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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 616/2000
of 20 March 2000**

amending Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Regulation (EEC) No 737/90 ⁽¹⁾ fixed, for agricultural products in third countries and intended for human consumption, maximum permitted levels of radioactivity with which imports must comply and in connection with which checks are carried out by the Member States. The said Regulation is to apply only until 31 March 2000.
- (2) The reasons prevailing when the said Regulation was adopted and extended are still valid, because radioactive contamination of certain agricultural products originating in the third countries most affected by the accident still exceeds the maximum permitted levels of radioactivity laid down in that Regulation.
- (3) Commission Regulation (EC) No 1661/1999 ⁽²⁾ revising Commission Regulation (EEC) No 1983/88 ⁽³⁾ has, *inter alia*, introduced specific conditions strengthening the controls on the import of non-cultivated mushrooms from a number of third countries.
- (4) There is now scientific evidence that the duration of caesium-137 contamination following the Chernobyl accident of a number of products originating from species living and growing in forests and wooded areas essentially relates to the physical half-life of that radionuclide which is some 30 years.
- (5) The experience gained in the implementation of the checks referred to in Article 4 of Regulation (EEC) No 737/90, in particular regarding the imports of dried

mushrooms, has shown that, in order to remain consistent, the maximum permitted levels referred to in Article 3 thereof are to be calculated for all concentrated or dried products on the basis of the reconstituted products as ready for consumption.

- (6) Council Regulation (Euratom) No 3954/87 ⁽⁴⁾ laid down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency. It is necessary, in such situations, to ensure consistency of any measures implemented.
- (7) It is advisable to extend for a second time Regulation (EEC) No 737/90.
- (8) The measures necessary for the implementation of Regulation (EEC) No 737/90 should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 737/90 is hereby amended as follows:

- (a) Article 3 shall be replaced by the following:

'Article 3

The maximum permitted levels referred to in Article 2 shall be as follows:

the accumulated maximum radioactive level in terms of caesium — 134 and — 137 shall be⁽⁷⁾:

⁽¹⁾ OJ L 82, 29.3.1990, p. 1. Regulation as amended by Regulation (EC) No 686/95 (OJ L 71, 31.3.1995, p. 15).

⁽²⁾ OJ L 197, 29.7.1999, p. 17.

⁽³⁾ OJ L 174, 6.7.1988, p. 32.

⁽⁴⁾ OJ L 371, 30.12.1987, p. 11. Regulation as last amended by Regulation (Euratom) No 2218/89 (OJ L 211, 22.7.1989, p. 1).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

— 370 Bq/kg for milk and milk products listed in Annex II and for foodstuffs intended for the special feeding of infants during the first four to six months of life, which meet, in themselves, the nutritional requirements of this category of persons and are put up for retail sale in packages which are clearly identified and labelled “food preparation for infants”,

— 600 Bq/kg for all other products concerned.;

(b) Article 7 shall be replaced by the following:

‘Article 7

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. The committee shall adopt its rules of procedure.;
- (c) the second subparagraph of Article 8 shall be replaced by the following:

‘It shall expire:

1. on 31 March 2010, unless the Council decides otherwise at an earlier date, in particular if the list of excluded products referred to in Article 6 covers all the products fit for human consumption to which this Regulation applies;
2. on the entry into force of the Commission Regulation provided for in Article 2(1) of Regulation (Euratom) No 3954/87, if such entry into force takes place before 31 March 2010.’

Article 2

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

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

Done at Brussels, 20 March 2000.

For the Council

The President

J. GAMA

**COMMISSION REGULATION (EC) No 617/2000
of 16 March 2000**

**imposing provisional anti-dumping duties on imports of solutions of urea and ammonium nitrate
originating in Algeria, Belarus, Lithuania, Russia and Ukraine and accepting, on a provisional basis,
an undertaking offered by an exporting producer in Algeria**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 26 June 1999, the Commission announced, by a notice published in the *Official Journal of the European Communities* ⁽²⁾ (hereinafter referred to as the 'notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Community of solutions of urea and ammonium nitrate (UAN), originating in Algeria, Belarus, Lithuania, Russia, the Slovak Republic, and Ukraine.
- (2) The proceeding was initiated following a complaint lodged by the European Fertiliser Manufacturers Association (EFMA) on behalf of a major proportion of Community producers. 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) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting countries, and the EU-Lithuania and EU-Slovak Republic Association Councils of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) In order to allow exporting producers in Russia to submit a claim for market economy status or individual treatment, if they so wished, the Commission sent market economy status/individual treatment claim forms to the Russian exporting producers known to be concerned.

