ISSN 0378-6978

Official Journal

of the European Communities

L 50

Volume 45

21 February 2002

English edition

Legislation

Contents

Price: EUR 22

(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)

II *Acts whose publication is not obligatory*

Council

2002/146/EC:

2002/147/EC:

2002/148/EC:

Commission

2002/149/EC:

2002/150/EC:

2002/151/EC:

EN

[1] Text with EEA relevance

(Continued on inside back cover)

Contents (continued)

EN

[1] Text with EEA relevance

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION
of 18 February 2002
concerning restrictive measures against Zimbabwe

(2002/145/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) On 28 January 2002, the Council expressed its serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

(2) The Council further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe on the right to freedom of speech, assembly and association, mainly the Public Order and Security Act and the General Laws Amendment Act (both of which violate the norms and standards for free and fair elections as agreed by SADC Parliamentarians in March 2001) and the proposed legislation to regulate the media.

(3) Therefore, the EU decided it will close the consultations conducted under Article 96 of the ACP-EC Partnership Agreement and implement targeted sanctions if:

— the Government of Zimbabwe prevents the deployment of an EU election observation mission starting by 3 February 2002, or if it later prevents the mission from operating effectively, or

— the Government of Zimbabwe prevents the international media from having free access to cover the election, or

— there is a serious deterioration on the ground, in terms of a worsening of the human rights' situation or attacks on the opposition, or

— the election is assessed as not being free and fair.

(4) The Council has assessed that the Government of Zimbabwe continues to engage in serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. Therefore, for as long as the violations occur, the Council deems it necessary to introduce restrictive measures against the Government of Zimbabwe and those who bear a wide responsibility for such violations.

(5) Action by the Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The supply or sale of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned to Zimbabwe by nationals of Member States or from the territories of Member States shall be prohibited whether originating or not in their territories.

2. The provision to Zimbabwe of technical training or assistance related to the provision, manufacture, maintenance or use of the items mentioned in paragraph 1 by nationals of Member States or from the territories of the Member States, shall be prohibited.

3. Paragraphs 1 and 2 shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, nor shall they apply to protective clothing, including flak jackets and military helmets, temporarily exported to Zimbabwe by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 2

No equipment which might be used for internal repression will be supplied to Zimbabwe.

Article 3

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons listed in the Annex, who are engaged in activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.

2. Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.

3. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of humanitarian need, including religious obligation, or on grounds of attending meetings of international bodies or conducting political dialogue that promote democracy, human rights and the rule of law in Zimbabwe.

4. A Member State wishing to grant exemptions referred to in paragraph 3 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within 48 hours of receiving notification of the proposed exemption.

Article 4

1. Funds, financial assets or economic resources of the persons listed in the Annex, who are engaged in activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe, will be frozen.

2. No funds, financial assets or economic resources will be made available directly or indirectly to the persons referred to in paragraph 1.

Article 5

The Council, acting upon a proposal by a Member State or the Commission, shall adopt modifications of the list contained in the Annex as required by political developments in Zimbabwe.

Article 6

In order to maximise the impact of the abovementioned measures, the European Union shall encourage third States to adopt restrictive measures similar to those contained in this Common Position.

Article 7

This Common Position shall take effect on the date of its adoption. It shall apply for a renewable 12-months' period after that date.

This Common Position shall be kept under constant review.

Article 8

This Common Position shall be published in the Official Journal.

Done at Brussels, 18 February 2002.

For the Council

The President

J. PIQUÉ I CAMPS

ANNEX

List of persons referred to in Articles 3 and 4

1. MUGABE Robert Gabriel	President, born 21.2.1924, Kutama
2. UTETE Charles	Cabinet Secretary, born 30.10.1938
3. MNANGAGWA Emmerson	Parliamentary Speaker, born 15.9.1946
4. NKOMO John	Home Affairs Minister, born 22.8.1934
5. GOCHE Nicholas	Security Minister, born 1.8.1946
6. MANYIKA Elliot	Youth Minister, born 30.7.1955
7. MOYO Jonathan	Information Minister, born 12.1.1957
8. CHARAMBA George	Information Minister's Permanent Secretary and Spokesman
9. CHINAMASA Patrick	Justice Minister, born 25.1.1947
10. MADE Joseph	Agricultural Minister, born 21.11.1954
11. CHOMBO Ignatius	Local Govt Minister, born 1.8.1952
12. MUDENGE Stan	Foreign Minister, born 17.12.1941, Zimutu Reserve
13. CHIWEWE Willard	Ministry of Foreign Affairs Senior Secretary, born 19.3.1949
14. ZVINAVASHE Vitalis	General (CDS), born 1943
15. CHIWENGA Constantine	Lt Gen (Army), born 25.8.1956
16. SHIRI Perence	Air Marshal (Air Force), born 1.11.1955
17. CHIHURI Augustine	Commissioner (Police), born 10.3.1953
18. MUZONZINI Elisha	Brig. (Intelligence), born 24.6.1957
19. ZIMONTE Paradzai	Prisons chief
20. SEKERAMAYI Sidney	Defence Minister, born 30.3.1944

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 310/2002
of 18 February 2002
concerning certain restrictive measures in respect of Zimbabwe

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Council Common Position 2002/145/CFSP of 18 February 2002 concerning restrictive measures against Zimbabwe [1],

Having regard to the proposal from the Commission,

Whereas:

(1) The Council has expressed serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It has noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

(2) The Council has assessed that the Government of Zimbabwe continues to engage in serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. Therefore, for as long as the violations occur, the Council deems it necessary to introduce restrictive measures against the government of Zimbabwe and those who bear a wide responsibility for such violations.

(3) Therefore, Common Position 2002/145/CFSP provides that certain restrictive measures will be taken in respect of Zimbabwe, in particular the freezing of funds, financial assets or economic resources of individual members of the Government and natural or legal persons associated with them as well as a ban on exports on repression equipment and a ban on technical advice, assistance or training related to military activities.

(4) These measures fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the said measures as far as the territory of the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

1. 'Funds, other financial assets or economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

2. 'freezing of funds, other financial assets or economic resources' means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

Article 2

1. All funds, other financial assets or economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in Annex I, shall be frozen.

2. No funds, financial assets or economic resources shall be made available directly or indirectly to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

[1] See page 1 of this Official Journal.

Article 3

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, natural and legal persons, entities and bodies shall:

(a) provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 to the competent authorities of the Member States listed in Annex III where they are resident or located, and to the Commission.

In particular, available information in respect of funds, financial assets or economic resources owned or controlled by persons listed in Annex I during the period of six months before the entry into force of this Regulation shall be provided;

(b) cooperate with the competent authorities listed in Annex III in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

3. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

Article 4

Article 2 shall not apply to:

(a) the crediting of frozen accounts on the condition that any additions shall be frozen;

(b) the use of frozen funds for:
- essential human needs of a natural person included in Annex I such as payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;
- payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community;
- payment of charges due to a financial institution in the Community for the maintenance of accounts.

The Commission shall be informed of any payment made under this Article and of conclusive evidence of the fulfilment of the conditions and the purposes. Such evidence shall be kept available for at least five years for inspection by competent authorities.

Article 5

1. Notwithstanding the provisions of Article 2 and with a view to the protection of the interests of the Community, which include the interests of its citizens and residents, the competent authorities of a Member State may grant specific authorisations:

— to unfreeze funds, other financial assets or other economic resources,

— to make funds, other financial assets or other economic resources available to a person, entity or body included in the list referred to in Article 2(2),

after consultation with the other Member States and the Commission in accordance with paragraph 2.

2. A competent authority which receives a request for an authorisation referred to in paragraph 1 shall notify the competent authorities of the other Member States and the Commission, as listed in Annex III, of the grounds on which it intends to either reject the request or grant a specific authorisation.

The competent authority which intends to grant a specific authorisation shall take due account of comments made within two weeks by other Member States and the Commission.

Article 6

Without prejudice to the powers of the Member States in the exercise of their public authority, the provision to Zimbabwe of technical training or assistance related to the provision, manufacture, maintenance or use of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned shall be prohibited.

Article 7

1. It shall be prohibited, knowingly and intentionally, to sell, supply, export or ship, directly or indirectly, equipment which might be used for internal repression as listed in Annex II to any natural or legal person, entity or body in Zimbabwe or for the purpose of any business carried on in or operated from the territory of Zimbabwe.

2. Paragraph 1 shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, nor shall they apply to protective clothing, including flak jackets and military helmets, temporarily exported to Zimbabwe by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 8

The Commission shall be empowered to amend:

— Annex I on the basis of decisions in respect of the Annex of Common Position 2002/145/CFSP, and

— Annex III on the basis of information supplied by the Member States.

Article 9

The participation, knowingly and intentionally, in related activities the object or effect of which is, directly or indirectly to promote the transactions or activities referred to in Articles 2, 6 and 7 or to circumvent the provisions of this Regulation shall be prohibited.

Article 10

The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgements handed down by national courts.

Article 11

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Article 12

This Regulation shall apply:

— within the territory of the Community, including its airspace,

— on board any aircraft or any vessel under the jurisdiction of a Member State,

— to any person elsewhere who is a national of a Member State, and

— to any legal person, entity or body which is incorporated or constituted under the law of a Member State.

Article 13

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

This Regulation shall apply for a renewable 12 months' period after that date.

It shall be kept under constant review.

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

Done at Brussels, 18 February 2002.

For the Council

The President

J. PIQUÉ I CAMPS

ANNEX I

List of persons, entities and bodies referred to in Article 2

1. MUGABE Robert Gabriel	President, born 21.2.1924, Kutama
2. UTETE Charles	Cabinet Secretary, born 30.10.1938
3. MNANGAGWA Emmerson	Parliamentary Speaker, born 15.9.1946
4. NKOMO John	Home Affairs Minister, born 22.8.1934
5. GOCHE Nicholas	Security Minister, born 1.8.1946
6. MANYIKA Elliot	Youth Minister, born 30.7.1955
7. MOYO Jonathan	Information Minister, born 12.1.1957
8. CHARAMBA George	Information Minister's Permanent Secretary and Spokesman
9. CHINAMASA Patrick	Justice Minister, born 25.1.1947
10. MADE Joseph	Agricultural Minister, born 21.11.1954
11. CHOMBO Ignatius	Local Govt Minister, born 1.8.1952
12. MUDENGE Stan	Foreign Minister, born 17.12.1941, Zimutu Reserve
13. CHIWEWE Willard	Ministry of Foreign Affairs Senior Secretary, born 19.3.1949
14. ZVINAVASHE Vitalis	General (CDS), born 1943
15. CHIWENGA Constantine	Lt Gen (Army), born 25.8.1956
16. SHIRI Perence	Air Marshal (Air Force), born 1.11.1955
17. CHIHURI Augustine	Commissioner (Police), born 10.3.1953
18. MUZONZINI Elisha	Brig. (Intelligence), born 24.6.1957
19. ZIMONTE Paradzai	Prisons chief
20. SEKERAMAYI Sidney	Defence Minister, born 30.3.1944

ANNEX II

Equipment for internal repression envisaged by Article 7

The list below does not comprise the articles that have been specially designed or modified for military use and that are covered by the arms embargo confirmed by Common Position 2002/145/CFSP.

Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

Specially designed fingerprint equipment.

Power controlled searchlights.

Construction equipment provided with ballistic protection.

Hunting knives.

Specially designed production equipment to make shotguns.

Ammunition hand-loading equipment.

Communications intercept devices.

Solid-state optical detectors.

Image-intensifier tubes.

Telescopic weapon sights.

Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:

1. signal pistols;

2. air- and cartridge-powered guns designed as industrial tools or humane animal stunners.

Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.

Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.

Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.

All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.

Water cannon and specially designed or modified components therefor.

Vehicles equipped with a water cannon.

Vehicles specially designed or modified to be electrified to repel borders and components therefor specially designed or modified for that purpose.

Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:

— handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.

Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.

Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.

Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:

— TV or X-ray inspection equipment.

Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

— those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).

Equipment and devices designed for explosive ordnance disposal; except:

1. bomb blankets;

2. containers designed for folding objects known to be, or suspected of being improvised explosive devices.

Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

Software specially designed and technology required for all listed items.

Linear cutting explosive charges.

Explosives and related substances as follows:

— amatol,

— nitrocellulose (containing more than 12,5 % nitrogen),

— nitroglycol,

— pentaerythritol tetranitrate (PETN),

— picryl chloride,

— tinitorphenylmethylnitramine (tetryl),

— 2,4,6-trinitrotoluene (TNT)

Software specially designed and technology required for all listed items.

ANNEX III

List of competent authorities referred to in Article 3(1) and Article 5

BELGIUM

Ministère des finances
Trésorerie
avenue des Arts 30
B-1040 Bruxelles
Fax (32-2) 233 75 18

DENMARK

Erhvervs- og Boligstyrelsen
Dahlerups Pakhus
Langelinie Alle 17
DK-2100 København Ø
Tel. (45) 35 46 60 00
Fax (45) 35 46 60 01

GERMANY

Deutsche Bundesbank
Postfach 100602
D-60006 Frankfurt/Main
Tel. (00-49-69) 95 66-01
Fax (00-49-69) 560 10 71

GREECE

— *For Capitals*

Ministry of National Economy
General Directorate of Economic Policy
5-7 Nikis str.
GR-101 80 Athens
Tel. (00-30-10) 333 27 81-2
Fax (00-30-10) 333 28 10, 333 27 93

Υπουργείο Εθνικής Οικονομίας
Γενική Διεύθυνση Οικονομικής Πολιτικής
Νίκης 5-7
GR-101 80 Αθήνα
Τηλ. (00-30-10) 333 27 81-2
Φαξ (00-30-10) 333 28 10, 333 27 93

— *For Trade sector*

Ministry of National Economy
General Directorate for Policy Planning and Implementation
1, Kornarou str.
GR-105 63 Athens
Tel. (00-30-10) 333 27 81-2
Fax (00-30-10) 333 28 10, 333 27 93

Υπουργείο Εθνικής Οικονομίας
Γενική Διεύθυνση Σχεδιασμού και Διαχείρισης Πολιτικής
Κορνάρου 1
GR-105 63 Αθήνα
Τηλ. (00-30-10) 333 27 81-2
Φαξ (00-30-10) 333 28 10, 333 27 93

SPAIN

Dirección General de Comercio e Inversiones
Subdirección General de Inversiones Exteriores
Ministerio de Economía
Paseo de la Castellana, 162
E-28046 Madrid
Tel. (00-34) 91 349 39 83
Fax (00-34) 91 349 35 62

Dirección General del Tesoro y Política Financiera
Subdirección General de Inspección y Control de Movimientos de Capitales
Ministerio de Economía
Paseo del Prado, 6
E-28014 Madrid
Tel. (00-34) 91 209 95 11
Fax (00-34) 91 209 96 56

FRANCE

Ministère de l'économie, des finances et de l'industrie
Direction du Trésor
Service des affaires européennes et internationales
Sous-direction E
139, rue du Bercy
F-75572 Paris Cedex 12
Tel. (33-1) 44 87 17 17
Fax (33-1) 53 18 36 15

IRELAND

Central Bank of Ireland
Financial Markets Department
PO Box 559
Dame Street
Dublin 2
Tel. (353-1) 671 66 66

Department of Foreign Affairs
Bilateral Economic Relations Division
76-78 Harcourt Street
Dublin 2
Tel. (353-1) 408 24 92

ITALY

— *Competent Authorities for exceptions on assets freeze*

Ministero dell'Economia e delle Finanze
Comitato di sicurezza finanziaria
Via XX Settembre 97
I-00187 Roma
csf@tesoro.it
Tel. + 39 06 4 761 39 21
Fax + 39 06 4 761 39 32

— *Competent Authorities for exceptions on visa ban*

Ministero degli Affari Esteri
Piazzale della Farnesina, 1
I-00100 Roma
Direzione Generale per gli Italiani all'estero e le Politiche Migratorie
Uff. VI (cons. Amb. Carlo Colombo)
Tel. 00 39 06 3691 35 00
Fax 00 39 06 3691 85 42-2261

LUXEMBOURG

Ministère des affaires étrangères, du commerce extérieur, de la coopération, de l'action humanitaire et de la défense
Direction des relations économiques internationales
BP 1602
L-1016 Luxembourg
Tel. (352) 478-1 or 478-2350
Fax (352) 22 20 48

Ministère des Finances
3, rue de la Congrégation
L-1352 Luxembourg
Tel. (352) 478-2712
Fax (352) 47 52 41

NETHERLANDS

Ministerie van Financiën
Directie Wetgeving, Juridische en Bestuurlijke Zaken
Postbus 20201
2500 EE Den Haag
Nederland
Tel. (31-70) 342 82 27
Fax (31-70) 342 79 05

AUSTRIA

Oesterreichische Nationalbank
A-1090 Wien
Otto-Wagner-Platz 3
Tel. (431) 404 20-0
Fax (431) 404 20-73 99

PORTUGAL

Ministério das Finanças
Direcção Geral dos Assuntos Europeus e Relações Internacionais
Avenida Infante D. Henrique, n.º 1, C 2.º
P-1100 Lisboa
Tel. (351-1) 882 32 40/47
Fax (351-1) 882 32 49

Ministério dos Negócios Estrangeiros
Direcção Geral dos Assuntos Multilaterias/Direcção dos Serviços das Organizações Políticas Internacionais
Largo do Rilvas
P-1350-179 Lisboa
Tel. (351 21) 394 60 72
Fax (351 21) 394 60 73

FINLAND

Ulkoasiainministeriö/Utrikesministeriet
PL 176
SF-00161 Helsinki
Tel. (358-9) 13 41 51
Fax (358-9) 13 41 57 07 and (358-9) 62 98 40

SWEDEN

— *Articles 3 and 5*

Finansinspektionen
Box 7831
S-103 98 Stockholm
Tel. 08-787 80 00
Fax 08-24 13 35

— *Article 4*

Riksförsäkringsverket (RFV)
S-103 51 Stockholm
Tel. 08-786 90 00
Fax 08-411 27 89

UNITED KINGDOM

HM Treasury
International Financial Services Team
19 Allington Towers
London SW1E 5EB
United Kingdom
Tel. (44-207) 270 55 50
Fax (44-207) 270 43 65

Bank of England
Financial Sanctions Unit
Threadneedle Street
London EC2R 8AH
United Kingdom
Tel. (44-207) 601 46 07
Fax (44-207) 601 43 09

EUROPEAN COMMUNITY

Commission of the European Communities
Directorate-General for External Relations
Directorate CFSP
Unit A.2/Mr A. de Vries
Rue de la Loi/Wetstraat 200
B-1049 Bruxelles/Brussel
Tel. (32-2) 295 68 80
Fax (32-2) 296 75 63
E-mail: anthonius.de-vries@cec.eu.int

COUNCIL REGULATION (EC) No 311/2002

of 18 February 2002

imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Hong Kong and the Republic of Korea

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 11(2) thereof,

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

Whereas:

A. GENERAL INFORMATION

1. Procedure

Previous investigations

(1) In September 1994, by Regulation (EC) No 2199/94 [2], the Council imposed definitive anti-dumping measures on imports of certain magnetic disks ('3,5″ microdisks') originating in Hong Kong and the Republic of Korea ('Korea').

Proceedings concerning other countries

(2) Apart from measures on 3,5″ microdisks originating in Hong Kong and Korea, it is recalled that definitive anti-dumping duties have also been imposed on imports of 3,5″ microdisks originating in Japan, Taiwan and the People's Republic of China [3] and Indonesia [4]. The measures on imports of 3,5″ microdisks originating in Japan, Taiwan and the People's Republic of China are currently subject to an expiry review [5].

(3) In December 1999 the product scope of the measures was clarified. It was found that the microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more did not fall under the scope of any of the existing anti-dumping measures on 3,5″ microdisks [6].

Current investigation

(4) Following the publication of the notice of impending expiry of the anti-dumping measures applicable to imports of 3,5″ microdisks originating in Hong Kong and Korea, the Commission received, in June 1999, a request to review these measures pursuant to Article 11(2) of Regulation (EC) No 384/96 ('the basic Regulation'). The request was lodged by the Committee of European Diskette Manufacturers ('Diskma') on behalf of producers whose combined output constitutes a major proportion of the total Community production of 3,5″ microdisks ('the product concerned'). The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry.

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation [7] pursuant to Article 11(2) of the basic Regulation.

Period of investigation

(6) The investigation of the likelihood of continuation and recurrence of dumping covered the period from 1 September 1998 to 31 August 1999 ('IP'). The examination of trends relevant for the assessment of the likelihood of continuation and recurrence of injury covered the period from 1995 up to the end of the investigation period ('the analysis period').

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 236, 10.9.1994, p. 2. Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[3] Regulation (EC) No 2861/93 (OJ L 262, 21.10.1993, p. 4). Regulation as last amended by Regulation (EC) No 2537/1999.
[4] Regulation (EC) No 1821/98 (OJ L 236, 22.8.1998, p. 1). Regulation as last amended by Regulation (EC) No 2537/1999.
[5] OJ C 322, 21.10.1998, p. 4.
[6] Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[7] OJ C 256, 9.9.1999, p. 3.

2. **Parties concerned by the investigation**

(7) The Commission officially advised the four Community producers supporting the request, the exporting producers and the importers known to be concerned as well as the representatives of the exporting countries of the initiation of the investigation, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) The Commission sent questionnaires to all parties known to be concerned and received full replies from three Community producers ('the cooperating Community producers') and one unrelated importer of 3,5″ microdisks originating in Hong Kong. No complete replies were received from any exporting producers in either Hong Kong or Korea.

(9) The Commission sought and verified all information they deemed necessary for the purposes of determining whether there was a likelihood of a continuation or recurrence of dumping and injury and whether maintaining the measures would not be against the Community interest.

Verification visits were carried out at the premises of the following companies:

Cooperating Community producers

— Sentinel N.V., Bodem, Belgium;

— Computer Support Italcard srl, Milan, Italy;

— Datarex srl, Assemini, Italy.

Importers

— Datamatic srl, Milan, Italy.

3. **Product concerned and like product**

Product concerned

(10) The product concerned is the same as in the original investigation and as clarified subsequently, i.e. 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

(11) The 3,5″ microdisks concerned are available in various types, depending on various factors, including, amongst others, their storage capacity, formatting, degree of certification (this is a measure used to test the performance of the microdisk which influences its market value) and on the way in which they are marketed, i.e. whether sold as branded products or in bulk. Despite the existence of various types of 3,5″ microdisks, there are no significant differences in their basic physical characteristics and technology, and they all show a high degree of interchangeability.

(12) On this basis, the 3,5″ microdisks as defined above are to be considered as one product.

Like product

(13) The various types of 3,5″ microdisks, as defined above, which are manufactured and sold in the Community, and those manufactured and sold in the countries concerned or exported to the Community are alike in their essential physical characteristics and technology and show a high degree of interchangeability. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

B. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

1. **General**

(14) The market share represented by imports of 3,5″microdisks from Hong Kong was significant at the time of the original investigation, when it represented more than 10 % of the total Community consumption. In the period following the imposition of the anti-dumping measures, this market share decreased to 5,5 % in 1997 and during the IP of this investigation, it represented 7,3 % of the total Community consumption.

(15) The market share represented by imports from Korea represented at the time of the original investigation more than 2 % of the total Community consumption. After the imposition of the anti-dumping measures, the market share of Korean imports decreased substantially, and during the IP it represented less than 0,2 % of the total Community consumption of the product concerned.

(16) As far as Hong Kong is concerned, four out of the 10 companies contacted came forward and stated that they were no longer producing or selling the product concerned to the Community. The remaining companies did not reply at all to the questionnaire.

(17) In the case of Korea, neither of the two companies named in the request for a review replied to the questionnaire. During the investigation no indication of the existence of other Korean exporting producers was found. It should be recalled that only one company cooperated in the investigation which led to the adoption of the anti-dumping measures.

(18) Under these circumstances, findings concerning Hong Kong and Korea were established on the basis of the facts available, in accordance with Article 18 of the basic Regulation.

2. **Continuation of dumping**

(a) Hong Kong

Normal value

(19) In view of the non-cooperation, normal value was established on the basis of the information provided in the request for review, which was the only reliable information available. The use of the normal value established in the original investigation would be inappropriate, because prices and costs for the manufacturing of the product concerned have decreased significantly over the period on all known international markets.

(20) In the request, normal value was constructed separately for bulked and branded/packed microdisks, by adding to the cost of production of the product concerned in the European Community a reasonable margin of profit (10 %, as in the original investigation). Given the nature of data available for the export price, i.e. Eurostat, which does not distinguish between different types, a single weighted average normal value was established. The weighing was done on the basis of the export shares of bulked and branded/packed microdisks to the Community, as evidenced by the few import invoices available. On the basis of this information, it was established that 3,5″ microdisks marketed in bulk represented almost 80 % of the imports of microdisks in the Community, while the remaining 20 % were branded/packed microdisks.

(21) The Hong Kong Economic and Trade Office ('HKETO') objected to the possible use of the cost of production submitted in the request for review to establish the normal value for Hong Kong exports. However, the only alternatives suggested by the HKETO were the use of either the domestic sales or the cost of production in Hong Kong. As none of these methods could be applied because of the non-cooperation, the evidence provided by the complainant remained the most reliable information available to the Commission. After disclosure, the HKETO claimed that normal value should instead have been based on the exports from Hong Kong to other countries, as resulting from Hong Kong's trade statistics. This claim was rejected, notably as these trade statistics (at the 6 digit level of the international nomenclature: Harmonised System) also include products other than the product under consideration.

Export price

(22) In view of the non-cooperation, the export price was established on the basis of Eurostat data. However, Eurostat figures (on a per month and individual Member State basis) sometimes showed high unit values that were entirely irreconcilable with sales prices of 3,5″ microdisks in the Community. This seems to be due to the fact that other products such as CD-Rs have been recorded under the CN code covering 3,5″ microdisks. The Eurostat figures concerning the IP were therefore adjusted in order to exclude monthly data having an average unit value higher than 0,17 EUR/unit. This was a very conservative approach because:

— the export prices for Hong Kong set out in the review request were significantly below this threshold. The import prices resulting from the invoices made available by the sole cooperating unrelated importer in the Community, which however represented only a small share in the total import volume from Hong Kong were also significantly below this level;

— the threshold of 0,17 EUR/unit corresponds to the weighted average unrelated importers/Community producers' resale/selling price of 3,5″ microdisks in the Community market during the IP. The weighing was carried out on the basis of sales quantities of the Community industry and the total import volumes of 3,5″ microdisks from all origins. It was in fact reckoned that imports from Hong Kong should reasonably not take place at cif Community frontier average prices higher than the average resale/selling prices prevailing in the Community market.

The HKETO claimed that the abovementioned methodology was arbitrary and incorrect, and that values and quantities reported under the total CN code should have been used to calculate the export price. This claim is rejected for the reasons outlined above.

Comparison

(23) Normal value and export price were compared on an ex-works basis, in accordance with Article 2(10) of the basic Regulation. Due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs on the basis of the information contained in the request for a review.

Dumping margin

(24) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price to the Community.

