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## Legislation

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EN

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<sup>(1)</sup> Text with EEA relevance

## I

*(Acts whose publication is obligatory)*

**COMMISSION REGULATION (EC) No 122/2000  
of 20 January 2000  
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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1498/98 <sup>(2)</sup>, 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 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 198, 15.7.1998, p. 4.

## ANNEX

**to the Commission Regulation of 20 January 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

| CN code                                           | Third country code <sup>(1)</sup> | Standard import value |
|---------------------------------------------------|-----------------------------------|-----------------------|
| 0702 00 00                                        | 052                               | 93,3                  |
|                                                   | 204                               | 56,8                  |
|                                                   | 624                               | 156,8                 |
|                                                   | 999                               | 102,3                 |
| 0707 00 05                                        | 052                               | 97,2                  |
|                                                   | 628                               | 152,7                 |
|                                                   | 999                               | 124,9                 |
| 0709 10 00                                        | 220                               | 165,5                 |
|                                                   | 999                               | 165,5                 |
| 0709 90 70                                        | 052                               | 123,6                 |
|                                                   | 204                               | 116,9                 |
|                                                   | 999                               | 120,3                 |
| 0805 10 10, 0805 10 30, 0805 10 50                | 052                               | 60,4                  |
|                                                   | 204                               | 40,9                  |
|                                                   | 212                               | 41,5                  |
|                                                   | 624                               | 60,6                  |
|                                                   | 999                               | 50,9                  |
| 0805 20 10                                        | 204                               | 60,4                  |
|                                                   | 999                               | 60,4                  |
| 0805 20 30, 0805 20 50,<br>0805 20 70, 0805 20 90 | 052                               | 62,7                  |
|                                                   | 204                               | 77,4                  |
|                                                   | 624                               | 82,5                  |
|                                                   | 999                               | 74,2                  |
| 0805 30 10                                        | 052                               | 44,9                  |
|                                                   | 600                               | 59,4                  |
|                                                   | 999                               | 52,1                  |
| 0808 10 20, 0808 10 50, 0808 10 90                | 400                               | 91,1                  |
|                                                   | 404                               | 82,7                  |
|                                                   | 524                               | 108,5                 |
|                                                   | 720                               | 101,1                 |
|                                                   | 728                               | 60,0                  |
|                                                   | 999                               | 88,7                  |
| 0808 20 50                                        | 064                               | 65,7                  |
|                                                   | 400                               | 96,3                  |
|                                                   | 720                               | 105,5                 |
|                                                   | 999                               | 89,2                  |

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 2645/98 (OJ L 335, 10.12.1998, p. 22). Code '999' stands for 'of other origin'.

## COMMISSION REGULATION (EC) No 123/2000

of 20 January 2000

**imposing a provisional countervailing duty on imports of polyester staple fibres (PSF) originating in Australia and Taiwan and terminating the anti-subsidy proceeding concerning imports of PSF originating in the Republic of Korea and Thailand**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(1)</sup>, and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

## A. PROCEDURE

- (1) In April 1999 the Commission announced by a notice (hereinafter referred to as a 'notice of initiation') published in the *Official Journal of the Communities* <sup>(2)</sup>, the initiation of an anti-subsidy proceeding with regard to imports in to the Community of polyester staple fibres (hereinafter referred to as 'PSF') originating in Australia, Indonesia, the Republic of Korea (hereinafter referred to as 'Korea'), Taiwan and Thailand and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged by the International Rayon and Synthetic Fibres Committee on behalf of Community producers representing a major proportion of Community production of PSF. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified to the Governments of Australia, Indonesia, Korea, Taiwan and Thailand that it had received a properly documented complaint alleging that subsidised imports of PSF originating in Australia, Indonesia, Korea, Taiwan and Thailand are causing material injury to the Community industry. These Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The Governments of Australia, Indonesia, Korea, Taiwan and Thailand accepted the offers of consultation which were held with the Commission on 7 April, 29 March, 7 April, 25 March and 9 April 1999, respectively. Due note was

taken of the comments made in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

- (4) The Commission officially advised the Community producers, exporting producers, importers and users known to be concerned, the representatives of the exporting country and the complainant of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing.

The Governments of Australia, Indonesia, Korea, Taiwan and Thailand, a number of exporting producers as well as complainant Community producers, Community users and importers made their views known in writing. All parties so requested within the time limits set in the notice of initiation were granted a hearing.

- (5) The Commission sent questionnaires to all parties known to be concerned and received replies from the Governments of Australia, Indonesia, Korea, Taiwan and Thailand from seven complaining Community producers, three users in the Community and exporting producers in all countries concerned.

- (6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of subsidisation and injury, and carried out, as appropriate, investigations at the premises of the following companies:

## (a) Community producers

- Dupont De Nemours GmbH, Frankfurt, Germany
- Trevira GmbH & Co KG, Frankfurt, Germany
- Wellman International Ltd, Mullagh, Kells, Co. Meath, Ireland
- Catalana de Polimers, Barcelona, Spain
- Montefibre SpA, Milano, Italy

## (b) Government of Australia

- Department for Foreign Affairs and Trade
- Australian Taxation Office
- Department of Industry, Science and Resources
- Australian Trade Commission
- Department of State Development (State Government of Victoria)

## (c) Exporting producer in Australia

- Leading Synthetics Pty Ltd, Melbourne, Victoria

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(2)</sup> OJ C 111, 22.4.1999, p. 3.

(d) *Government of Indonesia*

- Ministry of Industry and Trade
- Ministry of Finance
- Anti-Dumping Committee of Indonesia (KADI)
- Office of Coordinating Minister for Economy, Finance, and Industry
- Investment Coordinating Board (BKPM)
- Agency for Export Facility Services (BAPEKSTA)
- Sucofindo Masterlist Verification Division
- Bank Indonesia

(e) *Producers/exporters in Indonesia*

- PT. Indorama Synthetics Tbk, Jakarta
- PT. Panasia Indosyntec Tbk, Bandung
- PT. Susila Indah Synthetic Fiber Industries, Jakarta

(f) *Government of Korea*

- Ministry of Commerce, Industry and Energy
- Ministry of Finance and Economy
- Supply Administration of the Republic of Korea
- Korea Federation of Textile Industries
- The Korea Development Bank
- The Industrial Bank of Korea
- The Bank of Korea

(g) *Exporting producers in Korea*

- Daehan Synthetic Fiber Co. Ltd, Seoul
- Dobest Co. Ltd, Seoul
- Ein Textile Co. Ltd, Seoul
- Sung Lim Co. Ltd, Seoul
- Samyang Corporation, Seoul
- SK Chemicals Co. Ltd, Seoul
- SK Global Co. Ltd, Seoul
- Saehan Industries Inc, Seoul
- Estal Ind. Co, Yangsan City

(h) *Government of Taiwan*

- Ministry of Economic Affairs
- Ministry of Finance
- Development Fund of the Executive Yuan
- Chiao Tung Bank
- Business Bank of Taiwan

(i) *Exporting producers in Taiwan*

- Shinkong Synthetic Fibers Corporation, Taipei
- Tuntex Distinct Corp, Hsichih, Taipei County
- Far Eastern Textile Ltd, Taipei
- Nan Ya Plastics Corporation, Taipei

(j) *Government of Thailand*

- Department of Foreign Trade
- Board of Investment

— Customs Department

— Revenue Department

(k) *Exporting producers in Thailand*

- Indo-Poly (Thailand) Ltd, Nakornpathom
- Teijin Polyester (Thailand) Ltd, Bangkok
- Tuntex (Thailand) Public Company Ltd, Bangkok

(7) The investigation of subsidisation covered the period from 1 April 1998 to 31 March 1999 (hereinafter referred to as the investigation period' or 'IP'). The examination of injury covered the period from 1 January 1996 to 31 March 1999 (hereinafter referred to as 'the period considered').

(8) For the purposes of this investigation, and in accordance with established policy and practice in this area, in case a company received a benefit under a given scheme below 0,01 %, it is considered that such company did not benefit from such scheme. Furthermore, the benefit received by the exporting companies is expressed as a percentage of the denominator applicable to the subsidy scheme in question, in accordance with Article 7 of the basic Regulation.

(9) In April 1999 the Commission initiated an anti-dumping investigation concerning imports of the same product originating in Australia, Indonesia and Thailand <sup>(1)</sup>. With regard to imports of PSF originating in Korea, an anti-dumping proceeding was initiated in October 1999 <sup>(2)</sup>. Definitive anti-dumping measures are currently in force concerning imports of PSF originating in Taiwan by means of Council Regulation (EC) No 1728/1999 <sup>(3)</sup>.

## B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

### 1. Product under consideration

(10) The product under consideration is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00.

(11) This product is a basic material used at various stages of the manufacturing process of textile products, depending on the nature of textiles concerned. Around 60 % of the Community consumption of PSF is used for spinning, that is to say manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool. Approximately 25 % is used for filling, that is to say the stuffing or padding of certain textile goods (for example cushions, car seats, jackets) while the remaining 15 % is used for other non-woven applications, in particular the production of carpets. The product in question is sold with different specifications (e.g. Denier or decitex, lustre, silicon treatment). It is also sold as either first quality or as substandard qualities. Although the potential specific uses and the quality of the various types of PSF sold may differ, this does not entail any significant differences in the basic physical characteristics of the different types. They are therefore considered as one product for the purpose of this Regulation.

<sup>(1)</sup> OJ C 111, 22.4.1999, p. 7.

<sup>(2)</sup> OJ C 285, 7.10.1999, p. 3.

<sup>(3)</sup> OJ L 204, 4.8.1999, p. 3.

## 2. Like product

- (12) The Commission services found that there were no differences in the basic characteristics and uses of the PSF, originating in Australia, Indonesia, Korea, Thailand and Taiwan, imported into the Community and the PSF produced by the Community industry and sold on the Community market. It was also found that there was no difference between the PSF produced in Australia, Indonesia, Korea, Thailand and Taiwan and exported to the European Community and that sold on the domestic markets of those countries. It was therefore concluded that both the PSF produced and sold by the Community industry on the Community market and the PSF produced and sold on the domestic markets of Australia, Indonesia, Korea, Thailand and Taiwan were, within the meaning of Article 1(5) of the basic Regulation, alike to the PSF imported into the Community from the five countries subject to investigation.

## C. SUBSIDIES

### I. AUSTRALIA

#### 1. Introduction

- (13) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following four schemes, which allegedly involved the granting of subsidies:
- Export Market Development Grant Scheme
  - Textiles, Clothing and Footwear Plan
    - Incentives for International Competitiveness Programme
    - Infrastructure Support Programme
    - National Industry Extension Programme
    - Capitalisation Grants Programme
    - Labour Adjustment Programme
    - Import Credit Scheme
    - Overseas Assembly Programme
    - Quick Response Programme
  - Regional Scheme (Government of Victoria): Investment Attraction Programme (IAP)
  - Regional Scheme (Government of Victoria): Industry, Regional and Trade Support Programme (IRTSP).

## 2. Export Market Development Grant Scheme (EMDGS)

- (14) The legal basis of this scheme as it was in operation during the period of investigation, is the Export Market Development Grants Act 1997 (hereinafter referred to as EMDG Act 1997).
- (a) *Eligibility*
- (15) According to Parts 3 and 4 of the EMDG Act 1997, a company is entitled to a grant in respect of a grant year if:
- it is conducting a business in Australia with an income not exceeding AUD 50 million and export earnings not exceeding AUD 25 million and
  - has incurred certain eligible expenses related to marketing and promotional activities such as the cost of maintaining an overseas representation, market research, free samples and marketing visits.
  - in relation to eligible products, i.e. certain services, intellectual property rights, know-how and goods which are substantially of Australian origin (at least 50 % Australian content for goods made in Australia) or for which the Australian Trade Commission (Austrade) is satisfied that Australia will derive a significant net benefit from their export.
- (16) A company is eligible for eight grants only.
- (b) *Practical implementation*
- (17) In order to avail itself of the scheme, a company applies to Austrade which assesses the application. In this assessment a so-called 'grants entry test' is applied. According to Austrade's Determination 1/1997, this test requires, *inter alia*, that a first-time applicant must have planned export earnings which are not on their face unachievable. According to Section 65 of the EMDG Act 1997, if grants have already been given during a period of three grant years, the amount of the grant is calculated taking into account the actual export earnings for the subsequent grant years.
- (c) *Conclusion on countervailability*
- (18) This scheme involves a financial contribution by the Government of Australia (hereinafter referred to as 'GOA') in the form of a grant which confers a benefit on the recipient. This subsidy is an export subsidy in the meaning of Article 3(4)(a) of the basic Regulation since the subsidy is in fact tied to anticipated export earnings because the grant is not given unless the company has planned export earnings. Additionally, for grants given during the fourth grant year, the subsidy is in law contingent upon export performance since the grant amount is calculated on the basis of actual export earnings. Finally, the subsidy is contingent upon the use of

domestic over imported goods within the meaning of Article 3(4)(b) of the Basic Regulation, since it can only be obtained for goods which are substantially of Australian origin unless it is determined that Australia will derive a significant net benefit from their export (which would make the subsidy specific since in fact tied to anticipated export earnings according to Article 3(4)(a) of the basic Regulation).

(d) *Calculation of the subsidy amount*

- (19) The amount of subsidy should be the equivalent of the amount of the grant paid during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the recipient of not having to borrow this amount on the open market, the face value of the amount of the subsidy has to be transformed into the value prevailing during the investigation period through the application of the commercial interest rate on comparable loans obtained by the company during the investigation period.
- (20) The total amount of subsidy so attributed to the investigation period should be allocated over export sales since this subsidy benefits only export sales. The exporting producer availed itself of this scheme and obtained a benefit of 0,03 %.

### 3. Textiles, Clothing and Footwear Plan (TCFP)

- (21) The TCFP is a policy statement made by the GOA which constitutes the basis for a series of programmes providing assistance to the textile, clothing and footwear (TCF) industry. These programmes are either based on legislative acts, administrative arrangements or are made on an ad hoc basis.
- (22) The TCF Development Authority (hereinafter 'TCFDA') was created by the TCFDA Act of 1988 which is a key element of the TCFP. Its purpose was, *inter alia*, to implement the TCFP. The TCFDA was abolished in February 1996 and all remaining activities were transferred to the Department of Industry, Science and Resources.
- (23) The following two individual schemes, which are based on the TCFP, were used by the exporting producer and found to be countervailable.

#### 3.1. *Incentives for International Competitiveness Programme (IICP)*

- (24) The scheme is based on Section 7(d)(i) and Sections 36 through 40 of the TCFDA Act.

(a) *Eligibility*

- (25) The eligibility criteria were, *inter alia*:
- the project must involve investment or development costs,
  - the project must involve a specific financial commitment by the company (normally at least 70 % of total project costs),
  - the project must result in improvements to the firm's international competitiveness.
- (26) According to the guidelines issued by the TCFDA, the last criterion means that companies will be asked to demonstrate how the project will lead to improved international competitiveness through export growth, import replacement, quality improvement, cost reduction or similar measures. Additionally, the TCFDA places high priority on export development projects, raw materials processing projects, greenfield development projects and investment projects. Only producers of TCF products were eligible. The Government had discretion in selecting beneficiaries under the scheme.

(b) *Practical implementation*

- (27) The company must apply to the TCFDA with a standard application form. This form requests, *inter alia*, information on targets on export growth and import replacement.

(c) *Conclusion on countervailability*

- (28) The grant constitutes a subsidy since it involves a financial contribution by the government which confers a benefit on the recipient. The GOA stated during the verification visit that the subsidy was specific to the textiles, clothing and footwear industry but not contingent upon export performance. However, the GOA refused to provide access to the contract between the Government and the company which is the basis for the grant, citing 'business in confidence' requirements. The company was denied approval to release the contract to the Commission services for verification. Hence, a determination on the issue whether this subsidy is contingent upon export performance had to be made on the basis of the facts available in accordance with Article 28 of the basic Regulation. It was verified that the company had to provide information on target figures for export growth. Additionally, it was established that the granting authority gives priority to export development programmes.

- (29) In the absence of verified information on conditions for the actual grant given to the exporting producer, it is therefore considered that at least one of the criteria for paying out the grant was the achievement of targets on export earnings which makes the grant contingent upon export performance. In this respect, Article 3(4)(a) basic Regulation states that the existence of one of several factors for eligibility can constitute contingency upon export performance. Therefore, the subsidy is a specific export subsidy and countervailable in accordance with Article 3(4)(a) of the basic Regulation and a countervailable subsidy specific to certain enterprises, i.e. the textiles, clothing and footwear sector, in accordance with Article 3(2)(a) of the basic Regulation.

*(d) Calculation of the subsidy amount*

- (30) The subsidy at issue is a non-recurring subsidy, which can be linked to the acquisition of fixed assets. Therefore the amount of subsidy from a grant has to be allocated over the normal period used in the industry involved for the depreciation of assets in accordance with Article 7(3) of the basic Regulation. Since the exporting producer is the sole producer of the product concerned in Australia, the depreciation period used in that company was considered to be the appropriate allocation period.
- (31) In order to reflect the full benefit to the recipient of having a lump sum of money at its disposal from the beginning of the allocation period, the amount of subsidy should be increased by the average amount of interest which the recipient would expect to pay on the non-depreciated amount of the total grant over the whole period of allocation if he had to borrow the money on the open market.
- (32) The total amount of subsidy so attributed to the investigation period should be allocated over export sales since this subsidy benefits only export sales. The exporting producer availed itself of this scheme in the form of a grant and obtained a benefit of 1,92 %.

### **3.2. Import Credit Scheme (ICS)**

- (33) The scheme commenced on 1 July 1991. Its legal basis is an administrative arrangement.

*(a) Eligibility*

- (34) Companies exporting certain eligible products can obtain an import credit for certain other eligible products. PSF is not one of the eligible products for export but polyester textured yarn, which is also produced by the exporting producer.

*(b) Practical implementation*

- (35) The Australian Customs Service (ACS) administers this scheme. After conducting the export of an eligible product and payment is made, a company applies for a credit note to ACS. This credit note contains a code and the import credit amount which is calculated on the basis of a fixed percentage of fob value of the exported product. This information is normally transferred to the company's customs broker. Upon import of an eligible product, the customs broker uses the code to pay import duty with the credit amount. Alternatively, the company can advise the customs broker to transfer the import credit to another company in exchange for a cash payment.

*(c) Conclusion on countervailability*

- (36) This scheme is a subsidy since it involves a financial contribution in the form of import duty foregone which confers a benefit on the recipient. This scheme is a specific export subsidy in the meaning of Article 3(4)(a) of the basic Regulation since it is calculated on the basis of export sales and therefore contingent in law upon export performance. The GOA and the exporting producer argued that the subsidy did not benefit the product concerned since PSF was not an eligible product under the scheme. It was established, however, that the company did not use the credits to offset import duties for imports of inputs of its own products but sold the credits on the open market. In effect, the subsidy benefited all exports of the company since the benefits were finally received in cash, the use of which is not linked to a particular product. Hence, it is considered, that since the company obtained benefits under the scheme which have also benefited exports of the products concerned, the benefits should be countervailed.

*(d) Calculation of the subsidy amount*

- (37) The amount of subsidies, which have to be allocated over export sales, should be calculated on the basis of the grants obtained during the investigation period. In order to encompass the full benefit to the company, the annual commercial interest rate was added to the face amount of the grants. In this case, since the company

obtained subsidies equivalent to a series of grants during the investigation period, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months. The company obtained a benefit of 3,48 %.

#### **4. Regional Scheme (Government of Victoria): Investment Attraction Programme (IAP)**

- (38) The scheme is based on Section 13(3) of the Victorian Economic Development Act 1981. It commenced in 1981 and ceased in 1994 through the repeal of the Act. Guidelines were issued by the Government of Victoria.