Claims for market economy status were received from two exporting producers.

- (5) The Commission sent questionnaires to all parties known to be concerned. Replies were received from 10 complainant Community producers, seven exporting producers, and 13 importers in the Community.
- (6) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and injury and carried out verifications at the premises of the following companies:

a) Complainant Community producers

1. Agrolinz Melamin GmbH, ADM, Linz, Austria,
2. DSM Agro BV, Sittard, Netherlands,
3. Fertiberia SA, Madrid, Spain,
4. Grande Paroisse SA, Paris, France,
5. Hydro Agri Chafers, Immingham, United Kingdom,
6. Hydro Agri France, Nanterre, France,
7. Hydro Agri Rostock, Rostock, Germany,
8. Hydro Agri Sluiskil BV, Sluiskil, Netherlands,
9. Kemira Agro Rozenburg BV, Rotterdam, Netherlands,
10. SKW Stickstoffwerke Piesteritz, Wittenberg, Germany.

b) Exporting producers from the countries concerned

1. JSC Achema, Jonava, Lithuania,
2. Duslo AS, Sala, Slovak Republic,
3. JSC Nevinnomyssky Azot, Nevinnomyssk, Russia,
4. JSC Novolon, Moscow, Russia.

c) Importers

1. Agrobaltic, Rostock, Germany,
2. Champagne Fertilisants SA Reims, France,
3. Common Market Fertilisers (CMF), Brussels, Belgium,
4. Evertrade, Paris, France,
5. Francefert SA Le Chesnay, France,
6. Helm Düngemittel GmbH, Hamburg, Germany,
7. Helm Engrais France, Puteaux, France,
8. UNCAA, Paris, France,
9. Wittraco, Hamburg, Germany.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 181, 26.6.1999, p. 27.

- (7) The investigation of dumping covered the period from 1 June 1998 to 31 May 1999 (hereinafter referred to as 'the investigation period' or 'IP'). The examination of injury covered the period from 1995 to the end of the investigation period.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (8) The product concerned is a solution of urea and ammonium nitrate, a liquid fertiliser commonly used in agriculture. It consists of a mixture of urea and ammonium nitrate and water. The water content is approximately 70 % of the mixture (depending on the nitrogen content), the remaining part consisting equally of urea and ammonium nitrate. The nitrogen (N) content is the most significant 'feature' of the product, and it can vary between 28 % and 32 %. Such variation can be obtained by adding more or less water to the solution. Most of the imported UAN was 32 % N, which is more concentrated, and therefore cheaper to ship. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation. The product concerned falls within CN code 3102 80 00.

2. Like product

- (9) UAN is a pure commodity product, and its quality and basic physical and chemical characteristics are identical whatever the country of origin. The product produced and sold in the Community has thus been found to be a like product, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation') to that imported from the countries concerned, in that it has the same basic physical and chemical characteristics and essentially the same uses.

C. DUMPING

1. Algeria

a) Normal value

- (10) The sole Algerian exporting producer, Fertilge Industries, replied to the questionnaire. Although the company had acted to the best of its ability, the information provided was far from ideal. More specifically, many of the figures the exporting producer provided for the cost of production could not be thoroughly verified, not least because a proper accounting system was only introduced in 1999, half way through the IP. However, in view of Algeria's special situation as a developing country, and in accordance with Article 15 of the Agreement on implementation of Article VI of GATT 1994,

and taking into account the specific circumstances affecting this company, the Commission none the less decided to use data from the company where it was considered to be sufficiently reliable, and in so far as it did not materially affect the outcome.

- (11) In the absence of domestic sales, normal value was constructed, in accordance with Article 2(3) of the basic Regulation, on the basis of the cost of manufacturing, plus a reasonable amount for selling, general and administrative (SG & A) costs, and for profit.
- (12) For the purposes of calculating the cost of manufacturing, the raw material costs reported by the company were used. These costs account for a high proportion of the total cost of production of UAN. Other manufacturing costs, and the SG & A costs, were not considered sufficiently reliable (see recital 10) and so the Commission had recourse to the figures given in the complaint, which were considered reasonable. The only alternative, to use the figures reported by the Slovak producer, would not have been appropriate given the fundamental differences in the production system and in company structure between the two producers. Finally, a reasonable margin for profit of 5 % was added, this being considered the profit the producer could reasonably have expected to achieve had sufficient sales of the product concerned been made on its domestic market.

b) Export price

- (13) The export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community, in accordance with Article 2(8) of the basic Regulation.

c) Comparison

- (14) A comparison between the constructed normal value and the export price at an exworks level was made. For that purpose, adjustments were made to the export price for differences in transport, insurance, handling, loading and ancillary costs as provided for in Article 2(10) of the basic Regulation.

d) Dumping margin

- (15) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of the constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price (based on Eurostat figures), the provisional dumping margin for the sole Algerian exporting producer is 13,3 %.