(25) This comparison showed the existence of a margin of dumping of between 10 % and 15 %, the dumping margin being equal to the amount by which the normal value exceeded the export price, expressed as a percentage of the cif import price at the Community border, duty unpaid. This compares with a residual margin of dumping of 27,4 % established in the course of the original investigation (when individual dumping margins ranged from 6,7 % to 13,3 %).

(26) Should the comparison be made between the normal value calculated as described in recitals 17 to 19 and the export prices obtained from the invoices made available from the cooperating unrelated importer, the dumping margin would be even bigger. However, as mentioned above, this importer only accounted for a fairly small share of total imports from Hong Kong.

Conclusion

(27) The above findings show the existence of a continuation of dumping for imports of 3,5″ microdisks originating in Hong Kong established on the basis of significant export volumes.

(b) Korea

Methodology

(28) Normal value and export price concerning Korea were established by following the same methodology described above for Hong Kong, though in the case of Korea no import invoices were available from the cooperating unrelated importer. The comparison between normal value and export price was also carried out by applying the same methodology used for Hong Kong. It should however be noted that the results of the examination of continuation of dumping were not decisive in this case in view of the low volume of imports from Korea as described at recital 49.

Dumping margin

(29) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price to the Community.

(30) This comparison showed the existence of a margin of dumping of between 20 % and 25 %, the dumping margin being equal to the amount by which the normal value exceeded the export price, expressed as a percentage of the cif import price at the Community border, duty unpaid. This compares with a margin of dumping margin of 8,1 % established in the course of the original investigation.

Conclusion

(31) The above findings show the existence of a continuation of dumping for imports of 3,5″ microdisks originating in Korea, although the import volumes on the basis of which this conclusion had been reached were very small.

3. **Likelihood of recurrence of dumping**

(a) Hong Kong

(32) The market share represented by imports of 3,5″ microdisks from Hong Kong was significant at the time of the original investigation, when it represented more than 10 % of the total Community consumption. In the period following the imposition of the anti-dumping measures, this market share decreased to 5,5 % in 1997, and, during the IP, it represented 7,3 % of the total Community consumption. It should also be mentioned that imports from Hong Kong have shown, after the IP, a significant decrease.

(33) The HKETO claimed, at the initiation of the investigation, that there was only one Hong Kong exporting producer of 3,5″ microdisks still active in the market and that the production capacity of this company, if exported, was too limited to cause injury to the Community industry even if the anti-dumping duties were allowed to lapse. In addition, after disclosure, the HKETO claimed that after the IP production of microdisks in Hong Kong had ceased altogether and that therefore there was no likelihood of recurrence of dumping any more.

(34) In this respect, it should be pointed out that Hong Kong has held a substantial market share throughout the period analysed (mostly around 7 %). It should also be noted that imports of 3,5″ microdisks from Hong Kong significantly decreased after the IP while there was a commensurate increase of imports of this product from Macao which is not subject to anti-dumping measures. Following disclosure, the HKETO has provided information claiming that production and exports to the Community of microdisks originating in Hong Kong has ceased after the IP. However, this cannot compensate for the fact that manufacturing activities for the product concerned have been found to be mobile and, if measures were repealed it is likely that certain exporting producers would relocate their production back to Hong Kong, or resume their export should they only have suspended them temporarily. It should also be noted that, because of the lack of cooperation shown by exporting producers during the IP, it was not possible to ascertain whether the source(s) of dumped exports had indeed ceased its(their) activities after the IP.

(b) Korea

(35) The market share represented by imports from Korea represented at the time of the original investigation more than 2 % of the total Community consumption. After the imposition of the anti-dumping measures, the market share of Korean imports decreased substantially, and during the IP it represented less than 0,2 % of the total Community consumption of the product concerned. It was therefore considered whether there was a likely risk of a recurrence of dumping of Korean imports at above *de minimis* levels.

(36) Two companies had been named in the request for a review as producers of the product concerned, however neither of them cooperated. For one of these two producers, exports to the Community represented a very substantial proportion of its total sales during the original investigation. Moreover, this company had a production capacity which used to satisfy an important part of Community consumption (close to 5 %). In the absence of cooperation by this company, it can therefore be assumed that substantial unused production capacity

still exists in Korea which could be exploited, should the measures be repealed. Information available indicates that this producer is still manufacturing the product concerned.

(37) Moreover, given the abovementioned ease of relocation of production for the product concerned, it cannot be excluded that certain exporting producers would relocate their production back to Korea, should they have shifted production to locations outside Korea.

(38) As imports from Korea were made at significantly dumped prices, albeit in limited quantities, and as spare production capacity is reckoned to exist in the country and in view of the possibility of a relocation of production, it is concluded that, should the measures be repealed, there is a likelihood of recurrence of dumping at significant export volumes.

C. **DEFINITION OF THE COMMUNITY INDUSTRY**

(39) In the Community, during the IP, 3,5″ microdisks were manufactured by:

— three Community producers, which fully cooperated with the Commission during the investigation;

— another producer which supported the request for review but did not supply data;

— other economic operators related to Japanese, Taiwanese and Chinese exporting producers.

(40) As in the previous proceedings, the Commission found that the assessment of the situation of the Community industry would be distorted if Community producers related to those producers from countries involved in prior proceedings found to be dumping the product concerned, and causing material injury to the applicant, were not excluded from the definition of the 'Community production'. Consequently, the production of the economic operators which are related to producers in the countries concerned have been excluded from the definition of the 'Community production'.

(41) The production of the three cooperating Community producers and of the other producer supporting the complaint constitute therefore the Community production within the meaning of Article 4(1) of the basic Regulation.

(42) The HKETO argued that companies related with Japanese, Taiwanese or other non-Community-owned producers should not be excluded from the definition of the Community production and stated this exclusion inflated the applicants' standing.

(43) As explained above, these producers were excluded from the definition of the Community production, because they were found to be related to parties dumping on the Community market and no reasons have been given as to why this approach should be changed in the review investigation. Furthermore, even when taking these producers into account, the cooperating Community producers would still represent more than 25 % of production taking place in the Community. The HKETO claim was, therefore, rejected.

(44) On this basis and given that the cooperating Community producers represent a major proportion, in this case more than 75 %, of the Community production, they are therefore considered to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.

D. **THE COMMUNITY MICRODISKS' MARKET**

1. **General**

(45) The market for 3,5″ microdisks is mature, and is currently characterised by a situation of falling demand. Other products such as Zip™ discs, other high capacity microdisks such as HiFDs and optical-magnetic data storage media, such as recordable compact disks (CD-Rs) are progressively replacing the market held by 3,5″ microdisks. However, given the significant base of PCs with 3,5″ microdisk disk drives incorporated (currently estimated at 30 million units in the Community), it is clear that there will be a continuing need for these microdisks in the Community. Furthermore, according to recent market studies, most PC manufacturers continue to incorporate 3,5″ microdisk drives in the basic configuration of their machines. It is estimated that by the year 2002 there will be 38 million microdisk drives in the Community. The Community microdisk market will therefore remain important.

2. **Consumption of 3,5″ microdisks on the Community market**

(46) Figures for consumption in the Community are based on information contained in the request for review crossed checked by verified production and sales figures provided by the Community industry and total import volumes obtained from Eurostat.

(47) In Eurostat data however, 3,5″ microdisks are only a part of the CN heading concerned. During the analysis period they were deemed to be by far the largest part of this heading since the market for other non-rigid magnetic discs was very small. It has become evident to the Commission that in 1998 and 1999 some recordable CDs (CD-Rs) were misdeclared to the customs authorities under this CN heading. Volume import figures were corrected using detailed confidential statistical information to reflect this misdeclaration.

(48) Consumption fell by 50 % during the analysis period.

Total consumption of 3,5″ microdisks in the Community	1995	1996	1997	1998	IP
Millions of units	1 300	1 100	1 000	800	650
Index 1995 = 100	100	85	77	62	50

3. **Imports from the countries concerned**

Preliminary remark

(49) Due to the lack of cooperation, Eurostat and custom information (TARIC) was used to estimate imported volumes. For Hong Kong, the Commission has used custom information concerning the product concerned for 1995 to 1998. For the IP, it was considered that 20 % of the trade registered by Eurostat under the relevant heading could be linked to a misdeclaration of CD-Rs and volumes were corrected accordingly, while prices were estimated as explained at recital 20. For Korea, the custom information was used across the analysis period for volume and prices.

Volume and market share

(50) Based on the above methodology, the development of the volume of imports of 3,5″ microdisks into the Community was as follows:

Imports into the Community (millions of units) and market share (%)	1995	1996	1997	1998	IP
Imports from Hong Kong	89,1	72	54,7	62,1	47,2
Market share Hong Kong	6,9 %	6,5 %	5,5 %	7,8 %	7,3 %
Imports from Korea	5,7	1,7	0,1	0,5	1,2
Market share Korea	0,5 %	0,2 %	0 %	0,2 %	0,2 %
Total imports from Hong Kong and Korea	94,7	73,7	54,8	62,6	48,4
Total market share of Hong Kong and Korea	7,3 %	6,7 %	5,5 %	7,8 %	7,4 %

(51) The volume of imports from Hong Kong fell throughout the analysis period from 89 million units in 1995 to 47 million units during the IP. The market share of imports originating in Hong Kong fell initially from 6,9 % in 1995 to 5,5 % in 1997 before rising again in 1998, to reach 7,3 % in the IP.

(52) The volume of imports from Korea was at low levels throughout the period analysed, falling from 6 million units in 1995 to almost zero in 1997 and rising to just over 1 million units during the IP. Korean market share remained at negligible levels throughout the analysis period.

Price behaviour of exporting producers

(53) The Commission compared average cif prices of imports originating in Hong Kong and in Korea with sales prices of the Community industry in the Community.

(54) The comparison showed, on a weighted average basis, that the prices of the imports originating in Hong Kong were 5 % lower than those of the sales of the Community industry during the IP, and that the prices of the imports originating in Korea were 14 % lower than those of the sales of the Community industry during the IP.

4. **Imports from other third countries**

(55) During the IP, imports from other countries develop as follow. They were originating mainly in India and Singapore (5,7 % and 8,7 % of market share respectively).

Imports from other countries (in million of units)	637,5	237,6	198,4	167,5	190,5
Market share imports from other countries	49,0 %	21,6 %	19,8 %	20,9 %	27,9 %

5. **Situation of the Community industry**

Production, capacity and capacity utilisation

(56) The production volume of the Community industry decreased by 30 % over the analysis period. Over the same period, the rate of capacity utilisation by the Community industry decreased by 29 percentage points.

	1995	1996	1997	1998	UP
Production in million of units	225	208	190	178	157
Index 1995 = 100	100	92	84	79	70
Capacity in million of units	234	273	235	240	235
Capacity utilisation	96 %	76 %	81 %	74 %	67 %

Sales, market share and growth

(57) Sales made by the Community industry decreased by 31 % over the analysis period. Whilst the total Community consumption for 3,5″ microdisks has decreased over the analysis period by 50 %, the Community industry's market share has increased by 6 percentage points. This gain reflects a consolidation of the position of the Community industry that was permitted by anti-dumping measures in force.

Sales of 3,5″ microdisks in the Community by the Community industry	1995	1996	1997	1998	IP
Millions of units	218	205	187	168	149
Index 1995 = 100	100	94	86	77	69
Percentage market share	17 %	19 %	19 %	21 %	23 %

Price development

(58) The development of prices of the Community industry for sales to unrelated customers during the analysis period is as follows. Prices fell by 44 % during the analysis period.

Development of prices of 3,5″ microdisks of the Community industry	1995	1996	1997	1998	IP
Average price per unit (euro)	0,2599	0,2065	0,1796	0,1531	0,1453
Index 1995 = 100	100	79	69	59	56

Inventories

(59) Inventories are relatively stable over time and therefore they do not add any relevant information as to the situation of the Community industry.

Profitability, return on investments and cash flow

(60) It was found that throughout the analysis period, the Community industry had recorded financial results (i.e. losses) which were well below the profit rate deemed appropriate for the Community industry in the original investigation. Profit levels for 1995 are not available due to industry restructuring. Overall during the analysis period, losses fell from − 5,57 % in 1996 to − 1,75 % in the IP.

(61) Return on investments has been negative during the analysis period and, in general terms, in line with the trend of profitability. Cash flow has slightly improved in line with profitability.

Employment, productivity, wages

(62) Between 1995 and the IP, the Community industry reduced its labour force by 35 % from 252 to 163 employees. Accordingly, its productivity rose by 9 % during the same period, and total wages decreased by 23 % (wages per employee increased by 19 %).

Investments and ability to raise capital

(63) Production of 3,5″ microdisks is capital intensive and production facilities typically operate 24 hours daily all year round. After some insignificant investments made in 1995 and 1996, there has been no new net investment in this industry.

(64) The losses experienced during the analysis period were such that no financing for new investment by the Community industry was possible during the last three years.

Exports by the Community industry

(65) The exports remained stable between 2 and 3 % of total turnover over the analysis period.

Magnitude of dumping margin and recovery from past dumping

(66) The situation of the Community industry improved to a certain extent after the imposition of measures, but it has not completely recovered from past dumping as evidenced mainly from its weak financial situation.

(67) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping during the IP, this is not considered a relevant factor in the present review examination as the imposition of duties is meant to remedy the dumping found.

Submission by the Hong Kong Economic and Trade Office

(68) The HKETO claimed that the Community industry has had good economic results during the analysis period, taking into account the decrease in demand and that it was not showing any weakness. They also claimed that, because of the declining trend in the volume and value of imports from Hong Kong, it was doubtful that these imports had caused an injury to the Community industry and would do so in the future.

(69) These claims could not be accepted. Indeed, the above analysis describes the situation of the Community industry as improved in a difficult context of declining demand although it is clearly concluded that this industry has not completely recovered from past dumping from Hong Kong and from other countries subject to anti-dumping measures. Moreover, it must be underlined that imports from Hong Kong continued to be dumped as concluded at recital 25 and that Hong Kong was the largest supplier to the Community during the IP, with a market share of more than 7 %. Finally, it must be stressed that, in the context of an expiry review, it is necessary to establish whether there is a likelihood of recurrence of injury should measures expire.

Conclusions

(70) The overall picture that emerges of the situation of the Community industry from the foregoing is that of an industry still in a weak situation, despite an improved market share and a successful effort at significantly reducing costs of production (reduced by 40 % over the period examined). Production methods have been modernised and facilities are now almost entirely automated in order to improve efficiency, maintain market share and maximise profits. However, the Community industry has not yet been able to reach a satisfactory financial situation.

E. **LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY**

(71) It is recalled that it was concluded at recitals 33 and 37 that a likelihood of a recurrence of dumping in significant volumes existed for both Hong Kong and Korea.

(72) It was concluded above that the Community industry was in a vulnerable situation during the IP.

(73) Should measures expire, dumped imports from Hong Kong and Korea are likely to push down the prices of the Community industry which are already depressed.

(74) In such conditions, the Community industry, already loss-making, would not be able to compete with high quantities sold at such low prices because firstly, a difference in prices in this market (microdisks are a commodity-like product) leads to immediate substitution in supplies and secondly, the Community industry has already made all the necessary efforts to restructure itself and is already operating at very low costs. It is therefore likely that the Community industry would see a further deterioration of its financial situation bringing its very survival into question.

(75) In the light of the above findings it is concluded that the expiry of the measures would be likely to lead to a continuation and/or recurrence of injury for the Community industry.

F. **COMMUNITY INTEREST**

1. **General considerations**

(76) The Commission examined whether the maintenance of the anti-dumping measures on 3,5″ microdisks would be in the interest of the Community. It has been found that there is a likelihood of continuation and/or recurrence of injurious dumping. The investigation also considered whether or not there are any overriding interests against maintaining the measures and also took account of the past effects of duties on all the various interests involved.

(77) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. It should also be noted that, since this is an expiry review investigation, this investigation should also show the impact of the existing measures in particular on users, consumers and traders.

2. **Interests of the Community industry**

(78) In view of the conclusions on the situation of the Community industry set out at recital 68, especially in terms of its negative profitability, the Commission considers that, in the absence of measures against injurious dumping, the Community industry is likely to experience a worsening of its financial situation.

(79) The Community industry is viable and capable of supplying the market for a product which, although at a mature stage of its life cycle, constitutes the basic storage device for a large number of computer users. Indeed, the Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of such steps taken are:

(a) keeping prices at a minimum to maintain its market share;

(b) progression towards greater consolidation;

(c) closure of manufacturing units;

(d) widespread use of modern production techniques (e.g. increased mechanisation and computerisation);

(e) improvements in productivity;

(f) investing in production of other digital storage media products.

(80) It is also to be noted that the production of data storage media is an area of technological importance for the Community as a whole. The production technology and experience gained by the Community industry in 3,5″ microdisk production has provided, and will continue to provide, a basis for further innovation in the manufacture of other related data storage media products. For the Community industry, remaining viable in the microdisk sector is the economic basis for participating in the growing market of other storage media.

3. **Interests of unrelated importers/traders**

(81) Only one unrelated importer cooperated with the investigation. It stated that imports were restricted by the existence of anti-dumping duties. However, it was obvious that imports were still possible for this importer. Should measures be maintained, this company would still be able to source 3,5″ microdisks from the countries concerned and from other third countries, including countries not subject to anti-dumping measures.

(82) Furthermore, the limited cooperation of importer in this case leads to the conclusion that the measures in force on imports originating in Hong Kong and Korea did not have any significant impact on the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

(83) Therefore, it is concluded that the continuation of the measures is not likely to affect the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

4. **Interests of component suppliers**

(84) Any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the industry itself but may have a knock-on effect among the industry's suppliers of *inter alia*, shells, cookies, shutters, hubs, liners and springs.

(85) The Community producers source the large majority of their materials and components from suppliers located in the Community. Therefore, the continuation of the anti-dumping measures would clearly be in the interest of the Community component supplier industry.

5. **Interests of users and consumers**

(86) Major users of 3,5″ microdisks include duplicators and final consumers. Neither sector has made representations in this review investigation. The Commission, therefore, considers that the findings of the original investigation in this context are still applicable, i.e. the increase in costs applicable to this sector when compared to overall costs can be considered as negligible and would have very little or no impact on prices to retail consumers.

(87) On the contrary the expiry of the measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition, to the detriment of duplicators and consumers.

6. **Conclusion**

(88) After weighing the interests of the various parties involved, the Commission concludes that there are no compelling reasons of Community interest against the continuation of measures.

(89) Due to the long duration of the investigation, it is considered appropriate that the measures be limited to four years.

G. **PROPOSED DUTIES**

(90) The anti-dumping duties imposed by Regulation (EC) No 2199/94 should be maintained at existing levels, i.e.:

Country	Company	Duty
Hong Kong	Jackin Magnetic Co. Ltd	7,2 %
	Plantron (HK) Ltd	6,7 %
	Technosource Industrial Ltd	13,3 %
	All other companies	27,4 %
Republic of Korea	All companies	8,1 %

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (TARIC code 8523 20 90*40) and originating in Hong Kong and the Republic of Korea, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

2. The rate of definitive anti-dumping duty applicable to the net, free-at-Community-frontier price before duty, shall be as follows for the products manufactured by:

Country	Company	Rate of AD duty	TARIC additional
Hong Kong	Jackin Magnetic Co. Ltd	7,2 %	8775
	Plantron (HK) Ltd	6,7 %	8776
	Technosource Industrial Ltd	13,3 %	8778
	All other exporting producers	24,7 %	8999
Republic of Korea	All exporting producers	8,1 %	—

Article 2

Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

The anti-dumping duties shall be imposed for a period of four years from the date of entry into force of this Regulation.

Article 4

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

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

Done at Brussels, 18 February 2002.

For the Council

The President

J. PIQUÉ I CAMPS

COUNCIL REGULATION (EC) No 312/2002

of 18 February 2002

imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Japan and the People's Republic of China and terminating the proceeding in respect of imports of 3,5″ microdisks originating in Taiwan

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 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations involving Japan, Taiwan and the People's Republic of China

(1) By Regulation (EEC) No 2861/93 [2], the Council imposed definitive anti-dumping measures on imports into the Community of certain magnetic disks ('3,5″ microdisks') originating in Japan, Taiwan and the People's Republic of China.

2. Related investigations

(2) Definitive anti-dumping duties have also been imposed on imports of 3,5″ microdisks originating in Hong Kong and the Republic of Korea [3] and Indonesia [4].

The measures concerning Hong Kong and the Republic of Korea are subject to a review which was initiated in September 1999 [5].

(3) The measures concerning Malaysia, Mexico and the United States of America expired on 14 April 2001 [6].

3. Request for review

(4) Following the publication of the notice of impending expiry of the anti-dumping measures applicable to imports of 3,5″ microdisks originating in Japan, Taiwan and the People's Republic of China [7], the Commission received in July 1998, a request to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (the 'basic Regulation').

The request was lodged by the Committee of European Diskette Manufacturers ('Diskma') on behalf of producers whose combined output constitutes a major proportion of the total Community production of the product concerned.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated such a review [8] pursuant to Article 11(2) of the basic Regulation.

4. Investigation

(6) The Commission officially advised the five Community producers supporting the request, the exporting producers and the importers known to be concerned as well as the representatives of the exporting countries of the initiation of the investigation, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(7) The Commission sent questionnaires to the parties known to be concerned and received full replies from two Community producers, a Taiwanese exporting producer and a Chinese producer, its related exporter in Hong Kong and its related importer in the UK.

(8) The Commission also sent questionnaires to a large number of economic operators understood to be or to represent purchasers and importers of 3,5″ microdisks in the Community.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 262, 21.10.1993, p. 4. Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[3] Regulation (EC) No 2199/94 (OJ L 236, 10.9.1994, p. 2). Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[4] Regulation (EC) No 1821/98 (OJ L 236, 22.8.1998, p. 1). Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[5] OJ C 256, 9.9.1999, p. 3.
[6] OJ C 111, 12.4.2001, p. 9.
[7] OJ C 123, 22.4.1998, p. 5.
[8] OJ C 322, 21.10.1998, p. 4.

(9) The Commission sought and verified all information deemed necessary for the purposes of determining whether there was a likelihood of a continuation or recurrence of dumping and injury and whether maintaining the measures would not be against the Community interest.

Verification visits were carried out at the premises of the following companies:

Exporting producers

(a) Exporting producer in Taiwan:

CIS Technology Inc., Taipei Hsien, Taiwan;

(b) Exporting producer in the People's Republic of China/Hong Kong:

Hanny Zhuhai Ltd, Kowloon, Hong Kong (related exporter of the producer Hanny Magnetics (Zhuhai) Ltd., Guangdong Province, People's Republic of China)

and its related importer Memtek Products Europe Ltd, Harmondsworth, UK.

Community producers

Computer Support Italcard s.r.l., Milan, Italy;

Sentinel N.V., Bodem, Belgium.

(10) The investigation of the likelihood of continuation and recurrence of dumping covered the period from 1 October 1997 to 30 September 1998 (the 'investigation period'). The examination of the situation of the Community 3,5″ microdisks market covered the period from 1994 up to the end of the investigation period (the 'analysis period').

(11) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing measures for Japan and the People's Republic of China and the termination of the proceeding in respect of Taiwan. The Commission received representations from two interested parties following these disclosures. The comments of these parties were considered and, where appropriate, the findings have been modified accordingly.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(12) The product under consideration (3,5″ microdisks) is used to record and store encoded digital computer information falling within CN code ex 8523 20 90, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

(13) The 3,5″ microdisks concerned were available in various types, depending on various factors, including, amongst others, their storage capacity, formatting, degree of certification (a measure used to test the performance of the microdisk) and on the way in which they were marketed, i.e. whether sold as branded products (usually sold in 10 pieces boxes) or in bulk. Despite the existence of various types of 3,5″ microdisks, there were no significant differences in their basic physical characteristics and technology. They all showed a high degree of interchangeability.

On this basis, the 3,5″ microdisks as defined above are to be considered as one product.

2. Like product

(14) The various types of 3,5″ microdisks, as defined above, which are manufactured and sold in the Community or manufactured in the countries concerned and exported to the Community use the same basic technology, are alike in their basic physical characteristics and technology and show a high degree of interchangeability. All these 3,5″ microdisks, therefore, have to be considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF DUMPING

1. Preliminary remarks

(15) It should be noted that imports from the countries concerned during the investigation period represented only a fraction of the quantities which were exported during the original investigation period (1 April 1990 — 31 March 1991), i.e. about 10 % in the case of the People's Republic of China and Taiwan and less than 1 % in the case of Japan.

2. Japan

(16) Three of the five companies named in the request for a review stated that they were no longer producing or selling the product concerned to the Community. The remaining two companies did not reply to the Commission's questionnaire, and so it was impossible to establish on the basis of their individual data whether or not these companies were dumping. Therefore, and in order not to reward non-cooperation, findings concerning Japan were made on the basis of facts available in accordance with Article 18 of the basic Regulation, in this case the evidence provided by the applicant. It should be noted that the information contained in the review request was the best information available. Eurostat data could not be used for the purposes of calculating dumping because the product concerned covers

only a part of the CN code. In the review request, the dumping margin was established on the basis of a comparison of constructed normal values (cost of production plus a reasonable amount for selling, general and administrative expenses, and for profit) with constructed export prices (prices delivered to the first unrelated customers less allowances reflecting costs and profits of importers). On this basis, and without any deduction for anti-dumping duties, the margin of dumping was between 5 % and 10 %.

3. **Taiwan**

(17) It is to be noted that one company in Taiwan responded to the questionnaire. This company alone accounted for practically all the exports of the product concerned to the Community during the investigation period, which amounted to almost three million units. Key events which had taken place after the investigation period had to be taken into account. The fact is that, in the course of the investigation, the company ceased production of 3,5″ microdisks by closing its Storage Media Business Division. This event was considered to be manifest, undisputed, lasting, not open to manipulation and did not stem from deliberate action by interested parties. As the cooperating company which accounted for practically all the exports of 3,5″ microdisks to the Community during the investigation period has ceased manufacturing the product concerned, it was considered that any assessment of possible continuation of dumping during the investigation period was devoid of any purpose.

4. **People's Republic of China**

(a) *General*

(18) It is to be noted that one company in the People's Republic of China responded to the questionnaire. This company alone accounted for practically all the exports of the product concerned to the Community during the investigation period, which amounted to almost two million units.

(b) *Normal value*

(19) As in the original investigation, Taiwan was proposed as an appropriate market economy country for the purpose of establishing normal value for the People's Republic of China, in accordance with Article 2(7)(a) of the basic Regulation. Interested parties were invited to comment on this choice. The only cooperating producer from the People's Republic of China objected to the fact that an analogue country had to be selected at all, and argued that normal value should instead be calculated on the basis of its own cost of production in the People's Republic of China. It claimed that it met all the criteria referred to in Article 2(7)(c) of the basic Regulation. This claim could not be accepted on the grounds that, under reviews pursuant to Article 11(2) of the basic Regulation, measures must either be maintained or repealed, but not modified. Reference is also made to the findings concerning a likelihood of recurrence of dumping. The company was informed that it could claim market economy status in the context of an application for a review pursuant to Article 11(3) of the basic Regulation. However, the company declined to do so.