##### *(a) Eligibility*

- (39) Assistance under this programme is determined on a case-by-case basis. Primarily, the programme provides facilitation services for key investment programmes and regional headquarters, and seeks to attract additional investment for Victoria. Investment facilitation and assistance includes sight identification, selection, industrial relations and employment advice and information on cost in different locations. Where financial assistance is provided, companies must demonstrate a certain level of capital expenditure.
- (40) The Government of Victoria argued that the programme is not contingent upon export performance or the use of domestic over imported goods. It was explained that there were no express eligibility criteria set down but that the Government of Victoria had discretion in granting financial support. In exercising this discretion, certain factors were considered such as the balanced economic development of the state and capital investment, creation of employment and development of the export capacity throughout Victoria. It was not possible to verify the actual conditions for this scheme since the Government of Victoria denied access to the grant contract which sets forth the conditions of the grant, the application material submitted and the letter of offer sent by the Government of Victoria citing 'commercial in confidence' requirements.

##### *(b) Practical implementation*

- (41) The Victorian Department of Business and Employment (as of March 1996, the Victorian Department of State Development) was in charge of administering this scheme. Companies intending to obtain assistance provided information to the case officers in the Depart-

ment who recommend to the Cabinet Committee an assistance package. Upon approval by this Committee, a letter of offer is sent to the company which in case of an agreement by the company, will form the basis for the contract between the Government of Victoria and the company. This contract sets out the conditions for obtaining the incentive.

##### *(c) Conclusion on countervailability*

- (42) The grant is a subsidy since it involves a financial contribution by the Government which confers a benefit on the recipient. Since it was not possible to verify the actual conditions of the grant, the facts available had to be used in order to determine its countervailability in accordance with Article 28 of the basic Regulation. The Economic Development Act 1981 establishes as one of the objectives of the programme 'the development of the export capacity'. It is considered, therefore, that the grant was either made contingent upon export performance or in fact tied to anticipated exportation or export earnings the meaning of Article 3(4)(a) of the basic Regulation as alleged by the complainant. In this respect, the complainant cites the Report of the Victorian Auditor's Offices concerning the IAP which contains a reference to expected export growth of the company under investigation.
- (43) In any event, the programme is considered to be specific in accordance with Article 3(2)(a) of the basic Regulation since it does not establish objective criteria for eligibility under the IAP but allows the government of Victoria to exercise full discretion in providing financial assistance. Even though requested by Commission services, no information was provided by the Government on how this discretion was exercised, i.e. which sectors benefited from the programme.

##### *(d) Calculation of the subsidy amount*

- (44) The company received a grant to assist in the construction of new plant and equipment. The amount of the subsidy was calculated as explained above for the IICP Scheme. The company obtained a benefit of 0,64 %.

#### **5. Subsidy programmes not used by the exporting producer**

- (45) It was found that the exporting producer did not obtain any countervailable benefits under the following programmes:

- Infrastructure Support Programme
- National Industry Extension Programme
- Quick Response Programme
- Capitalisation Grants Programme
- Labour Adjustment Programme
- Overseas Assembly Programme
- Regional Scheme (Government of Victoria): Industry, Regional and Trade Support Programme.

#### 6. Amount of countervailable subsidies

- (46) The amount of countervailable export subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer, who is the sole exporting producer in Australia, is as follows.

(%)

|                            | EMDGS | IICP | ICS  | IAP  | Total |
|----------------------------|-------|------|------|------|-------|
| Leading Synthetics Pty Ltd | 0,03  | 1,92 | 3,48 | 0,64 | 6,07  |

#### II. TAIWAN

##### (a) Eligibility

#### 1. Introduction

- (47) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the Commission services investigated the following schemes, which allegedly involve the granting of subsidies:
- Tax credits and tax exemptions
  - Loans at preferential interest rates
  - Accelerated depreciation
  - Import duty exemption
  - Matching funds and/or assistance funds
  - Fund for the Development and Management of Industrial Zones

Further details of these schemes are set out below.

- (48) All schemes are based on the Statute for Upgrading Industries (hereinafter referred to as 'SUI') which entered into force on 1 January 1991 and was last amended on 27 January 1995. These programmes are designed to promote a general upgrading of the industry by creating an advantageous tax environment backed by appropriate financial measures. The implementation of these programmes is regulated by the Enforcement Rules of the Statute for Upgrading Industries as last amended on 15 November 1995.

#### 2. Tax credits for automation equipment and pollution control equipment

- (49) These tax credits are covered by Article 6(1) of the SUI and supplemented by Articles 13(1) and 14(1) of the Enforcement Rules of the SUI.

- (50) Tax exemptions are granted to companies only for a limited number of investments:

- investment in equipment for automation of production,
- investment in equipment for pollution control,
- investment in technology for automation of production or for pollution control.

- (51) The SUI states that the investment should exceed TWD 600 000 (new Taiwan dollars) in the same tax year. The tax credits for the different types of investment can be cumulated.

##### (b) Practical implementation

- (52) Any eligible company which invested in the above mentioned equipment types or technology may credit 10 % to 20 % of the purchase amount against the corporate income tax payable for the current year. In case the amount of income tax payable is less than the deductible amount, the credit may be carried over during the next four years.

- (53) The amount of tax credit is determined as follows:

- for the purchase of domestically manufactured automated equipment or pollution control equipment, the credit rate is 20 %,
- for the purchase of foreign made automated or pollution control equipment, the credit rate is 10 %,
- for the purchase of technology for automation production, the permissible credit is at the rate of 10 %.

- (54) In order to obtain the tax credits, a company makes an application for the issuance of a tax deduction certificate to the Industrial Development Bureau of the Ministry of Economic Affairs (IDB) within six months of the date of delivery of the equipment or the date of completion of the project. Once the certificate is issued, the tax credit can be deducted in the tax declaration for the current year.

*(c) Conclusions on countervailability*

- (55) The tax credits for automation equipment and pollution control equipment constitute a financial contribution by the Government of Taiwan (hereinafter referred to as 'GOT') in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.
- (56) Tax credits for automation equipment and pollution control equipment made in Taiwan constitute subsidies which are contingent in law upon the use of domestic over imported goods since domestically manufactured equipment benefits from a higher tax credit rate than imported equipment. In the light of the above, the subsidies obtained under this scheme are considered to be specific and therefore countervailable in accordance With Article 3(4)(b) of the basic Regulation.

*(d) Calculation of the subsidy amount*

- (57) The amount of subsidy should be calculated on the basis of the amount of taxes unpaid during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 9,03 %. The total amount of subsidy so attributed to the investigation period should be allocated over total sales since this subsidy benefits both domestic and export sales.
- (58) Two companies availed themselves of this scheme and obtained a benefit of 0,42 % and 0,41 %, respectively.

**3. Tax credit for investment in important enterprises**

- (59) This tax credit is covered by Article 8 of the SUI and Articles 15, 16, 17 and 18 of the Enforcement Rules of the SUI.

*(a) Eligibility*

- (60) This tax credit is available to investors who buy registered stocks either issued by an 'important technology-based enterprise' or an 'important invested enterprise' designated by the government or issued by a venture capital investment enterprise. There is no clear definition of 'important technology-based enterprise'. An 'important invested enterprise' may be any enterprise with a capital of at least TWD 2 billion providing it has been designated as such by the GOT.

*(b) Practical implementation*

- (61) Any eligible company which invested in the above mentioned enterprises may credit 20 % of the price paid for the acquisition of such stocks against the corporate income tax payable. In case the amount of income tax payable is less than the deductible amount, the benefit may be carried over during the next four years.
- (62) In order to obtain the tax credits, the invested company makes an application for the issuance of a tax deduction certificate to the IDB. Once the certificate is issued to the invested company, the investor may deduct the amount of the tax credit in the tax declaration of the current tax year.

*(c) Conclusions on countervailability*

- (63) Under this scheme there is a financial contribution by the GOT in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.
- (64) The GOT has limited the access to the subsidy to enterprises which make a specific investment in a technology-based or important invested enterprise. In addition, the GOT has large discretion in the designation of eligible investments. There are no objective criteria to determine what constitutes a technology-based or important invested enterprise. By the nature of these eligibility criteria, only a limited number of companies will benefit from this tax credit. Since the eligibility is expressly limited to certain enterprises and not based on neutral criteria within the meaning of Article 3(2)(b) of the basic Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

meaning of Article 3(2)(a) of the basic Regulation, and thus not to be countervailable.

(65) The amount of subsidy should be calculated as explained above in recital 57.

(66) One company availed itself of this scheme and obtained a benefit of 0,71 %.

**4. Tax credits for R & D and personnel training****5. Tax credit for investments in scanty natural resources areas**

(67) The tax credits for research and development ('R & D') and personnel training are covered by Article 6(1) of the SUI and Articles 13(2) and 14(2) of the Enforcement Rules. Furthermore, the practical implementation of the scheme is regulated by the Measures Governing the Application of Tax Deduction for Company Investment in R&D, Personnel Training and Establishing Image of World-wide Brand (hereinafter referred to as the 'Measures') promulgated by the Executive Yuan, i.e. a board of government officials established by the GOT.

(73) This tax credit is governed by Article 7 of the SUI and Articles 2 and 3 of the Measures Governing Application of Tax Deduction for Company's Investment in Areas with Scanty Natural Resources or Slow Development (hereinafter referred to as the 'Guidelines').

(a) *Eligibility and practical implementation*(a) *Eligibility*

(68) The tax credits mentioned above are available to manufacturing industries as well as agriculture and services.

(74) Any company that makes investments or employs a certain number of employees in certain industries in a designated area with scanty natural resources or with slow development is eligible for this tax credit.

(69) A tax credit for R & D can be claimed at a rate of 15 % or, if total expenditure for R & D exceeds a certain threshold, of 20 %, may be deducted from the corporate income tax.

(b) *Practical implementation*

(75) An eligible company may credit up to 20 % of the total amount of its investment in purchasing machinery, equipment and plant buildings against the amount of corporate income tax payable for the year in which the investment is completed.

(70) Additionally, a company can claim a tax credit for expenditure for personnel training at a rate of 15 %.

(c) *Conclusions on countervailability*

(76) This scheme constitutes a subsidy since there is a financial contribution in the form of taxes foregone by the GOT. This confers a benefit to companies availing themselves of this tax credit since they are exempted from paying a certain amount of taxes.

(b) *Conclusions on countervailability*

(77) The GOT has limited the use of this scheme to certain enterprises which make certain investments in designated geographical areas. In addition, the GOT has a large discretion in pronouncing the eligible investments.

(71) These tax credits constitute a financial contribution by the Government of Taiwan in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.

(78) The subsidies obtained under this scheme are therefore considered to be specific and countervailable in accordance with the provisions of Articles 3(2)(a) and 3(3) of the basic Regulation.

(72) However, the tax credits are generally available for all companies investing in R & D and personnel training. Furthermore, objective criteria were established governing the eligibility and are described in detail in Article 2 (R & D) and Article 3 (personnel training) of the Measures whereby the eligibility to benefit from this subsidy is automatic and the GOT has no discretion to determine which enterprise is eligible or not. These tax credits are therefore considered not to be specific in the

(d) *Calculation of the subsidy amount*

(79) The amount of subsidy should be calculated as explained above in recital 57.

(80) One company availed itself of this scheme and obtained a benefit of 0,01 %.

## 6. Tax credits for establishing international brands

- (81) The legal basis of the programme is Article 6(1) of the SUI and Articles 13(2) and 14(2) of the Enforcement Rules. It was established that one exporting producer availed itself of this scheme but obtained no benefit. Therefore, it is considered not to be necessary to make a finding on the countervailability of this scheme.

## 7. Loans at preferential rates: incentives for automation, anti-pollution incentives and energy conservation incentives

- (82) These schemes are based on Article 21(1) of the SUI.

### (a) Eligibility

- (83) The following eligibility criteria for loans under this programmes have to be met:
- for automation: any public and/or private company that intend to purchase automated machinery and/or equipment,
  - for anti-pollution: all private companies, environmental protection businesses, medical institutions which are authorised by responsible government agencies to purchase anti-pollution equipment,
  - for energy conservation: all Taiwanese companies purchasing certain energy conservation equipment.

### (b) Practical implementation

- (84) Companies concerned have to file an application to the Chiao Tung Bank. Based on the financial situation of the applicant, this bank will decide on the amount of the loan. 25 % of the Fund is financed through the Development Fund; the remaining 75 % through commercial banks.

### (c) Conclusions on countervailability

- (85) It has been established that there is a financial contribution by the GOT since the loans are in part funded by the public Development Fund and the Executive Yuan of the Development Fund, a government body, is responsible for establishing the rules relating to this programme.
- (86) In addition, a benefit is conferred to the recipient of the loan since the interest rates of these loans are generally lower than for comparable commercial loans.

- (87) Low-interest loans are only available to companies which purchase specific equipment under specific conditions set by the Executive Yuan of the Development Fund. These criteria are not considered to be objective since only companies investing in certain equipment will benefit from this programme. Since the eligibility is expressly limited to certain enterprises and not based on neutral criteria within the meaning of Article 3(2)(b) of the basic Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

### (d) Calculation of the subsidy amount

- (88) The subsidy is the difference between the amount of interest paid on the loan during the investigation period and the interest normally payable on a comparable commercial loan during the investigation period.
- (89) The comparable loan should be a loan of a similar amount with a similar repayment period actually obtained by the recipient from a private bank operating on the domestic market. In this investigation there were no such comparable commercial loans granted to the respective companies. Therefore it was considered that the appropriate benchmark would be the average commercial interest rate during the investigation period representing the interest rate on comparable loans made to companies in a similar financial situation. The resulting difference is the benefit to the company derived from the loan with preferential interest rates which is countervailed.
- (90) Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the company, for any amount as calculated above, interest was added at a rate which corresponds to the above described average commercial interest rate. The full subsidy amount so obtained should be allocated over the total turnover of the company during the investigation period.
- (91) Four companies availed themselves of this scheme and obtained benefits from 0,03 % to 0,36 %.

## 8. Import duty exemption: purchases of new equipment and anti-pollution equipment

- (92) This scheme is governed by the provisions of the Customs Import Tariff and Classification of Import and Export Commodities of the Republic of China (hereinafter referred to as 'the Customs Code').

(a) *Eligibility*

- (93) A manufacturing company is exempted from paying import duties on those imports if it imports equipment and machinery solely for research and development or for examination and analysis for the development of new products, quality upgrading, increase of production, achievement of energy conservation, promotion of recycling or improvement of production techniques, which have not yet been manufactured locally.

(b) *Practical implementation*

- (94) A company which intends to import the abovementioned machinery or equipment files an application with IDB prior to the importation of the machinery. If IDB has established that the machinery to be purchased is not produced in Taiwan and that the machinery will be used for one or more of the abovementioned purposes, it will issue a certificate which is sent to the applicant and the customs department. This certificate enables the company to import the specified machinery without paying the import duties.

(c) *Conclusions on countervailability*

- (95) The scheme constitutes a subsidy since there is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duty.
- (96) Due to its nature, the programme can only be used by limited sectors of the Taiwanese industry investing in specific equipment. The industry sectors whose machinery and/or equipment are produced in Taiwan will not be able to use this programme. Consequently, eligibility for the import duty exemption on purchases of new equipment and anti-pollution equipment is limited to those companies who import the specific machinery not available on the local market.
- (97) It is considered that the access to this programme is limited to certain companies and that this scheme therefore is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is countervailable.

(d) *Calculation of the subsidy amount*

- (98) The benefit to the companies represents the amount of import duties normally payable without the benefit of the exemption. For the purchase of imported machinery, this amount should be allocated over the normal service life of the machinery in this industry, i.e. eight years. In order to encompass the full benefit to the recipient, this

amount has been adjusted by adding the average commercial interest during the investigation period. The total amount of subsidy so attributed to the investigation period should be allocated over total sales since this subsidy benefits both domestic and export sales.

- (99) Four companies availed themselves of this scheme and obtained benefits from 0,12 % to 0,21 %.

**9. Import duty exemption: imports of raw material**

- (100) This programme is governed by Article 6 of Chapter 29 of the Customs Code.

(a) *Eligibility*

- (101) Pursuant to the abovementioned provisions of the Customs Code, manufacturing companies which import certain raw materials exhaustively described in the Customs Code which are not yet produced or sufficiently available on the local market, are exempted from paying import duties on the purchases of those raw materials.

(b) *Practical implementation*

- (102) A company which intends to import the specified raw material files an application to IDB prior to the importation of the raw material. If IDB has established that the raw material to be purchased is not produced in Taiwan or is not supplied sufficiently in Taiwan, it will issue a certificate which is sent to the applicant and the customs department. This certificate enables the company to import the raw material without paying the import duties.

(c) *Conclusions on countervailability*

- (103) There is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duties and constitutes a subsidy. Due to its nature, the programme can only be used by limited sectors of the Taiwanese industry importing specific raw materials. The industry sectors whose raw material is produced in Taiwan will not be able to use this programme. Consequently, eligibility for the import duty exemption on purchases of raw material is limited to those companies who import the specific raw materials not available on the local market.
- (104) It is considered that the access to this scheme is limited to certain companies and that therefore this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is countervailable.

*(d) Calculation of the subsidy amount*

(105) The benefit to the companies represents the amount of import duties normally payable without the benefit of the exemption. In order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period. In this case, since the companies obtained subsidies equivalent to a series of grants during the investigation period, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months. The total amount of subsidy so attributed to the investigation period should be allocated over the total sales turnover since this subsidy benefits both domestic and export sales.

(106) Four companies availed themselves of this scheme and obtained benefits from 0,17 % to 0,53 %.

**10. Matching funds and assistance funds**

(107) This scheme is governed by Article 21(1) of the SUI.

*(a) Eligibility*

(108) Eligible are companies incorporated under the Company Law with sound financial standing, possessing a research and development department with sufficient R & D specialists in Taiwan and which have actually made R & D achievements. The R & D achievements should relate to the development of products within the scope of ten newly emerging industries. Those industries are selected by the IDB based on specific selection criteria. Regularly the IDB issues a notification of which industries will be considered to be 'newly emerging'.

*(b) Practical implementation*

(109) The programme provides for the assistance fund (grants) and the matching fund (interestfree loans). The total amount of assistance and matching funds to be allocated to a leading product development plan is limited to maximum 50 % of the total amount of the budgeted R & D costs.

(110) Companies have to file an application relating to the development of a product within the scope of one of the 10 newly emerging industries. This application is first reviewed by the Technical Screening Board and then

submitted to the New Product Development Review Committee.

*(c) Conclusions on countervailability*

(111) The exporting producers availed themselves of matching funds only. Hence, the findings relate to this aspect of the scheme and not to assistance funds. It has been established that there is a financial contribution by the GOT since the competent authority governing the above programmes is the Ministry of Economic Affairs, while the Industrial Development Bureau, a government organisation, acts as the implementing agency. This scheme confers a direct benefit to the recipient in the form of a grant and/or a interest-free loan and therefore constitutes a subsidy.

(112) Due to its nature, the scheme can only be used by companies which possess a research and development department with sufficient R & D specialists in Taiwan and which have actually made R & D achievements relating to the development of products within the scope of one of the 10 newly emerging industries. It is considered that the GOT has limited the access to this programme to certain companies and therefore this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is to be considered countervailable.

*(d) Calculation of the subsidy amount*

(113) The subsidy amount was calculated as above in recitals 88 to 90.

(114) Two companies availed themselves from this scheme. One company did not obtain benefits, the other received a benefit of 0,01 %.

**11. Subsidy programmes not used by exporting producers**

(115) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:

- Tax credit: energy conservation incentives
- Tax credit: recycling incentives
- Accelerated depreciation
- Fund for the Development and Management of Industrial Zones.

## 12. Amount of countervailable subsidies

- (116) The amount of countervailable subsidies in accordance with the provisions of the Basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows.

(in %)

| Company                         | Tax credits | Loans | Import duty exemptions | Matching funds | Total |
|---------------------------------|-------------|-------|------------------------|----------------|-------|
| Nan Ya Plastics Corp.           | 1,14        | 0,06  | 0,32                   | 0              | 1,52  |
| Far Eastern Textile Ltd         | 0,41        | 0,36  | 0,37                   | 0              | 1,14  |
| Shinkong Synthetic Fibres Corp. | 0           | 0,03  | 0,68                   | 0,01           | 0,73  |
| Tuntex Distinct Corp.           | 0           | 0,29  | 0,34                   | 0              | 0,63  |

- (117) The weighted average country-wide subsidy margin for all the exporting producers investigated which represent the totality of exports of the product concerned to the Community originating in Taiwan is above the applicable *de minimis* threshold for subsidisation of 1 %.