Since the sole known exporting producer accounted for all Algerian exports of the product concerned to the Community, the Commission considers that the residual dumping margin should be set at the same level.

2. Lithuania

a) Normal value

- (16) Since domestic sales of the product concerned during the IP represented less than 5 % of export sales, normal value had to be constructed. In accordance with Article 2(3) of the basic Regulation, constructed normal value was calculated by adding to the exporter's cost of manufacturing an amount for SG & A costs and for profit. In the absence of representative domestic sales of the product concerned, the amount for SG & A costs was established on the basis of the producer's total domestic SG & A costs for the same general category of products (fertilisers), in accordance with Article 2(6)(b) of the basic Regulation. Finally, a margin for profit of 5 % was added, this being considered the profit the producer could reasonably have expected to achieve had sufficient sales of the product been made on its domestic market.

b) Export price

- (17) For those sales made to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community, in accordance with Article 2(8) of the basic Regulation. For sales made via a related importer, the export price was constructed on the basis of resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer and for the profit margin found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the basic Regulation.

c) Comparison

- (18) The normal value and the export price were compared on an ex-works basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, as provided for in Article 2(10) of the basic Regulation.

d) Dumping margin

- (19) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producer concerned was established on the basis of a comparison of constructed normal value with the

weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional dumping margin for the sole Lithuanian exporting producer is 7,6 %.

Since the sole known exporting producer accounted for all Lithuanian exports of the product concerned to the Community, the Commission considers that the residual dumping margin should be set at the same level.

3. Slovak Republic

- (20) In view of the injury findings, according to which it has been provisionally concluded that imports originating in the Slovak Republic have not had a material impact on the injury caused to the Community industry (see recital 60), no dumping calculations were made.

4. Russia, Belarus and Ukraine

a) Analogue country

- (21) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for Belarus and Ukraine has to be established on the basis of the price or constructed value in a market economy third country or 'analogue country'. The same applies to the Russian exporting producers, since none of them qualified for market economy status as defined in Article 2(7)(c) of the basic Regulation (see recital 24). In the notice of initiation, the United States of America was proposed as an appropriate third country. All parties were granted 10 days to comment on the proposed choice. Comments were submitted by three Russian companies jointly, by a fourth Russian company and by the sole Belarussian exporting producer. All of them criticised the proposed choice of the USA and proposed Lithuania as a more suitable analogue country.

The relevant arguments put forward were:

- the higher costs of raw materials (especially natural gas) in the USA and big differences in costs among US producers, depending on their geographical location, which could lead to inconsistent results,
- the similarity of equipment and production process (integrated production) between Lithuania, on the one hand, and Russia, Belarus and Ukraine on the other, unlike the situation in the USA,
- Lithuania was subject to the same investigation.

The Commission none the less approached known producers of the product in the USA but none of them was willing to cooperate in the investigation.

The Commission informed all interested parties of the refusal of companies in the USA to cooperate and asked them to comment on Lithuania as possible analogue country. EFMA raised objections to this proposal, mainly based on the allegedly very cheap gas prices paid by the Lithuanian exporter and the distortions allegedly carried over from its former non-market economy status. It then claimed that one US producer would cooperate. The Commission again approached this US producer but it confirmed that it was not willing to cooperate in the investigation.

EFMA then proposed the Slovak Republic.

- (22) The Commission then examined Lithuania and the Slovak Republic as possible market economy third countries, and took into consideration the following factors.

Production

In Lithuania, and in the Slovak Republic, there is only one producer. Both of these are integrated producers, although the Slovak facilities appear to be less modern.

Lithuania is closer to Russia and, having been part of the former USSR, its production process and company organisation are closer to those in Russia, Belarus and Ukraine than to the Slovak Republic.

Domestic market conditions

The sole Lithuanian producer did not have representative domestic sales, which would mean normal value having to be constructed. The Slovak producer did have domestic sales, but dominated the local UAN market, holding 85 % of it.