(20) As no alternative analogue country was proposed, the Commission decided to use Taiwan as the basis for establishing normal value for the People's Republic of China. In addition, Taiwan was considered to be an appropriate and not unreasonable market already at the time of the original investigation.

(21) For all the types of 3,5″ microdisk, except one, exported by the cooperating Chinese exporting producer, normal value was calculated by reference to representative domestic sales prices to independent customers.

For the one type of 3,5″ microdisk, however, for which no comparable domestic sales in the analogue country could be found, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. The constructed normal value was calculated on the basis of the cost of production of an equivalent type produced by the cooperating Taiwanese exporting producer, including a reasonable amount for selling, general and administrative expenses and for profit.

(c) *Export price*

(22) As exports were made to a related importer in the Community, export prices were constructed on the basis of the price at which the product concerned was first resold to an independent buyer in the Community, in accordance with Article 2(9) of the basic Regulation. Adjustments were made for costs incurred between importation and resale and for profits accruing, so as to establish a reliable export price. These adjustments included costs for transportation, insurance, handling and ancillary costs in the Community, and customs duties. The related importer's selling, general and administrative costs relating to the product concerned were also deducted, as well as a reasonable margin of profit. As it was found that the financing costs relating to the 3,5″ microdisks business were not reflected in the related importer's accounts, these costs were calculated as a percentage of the final selling price of the product concerned, and deducted accordingly. An additional adjustment was made to take account of the selling and marketing costs incurred by a subsidiary of the related importer involved in the sale of the product concerned in the Community.

(d) *Comparison*

(23) Normal values and export prices were compared for each product type. Due allowance in the form of adjustments was made, in accordance with Article 2(10) of the basic Regulation for differences in factors which were claimed and demonstrated to affect prices and price comparability. Allowances were granted for differences in physical characteristics, discounts, transport, insurance, handling and ancillary costs outside the Community, and packing. The adjustment for physical characteristics reflected the fact that certain types of 3,5″ microdisks sold by the Chinese exporting producer were formatted, whilst the similar types sold on the Taiwanese markets did not have this characteristic.

(e) *Dumping margin*

(24) It was found that there was a pattern of export prices which differed significantly among regions: in one Member State, sales to independent customers amounting to almost half of the total were made at prices consistently higher than sales to independent customers in all the other Member States. Since, in these circumstances, the use of the average-to-average method for the calculation of the dumping margin did not reflect the full degree of dumping, it was considered appropriate that weighted average normal values per type be compared to prices of all individual export transactions to the Community, in accordance with Article 2(11) of the basic Regulation.

(25) The comparison showed the existence of a margin of dumping of between 5 % and 10 %, the dumping margin being equal to the amount by which the normal value exceeded the export price, expressed as a percentage of the cif import price at the Community border, duty unpaid.

5. **Conclusion**

(26) The above findings show the existence of a continuation of dumping for imports of 3,5″ microdisks originating in Japan and the People's Republic of China, although the import volume on the basis of which this conclusion had been reached were small. In the case of Taiwan, dumping is no longer continuing.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **Imports from Japan and the People's Republic of China**

(27) Imports from Japan and the People's Republic of China during the period covered by the original investigation amounted to around 130 million units and collectively accounted for around 30 % of the apparent Community consumption. Imports originating in Japan accounted for approximately three-quarters of the total imports from these two countries.

(28) Imports from both countries fell sharply after the imposition of the measures in 1993, so that already in 1995 they amounted collectively to around 10 million units. In view of the conclusion on the continuation of dumping regarding imports originating in Japan and the People's Republic of China, it was considered appropriate also to examine the likelihood of recurrence of dumping, i.e. the likelihood of increased quantities of imports at dumped prices originating in these two countries.

2. **Unused production capacities in Japan and the People's Republic of China**

(29) Two of the three Japanese companies which came forward declared that they no longer manufactured the product concerned. The third Japanese company, which manufactured the product concerned but did not export it to the Community during the investigation period, claimed not to have unused production capacity. The two remaining companies mentioned in the application did not reply in any way to the questionnaire. It was therefore assumed that these two companies may have unused production capacity to exploit.

(30) For the sole cooperating Chinese exporting producer, production decreased by almost 50 % between 1995 and the investigation period. However, evidence shows that substantial unused production capacity exists.

3. **Prices to other third country markets of Japan and the People's Republic of China**

(31) During the investigation period, sales of the sole cooperating Chinese exporting producer to non-EU countries were made at average prices substantially lower than those to the Community market. No information in this respect was provided by any Japanese exporting producer.

4. **Likely effect of the expiry of the measures for Japan and the People's Republic of China**

(32) As shown above, the dumping calculations made are based on relatively low export volumes to the Community. It is reasonable to assume that the expiry of the measures will lead to lower prices for Japanese and Chinese microdisks when delivered to final customers with the result that volumes are likely to increase.

(33) Cooperation from Japan was low in both the original investigation and the current expiry review. As mentioned at recital 16, two companies contacted did not reply to the questionnaire at all, though they are still active in the 3,5″ microdisk market. In these circumstances, it was concluded, on the basis of Article 18 of the basic Regulation, that unused production capacity is likely to exist, which could be exploited in the event of the anti-dumping measures being allowed to expire. On this basis, substantial exports at dumped prices are likely.

(34) Since the People's Republic of China has substantial unused production capacity and average export prices to non-EU countries were, during the investigation period, substantially lower than those to the Community market, it could be expected that, should the measures be repealed, a substantial proportion of sales currently made on the domestic market or exported to non-EU countries would be redirected towards the Community market at dumped prices.

5. **Likely effect of the expiry of the measures for Taiwan**

(35) As the only company which accounted for practically all the exports of the product concerned to the Community during the investigation has ceased manufacturing 3,5″ microdisks, no likelihood of a recurrence of dumping from this company exists.

(36) The Community industry claimed that two other Taiwanese producers of microdisks are still active in the business and that these two companies, which had not cooperated in the investigation, would export large quantities of 3,5″ microdisks at dumped prices, should measures be repealed in respect of Taiwan.

(37) The claim was rejected because no evidence was ever found that these two non-cooperating companies might have exported 3,5″ microdisks to the Community during the investigation period or in other recent periods. As during recent periods, exports to the Community can be considered as having been made exclusively by the Taiwanese cooperating producer which has ceased production, the dumping activities concerning 3,5″ microdisks can also be considered as having ceased. Moreover, the largest of the two companies referred to by the Community industry has set up in the Community a wholly owned subsidiary producing 3,5″ microdisks, and it has therefore little or even no reason at all to resume its exports of the product concerned to the Community.

6. **Conclusions**

(38) The investigation showed that exports from Japan and the People's Republic of China are still made at dumped prices. There is no indication as to why this should change if measures were to be repealed. Moreover, the volume of dumped imports, which is currently at negligible levels, was found likely to increase significantly should measures expire because the possible repeal of the measures and the substantial unused capacities are likely to result in lower resale prices, increasing sales volumes and market shares. It was therefore concluded that should the measures be repealed, imports originating in Japan and the People's Republic of China would continue to be made at dumped prices and there is also a likelihood that the volume of dumped imports would increase to significant quantities.

(39) As far as Taiwan is concerned, in the absence of dumped exports, the mere existence of two other producers of the product concerned is judged as not sufficient to imply that these two Taiwanese producers are likely to start exporting to the Community at dumped prices. It was therefore concluded that no serious risk of recurrence of dumping from Taiwan exists at present.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(40) In the Community, 3,5″ microdisks are manufactured by:

— two Community producers, which fully cooperated with the Commission during the investigation,

— three other producers which were supporting the application,

— other economic operators related to Japanese, Taiwanese and Chinese exporters.

(41) As in the previous proceedings, it was found that the assessment of the situation of the Community industry would be distorted if Community producers related to those producers from countries involved in prior proceedings found to be dumping the product concerned, and causing material injury to the applicant, were not excluded from the definition of the 'Community production'. Consequently, the production of the economic operators which are related to producers in the countries concerned have been excluded from the definition of the 'Community production'.

(42) The production of the two cooperating Community producers and of the three other producers supporting the complaint constitute therefore the Community production within the meaning of Article 4(1) of the basic Regulation.

(43) During the course of the proceeding a submission was received from the Chinese exporting producer which alleged that the products manufactured by the two cooperating Community producers did not satisfy the provisions of the Community's own origin rules as laid down in Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community's customs code [1] and as further elaborated by the provisions of Regulation (EC) No 12/97 [2] and therefore could not be included in the Community production.

(44) This claim was rejected because the investigation revealed that the 3,5″ microdisks manufactured by these two Community companies are produced mainly from components sourced in the Community. In addition, they add substantial value in the manufacturing process, their headquarters and centres for research and development are all located in the Community and the 3,5″ microdisks that they produce have a Community origin in accordance with the Community's customs code.

(45) On the basis of the above, and given that the cooperating Community producers represent a major proportion, in this case more than 75 %, of the Community production, they are therefore considered to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.

F. THE COMMUNITY 3,5″ MICRODISKS MARKET

1. General

(46) The market for 3,5″ microdisks is mature, and is currently characterised by a situation of falling demand. Other products such as Zip™ discs, other high capacity microdisks such as HiFDs and optical-magnetic data storage media, such as CD-Rs are progressively replacing the market held by 3,5″ microdisks. However, given the significant base of PCs with 3,5″ microdisk disk drives incorporated, it is clear that there will be a continuing need for these microdisks in the Community. Furthermore, according to recent market studies, most PC manufacturers continue to incorporate 3,5″ microdisk drives in the basic configuration of their machines. It is estimated that by the year 2002 there will be 38 million microdisk drives in the Community. The Community microdisk market will therefore remain important.

2. Consumption of 3,5″ microdisks on the Community market

(47) Figures for consumption in the Community are based on information contained in the application, verified production and sales figures provided by the Community industry and import volumes obtained via Eurostat. These estimates allowed a reasonable assessment of the Community consumption of the product concerned.

On this basis, total consumption in the Community fell throughout the period analysed from 1 400 million units (1994) to 1 300 million units (1995), 1 100 million units (1996), 1 000 million units (1997), before falling again to 900 million units in the investigation period, which represents a fall of 36 % over the whole period analysed.

3. Imports from the countries concerned

(a) *General remark*

(48) As regards Taiwan, in view of the conclusion that there is no likelihood of a continuation or recurrence of dumping in the future, the examination of a likelihood of continuation or recurrence of injury, relating to imports originating from this country was not pursued.

(b) *Volume and market share and prices of imports from Japan and the People's Republic of China*

(49) Due to the lack of cooperation, Eurostat information was used to estimate imported volumes. As mentioned above, the product concerned is only part of a CN heading and an estimate had to be made based on detailed custom information.

(50) The volume of imports from Japan and the People's Republic of China fell throughout the analysis period from 11 million units in 1995 to 2,6 million units in the investigation period. The total market share of both these imports fell from 0,8 % in 1995 to 0,3 % in the investigation period.

[1] OJ L 302, 19.10.1992, p. 1.
[2] OJ L 9, 13.1.1997, p. 1.

Imports into the Community (millions of units)	1995	1996	1997	Investigation period
Imports from Japan	4,86	1,695	1,390	0,655
Market share Japan	0,37 %	0,15 %	0,14 %	0,07 %
Imports from the People's Republic of China	6,090	2,065	5,835	1,915
Markets share People's Republic of China	0,47 %	0,19 %	0,58 %	0,22 %
Total imports from Japan, and the People's Republic of China	10,95	3,76	7,225	2,570
Index 1995 = 100	100	34	66	23
Total market share of Japan and the People's Republic of China	0,84 %	0,34 %	0,72 %	0,29 %

(c) *Imports declared as having originated in Macao*

(51) It should be noted that 200 million units were imported into the Community as having originated in Macao in 1995. However, this trade stopped during 1996 following an investigation by the anti-fraud services of the Commission in which it was proven that these microdisks were either of Chinese or Taiwanese origin. Anti-dumping duties were therefore collected retroactively on these imports ([1]).

4. **Price behaviour of the exporting producers**

(52) The development of prices of the imports of 3,5″ microdisks from the People's Republic of China is shown in the following table.

(ECU per unit)

Average price of imports	1995	1996	1997	Investigation period
Imports from the People's Republic of China	0,330	0,135	0,119	0,146

Source: Eurostat.

(53) The comparison of the prices of the dumped imports originating in the People's Republic of China was established by comparing their cif sales prices established as described at recital 23, with the weighted average ex-factory prices of the Community industry. The comparison was made for the same product types imported (i.e. high-density, double-density, bulk or packed, degree of certification, formatted or unformatted). The comparison showed, on a weighted average basis, that the prices of the imports originating in the People's Republic of China were more than 20 % lower than those of the sales of the Community industry during the investigation period.

(54) For Japan, as no exporting producer from Japan cooperated in the present investigation, the only available prices are the Eurostat prices or price quotations provided in the review request. The level of prices derived from Eurostat appears very high in comparison to imports from the People's Republic of China (0,718 ECU/unit). However, it should be recalled that the Eurostat price data is for a group of product which also covered more expensive high storage microdisks that were excluded from the scope of the measures following a review concluded in 1999. Therefore no meaningful price comparison was possible from this source. With regard to price quotations, they showed prices for Japanese products similar to those of the Community industry.

([1]) See recital 15 of Commission Regulation (EC) No 1445/96 of 24 July 1996 (OJ L 186, 25.7.1996, p. 14) and recital 3 of Commission Decision No 98/175/EC of 3 March 1998 (OJ L 63, 4.3.1998, p. 32).

5. **Situation of the Community industry**

(a) *Production, capacity and capacity utilisation*

(55) The production, production capacity and capacity utilisation of the Community industry were as follows:

	1994	1995	1996	1997	Investigation period
Production in millions of units	185	218	201	182	174
Index 1995 = 100	100	118	109	98	94
Capacity in millions of units	201	223	261	222	222
Index 1995 = 100	100	111	130	110	110
Capacity utilisation	92 %	98 %	77 %	82 %	79 %

(b) *Sales, market shares and prices*

(56) Sales on the Community market to unrelated customers, market share and prices of the Community industry were as follows:

	1994	1995	1996	1997	Investigation period
Sales in millions of units	175	211	200	178	168
Index 1995 = 100	100	121	114	102	96
Market share	12,5 %	16,2 %	18,2 %	17,8 %	18,7 %
Average price per unit (ECU)	0,3217	0,2503	0,2056	0,1799	0,1511
Index 1995 = 100	100	78	64	56	47

(57) The Community industry's market share rose by 3,7 percentage points between 1994 and 1995 and by a further 2 percentage points between 1995 and 1996. It remained within a relatively narrow range thereafter. Prices fell by 53 % between 1994 and the investigation period.

(c) *Inventories*

(58) Inventories are relatively stable over time and therefore they do not add any relevant information as to the situation of the Community industry.

(d) *Profitability, return on investments and cash flow*

(59) It was found that throughout the analysis period, the Community industry had recorded financial results (i.e. losses) which were well below the profit rate deemed appropriate for the Community industry in the original investigation. Profit levels for 1995 are not available due to industry restructuring. Overall during the analysis period, losses fell from − 3,36 % in 1994 to − 0,17 % in the investigation period.

(60) Return on investments has been negative during the analysis period and, in general terms, in line with the trend of profitability. Cash flow has slightly improved in line with profitability.

(e) *Employment, wages and labour productivity*

(61) Employment in the Community industry fell steadily throughout the period analysed from 266 in 1994 to 132 in the investigation period, 50 % of its labour force, as the Community industry tried to reduce costs and increase productivity. Wages decreased by 35 %.

(62) The above employment levels were falling at a time when the Community industry was increasing its output. This implies that labour productivity was increasing, from 695 000 units per employee to 1 318 000 units per employee, an increase of 89 % throughout the period analysed.

(f) *Investments and ability to raise capital*

(63) Production of 3,5″ microdisks is capital intensive and production facilities typically operate 24 hours daily all year round. Although there were investments of ECU 2,9 millions in 1994, ECU 0,6 millions in 1995 and ECU 0,3 millions in 1996, there have been no significant net investments in this industry for the last two years of the analysis period.

(64) The losses experienced during the analysis period were such that no financing for new investment by the Community industry was possible during the last two years.

(g) *Exports by the Community industry*

(65) The exports remained stable between 2 and 3 % of total turnover over the analysis period.

(h) *Magnitude of dumping margin and recovery from past dumping*

(66) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping found during the investigation period, it should be noted that the margins found for Japan and the People's Republic of China are not negligible. The situation of the Community industry improved to a certain extent after the imposition of measures, but it has not completely recovered. Therefore, should measures be repealed, the impact of the dumping margin found in the current investigation would be significant.

6. **Submissions received from interested parties in the People's Republic of China**

(67) One cooperating exporting producer in the People's Republic of China claimed that the 3,5″ microdisk market can be divided into two market segments, namely 'branded' and 'bulk'. The bulk part of the market is characterised by large-scale deliveries of 3,5″ microdisks where there is no emphasis on high quality. Branded products, on the other hand, are those which normally correspond to high quality standards. It was argued that these market segments are distinct from each other, and that they should therefore receive separate treatment in the analysis.

To illustrate its point, the company claimed that sales of high quality branded product were stable while sales of low quality bulk product had been falling. It further alleged that the Community producers' sales were mainly in the area of low quality bulk products and that this would explain any material injury they might be suffering. According to the submission, this company concentrated on sales of branded products, and therefore allegedly did not compete with the Community industry.

(68) The argument that branded and bulk segments should be examined separately cannot be accepted. As has already been pointed out, 3,5″ microdisks are the same product irrespective of whether they are sold under a brand name or not, and are, on a type by type basis, alike in all respects and interchangeable. There is a significant overlap between the type of 3,5″ microdisks sold by Chinese producers and those sold by the Community producers; they are competing therefore in the same market segment.

(69) Another interested producer in the People's Republic of China, which did not cooperate in the investigation, claimed that the Community industry's injury was not due to the imports from the People's Republic of China, but rather was a result of 3,5″ microdisks being a mature product which would disappear within the next two years. In addition, it was stated that the Chinese product was a low quality bulk product which did not compete with the Community production which, according to this interested party, was at the high quality branded level.

(70) The claims by this party could not be verified in view of the lack of cooperation. In any event, although 3,5″ microdisks are indeed a mature product, the decline in consumption will take place over a considerably longer period than two years. As was shown above, demand for 3,5″ microdisks is expected to continue, albeit with declining sales, and personal computer manufacturers will continue to install microdisk drive-units as standard equipment in their machines. The claim that the Chinese product does not compete with Community production has already been rejected.

7. **Conclusions on the situation of the Community industry**

(71) The overall picture that emerges of the situation of the Community industry from the foregoing is that of an industry still in a weak situation, despite an improved market share and a successful effort at reducing significantly costs of production (which fell 51 % over the period examined). Production methods have been modernised and facilities are now almost entirely automated in order to improve efficiency, maintain market share and maximise profits. However, the Community industry has not been able yet to reach a satisfactory financial situation.

G. **LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY**

(72) It is recalled that it was concluded at section D that it is likely that, both for Japan and the People's Republic of China, dumping will continue should the anti-dumping measures expire. It was also concluded that there will be a likelihood of recurrence of dumping, should measures expire, since volumes of dumped imports would considerably increase.

(73) It was shown at section F that the Community industry was in a vulnerable situation during the investigation period.

(74) Should measures expire, dumped imports from Japan and the People's Republic of China are likely to push down the prices of the Community industry which are already depressed.

(75) In such conditions, the Community industry, already loss-making, would not be able to compete with high quantities sold at such low prices because firstly, a difference in prices in this market (microdisks are a commodity-like product) leads to immediate substitution in supplies and secondly, the Community industry has already made all the necessary efforts to restructure itself and is already operating at very low costs. It is therefore likely that the Community industry would see a further deterioration of its financial situation bringing its very survival into question.

Claim by a Chinese exporting producer

(76) A Chinese exporting producer argued that market circumstances were not likely to lead to renewed injurious dumping from the People's Republic of China. The investments required to upgrade existing Chinese production facilities to produce high quality 3,5″ microdisks would not be worthwhile given current market trends, and no stockpiles of product existed as claimed by the applicant parties. It submitted therefore that no significant increase in imports from the People's Republic of China was likely in the event that anti-dumping duties expired.

From the outset it should be noted that the allegations made by the company concerned could not be verified, as this company did not cooperate in the investigation. For the sake of completeness, the arguments brought forward have been analysed nevertheless. As regards the upgrading argument, this question is considered to be irrelevant for the question of recurrence of injury as it has been determined that all types of 3,5″ microdisks, including those for which there currently is production in the People's Republic of China, are products alike to those produced by the Community industry and that consequently these products are in competition with each other.

Conclusion

(77) In light of the above findings, it is concluded that the expiry of the measures would be likely to lead to a continuation and/or recurrence of injury for the Community industry.

H. **COMMUNITY INTEREST**

1. **General considerations**

(78) The Commission examined whether the maintenance of the anti-dumping measures on 3,5″ microdisks would be in the interest of the Community. It has been found that there is a likelihood of continuation and/or recurrence of injurious dumping. The investigation also considered whether or not there are any overriding interests against maintaining the measures and also took account of the past effects of duties on all the various interests involved.

(79) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. It should also be noted that, since this is an expiry review investigation, this investigation should also show the impact of the existing measures in particular on users consumers and traders.

2. **Interests of the Community industry**

(80) In view of the conclusions on the situation of the Community industry set out at section F, especially in terms of its negative profitability, the Commission considers that, in the absence of measures against injurious dumping, the Community industry is likely to experience a worsening of its financial situation.

(81) The Community industry is viable and capable of supplying the market for a product which, although at a mature stage of its life cycle, constitutes the basic storage device for a large number of computer users. Indeed, the Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of such steps taken are:

(a) keeping prices at a minimum to maintain its market share;

(b) progression towards greater consolidation;

(c) closure of manufacturing units;

(d) widespread use of modern production techniques (e.g. increased mechanisation and computerisation);

(e) improvements in productivity;

(f) investing in production of other digital storage media products.

(82) It is also to be noted that the production of data storage media is an area of technological importance for the Community as a whole. The production technology and experience gained by the Community industry in 3,5″ microdisk production has provided, and will continue to provide, a basis for further innovation in the manufacture of other related data storage media products. For the Community industry, remaining viable in the microdisk sector is the economic basis for participating in the growing market of other storage media.

3. **Interests of unrelated importers/traders**

(83) Only one unrelated importer cooperated with the investigation. It stated that imports were restricted by the existence of anti-dumping duties. However, it was obvious that imports were still possible for this importer. Should measures be maintained, this company would still be able to source 3,5″ microdisks from the countries concerned and from other third countries, including countries not subject to anti-dumping measures.

(84) Furthermore the limited cooperation of importer in this case leads to the conclusion that the measures in force on imports originating in Japan and the People's Republic of China did not have any significant impact on the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

(85) Therefore, it is concluded that the continuation of the measures is not likely to affect the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

4. **Interests of component suppliers**

(86) Any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the industry itself but may have a knock-on effect among the industry's suppliers of *inter alia*, shells, cookies, shutters, hubs, liners and springs.

(87) The Community producers source the large majority of their materials and components from suppliers located in the Community. Therefore the continuation of the anti-dumping measures would clearly be in the interest of the Community component supplier industry.

5. **Interests of users and consumers**

(88) Major users of 3,5″ microdisks include duplicators and final consumers. Neither sector has made representations in this review investigation. The Commission, therefore, considers that the findings of the original investigation in this context are still applicable, i.e. the increase in costs applicable to this sector when compared to overall costs can be considered as negligible and would have very little or no impact on prices to retail consumers.

(89) On the contrary the expiry of the measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition, to the detriment of duplicators and consumers.

6. **Conclusion**

(90) After weighing the interests of the various parties involved, the Commission concludes that there are no compelling reasons of Community interest against the continuation of measures.

I. **PROPOSED DUTIES FOR JAPAN AND THE PEOPLE'S REPUBLIC OF CHINA**

(91) In view of the findings above, it is considered appropriate that the anti-dumping duties imposed by Regulation (EEC) No 2861/93 should be maintained at existing levels, i.e.:

Japan	Memorex Telex Japan Ltd	6,1 %
	Hitachi Maxell Ltd	20,6 %
	TDK	26,7 %
	All other companies	40,9 %
People's Republic of China	Hanny Magnetics	35,6 %
	All other companies	39,4 %.

(92) Because of the long duration of the investigation, it is considered appropriate that the measures be limited to four years.

J. **TERMINATION OF THE PROCEEDING IN RESPECT OF TAIWAN**

(93) In view of the findings set out above concerning imports originating in Taiwan, the anti-dumping measures currently in force against Taiwan are no longer warranted and the proceeding should be terminated with regards to imports originating in this country. Notwithstanding the duration of the investigation the termination should be effective from the date of entry into force of this Regulation. In fact, the termination is motivated by post investigation period events assessed several months after, and to grant retroactivity in these circumstances would be inconsistent with the sequence of events during the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (TARIC code 8523 20 90*40) and originating in Japan and the People's Republic of China, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following manufacturers shall be as follows:

Country	Company	Rate of AD duty %	TARIC additional code
Japan	Memorex Telex Japan Ltd	6,1 %	8705
	Hitachi Maxell Ltd	20,6 %	8706
	TDK	26,7 %	8707
	All other exporting producers	40,9 %	8999
The People's Republic of China	Hanny Magnetics	35,6 %	8711
	All other exporting producers	39,4 %	8999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The anti-dumping duties shall be imposed for a period of four years from the date of entry into force of this Regulation.

Article 3

The proceeding concerning imports of 3,5″ microdisks originating in Taiwan is hereby terminated.

Article 4

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

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

Done at Brussels, 18 February 2002.

For the Council
The President
J. PIQUÉ I CAMPS

COMMISSION REGULATION (EC) No 313/2002

of 20 February 2002

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 20 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	148,9
	204	104,9
	212	224,0
	624	193,8
	999	167,9
0707 00 05	052	175,2
	068	117,9
	220	175,4
	999	156,2
0709 10 00	220	242,2
	999	242,2
0709 90 70	052	152,7
	204	73,1
	999	112,9
0805 10 10, 0805 10 30, 0805 10 50	052	50,9
	204	51,0
	212	46,1
	220	40,0
	508	22,3
	600	63,2
	624	62,6
	999	48,0
0805 20 10	052	83,4
	204	77,3
	999	80,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	61,1
	204	96,7
	220	59,3
	464	114,9
	600	110,8
	624	87,6
	999	88,4
0805 50 10	052	49,5
	600	44,9
	999	47,2
0808 10 20, 0808 10 50, 0808 10 90	060	40,6
	388	126,2
	400	122,7
	404	94,3
	508	112,1
	528	78,2
	720	125,5
	728	124,5
	999	103,0
0808 20 50	388	105,0
	400	95,1
	512	90,2
	528	74,2
	720	117,1
	999	96,3

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

COMMISSION REGULATION (EC) No 314/2002
of 20 February 2002
laying down detailed rules for the application of the quota system in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular Articles 13(3), 14(4), 15(8), 16(5), 18(5) and the second paragraph of Article 41 thereof,

Whereas:

(1) Recent amendments to the common organisation of the market in sugar for the 2001/02 to 2005/06 marketing years introduced by Regulation (EC) No 1260/2001 require some changes to be made to the measures for implementing the quota system. Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector [2], as last amended by Regulation (EC) No 392/94 [3], having, moreover, already been substantially amended a number of times, in the interests of clarity that Regulation should be recast.