### III. INDONESIA

- (118) On the basis of the information contained in the complaint and the replies to the questionnaires, the Commission services investigated the following schemes that allegedly involved the granting of subsidies:
- (119) BKPM Schemes: under these programmes, exporters received benefits in the form of exemptions on import duty on capital goods and raw materials. Since the subsidy is limited to certain enterprises operating in certain sectors and certain geographical areas, it provisionally is considered specific and countervailable.
- (120) BAPEKSTA Schemes: companies were granted subsidies in the form of exemption or restitution of import duties. This scheme is not a proper duty drawback scheme since it was found that there is not sufficient evidence for the existence of an effective verification system in accordance with point (i) of Annex I to the basic anti-subsidy Regulation. Hence, the system is provisionally considered contingent upon export performance and therefore a countervailable export subsidy.
- (121) The amounts of subsidies for the individual exporters in the sample vary from 0,2 % to 1 % and are therefore below the *de minimis* threshold for subsidisation for Indonesia, i.e. under 3 %. However, it should be noted that two companies representing a substantial share of imports of the product concerned into the Community did not cooperate in this proceeding. The treatment of these companies and the effect on the establishment of the country-wide margin of subsidisation will be further investigated and determined at the definitive stage of the proceeding.

### IV. KOREA

#### 1. Summary of subsidy programmes used by exporting producers

- (122) It was determined that the exporters in Korea received benefits in the shape of tax credits and tax reserves which reduce their income tax liability. These tax incentives involve subsidies in the form of government revenue foregone and are either contingent upon export performance, contingent upon the use of domestic over imported goods or otherwise specific to certain enterprises.
- (123) In addition, the exporters benefited from cheap loans funded by the Korean Government. They constitute countervailable subsidies since interest rates for these loans were below market rates and eligibility is either contingent upon export performance or limited to certain enterprises.

- (124) Under the Fixed Amount Duty Drawback Scheme, certain Korea exporters received refunds on import duties which were not calculated on the basis of actual inputs for the exported product. This scheme does therefore not constitute a proper duty drawback scheme in the meaning of point (i) of Annex I to the Regulation and is thus considered to be a countervailable export subsidy. Most of the abovementioned schemes were already found to be countervailable in Council Regulations (EC) No 1599/1999 and (EC) No 1601/1999 <sup>(1)</sup>.
- (125) Under the Localisation Scheme for the Capital Goods Industry, exporters received Subsidies in the form of government loans at preferential and grants which are found to be available only to certain sectors and therefore specific and are countervailable.

## 2. Subsidy programmes not used by exporting producers

- (126) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:
- Tax incentives under Article 18-2 Corporation Tax Act (Entertainment Expenses)
  - Tax incentives under Articles 10, 14, 15, 19, 20, 26, 88 of the Tax Exemption and Reduction Control Law
  - Modernisation Funds (Industrial Development Act)
  - Export Industry Facility Loans
  - Government purchases of PSF.

## 3. Amount of countervailable subsidies

- (127) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows:

(in %)

| Company                                 | Loans<br>(export) | Loans<br>(other) | Grants | Tax<br>(export) | Tax (other) | Duty<br>drawback<br>(export) | Total<br>subsidy |
|-----------------------------------------|-------------------|------------------|--------|-----------------|-------------|------------------------------|------------------|
| Dae Han Synthetic Fiber Inc.            | 0                 | 0                | 0      | 0,28            | 0,04        | 0                            | 0,32             |
| Sung Lim Corporation                    | 0,07              | 0,12             | 0      | 0,06            | 0,78        | 0                            | 1,03             |
| Ein Textile Co. Ltd/Dobest Co., Ltd     | 0                 | 0                | 0      | 0,12            | 0           | 0,08                         | 0,20             |
| SK Chemicals Co, Ltd/SK Global Co., Ltd | 0,01              | 0,03             | 0,02   | 0,01            | 0           | 0                            | 0,07             |
| Estal Ind. Co.                          | 0,21              | 0                | 0      | 0               | 0,05        | 1,01                         | 1,27             |
| Saehan Industries Inc.                  | 0,01              | 0,01             | 0,01   | 0               | 0,25        | 0                            | 0,28             |
| Sam Yang Corporation                    | 0                 | 0,01             | 0,04   | 0,11            | 0,15        | 0                            | 0,31             |

- (128) The weighted average country-wide subsidy margin for all the exporting producers investigated which represent the totality of exports to the Community originating in Korea is *de minimis*, i.e. under 1 %. Under these circumstances, the subsidy margin for Korea has to be considered negligible.

<sup>(1)</sup> OJ L 189, 22.7.1999, p. 1 and p. 26.

## V. THAILAND

**1. Summary of subsidy programmes used by cooperating exporters**

- (129) It was found that under Section 28 of the Investment Promotion Act (IPA), the exporters availed themselves of exemptions or reduction of import duties on machinery which are granted only to companies either located in certain geographical areas or operating in certain sectors. This was found to be a countervailable subsidy since it involves a financial contribution by the government in the form of import duties forgone which is specific to certain enterprises in the meaning of Article 3(2)(a) of the basic Regulation.

**2. Subsidy programmes not used by cooperating exporters**

- (130) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:
- Income tax exemptions under Section 31 of the IPA
  - Incentives pursuant to Sections 35(3) and (4) of the IPA
  - Exemptions from import duties under Section 36(1) of the IPA.

**3. Amount of countervailable subsidies**

- (131) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows.

(%)

| Company                              | Section 28 | Section 31 | Sections 35(3) and (4) | Section 36(1) | Total |
|--------------------------------------|------------|------------|------------------------|---------------|-------|
| Indo-Poly (Thailand) Ltd             | 2,6        | 0          | 0                      | 0             | 2,6   |
| Teijin Polyester (Thailand) Ltd      | 0,3        | 0          | 0                      | 0             | 0,3   |
| Tuntex (Thailand) Public Company Ltd | 1,3        | 0          | 0                      | 0             | 1,3   |

- (132) The weighted average country-wide subsidy margin for all exporting producers investigated which represent the totality of exports to the Community originating in Thailand is *de minimis*, i.e. under 2 %. Under these circumstances, the subsidy margin for Thailand has to be considered negligible.

**D. INJURY****1. Definition of the Community industry**

- (133) Fourteen producers are known to produce PSF in the Community market. Nine of them are complainants in the present case, but only eight initially replied to the questionnaire. In addition, one producer of these eight did not reply to the deficiency letters sent by the Commission services. Consequently it was considered that two complainant Community producers did not cooperate in the investigation. On this basis, the investigation showed that the share of the total Community production held by the seven cooperating complainant Community producers, during the IP represented around 85 % of total Community production of PSF.

Therefore, seven producers constitute the Community industry within the meaning of Article 9 of the basic Regulation. Hereinafter, the cooperating Community producers are referred to as 'the Community industry'.

## 2. Consumption in the Community

- (134) Given that no cooperation could be obtained with respect to information on the sales volume of the non-complaining Community producers, the Community consumption indicated in the table below, was based on the combined volume of sales made by the Community industry, the import volume from the countries concerned by the present investigation, the Eurostat information on imports from other third countries and estimates of the volume of sales of the non cooperating Community producers.

| Consumption        | 1996      | 1997      | 1998      | IP        |
|--------------------|-----------|-----------|-----------|-----------|
|                    | 454 470 t | 518 328 t | 585 164 t | 578 967 t |
| Index (1996 — 100) | 100       | 114       | 129       | 127       |

## 3. Imports of PSF on the Community from the countries concerned

### (a) Cumulative assessment of imports

- (135) The Commission considered whether imports of PSF originating in the countries concerned should be assessed cumulatively in accordance with Article 8(4) of the basic Regulation. The examination showed that:
- (a) as it has been mentioned above, the margins of subsidy relating to Indonesia, the Republic of Korea and Thailand were below the *de minimis* levels, whereas those for Australia and Taiwan, were above *de minimis*;
  - (b) the volume of imports from each country was not negligible when compared to Community consumption;
  - (c) the analysis of the conditions of competition between imported PSF and the Community product and the conditions of competition between imported PSF indicated that,
    - as indicated in recital 11, imported PSF from all exporting countries and Community produced PSF are like products,
    - imported PSF from all exporting countries was sold through similar sales channels to the same customers,
    - imported PSF from all exporting countries was sold at similar prices;
  - (d) the investigation showed that the exporting countries concerned sold PSF directly to unrelated customers, such as textile manufacturers, cushion and quilt manufacturers and to PSF merchants. The investigation showed that the Community industry was selling the like product through the same sales channels and to the same categories of customers, although most of their sales were made to end-users.

Based on the above considerations, the Commission concluded that there were sufficient grounds for cumulating the imports from Australia and Taiwan and exclude those from Indonesia, the Republic of Korea and Thailand.

(b) *Volume of imports*

- (136) Between 1996 and the IP imports originating from the countries concerned developed as set out below.

| Imports            | 1996     | 1997     | 1998     | IP       |
|--------------------|----------|----------|----------|----------|
| Australia          | 62 t     | 1 248 t  | 11 254 t | 11 799 t |
| Index (1996 — 100) | 100      | 2 007    | 18 093   | 18 969   |
| Taiwan             | 20 213 t | 26 811 t | 35 524 t | 34 878 t |
| Index (1996 — 100) | 100      | 133      | 176      | 173      |
| Total              | 20 275 t | 28 059 t | 46 778 t | 46 677 t |
| Index (1996 — 100) | 100      | 138      | 231      | 230      |

Source: Comext 2.

(c) *Market share of imports concerned*

- (137) The market share by volume held by imports from Australia and Taiwan increased and developed as shown below:

| Market share       | 1996   | 1997   | 1998   | IP     |
|--------------------|--------|--------|--------|--------|
| Australia          | 0,01 % | 0,24 % | 1,92 % | 2,04 % |
| Index (1996 — 100) | 100    | 1 760  | 14 052 | 14 903 |
| Taiwan             | 4,45 % | 5,17 % | 6,07 % | 6,03 % |
| Index (1996 — 100) | 100    | 116    | 136    | 136    |
| Total              | 4,46 % | 5,41 % | 7,99 % | 8,07 % |
| Index (1996 — 100) | 100    | 121    | 179    | 181    |

The trend showed in the tables above confirms the increase of the imports from the countries concerned in the Community market, both in absolute terms and in terms of market share.

(d) *Average price of imports*

- (138) From 1996 to the IP, sales prices in the Community market of PSF imported from Australia and Taiwan followed a continuously decreasing tendency throughout the period considered as indicated in the table below.

| Average import price evolution<br>Index (1996 — 100) | 1996 | 1997 | 1998 | IP |
|------------------------------------------------------|------|------|------|----|
| Australia                                            | 100  | 56   | 52   | 50 |
| Taiwan                                               | 100  | 98   | 87   | 81 |
| Total                                                | 100  | 97   | 85   | 79 |

(e) *Price undercutting*

- (139) For the determination of price undercutting, the Commission analysed data referring to the IP. Price undercutting was established on the basis of a comparison of the export price with prices charged by the Community industry.

The sales prices of the Community industry considered were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding transport costs. As the Community industry was selling mainly to endusers whereas the exporting producers were selling to both endusers as well as distributors/wholesalers, adjustments were made to the exporting producers' selling prices (cif Community frontier) to take account these differences in the level of trade as well as of customs and eventual anti-dumping duties paid. All prices were compared after excluding discounts and rebates.

Weighted average prices were compared for similar product types of PSF, as defined in the Commission's questionnaires. The weighted average price undercutting margins, expressed as a percentage of the Community industry's average selling prices were 21 % for Australia and 6,1 % for Taiwan.

#### 4. Economic situation of the Community industry

(a) *Preliminary remarks*

- (140) The examination of the injury trends covered the period from 1996 up to the end of the IP. It should be noted that during this period anti-dumping measures were in force against the Republic of Korea, Taiwan and Belarus with a resulting effect on the Community industry.

(b) *Production, capacity and capacity utilisation*

(141)

|                      | 1996      | 1997      | 1998      | IP        |
|----------------------|-----------|-----------|-----------|-----------|
| Production           | 312 917 t | 330 577 t | 322 403 t | 315 917 t |
| Index (1996 - 100)   | 100       | 106       | 103       | 101       |
| Capacity             | 384 500 t | 376 800 t | 358 300 t | 359 400 t |
| Index (1996 - 100)   | 100       | 98        | 93        | 93        |
| Capacity utilisation | 81,38 %   | 87,73 %   | 89,98 %   | 87,90 %   |
| Index (1996 - 100)   | 100       | 108       | 111       | 108       |

As illustrated in the table above, production of the Community industry was by and large stable.

- (142) As regards capacity, it should be noted that the production facilities for PSF are also used in the production of other products not concerned by the present proceedings, e.g. tow and tops. As a consequence, the capacity attributed to the production of PSF was determined on the basis of the actual production of the various products including PSF. On this basis, capacity decreased by 7 %.

The decrease in the capacity of production can be attributed to the fact that the Community industry closed certain production lines and factories or converted them to the production of other products not covered by this investigation with the aim of obtaining a more efficient capacity utilisation.

- (143) The rate of utilisation of the production capacity, as shown in the above table, increased by 8 % during the period considered. This increase however is the direct result of the reduction of the capacity of production.

(c) *Sales volume of the Community industry*

- (144) The volume of PSF sold by the Community industry on the Community market decreased by 6 % during the period considered, as shown in the table below.

| Sales              | 1996      | 1997      | 1998      | IP        |
|--------------------|-----------|-----------|-----------|-----------|
|                    | 308 851 t | 319 235 t | 294 718 t | 291 013 t |
| Index (1996 — 100) | 100       | 103       | 95        | 94        |

This trend indicates that the sales made by the Community industry did not follow the trend in consumption, which increased by 27 % during that period, as mentioned in recital 134. In fact, sales volume only roughly followed the trend of consumption between 1996 and 1997 when it increased by 3 % whereas consumption rose by 14 %. Since then, the trend in sales volume fell continuously up to the IP.

(d) *Average sales price and price evolution*

- (145) The weighted average prices of the product concerned sold by the Community industry on the Community market showed a considerable decrease over the period considered. As reported in the table below, the average price fell by 11 % during that period.

| Average Community industry price evolution | 1996 | 1997 | 1998 | IP |
|--------------------------------------------|------|------|------|----|
| Index (1996 — 100)                         | 100  | 93   | 93   | 89 |

The investigation has shown that PSF prices are also influenced by the evolution of the prices of the basic raw materials, e.g. pure terephthalic acid (PTA), dimethylterephthalate (DMT) and glycol which represent between 60 % and 70 % of the cost of production of the finished PSF.

(e) *Market share*

- (146) The development of sales volume compared to that of Community consumption shows that the market share held by the Community industry decreased significantly during the period considered. The table below indicates this development:

| Market share       | 1996    | 1997    | 1998    | IP      |
|--------------------|---------|---------|---------|---------|
|                    | 67,96 % | 61,59 % | 50,37 % | 50,31 % |
| Index (1996 — 100) | 100     | 91      | 74      | 74      |

The above table indicates that the decreasing trend was continuous during the period examined. However, the loss in market share was relatively limited between 1996 and 1997, where 6.4 percentage points were lost. In contrast, the decline between 1997 and the IP was more spectacular with 11.3 percentage points.

(f) *Stocks*

(147)

| Stocks             | 1996     | 1997     | 1998     | IP       |
|--------------------|----------|----------|----------|----------|
|                    | 30 084 t | 28 033 t | 36 801 t | 36 780 t |
| Index (1996 — 100) | 100      | 93       | 122      | 122      |

As shown in the table above, stocks significantly increased by 22 % between 1996 and the IP.

(g) *Profitability*

(148) In 1996, the Community industry incurred a weighted average loss of 4 %, expressed as a percentage of net sales.

| Profitability | 1996     | 1997     | 1998   | IP     |
|---------------|----------|----------|--------|--------|
|               | - 4,04 % | - 0,41 % | 6,34 % | 6,73 % |

Subsequently, as shown in the table above, its financial situation improved, especially during 1998 (profit of 6,34 %). This improvement was in fact the result of the restructuring processes undertaken by the Community industry, aiming at more efficient production processes and using certain product lines for more specialised products with higher profit margin.

Indeed, the profit achieved during the IP was mainly influenced by the performance of the specialities sector (18,85 %). In the non-woven regular and hollow fibres the profit only reached 0,86 % and 1,37 % respectively.

Furthermore, the investigation showed that the restructuring of the Community industry resulted in a decrease in SG & A costs by 15,3 % from 1996 to the IP. It is also important to note that the prices of the raw materials decreased significantly: according to information made available during the verification, PTA prices decreased by 35,6 % and glycol prices by 14,3 % over the period considered. The combined effect of the price reductions of these raw materials was estimated to have lead to a 31 % decrease of the cost of manufacturing of PSF.

Both of the above mentioned factors, i.e. the SG & A reduction and the decrease of the raw materials prices, suggest that the cost of production was reduced faster than the decrease of the sales prices, allowing thus the Community industry to return to profits from 1998 onwards. In fact, it is considered that the current profit is the maximum that can be achieved given the price pressure from imports. The improved efficiency of the industry cannot be improved upon in the short term.

(h) *Investments*

(149)

| Investments        | 1996   | 1997   | 1998   | IP     |
|--------------------|--------|--------|--------|--------|
| (Thousand ECU)     | 17 652 | 10 177 | 19 508 | 15 980 |
| Index (1996 — 100) | 100    | 58     | 111    | 91     |

Yearly investments made by the Community industry were important during the period considered, as indicated in the table above. It should be noted that this significant effort represents, for the most part, investments in replacement machinery as part of an overall restructuring program.

(i) *Employment*

- (150) Due to a certain degree of reduction in production capacity and restructuring, employment of the sector of the product concerned decreased by 20 %, as shown in the table below.

| Employment         | 1996  | 1997  | 1998  | IP    |
|--------------------|-------|-------|-------|-------|
|                    | 3 111 | 2 817 | 2 475 | 2 474 |
| Index (1996 — 100) | 100   | 91    | 80    | 80    |

(j) *Conclusion on the situation of the Community industry*

- (151) The above analysis has revealed that during the period considered some economic indicators such as capacity (-7 %), sales volume (-6 %), sales prices (-11 %), market share (-26 %), stocks (+22 %), investments (-9 %) and employment (-20 %) showed negative trends, in particular between 1997 and the IP.
- (152) In the meantime, production increased marginally by 1 %. Following a reduction in the capacity of production, capacity utilisation increased by 8 %. Profitability which was negative in 1996 and 1997 became positive in 1998 and in the IP without reaching a level that was considered satisfactory.
- (153) The investigation has shown that the Community industry has also suffered significant price pressure. Indeed, substantial price undercutting (10,1 % on average) has been established for imports originating in the countries concerned.
- (154) In the light of the foregoing analysis, in particular the high loss in market share, the decrease in sales price, the Commission has concluded that the Community industry has suffered injury which is classified as material.

**E. CAUSATION****1. Introduction**

- (155) The Commission examined whether the material injury suffered by the Community industry had been caused by the subsidised imports from Australia and Taiwan. The Commission also examined other factors in order to ensure that injury caused by other factors was not wrongly attributed to the subsidised imports subject to investigation.

**2. General**

- (156) In the recent past, the Community Institutions have found that the Community industry suffered injury and that this injury was caused by dumped imports from a number of countries among which Taiwan and Belarus. This industry has therefore been weakened since the beginning of the present investigation and was seen to be still vulnerable during the period under examination.

**3. Effect of the subsidised imports**

- (157) The present investigation has shown that imports from the countries concerned onto the Community market more than doubled during the period considered. In 1996, 20 275 tonnes of PSF were imported from the countries concerned whereas the volume imported during the IP was 46 677 tonnes. As a consequence of the above import development the market share held by the countries concerned increased from 4,46 % in 1996 up to 8,07 % during the IP. During the same period, the average sales prices of these imports decreased by 21 %. They undercut those of the Community industry by 10,1 %.
- (158) These developments took place at a moment when the Community industry was particularly vulnerable recovering after a long period of dumped imports from other third countries.
- (159) This resulted in a situation in which the Community industry, instead of benefiting from the re-establishment of fair trading conditions following the imposition of anti-dumping measures with respect to imports from other third countries, faced further deterioration. The injury investigation concluded, as indicated above, that an overall worsening of the situation in that industry existed with major decreases in market share (-26 %), sales volume (-6 %) and sales prices (-11 %).