In addition, many Slovak customers have cash-flow problems and a number of transactions involve barter (affecting between 10 % and 20 % of the turnover of the product concerned). It should be noted that the use of barter is one of the grounds for rejecting market economy status for two Russian exporters (see recital 24). In contrast, no use of barter could be detected in Lithuania.

Energy

Both producers purchase gas from Gazprom, the Russian supplier. However, the Lithuanian producer pays Gazprom a price which varies in accordance with changes in the published cif Northern Europe price for ammonia, whilst the Slovak company pays a fixed price

(unchanged between 1997 and the IP) in Slovak crowns to a Slovak State-owned intermediary.

For all the above reasons, the Commission provisionally concluded that, in the absence of any alternative, Lithuania would be a reasonable choice of market economy third country, in accordance with Article 2(7)(a) of the basic Regulation.

b) Russia

i) Market economy status

- (23) Article 2(7)(b) of the basic Regulation states that, in anti-dumping investigations concerning imports from Russia, normal value shall be determined in accordance with Article 2(1) to (6) for those producers which can show they meet the criteria laid down in Article 2(7)(c) i.e. that market economy conditions prevail in respect of the manufacture and sale of the like product concerned.

- (24) As mentioned above, claims for market economy status were received from two producers. The Commission sought and verified all the information deemed necessary for the purposes of a determination of market economy status and carried out verifications at their premises.

The claims had to be rejected for the following main reasons:

Barter

Both companies engaged in barter trade. company A, which in fact was found to have purchased UAN from a related producer, paid for it on several occasions by delivering a product used by its supplier to produce compound fertilisers. Company B had been instructed by regional authorities to deliver UAN to farmers, the value of which would be offset against its tax bills. The farmers were to deliver grain to a State-owned agricultural consortium for use by the Regional Food Fund. Nearly half of company B's domestic sales of UAN were accounted for in this way.

Prices

Company A did not have its own marketing department and had no influence over export prices. All export sales were handled by a related trading company. Company A's domestic sales were made to a related company, which in turn resold the product on the Russian market. Since this related company did not cooperate, it was not possible to examine domestic sales in the light of the conditions set out in Article 2(7)(c) of the basic Regulation.

Costs and inputs

Company A claimed to purchase urea and ammonium nitrate from a related company for mixing in its own production facilities. In fact, it was billed for UAN, not for its constituents, and thus it is to be considered more an intermediary than a genuine producer.

Energy

For company B, the cost of energy, i.e. a major input for the production of UAN, did not reflect market values. The company reported that, since 1998, a series of discount schemes had been introduced by Presidential decree to encourage customers to pay cash for electricity and gas. For electricity, the cash discounts allowed to range from 30 % to 50 % and for gas, from 25 % to 50 %, the sole proviso being that the discounted energy price should not fall below the full primary costs of the supplier. In other words, and independently of the fact that these discounts were a clear indication of State interference in the market, prices did not reflect the full cost of energy, let alone its true market value.

Accounts

Finally, neither company had accounting records independently audited in line with international accounting standards, and there were significant deviations from those standards in several important areas (e.g. depreciation and fixed asset revaluation rates). Moreover, it appeared that the basic purpose of the accounts was to meet the requirements of the tax authorities and not to provide a complete picture of the company's situation at the end of the accounting period.

In view of the above, the Commission determined that neither company fulfilled all the criteria for granting market economy status which are set out at Article 2(7)(c) of the basic Regulation. In addition, it has been decided to reject the claims for individual treatment on the grounds that one company is not an exporting producer and that the other is not sufficiently free of State influence.

The producers concerned and the Community industry were given an opportunity to comment on the above findings. No comments were received.

ii) Normal value, export price and comparison

- (25) For both cooperating and non-cooperating Russian companies normal value was established as described for Lithuania (see recital 16).

- (26) For one cooperating producer, which sold to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community. For the other cooperating producer sales were made via a related trading company in the Channel Islands (part of the customs territory of the Community), and the export price was established by reference to the resale prices actually paid or payable to it. Adjustments were made for all costs incurred between importation and resale by that trader plus a reasonable margin for profit, based on that found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the basic Regulation.

- (27) As far as concerns non-cooperating companies, the cif value according to Eurostat for Russian imports was used as a basis for establishing the export price, after removal of the cooperating companies' exports. This price was then reduced by an amount corresponding to the weighted average of the difference between fob and cif prices charged by the two cooperating companies, in order to convert it to fob (ex-Russia frontier) level.

