exposed to the risks associated with international financing activities. On the other hand, there seems to be no doubt that the number of companies which do not meet the gfa scheme's criteria far exceeds the number of those which do. In that sense, and in the light of the Court of First Instance's recent *Alava* judgment ([27]), it has not been proven that the measure is justified by the nature or aims of the Dutch tax system. Thus measures to combat erosion of the tax base or improve the lack of competitiveness which group financing activities in the Netherlands suffered from before 1997 do not justify the award of State aid to a limited number of companies. This principle was established in the Court of Justice judgment in Case 173/73 ([28]).

(95) As indicated above, the scheme's express aim was to encourage large multinationals to transfer their financing activities back to the Netherlands. This is an economic aim and is not inherent in a taxation system.

([26]) According to report No 2/2002 of the European Observatory for SMEs, the total number of companies in the Netherlands is 555 000.

([27]) Judgment of 23 October 2002, Case T-346/99 [2002], p. II-4259, paragraphs 58-63.

([28]) Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraphs 22-33.

(96) In addition, even if it has been proven, in the light of the comments submitted by the Netherlands and other interested parties, that additions to the risk reserve were genuinely intended to cover risks, it has not been shown that the limit of 80 % of net profits from international financing activities and 80 % of profits from all the recipient's activities were proportionate in all cases to the actual risks incurred. Additions to the reserve can be made as soon as a risk has been shown to exist; however, it is not necessary to demonstrate the importance of the risk, the only restriction being that no more than 80 % of profits from international financing activities can be added to the reserve.

(97) Since the purpose of the risk reserve is to cover the risks associated with international financing activities, releases from the risk reserve with temporary tax exemption for the purpose of acquisitions in the Netherlands or abroad are not in keeping with the logic which underpins the establishment of risk reserves in general, but tally far more closely with the logic of an aid scheme for company takeovers. This is because the reduction in the tax burden in cases of company takeovers is compensated for only if the companies in question are sold on or wound up. Whether tax is levied in such circumstances does not depend on whether the risk covered actually arises but on a decision by the company caught by the gfa scheme.

(98) Lastly, irrespective of the limits provided for in this scheme, the Commission basically takes the view that the tax treatment of intergroup financial transactions should not differ from the arrangements for financial transactions between non-associated companies. Since the main justification put forward in the procedure is the disadvantage suffered by these activities in the Netherlands in comparison with some other tax systems, the Commission takes the view that it is external to the logic of the Dutch tax system but tends to reflect economic policy objectives.

7.5. **Classification of the scheme as unlawful aid**

(99) Both the Dutch authorities and the interested third parties have argued that the gfa scheme should be regarded as existing aid because of its similarity to the Belgian coordination centres scheme, which could not be regarded as aid according to the 1984 Commission ruling. A number of elements need to be identified in that connection.

(100) First, it should be noted that the concept of an aid measure is an objective criterion and that the Commission does not have any discretionary power as far as it is concerned. The Court [29] has also ruled that the Commission does not have any margin for manoeuvre when asked whether a measure constitutes existing aid. It has been established in the present case that the Dutch scheme was not notified to the Commission prior to implementation, and that the information which the Dutch authorities provided to the Commission at the latter's request in March 1997 cannot be regarded as informing the Commission within the meaning of Article 88(3) of the Treaty.

(101) Second, as regards the Belgian coordination centres scheme quoted by the Dutch authorities and the interested parties, it should be noted that although a decision was issued in 1984 indicating that the scheme should not be regarded as aid, it goes without saying that it concerned the Belgian scheme alone and was solely addressed to Belgium. Moreover, although the two schemes do have some features in common, the fact that they are not identical cannot be denied in view of the techniques used and the form in which the benefits were granted.

(102) Lastly, the gfa scheme cannot be considered to be existing aid within the meaning of Article 1(b)(v) of the procedural regulation because all the elements of State aid were present from the time when the measure was introduced. Nor had it been demonstrated that the common market has evolved. Because even if the third phase of economic and monetary union had already been launched, and increasing globalisation was already a reality, these notable events nevertheless formed part of ongoing processes which had started long before the gfa scheme was approved. The third phase of monetary union is the culmination of attempts to coordinate exchange-rate policy which began in the 1970s. For its part, globalisation can be traced back to the multilateral nature of the GATT Agreement [30] immediately after the war. As far as the aforementioned Commission notice is concerned, as the Court of First Instance observed in the *Alava* judgment [31], it is substantially based on the case-law of the Court of Justice and the Court of First Instance and merely elucidates the application to tax measures of Articles 87 and 88 of the Treaty. Even assuming that the Commission's decision-making practice has changed, as underlined by the Court of First Instance in its *Gibraltar* judgment [32], the answer to whether a measure constitutes existing aid or new aid cannot depend on a subjective assessment by the Commission but must be answered independently of its previous administrative practice.