- (160) It should also be mentioned that the major losses suffered by the Community industry occurred for those product types of PSF mainly imported from the said countries. Indeed, imports of non-woven regular types represent about 18,5 % and imports of non-woven hollow types represent 29 % respectively of all imports of PSF from the countries concerned. For these particular product types, the profits realised by the Community industry were 0,86 % and 1,37 % respectively, whereas the average profits for more specialised products, which are imported to a lesser degree, was about 18.85 %.
- (161) The above appears to be particularly relevant as imported PSF and PSF produced in the Community are like products, offered through similar sales channels in the Community market. Therefore the increasing presence of high volumes of subsidised PSF imported from the countries concerned has had a significant impact on that market overall. Furthermore, the market being transparent, the effect of the low prices offered for PSF imported from the countries concerned and well known to all potential customers in the Community market, had a major impact on the level of prices of the Community industry.
- (162) Based on the above, it was concluded that the low-priced subsidised imports had a significant negative impact on the situation of the Community industry.

#### 4. Impact of other factors

##### (a) Development of consumption

- (163) As mentioned in recital 134, from 1996 up to the IP, consumption in the Community market increased by 27 % indicating a fast growing PSF market. Therefore, consumption cannot be held responsible for the injurious situation suffered by the Community industry.

##### (b) Imports of PSF from other third countries

- (164) Total imports of PSF onto the Community from countries other than Taiwan <sup>(1)</sup> and Australia developed as follows.

| Imports                                         | 1996     | 1997      | 1998      | IP        |
|-------------------------------------------------|----------|-----------|-----------|-----------|
| Indonesia, Thailand, South Korea <sup>(1)</sup> | 25 814 t | 46 718 t  | 105 747 t | 108 675 t |
| Index (1996-100)                                | 100      | 181       | 410       | 421       |
| Belarus <sup>(2)</sup>                          | 4 463 t  | 243 t     | 35 t      | 19 t      |
| Index (1996-100)                                | 100      | 5         | 1         | 0         |
| Other countries                                 | 64 547 t | 78 344 t  | 81 144 t  | 76 174 t  |
| Index (1996-100)                                | 100      | 121       | 126       | 118       |
| Total (other imports)                           | 90 361 t | 125 062 t | 186 890 t | 184 848 t |
| Index (1996-100)                                | 100      | 138       | 207       | 205       |
| y/y difference                                  |          | + 32 %    | + 49 %    | - 1 %     |

<sup>(1)</sup> PSF imported from Korea is subject to a 4,8 % definitive anti-dumping duty until August 1999.

<sup>(2)</sup> PSF imported from Belarus is subject to a 43,5 % definitive anti-dumping duty since July 1996.

<sup>(1)</sup> PSF imported from Taiwan is subject to a 13 % definitive anti-dumping duty since September 1993.

| Average import price evolution<br>Index (1996 — 100) | 1995 | 1997 | 1998 | IP |
|------------------------------------------------------|------|------|------|----|
| Indonesia, Thailand,<br>South Korea                  | 100  | 90   | 79   | 73 |
| Belarus                                              | 100  | 84   | 75   | 75 |
| Other countries                                      | 100  | 90   | 89   | 87 |
| Total (other imports)                                | 100  | 89   | 79   | 75 |

It should be underlined that the two major exporting countries, namely Indonesia and Thailand, are subject to an anti-dumping investigation which was initiated in parallel to the present investigation.

- (165) An analysis of the development of the indicative import prices of Indonesia, Thailand and South Korea reveals that they also contributed to the pressure exerted on prices in the Community. The information available shows that the average prices of imports from these countries fluctuated below those practised by the countries concerned by this proceeding and those of the Community industry.

As far as the imports from other third countries, their limited volume and their prices which were at the level of those of the Community industry, indicate that such imports did not contribute to the price deterioration noticed in the market.

On the basis of the above, it cannot be excluded that imports from Indonesia, Thailand and South Korea onto the Community market did have an impact on the economic situation of the Community industry. However, taking into account the level and prices of these imports, these cannot break the causal link between the imports from the countries concerned and the injurious situation suffered by the Community industry.

*(c) Export activity and other activities of the Community industry*

- (166) Exports to third countries have always represented a minor activity for the Community industry. From a level of around 9 % of total sales in 1996, exports decreased to a level of 5 % during the IP. The table below shows the volumes exported.

| Exports            | 1996     | 1997     | 1998     | IP       |
|--------------------|----------|----------|----------|----------|
|                    | 27 649 t | 29 200 t | 16 300 t | 14 854 t |
| Index (1996 — 100) | 100      | 106      | 59       | 54       |

Export sales made by the Community producers nearly halved during the period considered. However, it is considered that these sales are limited as compared to total production of the Community industry. Consequently, any injury in terms of reduced production caused by a reduced export sales volume is thus very limited.

- (167) It has been argued that imports have increased at a time when the Community industry has reduced its production capacity by 7 %, which corresponds to a significant share of the import volume, making an increase in imports inevitable in order to satisfy demand. In this respect, it should be noted that the Community industry has still spare capacity. In addition, the decrease in capacity only reflects roughly half of the increase of imports from the countries concerned.

Furthermore, the investigation has shown that the capacity reduction was the result of the closure or conversion to other products of certain production sites, which could not operate economically in view of the low priced imports. Should measures in the present case not be imposed, further production site closures could occur. On the contrary, if fair trading conditions are restored, the Community industry would be able in the future to supply a bigger share of the Community market, considering its past record and the fact that certain production lines can be converted back to PSF products.

## **5. Conclusion on causation**

- (168) It cannot be excluded that factors other than subsidised imports from the countries concerned, in particular the imports from other third countries which are subject to a parallel anti-dumping investigation, contributed to the difficult state of the Community industry. However, the substantial increase in import volume from the countries concerned, the considerable degree of price decreases and price undercutting had material negative consequences on the situation of the Community industry. It was therefore concluded that these imports, taken in isolation, have caused material injury to the Community industry.

## **F. COMMUNITY INTEREST**

### **1. Introduction**

- (169) In order to reach its final conclusions the Commission examined, whether, despite the conclusions on subsidisation and injury, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 31 of the basic Regulation, the Commission considered the impact of measures for all parties involved in the proceedings.

### **2. Interest of the Community industry**

- (170) The Community industry has for almost a decade been suffering from lowpriced imports of PSF. The objective of the eventual adoption of anti-subsidy measures is to re-establish fair competition in the Community market between the Community producers and their exporting counterparts in third countries.

The Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its cost of production and to enhance its competitiveness in this pricesensitive market. It deployed particular efforts of rationalisation during the period considered. By way of example, one Community producer shut down two of its production facilities in an effort to reduce costs and to improve its productivity.

In view of the nature of the injury suffered by the Community industry, in particular the fact that it was prevented from recovering from the injurious situation caused by other dumped imports, the Commission consider that, in the absence of the imposition of anti-subsidy measures, the further deterioration of the situation of the Community industry is quite probable. This could entail a further reduction in numbers employed and may ultimately lead to a reduction of the number of producers in the Community.

Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production, particularly as the market is rapidly growing. The adoption of anti-subsidy measures would therefore be in the interest of the Community industry.

### **3. Impact on users**

- (171) The Commission services sent questionnaires to 11 known importers unrelated to the exporting producers in the countries concerned, as well as to 14 users of PSF in the Community. None of the importers answered to the questionnaire sent by the Commission services during the current investigation, whereas three users submitted their replies. Furthermore, two users' associations made submissions concerning this proceeding.

- (172) The analysis of the data submitted by the three user companies revealed that two among them imported PSF from the countries concerned by this proceeding. The main argument put forward by these users was that an eventual adoption of measures would affect negatively their profitability and threaten their survival in the market. We should note however that one user was served until the end of 1997 almost exclusively by the Community industry and since 1998 turned exclusively to imports from the countries concerned, only because of the lower prices. The activity related to PSF products represented about 12 % in terms of turnover for this user. Regarding the other user, its imports from the countries concerned traditionally covered about 30 % of its needs and PSF costs represent about 24 % of its cost of production. The turnover of the finished product that incorporates PSF represent 46 % of its total turnover.

An evaluation of the situation described above, points out that the above users can be served by alternative sources of supply and that the adoption of any anti-subsidy measure would thus have limited impact on their overall profitability and survival in the market.

- (173) One Community user's association requested the exclusion of certain types of PSF allegedly not produced by the Community industry. This allegation was however not further substantiated by sufficient technical information. It was therefore not possible for the Commission services to conclude on the validity of this argument.
- (174) On the basis of the above it can be concluded that the eventual imposition of anti-subsidy measures against imports of PSF from the countries concerned would not imply a significant deterioration, if any, to the situation of the users.

#### 4. Conclusion

- (175) On the basis of the above facts and considerations in particular, and having examined the arguments submitted by the Community industry and Community users of the product concerned, it was concluded, that there were no compelling reasons not to impose measures concerning imports from Australia and Taiwan, in order to ensure competitive conditions of fair pricing and to revert the continuation of injury in the Community industry.

#### G. TERMINATION

- (176) In the light of the above findings that the country-wide weighted average subsidy margins for imports originating in Korea and Thailand are *de minimis*, the proceeding with regard to imports from Korea and Thailand should be terminated in accordance with Article 14(3) of the basic Regulation.

#### H. PROVISIONAL DUTY

- (177) On the basis of the conclusions on subsidisation, injury, causal link and Community interest, the Commission considers it necessary to adopt provisional countervailing measures.
- (178) For the purpose of determining the level of these measures, the Commission took account of the subsidy margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (179) To that effect, the Commission considered that the prices of subsidised imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined in recital 139, *et seq.* with the non-injurious price of different references or models by the Community industry. The non-injurious price has been obtained by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 10 %. This profit margin corresponds to what has been found as a minimum necessary in earlier cases for this type of industry. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

- (180) In accordance with Article 12(1) of the basic Regulation the duty rate should correspond to the amount of subsidy, unless the injury margin is lower. The following rates of duty therefore apply for the cooperating producers:
- (a) Australia
- |                               |     |
|-------------------------------|-----|
| — Leading Synthetics Pty Ltd. | 6 % |
|-------------------------------|-----|
- (b) Taiwan
- |                                   |       |
|-----------------------------------|-------|
| — Nan Ya Plastics Corp.           | 1,5 % |
| — Far Eastern Textile Ltd.        | 1,1 % |
| — Shinkong Synthetic Fibres Corp. | 0 %   |
| — Tuntex Distinct Corp.           | 0 %.  |
- (181) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the sum of the highest rate established for any cooperating exporting producers, i.e. 6 % for Australian producers and 1,5 % for Taiwanese producers.
- (182) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (183) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

#### I. FINAL PROVISION

- (184) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional countervailing duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia and Taiwan.
2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows.

<sup>(1)</sup> European Commission  
Trade Directorate-General  
Directorate EDM 24 — 5/77  
Rue de la Loi/Wetstraat 200  
B-1049 Brussels.

| Australian producers                            | Rate of duty (%) | TARIC additional code |
|-------------------------------------------------|------------------|-----------------------|
| Leading Synthetics Pty Ltd, Melbourne, Victoria | 6                | A059                  |
| All other Australian companies                  | 6                | A999                  |

  

| Taiwanese producers                           | Rate of duty (%) | TARIC additional code |
|-----------------------------------------------|------------------|-----------------------|
| Nan Ya Plastics Corp., Taipei                 | 1,5              | A060                  |
| Far Eastern Textile Ltd, Taipei               | 1,1              | A061                  |
| Shinkong Synthetics Fibres Corp., Taipei      | 0                | A062                  |
| Tuntex Distinct Corp., Hsichih, Taipei County | 0                | A063                  |
| All other Taiwanese companies                 | 1,5              | A999                  |

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

#### Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within 15 days from the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

#### Article 3

The anti-subsidy proceeding concerning imports of polyester staple fibres originating in the Republic of Korea and Thailand 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*.

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 20 January 2000.

For the Commission  
Pascal LAMY  
Member of the Commission

## COMMISSION REGULATION (EC) No 124/2000

of 20 January 2000

**imposing a provisional anti-dumping duty on imports of polyester staple fibres (PSF) originating in Australia, Indonesia and Thailand**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, as last amended by Regulation (EC) No 905/98 <sup>(2)</sup>, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

- (1) On 22 April 1999, the Commission announced, by a notice published in the *Official Journal of the European Communities* <sup>(3)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of polyester staple fibres (hereinafter 'PSF') originating in Australia, Indonesia and Thailand and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged in March 1999 by the International Rayon and Synthetic Fibres Committee (CIRFS) on behalf of producers representing a major proportion of the Community production of PSF. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) A parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in, *inter alia*, Australia, Indonesia and Thailand was announced by a notice published in the *Official Journal of the European Communities* <sup>(4)</sup> on the same date.
- (4) There are anti-dumping measures currently in force on imports of PSF originating in Belarus (Council Regulation (EC) No 1490/96 <sup>(5)</sup>) and Taiwan (Council Regulation (EC) No 1728/1999 <sup>(6)</sup>). Measures against the Republic of Korea were repealed in August 1999 (Regulation (EC) No 1728/1999).
- (5) The Commission officially advised the complainant Community producers, exporting producers and importers known to be concerned, the representatives of the

exporting countries as well as Community users and suppliers of the initiation of the proceeding. The parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

- (6) A number of exporting producers in the countries concerned, as well as complainant Community producers, Community users and importers made their views known in writing. All parties, who so requested within the above time limit and indicated that there were particular reasons why they should be heard, were granted a hearing.
- (7) In view of the large number of exporting producers in Indonesia, the Commission applied sampling techniques in accordance with Article 17 of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation'). The Commission received detailed information from a representative sample of exporting producers in Indonesia, as set out in recitals 18 and 19.

The Commission also received replies to its questionnaire from one exporting producer in Australia and four exporting producers in Thailand.

They also received replies from seven complaining Community producers and from two users in the Community which were considered to be meaningful and complete.

- (8) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest, and carried out verifications at the premises of the following companies:

**(a) Complainant Community producers****Germany**

- DuPont De Nemours GmbH, Frankfurt
- Trevira GmbH & Co KG, Frankfurt

**Ireland**

- Wellman International Ltd, Mullagh, Kells, Co. Meath

**Spain**

- Catalana de Polimers, Barcelona

**Italy**

- Montefibre SpA, Milan

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ L 128, 30.4.1998, p. 18.

<sup>(3)</sup> OJ C 111, 22.4.1999, p. 7.

<sup>(4)</sup> OJ C 111, 22.4.1999, p. 3.

<sup>(5)</sup> OJ L 189, 30.7.1996, p. 13.

<sup>(6)</sup> OJ L 204, 4.8.1999, p. 3.

(b) *Exporting producers in the exporting countries*

## Australia

- Leading Synthetics Pty Ltd, Campbellfield, Melbourne

## Indonesia

- PT. Indorama Synthetics Tbk, Jakarta
- PT. Panasia Indosyntec, Bandung

## Thailand

- Indo Poly (Thailand) Ltd, Nakornpathom
- Teijin Polyester (Thailand) Ltd, Bangkok
- Teijin (Thailand) Ltd, Bangkok
- Tuntex (Thailand) Public Co., Ltd, Bangkok.

- (9) The investigation of dumping covered the period 1 April 1998 to 31 March 1999 (hereinafter 'the investigation period' or 'IP'). The examination of injury covered the period from 1996 up to the end of the investigation period.

**B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT****1. Product under consideration**

- (10) The product under consideration is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00. It is commonly referred to as polyester staple fibres (PSF).
- (11) This product is a basic material used at various stages of the manufacturing process of textile products, depending on the nature of textiles concerned. Around 60 % of the Community consumption of PSF is used for spinning, that is to say manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool. Approximately 25 % is used for filling, that is to say the stuffing or padding of certain textile goods (for example cushions, car seats, jackets) while the remaining 15 % is used for other non-woven applications, in particular the production of carpets. The product in question is sold in different product types which can be identified through different specifications (e.g. denier or decitex, lustre, silicon treatment). It is also sold as either first quality or as sub-standard qualities. Although the potential specific range of uses and the quality of the various types of PSF sold may differ, this does not entail any significant differences in the basic physical characteristics of the different types. They are therefore considered as one product for the purpose of this investigation.

**2. Like product**

- (12) The Commission found that there were no differences in the basic physical characteristics and uses of the PSF imported into the Community originating in Australia, Indonesia and Thailand and the PSF produced by the complainant Community producers and sold on the Community market. It was also found that there was no difference between the PSF produced in Australia, Indonesia and Thailand and exported to the European Community and that sold on the domestic markets of those countries. It was therefore concluded that both the PSF produced and sold by the Community industry on the Community market and the PSF produced and sold on the domestic markets of Australia, Indonesia and Thailand were, within the meaning of Article 1(4) of the basic Regulation, alike to the PSF imported into the Community from the three countries subject to investigation.

**C. SAMPLING IN INDONESIA**(a) *Sampling*

- (13) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the PSF sector. The Indonesian authorities and the Indonesian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

(b) *Pre-selection of cooperating companies*

- (14) Seven companies in Indonesia came forward and provided the requested information within the three-week period. These companies were initially considered as cooperating and were taken into account in the selection of the sample.

The companies, which made themselves known within the three-week period, represented up to 100 % of total imports from Indonesia into the Community.

- (15) The cooperating companies which were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.
- (16) Companies, if any, which did not make themselves known within the three-week period, were considered as non cooperating companies.

(c) *Selection of the sample*

- (17) Initially, three Indonesian companies were chosen to constitute the sample in consultation with the Indonesian association of exporting producers. The Indonesian association proposed the replacement of two initially chosen companies by two others which, however, could not be considered more representative than those initially chosen. The Indonesian authorities were informed accordingly.
- (18) Questionnaires were sent for completion to all three initially sampled companies. One of these companies provided an unsatisfactory response, which was not in accordance with the basic information it had previously provided for the sampling exercise and a second did not provide a completed response within a twice-extended deadline. In consequence, these two companies were informed that they were no longer considered to be cooperating with the investigation and that the result of the investigation may be less favourable to them than if they had cooperated.
- (19) Given the degree of non-cooperation by companies initially selected in the sample, the only other Indonesian cooperating company, which had provided a satisfactory questionnaire response, with a view to being granted individual examination, was added to the sample (see recital 21 below). The Indonesian association of exporting producers and the Indonesian authorities were informed and raised no objection.
- (20) The two companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin and individual duty rate.

(d) *Individual examination within the context of sampling*

- (21) The Commission received two requests for individual examination within the deadline set for this purpose, as required by Article 17(3) of the basic Regulation.

However, only one of these requests was accompanied by a satisfactory reply to the questionnaire and the company concerned was the company added to the sample following non-cooperation by two initially sampled companies as mentioned in recital 19.

- (22) The other exporting producer, which also requested individual examination, failed to provide a questionnaire response within the stated deadline and therefore, could not be granted individual examination. However, it was still considered to be a cooperating company, as it had provided satisfactory basic information for the constitution of the sample and had not been included in the sample.

**D. DUMPING**

- (23) This section first explains the general methodology used to establish whether the imports into the Community of the product under consideration have been dumped (recitals 24 to 35). Specific issues raised by the investigation for each country concerned are then described in recitals 36 to 63.

**1. Normal value**

- (24) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of PSF to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

This assessment revealed that all investigated exporting producers had representative sales of PSF on their domestic markets during the investigation period.

- (25) With regard to the examination on a product type basis, and as indicated in recital 12, the Commission considered domestically sold and exported product types, which had similar quality, denier, lustre, silicon treatment and use, as being directly comparable.

Certain exporting producers claimed that PSF of sub-standard quality should be further distinguished in different sub-qualities. However, these claims were not supported by any generally recognised criteria on how to differentiate between substandard qualities and therefore, these claims were provisionally rejected.

- (26) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

- (27) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the investigation period:

- (a) for those product types where more than 80 % of sales on the domestic market (by volume) were not below unit costs and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question;

(b) for those product types where at least 10 %, but no more than 80 % of sales on the domestic market (by volume) were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question;

(c) for those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

(28) When the requirements set out in recitals 26 and 27(a) and (b) above were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country, during the investigation period, as set out in Article 2(1) of the basic Regulation.