- (28) The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. Adjustments were made for differences in payment terms, transport, insurance, loading and ancillary costs, in accordance with Article 2(10) of the basic Regulation.

iii) Dumping margin

- (29) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for Russia was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide weighted average dumping margin is 24,1 %.

c) Belarus

i) Normal value, export price and comparison

- (30) As in the case of Russia, normal value was established as described at recital 16.

The export price was established on the basis of the prices actually paid or payable for the product when sold for export to the Community.

The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. For that purpose, adjustments were made for differences in transport, insurance, loading and ancillary costs, in accordance with Article 2(10) of the basic Regulation.

ii) Dumping margin

- (31) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide dumping margin for Belarus is 33,0 %.

d) *Ukraine*

i) Cooperation

- (32) The Commission sent questionnaires to the two companies mentioned in the complaint. One replied to the questionnaire within the time limit, stating that it had not exported to the Community at all during the IP. No reply was received from the second company. It should be noted that substantial export quantities originating in this country are recorded in Eurostat statistics.

ii) Normal value, export price and comparison

- (33) As in the case of Russia and Belarus, normal value was established as described at recital 16.

In the absence of information from the exporting producers concerning export prices, the Commission made its findings on the basis of the facts available, in this case Eurostat figures, in accordance with Article 18 of the basic Regulation. In order not to reward non-cooperation, the lowest monthly cif price for exports from Ukraine was used to establish the export price.

The normal value and export prices were compared on a fob (ex-exporting country frontier) basis. Adjustments for differences in transport, insurance, loading and ancil-

lary costs, and for commissions, were made, in the absence of any other more reliable information, on the basis of information contained in the complaint.

iii) Dumping margin

- (34) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of constructed normal value with the weighted average export price. Expressed as a percentage of the cif Community frontier price, the provisional countrywide dumping margin is 38,7 %.

D. DEFINITION OF THE COMMUNITY INDUSTRY

- (35) The complainant Community producers represent more than 85 % of the Community production of UAN solutions and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (36) In this respect, some interested parties have argued that certain complainant Community producers were importing UAN solutions originating in the countries concerned and could therefore not be considered as forming part of the Community production and consequently the Community industry.

The investigation has shown that indeed some complainant Community producers had imported the product concerned originating in the exporting countries concerned. It was, however, established that this import activity does not alter the fact that the primary interest of these companies was in the own production of UAN and not in importing. In addition, these imports do not represent any significant part of the sales of the importing Community producers' sales in the Community. Finally, the resales of these imports were made at the same price level as the UAN solutions manufactured and sold by the complainant Community producers in the Community.

Consequently, it is provisionally concluded that these Community producers should not be excluded from the definition of the Community industry.

E. INJURY

- (37) As can be seen below, the overall situation of the Community industry followed an upward trend between 1995 and 1997, from which year onwards it started to deteriorate. This development should be seen in the light of the measures introduced against imports of UAN solutions originating in Poland and Bulgaria⁽¹⁾, which started to take effect as from 1995.

⁽¹⁾ Council Regulation (EC) No 3319/94 (OJ L 350, 31.12.1994, p. 20).

1. Community consumption

- (38) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the information contained in the complaint concerning the sales volumes of the remaining Community producers, information provided by the cooperating exporting producers concerning their export volume and Eurostat figures for other third countries. All volumes have been, where appropriate, adapted so as to correspond to UAN solutions with a nitrogen content of 32 %.

On this basis, Community consumption increased from 3 155 000 tonnes to 3 297 000 tonnes, i.e. by 4,5 % between 1995 and the IP. Between 1995 and 1997 it decreased significantly, to increase rapidly after that year.

2. Imports from the countries concerned ⁽¹⁾

a) *Cumulative assessment of the effects of the imports concerned*

- (39) It has firstly been examined whether imports from all countries concerned should be assessed cumulatively, taking into account the conditions set out in Article 3(4) of the basic Regulation. In this respect, the investigation has shown the following.

i) Slovak Republic

- (40) As regards the volume of imports into the Community, the exporting producer from the Slovak Republic has argued that this volume was negligible in accordance with Articles 9(3) and 5(7) of the basic Regulation. However, the information provided by this sole Slovak exporting producer and Eurostat shows that Slovak exports represent around 2 % of the Community consumption and are therefore not negligible.

This exporting producer has further argued that its exports of UAN solutions should not be cumulated with the rest of the countries concerned in view of the different conditions of competition with respect to the imports from the other countries concerned, pointing to the different evolution of prices, import volumes and market shares and that imports originating in the Slovak Republic were competing only with the geographically closest Community producers.