7.6. **Investigation into compatibility**

(103) Given that the relevant tax scheme constitutes aid within the meaning of Article 87(1) of the EC Treaty, whether it is compatible must be examined in the light of the derogations referred to in Article 87(2) and (3).

[29] Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraphs 44 *et seq*.

[30] General Agreement on Tariffs and Trade.

[31] Paragraphs 83 and 84.

[32] Joined cases T-195/01 and T-207/01 [2002] ECR II-2309, paragraph 121.

(104) The derogations set out in Article 87(2) EC of the Treaty concerning aid with a social character, granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to the economy of certain areas of the Federal Republic of Germany do not apply in the present instance.

(105) The derogation in Article 87(3)(a) authorising aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment does not apply in this case because no part of the Netherlands is caught by the Article in question. The same is true of the derogation in Article 87(3)(c) authorising aid to facilitate the development of certain economic areas because the scheme in question applies outside the regions eligible for this derogation.

(106) The tax scheme on the risk reserve does not fall within the category of projects of common European interest which qualify for the derogation enshrined in Article 87(3)(b) either, nor is it designed to promote culture and heritage conservation, so it does not qualify for the derogation in Article 87(3)(d).

(107) Lastly, it needs to be investigated whether the scheme is eligible for the derogation enshrined in Article 87(3)(c) whereby aid to facilitate the development of certain economic activities is authorised on condition that it does not adversely affect trading conditions to an extent contrary to the common interest.

(108) The tax benefits associated with the establishment of the risk reserve and its voluntary release are not linked to investments, job creation or specific projects. They merely entail a reduction in overheads and may therefore be regarded as operating aid. The Commission therefore takes the view that they adversely affect trading conditions to an extent contrary to the common interest and that as such they do not qualify for the derogation set out in Article 87(3)(c).

(109) With regard to the aid granted when the reserve is released with a view to acquiring companies in the Netherlands and abroad, the Commission finds that the measures should normally be limited to the assisted areas or SMEs, and to investments which qualify for aid, namely initial investments ([33]), and that aid intensity should reflect the level authorised by the Commission. The Commission finds, however, that the present measure does not include any provisions on the aforementioned areas, the exclusion of large companies, eligible costs or restrictions on aid intensity. In addition, the post-investment tax cut is immediate and the final amount cannot be calculated in advance; as such, the measure may include elements of operating aid which, as stated above, is not eligible for the derogation enshrined in Article 87(3)(c).

(110) Given that the scheme does not qualify for any of the derogations in Article 87 of the EC Treaty, it is incompatible with the common market.

7.7. **Legitimate expectation**

(111) Article 14(1) of Regulation (EC) No 659/1999 states: 'The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.' Pursuant to Court of Justice case-law and the Commission's previous decisions, a recovery decision constitutes an infringement of a general principle of Community law in so far as the Commission creates, by its actions, a legitimate expectation on the part of the recipient that the aid was granted in accordance with Community law.

In the Van den Bergh and Jurgens case ([34]) the Court stated: 'The Court has consistently held that any trader in regard to whom an institution has given rise to justified hopes may rely on the principle of the protection of legitimate expectation. On the other hand, if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted.'

In the present case the Commission notes that, although the Belgian and Dutch schemes are not completely identical, the gfa scheme nevertheless has similarities with the scheme introduced in Belgium by Royal Decree No 187 of 30 December 1982 dealing with the tax treatment of coordination centres. Both of the measures concern intra-group activities and a significant number of beneficiaries of the gfa scheme had previously made use of the Belgian scheme. In its decision of 2 May 1984, the Commission ruled that the Belgian scheme was not aid within the meaning of Article 92(1) EC of the Treaty. Even if this decision was not published, it should be noted, as the Dutch authorities and interested parties have stressed, that it was stated in the 14th Competition Report and in an answer to a parliamentary question ([35]) that the Commission had not lodged any objections to the scheme in question.

([33]) For the definition of initial investments, see point 4.4 of the Guidelines on national regional aid (OJ C 74,10.3.1998, p. 9).