(29) For product types falling under (c) above, as well as for the product types which were not sold in representative quantities on the domestic market, as mentioned in recital 26, normal value had to be constructed.

To construct normal value pursuant to Article 2(6) of the basic Regulation, the selling, general and administrative (SG & A) expenses incurred and weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of manufacturing during the investigation period.

## 2. Export price

(30) As all exports of the product under consideration by all exporting producers were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

## 3. Comparison

(31) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

Accordingly, allowances for differences in transport costs, insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, packing costs, credit costs, after-sales costs, commissions, discounts and rebates have been granted where applicable and justified.

The comparison between normal value and export price was made on an ex-factory basis.

### (a) Dumping margin for companies investigated

(32) According to Article 2(11) of the basic Regulation, the weighted average normal value by product type, as determined in recital 27, was compared with the weighted average export price, as determined under recital 30.

### (b) Dumping margin for cooperating companies not in the sample

(33) In the case of Indonesia, the dumping margin for exporting producers, which made themselves known in accordance with Article 17 of the basic Regulation but were not examined individually, has been established on the basis of the weighed average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.

### (c) Dumping margin for non-cooperating companies

(34) For those exporting producers which neither replied to the Commission's questionnaire (see recital 19) nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

(35) For each country subject to investigation, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics in order to establish the overall level of cooperation:

(a) for each of those countries concerned for which it was found that the overall level of cooperation was high, it was considered appropriate to set a residual dumping margin for the non-cooperating companies at the level of the highest dumping margin established for a cooperating company in the country in question or at the level of the sole cooperating company. This approach was taken as there is no reason to believe that any non-cooperating exporting producer in any country concerned would have dumped at a lower level than a cooperating exporting producer in the same country;

- (b) for each of those countries concerned for which it was found that the overall level of cooperation was low, it was considered appropriate to set a residual dumping margin for the non-cooperating companies at a level higher than the highest dumping margin established for a cooperating company. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the country concerned generally having dumped at a higher level than any cooperating exporting producer in the same country.

The above approach with regard to non-cooperating companies was also considered necessary in order to prevent non-cooperating companies benefitting from their noncooperation.

#### 4. Specific issues raised by the investigation with regard to the establishment of dumping for each of the countries concerned

##### (a) Australia

###### (i) Normal value

- (36) The cooperating Australian exporting producer made substantial sales of the product concerned to a related user on the domestic market. Pursuant to Article 2(1) of the basic Regulation, these sales were not considered to be in the ordinary course of trade and were not used to establish normal value.

Where necessary, the manufacturing costs and SG & A expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal value.

In all other aspects, normal value was established according to the general methodology outlined in recitals 24 to 29. On this basis, normal value was established by reference to domestic sales prices or constructed values, depending on the product types.

###### (ii) Export price

- (37) All sales of the product concerned made to the Community market, by the exporting Australian producer were made to independent customers. The export prices for the company were established according to the general methodology outlined in recital 30, i.e. on the basis of the prices actually paid or payable.

##### (iii) Comparison

- (38) According to the general methodology outlined in recital 31, allowances for differences in transport costs, insurance costs, handling, loading and ancillary costs, credit costs and commissions have been granted where applicable and justified.
- (39) The Australian exporting producer claimed an adjustment for differences in packing costs because for some domestic clients the goods are delivered on pallets. This request was however rejected as the pallets were invoiced separately to the customer.
- (40) The Australian exporting producer claimed allowances on its normal value for differences in the costs for providing warranties and guarantees as well as for technical assistance and services. The company did not give a satisfactory explanation with regard to the nature of its claims and also did not provide satisfactory explanations or documentary evidence to support the amounts of the adjustments claimed. Furthermore, the company was not able to demonstrate that the factors concerned led to different prices being charged to customers on the domestic and export markets. The claim was consequently rejected.

##### (iv) Dumping margin

- (41) The provisional dumping margin was established as described in recitals 32 to 35.
- (42) It was found that the sole cooperating Australian exporting producer accounted for the totality of exports to the Community from Australia. The residual dumping margin for Australia was therefore established as described in recital (35)(a) at the level of the dumping margin determined for the sole cooperating company, Leading Synthetics Pty Ltd.
- (43) The provisional dumping margin expressed as a percentage of the cif import price at the Community border duty unpaid is 19.6 %.

##### (b) Indonesia

###### (i) Normal value

- (44) One of the two investigated Indonesian exporting producers made some sales of the product concerned to a related user on the domestic market. Pursuant to Article 2(1) of the basic Regulation, these sales were not considered to be in the ordinary course of trade and were not used to establish normal value.

Where necessary, the manufacturing costs and SG & A expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal value.

In all other aspects, normal value was established according to the general methodology outlined in recitals 24 to 29. For both exporting producers, depending on the product types, normal value based on domestic sales prices and constructed values have been determined.

(ii) *Export price*

- (45) All sales of the product concerned made to the Community market, by the two investigated Indonesian exporting producers, were made to independent customers. The export prices for the companies were established according to the general methodology outlined in recital 30, i.e. on the basis of the prices actually paid or payable.

(iii) *Comparison*

- (46) According to the general methodology outlined in recital 31, allowances for differences in discounts, transport costs, insurance costs, handling, loading and ancillary costs, credit costs and commissions have been granted where applicable and justified.

(iv) *Dumping margin*

- (47) The provisional dumping margins for the two investigated exporting producers were established as described in recital 32.
- (48) For cooperating exporting producers not included in the sample (see recitals 13 to 22) a dumping margin was established on the basis of the weighted average by volume of the dumping margins of the two sampled companies.
- (49) Furthermore, as indicated in recital 18, two Indonesian exporting producers, selected in the initial sample, failed to cooperate, with the investigation after the selection of the sample was completed. These companies represent around 30 % of the exports of the product under consideration to the Community. Therefore, it was considered appropriate to establish a residual dumping margin as described in recital 35(b) at a level higher than the highest dumping margin determined for a cooperating company in the sample. Accordingly, the residual dumping margin for Indonesia was established on the basis of the weighted average by volume of the two

product types with the highest specific dumping margin established and accounting for a representative export volume to the Community.

- (50) The provisional dumping margins expressed as a percentage of the cif import price at the Community border duty unpaid are the following:

Sampled exporting producers investigated:

|                                |        |
|--------------------------------|--------|
| — PT. Indorama Synthetics Tbk: | 5,2 %  |
| — PT. Panasia Indosyntec:      | 14,8 % |

Cooperating exporting producers not included in the sample:

|                                                 |         |
|-------------------------------------------------|---------|
| — PT. GT Petrochem Industries Tbk:              | 13,7 %  |
| — PT. Susilia Indah Synthetic Fiber Industries: | 13,7 %  |
| — PT. Teijin Indonesia Fiber Corporation Tbk:   | 13,7 %  |
| Non-cooperating exporting producers:            | 20,8 %. |

(c) *Thailand*

- (51) In total, four exporting producers made themselves known and cooperated in the investigation. Two of these exporting producers were related.

(i) *Normal value*

- (52) Normal value was established according to the general methodology outlined in recitals 24 to 29. For product types falling under recital 27(c), as well as for one product type, sold by one company, where the volume of domestic sales was not representative when compared with the volume of that type sold for export to the European Community, normal value had to be constructed. In all other cases, normal value was based on domestic sales prices.

Where necessary, the manufacturing costs and SG & A expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal values.

- (53) One cooperating company requested that a certain product type should be excluded from the dumping margin calculation on the grounds that its costs and prices were affected by a start-up phase, or if that was not accepted, that a suitable adjustment should be granted. However, the company did not suggest any appropriate adjustment. As the value of these sales represented more than 59 % of total export sales of the product concerned to the European Community during the investigation period, it is not considered appropriate to exclude them from the dumping margin calculation.

In these circumstances, in accordance with Article 2(5) of the basic Regulation, as the start-up phase extended beyond the investigation period, the average costs of production taken into account, for this type of production, for the investigation period, were those applicable at the end of the start-up phase, where the appropriate information had been submitted prior to the verification visit and within three months of the initiation of the investigation.

(ii) *Export price*

- (54) All sales of the product under consideration made to the Community market, by the four cooperating Thai exporting producers, were made to independent customers. The export prices for the companies were established according to the general methodology outlined in recital 30, i.e. on the basis of the prices actually paid or payable.

(iii) *Comparison*

- (55) According to the general methodology outlined in recital 31, allowances for differences in transport costs, insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, packing costs, credit costs, after-sales costs, commissions, discounts and rebates have been granted where applicable and justified.
- (56) All four cooperating exporting producers requested a level of trade adjustment. However, for one producer, the basis of the claim was considered inappropriate, for a second, the company did not demonstrate consistent and distinct differences in functions and prices for the different levels of trade in the domestic market, which were not already included in other allowances claimed. Moreover, no exporting producer provided a satisfactory justification for the amount of the level of trade adjustment claimed. In these circumstances, no level of trade adjustment was granted at this stage.
- (57) A currency conversion allowance was claimed by two exporting producers on the grounds that there had been a sustained downward movement in the export invoice currency against the accounting currency during the investigation period. However, it was found that there was a fluctuating exchange rate during the investigation period rather than a sustained movement and therefore, the claim was rejected.
- (58) One company made a late claim for a duty drawback allowance, i.e. almost two months after the deadline for submissions of completed questionnaires. In addition, the company did not provide the detailed legislative documentation requested in the questionnaire and did not demonstrate that the duties had actually been refunded. In these circumstances, no allowance was granted.
- (59) Three companies claimed allowances for technical assistance provided by in-house staff. However, these claims were rejected on the grounds that the technical assistance was not provided for by law or in the sales contracts reviewed, evidence was not provided that the

cost was an after-sales cost and the technical assistance provided was not demonstrated to affect prices.

(iv) *Dumping margin*

- (60) The provisional dumping margins for the four investigated exporting producers were established as described in recital 32.
- (61) It is the consistent practice of the Commission to establish one single weighted average dumping margin for related companies. This is because determining individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related producers to channel their exports to the Community through the company with the lowest individual dumping margin. In accordance with this practice, the two related exporting producers belonging to the same group were attributed one single dumping margin by first calculating a dumping margin per company and then establishing a weighted average of these dumping margins.
- (62) It was found that the overall cooperation in Thailand was very high (up to 100 %). The residual dumping margin for Thailand, expressed as a percentage of the cif duty unpaid Community border import price, was therefore established on the basis of recital 35(a) above at the level of the highest dumping margin determined for a cooperating company.
- (63) The provisional dumping margins as established, expressed as a percentage of the cif import price at the Community border duty unpaid are the following:
- |                                      |         |
|--------------------------------------|---------|
| — Indo Poly (Thailand) Ltd:          | 15,5 %  |
| — Teijin Polyester (Thailand) Ltd:   | 36,6 %  |
| — Teijin (Thailand) Ltd:             | 36,6 %  |
| — Tuntex (Thailand) Public Co., Ltd: | 35,3 %  |
| Non-cooperating exporting producers: | 36,6 %. |

## E. INJURY

### 1. Definition of the Community industry

- (64) Fourteen producers are known to produce PSF in the Community. Nine of them are complainants in the present case, but only eight initially replied to the questionnaire. In addition, one producer of these eight did not reply to the deficiency letters sent by the Commission. Consequently it was considered that two complainant Community producers did not cooperate in the investigation. On this basis, the investigation showed that the share of the total Community production held by the seven cooperating complainant Community producers, during the IP represented around 85 % of total Community production of PSF.

Therefore, the seven producers constitute the Community industry within the meaning of Article 4(1) of the basic Regulation. Hereinafter, the cooperating Community producers are referred to as the 'Community industry'.

## 2. Analysis of the situation in the Community PSF market

(a) Consumption in the Community.

- (65) Given that no cooperation could be obtained with respect to information on the sales volume of the non-complaining Community producers, the Community consumption indicated in the table below, was based on the combined volume of sales made by the Community industry, the import volume from the countries concerned by the present investigation, the Eurostat information on imports from other third countries and estimates of the volume of sales of the non cooperating Community producers.

| Consumption        | 1996      | 1997      | 1998      | IP        |
|--------------------|-----------|-----------|-----------|-----------|
|                    | 454 470 t | 518 328 t | 585 164 t | 578 967 t |
| Index (1996 — 100) | 100       | 114       | 129       | 127       |

(b) Imports of PSF into the Community from the countries concerned

(i) *Cumulative assessment of imports*

- (66) The Commission considered whether imports of PSF originating in the countries concerned should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation. The examination showed that:

- (a) the margin of dumping relating to each country, as shown above, was above *de minimis*;
- (b) the volume of imports from each country was not negligible when compared to Community consumption;
- (c) the analysis of the conditions of competition between imported PSF and the Community product and the conditions of competition between imported PSF indicated that,
  - as indicated in recital imported PSF from all exporting countries and Community produced PSF are like products,
  - imported PSF from all exporting countries was sold through similar sales channels to the same customers
  - imported PSF from all exporting countries was sold at similar prices;
- (d) the investigation showed that the exporting countries concerned sold PSF directly to unrelated customers, such as textile manufacturers, cushion and quilt manufacturers, and to PSF merchants. The investigation showed that the Community industry was selling the like product through the same sales channels and to the same categories of customers, although most of their sales were made to end-users.

Accordingly, there were sufficient grounds for cumulating the imports from the abovementioned countries.

(ii) *Volume of imports*

- (67) Between 1996 and the IP imports originating from the countries concerned developed as set out below:

| Imports            | 1996    | 1997     | 1998     | IP       |
|--------------------|---------|----------|----------|----------|
| Australia          | 62 t    | 1 248 t  | 11 254 t | 11 799 t |
| Index (1996 — 100) | 100     | 2 007    | 18 093   | 18 969   |
| Indonesia          | 4 696 t | 12 238 t | 25 276 t | 22 871 t |
| Index (1996 — 100) | 100     | 261      | 538      | 487      |
| Thailand           | 2 790 t | 3 093 t  | 13 359 t | 17 241 t |
| Index (1996 — 100) | 100     | 111      | 479      | 618      |
| Total              | 7 549 t | 16 579 t | 49 888 t | 51 911 t |
| Index (1996 — 100) | 100     | 220      | 661      | 688      |

Source: Comext 2.

(iii) *Market share of imports concerned*

- (68) The market share by volume held by imports from the countries concerned increased considerably during the period considered.

| Market share       | 1996   | 1997   | 1998   | IP     |
|--------------------|--------|--------|--------|--------|
| Australia          | 0,01 % | 0,24 % | 1,92 % | 2,04 % |
| Index (1996 — 100) | 100    | 1 760  | 14 052 | 14 903 |
| Indonesia          | 1,03 % | 2,36 % | 4,32 % | 3,95 % |
| Index (1996 — 100) | 100    | 228    | 418    | 383    |
| Thailand           | 0,61 % | 0,60 % | 2,28 % | 2,98 % |
| Index (1996 — 100) | 100    | 97     | 372    | 485    |
| Total              | 1,66 % | 3,20 % | 8,53 % | 8,97 % |
| Index (1996 — 100) | 100    | 193    | 513    | 540    |

The trend shown in the tables above confirms the sharp increase of the imports from the countries concerned in the Community market, both in absolute terms and in terms of market share.

(iv) *Average price of imports*

- (69) From 1996 to the IP, sales prices in the Community market of PSF imported from the countries concerned followed a continuously decreasing tendency throughout the period considered, as indicated in the following table:

| Average import price evolution<br>Index (1996 — 100) | 1996 | 1997 | 1998 | IP |
|------------------------------------------------------|------|------|------|----|
| Australia                                            | 100  | 56   | 52   | 50 |
| Indonesia                                            | 100  | 92   | 85   | 80 |
| Thailand                                             | 100  | 92   | 75   | 70 |
| Total                                                | 100  | 89   | 82   | 78 |

(v) *Price undercutting*

- (70) For the determination of price undercutting, the Commission analysed data referring to the IP. Price undercutting was established on the basis of a comparison of the export price with prices charged by the Community industry.

The sales prices of the Community industry considered were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding transport costs. As the Community industry was selling mainly to end-users whereas the exporting producers were selling to both end-users as well as distributors/wholesalers, adjustments were made to the exporting producers' selling prices (cif Community frontier) to take account these differences in the level of trade as well as of customs duties paid. All prices were compared after excluding discounts and rebates.

Weighted average prices were compared for similar product types of PSF, as defined in the Commission's questionnaires. The weighted average price undercutting margins, expressed as a percentage of the Community industry's average selling prices, were 34,7 % for Indonesia, 21 % for Australia and 32,7 % for Thailand.

### 3. Economic situation of the Community industry

(a) *Preliminary remarks*

- (71) The examination of the injury trends covered the period from 1996 up to the end of the IP. It should be noted that during this period anti-dumping measures were in force against the Republic of Korea, Taiwan and Belarus with a resulting effect on the Community industry.

(b) *Production, capacity and capacity utilisation*

(72)

|                      | 1996      | 1997      | 1998      | IP        |
|----------------------|-----------|-----------|-----------|-----------|
| Production           | 312 917 t | 330 577 t | 322 403 t | 315 917 t |
| Index (1996 - 100)   | 100       | 106       | 103       | 101       |
| Capacity             | 384 500 t | 376 800 t | 358 300 t | 359 400 t |
| Index (1996 - 100)   | 100       | 98        | 93        | 93        |
| Capacity utilisation | 81,38 %   | 87,73 %   | 89,98 %   | 87,90 %   |
| Index (1996 - 100)   | 100       | 108       | 111       | 108       |

As illustrated in the table above, production of the Community industry was by and large stable.

- (73) As regards capacity, it should be noted that the production facilities for PSF are also used in the production of other products not concerned by the present proceedings, e.g. tow and tops. As a consequence, the capacity attributed to the production of PSF was determined on the basis of the actual production of the various products including PSF. On this basis, capacity decreased by 7 %.

The decrease in the capacity of production can be attributed to the fact that the Community industry closed certain production lines and factories or converted them to the production of other products not covered by this investigation with the aim of obtaining a more efficient capacity utilisation.

- (74) The rate of utilisation of the production capacity, as shown in the above table, increased by 8 % during the period considered. This increase, however, is the direct result of the reduction of the capacity of production.

(c) *Sales volume of the Community industry*

- (75) The volume of PSF sold by the Community industry on the Community market decreased by 6 % during the period considered, as shown in the table below.

| Sales              | 1996      | 1997      | 1998      | IP        |
|--------------------|-----------|-----------|-----------|-----------|
|                    | 308 851 t | 319 235 t | 294 718 t | 291 013 t |
| Index (1996 — 100) | 100       | 103       | 95        | 94        |

This trend indicates that the sales made by the Community industry did not follow the trend in consumption, which increased by 27 % during that period, as mentioned in recital 65. In fact, sales volume only roughly followed the trend of consumption between 1996 and 1997 when it increased by 3 % whereas consumption by 14 %. Since then, the trend in sales volume fell continuously up to the IP.

(d) *Average sales price and price evolution*

- (76) The weighted average prices of the product concerned sold by the Community industry on the Community market showed a considerable decrease over the period considered. As reported in the table below, the average price fell by 11 % during that period.

| Average Community industry price evolution | 1996 | 1997 | 1998 | IP |
|--------------------------------------------|------|------|------|----|
| Index (1996 — 100)                         | 100  | 93   | 93   | 89 |

The investigation has shown that PSF prices are also influenced by the evolution of the prices of the basic raw materials, e.g. pure terephthalic acid (PTA), Dimethylterephthalate (DMT) and Glycol which represent between 60 and 70 % of the cost of production of the finished PSF.

(e) *Market share*

- (77) The development of sales volume compared to that of Community consumption shows that the market share held by the Community industry decreased significantly during the period considered. The table below indicates the development.

| Market share       | 1996    | 1997    | 1998    | IP      |
|--------------------|---------|---------|---------|---------|
|                    | 67,96 % | 61,59 % | 50,37 % | 50,31 % |
| Index (1996 — 100) | 100     | 91      | 74      | 74      |

The above table indicates that the decreasing trend was continuous during the period examined. However, the loss in market share was relatively limited between 1996 and 1997, where 6,4 percentage points were lost. In contrast, the decline between 1996 and the IP was spectacular with 18 percentage points lost.