(2) For the application of the quota system in the sugar sector, precise definitions are required of an undertaking's production of sugar, isoglucose or inulin syrup and of internal Community consumption. For this purpose all the white sugar, raw sugar, invert sugar and syrups or, as the case may be, isoglucose or inulin syrup actually produced by an undertaking should be treated as that undertaking's production. The possibility of allocating part of the production of one undertaking to another undertaking which has had sugar produced under contract should be restricted to specific cases. Without prejudice to circumstances of *force majeure*, such cases must be determined so as to avoid financial consequences in the sugar sector.

(3) The smooth and efficient application of the quota system in the Community requires that the method for recording production of sucrose syrups, isoglucose and inulin syrup be laid down.

(4) The production of isoglucose is completely accomplished as soon as the glucose or its polymers have undergone the process known as 'isomerisation'. Thus, in order to avoid arbitrary choices of the moment at which production is recorded, such recording should take place as soon as the isomerisation process has ended and before any operation to separate the glucose and fructose constituents or to produce mixtures. In order to make this control as effective as possible, isoglucose manufacturers in the Community should be required to notify the competent authorities of the Member State in question of every isomerisation facility used by them.

(5) Inulin syrup in product form generally appears as such from the moment that the inulin or its oligofructoses have undergone the process known as hydrolysis and first evaporation. This means that production should be recorded immediately after the hydrolysis and first evaporation process has ended and before any operation to separate the glucose and fructose constituents or to produce mixtures.

(6) In order to enable the Member States to establish correctly and unequivocally the production of inulin syrup, it should be specified, on the basis of past experience in particular, that this operation is to be carried out with reference to an inulin syrup with an 80 % fructose content and a sugar/isoglucose equivalent expressed by application of a coefficient of 1,9.

(7) The production levies provided for in Article 15 of Regulation (EC) No 1260/2001 cannot be fixed until after the end of the marketing year in view of the fact that a large proportion of the export commitments are made in the second half of the marketing year and that the data serving to establish the production levies are available only at that point. Therefore, in order to implement as soon as possible the financial responsibility of producers, payment in advance of levies calculated on the basis of estimates should be made well before the end of the marketing year. Since most production of B isoglucose does not, in general, take place until the last months of the marketing year, advance payment of the basic production levy only should be required in respect of isoglucose produced before 1 March of the marketing year in question. The levies should not be fixed or collected until information which is as precise as possible, in particular on consumption, is to hand.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 158, 9.6.1982, p. 17.
[3] OJ L 53, 24.2.1994, p. 7.

(8) Rules should be laid down for payment of an additional price component for beet where the production levy is less than the maximum amount, and provision should also be made for an additional payment taking account, in particular, of the period between the date of payment for the beet and the date of payment of production levies by the manufacturer.

(9) To facilitate proper management of the quota system, the necessary time limits for recording production and for communicating relevant data should be laid down, and provision should be made, as necessary, for appropriate control measures by the Member States.

(10) The abolition of the system for compensating storage costs in the sugar sector from 1 July 2001 interrupted the availability of statistics on sugar stocks and disposal of sugar in the Community. In view of the importance of these statistics for the good management of the quota system, in particular for determining the monthly consumption of sugar and for drawing up supply balances, provision should be made for Community sugar producers and refiners to continue to provide the Member States with monthly data on sugar stocks and disposals.

(11) One of the characteristics of the organisation of the sugar sector is the fact that relations between sugar manufacturers and beet producers, in particular as regards the delivery of and payment for sugar beet, are generally governed by inter-trade agreements drawn up within the framework laid down in Community legislation. These inter-trade agreements may provide for arrangements which take account of the specific situation in the region in which they apply. Provision should therefore be made, with regard to the option given to manufacturers to make beet growers contribute towards the payment of the additional levy, for the arrangements for this contribution to be laid down in inter-trade agreements within the framework of Article 16(3) of Regulation (EC) No 1260/2001.

(12) Undertakings producing isoglucose, contrary to undertakings producing sugar which rely on production of sugar beet or sugar cane, are not authorised to use the option of carrying over production from one marketing year to the next.

(13) Isoglucose is produced on a constant basis throughout the marketing year in order to be able to respond quickly and without interruption to fluctuations in demand, which is highest at the start and end of each marketing year. However, the isoglucose produced is difficult to stock in sufficient quantities to meet these peaks in demand because extended storage threatens the essential sterility of the product. Under these circumstances, undertakings producing isoglucose have to discontinue production at the end of the marketing year to avoid producing C isoglucose which cannot be disposed of on the Community market. This situation is detrimental to undertakings producing isoglucose and requires provision to be made for a certain amount of flexibility in the monthly recording of isoglucose production. Such flexibility should however be limited to avoid introducing, by automatic use thereof, a concealed carry-over system and thus an indirect increase in the production quotas of those undertakings.

(14) In the operation of the quota system there may be some delays in the recovery of production levies. To ensure harmonious recovery of these sums in good time, rules should be laid down for fixing and collecting production levies.

(15) 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

1. For the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001, 'sugar production' means the total quantity, expressed as white sugar, of:

(a) white sugar;

(b) raw sugar;

(c) invert sugar;

(d) syrups belonging to one of the following categories, hereinafter called 'syrups':

— sucrose or invert sugar syrups which are at least 70 % pure and are produced from sugar beet,

— sucrose or invert sugar syrups which are at least 75 % pure and are produced from sugar cane.

2. The following shall be excluded when the quantity referred to in paragraph 1 is being calculated:

(a) quantities of white sugar produced from raw sugar or syrups which were not produced in the undertaking which manufactured the white sugar;

(b) quantities of white sugar produced from raw sugar, syrups or sugar sweepings which were not produced during the marketing year in which the white sugar was manufactured;

(c) quantities of raw sugar produced from syrups which were not produced in the undertaking which manufactured the raw sugar;

(d) quantities of raw sugar produced from syrups which were not produced during the marketing year in which the raw sugar was manufactured;

(e) quantities of raw sugar processed into white sugar during the marketing year in question by the undertaking which produced them;

(f) quantities of invert sugar and syrups processed into alcohol or rum;

(g) quantities of syrups processed into sugar or invert sugar during the marketing year in question by the undertaking which produced them;

(h) quantities of syrups for spreading and those to be processed into 'Rinse appelstroop';

(i) quantities of sugar, invert sugar and syrups produced under inward-processing arrangements;

(j) quantities of invert sugar produced from syrups which were not produced by the undertaking which manufactured the invert sugar;

(k) quantities of invert sugar produced from syrups which were not produced during the marketing year in which the invert sugar was manufactured.

3. Production shall be expressed in terms of white sugar in the following way:

(a) in the case of white sugar, disregarding differences in quality;

(b) in the case of raw sugar, on the basis of yield determined in accordance with Annex I to Regulation (EC) No 1260/2001;

(c) in the case of invert sugar, by multiplying production by the coefficient 1;

(d) in the case of syrups considered as intermediate products, on the basis of extractable sugar content determined in accordance with paragraph 5;

(e) in the case of syrups which are not considered as intermediate products, on the basis of sugar content, expressed as sucrose in accordance with Article 3(2) of Commission Regulation (EC) No 2135/95 [1].

4. Sugar sweepings from a previous sugar year shall be expressed as white sugar in proportion to the sucrose content.

5. Purity of syrups shall be calculated by dividing the total sugar content by the dry matter content.

The extractable sugar content shall be calculated by subtracting the difference between the dry matter content and the polarimetric reading for that syrup, multiplied by 1,70, from the polarimetric reading for the syrup in question. Dry matter content shall be determined in accordance with the areometric method.

However, the extractable sugar content can be established, for an entire marketing year, on the basis of the real yield in syrups.

Article 2

1. For the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001, 'isoglucose production' means the total quantity of product obtained from glucose or its polymers with a content by weight in the dry state of at least 10 % fructose irrespective of its fructose content in excess of that limit, expressed as dry matter and recorded in accordance with paragraph 2.

2. Isoglucose production shall be recorded as soon as the isomerisation process has terminated and before any operation to separate the glucose and fructose constituents or to produce mixtures, by physical metering of the volume of the product as such and determination of the dry matter content by refractometry.

3. Every isoglucose manufacturer shall be required to notify without delay any of its facilities which may be used for the isomerisation of glucose or its polymers.

Notification shall be made to the Member State on whose territory each facility is situated. The Member State may require the manufacturer to furnish additional information in this respect.

Article 3

1. For the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001, 'inulin syrup production' means the quantity of product obtained after the hydrolysis of inulin or oligofructoses with a content by weight in the dry state of at least 10 % fructose in free form or as sucrose, irrespective of its fructose content in excess of that limit, expressed as dry matter sugar/isoglucose equivalent, and established for each undertaking producing inulin syrup in accordance with paragraph 2.

2. Inulin syrup production shall be recorded by means of the combination of the following operations:

(a) physical metering of the volume of the product as such immediately after leaving the first evaporator after each hydrolysis and before any operation to separate the glucose and fructose constituents or to produce mixtures;

(b) determination of the dry matter content by refractometry and measurement of the fructose content by weight in the dry state, on the basis of daily representative sampling;

(c) conversion of the fructose content to 80 % by weight in the dry state by multiplying the quantity determined in dry matter by the coefficient representing the ratio between the measured fructose content of that quantity of syrup and 80 %;

(d) expression as sugar/isoglucose equivalent by applying the coefficient 1,9.

Article 4

1. Before 15 February of each year Member States shall establish provisional sugar and inulin syrup production figures for the current marketing year for each undertaking situated on their territories.

For the French departments of Guadeloupe and Martinique, this production shall be recorded before 15 May each year.

[1] OJ L 214, 8.9.1995, p. 16.

2. Before the 15th day of each month each isoglucose-producing undertaking shall communicate to the Member State on whose territory production took place the quantities, expressed as dry matter, actually produced during the preceding calendar month.

On the basis of these communications Member States shall establish, in respect of each month and not later than the 15th day of the second month thereafter, the isoglucose production of each undertaking concerned.

In calculating the production referred to in the preceding subparagraph the quantities of isoglucose produced under inward-processing arrangements shall not be taken into account.

3. Notwithstanding the first and second subparagraphs of paragraph 2, the competent authorities of the Member State may decide, for a given isoglucose-producing undertaking, on the basis of a duly substantiated prior request in writing from the undertaking:

(a) either to combine the production of the months of May and June of a marketing year for counting against the marketing year in question;

(b) or to combine all or part of the production of the month of June of a marketing year with that of the month of July of the following marketing year for counting against the latter marketing year. The request for combination must indicate at least the quantity of the production of the month of June to be combined with that of the month of July. This quantity may not exceed 7 % of the sum of the A and B quotas of the undertaking in question applicable to the marketing year during which the request for combination is made. The quantity so combined shall be considered as the first production within the quotas of the undertaking concerned.

The Member State shall assess whether the request is justified, taking into account the production situation of the undertaking and market demand, in particular in the light of the quotas and production levies. Only one of the combination types referred to in the first subparagraph may be used by a given undertaking in a given marketing year.

After agreement by the Member State, the isoglucose-producing undertaking in question shall communicate to the Member State, before the following 15 July in the case referred to under (a) of the first subparagraph and before the following 15 August in the case referred to under (b) thereof, the quantities, expressed as dry matter, actually produced during the relevant two-month period, account being taken where appropriate of the quantities to be combined referred to under (b) of the first subparagraph.

On the basis of these communications the Member State shall establish the combined isoglucose production of the undertaking concerned during the two months in question to be counted against the production of the marketing year concerned in accordance with (a) or (b), as the case may be, of the first subparagraph. The Member State shall communicate this production to the Commission.

The provisions under (b) of the first subparagraph shall not be applicable to the last marketing year included in the period referred to in Article 10(1) of Regulation (EC) No 1260/2001.

4. Before 15 September of each year Member States shall establish final figures for sugar, isoglucose and inulin syrup production by each undertaking situated on their territories in the preceding marketing year.

5. Where differences are found after the establishment of final production figures for the sugar referred to in paragraph 4, such differences shall be taken into account when final production figures are established for the marketing year in which the differences are found.

6. Before the 25th day of each month, each sugar manufacturer shall communicate to the competent authority of the Member State on whose territory production takes place or to the authority of the Member State in question competent for intervention on the market in the product concerned, indicating the quantities which are its property or otherwise:

(a) the quantities of sugar, expressed as white sugar, stored in the facilities at its disposal at the end of the preceding calendar month;

(b) the quantities of sugar, expressed as white sugar, which left the facilities at its disposal during the preceding calendar month.

This communication should specify the breakdown of the quantities concerned between sugar produced within the A and B quotas, sugar carried forward in accordance with Article 14 of Regulation (EC) No 1260/2001, and C sugar.

The authority referred to in the first subparagraph may request the communication of additional data on stocks held by the manufacturer and on quantities leaving its facilities.

7. Before the 25th day of each month each refiner of raw sugar shall communicate to the competent authority of the Member State on whose territory refining takes place or to the authority of the Member State in question competent for intervention on the market for the product concerned, indicating the quantities which are its property or otherwise:

(a) the quantities of sugar, expressed as white sugar, stored in the facilities at its disposal at the end of the preceding calendar month;

(b) the quantities of sugar, expressed as white sugar, which left the facilities at its disposal during the preceding calendar month.

This communication must distinguish quantities subject to inward processing arrangements.

The authority referred to in the first subparagraph may request the communication of additional data on stocks held by the refiner and on quantities leaving the facilities in question.

Article 5

1. For the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001 and subject to paragraphs 2 to 5 of this Article, the sugar or isoglucose production of an undertaking means the quantity of sugar or isoglucose actually manufactured by that undertaking.

2. For a given marketing year, the total sugar production of an undertaking shall be the production referred to in paragraph 1 plus the quantity carried over to that marketing year and minus the quantity carried over to the following marketing year.

3. Where two manufacturers make a signed application in writing to the Member State concerned, the quantity of sugar produced by an undertaking (hereinafter called 'the processor') under contract from materials supplied shall be treated as part of the production of the undertaking (hereinafter called 'the principal') which had the sugar produced under that contract provided that one of the following conditions is met:

(a) the total sugar production of the processor is less than it's a quota;

(b) the total sugar production of the processor is more than it's a quota but less than the sum of it's a and B quotas and the principal's total sugar production is more than it's a quota;

(c) the total sugar production of the processor and of the principal is more than the sum of their respective A and B quotas.

4. Where the factories of the principal and of the processor are situated in different Member States, the application referred to in paragraph 3 must be made to the two Member States concerned. In that case the Member States concerned shall act in concert as regards the response to be given, and shall take the necessary steps to verify that the conditions referred to in paragraph 3 are observed.

5. In accordance with the procedure laid down in Article 42(2) of Regulation (EC) No 1260/2001, the quantity of sugar produced by a processor may be considered to be produced by the principal if, owing to a case of *force majeure*, the beet, cane or molasses have to be processed into sugar in an undertaking other than that of the principal.

Article 6

1. Before 1 April the following action shall be taken in respect of the current marketing year:

(a) the basic production levy and B levy for sugar shall be estimated in accordance with Article 15 of Regulation (EC) No 1260/2001;

(b) the unit amounts, determined in accordance with Article 7 of this Regulation, to be paid by sugar manufacturers, isoglucose manufacturers and inulin syrup manufacturers as advance payments in respect of the levy shall be fixed in accordance with the procedure laid down in Article 42(2) of Regulation (EC) No 1260/2001.

2. Before 15 April of the current marketing year Member States shall establish the advance payments for that marketing year to be made by each sugar-producing undertaking, each isoglucose-producing undertaking and each inulin syrup-producing undertaking.

In the case of the French departments of Guadeloupe and Martinique and of Spain, in respect of cane sugar, these advance payments shall be fixed before 15 August of the current marketing year.

In the case of sugar and inulin syrup, the advance payment shall be determined:

(a) by applying to the provisional production of A sugar and A inulin syrup and B sugar and B inulin syrup, determined pursuant to Article 4(1), the unit amount fixed for the advance payment in respect of the basic production levy;

(b) by applying to the provisional production of B sugar and B inulin syrup, determined pursuant to Article 4(1), the unit amount fixed for the advance payment in respect of the B levy.

In the case of isoglucose, the advance payment shall be determined by applying to the production between 1 July and the end of the following February for the current marketing year the unit amount fixed for the advance payment in respect of the basic production levy on isoglucose.

3. Member States shall collect these advance payments before 1 June of the current marketing year.

In the case of the French departments of Guadeloupe and Martinique and of Spain, in respect of cane sugar, these advance payments shall be collected before 1 September of the current marketing year.

4. The quantity to be determined under Article 15(1)(b) of Regulation (EC) No 1260/2001 shall be established on the basis of the sum of the following quantities:

(a) the quantities of sugar, isoglucose and inulin syrup disposed of in the Community for direct consumption or for consumption after processing by the user industries;

(b) the quantities of denatured sugar;

(c) the quantities of sugar, isoglucose and inulin syrup imported from non-member countries as processed products.

There shall be subtracted from the sum referred to in the first subparagraph the sum of the quantities of sugar, isoglucose and inulin syrup exported to non-member countries as processed products and the quantities of basic products expressed as white sugar for which certificates for the production refunds referred to in Article 7(3) of Regulation (EC) No 1260/2001 have been issued.

5. The following shall be regarded within the meaning of Article 15(1)(d) of Regulation (EC) No 1260/2001 as export obligations to be fulfilled during the current marketing year:

(a) all quantities of sugar to be exported in the natural state with export refunds or levies fixed by means of tenders opened in respect of that marketing year;

(b) all quantities of sugar, isoglucose and inulin syrup to be exported in the natural state with export refunds or levies fixed periodically on the basis of export licences issued during that marketing year;

(c) all foreseeable exports of sugar, isoglucose and inulin syrup in the form of processed products with export refunds or levies fixed for that purpose during that marketing year, such quantities being spread evenly over the marketing year.

For the calculation of the foreseeable average loss referred to in Article 15(1)(d) of Regulation (EC) No 1260/2001, the production refunds for the quantities of basic products expressed as white sugar for which certificates for the production refunds referred to in Article 7(3) of that Regulation have been issued during the course of the marketing year in question shall also be taken into account.

Article 7

1. Where the estimate of the basic production levy on sugar and inulin syrup is at least 60 % of the maximum amount referred to in Article 15(3) of Regulation (EC) No 1260/2001, the unit amount of the advance payment shall be 50 % of that maximum amount.

Where the estimate is less than 60 % of that maximum amount, the unit amount of the advance payment shall be 80 % of that estimate.

2. Paragraph 1 shall also apply for determining the unit amount of the advance payment in respect of the B levy on sugar and inulin syrup, taking into account the maximum amount referred to in Article 15(4) and (5) of Regulation (EC) No 1260/2001.

3. The unit amount of the advance payment in respect of the basic production levy on isoglucose shall be 40 % of the unit amount of the basic production levy on sugar estimated in accordance with Article 6(1)(a) of this Regulation.

Article 8

1. There shall be fixed for sugar, isoglucose and inulin syrup before 15 October, in respect of the preceding marketing year:

(a) the amounts of the basic production levy and the B levy;

(b) if required, the coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001.

2. Before 1 November in respect of the preceding marketing year and taking into account the advance payments collected pursuant to Article 6, Member States shall determine the balance of the levies outstanding in the case of each sugar-producing undertaking, each isoglucose-producing undertaking and each inulin syrup-producing undertaking.

Balances due from the undertaking or from the Member State referred to in the first subparagraph shall be paid before 15 December following the deadline for determining those balances.

3. If a coefficient is adopted in accordance with Article 16(2) of Regulation (EC) No 1260/2001 the Member States shall, in accordance with the provisions of that paragraph, determine for each sugar-producing undertaking, for each isoglucose-producing undertaking and for each inulin syrup-producing undertaking, before 1 November in respect of the preceding marketing year, the additional levy to be paid by the manufacturers in question. This levy shall be collected at the same time as the balance of the production levies for that marketing year.

4. If the sum of the levies due by a producing undertaking has not been correctly established, the correct amount to be paid or balance due by the producing undertaking in question must be established within a period of 30 days from the date on which the Member State has noticed this situation and is able to calculate the amount legally due.

Member States shall collect the amounts referred to in the first subparagraph within 30 days of the date on which they are established.

Article 9

1. The amounts referred to in Article 18(2) of Regulation (EC) No 1260/2001 shall be fixed at the same time as the levies referred to in Article 8(1) of this Regulation and in accordance with the same procedure.

2. Where the price paid by a sugar manufacturer to the beet seller is lower than the basic price for beet, the manufacturer shall, to the extent of the difference in question, allow the beet seller a share of the increased value of the sugar in the light of the intervention price.

For the purpose of calculating the amount corresponding to this share, the manufacturer shall take into account:

(a) the periods between the dates of payment for the beet and the dates laid down for the advance payments and payment of the balances in respect of the production levies and the additional levy;

(b) the European Central Bank's interest rate for main refinancing operations in the periods referred to in point (a). For a Member State which is not participating in the third stage of economic and monetary union, the reference rate shall be the equivalent rate set by its national central bank;

(c) the percentage laid down in Article 18(2) of Regulation (EC) No 1260/2001;

(d) the yield of the beet in question, without prejudice to Article 5(1) of Regulation (EC) No 1260/2001.

3. The amounts referred to in paragraph 1 and the amount corresponding to the share referred to in paragraph 2 shall be paid to the beet seller by the sugar manufacturer within four weeks following the date on which the levies referred to in Article 8(1) are fixed.

4. Inter-trade agreements may derogate from the provisions of paragraphs 2 and 3.

Article 10

Member States shall take all the measures necessary to establish the controls required for recording production of the products covered by this Regulation.

Article 11

The reimbursement referred to in the second and third subparagraphs of Article 16(3) of Regulation (EC) No 1260/2001 may, without prejudice to these provisions, be made in accordance with rules defined by an inter-trade agreement.

Article 12

Regulation (EEC) No 1443/82 is hereby repealed.

Article 13

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

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 315/2002

of 20 February 2002

on the survey of prices of fresh or chilled sheep carcasses on representative markets in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat [1], and in particular Articles 20 and 24 thereof,

Whereas:

(1) Regulation (EC) No 2529/2001 sets up a new system of premia to replace the system set out in Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat [2], as amended by Regulation (EC) No 1669/2000 [3]. In order to take into account the new arrangements and in the interests of clarity it is necessary to establish new rules to replace those set out in Commission Regulation (EEC) No 1481/86 of 15 May 1986 on the determination of prices of fresh or chilled lamb carcasses on representative Community markets and the survey of prices of certain other qualities of sheep carcasses in the Community [4], as last amended by Regulation (EC) No 2877/2000 [5].

(2) Pursuant to Article 20 of Regulation (EC) No 2529/2001, Member States shall record prices of ovine animals and of meat of ovine animals. The rules for the application of price reporting should therefore be fixed.

(3) The prices shall be those recorded on the representative market or markets of each Member State for the various categories of fresh or chilled sheep carcasses. Moreover, where there is more than one representative market in a Member State the arithmetical or, if necessary, the weighted average of quotations recorded on these markets should be taken.

(4) The prices recorded on the market shall be based on the prices, excluding value added tax, of carcasses, but with no deductions authorised in respect of other charges. Market prices should be recorded in respect of the 'carcass weight' as defined in Commission Decision 94/434/EC of 30 May 1994 laying down detailed rules for the application of Council Directive 93/25/EEC as regards the statistical surveys to be carried out by Member States on sheep and goat population and production [6], as last amended by Decision 1999/47/EC [7]. However, it should be permitted that this definition be not used in the case of carcasses of young lambs weighing between 9 and 16 kilograms, so that market practices, whereby whole carcasses marketed with head and offals command a greater commercial value, can be taken into account.

(5) In certain Member States prices relate to prices for live animals. These prices should then be converted by means of appropriate coefficients. However, in regions where the individual assessment of live animals is carried out in order to estimate carcass weight the conversion may be based on that assessment.

(6) In order to explain the basis on which Member States compile prices, they should notify the Commission with regard to the representative markets chosen and the categories of carcasses and the weighting or relative importance of those elements used for the calculation of the prices.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Member States whose sheep meat production exceeds 200 tonnes per year shall communicate to the Commission, each Thursday at the latest, the prices of fresh or chilled carcasses of lambs and ewes.

2. The prices shall be those recorded in the quotation areas referred to in Article 12 of Regulation (EC) No 2529/2001 of Member States that fulfil the requirements set out in paragraph 1. They shall be wholesale prices recorded by those Member States on the representative market or markets during the week preceding the week in which the information is given. The representative market or markets shall be determined by the Member States mentioned above. The prices shall be calculated on the basis of market prices, ex value added tax.

Article 2

1. Market prices shall be recorded in respect of the 'carcass weight' within the meaning of Decision 94/434/EC.

[1] OJ L 341, 22.12.2001, p. 3.
[2] OJ L 312, 20.11.1998, p. 1.
[3] OJ L 193, 29.7.2000, p. 8.
[4] OJ L 130, 16.5.1986, p. 12.
[5] OJ L 333, 29.12.2000, p. 57.
[6] OJ L 179, 13.7.1994, p. 33.
[7] OJ L 15, 20.1.1999, p. 10.

Where prices are recorded according to different categories of carcass the price on the representative market shall be equal to the average, weighted by coefficients fixed by Member States to reflect the relative importance of each category, of the prices recorded for the said categories during a seven-day period at the wholesale stage.

2. In the case of lamb carcasses weighing up to 16 kilograms, and in accordance with normal commercial practice, prices may be recorded before evisceration and removal of the head.

Where prices are recorded on a liveweight basis, the prices per kilogram liveweight shall be divided by a maximum conversion coefficient of 0,5. However, where normal practice is to include head and offals with the carcass, for lambs weighing up to 28 kilograms liveweight the Member States may fix a higher coefficient.

In regions where price recording is based on the individual assessment of the weight of lamb carcasses, the conversion shall be based on that assessment.

Article 3

1. Where markets are held more than once during the seven-day period referred to in Article 2(1), the price of each category shall be the arithmetical average of the quotations recorded during each market.

2. Where there are several representative markets in a quotation area the price for that quotation area shall be the average of the prices recorded on the said markets, weighted by coefficients fixed by the Member States to reflect the relative importance of each market or of each category.

3. However, where no information is available the prices on the representative markets of that Member State shall be determined by reference in particular to the last prices known.

Article 4

Member States shall notify the Commission by 1 March 2002 of:

(a) the representative markets of each quotation area;

(b) the categories of lamb carcasses;

(c) the weighting and conversion coefficients referred to in Articles 2 and 3.

Member States shall notify the Commission of any changes in the arrangements within a period of one month after any such changes.

Article 5

Regulation (EEC) No 1481/86 is hereby repealed.