It is the established practice of the Community institutions, when there are diametrically different market behaviours between the different countries concerned, to assess separately the effects that the imports have on the Community industry.

⁽¹⁾ For confidentiality reasons, given that in some of the countries concerned there is only one exporting producer, the figures contained in this Regulation relating to them will be indexed or only given approximately.

The investigation has shown that both volumes and market shares of the imports originating in the Slovak Republic were at the same level in the IP as compared to 1995, unlike the development found in the remaining countries concerned. Furthermore, import volumes from the Slovak Republic were the lowest of all countries concerned during the IP. As to the prices of imports originating in the Slovak Republic, although they followed the same trend as the other countries concerned, they were at a higher level after 1997. Finally, as opposed to the imports originating in all the other countries concerned, no price undercutting has been found for the imports originating in the Slovak Republic.

For these reasons, it is provisionally concluded that imports originating in the Slovak Republic should be assessed separately from the other imports subject to the present investigation.

ii) Belarus

The exporting producer from Belarus argued that its exports should be decumulated and assessed separately in view of the different conditions of competition with respect to the other countries concerned, as evidenced by the differences in evolution of import volumes and market shares by comparison to these other countries concerned.

The investigation has shown that import volumes from Belarus and the corresponding market shares decreased between 1995 and 1997, and increased thereafter, and therefore followed the trend of the five countries concerned as a whole. In addition, import volumes were substantial and the market share was 6,1 % during the IP. Furthermore, as was the case for the other countries concerned, the average prices of UAN solutions originating in Belarus followed a downward trend since 1996.

For these reasons, it is provisionally considered appropriate to reject the request for decumulation by the exporting producer from Belarus and to cumulatively assess imports from Belarus with those originating in the other remaining countries concerned.

iii) The remaining countries concerned (Algeria, Lithuania, Russia, and Ukraine)

- (41) As to the remaining countries concerned, the dumping margins found are more than *de minimis*, the volumes of imports are not negligible and the cumulative assessment appears appropriate in view of the conditions of competition both between the imports and between the imports and the like Community product. This is evidenced by the fact that all import volumes were substantial and their market share has increased, in

particular since 1996. Moreover, their prices have considerably decreased since 1996 and they have undercut the sales prices of the Community industry, while using the same or similar channels of trade. For these reasons, it is provisionally concluded that imports originating in the remaining countries concerned and Belarus (hereinafter referred to as 'the five countries concerned') should be assessed cumulatively.

b) *Volume and market share of dumped imports*

i) *The five countries concerned*

- (42) The import volume of UAN solutions originating in the five countries concerned increased from around 800 000 tonnes to around 1 500 000 tonnes, i.e. by around 87 % between 1995 and the IP. It should be noted that while they decreased between 1995 and 1997, as from that year to the IP they increased by around 200 %, while between 1997 and the IP, the Community consumption increased by around 14 %.

The market shares of the imports from the five countries concerned increased from 26,5 % in 1995 to 44,2 % in the IP, i.e. by 17,7 percentage points. More particularly, the market share first decreased between 1995 and 1997 and then more than doubled between 1997 and the IP.

ii) *Slovak Republic*

- (43) Imports from the Slovak Republic were at the same level in the IP as compared to 1995, both in terms of volume and market shares. Moreover, both import volume and market share started to decrease sharply after 1997.

c) *Prices of dumped imports*

i) *Price evolution ⁽¹⁾*

— *The five countries concerned*

- (44) The weighted average import prices of imports originating in the five countries concerned decreased from ECU 89,8/t to ECU 67/t, i.e. by 25,4 % between 1995 and the IP. While prices reached a peak in 1996, they decreased significantly thereafter by 34 %.

— *Slovak Republic*

- (45) As mentioned at recital 40, although the prices of imports originating in the Slovak Republic followed the same trend throughout the period as the other countries concerned, they did not fall as much after 1997 when the imports concerned significantly increased.

⁽¹⁾ For the assessment of price trends, in order to compare coherent data, only Eurostat data were used, whereas for the calculation of price undercutting and injury margins, information provided by exporting producers was used where available.

ii) *Undercutting*

- (46) It was examined whether the exporting producers of the five countries concerned undercut the prices of the Community industry during the IP. For this analysis, the cif prices of the exporting producers of UAN solutions have been duly adjusted to a Community frontier ex-quay customs-duty paid-level (DEQ) and compared, at the same level of trade, to the Community producers' ex-works prices.