(f) *Stocks*

- (78)
- | Stocks             | 1996     | 1997     | 1998     | IP       |
|--------------------|----------|----------|----------|----------|
|                    | 30 084 t | 28 033 t | 36 801 t | 36 780 t |
| Index (1996 — 100) | 100      | 93       | 122      | 122      |

As shown in the table above, stocks significantly increased by 22 % between 1996 and the IP.

(g) *Profitability*

- (79) In 1996, the Community industry incurred a weighted average loss of 4 %, expressed as a percentage of net sales.

| Profitability | 1996   | 1997   | 1998 | IP   |
|---------------|--------|--------|------|------|
|               | (%)    |        |      |      |
|               | - 4,04 | - 0,41 | 6,34 | 6,73 |

Subsequently, as shown in the table above, its financial situation improved, especially during 1998 (profit of 6,34 %). This improvement was in fact the result of the restructuring processes undertaken by the Community industry, aiming at more efficient production processes and using certain product lines for more specialised products with higher profit margin. Nevertheless, the above profit margin should be seen in the light of a profit rate of 10 % which is considered to be the minimum profit rate that would ensure the viability of this type of industry in the long term.

It should also be mentioned that the profit achieved during the IP was mainly influenced by the performance of the specialities sector (18,85 %). In the non-woven regular and hollow fibres, where imports are particularly present, the profit only reached 0,86 % and 1,37 % respectively.

Furthermore, the investigation showed that the restructuring of the Community industry resulted in a decrease in SG & A costs by 15,3 % from 1996 to the IP. It is also important to note that the prices of the raw materials decreased significantly over the period considered: according to information made available during the verification, PTA prices decreased by 35,6 % and Glycol prices by 14,3 % over the period considered. The combined effect of the price reductions of these raw materials was estimated to have led to a 31 % decrease of the cost of manufacturing of PSF.

Both of the abovementioned factors, i.e. the SG & A reduction and the decrease of the raw materials prices, suggest that the cost of production was reduced faster than the decrease of the sales prices, allowing thus the Community industry to return to profits from 1998 onwards. In fact, it is considered that the current profit is the maximum that can be achieved given the price pressure from imports. The increased efficiency of the industry cannot be improved upon in the short term.

(h) *Investments*

(80)

| Investments        | 1996   | 1997   | 1998   | IP     |
|--------------------|--------|--------|--------|--------|
| (Thousand ECU)     | 17 652 | 10 177 | 19 508 | 15 980 |
| Index (1996 — 100) | 100    | 58     | 111    | 91     |

Yearly investments made by the Community industry were important during the period examined, as indicated in the table above. It should be noted that this significant effort represents, for the most part, investments in replacement machinery as part of an overall restructuring programme.

(i) *Employment*

- (81) Due to a certain degree of reduction in production capacity and restructuring, employment of the sector of the product concerned decreased by 20 %, as shown in the table below.

| Employment         | 1996  | 1997  | 1998  | IP    |
|--------------------|-------|-------|-------|-------|
|                    | 3 111 | 2 817 | 2 475 | 2 474 |
| Index (1996 — 100) | 100   | 91    | 80    | 80    |

(j) *Conclusion on the situation of the Community industry*

- (82) The above analysis has revealed that during the period considered some economic indicators such as capacity (- 7 %), sales volume (- 6 %), sales prices (- 11 %), market share (- 26 %), stocks (+ 22 %), investments (- 9 %) and employment (- 20 %) showed negative trends, in particular between 1997 and the IP.
- (83) In the meantime, production increased marginally by 1 %. Following a reduction in the capacity of production, capacity utilisation increased by 8 %. Profitability which was negative in 1996 and 1997 became positive in 1998 and in the IP without reaching a level that was considered satisfactory.
- (84) The investigation has also shown that the Community industry has suffered significant price pressure. Indeed, substantial price undercutting (40 % on average) has been established for imports originating from the countries concerned.
- (85) In the light of the foregoing analysis, in particular the high loss in market share, the decrease in sales price, the Commission has concluded that the Community industry has suffered injury which is classified as material.

**F. CAUSATION****1. Introduction**

- (86) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from Indonesia, Thailand and Australia. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors in order to ensure that injury caused by other factors was not wrongly attributed to the dumped imports subject to investigation.

**2. General**

- (87) In the recent past, the Community Institutions have found that the Community industry suffered injury and that this injury was caused by dumped imports from a number of countries among which Taiwan and Belarus. This industry has therefore been weakened since the beginning of the present investigation and was seen to be still vulnerable during the period under examination.

**3. Effect of the dumped imports**

- (88) The present investigation has shown that imports from the countries concerned onto the Community market significantly increased during the period examined, namely by almost seven times. In 1996, 7 549 tonnes of PSF were imported from the countries concerned whereas the volume imported during the IP was 51 911 tonnes. As a consequence of the above import development the market share held by the countries concerned increased from 1,66 % in 1996 up to 8,97 % during the IP. During the same period, the average sales prices of these imports decreased by 22 %. They undercut those of the Community industry by 40 %.
- (89) These developments took place at a moment when the Community industry was particularly vulnerable recovering after a long period of dumped imports from other third countries.

- (90) This resulted in a situation in which the Community industry, instead of benefiting from the re-establishment of fair trading conditions following the imposition of antidumping measures with respect to imports from other third countries, faced further deterioration. The injury investigation concluded, as indicated above, that an overall worsening of the situation in that industry existed with major decreases in market share (- 26 %), sales volume (- 6 %) and sales prices (- 11 %).
- (91) It should also be mentioned that the major losses suffered by the Community industry occurred for those product types of PSF mainly imported from the said countries. Indeed, imports of woven PSF products represent around 50 % and of regular nonwoven products about 29 % of all imports of PSF from the countries concerned. For these particular product types, the profits realised by the Community industry was 3,1 % and 0,86 % respectively, whereas the average profits for more specialised products, which are imported to a lesser degree, was about 18,85 %.
- (92) The above appears to be particularly relevant as imported PSF and PSF produced in the Community are like products, offered through similar sales channels in the Community market. Therefore the increasing presence of high volumes of dumped PSF imported from the countries concerned has had a significant impact on that market overall. Furthermore, the market being transparent, the effect of the low prices offered for PSF imported from the countries concerned and well known to all potential customers in the Community market, had a major impact on the level of prices of the Community industry.
- (93) Based on the above, it was concluded that the low-priced dumped imports had a significant negative impact on the situation of the Community industry.

#### 4. Impact of other factors

##### (a) Development of consumption

- (94) As mentioned in recital 65, from 1996 to the IP, consumption in the Community market increased by 27 % indicating a fast growing PSF market. Therefore, consumption cannot be held responsible for the injurious situation suffered by the Community industry.

##### (b) Imports of PSF from other third countries

- (95) Total imports of PSF onto the Community market from countries other than Indonesia, Thailand and Australia developed as follows:

| Imports                            | 1996      | 1997      | 1998      | IP        |
|------------------------------------|-----------|-----------|-----------|-----------|
| Taiwan, South Korea <sup>(1)</sup> | 38 541 t  | 58 198 t  | 102 636 t | 103 441 t |
| Index (1996 — 100)                 | 100       | 153       | 268       | 271       |
| Belarus <sup>(2)</sup>             | 4 463 t   | 243 t     | 35 t      | 35 t      |
| Index (1996 — 100)                 | 100       | 5         | 1         | 0         |
| Other countries                    | 60 084 t  | 78 100 t  | 81 109 t  | 76 155 t  |
| Index (1996 — 100)                 | 100       | 130       | 135       | 127       |
| Total other imports                | 103 088 t | 136 541 t | 183 780 t | 179 615 t |
| Index (1996 — 100)                 | 100       | 132       | 178       | 174       |
| y/y difference                     |           | + 32 %    | + 35 %    | - 2 %     |

<sup>(1)</sup> PSF imported from Taiwan is subject to a 13,0 % definitive anti-dumping duty since September 1993.

PSF imported from Korea was subject to a 4,8 % definitive anti-dumping duty until August 1999.

<sup>(2)</sup> PSF imported from Belarus is subject to a 43,5 % definitive anti-dumping duty since July 1996.

| Average import price evolution<br>Index (1996 — 100) | 1996 | 1997 | 1998 | IT |
|------------------------------------------------------|------|------|------|----|
| Taiwan, South Korea                                  | 100  | 95   | 83   | 77 |
| Belarus                                              | 100  | 84   | 75   | 75 |
| Other countries                                      | 100  | 90   | 88   | 86 |
| Total (other imports)                                | 100  | 91   | 83   | 79 |

- (96) It should be underlined that the two major exporting countries, namely Taiwan and South Korea, are subject to an anti-subsidy investigation which was initiated in parallel to the present investigation. The anti-subsidy investigation concluded that imports from South Korea were not subsidised. However, it showed that the subsidised imports from Taiwan combined with the imports from the countries concerned by the present anti-dumping investigation contributed to the injury suffered by the Community industry.

An analysis of the development of import prices of South Korea and Taiwan reveals that they also contributed to the pressure exerted on prices in the Community. The information available shows that the average prices of imports from these countries fluctuated between those practised by the countries concerned by this proceeding and those of the Community industry. As far as imports from other third countries, their limited volume and their prices which were at the level of those of the Community industry, indicate that such imports did not contribute to the price deterioration noticed in the market.

On the basis of the above, it cannot be excluded that imports from South Korea and Taiwan onto the Community market did have an impact on the economic situation of the Community industry. However, taking into account the level and prices of these imports these cannot break the causal link between the imports from the countries concerned and the injurious situation suffered by the Community industry.

*(c) Export activity and other activities of the Community industry*

- (97) Exports to third countries have always represented a minor activity for the Community industry. From a level of around 9 % of total sales in 1996, exports decreased to a level of 5 % during the IP. The table below shows the volumes exported:

| Exports            | 1996     | 1997     | 1998     | IP       |
|--------------------|----------|----------|----------|----------|
|                    | 27 649 t | 29 200 t | 16 300 t | 14 854 t |
| Index (1996 — 100) | 100      | 106      | 59       | 54       |

Exports sales made by the Community industry nearly halved during the period considered. However, it is considered that these sales are limited as compared to total production of the Community industry. Consequently, any injury in terms of reduced production caused by a reduced export sales volume is thus very limited.

- (98) It has been argued that imports have increased at a time when the Community industry has reduced its production capacity by 7 %, which corresponds to a significant share of the import volume, making an increase in imports inevitable in order to satisfy demand. In this respect, it should be noted that the Community industry has still spare capacity. In addition, the decrease in capacity reflects only roughly half of the increase in imports from the countries concerned.

Furthermore, the investigation has shown that the capacity reduction was the result of the closure or conversion to other products of certain production sites, which could not operate economically in view of the low priced imports. Should measures in the present case not be imposed, further production site closures could occur. On the contrary, if fair trading conditions are restored, the Community industry would be able in the future to supply a bigger share of the Community market, considering its past record and the fact that certain production lines can be converted back to PSF products.

## **5. Conclusion on causation**

- (99) It cannot be excluded that factors other than dumped imports from the countries concerned, in particular the imports from other third countries which are subject to a parallel anti-subsidy investigation, contributed to the difficult state of the Community industry. However, the substantial increase in import volume from the countries concerned, the considerable degree of price decreases and price undercutting had material negative consequences on the situation of the Community industry. It was therefore concluded that these imports, taken in isolation, have caused material injury to the Community industry.

## **G. COMMUNITY INTEREST**

### **1. Introduction**

- (100) In order to reach its final conclusions the Commission examined, whether, despite the conclusions on injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21 (1) of the basic Regulation, the Commission considered the impact of measures for all parties involved in the proceedings.

### **2. Interest of the Community industry**

- (101) The Community industry has for almost a decade been suffering from low-priced imports of PSF. The objective of the eventual adoption of anti-dumping measures is to re-establish fair competition in the Community market between the Community producers and their exporting counterparts in third countries.

The Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its cost of production and to enhance its competitiveness in this price sensitive market. It has deployed particular efforts of rationalisation during the period examined. By way of example, one Community producer shut down two of his production facilities in an effort to reduce costs and to improve its productivity.

In view of the nature of the injury suffered by the Community industry, in particular the fact that it was prevented from recovering from the injurious situation caused by other dumped imports, the Commission considers that, in the absence of the imposition of anti-dumping measures, the further deterioration of the situation of the Community industry is quite probable. This could entail a further reduction in numbers employed and may ultimately lead to a reduction of the number of producers in the Community.

Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production, particularly as the market is rapidly growing. The adoption of anti-dumping measures would therefore be in the interest of the Community industry.

### 3. Impact on importers and users

- (102) The Commission sent questionnaires to 11 known importers unrelated to the exporting producers in the countries concerned, as well as to users of PSF in the Community. None of the importers answered the questionnaire sent by the Commission during the current investigation, whereas three users submitted their replies. Furthermore, two users' associations made submissions concerning this proceeding.
- (103) The analysis of the data submitted by the three user companies revealed that only one of them imported PSF from the countries concerned by this proceeding. This user argued that the particular type of PSF used in the production of its finished product is not produced by the Community industry and consequently any imposition of antidumping measures would jeopardise its profitability. The Commission however, based on the description of the PSF type imported by this user, established that at least three complaining Community producers offer this product in the market. In any event, the imposition of anti-dumping measures will not foreclose the Community to imports it will merely re-establish fair trading conditions. It was therefore considered that the argument put forward by this user could not be accepted.

Since no further evidence was provided by users concerning any potential disadvantage that the anti-dumping measures could bring to their business, any subsequent analysis was not performed.

- (104) One Community user association requested the exclusion of certain types of PSF allegedly not produced by the Community industry. This allegation was however not further substantiated by sufficient technical information. It was therefore not possible for the Commission to conclude on the validity of this argument.
- (105) On the basis of the above it can be concluded that the eventual imposition of antidumping measures against imports of PSF from the countries concerned would not imply a significant deterioration, if any, of the situation of the users.

### 4. Conclusion

- (106) On the basis of the above facts and considerations in particular, and having examined the arguments submitted by the Community industry and Community users of the product concerned, it was concluded, that there were no compelling reasons not to impose measures concerning imports from Indonesia, Australia and Thailand, in order to ensure competitive conditions of fair pricing and to revert the continuation of injury in the Community industry.

## H. PROVISIONAL ANTI-DUMPING MEASURES

- (107) In order to prevent further injury being caused by the dumped imports concerned before the end of the investigation, provisional anti-dumping measures should be adopted. These measures should take the form of *ad valorem* duties.

### 1. Injury elimination level

- (108) For the purpose of establishing the level of the provisional duties, account has been taken both of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry. In this respect it should be noted that the price undercutting margins calculated for all types of the like product were significantly higher than the relevant dumping margins. It follows that also the injury elimination level expressed as a percentage of the free-at-Community-frontier price would be higher than the respective dumping margins established for exporting producers. In this context, it is recalled that the injury elimination level is established on the basis of the difference between the export price and the cost of production of the Community producers increased by an amount of profit which could be expected in the absence of dumped imports, whereas the undercutting margin is established using the same export prices but a lower actual sales price of the Community industry.

### 2. Provisional measures

- (109) Since in all cases the dumping margin has been found to be lower than the price undercutting margins and therefore, in the present case, also lower than the injury elimination level, the provisional duties to be imposed should correspond to the dumping margins established, in conformity with Article 7(2) of the basic Regulation.

- (110) However, with regard to the parallel anti-subsidy proceeding, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 <sup>(1)</sup> (hereinafter 'the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping and from export subsidisation. In the present investigation, it was found that an anti-dumping duty should provisionally be imposed on imports of the product concerned originating in Australia, Indonesia and Thailand and therefore, it is necessary to determine whether, and to what extent, the subsidy and the dumping margins arise from the same situation.
- (111) In the parallel anti-subsidy proceeding it was found that in, *inter alia*, Indonesia and Thailand, the level of subsidisation was below the *de minimis* level and therefore, no countervailing duty should be imposed.
- (112) With regard to Australia, a provisional countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 12(1) of the basic anti-subsidy Regulation. All of the subsidy schemes investigated in Australia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, the subsidies could only affect the export price of the Australian exporting producer, thus leading to an increased margin of dumping. In other words, the provisional dumping margin established for the sole cooperating Australian producer is partly due to the existence of export subsidies. In these circumstances it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant subsidy and dumping margins provisionally established. Therefore, the provisional anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the provisional countervailing duty offsetting the effect of the export subsidies.
- (113) On the basis of the above, the provisional duty rates, expressed as a percentage of the CIF Community border price, customs duty unpaid are as follows:

| Country   | Company                                       | Rate of duty (%) |
|-----------|-----------------------------------------------|------------------|
| Australia | All companies                                 | 13,6             |
| Indonesia | P.T. Indorama Synthetics Tbk                  | 5,2              |
|           | P.T. Panasia Indosyntec                       | 14,8             |
|           | P.T. GT Petrochem Industries Tbk              | 13,7             |
|           | P.T. Susilia Indah Synthetic Fiber Industries | 13,7             |
|           | P.T. Teijin Indonesia Fiber Corporation Tbk   | 13,7             |
|           | All other companies                           | 20,8             |
| Thailand  | Indo Poly (Thailand) Ltd                      | 15,5             |
|           | Tuntex (Thailand) Public Co., Ltd             | 35,3             |
|           | All other companies                           | 36,6             |

- (114) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to, 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1.

- (115) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

#### I. FINAL PROVISION

- (116) In the interests of sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of synthetic fibres of polyesters, not carded, combed or otherwise processed for spinning, currently classifiable within CN code 5503 20 00, originating in Australia, Indonesia and Thailand.
2. The rate of the provisional anti-dumping duty for Australia has been adjusted to reflect the actual dumping margin remaining after the imposition of the countervailing duty as provisionally determined in Commission Regulation (EC) No 123/2000 <sup>(2)</sup>.
3. The rate of the provisional duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

| Country   | Company                                                                                                                              | Rate of (%) | TARIC additional code |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------|
| Australia | All companies                                                                                                                        | 13,6        | —                     |
| Indonesia | P.T. Indorama Synthetics Tbk<br>Graha Irama, 17th floor<br>Jl. H.R. Rasuna Said Blok X-1 Kav. 1-2<br>PO Box 3375<br>Jakarta 12950    | 5,2         | A051                  |
|           | P.T. Panasia Indosyntec<br>Jl. Garuda 153/74<br>Bandung 40184                                                                        | 14,8        | A052                  |
|           | P.T. GT Petrochem Industries Tbk<br>Exim Melati Building, 9th floor<br>Jl. M.H. Thamrin Kav. 8-9<br>Jakarta 10230                    | 13,7        | A053                  |
|           | P.T. Susilia Indah Synthetic Fiber Industries<br>Jl. Kh. Zainul Arifin Kompleks<br>Ketapang Indah<br>Blok B 1 No 23<br>Jakarta 11140 | 13,7        | A054                  |

<sup>(1)</sup> European Commission  
Trade Directorate-General  
Directorate C  
DM 24 — 8/38  
Rue de la Loi/Wetstraat 200  
B-1049 Brussels

<sup>(2)</sup> See page 3 of this Official Journal.

| Country  | Company                                                                                                                               | Rate of (%) | TARIC additional code |
|----------|---------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------|
|          | P.T. Teijin Indonesia Fiber Corporation Tbk<br>5th floor Mid Plaza 1<br>Jl. Jend. Sudiman Kav. 10-11<br>Jakarta 10220                 | 13,7        | A055                  |
|          | All other companies                                                                                                                   | 20,8        | A999                  |
| Thailand | Indo Poly (Thailand) Ltd<br>35/8 MOO 4, Tambol Khunkeaw<br>Amphur Nakhonchaisri<br>Nakornpathom 73120                                 | 15,5        | A056                  |
|          | Tuntex (Thailand) Public Co., Ltd<br>Room 1812, 18th floor<br>54 Sukhumvit 21 Road (Soi Asoke)<br>Klongtoey, Wattana<br>Bangkok 10110 | 35,3        | A057                  |
|          | All other companies                                                                                                                   | 36,6        | A999                  |

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

5. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

#### Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties may make known their views in writing and apply to be heard by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of its entry into force.

#### Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 20 January 2000.