Article 6

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

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 316/2002

of 20 February 2002

fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 8(3) thereof,

Whereas:

(1) Article 8(1) of Regulation (EEC) No 2771/75 provides that the difference between prices in international trade for the products listed in Article 1(1) of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed in the Annex to that Regulation. Whereas Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds [3], as last amended by Regulation (EC) No 1563/2001 [4], specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EEC) No 2771/75.

(2) In accordance Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.

(3) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(4) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

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

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed in Article 1(1) of Regulation (EEC) No 2771/75, exported in the form of goods listed in the Annex I to Regulation (EEC) No 2771/75, are hereby fixed as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

[1] OJ L 282, 1.11.1975, p. 49.
[2] OJ L 189, 30.7.1996, p. 99.
[3] OJ L 177, 15.7.2000, p. 1.
[4] OJ L 208, 1.8.2001, p. 8.

ANNEX

to the Commission Regulation of 20 February 2002 fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description	Destination (1)	Rate of refund
0407 00	Birds' eggs, in shell, fresh, preserved or cooked:		
	– Of poultry:		
0407 00 30	– – Other:		
	a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90	02	7,00
		03	15,00
		04	3,50
	b) On exportation of other goods	01	3,50
0408	Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:		
	– Egg yolks:		
0408 11	– – Dried:		
ex 0408 11 80	– – – Suitable for human consumption:		
	not sweetened	01	20,00
0408 19	– – Other:		
	– – – Suitable for human consumption:		
ex 0408 19 81	– – – – Liquid:		
	not sweetened	01	10,00
ex 0408 19 89	– – – – Frozen:		
	not sweetened	01	10,00
	– Other:		
0408 91	– – Dried:		
ex 0408 91 80	– – – Suitable for human consumption:		
	not sweetened	01	33,00
0408 99	– – Other:		
ex 0408 99 80	– – – Suitable for human consumption:		
	not sweetened	01	8,00

(1) The destinations are as follows:
01 Third countries,
02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Hong Kong SAR and Russia,
03 South Korea, Japan, Malaysia, Thailand, Taiwan, the Philippines and Egypt,
04 All destinations except Switzerland and those of 02 and 03.

COMMISSION REGULATION (EC) No 317/2002

of 20 February 2002

fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [3], as last amended by Commission Regulation (EC) No 2916/95 [4], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin [5], as last amended by Regulation (EC) No 2916/95, and in particular Article 3(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1484/95 [6], as last amended by Regulation (EC) No 118/2002 [7], fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

(3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ L 282, 1.11.1975, p. 49.
[2] OJ L 189, 30.7.1996, p. 99.
[3] OJ L 282, 1.11.1975, p. 77.
[4] OJ L 305, 19.12.1995, p. 49.
[5] OJ L 282, 1.11.1975, p. 104.
[6] OJ L 145, 29.6.1995, p. 47.
[7] OJ L 21, 24.1.2002, p. 17.

ANNEX

to the Commission Regulation of 20 February 2002 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

'ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin (1)
0207 12 90	Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as "65 % chickens", or otherwise presented, frozen	102,2	5	01
0207 14 10	Boneless cuts of fowl of the species *Gallus domesticus*, frozen	196,7 206,4 183,7 264,2 292,9	32 28 38 11 2	01 02 03 04 05
0207 14 60	Chicken legs and cuts thereof, frozen	109,5	10	01
0207 14 70	Other cuts of chicken, frozen	234,3	15	01
0207 25 10	Turkeys, plucked and drawn, without heads and feet but with necks, hearts, livers and gizzards, known as "80 %" turkeys	153,1	2	01
0207 27 10	Boneless cuts of turkeys, frozen	251,0	14	01
1602 32 11	Preparations of uncooked fowl of the species *Gallus domesticus*	202,1 208,8	25 23	01 02

(1) Origin of imports:
01 Brazil
02 Thailand
03 China
04 Argentina
05 Chile.'

COMMISSION REGULATION (EC) No 318/2002
of 20 February 2002
fixing the export refunds on eggs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 8(3) thereof,

Whereas:

(1) Article 8 of Regulation (EEC) No 2771/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) The present market situation in certain third countries and that regarding competition on particular third country markets make it necessary to fix a refund differentiated by destination for certain products in the egg sector.

(3) It follows from applying these rules and criteria to the present situation on the market in eggs that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time.

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of codes of products for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2771/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 282, 1.11.1975, p. 49.
[2] OJ L 189, 30.7.1996, p. 99.

ANNEX

to the Commission Regulation of 20 February 2002 fixing the export refunds on eggs

Product code	Destination	Unit of measurement	Amount of refund
0407 00 11 9000	A02	EUR/100 pcs	2,15
0407 00 19 9000	A02	EUR/100 pcs	1,00
0407 00 30 9000	E01	EUR/100 kg	7,00
	E03	EUR/100 kg	15,00
	E05	EUR/100 kg	3,50
0408 11 80 9100	E04	EUR/100 kg	20,00
0408 19 81 9100	E04	EUR/100 kg	10,00
0408 19 89 9100	E04	EUR/100 kg	10,00
0408 91 80 9100	E06	EUR/100 kg	33,00
0408 99 80 9100	E04	EUR/100 kg	8,00

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 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

E01 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR and Russia

E03 South Korea, Japan, Malaysia, Thailand, Taiwan, the Philippines and Egypt

E04 all destinations except Switzerland and Estonia

E05 all destinations except Switzerland, Lithuania and those of E01 and E03

E06 all destinations except Switzerland, Estonia and Lithuania.

COMMISSION REGULATION (EC) No 319/2002
of 20 February 2002
fixing the export refunds on poultrymeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat [1], as last amended by Commission Regulation (EC) No 2916/95 [2], and in particular Article 8(3) thereof,

Whereas:

(1) Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those 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 poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

The list of product codes for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 282, 1.11.1975, p. 77.
[2] OJ L 305, 19.12.1995, p. 49.

ANNEX

to the Commission Regulation of 20 February 2002 fixing the export refunds on poultrymeat

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	1,00
0105 11 19 9000	A02	EUR/100 pcs	1,00
0105 11 91 9000	A02	EUR/100 pcs	1,00
0105 11 99 9000	A02	EUR/100 pcs	1,00
0207 12 10 9900	V01	EUR/100 kg	30,00
0207 12 10 9900	A24	EUR/100 kg	30,00
0207 12 90 9190	V01	EUR/100 kg	30,00
0207 12 90 9190	A24	EUR/100 kg	30,00
0207 12 90 9990	V01	EUR/100 kg	30,00
0207 12 90 9990	A24	EUR/100 kg	30,00
0207 14 20 9900	V03	EUR/100 kg	5,00
0207 14 60 9900	V03	EUR/100 kg	5,00
0207 14 70 9190	V03	EUR/100 kg	5,00
0207 14 70 9290	V03	EUR/100 kg	5,00

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 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

V01 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, the United Arab Emirates, Jordan, Yemen, Lebanon, Iraq, Iran

V03 All destinations except the United States of America and zones A24 and A26.

COMMISSION REGULATION (EC) No 320/2002
of 20 February 2002
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 2556/2001 [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 February 2002.

[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 348, 31.12.2001, p. 1.
[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, 20 February 2002.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 20 February 2002 fixing the export refunds on pigmeat

Product code	Destination	Unit of measurement	Amount of refund
0210 11 31 9110	P05	EUR/100 kg	56,00
0210 11 31 9910	P05	EUR/100 kg	56,00
0210 19 81 9100	P05	EUR/100 kg	59,00
0210 19 81 9300	P05	EUR/100 kg	47,00
1601 00 91 9120	P05	EUR/100 kg	17,00
1601 00 99 9110	P05	EUR/100 kg	13,00
1602 41 10 9210	P05	EUR/100 kg	39,00
1602 42 10 9210	P05	EUR/100 kg	21,00
1602 49 19 9120	P05	EUR/100 kg	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 2020/2001 (OJ L 273, 16.10.2001, 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 321/2002
of 20 February 2002
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 22,049/100 kg.

Article 2

This Regulation shall enter into force on 21 February 2002.

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

Done at Brussels, 20 February 2002.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10.

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 9/2001 OF THE ACP-EC COMMITTEE OF AMBASSADORS of 20 December 2001 adopting the rules of procedure of the ACP-EC Development Finance Cooperation Committee

(2002/146/EC)

THE ACP-EC COMMITTEE OF AMBASSADORS,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 between the Members of the Group of African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part, hereinafter referred to as 'the Agreement', and in particular Article 83(1) thereof,

Whereas, by Decision No 1/2000 of 27 July, the ACP-EC Council of Ministers implemented in advance most of the provisions of the Agreement,

Having regard to the Decision of the ACP-EC Council of Ministers of 11 May 2001 to delegate powers to the ACP-EC Committee of Ambassadors for the adoption of the rules of procedure of the ACP-EC Development Finance Cooperation Committee provided for in Article 83(4) of the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Composition of the Committee

1. The Committee shall comprise, on the one hand, the members of the Council of the European Union and a member of the Commission of the European Communities and, on the other, on a basis of parity, Ministers of the ACP States.

2. Every year the parties shall appoint their representatives on the Committee and shall inform its secretariat.

3. Each member of the Committee shall appoint his or her authorised representative and shall inform the Committee's secretariat.

4. The Chairman of the ACP Committee of Ambassadors and the Chairman of COREPER or their representatives shall attend meetings of the Committee.

5. A representative of the Centre for Enterprise Development and of the Technical Centre for Agricultural and Rural Cooperation shall attend the Committee's proceedings when the issues under discussion concern them.

6. A representative of the European Investment Bank shall be present at the Committee's meetings.

7. The members of the Committee and their authorised representatives may be assisted by advisers.

Article 2

Chairing the Committee

The Committee shall be chaired for six-month periods from 1 April to 30 September by the ACP States and from 1 October to 31 March by the Community. On the Community side, the position of Chair shall rotate among members of the Council of the European Union, working in close consultation with the Commission of the European Communities.

Article 3

Procedural rules

1. The Committee shall meet every three months. It shall meet at ministerial level at least once a year and normally coincide with a meeting of the ACP-EC Council of Ministers.

2. Other meetings at ministerial level shall be held at the request of one of the parties and at a venue to be agreed by both parties.

3. Meetings at the level of authorised representatives shall be held at the normal venues of meetings of the Council of the European Union, the ACP General Secretariat or any other venue to be decided by the Committee.

4. Any member of the Committee unable to attend a meeting may be represented. The representative shall exercise all the rights of the accredited member.

5. The Committee shall be convened by its Chair, either on his or her own initiative or at the request of the ACP States or of the Community.

6. At least three weeks before the scheduled date of the meeting, the Committee's secretariat shall send the members of the Committee a draft agenda, accompanied by any relevant documents.

7. The agenda shall be adopted by the Committee at the beginning of each meeting. In urgent cases, the Committee may decide, at the request of representatives of the ACP States or of the Community, to put on the agenda items for which the time-limit laid down in paragraph 6 has not been observed.

8. Unless otherwise decided, meetings of the Committee shall not be public.

Article 4

Powers

1. The Committee shall exercise the powers conferred on it under the relevant Articles of the Agreement.

2. The Committee shall adopt its work programme each year and report to the Council on its execution.

Article 5

Proceedings

1. The Committee shall take decisions by agreement between the Community, on the one hand, and the ACP States, on the other hand.

2. The proceedings of the Committee shall be valid only if at least half of the members of the Council of the European Union, a Commission representative and at least half of the ACP members are present.

3. Without prejudice to such other provisions as may apply, the deliberations of the Committee shall be covered by the obligation of professional confidentiality.

Article 6

Technical working party

1. A working party shall be set up for the purpose of preparing items of a technical nature and drafting all the documents to be submitted to the Committee.

2. The working party shall include a representative of the Chair of the Committee as well as of the party not in the chair, of the Commission of the European Communities as well as the Committee's secretariat. A representative of the European Investment Bank shall participate in its work, where appropriate. The Chair may be assisted by other members of the Committee and by representatives of the Centre for Enterprise Development and the Technical Centre for Agricultural and Rural Cooperation.

3. The working party shall meet regularly in order to do the work assigned to it by the Committee.

Article 7

Secretariat

1. The Committee's secretarial services shall be provided by the Secretariat of the ACP-EC Council of Ministers.

2. Minutes shall be drawn up of every meeting, noting in particular decisions taken by the Committee.

3. After each meeting of the Committee, the record of the proceedings shall be sent to the Committee members within the three weeks following the meeting. The record of each meeting shall be submitted at the start of the next meeting for approval.

Done at Brussels, 20 December 2001.

For the ACP-EC Council of Ministers

By the ACP-EC Committee of Ambassadors

The President

F. van DAELE

DECISION No 10/2001 OF THE ACP-EC COMMITTEE OF AMBASSADORS of 20 December 2001 on the use of unallocated resources from the 8th European Development Fund

(2002/147/EC)

THE ACP-EC COMMITTEE OF AMBASSADORS,

Having regard to the Fourth ACP-EC Convention, signed at Lomé on 15 December 1989 and amended by the Agreement signed in Mauritius on 4 November 1995, and in particular Articles 195(b), 219(2)(d), 245(2), 257 and 282(5) thereof,

Having regard to the ACP-EC Partnership Agreement, signed in Cotonou on 23 June 2000,

Whereas:

(1) Decision No 1/2000 [1], the ACP-EC Council of Ministers on 27 July 2000 establishes transitional measures for the period from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement, and provides for the anticipated application of certain provisions of the Partnership Agreement. In addition certain provisions of the Fourth ACP-EC Lomé Convention continue to apply. Article 2(e) of that Decision stipulates that the provisions of the said Convention, regarding the ACP-EC Council of Ministers' power of decision on the use of unallocated resources from the 6th, 7th and 8th EDFs, remain applicable.

(2) The ACP-EC Council of Ministers on 11 May 2001 delegated the power to decide on the use of unallocated resources from the 8th EDF to the ACP-EC Committee of Ambassadors, on the basis of Articles 195(b), 219(2)(d), 245(2), 257 and 282(5) of the Fourth ACP-EC Convention and Article 2(e) of Decision No 1/2000 of the ACP-EC Council of Ministers.

(3) To ensure the continuation of the activities of the Centre for the Development of Enterprise (CDE) and the Technical Centre for Agricultural and Rural Cooperation (CTA), the necessary funds should be made available to cover the financial requirements for the 2002 financial year.

(4) To ensure that the Community continues the delivery of emergency assistance as referred to in Article 254 of the Fourth ACP-EC Convention it is appropriate to maintain the allocation provided for in Article 2(a) of the Second Financial Protocol.

(5) To ensure that the Community contributes to efforts of conflict prevention and resolution and of peace-building, especially by facilitating the demobilisation and reintegration of former combatants, it is appropriate to create an allocation to this effect.

(6) To ensure the financing of certain activities it is appropriate to allocate supplementary resources to intra-ACP regional cooperation, particularly in favour of public health and private sector support,

HAS DECIDED AS FOLLOWS:

Article 1

CDE/CTA

1. The following shall be taken from unallocated 8th EDF resources (general reserve), as an advance on the 9th EDF:

— a maximum of EUR 23 million to finance the CDE budget in 2002,

— a maximum of EUR 13,7 million to finance the CTA budget in 2002.

2. Any unexpended balances from the funds for the CDE and the CTA not used for the 2002 financial year shall be automatically carried over to the 2003 financial year.

Article 2

Emergency assistance

Until the entry into force of the Financial Protocol of the ACP-EC Partnership Agreement, uncommitted balances of the allocation for emergency assistance as referred to under Article 254 of the Fourth ACP-EC Convention and Article 2(a) of its Second Financial Protocol shall remain allocated to emergency assistance.

Article 3

Conflict prevention and resolution and peace-building

An amount of EUR 50 million shall be taken from unallocated 8th EDF resources (general reserve) for actions in the field of conflict prevention and resolution and peace-building, in accordance with Article 11(2) and (3) of the ACP-EC Partnership Agreement.

[1] OJ L 195, 1.8.2000, p. 46.

Article 4

Intra-ACP

An amount of EUR 94 million shall be taken from unallocated 8th EDF resources (general reserve) for the use of intra-ACP regional cooperation. Within this amount, EUR 44 million shall be a specific allocation for a new initiative in the field of public health and EUR 50 million shall be a specific allocation for the development of the private sector and information technology and communications.

Article 5

Implementation

The Chief Authorising Officer of the EDF is requested to take the measures necessary to give effect to this Decision.

Article 6

Entry into force

This Decision shall enter into force on the day it is adopted.

Done at Brussels, 20 December 2001.

For the ACP-EC Council of Ministers
by the ACP-EC Committee of Ambassadors
The President
F. van DAELE

COUNCIL DECISION
of 18 February 2002
concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement

(2002/148/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), second subparagraph, thereof,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 [1], as put into provisional application by Decision of the Representatives of the Governments of the Member States of 18 September 2000, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The essential elements cited in Article 9 of the ACP-EC Partnership Agreement have been violated by the Government of Zimbabwe.

(2) Consultations under Article 96 of the ACP-EC Partnership Agreement were held on 11 January 2002 with Zimbabwe, at which the Zimbabwean authorities explained their point of view and made specific commitments that are still insufficient as regards ending violence, the holding of free and fair presidential elections on 9 and 10 March 2002, in particular allowing access for international election observers and for the media.

(3) Recent events in Zimbabwe's political development have been taken into consideration, as well as the fact that certain important measures concerning the essential elements of the ACP-EC Partnership Agreement have still not been adequately implemented. Restrictive legislation which has been recently adopted and the escalation of violence and intimidation of political opponents seriously undermine the freedom of expression, of association and of peaceful assembly in Zimbabwe,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with the Republic of Zimbabwe under Article 96(2)(c) of the ACP-EC Partnership Agreement are hereby concluded.

Article 2

The measures specified in the annexed letter are hereby adopted as appropriate measures within the meaning of Article 96(2)(c) of the ACP-EC Partnership Agreement.

These measures shall be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law.

These measures shall apply for a period of twelve months. They shall be reviewed within six months.

Article 3

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

Done at Brussels, 18 February 2002.

For the Council

The President

J. PIQUÉ I CAMPS

[1] OJ L 317, 15.12.2000, p. 3.

ANNEX

Brussels, …

LETTER TO THE PRESIDENT OF ZIMBABWE

The European Union attaches the utmost importance to the provisions of Article 9 of the ACP-EC Partnership Agreement. As essential elements of the Partnership Agreement, respect for human rights, democratic institutions and the rule of law are the basis of our relations.

Thus, the European Union on 29 October 2001 expressed its deep concern at the situation in Zimbabwe and decided to invite the authorities of Zimbabwe to hold consultations, with a view to assessing the situation in detail and remedying it.

During these consultations, which took place in Brussels on 11 January 2002, the European Union reiterated its serious concern as regards politically motivated violence, freedom of the media, independence of the judiciary, end of illegal farm occupations and free and fair elections, and considered that significant progress remains to be achieved in these areas.

The European Union was confident that free and fair presidential elections in March 2002 would put the country on the path of democracy, social peace and economic recovery in Zimbabwe. However, it notes that these expectations have not been fulfilled. Minimum internationally agreed conditions for free and fair elections are not being met.

In the light of the above, the European Union has decided to conclude the consultations held under Article 96 of the ACP-EC Partnership Agreement. The Union has decided to take the following appropriate measures, within the meaning of Article 96(2)(c) of that Agreement:

(a) The financing of budgetary support under Zimbabwe's 7th and 8th EDF National Indicative Programmes (NIP) is suspended.

(b) Financial support for all projects is suspended except those in direct support of the population, in particular in the social sectors.

(c) Financing shall be reoriented in direct support of the population, in particular in the social sectors, democratisation, respect for human rights and the rule of law.

(d) The signature of the 9th EDF NIP is suspended.

(e) Article 12 of Annex 2 to the ACP-EC Partnership Agreement is suspended in so far as required for the application of restrictive measures adopted on the basis of the Treaty establishing the European Community.

(f) Contributions to operations of a humanitarian nature will not be affected.

(g) Regional projects will be evaluated on a case by case basis.

These measures will be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law.

The European Union reserves the right to take additional restrictive measures.

The European Union will closely follow developments in Zimbabwe and would once again like to emphasise its desire to pursue the dialogue with Zimbabwe, on the basis of the ACP-EC Partnership Agreement.

Yours faithfully,

For the Commission *For the Council*

COMMISSION

COMMISSION DECISION
of 30 October 2001
on the State aid awarded by France to the Société nationale maritime Corse-Méditerranée (SNCM)

(notified under document number C(2001) 3279)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/149/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 [1] pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2],

Whereas:

1. **INTRODUCTION**

(1) Scheduled maritime transport services between the ports of mainland France and Corsica have been provided as a public service since 1948. The French State has entrusted public undertakings with operating maritime services with Corsica since that date.

(2) SNCM (Société nationale maritime Corse-Méditerranée) and CMN (Compagnie méridionale de navigation) are the current concession-holders for this service pursuant to an agreement concluded in 1976 for a period of 25 years. Since 1991, the Corsican regional authority (collectivité territoriale de Corse) has been the authority responsible for guaranteeing the public service.

(3) Apart from the public service (the concessionary network), SNCM also provides scheduled maritime services to Algeria and Tunisia and, in the high season from April to September, to Sardinia (the open network). Since 1990 SNCM has been offering passenger transport services between France and Italy through its subsidiary, Corsica Marittima.

[1] OJ C 117, 21.4.2001, p. 9.
[2] OJ L 83, 27.3.1999, p. 1.

(4) Since 1 January 1999, pursuant to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ([3]), the free provision of regular cabotage services with the islands of the Mediterranean (with the exception of the Greek islands) is applicable to all Community shipowners operating vessels registered in a Member State and flying the flag of that Member State.

(5) In 1997, 1998 and 2000, the Commission received complaints from private operators regarding the subsidies awarded to SNCM in return for the cost of the public service obligations. The main thrust of these complaints was:

— the possible use of public funding to provide maritime transport services outside the concessionary network, notably for international maritime connections between France and Italy,

— the possible overcompensation of costs linked to the public service provided.

(6) In order to study the information brought to its attention and pursuant to the provisions of Article 88 of the Treaty, the Commission initiated two investigation procedures. The present final decision, taken when these procedures had been completed, closes Cases C-78/98 and C-14/01.

2. **PROCEDURE**

Case C-78/98

(7) On 5 February 1997 and 22 April 1998, the Commission received complaints regarding the aid which the company Corsica Marittima, a subsidiary of SNCM, was said to be receiving from the French State for transporting passengers between France and Italy on the Genoa-Bastia and Livorno-Bastia routes.

(8) By letter of 22 December 1998, the Commission notified France of its intention to initiate the procedure provided for in Article 88(2) of the Treaty to examine the compatibility of this aid with the common market. By letter of 8 March 1999, the French authorities forwarded their comments on that decision.

(9) The Commission Decision was published in the *Official Journal of the European Communities* ([4]). Following its publication, the Commission received comments from several private operators in competition with the companies of the SNCM group. These comments were forwarded to France, providing it with an opportunity to make its own observations concerning them.

Case C-14/01

(10) Following the initiation of the abovementioned procedure, the Commission received further complaints, this time denouncing the excessive amount of the aid compared with the cost of the public service obligations fulfilled by SNCM and the use of this over compensation to finance the activities of Corsica Marittima.

(11) By letter of 28 February 2001, the Commission notified France of its decision to initiate the procedure pursuant to Article 88(2) of the Treaty to assess the aid measures linked to the compensation of public service obligations provided by SNCM.

(12) The Commission Decision was published in the *Official Journal of the European Communities* ([5]). The Commission received comments from two interested third parties. The French authorities communicated their comments on this Decision and on the comments of the third parties by letters dated 26 April and 17 September 2001 respectively. Additional information in the form of accounting data was forwarded by France on 1 June 2001. Commission officials, accompanied by an independent auditor, verified these data at SNCM headquarters on 2 July 2001.

([3]) OJ L 364, 12.12.1992, p. 7.
([4]) OJ C 62, 4.3.1999, p. 9.
([5]) OJ C 117, 21.4.2001, p. 9.

3. THE MARKET AT ISSUE

(13) A total of 5,509 million passengers travelled between Corsica and the mainland by air and sea in 1999, of which 3,106 million by sea and 2,402 million by air. Taking all the shipping lines together between mainland France and Corsica, the total number of passengers was approximately 1,626 million, 1,480 million of whom travelled on scheduled international links. Nine shipping companies operated services to the island from 13 mainland ports (three in France: Marseilles, Toulon and Nice, and ten Italian ports). The share of passengers carried by sea within the framework of the public service was 1,450 million, including 510 000 for Ajaccio, 584 000 for Bastia, 69 000 for Calvi, 126 000 for Île Rousse, 59 000 for Porto-Vecchio and 97 000 for Propriano. On the passenger transport market as a whole in 1999, maritime connections between Corsica and mainland France represented less than 30 % of all traffic between the mainland (mainland France and Italy, essentially) and Corsica.

(14) Freight transport, which is provided in the context of territorial continuity (with the exceptions of cement and hydrocarbons) is divided more or less equally between SNCM (ferries and passenger-cargo vessels) and CMN (passenger-cargo vessels). In 1999, it amounted to 950 000 net tonnes, of which 799 000 entered and 151 000 left Corsica. This traffic was divided mainly between Bastia (504 000 tonnes) and Ajaccio (306 000 tonnes), while Porto-Vecchio accounted for fewer than 70 000 tonnes.

The SNCM Group

(15) SNCM-Ferryterranée is a State-owned holding company (80 % CGMF/20 % SNCF) which groups together several subsidiaries in the maritime transport sector ([6]). SNCM-Ferryterranée passenger and vehicle transport on the one hand and cargo transport on the other are concentrated around two major networks: the Corsica network (lines between mainland France and Corsica) and the international network (lines between mainland France and North Africa). Within the group, SNCM ([7]) operates both the public maritime service between Corsica and the south of mainland France and scheduled maritime services to Algeria and Tunisia from French ports. SNCM also operates seasonal lines with Sardinia. The activities of Corsica Marittima, 95 % of which is a subsidiary of SNCM, are concentrated on transporting passengers between France and Italy on the routes Genoa-Bastia and Livorno-Bastia ([8]). SNCM's fleet consists of six car ferries, three high-speed vessels (HSV) and four ro-ro mixed passenger and cargo vessels.

(16) As far as the lines between Corsica and the mainland French ports are concerned, at the end of 1999 SNCM had a market share of 83 % of the passenger transport segment and 77 % of the freight segment. According to data supplied to the Commission ([9]), SNCM lost more than 10 market share points (passengers and vehicles) between 1994 and 1999 on the Corsica network:

Total network	1994	1995	1996	1997	1998	1999
Passengers	1 227	1 091	1 144	1 282	1 463	1 626
Cars	417	374	395	444	499	553

([6]) The group is made up of the following companies: CGHT (100 % subsidiary), Sudcargos (50 %), Sara (89 %), Sotramat (100 %), Ferrytour (97 %), MCM (100 %), Cofremar (50 %), Corsica Marittima (95 %), SNCM Germany (50 %), Navitel (99 %), CMN (40 %), Someca (40 %), Sitec (35 %) and Esterel (13 %) (see the group's accounts).