([34]) Case 265/85 *Van den Bergh en Jurgens* v *Commission* [1987] ECR 1155, paragraph 44.

([35]) See footnote 16.

(112) In this context, the Commission points out that its decision on the Belgian scheme was adopted before the gfa scheme entered into force. It also notes that all beneficiaries of the gfa scheme were recognised as such before the Commission decided to institute the formal investigation procedure. The Commission therefore accepts the arguments put forward by the Dutch authorities and interested parties to the effect that the beneficiaries had a legitimate expectation and will refrain from ordering recovery of the aid.

8. **THE NEED FOR A TRANSITIONAL PERIOD**

(113) By letter dated 3 October 2002 the Netherlands informed the Commission that, in view of legitimate expectation and the safeguarding of acquired rights, it should enable companies currently using the gfa scheme to benefit from this scheme until the end of the period for which they were recognised as beneficiaries. In the Commission's view, two issues need to be examined in this connection. First, what needs to be done with the reserves already created under the gfa scheme, and second, whether companies can still use the scheme to constitute new reserves after the final decision.

(114) First, it should be noted that the beneficiaries of the scheme can invoke the principle of legitimate expectation when constituting these reserves. The amounts placed in these reserves are regarded as intended to cover the risks associated with financing activities. Leaving aside the nature of the potential risks, it emerged that the decisions to place funds in the reserves were the result of trade-offs and formed part of the beneficiaries' long-term strategy. The Commission finds that although the advantages of using the reserve can be spread over time, they are induced by the establishment of the reserve. It can therefore be posited that the advantages associated with the actual amounts in the reserves are safeguarded in principle on the basis of legitimate expectation. As such, in the case in point there is no basis for requiring the amounts in the risk reserve to be subject immediately to corporate tax at the normal rate. The amounts placed in these reserves can therefore be used under existing Dutch law and qualify for the benefits for which it provides.

(115) With regard to the establishment of new reserves, the Commission takes the view in principle that after a final decision in which a scheme is classified as unlawful aid, companies may no longer invoke the principles of legitimate expectation or legal certainty. It goes without saying that the principle of legitimate expectation cannot be invoked after a reasonable period, which should provide the Member State and the companies concerned with sufficient time to adapt to the new situation. However, the Commission feels that the following factors should be taken into account in this particular case.

(116) First, the Commission takes note of the context in which the procedure was initiated. It complements the activities launched by the Member States under the code of conduct with a view to combating harmful tax competition. The progress made by the Member States towards the final objective of bringing harmful tax competition to an end should also be taken into account. As such, the distortion of competition entailed by maintaining the scheme until 2010 should be offset against the progress achieved at Community level in realising the objective of combating harmful tax competition.

(117) Second, as the Netherlands stated in its letter of 3 October 2002, the number of beneficiaries of the scheme is to diminish gradually in the run-up to 2010. In December 2002 the Dutch authorities announced that no new applications would be accepted. As a result the number of beneficiaries will gradually diminish and it is probable that most of them will make use of the remaining life of the scheme to liquidate the reserves, given that the Netherlands has undertaken not to extend the scheme beyond 2010. In view of the fact that a date has been set for the scheme's termination, the Commission takes the view that the beneficiaries will focus mainly on using existing reserves rather than constituting new reserves.

(118) In view of these exceptional circumstances, the Commission considers that the companies benefiting from the gfa scheme when this procedure was initiated can continue to constitute new reserves or to continue to use existing reserves in accordance with the gfa scheme's implementing provisions while the current provisions remain in force and until 31 December 2010 at the latest.

9. **CONCLUSION**

(119) The Commission finds that the Kingdom of the Netherlands has unlawfully implemented the aid in breach of Article 88(3) of the Treaty. It regards the gfa scheme as incompatible with the common market. However, in view of the beneficiaries' legitimate expectation and the exceptional circumstances described above, there are no grounds for proceeding with recovery of the aid and the scheme can be maintained until 31 December 2010,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme implemented by the Netherlands pursuant to Article 15b of the 1969 Corporate Tax Act and put into effect by the Law of 13 December 1996 is incompatible with the common market.

Article 2

The Netherlands shall terminate the scheme referred to in Article 1. The companies covered by this scheme as at 11 July 2001 may continue to benefit from it until the end of the 10-year period granted to them by the Dutch tax authorities. In any event, implementation of the scheme shall be terminated by 31 December 2010 at the latest.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 17 February 2003.

For the Commission

Mario MONTI

Member of the Commission