For the Commission  
Pascal LAMY  
Member of the Commission

**COMMISSION REGULATION (EC) No 125/2000****of 20 January 2000****determining the world market price for unginned cotton and the rate for the aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

differences in product quality and the nature of offers and quotations; whereas these adjustments are specified in Article 2 of Regulation (EEC) No 1201/89;

Having regard to the Treaty establishing the European Community,

(3) Whereas application of the above rules gives the world market price for unginned cotton indicated hereunder;

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95 <sup>(1)</sup>,

(4) Whereas the second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95 stipulates that the advance payment rate for the aid is to be the guide price less the world market price and less a further amount calculated by the formula applicable when the guaranteed maximum quantity based on the revised production estimate for unginned cotton plus at least 7,5 %; Commission Regulation (EC) No 2606/1999 <sup>(6)</sup> fixes the production estimate for the 1999/2000 marketing year, and the relevant percentage increase; whereas the application of this method results in the fixing of the advance payment rate for each Member State at the levels set out below,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 <sup>(2)</sup> laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81, as last amended by Regulation (EC) No 1419/98 <sup>(3)</sup>, and in particular Articles 3, 4 and 5 thereof,

(1) Whereas Article 3 of Regulation (EC) No 1554/95 requires a world market price for unginned cotton to be periodically determined from the world market price determined for ginned cotton, using the historical relationship between the two prices as specified in Article 1 (2) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules for implementing the system of aid for cotton <sup>(4)</sup>, as last amended by Regulation (EC) No 1624/1999 <sup>(5)</sup>; whereas if it cannot be determined in this way it is to be based on the last price determined;

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The world market price for unginned cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at 22,225 EUR/100 kg.

(2) Whereas Article 4 of Regulation (EC) No 1554/95 requires the world market price for ginned cotton to be determined for a product of specific characteristics using the most favourable offers and quotations on the world market of those considered representative of the real market trend; whereas to this end an average is to be calculated of offers and quotations on one or more European exchanges for a cif product to a North European port from the supplier countries considered most representative as regards international trade; whereas these rules for determination of the world market price for ginned cotton provide for adjustments to reflect

2. The advance payment of the aid referred to in Article 5(3a), second subparagraph, of Regulation (EC) No 1554/95 is fixed at:

- 47,614 EUR/100 kg in Spain,
- 43,681 EUR/100 kg in Greece,
- 84,075 EUR/100 kg in other Member States.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

<sup>(1)</sup> OJ L 148, 30.6.1995, p. 45.

<sup>(2)</sup> OJ L 148, 30.6.1995, p. 48.

<sup>(3)</sup> OJ L 190, 4.7.1998, p. 4.

<sup>(4)</sup> OJ L 123, 4.5.1989, p. 23.

<sup>(5)</sup> OJ L 192, 24.7.1999, p. 39.

<sup>(6)</sup> OJ L 316, 10.12.1999, p. 36.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

  

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**COMMISSION REGULATION (EC) No 126/2000****of 20 January 2000****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 13 (2) thereof,

- (1) Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;
- (2) Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98 <sup>(4)</sup>;
- (3) Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

## ANNEX

**to the Commission Regulation of 20 January 2000 fixing the export refunds on cereals and on wheat or rye  
flour, groats and meal**

| (EUR/t)         |                            |                  | (EUR/t)         |                            |                      |
|-----------------|----------------------------|------------------|-----------------|----------------------------|----------------------|
| Product code    | Destination <sup>(1)</sup> | Amount of refund | Product code    | Destination <sup>(1)</sup> | Amount of refund     |
| 1001 10 00 9200 | —                          | —                | 1101 00 11 9000 | —                          | —                    |
| 1001 10 00 9400 | 01                         | 0                | 1101 00 15 9100 | 01                         | 46,00                |
| 1001 90 91 9000 | —                          | —                | 1101 00 15 9130 | 01                         | 42,75                |
| 1001 90 99 9000 | 03                         | 23,50            | 1101 00 15 9150 | 01                         | 39,50                |
|                 | 02                         | 0                | 1101 00 15 9170 | 01                         | 36,50                |
| 1002 00 00 9000 | 03                         | 57,50            | 1101 00 15 9180 | 01                         | 34,25                |
|                 | 02                         | 0                | 1101 00 15 9190 | —                          | —                    |
| 1003 00 10 9000 | —                          | —                | 1101 00 90 9000 | —                          | —                    |
| 1003 00 90 9000 | 03                         | 19,00            | 1102 10 00 9500 | 01                         | 87,00                |
|                 | 02                         | 0                | 1102 10 00 9700 | 01                         | 68,50                |
| 1004 00 00 9200 | —                          | —                | 1102 10 00 9900 | —                          | —                    |
| 1004 00 00 9400 | —                          | —                | 1103 11 10 9200 | 01                         | 15,00 <sup>(2)</sup> |
| 1005 10 90 9000 | —                          | —                | 1103 11 10 9400 | 01                         | 13,40 <sup>(2)</sup> |
| 1005 90 00 9000 | 03                         | 28,00            | 1103 11 10 9900 | —                          | —                    |
|                 | 02                         | 0                | 1103 11 90 9200 | 01                         | 15,00 <sup>(2)</sup> |
| 1007 00 90 9000 | —                          | —                | 1103 11 90 9800 | —                          | —                    |
| 1008 20 00 9000 | —                          | —                |                 |                            |                      |

<sup>(1)</sup> The destinations are identified as follows:

- 01 all third countries,
- 02 other third countries,
- 03 Switzerland, Liechtenstein.

<sup>(2)</sup> No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30.7.1992, p. 20).

**COMMISSION REGULATION (EC) No 127/2000**  
**of 20 January 2000**  
**fixing the export refunds on cereal-based compound feedingstuffs**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999<sup>(2)</sup>, and in particular Article 13(3) thereof,

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

- (4) Whereas furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export;
- (5) Whereas, however, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported;
- (6) Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;
- (7) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 51.

## ANNEX

**to the Commission Regulation of 20 January 2000 fixing the export refunds on cereal-based compound feedingsuffs**

Product code benefiting from export refund <sup>(1)</sup>:

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

(EUR/t)

| Cereal products <sup>(2)</sup>                                                                                                       | Amount of refund <sup>(2)</sup> |
|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| Maize and maize products:<br>CN codes 0709 90 60, 0712 90 19, 1005, 1102 20,<br>1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10 | 41,38                           |
| Cereal products <sup>(2)</sup> excluding maize and maize products                                                                    | 30,33                           |

<sup>(1)</sup> The product codes are defined in Sector 5 of the Annex to Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

<sup>(2)</sup> For the purposes of the refund only the starch coming from cereal products is taken into account.

Cereal products means the products falling within subheadings 0709 90 60 and 0712 90 19, Chapter 10, and headings Nos 1101, 1102, 1103 and 1104 (unprocessed and not reconstituted excluding subheading 1104 30) and the cereals content of the products falling within subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature. The cereals content in products under subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature is considered to be equal to the weight of this final product. No refund is paid for cereals where the origin of the starch cannot be clearly established by analysis.

**COMMISSION REGULATION (EC) No 128/2000**  
**of 20 January 2000**  
**fixing the maximum export refund on barley in connection with the invitation to tender issued in**  
**Regulation (EC) No 1701/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98 <sup>(4)</sup>, and in particular Article 4 thereof,

- (1) Whereas an invitation to tender for the refund and/or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1701/1999 <sup>(5)</sup>, as amended by Regulation (EC) No 2322/1999 <sup>(6)</sup>;
- (2) Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account

of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1701/1999, the maximum refund on exportation of barley shall be EUR 29,03/t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

<sup>(5)</sup> OJ L 201, 31.7.1999, p. 27.

<sup>(6)</sup> OJ L 280, 30.10.1999, p. 77.

**COMMISSION REGULATION (EC) No 129/2000**  
**of 20 January 2000**  
**fixing the maximum export refund on rye in connection with the invitation to tender issued in**  
**Regulation (EC) No 1758/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98 <sup>(4)</sup>, and in particular Article 7 thereof,

- (1) Whereas an invitation to tender for the refund and/or the tax for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1758/1999 <sup>(5)</sup>;
- (2) Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC)

No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1758/1999, the maximum refund on exportation of rye shall be EUR 67,50/t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

<sup>(5)</sup> OJ L 210, 10.8.1999, p. 3.

**COMMISSION REGULATION (EC) No 130/2000****of 20 January 2000****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1707/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98 <sup>(4)</sup>, and in particular Article 4 thereof,

- (1) Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries was opened pursuant to Commission Regulation (EC) No 1707/1999 <sup>(5)</sup>, as amended by Regulation (EC) No 2011/1999 <sup>(6)</sup>;
- (2) Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account

of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1707/1999, the maximum refund on exportation of common wheat shall be EUR 33,50/t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

<sup>(5)</sup> OJ L 201, 31.7.1999, p. 55.

<sup>(6)</sup> OJ L 248, 21.9.1999, p. 23.

**COMMISSION REGULATION (EC) No 131/2000**  
**of 20 January 2000**  
**concerning tenders notified in response to the invitation to tender for the export of oats issued in**  
**Regulation (EC) No 1897/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98<sup>(4)</sup>,

Having regard to Commission Regulation (EC) No 1897/1999 of 2 September 1999 on a special intervention measure for cereals in Finland and Sweden<sup>(5)</sup>, as last amended by Regulation (EC) No 2482/1999<sup>(6)</sup>, and in particular Article 8 thereof,

- (1) Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 1897/1999;

- (2) Whereas Article 8 of Regulation (EC) No 1897/1999 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to make no award;

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

No action shall be taken on the tenders notified from 14 to 20 January 2000 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1897/1999.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

<sup>(5)</sup> OJ L 233, 3.9.1999, p. 10.

<sup>(6)</sup> OJ L 303, 26.11.1999, p. 3.

**COMMISSION REGULATION (EC) No 132/2000****of 20 January 2000****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 2010/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2513/98 <sup>(4)</sup>, and in particular Article 7 thereof,

- (1) Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2010/1999 <sup>(5)</sup>;
- (2) Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC)

No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2010/1999, the maximum refund on exportation of common wheat shall be EUR 36,50/t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 147, 30.6.1995, p. 7.

<sup>(4)</sup> OJ L 313, 21.11.1998, p. 16.

<sup>(5)</sup> OJ L 248, 21.9.1999, p. 19.

**COMMISSION REGULATION (EC) No 133/2000****of 20 January 2000****fixing the maximum reduction in the duty on sorghum imported in connection with the invitation to tender issued in Regulation (EC) No 2774/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 12(1) thereof,

(1) Whereas an invitation to tender for the maximum reduction in the duty on sorghum imported into Spain was opened pursuant to Commission Regulation (EC) No 2774/1999 <sup>(3)</sup>;

(2) Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95 <sup>(4)</sup>, as amended by Regulation (EC) No 1963/95 <sup>(5)</sup>, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix a maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is

equal to or less than the maximum reduction in the duty;

(3) Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2774/1999, the maximum reduction in the duty on sorghum imported shall be EUR/t 48,92 and be valid for a total maximum quantity of 30 000 t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 334, 28.12.1999, p. 5.

<sup>(4)</sup> OJ L 177, 28.7.1995, p. 4.

<sup>(5)</sup> OJ L 189, 10.7.1995, p. 22.

**COMMISSION REGULATION (EC) No 134/2000****of 20 January 2000****fixing the maximum reduction in the duty on maize imported in connection with the invitation to tender issued in Regulation (EC) No 2775/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 12(1) thereof,

(1) Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 2775/1999 <sup>(3)</sup>;

(2) Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95 <sup>(4)</sup>, as amended by Regulation (EC) No 1963/95 <sup>(5)</sup>, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is

equal to or less than the maximum reduction in the duty;

(3) Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2775/1999, the maximum reduction in the duty on maize imported shall be 64,89 EUR/t and be valid for a total maximum quantity of 132 823 tonnes.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 334, 28.12.1999, p. 7.

<sup>(4)</sup> OJ L 177, 28.7.1995, p. 4.

<sup>(5)</sup> OJ L 189, 10.8.1995, p. 22.

**COMMISSION REGULATION (EC) No 135/2000****of 20 January 2000****fixing the maximum reduction in the duty on maize imported in connection with the invitation to tender issued in Regulation (EC) No 2776/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 12(1) thereof,

(1) Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 2776/1999 <sup>(3)</sup>;

(2) Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95 <sup>(4)</sup>, as amended by Regulation (EC) No 1963/95 <sup>(5)</sup>, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is

equal to or less than the maximum reduction in the duty;

(3) Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For tenders notified from 14 to 20 January 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2776/1999, the maximum reduction in the duty on maize imported shall be EUR 68,54/t and be valid for a total maximum quantity of 182 000 t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 334, 28.12.1999, p. 8.

<sup>(4)</sup> OJ L 177, 28.7.1995, p. 4.

<sup>(5)</sup> OJ L 189, 10.8.1995, p. 22.

**COMMISSION REGULATION (EC) No 136/2000**  
**of 20 January 2000**  
**fixing the export refunds on products processed from cereals and rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice <sup>(3)</sup>, as last amended by Regulation (EC) No 2072/98 <sup>(4)</sup>, and in particular Article 13(3) thereof,

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

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

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

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

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

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

(7) Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(4)</sup> OJ L 265, 30.9.1998, p. 4.

<sup>(5)</sup> OJ L 147, 30.6.1995, p. 55.

<sup>(6)</sup> OJ L 312, 23.12.1995, p. 25.

## Article 2

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

## ANNEX

**to the Commission Regulation of 20 January 2000 fixing the export refunds on products processed from cereals and rice**

| (EUR/tonne)                    |        | (EUR/tonne)                    |        |
|--------------------------------|--------|--------------------------------|--------|
| Product code                   | Refund | Product code                   | Refund |
| 1102 20 10 9200 <sup>(1)</sup> | 57,93  | 1104 23 10 9100                | 62,07  |
| 1102 20 10 9400 <sup>(1)</sup> | 49,66  | 1104 23 10 9300                | 47,59  |
| 1102 20 90 9200 <sup>(1)</sup> | 49,66  | 1104 29 11 9000                | 34,04  |
| 1102 90 10 9100                | 40,92  | 1104 29 51 9000                | 33,37  |
| 1102 90 10 9900                | 27,83  | 1104 29 55 9000                | 33,37  |
| 1102 90 30 9100                | 92,65  | 1104 30 10 9000                | 8,34   |
| 1103 12 00 9100                | 92,65  | 1104 30 90 9000                | 10,35  |
| 1103 13 10 9100 <sup>(1)</sup> | 74,48  | 1107 10 11 9000                | 59,40  |
| 1103 13 10 9300 <sup>(1)</sup> | 57,93  | 1107 10 91 9000                | 48,56  |
| 1103 13 10 9500 <sup>(1)</sup> | 49,66  | 1108 11 00 9200                | 66,74  |
| 1103 13 90 9100 <sup>(1)</sup> | 49,66  | 1108 11 00 9300                | 66,74  |
| 1103 19 10 9000                | 45,54  | 1108 12 00 9200                | 66,21  |
| 1103 19 30 9100                | 42,28  | 1108 12 00 9300                | 66,21  |
| 1103 21 00 9000                | 34,04  | 1108 13 00 9200                | 66,21  |
| 1103 29 20 9000                | 27,83  | 1108 13 00 9300                | 66,21  |
| 1104 11 90 9100                | 40,92  | 1108 19 10 9200                | 45,60  |
| 1104 12 90 9100                | 102,94 | 1108 19 10 9300                | 45,60  |
| 1104 12 90 9300                | 82,35  | 1109 00 00 9100                | 0,00   |
| 1104 19 10 9000                | 34,04  | 1702 30 51 9000 <sup>(2)</sup> | 82,30  |
| 1104 19 50 9110                | 66,21  | 1702 30 59 9000 <sup>(2)</sup> | 63,00  |
| 1104 19 50 9130                | 53,79  | 1702 30 91 9000                | 82,30  |
| 1104 21 10 9100                | 40,92  | 1702 30 99 9000                | 63,00  |
| 1104 21 30 9100                | 40,92  | 1702 40 90 9000                | 63,00  |
| 1104 21 50 9100                | 54,56  | 1702 90 50 9100                | 82,30  |
| 1104 21 50 9300                | 43,65  | 1702 90 50 9900                | 63,00  |
| 1104 22 20 9100                | 82,35  | 1702 90 75 9000                | 86,24  |
| 1104 22 30 9100                | 87,50  | 1702 90 79 9000                | 59,85  |
|                                |        | 2106 90 55 9000                | 63,00  |

<sup>(1)</sup> No refund shall be granted on products given a heat treatment resulting in pregelatinization of the starch.

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

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

**COMMISSION REGULATION (EC) No 137/2000**  
**of 20 January 2000**  
**fixing production refunds on cereals and rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992, on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 7 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(3)</sup>, as last amended by Regulation (EC) No 2072/98 <sup>(4)</sup>, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the arrangements concerning production refunds in the cereals and rice sectors <sup>(5)</sup>, as last amended by Regulation (EC) No 87/1999 <sup>(6)</sup>, and in particular Article 3 thereof,

- (1) Whereas Regulation (EEC) No 1722/93 establishes the conditions for granting the production refund; whereas the basis for the calculation is established in Article 3 of the said Regulation; whereas the refund thus calculated

must be fixed once a month and may be altered if the price of maize and/or wheat changes significantly;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The refund referred to in Article 3(2) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from maize, wheat, barley, oats, potatoes, rice or broken rice, shall be EUR 34,21/t.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(4)</sup> OJ L 265, 30.9.1998, p. 4.

<sup>(5)</sup> OJ L 159, 1.7.1993, p. 112.

<sup>(6)</sup> OJ L 9, 15.1.1999, p. 8.

**COMMISSION REGULATION (EC) No 138/2000****of 20 January 2000****determining to what extent applications for import rights lodged pursuant to Regulation (EC) No 2684/1999 can be met as regards the tariff quota for certain beef and veal sector products originating in the former Yugoslav Republic of Macedonia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2684/1999 of 17 December 1999 laying down detailed rules for the application in 2000 of the arrangements applicable to imports laid down in the Cooperation Agreement with the Former Yugoslav Republic of Macedonia as regards certain beef and veal products <sup>(1)</sup>, and in particular Article 4 thereof,

Whereas:

- (1) Article 1(1) of Regulation (EC) No 2684/1999 fixes the quantity of certain beef and veal products originating in the former Yugoslav Republic of Macedonia that can be imported under special terms in 2000;
- (2) Article 4 of Regulation (EC) No 2684/1999 stipulates that the quantities applied for may be reduced; whereas the quantities applied for exceed the quantities available;

under the circumstances and with a view to ensuring an equitable shareout of the available quantities, the quantities applied for should be reduced on a proportional basis,

HAS ADOPTED THIS REGULATION:

*Article 1*

All applications for import rights lodged pursuant to Article 3 of Regulation (EC) No 2684/1999 shall be met to the extent of 0,22356 % of the quantity applied for.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 326, 18.12.1999, p. 24.

**COMMISSION REGULATION (EC) No 139/2000****of 20 January 2000****fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 1253/1999 <sup>(2)</sup>, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(3)</sup>, as amended by Regulation (EC) No 2072/98 <sup>(4)</sup>, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.
- (2) Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds <sup>(5)</sup>, as last amended by Regulation (EC) No 1702/1999 <sup>(6)</sup>, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.
- (3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.
- (4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. Whereas it is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term

contracts. Whereas the fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

- (5) Now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC <sup>(7)</sup>, it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.
- (6) Article 4(5)(b) of Regulation (EC) No 1222/94 provides that, in the absence of the proof referred to in Article 4(5)(a) of that Regulation, a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Commission Regulation (EEC) No 1722/93 <sup>(8)</sup>, as last amended by Regulation (EC) No 87/1999 <sup>(9)</sup>, for the basic product in question, used during the assumed period of manufacture of the goods.
- (7) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.
- (8) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(4)</sup> OJ L 265, 30.9.1998, p. 4.

<sup>(5)</sup> OJ L 136, 31.5.1994, p. 5.

<sup>(6)</sup> OJ L 201, 31.7.1999, p. 30.

<sup>(7)</sup> OJ L 275, 29.9.1987, p. 36.

<sup>(8)</sup> OJ L 159, 1.7.1993, p. 112.