The undercutting margins found on this basis per country, expressed as a percentage of the Community producers' prices, are as follows:

Country	Undercutting
Algeria	Between 2 % and 6 %
Belarus	Between 4 % and 8 %
Lithuania	Between 5 % and 10 %
Russia	6,7 %
Ukraine	16,7 %

- (47) In line with the price behaviour and development of imports of the Slovak exporting producer discussed earlier, no price undercutting was found.

3. Situation of the Community industry

a) *Production*

- (48) The Community industry's production of UAN (all volumes have been adapted, when applicable, so as to correspond to UAN solutions with a nitrogen content of 32 %) increased by 2,4 % between 1995 and the IP, i.e. from 1 484 000 tonnes to 1 520 000 tonnes. The most significant increase took place between 1995 and 1997, at a time when anti-dumping measures were imposed on imports of UAN originating in Poland and Bulgaria. Thereafter, production decreased between 1997 and the IP by 9,6 %.

b) *Capacity and capacity utilisation rates*

- (49) The total production capacity of the Community industry was, by and large, stable over the period under consideration. Capacity utilisation increased from 38 % in 1995 to 43 % in 1997 and subsequently fell back to the 1995/1996 level. It should be noted that capacity utilisation is not a meaningful indicator for this type of production and industry since it is affected by the production of other products which can be produced on the same production equipment.

c) *Sales in the Community*

- (50) The sales volume of the Community industry increased by 20,9 % between 1995 and 1997 from 1 446 000 tonnes to 1 748 000 tonnes and then decreased to 1 598 000 tonnes, i.e. by 8,6 % between 1997 and the IP.

d) *Market share*

- (51) The Community industry's market share increased from 45,8 % in 1995 to 60,7 % in 1997 and then decreased by around 12 percentage points to 48,5 % in the IP.

e) *Prices of the Community industry*

- (52) The Community producers' average net sales price increased by 3,8 % between 1995 and 1996 from ECU 111,3/t to ECU 115,5/t and then decreased to ECU 83,4/t in the IP, i.e. a fall by 27,8 %.

f) *Profitability*

- (53) The weighted average profitability of the Community industry deteriorated by 17,1 percentage points between 1995 and the IP, from 4,9 % to -12,2 %. In parallel with the price development, the profitability was highest in 1996 and decreased between that year and the IP, by 18,4 percentage points.

g) *Employment*

- (54) Employment in the Community industry, while increasing between 1995 and 1996/1997, when it was at 339 employees in both years, decreased thereafter to 311 employees in the IP, a decrease of 8,3 %.

h) *Investment*

- (55) The Community industry increased its investments between 1995 and the IP, with a peak in the year 1998 owing to large investments in preceding production steps. The most important investments between 1995 and the IP were investments in production facilities for urea and nitric acid, which are both raw materials for the production of UAN solutions but are also used for other purposes such as the production of solid ammonium nitrate and solid urea.

4. Conclusion on injury

- (56) A marked deterioration of the situation of the Community industry has been found in particular between 1997 and the IP, when the five countries concerned were able to expand their export volume to the Community by around 200 %, also benefiting from the substantial decrease in market share of other third countries. In an increasing market this meant that

between 1997 and the IP the Community industry lost around 12 percentage points of market share and the corresponding sales volume whereas the imports originating in the five countries concerned gained around 26 percentage points. The investigation has shown that during the IP, the imports concerned were made at prices significantly undercutting those of the Community industry.

In terms of price development, the Community industry managed to increase its average prices between 1995 and 1996. However, their sales prices eroded considerably thereafter. This had a negative impact on its profitability, which substantially deteriorated as from 1997 to reach a level of -12,2 % during the IP.

The above deterioration of the situation of the Community industry, in particular since 1997 was such that it is provisionally concluded that the Community industry has suffered material injury in the IP.

F. CAUSATION

1. Introduction

- (57) According to Article 3(6) and (7) of the basic Regulation, the Commission, in order to reach conclusions on the cause of the injury suffered by the Community industry, examined the impact of all known factors and their consequences on the situation in that industry. Such analysis ensures that any injury caused by factors other than dumped imports is not attributed to the dumped imports.

2. Effect of the dumped imports

a) General

- (58) UAN solutions are a commodity with no difference in quality or applications between the imported product and the one produced in the Community. Therefore, UAN solutions produced in the Community and UAN solutions imported from the countries concerned are in direct competition with each other mainly on the basis of price.

i) The five countries concerned

- (59) Between 1997 and the IP, dumped imports from the five countries concerned significantly increased in terms of volume (around 200 %) and of market shares (from around 18 % to around 44 %) and they undercut the prices of the Community industry. This coincided with the deterioration of the situation of the Community industry in terms of loss of market share, price depression as well as deteriorating profitability.