([7]) For the purposes of this Decision, the term 'SNCM' means the company which carries out these activities, while the term 'SNCM-Ferryterranée' refers to the group, including all the subsidiaries mentioned in footnote 6.

([8]) In addition to the routes Genoa-Bastia and Livorno-Bastia, Corsica Marittima operated on the following routes: in 1997, Bastia-Island of Elba, Livorno-Porto-Vecchio, Bonifacio-S. Teresa (Sardinia), Genoa-Tunisia and, in 1998, Livorno-Porto-Vecchio, Genoa-Tunisia.

([9]) Report to the Office des transports de la Corse (OTC), *Suivi de la dotation forfaitaire de continuité territoriale*, May-July 2000.

SNCM	1994	1995	1996	1997	1998	1999
Passengers	1 145	1 011	1 013	1 096	1 233	1 352
Cars	383	342	348	378	416	453

(SNCM % market share)

Passengers	93,3	92,7	88,6	85,5	84,3	82,9
Cars	92,1	91,5	88,2	85,1	83,5	82,0

(17) The most salient feature of maritime traffic between Corsica and the mainland is the seasonal imbalance of passenger traffic, which fluctuates dramatically between the summer and winter periods. Traditionally, the months of July and August account for 50 % of the year's traffic ([10]). There are also marked variations during the school holiday periods, on some weekends and between the middle and the end of the week. In addition to the seasonal variations, traffic flows are not balanced in both directions. Volumes vary widely in the north-south and the south-north directions between the beginning and the end of the week. This concentration of traffic in a very short time span is a problem in that vessels have to be made available to operate the line to meet demand and a service has to be provided in the middle and low seasons, which are of scant interest to an operator.

4. **ORGANISATION OF THE MARITIME SERVICE**

4.1. **The legal framework**

(18) Between 1948 and 1976 the service to Corsica was carried out under a system partly regulated by French law and within the context of a national cabotage monopoly. The State paid companies providing the service a lump-sum subsidy to balance their accounts in return for fulfilling public service requirements concerning the ports to be served, the regularity, frequency and capacity of the service, the fares to be applied and the vessel's crew.

(19) In 1976 France redefined the conditions for providing the public maritime transport service with Corsica on the basis of the territorial continuity principle. This principle aims to limit the drawbacks of insularity and ensure that islands are served in ways as close as possible to purely mainland connections. A concessions scheme was set up with a set of specifications laying down the public service framework. A framework agreement was concluded with SNCM and CMN for a period of 25 years. This agreement expires on 31 December 2001.

(20) Between 1976 and 1982, the French Government established the procedures for providing the service based on this framework agreement. The Law of 30 July 1982 ([11]) transferred the management of territorial continuity in a contractual framework with the French State to the Corsican Parliament. Subsequently, the Law of 13 May 1991 ([12]) conferring status on the territorial community of Corsica (the Corsican regional authority) granted total jurisdiction to services to the island to that Parliament. Since that time, the service has been organised by the Office des transports de la Corse (OTC).

(21) Since 1991, two five-year agreements have been concluded between the OTC and two concessionary companies. The legal basis for these five-year agreements is the 1976-2001 framework agreement. These agreements specified the ways in which the public service was to be performed for the periods 1991 to 1996 and 1996 to 2001 respectively. They also defined the principles for the payment of the lump-sum subsidy from the budget for territorial continuity in return for the obligations imposed.

([10]) Tourists constitute approximately 85 % of the maritime passenger traffic. Residents constitute the remaining 15 % (source: Direction régionale de l'équipement).
([11]) Law of 30 July 1982 conferring special status on the region of Corsica.
([12]) Law of 13 May 1991 conferring status on the territorial community of Corsica.

4.2. **Public service obligations (PSOs)**

(22) Maritime services of public interest between the French mainland ports and Corsica were initially set out in the agreement of 31 March 1976 (framework agreement) and the annexed specifications. These documents indicate the ports to be served and the number of services to be provided according to the season, without quantitative indications as to the number of passengers or the freight capacity of the vessels which must perform these services. The initial specifications distinguished, however, between the permanent service which SNCM must provide throughout the year and the supplementary service to be provided during the thirteen weeks of the summer season.

(23) In particular, the framework agreement establishes ([13]) that:

— the number of connections offered and lines served can only be revised by decision of the public authorities,

— the public service fares are established by the public authorities by referring to the fares of travellers, accompanied vehicles and freight set by the Société Nationale des Chemins de fer Français (SNCF) (French National Railways),

— SNCM proposes draft timetables for services, which may be modified, and are then approved by the public authorities,

— decisions concerning the size of the fleet of ferries and cargo vessels assigned to the public service are taken by the public authorities. The specifications annexed to the framework agreement give details of the fleet assigned to this service. Pursuant to Article 4 of these specifications, SNCM is authorised to use the vessels assigned to the public service on lines outside the concessionary services within limits which are compatible with this service.

(24) As indicated above, the Law of 13 May 1991 granted the Corsican Parliament complete jurisdiction to organise services for the island, which is implemented by the OTC. The new five-year agreements concluded between the OTC and SNCM specify, in greater detail but in accordance with the principles of the framework agreement, the ways in which the public service is to operate. The agreement which is currently in force (for the period 1996-2001) provides for basic public services (transport of passengers and accompanied vehicles ([14])) as follows:

in the winter period:

— three crossings a week between Ajaccio and Marseilles or Nice,

— three crossings a week between Bastia and Marseilles or Nice,

— one crossing a week between Balagne and Marseilles or Nice;

in the intermediate autumn and spring periods:

— six crossings a week from Marseilles/Toulon mainly to the ports of Ajaccio and Bastia, some crossings being to Propriano,

— seven crossings a week from Nice by high-speed passenger craft to the ports of Bastia and Balagne;

in the summer period (13 weeks):

— basic crossings from Marseilles/Toulon by ferry: six crossings a week to Ajaccio, six crossings a week to Bastia and three crossings a week to Propriano,

— basic crossings from Nice are by high-speed passenger craft: 26 crossings a week in 1996 and 1997, mainly with the ports of Bastia and Balagne, 27 crossings a week as from 1998.

([13]) These are clauses and conditions which remain in force in the five-year agreements concluded by the OTC.
([14]) There is provision for stepping up the service in some periods (school holidays, long weekends). The agreement provides for a period for trying out high-speed vessels. Some services may be stepped up by additional connections according to the forecast demand.

(25) In accordance with clause III of the agreement for the period 1996 to 2001, the freight share of the overall public service for which SNCM is responsible between the French mainland ports and Corsica, is carried out using ro-ro cargo vessels and car ferries. This service includes the following crossings:

involving major ports:

— six crossings a week between Marseilles and Bastia, three of which are provided by SNCM ([15]),

— six crossings a week between Marseilles and Ajaccio, three of which are provided by SNCM;

involving departmental ports:

— three crossings a week between Marseilles and Porto-Vecchio,

— five crossings a week between Marseilles and Balagne or Propriano, two of which are provided by SNCM.

(26) As for the schedule of this service, clause VIII of the agreement provides that SNCM draws up draft timetables for its car ferries and, where applicable, high-speed passenger craft for the summer period, for the winter period and for the intervening autumn and spring periods, and submits them to the OTC for approval.

(27) On the basis of the statistical data available and taking into account, in particular, the transport capacities of the fleet assigned to the public service according to these agreements, the following tables offer a comparison ([16]) of the public service obligations set out in the agreements and the services actually provided by SNCM under these agreements:

PSO provided for in the agreements ([1])	1991-1995 agreement	1996-2001 agreement
Number of imposed crossings	2 428	3 068
Number of passenger seats	2 845 000	2 796 000
Number of places for cars	813 000	788 000
Freight (in linear metres)	1 398 000	1 703 000

([1]) The size of the SNCM fleet has been designed to provide these transport capacities.

Average annual performance per period ([1])	1991-1995 agreement	1996-2001 agreement
Number of crossings carried out	2 514	3 232
Number of passengers conveyed	1 137 000	1 173 000
Number of cars transported	414 000	382 000
Thousands of tonnes (1991-1995), then linear metres (after 1996)	822 000	661 000

([1]) These data correspond to actual market demand.

(28) It must be pointed out that the size of the SNCM fleet has been designed to offer sufficient transport capacities, given its public service obligations. These capacities greatly exceed the number of passengers, cars and volumes of freight actually transported. SNCM's loading ratios for the various types of transport are consequently very low. This stems from the nature of the public service, based on the logic of territorial continuity. This logic presupposes that there are sufficient means of maritime transport available at any moment of the year and for all the Corsican ports and that such means are capable of responding to a highly irregular demand (see recital 17).

([15]) The other crossings are provided by Compagnie méridionale de navigation.
([16]) The numbers of seats for passengers are not indicated in the agreements. The figures given here are an extrapolation taking into account the number of imposed crossings and the capacity of the vessels designated for the public service.

4.3. **The State's financial contribution**

(29) In consideration of the public service obligations defined in the agreements, SNCM receives an annual subsidy from the State, the amount of which is fixed for five years. This amount is revised every year according to the changes in gross domestic product at market prices and the information and the analytical accounts which SNCM is required to provide. The amounts of the annual territorial continuity subsidies awarded to SNCM during the period 1991 to 1999 were as follows (in millions of French francs) ([17]):

1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
480	489	501	503	508	515	525	528	553	4 602

(30) Under the terms of Article 4 of the 1976 agreement ([18]), the annual subsidy is awarded in the form of 12 equal monthly instalments. For the subsidy to be paid over, SNCM must submit its results for the previous financial year approved by the State financial officer. Any repayments owed by SNCM are deducted from the instalment or the instalments of the current financial year. The arrangements for adjusting instalments also provide for additional payments to be made by the State. Subsequent agreements also provide for penalties if the basic number of crossings that have not been made by SNCM in the course of the year exceeds 2 % of the basic number of crossings provided for in the agreement. The awarding authority may also notify SNCM that it is withholding the lump-sum payment for territorial continuity in the case of significant incidents causing the interruption of the public service.

4.4. **Ownership of the fleet**

(31) Annex II to the 1991 and 1996 agreements gives details of the composition of the SNCM fleet assigned to the public transport service, namely the car ferries, high-speed passenger vessels and ro-ro cargo ferries ([19]). As regards the public authorities' intervention in determining the size of the fleet in relation to the capacities judged necessary, the 1991 and 1996 agreements stipulate that 'every autumn, SNCM and the OTC will hold talks to adjust the service where necessary and, if need be, the size of the fleet, depending on traffic forecasts for the year to come and the results of the season that has just finished, in order to obtain an average loading coefficient of the vessels of between 55 % and 60 % in the summer season'. The following table shows the evolution of the passenger fleet capacities over the last 20 years:

Passenger transport unit capacities

Ferries — HSV's	1980	1985	1990	1995	2000
Napoléon	1 844	1 844	1 844	1 844	
Cyrnos	1 629	1 629			
Provence	1 288	1 288			
Comte de Nice	1 408				
Corse (old)	1 408				
Corse (new)		2 262	2 262	2 262	2 262
Esterel		2 262	2 262	2 262	
Ile de Beauté			1 660	1 660	1 660

([17]) Source: SNCM's audited accounts.
([18]) Conditions governing the State's financial contribution, given in clause IV of the five-year agreement between SNCM and the OTC for the period 1996-2001.
([19]) Some of these ro-ro ferries can also transport passengers.

Ferries — HSV's	1980	1985	1990	1995	2000
Danielle Casanova			2 772	2 772	2 772
Napoléon Bonaparte					2 680
HSV 1					530
HSV 2					1 100
Total	7 577	9 285	10 800	10 800	11 004

(32) The agreement system conceived in 1976 and on which the 1991 and 1996 agreements were based stipulates that the vessels acquired to provide the public service belong to SNCM and are not the subject of a clause of return to the concessionary authority. The concession scheme as conceived in 1976 does not provide for any specific remuneration to the concession-holder but, on the other hand, he remains the owner of his investments.

4.5. **Auditing arrangements**

(33) According to the arrangements introduced in 1976, SNCM is required to submit analytical accounts relating to the concessionary services every year. According to Article 5 of the framework agreement and clause VII of the five-year agreements for 1991-1996 and 1996-2001, a distinction must be drawn in these accounts between, on the one hand, ferries and any high-speed passenger craft and, on the other hand, ro-ro cargo vessels for freight transport. These accounts must firstly permit a distinction to be drawn between the concessionary services, maritime services and supplementary activities and secondly must be established according to procedures approved by the State financial officer.

(34) Article 6 of the Decree of 16 September 1983 stipulates that SNCM will forward to the OTC all documents and accounts concerning the concessionary services under the territorial continuity heading and all information needed for their comprehension, in particular how the structural charges associated with activities other than the concessionary network are passed on. Furthermore, the five-year agreements for 1991 to 1996 and 1996 to 2001 stipulate that SNCM must present a report each year to the OTC outlining the use that has been made of the annual lump-sum award which it has received on the basis of the previous year's activities and including an inventory of the services provided.

(35) Since 1991, the OTC has entrusted a consultant, Mr Paul Ménestrier, with monitoring SNCM's accounts and the use of the territorial continuity lump-sum award from the previous financial year. Finally, SNCM is subject to economic and financial supervision by the State under the conditions applying to public undertakings laid down by Decree No 55-733 of 26 May 1955.

5. **THE AID MEASURES UNDER EXAMINATION**

5.1. **Case C-78/98**

(36) Case C-78/98 concerns the operations of the SNCM-Ferryterranée group through the intermediary of its subsidiary Corsica Marittima. Corsica Marittima, which has its own administrative staff, leases available SNCM vessels with their crews for a number of hours on certain dates between the end of March and the beginning of September in order to operate services between Corsica and mainland Italy ([20]). The rentals paid by Corsica Marittima are credited to the concessionary network.

(37) When it initiated the investigation procedure, the Commission identified the following types of possible aid within the meaning of Article 87 of the Treaty:

— the financing of Corsica Marittima's operating losses by the parent company, SNCM,

— low rentals paid by Corsica Marittima to SNCM to lease its vessels with the crews needed to operate them.

([20]) In addition to the Genoa-Bastia and Livorno-Bastia routes, Corsica Marittima was operating on the following routes: in 1997, Bastia-Island of Elba, Livorno-Porto-Vecchio, Bonifacio-S. Teresa (Sardinia), Genoa-Tunisia and, in 1998, Livorno-Porto-Vecchio, Genoa-Tunisia.

5.2. **Case C-14/01**

(38) Case C-14/01 concerns the possible overcompensation by the State for the cost of the public service obligations linked to maritime services with Corsica borne by SNCM. Such overcompensation would result from the excessive level of subsidies granted under the agreements (see recitals 29 and 30). This might give rise to the misuse of the public service subsidy to finance SNCM activities on markets open to competition.

(39) When the investigatory procedure regarding this question was initiated, the Commission also indicated that it would examine additional financial compensation of FRF 20 million awarded annually to SNCM for a three-year period, and which the French authorities approved on 6 November 1998 ([21]). This additional compensation was awarded subsequently in the form of a rider to the agreement currently in force, covering the period 1996-2001. Thus an amount of FRF 20 million is to be added to the annual sum of FRF 515 million (1996 francs) laid down in Section IV of the said agreement (territorial continuity lump-sum award).

6. **COMMENTS FROM INTERESTED PARTIES**

6.1. **Case C-78/98**

Comments from private operators

(40) The Commission received comments from several private operators in competition with the concession-holders, which mainly emphasised the following points:

— SNCM's and Corsica Marittima's poor management and the fact that the latter company is operating in a competitive market thanks to subsidies which the parent company receives under the cover of public service obligations,

— the extremely aggressive price policy ([22]) applied by Corsica Marittima in the competitive market, despite its heavy operating losses. Italian tour operators were said to have been offered drastic reductions on the fares officially published by Corsica Marittima,

— the fact that the reports by Mr Ménestrier establish that the 'free network' operated by SNCM is loss-making and that it emerges from the further analysis performed by Mr Ménestrier that SNCM is financing the operating losses of its subsidiary Corsica Marittima from the budget for the 'territorial continuity public service network' supplied by subsidies from the French State.

Comments from the French authorities

(41) By letter of 8 March 1999, the French authorities forwarded their comments on the initiation of the procedure. Primarily, these authorities contest the existence of State aid in the financing of Corsica Marittima by SNCM. The French authorities point out that the agreement between SNCM and the OTC ([23]) sets out the applicable rules concerning the cost of making maritime equipment available to the concessionary network, while authorising and encouraging the concession-holder to deploy vessels from the territorial continuity fleet on other networks whenever these are not being used for the concessionary network.

(42) According to the French authorities, SNCM made an economically rational choice in leasing its vessels to its subsidiary Corsica Marittima to respond better to the demand for transport between Corsica and the mainland for the least cost. The rentals paid by Corsica Marittima would broadly cover the marginal cost of using vessels which otherwise would remain unused. To leave these vessels unused would have deprived SNCM of the resources from these rentals. This constitutes, therefore, additional income generated by an activity open to competition to benefit the concessionary network.

([21]) Decision No 4/98 of 6 November 1998 by the Management Board of the Office des transports de la Corse (OTC).
([22]) A file on 'clandestine price-cutting by Corsica Marittima' was supplied to the Commission.
([23]) Agreement for the period 1991-1995, p. 20.

(43) With regard to Corsica Marittima's losses since its creation, the French authorities observe that SNCM's decision to pursue the operations is not contrary to the principles of market economy. Quite apart from the strategic aspect, which may justify the existence of losses for several years (as this is a commercial investment), an operator reasons in a consolidated manner. Corsica Marittima's losses were made essentially in the first two years (45 % of the losses for the period 1990-1997 occurred in 1990 and 1991). Corsica Marittima's results became positive for the first time in 1997.

(44) The French authorities conclude that, by leasing its vessels to its subsidiary Corsica Marittima in a period of low traffic at a rate which does not cover the total cost, SNCM behaved like an entrepreneur consciously seeking to optimise the use of his fleet throughout the year.

(45) Finally, the French authorities provided data from SNCM's analytical accounts showing that the result of the free network activities enabled Corsica Marittima's losses to be covered, particularly since the sharp drop in traffic in 1995.

Comments from SNCM

(46) By letter of 2 April 1999, SNCM produced extracts from its analytical accounts for the years 1990 and 1995 and extracts from the report by Mr Ménestrier for the year 1995. Together with these documents, SNCM submitted its comments, contesting Mr Ménestrier's further analysis and opinions concerning the company's analytical accounts.

(47) SNCM also noted that one of the complainants in the case enjoys a dominant position on the maritime transport passenger services market between Corsica and Italy on which Corsica Marittima operates. The general fares charged by Corsica Marittima to private individuals and travel agencies for its services on this market were very close to those of the complainant. The prices offered to Italian tour operators were also within the market price range.

6.2. **Case C-14/01**

Comments from private operators

(48) The Commission received comments from two private operators in competition with SNCM on the Corsican lines. These comments stress, in particular, the considerations which formed the basis of the complaints forwarded in the first place to the Commission:

— the territorial continuity system introduced by France constitutes an obstacle to forming a trade network between France and Italy. The system has the direct effect of promoting connections with mainland France using the three ports of Marseilles, Nice and Toulon, to the detriment of connections with Italian ports, which are much closer to Corsica,

— SNCM establishes the public service obligations itself. According to its competitors, it appears unlikely that the seasonal promotional fares were really decided upon by the public authorities, as provided for in the agreements. In addition, the frequencies of service, decision as to which ports are served and transport capacity are all, in practice, left up to SNCM,

— maritime services to Corsica, also known as the territorial continuity services, are principally governed by fleet capacity, since it is the nature and size of the SNCM fleet which determines the content of the public service obligations and not the reverse. SNCM acquired and put into service vessels to provide the public service despite the negative opinion of the OTC awarding authority,

— the aid awarded to SNCM exceeds the amount needed to carry out the public service task, this overcompensation being inherent in the very structure of the annual territorial continuity award. This overcompensation is revealed, in particular, by the inclusion of costs which are completely external to the public service obligations in the compensation awarded,

— at a national Parliament hearing ([24]), the Corsican officials responsible themselves identified the components of this excess cost, pointing out, in particular, the excess costs imposed on SNCM by systematically choosing French yards for shipbuilding and through the cost of social coverage for dockers in the port of Marseilles, which was said to have been set off against the funds awarded under the territorial continuity scheme. The competitors also state that there are too many staff allocated to the public service and that they cost too much when compared with the service requirements,

— finally, the comments received question the system for constituting the fleet assigned to the public service as set out in the agreements, denouncing the fact that, at the end of the concession period, the fleet constituted thanks to the territorial continuity award would be totally dispensed from operating services to Corsica. The capital gains which SNCM made on vessels financed by the award were registered in the accounts, not for the territorial continuity network, but for the so-called free network ([25]).

Comments from the French authorities

(49) The French authorities forwarded their comments in a letter dated 1 June 2001. In order to justify the need for a public service to provide maritime connections with Corsica, the French authorities begin by stating that it is their responsibility to maintain a continuous link between the mainland and the island (the territorial continuity policy). This policy aims to reduce the drawbacks of insularity, seeking to integrate Corsica more effectively into the European area. The French authorities point out that the territorial continuity policy calls for a level of maritime transport services which no shipowner would assume to the same extent and under the same conditions if he were considering his commercial interests.

(50) More precisely, the French authorities stress some of the specific features of the maritime services for Corsica which led the public authorities to intervene in the organisation of transport very early on and to participate in its financing to provide sufficient and regular shipping services and in order to organise and rationalise the service. These specific features were:

— the relatively low level of maritime traffic between mainland France and Corsica,

— the seasonal imbalance of passenger traffic, very high transport capacities being required during the summer period, without being necessary the rest of the year,

— dissymmetry of traffic: traffic is not balanced equally in both directions, the volumes varying sharply according to the direction north-south or south-north, according to the season, and between the beginning and the end of the week,

— the service concerned a high number of ports in relation to existing traffic. The need to serve all the secondary ports, which account for less than 20 % of total tonnage, is regarded as essential for territorial management reasons.

([24]) Hearing of Mr Piazza-Alessandrini, Chairman of the Office des transports de la Corse (OTC), by the national Parliament's fact-finding mission on Corsica on 21 April 1997.

([25]) See the report of the OTC inspector and the analysis made by Mr Ménestrier and contested by SNCM (see recital 46). The comments received refer in particular to the resale of the *Esterel* in 1997 and the indemnity paid by the insurance company following the total loss of the *Monte Stello* in 1994.

(51) The French authorities emphasise that the companies responsible for the public maritime transport service to Corsica have never benefited from exclusive arrangements and that the operators of lines to and from Corsica are only interested in exploiting those which are of real economic interest, namely the major lines in the high season. Outside of the season and of these lines, there would be a noticeable shortage of regular transport services compared with the public service obligations which the public authorities must fulfil.

(52) The French authorities also evoked their obligation to ensure that the fleet was capable (in the number and type of vessels and crews to be deployed) of coping both with a large capacity required for a small part of the year and with highly variable traffic. According to the authorities, the average annual loading coefficient for vessels assigned to the public service is around 40 % ([26]). This low average and the marked variability of the coefficient would be very damaging to a carrier operating without financial compensation in a competitive market. Maintaining a fleet capable of meeting the public service obligations would entail substantial structural costs and the under-use of resources for a considerable period of the year. In addition, the physical features of Corsican ports limited the size of vessels, particularly at Bastia ([27]), making the use of specific ferries mandatory, and which thus determined the composition of the fleet.

(53) Finally, the French authorities point out that an invitation to tender, open to all European maritime operators, for the Corsican services at the end of the year 2000 had not encouraged many tenderers to come forward, even among those now operating from France and Italy. The limited amount of interest shown illustrated the difficulty of guaranteeing services to the island in a way which complied with the wishes of the public authorities in economic and financial conditions which were acceptable for a private operator, even with the contribution of public funding.

(54) The French authorities claimed that concluding a public service contract had enabled them to obtain transport services which meet these specific requirements, while at the same time ensuring the existence of:

— a programme to provide the public with sufficient services which met standards of continuity, regularity, capacity and quality, with fixed fares and conditions, particularly for certain categories of traveller,

— sufficient transport capacity to guarantee a public service throughout the year, given seasonal imbalances and the dissymmetry of traffic,

— moderate fares, fixed according to the principle of territorial continuity,

— a balance between the ports served, both regarding the two major ports of the north and the south of the island and regarding the four secondary ports, independently of the economic viability of each connection,

— security of service: the contract permits having the vessels needed to guarantee continuity of service when there are technical stoppages, operating incidents or unpredictable bad weather.

(55) Lastly, the French authorities point out that, under Article 4(3) of Regulation (EEC) No 3577/92, existing public service contracts in the Member States may remain in force until their expiry date.

7. **ASSESSMENT OF AID**

(56) Pursuant to Article 87(1) of the Treaty 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.

([26]) Whereas it can reach 100 % in the direction of Marseilles to Ajaccio during the first week of August.
([27]) Port limited to vessels less than 175 m long.

(57) Making public money available to SNCM constitutes without any doubt a State aid. SNCM is an operator engaged in the provision of international maritime transport services. Since 31 December 1989, maritime transport between Member States and between Member States and third countries has been open to all operators referred to in Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ([28]), amended by Regulation (EEC) No 3573/90 ([29]). Since 31 December 1989, aid granted to an undertaking transporting passengers and freight between France and third countries, including Italy, may affect trade between Member States and threatens to distort competition, which would confirm the presence of aid within the meaning of Article 87(1) of the Treaty. It will be recalled that the SNCM-Ferryterranée group operates on intra-Community connections in direct competition with operators such as Corsica Ferries, Moby Lines, Happy Lines, Tris, Lauro and Saremar and, as regards freight traffic with the North African countries ([30]), it is also in competition with other European operators.

(58) Generally speaking, according to case law, State financing aimed at compensating the additional costs arising from public service obligations constitutes a measure falling under Article 87 of the Treaty ([31]).

(59) This would also be the case for the financing of Corsica Marittima's activities on the France-Italy connection if the free network were partly financed thanks to the subsidy awarded by the State to SNCM for the public service obligations on the concessionary network.

Notification requirement

(60) In accordance with Regulation (EC) No 659/99, any aid awarded to SNCM from 1 January 1990 at the latest constitutes a new aid and as such is subject to the requirement of prior notification to the Commission. There are no exceptions to this rule in the maritime transport sector. It is applicable even if the undertaking receiving the aid is likely to benefit from an exemption from the competition rules as provided for in Article 86(2) of the Treaty ([32]).

7.1. **Assessment of the compatibility of the aid**

(61) As for the compatibility of State aid with the common market, aid is prohibited unless one of the specific exemptions provided for by the Treaty applies. Exemptions may be granted pursuant to Article 87(2) and (3) and Article 86(2) of the Treaty.

(62) The aid awarded to SNCM under the territorial continuity subsidy does not fall under any of the exemptions provided for in Article 87(2) of the Treaty, being neither aid having a social character, granted to individual consumers, nor aid to make good the damage caused by natural disasters or exceptional occurrences, nor aid granted to the economy of certain areas of the Federal Republic of Germany.