<sup>(9)</sup> OJ L 9, 15.1.1999, p. 8.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Erkki LIIKANEN

*Member of the Commission*

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## ANNEX

**to the Commission Regulation of 20 January 2000 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty**

(EUR/100 kg)

| CN code    | Description of products <sup>(1)</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Rate of refund per 100 kg of basic product                  |                                                             |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------|
|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | In case of advance fixing of refunds                        | Other                                                       |
| 1001 10 00 | Durum wheat:<br>– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America<br>– in other cases                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 0,621<br>0,955                                              | 0,621<br>0,955                                              |
| 1001 90 99 | Common wheat and meslin:<br>– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America<br>– in other cases:<br>– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 <sup>(2)</sup><br>– – in other cases                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 2,071<br>0,926<br>3,187                                     | 2,071<br>0,926<br>3,187                                     |
| 1002 00 00 | Rye                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 4,349                                                       | 4,349                                                       |
| 1003 00 90 | Barley                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 2,605                                                       | 2,605                                                       |
| 1004 00 00 | Oats                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 4,915                                                       | 4,915                                                       |
| 1005 90 00 | Maize (corn) used in the form of:<br>– starch:<br>– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 <sup>(2)</sup><br>– – in other cases<br>– glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 <sup>(3)</sup> :<br>– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 <sup>(2)</sup><br>– – in other cases<br>– other (including unprocessed)<br>Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize:<br>– where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 <sup>(2)</sup><br>– in other cases | 1,125<br>3,952<br>0,934<br>3,761<br>3,952<br>1,125<br>3,952 | 1,125<br>3,952<br>0,934<br>3,761<br>3,952<br>1,125<br>3,952 |
| ex 1006 30 | Wholly-milled rice:<br>– round grain<br>– medium grain<br>– long grain                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 12,129<br>12,129<br>12,129                                  | 12,129<br>12,129<br>12,129                                  |
| 1006 40 00 | Broken rice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 2,865                                                       | 2,865                                                       |
| 1007 00 90 | Sorghum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2,605                                                       | 2,605                                                       |

<sup>(1)</sup> As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1222/94 shall be applied (OJ L 136, 31.5.1994, p. 5).

<sup>(2)</sup> The goods concerned are listed in Annex I of amended Regulation (EEC) No 1722/93 (OJ L 159, 1.7.1993, p. 112).

<sup>(3)</sup> For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

**COMMISSION REGULATION (EC) No 140/2000**  
**of 20 January 2000**  
**providing for the rejection of applications for export licences in relation to cereal products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1253/1999 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice <sup>(3)</sup>, as last amended by Regulation (EC) No 1432/1999 <sup>(4)</sup>, and in particular Article 7(3) thereof,

Whereas the quantity covered by applications for advance fixing of refunds for flour of common wheat and spelt could give rise to speculation; whereas it has therefore been decided

to reject all applications for export licences for this product made on 20 January 2000,

HAS ADOPTED THIS REGULATION:

*Article 1*

In accordance with Article 7(3) of Regulation (EC) No 1162/95, applications for export licences with advance fixing of refunds for products falling within CN code 1101 00 15 made on 20 January 2000 shall be rejected.

*Article 2*

This Regulation shall enter into force on 21 January 2000.

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

Done at Brussels, 20 January 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 18.

<sup>(3)</sup> OJ L 117, 24.5.1995, p. 2.

<sup>(4)</sup> OJ L 166, 1.7.1999, p. 56.

**DIRECTIVE 1999/87/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 23 November 1999**

**amending Council Directive 76/625/EEC concerning the statistical surveys to be carried out by the  
Member States in order to determine the production potential of plantations of certain species of  
fruit trees**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) Council Directive 76/625/EEC <sup>(3)</sup> lays down the basic provisions for statistical surveys of the area of plantations of certain species of fruit trees in order to determine the potential and medium-term development of Community production;
- (2) the said Directive requires the Member States to provide the Commission every year with annual data on the clearing and new plantations of fruit trees, and requires the Commission to submit annual reports to the Council on that basis;
- (3) those data are not indispensable for determining the potential and medium-term development of Community production;
- (4) the collection and transmission of data on clearing and new plantations and the annual reports to be presented

to the Council by the Commission should be made optional,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

The following Article shall be inserted in Directive 76/625/EEC:

*'Article 8a*

The measures provided for in Articles 5 and 6, and the annual reports provided for in Article 8, shall be optional.'

*Article 2*

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

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 23 November 1999.

*For the European Parliament*

*The President*

N. FONTAINE

*For the Council*

*The President*

S. LINDEN

<sup>(1)</sup> OJ C 110, 21.4.1999, p. 8.

<sup>(2)</sup> Opinion of the European Parliament of 4 May 1999 (OJ C 279, 1.10.1999, p. 54). Confirmed on 16 September 1999 (not yet published in the Official Journal). Council Decision of 15 November 1999.

<sup>(3)</sup> OJ L 218, 11.8.1976, p. 10. Directive as last amended by the 1994 Act of Accession.

## II

(Acts whose publication is not obligatory)

## COUNCIL

**COUNCIL DECISION  
of 17 December 1999  
on the settlement of the Bangemann case**

(2000/44/EC, ECSC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 213 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Article 9 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community (EAEC), and in particular Article 126 thereof,

Having regard to its Decision of 9 July 1999 on the referral of the case of Mr Bangemann to the Court of Justice,

Whereas:

- (1) The term of office of Mr Bangemann as a member of the Commission ended on 9 July 1999;
- (2) The Council has taken note of the following information provided to it by Mr Bangemann by letter dated 10 December 1999:
  1. Mr Bangemann will not become before 1 July 2000 a member of the *consejo administrativo* (Board of Directors) of Telefónica and until then will not accept any other employment with that undertaking or any other telecom operator.
  2. Mr Bangemann undertakes not to represent any third party (including Telefónica) vis-à-vis the European institutions until 31 December 2001 inclusive.
  3. Mr Bangemann will permanently continue to safeguard any confidential information he may have become aware of as Member of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

*Article 1*

The application brought by the Council against Mr Bangemann pursuant to the last sentence of the third subparagraph of Article 213(2) of the Treaty establishing the European Community and the corresponding provisions of the ECSC and EAEC Treaties aimed at depriving Mr Bangemann of his right to a pension, pending before the Court of Justice of the European Communities (Case C-290/99), shall be withdrawn provided that Mr Bangemann withdraws at the same time his action brought against the Council before the Court of First Instance of the European Communities (Case T-208/99) and waives any damage claims and that both parties bear their own costs.

*Article 2*

This Decision shall be communicated to Mr Bangemann, to the President of the Commission of the European Communities and to the Governments of the Member States of the European Union.

*Article 3*

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 17 December 1999.

*For the Council*

*The President*

K. HEMILÄ

# COMMISSION

## COMMISSION DECISION

of 17 December 1999

establishing the ecological criteria for the award of the Community eco-label to washing machines

(notified under document number C(1999) 4650)

(Text with EEA relevance)

(2000/45/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 880/92 of 23 March 1992 on a Community eco-label award scheme <sup>(1)</sup>, and in particular the second subparagraph of Article 5(1) thereof,

- (1) Whereas the first subparagraph of Article 5(1) of Regulation (EEC) No 880/92 provides that the conditions for the award of the Community eco-label shall be defined by product group;
- (2) Whereas Article 10(2) of Regulation (EEC) No 880/92 states that the environmental performance of a product shall be assessed by reference to the specific criteria for product groups;
- (3) Whereas, by Decision 96/461/EEC <sup>(2)</sup>, the Commission established ecological criteria for the award of the Community eco-label to washing machines, which, according to Article 3 thereof, expire on 30 June 1999;
- (4) Whereas it is appropriate to adopt a new decision establishing the ecological criteria for this product group;
- (5) Whereas in accordance with Article 6 of Regulation (EEC) No 880/92 the Commission has consulted the principal interest groups within a consultation forum;
- (6) Whereas the measures set out in this Decision are in accordance with the opinion of the committee set up under Article 7 of Regulation (EEC) No 880/92,

HAS ADOPTED THIS DECISION:

### Article 1

The product group 'washing machines' (hereinafter referred to as 'the product group') shall mean:

front and top loading household washing machines excluding twin-tubs and washer-dryers.

### Article 2

The environmental performance and the fitness for use of the product group shall be assessed by reference to the criteria set out in the Annex.

### Article 3

The product group definition and the criteria for the product group shall be valid from the day of notification of this Decision until 1 December 2002. If, however, on 1 December 2002 a new decision establishing the product group definition and the criteria for this product group has not yet been adopted, this period of validity shall instead end either on 1 December 2003 or on the date of adoption of the new decision, whichever is sooner.

### Article 4

For administrative purposes the code number assigned to the product group shall be '001'.

### Article 5

This Decision is addressed to the Member States.

Done at Brussels, 17 December 1999.

For the Commission

Margot WALLSTRÖM

Member of the Commission

<sup>(1)</sup> OJ L 99, 11.4.1992, p. 1.

<sup>(2)</sup> OJ L 191, 1.8.1996, p. 56.

## ANNEX

## CRITERIA

## FRAMEWORK

In order to qualify for an eco-label, the product as defined in Article 1 must comply with the criteria of this Annex. Where appropriate, other test methods may be used if their equivalence is accepted by the competent body assessing the application.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or ISO 14 001, when assessing applications and monitoring compliance with the criteria in this Annex (*Note: it is not required to implement such management schemes.*)

These criteria aim in particular at promoting:

- the reduction of environmental damage or risks related to the use of energy (global warming, acidification, depletion of non-renewable resources) by reducing energy consumption
- the reduction of environmental damage related to the use of natural resources by reducing water consumption
- the reduction of environmental damage related to the use of natural resources by encouraging recyclability
- the reduction of water pollution by contributing to reduced detergent consumption, and
- the reduction of noise emissions.

The criteria encourage the implementation of best practice and enhance consumer environmental awareness. Furthermore, marking the plastic components encourages the recycling of the machine.

## KEY CRITERIA

## 1. Energy efficiency

The machine shall use less than or equal to 0,17 kWh of electrical energy per kg of washload measured according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Commission Directive 95/12/EC <sup>(1)</sup>.

*The applicant shall provide a copy of the technical documentation referred to under Article 2(1) of Directive 95/12/EC. This documentation shall include the reports of at least three measurements of energy consumption made according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC. The arithmetic mean of these measurements shall be less or equal to the above requirement. The value declared on the energy label shall not be lower than this mean value, and the energy efficiency class indicated on the energy label shall correspond to this mean value.*

*In case of verification, which is not required on application, competent bodies shall apply the tolerances and control procedures laid down in EN 60456:1999.*

## 2. Water consumption

The machine shall use less than or equal to 12 litres of water per kg of washload measured according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC.

*The applicant shall provide a copy of the technical documentation referred to under Article 2(1) of Directive 95/12/EC. This documentation shall include the reports of at least three measurements of water consumption made according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC. The arithmetic mean of these measurements shall be less or equal to the above requirement. The value declared on the energy label shall not be lower than this mean value.*

*In case of verification, which is not required on application, competent bodies shall apply the tolerances and control procedures laid down in EN 6056:1999.*

## 3. Spin drying efficiency

The machine shall achieve a residual moisture content (also termed D or spin extraction) of less than 54 %, in an EN 60456:1999 test, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC.

The machine will thus qualify for spin drying efficiency class A or B as defined in Directive 95/12/EC, Annex IV.

*The applicant shall provide a copy of the technical documentation referred to under Article 2(1) of Directive 95/12/EC. This documentation shall include the reports of at least three measurements of the spin extraction made according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC. The arithmetic mean of these measurements shall be less than the above requirement. The spin drying efficiency class indicated on the energy label shall correspond to this mean value.*

<sup>(1)</sup> OJ L 136, 21.6.1995, p. 1.

*In case of verification, which is not required on application, competent bodies shall apply the tolerances and control procedures laid down in EN 6056:1999.*

#### 4. Noise

Airborne acoustical noise from the appliance, counted as sound power, shall not exceed  $L_{wAd}$  56 dB(A) during washing or  $L_{wAd}$  76 dB(A) during spinning, measured according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC.

Information about the noise level of the machine shall be provided in a way clearly visible to the consumer. This shall be done by the incorporation of this information in the energy label for washing machines.

*The applicant shall provide a copy of the technical documentation referred to under Article 2(1) of Commission Directive 95/12/EC. This documentation shall include the reports of at least three measurements of noise made according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC. The declared noise during washing and during spinning shall be derived from these measurements as laid down in the standards referred to in EN 60456:1999 (with the producer's risk  $\alpha \leq 5\%$ ), shall be less or equal to the above requirements, and shall appear on the energy label.*

*In case of verification, which is not required on application, competent bodies shall apply the tolerances and control procedures laid down in EN 60456:1999.*

#### 5. Prevention of excessive use of detergent

The appliance shall have clear volumetric and/or weight-related markings on the detergent dispenser allowing the user to adjust the detergent quantity used according to the type and amount of load and its degree of soiling.

*The applicant shall declare the compliance of the product with this requirement.*

### ADDITIONAL CRITERIA

#### 6. Appliance design

The machine shall have clear markings on it identifying the appropriate settings according to fabric type and laundry code.

The machine shall have clear markings on it identifying energy and water saving programmes and options.

*The applicant shall declare the compliance of the product with these requirements.*

#### 7. User instructions

The appliance shall be sold with an instruction manual which, amongst others, shall provide advice on the correct environmental use and, in particular recommendations for optimal use of energy, water and detergent in the operation of the appliance. This manual shall include:

- (a) on the cover page or first page the following text: 'Information on how to minimise environmental impacts is given in this manual';
- (b) if the machine has hot-fill, advice that the use of the hot-fill can save primary energy and related emissions if the water is heated by solar energy, community heating, modern natural gas or oil heating systems or natural gas continuous flow heater. The user shall be informed that the conduit between the warm water source and the washing machine should be short and well insulated;
- (c) advice to use a full load whenever possible;
- (d) advice on the availability of ecological friendly modern detergents, such as compact detergents;
- (e) advice on varying the detergent dose according to water hardness, the type and amount of the load and its degree of soiling (for example: a half load requires less detergent); reference shall be made to the markings in the detergent dispenser;
- (f) advice on sorting fabrics appropriately, the corresponding wash temperature according to the fabric type, also stating that in most cases washing at higher temperatures is no longer necessary when using modern detergents, such as compact detergents, and modern washing machines;
- (g) information about the energy and water consumption of the washing machine for the different temperature settings and for different load settings, allowing the consumer to identify an appropriate programme to make the least use of energy and water;
- (h) advice that the washing machine should be switched off when it has completed its cycle, because of possible energy losses; the instruction manual shall state the time needed to complete the programmes available;

- (i) information on power requirements during the following modes: off mode, timer mode (programming), programme ended mode;
- (j) advice to avoid pre-washing in the machine whenever possible;
- (k) advice on appropriate maintenance of the washing machine, including the regular cleaning of filters and pumps, and removal of deposits;
- (l) advice on how to install the machine so as to minimise the noise emitted;
- (m) information that ignoring the issues mentioned above can lead to higher consumption of energy, water and/or detergent and thus can increase the running costs and lead to poor washing performance;
- (n) advice on how the consumer can take advantage of the manufacturer's take-back offer.

*The applicant shall declare the compliance of the product with these requirements, and shall provide a copy of the instruction manual to the competent body assessing the application.*

#### 8. Take-back and recycling

- (a) The manufacturer shall offer the take-back, free of charge, for recycling of the washing machines and of components being replaced by himself or by any commissioned company, except for washing machines which are not complete or contain components which do not belong to the washing machine.
- (b) Plastic parts heavier than 50 grams shall have a permanent marking identifying the material, in conformity with ISO 11 469. This requirement does not apply to extruded plastic parts.
- (c) Plastic parts heavier than 25 grams shall not contain the following flame retardants:

| Name                                                                                     | CAS No     |
|------------------------------------------------------------------------------------------|------------|
| decabromodiphenyl                                                                        | 13654-09-6 |
| monobromodiphenyl ether                                                                  | 101-55-3   |
| dibromodiphenyl ether                                                                    | 2050-47-7  |
| tribromodiphenyl ether                                                                   | 49690-94-0 |
| tetrabromodiphenyl ether                                                                 | 40088-47-9 |
| pentabromodiphenyl ether                                                                 | 32534-81-9 |
| hexabromodiphenyl ether                                                                  | 36483-60-0 |
| heptabromodiphenyl ether                                                                 | 68928-80-3 |
| octabromodiphenyl ether                                                                  | 32536-52-0 |
| nonabromodiphenyl ether                                                                  | 63936-56-1 |
| decabromodiphenyl ether                                                                  | 1163-19-5  |
| Chloroparaffins with chain length 10 to 13 C atoms,<br>chlorine content > 50 % by weight | 85535-84-8 |

- (d) Plastic parts heavier than 25 grams shall not contain flame retardant substances or preparations containing substances that are or may be assigned any of the risk phrases R45 (may cause cancer), R46 (may cause heritable genetic damage), R50 (very toxic to aquatic organisms), R51 (toxic to aquatic organisms), R52 (harmful to aquatic organisms), R53 (may cause long-term adverse effects in the aquatic environment), R60 (may impair fertility) or R61 (may cause harm to the unborn child), or any combinations of risk phrases containing any of the above risk phrases, as defined in Council Directive 67/548/EEC <sup>(1)</sup> as last amended by Commission Directive 98/98/EEC <sup>(2)</sup>.

This requirement does not apply to flame retardants that on application change their chemical nature to no longer warrant classification under any of the R-phrases listed above, and where less than 0.1 % of the flame retardant in the treated part remains in the form as before application.

- (e) The manufacturer shall take into account disassembly when designing and shall check the disassembly of the washing machine and provide a disassembly report. Amongst others, the report shall confirm that:
  - joints are easy to find and accessible
  - electronic assemblies are easy to find and to dismantle
  - the product is easy to dismantle by using commonly available tools
  - incompatible and hazardous materials are separable

<sup>(1)</sup> OJ 196, 16.8.1967, p. 1.

<sup>(2)</sup> OJ L 355, 30.12.1998, p. 1.

*The applicant shall declare the compliance of the product with these requirements. The applicant shall provide to the competent body assessing the application a copy of the disassembly report. The applicant and/or his supplier or suppliers, as appropriate, shall indicate to this competent body which flame retardants, if any, have been used in or on plastic parts heavier than 25 grams.*

#### **9. Lifetime extension**

The manufacturer shall offer a commercial guarantee to ensure that the washing machine will function for at least two years. This guarantee shall be valid from the date of delivery to the customer.

The availability of compatible replacement parts shall be guaranteed for 12 years from the time that production ceases.

*The applicant shall declare the compliance of the product with these requirements.*

### **FITNESS FOR USE CRITERIA**

#### **10. Washing performance**

The machine shall achieve a washing performance index of more than 1,00 in an EN 60456:1999 test, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC.

The machine will thus qualify for washing performance class A or B as defined in Directive 95/12/EC, Annex IV.

*The applicant shall provide a copy of the technical documentation referred to under Article 2(1) of Directive 95/12/EC. This documentation shall include the reports of at least three measurements of the washing performance index made according to EN 60456:1999, using the same standard 60 °C cotton cycle as chosen for Directive 95/12/EC. The arithmetic mean of these measurements shall be greater than the above requirement. The washing performance class indicated on the energy label shall correspond to this mean value.*

*In case of verification, which is not required on application, competent bodies shall apply the tolerances and control procedures laid down in EN 60456:1999.*

### **CONSUMER INFORMATION**

#### **11. Consumer information**

The following text shall be provided in such a way as to be clearly visible to consumers (next to the label, whenever possible).

'This product qualifies for the European Union eco-label because in particular it is economical with energy and water and is designed to increase durability, to facilitate recycling, reparability and environmentally sound disposal.'

*The applicant shall declare the compliance of the product with this requirement.*

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**CORRIGENDA****Corrigendum to Commission Decision 1999/568/EC of 27 July 1999 establishing the ecological criteria for the award of the Community eco-label to light bulbs**

*(Official Journal of the European Communities L 216 of 14 August 1999)*

On page 20, in part B of the Annex, point 2, against the entry 'Double-ended' in the table:

*for:* '> 10 000 hours but > 20 000 hours',

*read:* '> 10 000 hours but < 20 000 hours'.

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