([28]) OJ L 378, 31.12.1986, p. 1. SNCM operations between Corsica and the French mainland within the context of the 1976 agreement are considered maritime cabotage. Scheduled passenger transport services and ferry transport along the French coasts have been open to all operators since 1 January 1999 pursuant to Regulation (EEC) No 3577/92.
([29]) OJ L 353, 17.12.1990, p. 16.
([30]) The countries concerned are Tunisia and Algeria, whose maritime relations with France have been governed for a long time by shared cargo agreements between the national maritime companies. These agreements were cancelled to make way for traffic liberalisation in 1987 in the case of Algeria and 1988 in the case of Tunisia.
([31]) See the judgment of the Court of First Instance of the European Communities of 27 February 1997, Fédération française des sociétés d'assurances (FFSA) *et al.* v. Commission, T-106/95, [1997] ECR, p. II-229, point 165.
([32]) See in particular the judgment of the Court of Justice of the European Communities of 22 June 2000, Aid to the Coopérative d'exportation du livre français (CELF), C-332/98, [2000] ECR, p. I-4833.

(63) Nor can this aid benefit from any of the exemptions referred to in Article 87(3) of the Treaty. For the aid in question is not intended to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the economy of a Member State, within the meaning of Article 87(3)(b) of the Treaty, nor aimed at promoting culture and heritage conservation, referred to in (d) of that paragraph. Nor can the aid in question be qualified as regional development aid pursuant to Article 87(3)(a) or (c), as it is not part of a multisectoral aid scheme which is open in a given region to all the undertakings of the sectors concerned (see the guidelines on national regional aid ([33])). Nor can this aid be regarded as aid to facilitate the development of certain activities as referred to in the abovementioned subparagraph (c), since the aid in question is intended to cover the operating costs of a specific maritime operator and is not part of a general plan to render the beneficiary undertaking economically and financially efficient without recourse to further aid.

(64) Article 86(2) of the Treaty states that 'undertakings entrusted with the operation of services of general economic interest […] shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

(65) In accordance with case law, as this provision lays down a derogating rule, it must be interpreted restrictively ([34]). It is not therefore sufficient in this respect that the company in question has been entrusted by the public authorities with the operation of a service of general economic interest; the application of the rules of the Treaty, specifically those of Article 87, must also obstruct the performance of the particular tasks assigned to the company and the interests of the Community must not be affected ([35]).

(66) In order to assess whether the subsidies paid to SNCM under the 1991 agreement qualify for the exemption referred to in Article 86(2) of the Treaty, the Commission must in turn:

— verify whether the services whose management has been entrusted to SNCM can be qualified as a service of general economic interest. This qualification presupposes that there would be insufficient scheduled transport services if the latter were left up to market forces alone ([36]), and

— examine whether the amount of the subsidies awarded to SNCM in the context of its public service obligations for maritime services to Corsica matches the excess costs borne by SNCM to satisfy the fundamental requirements of the public service contract.

(67) In 1997, the Commission established Community guidelines on State aids to maritime transport, specifying the conditions under which State aid awarded in exchange for fulfilling public service obligations will be considered compatible with the common market.

7.2. **Justification of the public service**

(68) Article 2(4) of Regulation (EEC) No 3577/92 defines public service obligations as 'obligations which the Community shipowner in question, if he were considering his own commercial interest, would not assume or would not assume to the same extent or under the same conditions'.

(69) In accordance with the Community guidelines on State aid to maritime transport, 'public service obligations may be imposed for scheduled services to ports serving peripheral regions of the Community or thinly served routes considered vital for the economic development of that region, in cases where the operation of market forces would not ensure a sufficient service level'.

([33]) OJ C 74, 10.3.1998, p. 9.
([34]) See the abovementioned judgment 'FFSA', point 173.
([35]) See the abovementioned judgment 'FFSA', point 173, and the Judgment of the Court of Justice of 10 December 1991, Merci convenzionali porto di Genova, C-179/90, [1991] ECR, p. I-5889, point 26.
([36]) Judgment of the Court of Justice of 20 February 2001, Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) *et al.* v. Administración General del Estado, C-205/99, [2001] ECR, p. I-1271, point 34.

(70) In addition, the Treaty, as amended by the Treaty of Amsterdam, takes the special nature of island regions into consideration in the conditions for which it provides as set out in the second paragraph of Article 158. The special nature of island regions was also acknowledged in declaration No 30 on island regions, annexed to the final act of the Treaty of Amsterdam.

(71) The Commission is not contesting the so-called territorial continuity policy that France has been implementing for some time, nor the obligation of the public authorities to examine and, where necessary, ensure that there are sufficient scheduled maritime transport services for passengers and goods to and from Corsica so as to meet the economic and social development requirements of this island region.

(72) The Commission notes that, historically, this objective, which is of legitimate public interest ([37]), has not been achieved through the interplay of market forces alone. Indeed, from 1976 until the late 1990s, SNCM enjoyed a *de facto* monopoly on nearly all the lines concerned ([38]). According to the information available to the Commission, it was only from 1996 that a private operator, Corsica Ferries, opened the market to competition by serving the island from Nice with high-speed vessels during the summer months. This service was subsequently extended in the following manner:

Toulon-Bastia line

Since 18 December 2000, four crossings per week in the season and three crossings per week out of season;

Toulon-Ajaccio line

Since 1 April 2000, four crossings per week in the season and three crossings per week out of season;

Nice-Bastia line

Since 4 July 1996, seven crossings per week in the season and, since 18 March 1999, one crossing per week out of season;

Nice-Calvi line

Since 4 July 1996, eight crossings per week in the season and, since 18 March 1999, one crossing per week out of season;

Nice-Ajaccio line

Since 1 April 2001, one crossing per week out of season.

(73) The agreement concluded by the State with SNCM in 1976 for a period of 25 years aimed, precisely, at remedying the proven lack of scheduled maritime transport services between mainland France and Corsica and at permitting the compensation of the costs connected with the deficit recorded by the company in satisfying these obligations. In accordance with the legal framework and the provisions of the agreement described above, SNCM was subject, on all its routes, to a series of obligations regarding the ports to be served, voyage frequencies, times of departure and arrival, types of vessels to be used and fares to be charged, which obligations the company would not assume or would not assume to the same extent or under the same conditions if it could act solely in its own commercial interests.

(74) No competing operator was able to fulfil the requirements of annual regularity and frequency of service provided for by the agreement scheme, neither for passenger nor for goods transport. Even the presence, since 1996, of a private operator on a limited number of lines and during a part of the year only has not been able to satisfy the public service requirements deemed necessary by the French public authorities. In this context, it must be noted that, within the framework of the implementation of Regulation (EEC) No 3577/92, the Commission considers it legitimate to impose obligations for a period covering both the low and the high season in order to avoid the risk of shipowners creaming off the market and who, operating only in the summer, would leave the operator in charge of the public service obligations with all of the non-profitable lines. Consequently, the Commission comes to the conclusion that the absence of competition observed by the French authorities in 1991 and 1996, when the two five-year agreements were concluded, justifies the need for providing a public service within the framework of an agreement scheme.

([37]) See the abovementioned judgment 'Analir', point 27.
([38]) Including five from Marseilles (to Porto-Vecchio, Propriano, Bastia, Ajaccio and Balagne), three from Toulon (to Propriano, Bastia and Ajaccio) and three from Nice (to Bastia, Calvi and Ajaccio).

(75) The system introduced by the French authorities sets out, in the agreements themselves and in the annexes to these agreements, precise rules governing continuity, regularity, capacity and fares which the carrier must respect in order to provide the public service. Thus the five-year agreement from 1996 determines the basic connections which constitute the maritime transport public service, stipulating that the service timetable for each of the periods provided for must be submitted in good time for prior approval by the OTC. Finally, the vessels assigned to the public service are also identified in the agreements.

(76) With regard to the additional financial compensation approved on 6 November 1998, the Commission notes that the rider to the agreement takes account of a change to the public service decided on by the public authorities, consisting of an increase in the services provided by SNCM. The provisions of this rider comply with those of the 1976 framework agreement and the 1996 five-year agreement (Part II, Article 4(2)). For these reasons, the comments by certain third parties to the effect that SNCM had fixed the public service obligations itself are not pertinent.

(77) It must be pointed out however that maritime transport with Corsica is a market which is subject to a great deal of competition, in addition to the permanent competition from air transport (which also receives subsidies). This maritime competition is very fierce, particularly from Italy, with scheduled services from the ports of Livorno and Savona to Corsica.

(78) As far as services from the French mainland ports are concerned, the market has evolved significantly in recent years, to the extent that the need for public service obligations for all the lines throughout the whole year has been questioned. According to the data of the Observatoire régional des transports de la Corse ([39]), since 1995, the growth in the supply of summer services on French lines resulting principally from the successive opening to competition of the Nice and then the Toulon lines and the putting into service of new maritime transport vessels ([40]), has meant that the number of crossings offered has tripled and the number of seats offered has increased by 77 %.

(79) This progression in the volume of summer services offered in 2001, due to the opening up of competition, could lead to a restructuring of the summer services and a new sharing out of traffic between operators to the detriment of SNCM.

Seats offered — mainland France-Corsica

Companies	2000	2001	Trend
SNCM	2 238 449	2 364 915	+ 6 %
CMN	63 595	66 633	+ 5 %
Corsica Ferries	321 500	1 025 600	+ 219 %
Total	2 623 544	3 457 148	+ 32 %

Seats offered — mainland France-Corsica

Month	2000	2001	Trend
May	333 844	454 052	+ 36 %
June	470 932	570 857	+ 21 %
July	710 054	894 039	+ 26 %
August	728 358	922 270	+ 27 %
September	380 356	615 930	+ 62 %
Total	2 623 544	3 457 148	+ 32 %

([39]) *Évolution structurelle de l'offre 'passagers' sur les lignes maritimes françaises, saison 2001* (document dated April 2001).
([40]) Particularly HSVs, with up to 1 700 seats.

(80) In the light of these data, the Commission's conclusion regarding the real need for a public service resulting from the service system provided for by the framework agreement signed between the State and SNCM in 1976 and, within the framework of this agreement, by the five-year agreements concluded between the OTC and SNCM in 1991 and 1996, cannot be extrapolated beyond the deadline of 31 December 2001, the date on which the framework agreement expires. This conclusion is supported by the French authorities' intention ([41]) to reduce, as from that date, the level of public service obligations imposed.

7.3. **Matching of compensation to public service costs**

Absence of a call for tenders

(81) With regard to public service contracts in the maritime transport sector, the Commission considers that, if there has been public procurement according to transparent and non-discriminatory procedures, the reimbursement of operating losses incurred as a direct result of fulfilling services of a general economic interest pursuant to Article 86(2) of the Treaty does not comprise overcompensation and remains compatible with the common market ([42]). In the present case, there has been no call for tenders. As a result, the financial compensation could comprise operational aid incompatible with the common market.

The non-lump-sum character of the subsidy

(82) The French authorities believe that the territorial continuity award is a lump-sum award and should not be used for either operating costs or investment costs. However, even if it is true that the terminology used in clause IV of the agreement to define the subsidy is a 'territorial continuity lump-sum award', the second part of clause IV stipulates that 'should economic conditions and, in particular, operational costs and traffic levels that have served as the basis for calculating the subsidy deteriorate substantially, SNCM and the OTC will get together to study the measures to be implemented regarding the service, fares or raising of the amount of the award in order to re-establish the financial equilibrium of the company'.

(83) The Commission is of the opinion that this possibility of upwardly adjusting the subsidy in order to offset a financial imbalance which is connected to the disparity between the real operational costs and the costs which served as the basis for calculating the subsidy is evidence that the subsidy is not a lump sum.

Additional financial compensation

(84) In part II of the 1996 five-year agreement, Article 4(2) provides for the possibility of changing the distribution of the various connections to be provided by SNCM as a public service, with the agreement of the Office des transports de la Corse, depending on the forecast demand, so long as the total number of connections does not fall below the total number of basic connections mentioned in the agreement. Part 1 of the 1996 agreement also provides that the OTC may ask SNCM to allow refunds or rebates on the fares charged, these refunds or rebates giving rise to financial compensation in favour of the company.

(85) The French authorities have explained that the rider to the 1996 agreement, decided upon on 6 November 1998 in order to award an additional financial compensation of FRF 20 million to SNCM, is the result of a change in the public service obligations, consisting of an increased level of services to be provided by SNCM. The provisions of this rider are said to comply with those of the agreements. According to the French authorities, the extra costs connected with this change give rise to the following charges:

— the putting into service of an additional service ferry (the *Île de Beauté*) in the low and mid-season periods at a cost of FRF 14,7 million,

— a stepping-up of the frequency of service provided for in the agreement as regards Ajaccio, at a cost of FRF 1,1 million,

— reduction of the crossing fares stipulated in the agreement at a cost of FRF 8 million.

([41]) See recital 120.

([42]) See the third paragraph of Section 9 of the Community Guidelines on State aid to maritime transport and the Commission Decisions of 19 July 2000 in Case C-10/98 — Spain, New maritime public service contract (not yet published in the Official Journal) and of 6 August 1999 in Case C-64/99 — Italy, Gruppo Tirrenia di Navigazione (OJ C 306, 23.10.1999, p. 2).

(86) The *Île de Beauté* ferry was made available at the request of the OTC to increase, as a back-up vessel, the HSV connections from Nice in the autumn and the spring. The decision to charge reduced fares was made by the OTC and the Executive Council of Corsica as from 1996 in order to step up traffic in the south-north direction at the beginning of the summer and in the north-south direction at the end of the summer. However that may be, the amount of additional financial compensation must be taken into account in order to assess whether the total amount of subsidies awarded matches the extra costs engendered by the public service obligation.

Matching of the total subsidies to the public service costs

(87) As indicated above, the Commission must examine whether the amount of the subsidies matches the costs sustained by SNCM to satisfy the fundamental requirements of the public service contract. The requirements in question are set out in the specifications annexed to the five-year agreements of 1991 and 1996. Among other things, these specifications determine the services to be provided, the number of connections, the ports served, the fares to be charged and the timetables, all of which are the responsibility of SNCM. The annexes to the agreements also determine the technical specifications, capacity and number of vessels which have to be assigned to the public service obligations and the expected evolution of the fleet until the expiry of the agreement.

(88) In this respect, the Community Guidelines on State aid to maritime transport point out that the additional costs which Member States may reimburse to an operator providing a service under public service obligations contracts must be directly connected to the calculated deficit recorded by the operator on that occasion. They must be accounted for separately for each service of that type to permit verification that there has been no overcompensation or cross subsidy so that the system cannot be used to support inefficient management and operating methods.

(89) On the basis of the audit arrangements provided for in the agreements, the French authorities indicated that the financial compensation in question had been calculated, using the operating accounts of the company as a basis, taking account of the real cost of carrying out the public maritime transport service provided by SNCM. In addition, on 27 April 2000 the authorities had provided a report prepared by an independent consultant on the breakdown by sector ('concessionary network' and 'other activities') of SNCM's analytical results. According to the analysis of this consultant, the subsidy which SNCM had received from the State was necessary to offset the operating deficits of the Corsica network. The net results of the concessionary network were clearly in deficit for the years covered by the analysis.

(90) At the same time, on 7 August 2000 the complainants submitted the report of another consultant on the profitability of French cabotage lines with Corsica ([43]) to the Commission. The conclusions of this report are used to question the amount of the subsidies which SNCM receives from the State. In addition, the Commission's attention was drawn on several occasions to the reports prepared by Mr Paul Ménestrier as the auditor of the OTC monitoring the territorial continuity lump-sum award. Information was also received regarding a report of the French Court of Auditors analysing the management of SNCM in the period 1992 to 1996.

(91) A detailed examination of these apparently contradictory documents and data led the Commission to call upon an outside consultant to study the different charging criteria applied and to throw light on the apparent contradictions. The audit by the consultant was intended to examine whether there was any possible overcompensation or cross subsidies linked to the subsidies awarded by the French State to SNCM in the period 1990 to 1999. The scope of the study requested by the Commission was limited to the question of State aid within the meaning of Article 87 of the Treaty. This analysis did not aim and must not serve to question the conclusions of the reports drawn up by the various national and/or regional audit bodies in other contexts and for other purposes.

(92) The expert hired by the Commission first examined the analytical accounting of SNCM from the company's annual accounts, the reports from the SNCM to the OTC, Mr Ménestrier's report and the report prepared by the consultant hired by the French authorities. He next offered explanations of the noted disparities between these reports before giving his opinion.

([43]) PWC report entitled 'Analysis of the profitability of some French cabotage lines'.

(93) As far as the report drawn up by the consultant hired by the complainants is concerned, the Commission expert is of the opinion that the study is based to a large extent on a theoretical model, founded on working hypotheses, and hence remote from the specific case of SNCM. For this reason it was impossible for him to compare the figures given in the model with those of SNCM's accounts. This report does not therefore make it possible to conclude whether or not there was overcompensation. Indeed, a conclusion of this kind presupposes an examination of compensation paid compared with the real costs of SNCM in a given context. But this research had not been carried out. The author confined himself to showing that, under certain conditions and if certain working hypotheses were valid, a company entrusted with the management of a public service could make a profit.

(94) With regard to the report drawn up by the consultant hired by the French authorities, it appears that this report refers to three specific financial years: 1993, 1995 and 1997. These financial years are considered representative of the variable operating conditions observed during the last decade with regard to the number of passengers transported and political and social occurrences which could have a significant impact on the company's results. It is not however possible to arrive at the conclusion that there was no overcompensation in favour of SNCM connected with the subsidies received under the 1991 and 1996 agreements on the basis of data confined to only three financial years.

(95) Finally, the expert hired by the Commission examined the criteria for allocating the costs of the various activities of SNCM, in particular those connected with the public service (services to Corsica), international trade (freight and passenger traffic between France and North Africa) and those of its subsidiary, Corsica Marittima.

(96) There is a need here to distinguish between the direct costs which, on account of their nature, are directly attributable to one or the other of the subsidiaries of the SNCM-Ferryterranée Group and, in the case of SNCM, to each operational activity (Corsica network or international network), and the structural charges common to all the enterprises and activities of the group. In the case of direct costs, the separation between companies ([44]) and activities in the accounts guarantees transparency concerning the allocation of the costs linked to the provision of the public service.

(97) The group's common structural charges are allocated on a flat-rate basis to the various subsidiaries and branches of activity, including the provision of the public service. These charges, which are few in number, represent in particular all the operational charges for the group's administrative services. They are distributed according to the network concerned, Corsica or international, in the following way (most important headings):

— charges related to fleet management structures: commissioning, supplies, technical expenses, catering expenses. They are attributed to the vessels in proportion to their use of these facilities,

— charges for the 'Corsica' operations, including the regional office for Corsica, the agencies in Nice, Bastia and Ajaccio, the management of hangars in Nice, commission for travel agents, commercial inspection costs, etc. These are attributed according to the number of reservations per destination,

— 'mainland agency' charges (Paris, Nancy, Lille, Brussels), distinguishing between the cost of the agency's activity and the cost of commercial inspection per network. They are attributed according to the number of reservations per destination,

— charges for the 'North Africa' operations. These are directly attributable to the network concerned,

— the 'maritime operations' structure charges. Expenditure on publicity campaigns is attributed directly to the network concerned,

— the 'port agency of Marseilles' structure charges. These are divided into passenger and freight charges and distributed among the different networks according to the number of reservations recorded,

— charges relating to the company structure. Central office overheads and management expenses are distributed on a *pro rata* basis according to the net income (operating income less commercial expenditure) of each network.

([44]) Corsica Marittima has its own headquarters whose structural costs it sustains. Consignment expenses and other maritime expenses with regard to the vessels which it uses (i. e. direct costs, including port charges, fuel, etc.) are also borne directly by Corsica Marittima.

(98) On the basis of the accounting and management data put forward by the French authorities, the expert hired by the Commission believes that all the assets, liabilities and profit and loss account items presented as components of the public service cost correspond precisely to that activity. The other costs are charged to the international network. Consequently, the Commission may conclude that public service subsidies have not served to compensate the costs of the competitive activities performed by SNCM. The separation of the accounts relating to the provision of that service ([45]) and the audits carried out by the regional and national audit bodies ([46]) also guarantee that the annual accounts plotting the use of the territorial continuity subsidy provide a faithful image of the cost of providing the public service.

Audit results

(99) Taking account of these details, the opinion of the expert hired by the Commission is that, independently of the criteria applied for the breakdown of the analytical accounts according to the various layouts ([47]), the aggregate results before tax of the 'Corsica fleet' activity which emerge from the accounting and management data provided by the French authorities reasonably reflect SNCM's costs in providing the public service. This opinion is accompanied by comments on the inclusion of capital charges in these costs concerning the making of vessels available to the concessionary network.

Capital charges

(100) According to the five-year agreement currently in force ([48]), the capital charges include:

— financial charges connected with financing the acquisition of vessels. These are calculated on 90 % of the investment and applying a 5,5 % net rate for the change in the price of gross domestic product,

— (straight-line) depreciation of vessels, calculated on 90 % of the investment in a linear manner over a duration of 20 years for passenger ferries and ro-ro cargo ships and over a period of 10 years for high-speed passenger craft,

— leasing and hiring charges.

The capital charges (depreciation and interest) are maintained throughout the period the ship is used, regardless of the length of life used to calculate the depreciation.

(101) In this context, the Commission would point out that the Community guidelines on State aid to maritime transport state that the amount of the subsidy awarded as compensation for public service obligations should take account 'of a reasonable return on capital employed', which was the case in the five-year agreements of 1991 and 1996 ([49]).

Capital gains made

(102) During the period 1991-1999, three vessels were sold, leading to the following capital gains: FRF 7,2 million in 1993 (sale of the *Aude* ([50])), FRF 95,4 million in 1994-1996 (sale of the *Monte Stello* ([51])) and FRF 79,5 million in 1997 (sale of the *Esterel* ([52])), i.e. a total of FRF 182,1 million.

([45]) In accordance with the legislative and regulatory framework applicable in France (Law of 3 January 1985 and implementation decrees) and with the Order of 9 December 1986 issued following the opinion of the Conseil national de la comptabilité.

([46]) See the reports of the OTC auditor, the report of SNCM's auditors and the reports of the French Court of Auditors. Any use of the territorial continuity subsidy for purposes other than those of connections with Corsica would be contrary to French law.

([47]) Audited accounts, analytical accounts of SNCM, reports from SNCM to the OTC and Mr Ménestrier's reports to the OTC.

([48]) The 1991 agreement with the OTC set out the following formula: 'the annual instalment for each of the vessels deployed on territorial continuity has been determined from the financial criteria habitually taken into account for long-term contracts. It is established on the basis of the true cost price of the vessel in francs, less a residual value of 10 % at the end of the period and by agreement includes a net interest rate of 7 % for the change in the market price of GDP. The duration is 16 years for ferries and 14 years for ro-ro ships'.

([49]) The returns calculated on the GDP price variation index have been on average lower than the returns resulting from the rates applied on the capital markets during the years in question.

([50]) See the Ménestrier report, p. 179, and the PWC report, p. 19.

([51]) See the Ménestrier report, p. 179.

([52]) See the Ménestrier report, p. 179, and the PWC report, p. 19.

(103) These three capital gains made on vessels deployed as part of the Corsican fleet had been charged by SNCM to the free network and other activities in the analytical accounts. It is true that this does not contravene the agreement between the OTC and SNCM, as the agreement does not provide for anything in this regard. However, even if the agreement has no provisions to this effect, the Commission is of the opinion that, from an economic standpoint, it is more appropriate to assign the capital gains from the cessation of an activity to the activity which sustained the investment costs, namely the Corsica network. Indeed, the vessels in question, whose priority use was to provide the public service ([53]), were purchased and fully depreciated over the period covered by the agreement. Thus the financing and depreciation of the vessels was borne entirely by the public service. For this reason, the Commission's general conclusion, based on the opinion of its expert's as to overcompensation, must take account of this correction.

Absence of overcompensation

(104) The table below summarises the reconciliation of the accounts carried out by the expert hired by the Commission between the costs chargeable to the public service (operating deficit plus capital charges) and those chargeable to other company activities and their level in relation to the subsidies paid.

Overall summary table for the years 1991 to 1999 ([1])

(in FRF thousands)

	Total Corsica fleet (public service)	International network and other activities	Total
Net operating margin	(2 984 913)	340 140	(2 644 773)
Capital charges	(2 080 916)	(333 799)	(2 414 715)
— Financial charges	(521 914)	(33 792)	(555 705)
— Leasing	(18 810)	0	(18 810)
— Depreciation	(1 540 192)	(272 792)	(1 812 984)
— Provisions and other	(222 800)	(27 215)	(222 800)
Total charges	(5 065 829)	6 341	(5 059 487)
Subsidy	4 602 486	0	4 602 486
Exceptional result	64 262	202 660	266 925
Result before tax	(399 080)	209 001	(190 079)
Capital gains adjustment	*182 100*	*(182 100)*	*0*
Total	(216 980)	26 901	(190 079)

([1]) This table corresponds to the consolidated accounts of the group. The expert hired by the Commission checked the concordance between these figures, the analytical result accounts, the social accounts results account, the accounts presented in SNCM's report to the OTC and the accounts taken up in Mr Ménestrier's reports to the OTC.

([53]) Subject to the reservation of recital 108.

(105) Taking account of the above, the Commission comes to the conclusion that, during the period examined (agreements of 1991 and 1996), SNCM's income from managing the public service providing maritime services to Corsica, including the subsidies received, does not exceed the reported charges connected with the public service. According to the analysis of the expert hired by the Commission, the Corsican fleet's result remains in substantial deficit (FRF – 399 million). Even if we include the capital gains made on certain vessels for an amount of FRF 182,1 million ([54]), the net result remains negative (– 399,1 + 182,1 = FRF – 217 million).

(106) In coming to this conclusion, the Commission is not giving an opinion as to whether or not the cost of the public service obligations is excessive. As the Court of First Instance has pointed out ([55]), '... in the absence of Community rules governing the matter, the Commission has no power to take a position on the organisation and scale of public service tasks assigned to a public undertaking or on the expediency of political choices made in this regard by the competent national authorities [...]'. Within the limits provided for in Article 86 of the Treaty, it is up to each Member State to determine the level of public service required and what means need to be used to provide such a service.

7.4. **Corsica Marittima's activities**

(107) During the financial years 1991 to 1999, the overall result of Corsica Marittima's activities, which depends mainly on the level of rentals fixed by the parent company, showed a net loss. These losses amounted to approximately FRF 36 million. The reconciliation of the accounts carried out by the expert hired by the Commission shows that it is the result of the international network activities which permitted these losses to be covered. It appears that, in the absence of over-compensation for the public service costs, the financing of Corsica Marittima's activities by SNCM was not financed by subsidies paid under the public service obligations.

(108) In addition, clause III of Annex 2 to the agreement between SNCM and the OTC stipulates that 'SNCM will endeavour to reduce the burden which the vessels for territorial continuity represent whenever their use is not required for the concessionary service by deploying them whenever possible on external connections in order to seek, in matching supply to demand, a better adaptation of the cost of the public service to transport requirements; the result of voyages made on these external connections by the territorial continuity fleet vessels will be credited to the concessionary network. These external connections will be carried out by an SNCM subsidiary, while the territorial continuity fleet vessels will be remunerated in the form of charter contracts per voyage'. Thus the OTC authorises transferring vessels between networks.

(109) In this way, SNCM makes vessels available to its subsidiary Corsica Marittima; which, when they are not needed for the public service, would otherwise remain unused (certain car ferries in the middle of the week, cargo vessels Saturday lunchtime to Sunday evening) ([56]). As was announced when the procedure in case C-78/98 (see recital 7) was initiated, the Commission has examined the calculation method used by SNCM to fix the charter rates billed to Corsica Marittima. From the examination carried out by the Commission, it appears that in the case of the HSVs, the rentals charged to the subsidiary cover the complete cost of chartering the vessel, whereas in the case of mixed cargo and car ferries, these rentals are lower than the full charter costs but higher than the marginal operating costs ([57]).

([54]) See recital 102.
([55]) See the abovementioned 'FFSA' judgment, point 192.
([56]) Their use is confined to the restricted time periods when vessels are available.
([57]) The French authorities have justified these differences by the nature of the vessels leased. They say that the HSVs correspond precisely to the demand expressed by Corsica Marittima. In the case of cargo vessels, on the other hand, only the passenger section (which is only accessory) is of commercial interest. Similarly, the capacity offered by SNCM's car ferries in the middle of the week is much greater than the ad hoc requirements of Corsica Marittima.

(110) It is true that the rental fees set enabled SNCM to show a profit of some FRF 18 million for leasing the ships to Corsica Marittima in the analytical accounts for the period 1991-1999. This profit helped to compensate partly the costs of the public service because it was credited to the concessionary network in the SNCM accounts. Such leasing helped compensate SNCM for expenditure which had in any case already been incurred ([58]). That is why SNCM acted in an economically rational way when leasing vessels to its subsidiary Corsica Marittima. Leaving these ships unused would have deprived it of resources deriving from rentals. An investor in a market economy would also have sought out such resources if he had had assets of this kind in his possession under the same conditions of use.

(111) However, the fact that leasing ships to its subsidiary permitted SNCM to compensate for the costs of the public service does not exclude the possibility that such leasing procured an advantage for Corsica Marittima. It must be remembered that SNCM is a State-owned company, an important part of whose activity (services between Corsica and the mainland) is financed through public subsidies. In its SFEI judgment, the Court of Justice observes that the provision of logistic and commercial assistance by a company to its subsidiaries exercising an activity open to competition is likely to constitute State aid within the meaning of Article 87 of the Treaty if the consideration received in return is lower than that which would have been called for under normal market conditions ([59]).

(112) It is necessary, therefore, to examine the situation from the point of view of the subsidiary, which is Corsica Marittima in this case, and to determine whether it was able to hire ships at a price which it would not have been able to obtain under normal market conditions. In order to check whether the rentals in question satisfy this condition, the economic analysis must take account ([60]) of all the facts which an undertaking, acting in normal market conditions, would have had to take into consideration when fixing the remuneration for the services provided ([61]).

(113) Accordingly, the Commission examined whether the rental fees charged by SNCM could correspond to the market rates for leasing ships similar to those used by its subsidiary in recent years. The reference data supplied to the Commission ([62]) permit it to conclude that it would have been possible for Corsica Marittima to hire similar vessels at conditions more advantageous than those offered by its parent company. These data distinguish between 'bare boat' leasing and the additional costs of commissioning and fitting out the vessels in question. It appears that the calculation method used by SNCM to work out the charter prices included all the costs of commissioning vessels under the French flag and including the costs of insurance, maintenance and accidental damage excess and the corresponding share of the financial charges and depreciation of the vessels in question. The experts consulted by the Commission point out that an operator acting under normal market conditions in the Mediterranean would have been able to lease similar vessels at markedly lower prices than those fixed by SNCM and commission these vessels under a cheaper flag ([63]). These data confirm that the consideration received by SNCM for leasing its vessels is comparable to that which would have been asked for by a private investor operating in similar conditions. In conclusion, the Commission observes that the prices for hiring vessels were not fixed by SNCM for the advantage of its subsidiary ([64]) and do not contain aid elements within the meaning of Article 87(1) of the Treaty.

([58]) The crews of cargo ships that have stopped at the end of the week in Corsica do not go ashore for a day and the same applies to the crews of car ferries in the middle of the week.
([59]) Judgment of the Court of Justice of 11 July 1996, Syndicat français de l'Express international (SFEI) *et al.* v. La Poste *et al.*, C-39/94, [1996] ECR, p. I-3547, point 62.
([60]) The analysis must be performed abstracting from the various privileges and aids, etc. of the service company.
([61]) See the judgment of the Court of First Instance of 14 December 2000, Union française de l'Express (Ufex) *et al.* v. Commission, T-613/97, [2000] ECR, p. II-4055, point 70.
([62]) These are, on the one hand, 'bare boat' chartering of HSVs and cargo ferries in the high season for short periods in the Mediterranean (particularly in Greece, Italy, France, Spain and Tunisia) in recent years and, on the other hand, the costs of commissioning and equipping these ships.
([63]) The Commission's third report on the implementation of Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (1997-1998) (Document COM(2000) 99 final of 24.2.2000) notes that the costs of manning French vessels are among the highest in Europe. It turns out that the wage bill and taxes borne by SNCM (ships flying the French flag) are clearly higher than the corresponding costs of private shipowners who operate according to market conditions and whose vessels fly a cheaper flag.
([64]) In the case of HSVs, the market prices obtained are lower than the leasing price paid by Corsica Marittima. They amount to approximately 70-80 % of that price. The disparity is even more pronounced in the case of cargo ferries.

(114) From a more general standpoint, regarding the coverage of Corsica Marittima's losses by SNCM and the appropriateness of extending the activity of a subsidiary which overall presents a negative result, the French authorities argue in favour of the strategic aspect of taking up a position in a market other than the traditional one following the liberalisation of cabotage in the Mediterranean area. This strategy has taken into account the prospect of increased competition in traffic headed for Corsica and the fact that the future public service agreements will be of a much more limited duration. In terms of commercial investment, Corsica Marittima's losses over the period in question (FRF 36 million) are relatively modest compared with the turnover of the international network of SNCM-Ferryterranée during the same period (FRF 3 800 million). The total amount of rentals paid by Corsica Marittima permitted the group to obtain some income, however marginal, from assets which would otherwise have remained underutilised.

(115) Taking the above into account, Corsica Marittima's activity may be seen as part of the logic of a group of companies that are pursuing a structural, global or sectoral policy, guided by the long-term outlook ([65]).

(116) Finally, the Commission has not become aware of any abnormal practices regarding Corsica Marittima's activity in the market. The complainants denounced the company's aggressive price policy. Such a policy may correspond to the legitimate strategy of a company trying to enter a new market. It is established that, following the introduction of high-speed vessels (HSVs) through competition in the market of maritime connections between Corsica and Italy, the fares charged by Corsica Marittima are higher than the market average. What is more, on the basis of information obtained from SNCM, the volumes transported by Corsica Marittima in the period 1990-1999 were very low. The average turnover of Corsica Marittima during this period was FRF 7,75 million ([66]) and its market share did not exceed 6,5 %.

7.5. **Proportionality of the aid**

(117) The exemption provided for in Article 86(2) of the Treaty is subject to the condition that the aid is proportional. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community. At the end of the examination carried out by the Commission, it is clear that the system of agreements introduced in 1976 has not led to the overcompensation of the costs of the public service rendered by SNCM. The examination has nevertheless disclosed a number of undesirable effects stemming from the agreement system which could affect trade in the future.

(118) In this regard, it may be wondered whether the logic of the public service, which requires a very large fleet, surplus to requirements during a large part of the year, does not encourage the development of ancillary activities, such as the Corsica-Italy service. One could therefore argue that the system of agreements has, to a certain extent, made possible the activity of Corsica Marittima which, on its own, would doubtless not have been able to obtain such resources nor to procure the ships under SNCM conditions.

(119) The 1976 agreement between the State and SNCM expires on 31 December 2001. The French authorities are currently preparing a new public service contract to guarantee continuity of service. Under the terms of Article 4 of Regulation (EEC) No 3577/92, whenever a Member State concludes public service contracts, it must do so on a non-discriminatory basis in respect of all Community shipowners.

(120) The Corsican regional authority has launched a call for tenders ([67]) for the new contract awarding the public service for the maritime transport of passengers between Marseilles and various Corsican ports for the period between 1 January 2002 and 31 December 2006. The French authorities' proposed new contract concerns much more limited public service obligations than in the past. What is more, the Commission notes that, as already indicated above ([68]), the increase in the services offered in the summer of 2001 due to competition is leading to a restructuring of the summer service and to a new sharing-out of traffic between operators, to the detriment of SNCM.

([65]) See the abovementioned 'Ufex' judgment, point 75.
([66]) FRF 13,3 million in 1999.
([67]) OJ S 236, 8.12.2000.
([68]) See recital 77.

(121) According to the complainants, this market could be negatively affected if the territorial continuity fleet were to be redeployed on connections other than those of Corsica. If SNCM were not to be chosen to fulfil the public service obligations once again when the agreement which is currently in force expires, the company would probably be obliged to find an alternative solution for part of its fleet which will have become surplus to requirements.

Ownership of the fleet

(122) As far as the fleet currently in service is concerned, the vessels which are part of the territorial continuity fleet were purchased to fulfil transport requirements determined by the public authorities, under the responsibility of SNCM, which assumed all the risks. SNCM provides the necessary financing and remains responsible for repaying the loans contracted to that end.

(123) It appears that a substantial part of the investment costs entered into will remain SNCM's responsibility on 31 December 2001 ([69]). This situation is the consequence of the investment policy pursued in recent years, characterised, in particular, by the introduction of high-speed vessels and the putting into service of the ferry *Napoléon Bonaparte*. It emerges from the Commission's examination of the accounts that the financial resources obtained by SNCM under the 1991 and 1996 agreements are quite insufficient to fulfil the financial obligations (investments and repayment of loans) which SNCM will have to continue shouldering after the expiry date of the present agreement. It has been demonstrated that, if SNCM no longer benefited from the subsidy which it is awarded, it would no longer be able to face the capital charges inherent in the investments made in order to guarantee the public service. The oversizing of its fleet could also compromise the length of its life. In these conditions, the Commission notes that the system set up by the 1976 agreement does not procure any unlawful advantage for SNCM in this respect.

(124) For these reasons, the Commission considers that it is necessary to invite the French authorities, with a view to monitoring the effects of the aid in question beyond the date of expiry of the public service contract which is currently in force, to inform it, before the date on which the new scheme for public services to Corsica enters into force and which the territorial community of Corsica must implement when the current agreement expires, of the measures they are planning to adapt SNCM's structure to the new market conditions.

8. **CONCLUSIONS**

(125) In the light of the preceding developments, the Commission notes that the doubts concerning the compatibility of aid paid to SNCM within the framework of the 1991 and 1996 five-year agreements have been resolved.

(126) To the extent that the aid awarded to SNCM has not exceeded the costs sustained by this company in providing the public maritime service to Corsica, as established by the public authorities, it may be concluded that there were no cross-subsidies in favour of its subsidiary Corsica Marittima. In addition, the Commission's examination has shown that the rentals paid by the latter company were fixed in line with market conditions.

(127) The French authorities should inform the Commission of the measures that will be taken, upon the expiry of the 1976 agreement, concerning the structural adaptation of SNCM to the new market conditions resulting from the application of Article 4 of Regulation (EEC) No 3577/92,

([69]) As already indicated in recital 100, the territorial continuity subsidies have permitted the partial financing of the fleet through financial charges related to the financing of vessels and related depreciation in the capital charges. According to these rules, ships are depreciated on a reducing-balance basis over the following periods: 12 years for conventional and ro-ro ferries, 20 years for the *Napoléon Bonaparte* and 10 years for high-speed vessels.

HAS ADOPTED THIS DECISION:

Article 1

The aid paid by France to the Société nationale maritime Corse-Méditerranée under the five-year agreements concluded with the Office des transports de la Corse in 1991 and 1996 as compensation for public service obligations is compatible with the common market.

Article 2

The covering of Corsica Marittima's losses by SNCM and the conditions for leasing the vessels of the latter to its subsidiary did not contain elements of State aid within the meaning of Article 87(1) of the Treaty.

Article 3

Before the date of entry into force of the new contract awarding the public service for connections with Corsica, France is to inform the Commission of the measures that will be taken to structurally adapt SNCM to the new market conditions resulting from the application of Article 4 of Regulation (EEC) No 3577/92.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 30 October 2001.

For the Commission

Loyola DE PALACIO

Vice-President

COMMISSION DECISION

of 15 February 2002

authorising the placing on the market of coagulated potato proteins and hydrolysates thereof as novel food ingredients under Regulation (EC) No 258/97 of the European Parliament and of the Council

(notified under document number C(2002) 506)

(Only the Dutch text is authentic)

(2002/150/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients [1], and in particular Article 7 thereof,

Having regard to the request by AVEBE ba to the competent authorities of the Netherlands of 25 May 2000 for placing coagulated potato protein and hydrolysates thereof on the market as a novel food ingredient,

Having regard to the initial assessment report drawn up by the competent authorities of the Netherlands,

Whereas:

(1) Whilst protein has been extracted from a number of plants to be used in foods, potato protein had not been on the market in the Community before Regulation (EC) No 258/97 entered into force. Therefore, potato protein requires authorisation according to Article 1(2)(e) of the Regulation.

(2) In their initial assessment report the Netherlands' competent food assessment body came to the conclusion that coagulated potato proteins and hydrolysates thereof are safe for human consumption.

(3) The Commission forwarded the initial assessment report to all Member States on 19 February 2001.

(4) Within the 60-days period laid down in Article 6(4) of the Regulation, reasoned objections to the marketing of the product were raised in accordance with that provision concerning, in particular, the use of sulphite as an additive and the specification requirements for certain alkaloids.

(5) AVEBE provided additional information in response to the comments and objections raised by Member States, which was discussed with Member States' experts on 17 July 2001.

(6) On the basis of this additional information and the initial assessment report, it is established that coagulated potato protein and hydrolysates thereof comply with the criteria laid down in Article 3(1) of the Regulation.

(7) The use and the labelling of sulphite is governed by Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption [2] and Directive 95/2/EC of 20 February 1995 of the European Parliament and of the Council on food additives other than colours and sweeteners [3].

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee for Foodstuffs,

HAS ADOPTED THIS DECISION:

Article 1

Coagulated potato protein and hydrolysates thereof as specified in the Annex, may be placed on the market in the Community as novel food ingredients.

Article 2

The designation 'potato protein' shall be displayed on the labelling of the product as such or in the list of ingredients of foodstuffs containing it.

Article 3

This Decision is addressed to AVEBE ba, Prins Hendrikplein 20, 9641 GK Veendam, The Netherlands.

Done at Brussels, 15 February 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 43, 14.2.1997, p. 1.

[2] OJ L 40, 11.2.1989, p. 27.

[3] OJ L 61, 18.3.1995, p. 1.

ANNEX

Specifications of coagulated potato proteins and hydrolysates thereof

Dry substance: not less than 800 mg/g
Protein (N*6,25): not less than 600 mg/g (dry substance)
Ash: not more than 400 mg/g (dry substance)
Glycoalkaloid (total): not more than 150 mg/kg
Lysinoalanine (total): not more than 500 mg/kg
Lysinoalanine (free): not more than 10 mg/kg

COMMISSION DECISION

of 19 February 2002

on minimum requirements for the certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles

(notified under document number C(2002) 518)

(Text with EEA relevance)

(2002/151/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles [1], and in particular Articles 5(5) and 11(4) thereof,

Whereas:

(1) Directive 2000/53/EC establishes that deregistration of vehicles will only be possible upon the presentation of a certificate of destruction.

(2) With a view to enabling competent authorities to mutually recognise and accept the certificates of destruction issued in other Member States, Directive 2000/53/EC requires the Commission to establish minimum requirements for the certificate of destruction.

(3) The minimum requirements aim at providing certainty about the identity and details of the treatment facility, competent authority and vehicle holder, as well as a number of items of information relating to the vehicle.

(4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18 of Council Directive 75/442/EEC [2],

HAS ADOPTED THIS DECISION:

Article 1

The certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC shall contain at least the information listed in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 19 February 2002.

For the Commission

Margot WALLSTRÖM

Member of the Commission

[1] OJ L 269, 21.10.2000, p. 34.

[2] OJ L 78, 18.3.1991, p. 32.

ANNEX

Minimum requirements for the certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC

1. Name, address, signature and registration or identification number ([1]) of the establishment or undertaking issuing the certificate.
2. Name and address of competent authority responsible for the permit (in accordance with Article 6(2) of Directive 2000/53/EC) for the establishment or undertaking issuing the certificate of destruction.
3. Where the certificate is issued by a producer, dealer or collector on behalf of an authorised treatment facility, the name and address and registration or identification number ([1]) of the establishment or undertaking issuing the certificate.
4. Date of issue of the certificate of destruction.
5. Vehicle nationality mark and registration number (attach the registration document or a statement by the establishment or undertaking issuing the certificate that the registration document has been destroyed ([2])).
6. Class of vehicle, brand and model.
7. Vehicle identification number (chassis).
8. Name, address, nationality and signature of the holder or owner of the vehicle delivered.

([1]) This requirement may be waived in the case where the national registration or identification system does not provide for such number.

([2]) In the case where no registration document exists on paper due to the use of an electronic registration system, this requirement may be waived.

COMMISSION DECISION

of 19 February 2002

prolonging for the ninth time the validity of Decision 1999/815/EC concerning measures prohibiting the placing on the market of toys and childcare articles intended to be placed in the mouth by children under three years of age made of soft PVC containing certain phthalates

(notified under document number C(2002) 541)

(Text with EEA relevance)

(2002/152/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/59/EEC of 29 June 1992 on general product safety [1], and in particular Article 9 thereof,

Whereas:

(1) The Commission adopted, on 7 December 1999, Decision 1999/815/EC [2] based on Article 9 of Directive 92/59/EEC requiring the Member States to prohibit the placing on the market of toys and childcare articles intended to be placed in the mouth by children under three years of age, made of soft PVC containing one or more of the substances di-iso-nonyl phthalate (DINP), di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), di-iso-decyl phthalate (DIDP), di-n-octyl phthalate (DNOP), and butylbenzyl phthalate (BBP).

(2) The validity of Decision 1999/815/EC was limited to three months, in accordance with the provision of Article 11(2) of Directive 92/59/EEC; therefore, the validity of the Decision was to expire on 8 March 2000.

(3) Article 11(2) of Directive 92/59/EEC states that the validity of the measures adopted on the basis of Article 9 of the said Directive is limited to three months, but may be prolonged under the same procedure foreseen for the adoption of these measures.

(4) When adopting Decision 1999/815/EC it was foreseen to prolong its validity if necessary. The validity of the measures adopted under Decision 1999/815/EC on the basis of Article 9 of Directive 92/59/EEC was prolonged under Commission Decisions 2000/217/EC [3], 2000/381/EC [4], 2000/535/EC [5], 2000/769/EC [6], 2001/195/EC [7], 2001/467/EC [8], 2001/665/EC [9] and 2001/804/EC [10], for an additional period of three months each time, in accordance with the provision of Article 11(2) of the said Directive; therefore the validity of the Decision is to expire on 20 February 2002.

(5) Some relevant developments have taken place recently concerning the validation of phthalates migration test methods and the comprehensive risk assessment of these phthalates under the existing substances Regulation (Council Regulation (EEC) No 793/93 [11]). However, further work in this area is still necessary to try to solve some crucial outstanding difficulties.

(6) Pending resolution of the outstanding issues, and in order to guarantee the objectives of Decision 1999/815/EC and its prolongation under Decisions 2000/217/EC, 2000/381/EC, 2000/535/EC, 2000/769/EC, 2001/195/EC, 2001/467/EC, 2001/665/EC and 2001/804/EC, it is necessary to maintain the prohibition of the placing on the market of the products considered.

(7) Certain Member States have implemented Decision 1999/815/EC as modified by Decisions 2000/217/EC, 2000/381/EC, 2000/535/EC, 2000/769/EC, 2001/195/EC, 2001/467/EC, 2001/665/EC, and 2001/804/EC by measures applicable until 20 February 2002. Therefore, it is necessary to ensure that the validity of these measures is prolonged.

(8) It is therefore necessary to prolong the validity of Decision 1999/815/EC for a ninth time in order to ensure that all the Member States maintain the prohibition provided for by that Decision; according to Article 11(2) of Directive 92/59/EEC the validity may be prolonged for a period of three months.

(9) The measures provided for in this Decision are in accordance with the opinion of the Emergencies Committee,

[1] OJ L 228, 11.8.1992, p. 24.
[2] OJ L 315, 9.12.1999, p. 46.
[3] OJ L 68, 16.3.2000, p. 62.
[4] OJ L 163, 10.6.2000, p. 40.
[5] OJ L 226, 6.9.2000, p. 27.
[6] OJ L 306, 7.12.2000, p. 37.
[7] OJ L 69, 10.3.2001, p. 37.
[8] OJ L 163, 20.6.2001, p. 30.
[9] OJ L 233, 31.8.2001, p. 51.
[10] OJ L 304, 21.11.2001, p. 26.
[11] OJ L 84, 5.4.1993, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

In Article 5 of Decision 1999/815/EC the words '20 February 2002' are replaced by the words '20 May 2002'.

Article 2

Member States shall take the measures necessary to comply with this Decision within less than 10 days of its notification. They shall forthwith inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 19 February 2002.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION

of 20 February 2002

concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom, repealing Decision 2001/740/EC and amending for the eighth time Decision 2001/327/EC

(notified under document number C(2002) 557)

(Text with EEA relevance)

(2002/153/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

(1) Commission Decision 2001/740/EC [4], as last amended by Decision 2002/48/EC [5], concerns certain protection measures with regard to foot-and-mouth disease in the United Kingdom.

(2) Commission Decision 2001/304/EC [6], as last amended by Decision 2002/49/EC [7], on marking and use of certain animal products in relation to Commission Decision 2001/172/EC [8] concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom.

(3) Commission Decision 2001/327/EC [9], as last amended by Decision 2001/904/EC [10], concerns restrictions to the movement of animals of susceptible species with regard to foot-and-mouth disease.

(4) Council Directive 64/433/EEC [11], as last amended by Directive 95/23/EC [12], concerns health conditions for the production and marketing of fresh meat.

(5) Council Directive 94/65/EC [13] lays down the requirements for the production and placing on the market of minced meat and meat preparations.

(6) Council Directive 91/495/EEC [14], as last amended by Directive 94/65/EC, concerns public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat.

(7) Council Directive 80/215/EEC [15], as last amended by the Act of Accession of Austria, Finland and Sweden, concerns animal health problems affecting intra-Community trade in meat products.

(8) Council Directive 77/99/EEC [16], as last amended by Council Directive 97/76/EC [17], concerns health problems affecting the production and marketing of meat products and certain other products of animal origin.

(9) The Foot-and-Mouth Disease and Other Epizootics Commission of the Office International des Epizooties (OIE) evaluated documentation concerning the eradication of foot-and-mouth disease, submitted by the Delegate of the United Kingdom, and, in accordance with Resolution No XVII (Restoration of recognition of the foot and mouth disease status of Member Countries) adopted by the OIE International Committee during its 65th General Session (May 1997), recognised on 21 January 2002 that this country has regained its previously recognised FMD-free status without vaccination.

(10) It is therefore necessary to repeal Commission Decision 2001/740/EC concerning certain protective measures with regard to foot-and-mouth disease in the United Kingdom.

[1] OJ L 224, 18.8.1990, p. 29.
[2] OJ L 62, 15.3.1993, p. 49.
[3] OJ L 395, 30.12.1989, p. 13.
[4] OJ L 277, 20.10.2001, p. 30.
[5] OJ L 21, 24.1.2002, p. 28.
[6] OJ L 104, 13.4.2001, p. 6.
[7] OJ L 21, 24.1.2002, p. 30.
[8] OJ L 62, 2.3.2001, p. 22.
[9] OJ L 115, 25.4.2001, p. 12.
[10] OJ L 335, 19.12.2001, p. 21.
[11] OJ 121, 29.7.1964, p. 2012/64
[12] OJ L 243, 11.10.1995, p. 7.
[13] OJ L 368, 31.12.1994, p. 10.
[14] OJ L 268, 24.9.1991, p. 41.
[15] OJ L 47, 21.2.1980, p. 4.
[16] OJ L 26, 31.1.1977, p. 85.
[17] OJ L 10, 16.1.1998, p. 25.

(11) However, provisions are necessary to ensure that certain meats and meat products in stock which have been produced during the epidemic and do not meet the animal health criteria for intra-Community trade are marketed only on the territory of Great Britain.

(12) In order to ensure that the provisions of Decision 2001/327/EC are applied also to trade in sheep and goats originating in or coming from Great Britain after the date Decision 2001/740/EC would be repealed, it is necessary to amend Decision 2001/327/EC accordingly.

(13) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. The United Kingdom shall ensure that meat as defined in paragraph 2 of the bovine, ovine, caprine and porcine species and other biungulates which meets at least one of the conditions specified in paragraph 3 is not dispatched to other Member States.

2. Meats referred to in paragraph 1 includes 'fresh meat' as defined in Directives 64/433/EEC and 91/495/EEC, and 'minced meat and meat preparations' as defined in Council Directive 94/65/EC.

3. Conditions for meats not eligible for intra-Community trade:

(a) meat not eligible for intra-Community trade in accordance with Community protective measures with regard to foot-and-mouth disease in the United Kingdom which have been in force between the date of 21 February 2001 until coming into force of this Decision,

(b) meat bearing the health mark established by Commission Decision 2001/304/EC.

Article 2

1. The United Kingdom shall ensure that meat products of animals of the bovine, ovine, caprine and porcine species and of other biungulates which meet at least one of the conditions specified in paragraph 2 are not dispatched to other Member States.

2. Conditions for meat products not eligible for intra-Community trade:

(a) meat products produced from meat meeting at least one of the conditions set up in Article 1(3),

(b) meat products not eligible for intra-Community trade in accordance with Community protective measures with regard to foot-and-mouth disease in the United Kingdom which have been in force between the date of 21 February 2001 until coming into force of this Decision,

(c) meat products bearing the health mark established by Commission Decision 2001/304/EC.

3. The prohibition provided for in paragraph 1 shall not apply to meat products meeting the public health requirements of Directive 77/99/EEC and which have undergone one of the treatments laid down in Article 4(1) of Council Directive 80/215/EEC, or have been subjected during preparation uniformly throughout the substance to a pH value of less than 6.

Article 3

Commission Decision 2001/740/EC is hereby repealed.

Article 4

The words 'and Commission Decision 2001/740/EC' are deleted in the introductory sentence of Article 2(1) of Commission Decision 2001/327/EC.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 20 February 2002.

For the Commission

David BYRNE

Member of the Commission