The dumped imports from the five countries concerned prevented the Community industry from benefiting from the anti-dumping measures imposed on imports from Poland and Bulgaria. In terms of volume, the five countries concerned basically took over most of the market shares held previously by Poland and Bulgaria while the Community industry could only secure a small part of this share. Furthermore, the significant increase of the market share of the dumped imports between 1997 and the IP coincided with the downward trend of the situation of the Community industry, which lost market share.

When faced with low-priced imports originating in the five countries concerned, the Community industry had the possibility of either maintaining its prices with a risk of losing sales volumes, or following the low prices of dumped imports with negative consequences on profitability. Indeed, as from 1997, the Community industry substantially lowered its sales prices. This had a negative impact on its profitability, which became negative. This clearly illustrates the price sensitivity of the market and the important impact of the pricing policy of the exporting producers of the five countries concerned.

It is therefore provisionally concluded that the dumped imports from the five countries concerned have caused material injury to the Community industry.

ii) Slovak Republic

- (60) As far as the Slovak Republic is concerned, no price undercutting has been found. Slovak imports were at the same level in the IP as compared to 1995. Given the relatively low import volumes, the small and stable market share and the fact that there is no price undercutting, it is provisionally concluded that imports originating in the Slovak Republic have not had an impact to a degree such as to be classified as material, within the meaning of Article 3(5) and (6) of the basic Regulation.

3. Effect of other factors

a) Imports from other third countries

- (61) The import volume of UAN solutions from other third countries decreased from about 669 000 tonnes in 1995 to around 37 000 tonnes in the IP, i.e. by 94,5 %. The most important suppliers in this group of countries during the IP were Mexico and the Czech Republic. Market shares of the imports from other third countries decreased from 21,2 % in 1995 to 1,1 % in the IP, i.e. a decrease of 20,1 percentage points, which is mainly

related to the anti-dumping measures concerning imports from Bulgaria and Poland.

Given the decrease in terms of volume and market share of the imports originating in other third countries, it is obvious that these imports did not contribute to the material injury suffered by the Community industry.

b) Other factors

- (62) The Commission also examined whether factors other than the abovementioned might have contributed to the injury suffered by the Community industry, having regard to, in particular, a contraction in demand or the changes in the patterns of consumption, developments in supply and in technology and productivity of the Community industry.

As to the development of supply, at a worldwide level, the Chinese decision in April 1997 to ban imports of urea and to replace them by domestic production led to a worldwide overcapacity for nitrogen fertilisers. It has been argued that the subsequent worldwide oversupply and fall in prices for nitrogen fertilisers has been a major factor causing the injury suffered by the Community industry. However, the investigation has shown that the prices of dumped imports had decreased substantially even before the Chinese decision. Furthermore, the Community industry itself was not directly affected because it did not export to China. In any event, the existence or not of a situation of oversupply is no justification for a significant surge in low-priced dumped imports.

Concerning the changes in the pattern of consumption, it has been argued that the increase in set-aside areas of agricultural farmland led to a reduction in the overall consumption of fertilisers in the Community. However, it has been established as set out above that the market for UAN solutions has steadily increased since 1997. At the same time, it has been established that the Community industry did not benefit from this expansion of the market, as opposed to the exporting producers from the countries concerned.

In relation to the developments in technology and productivity of the Community industry, it has been established that the Community industry has carried out considerable investments in order not to lose competitiveness.

Thus, it can be concluded that the effect of factors other than the dumped imports were not such as to break the causal link between the dumped imports and the material injury suffered by the Community industry therefrom.

4. Conclusion on causation

- (63) In view of the coincidence in time between, on the one hand, the price undercutting established, the significant market share gained by the dumped imports from the countries concerned and, on the other hand, the corresponding loss of market share suffered by the Community industry, as well as the reduction of its sales prices and the decline of its profitability, it is provisionally concluded that the dumped imports originating in the five countries concerned have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. Preliminary remark

- (64) In accordance with Article 21 of the basic Regulation, the Commission examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and traders and the users of the product concerned to the extent that the relevant interested parties submitted the information requested in this respect.

In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, 29 importers/traders, one importers' association and two associations of users of the product concerned. Thirteen importers/traders as well as the importers' association replied. As to the users' associations, none of them replied to the questionnaires or submitted any other information.

On this basis it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in this particular case.

2. Interest of the Community industry

- (65) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the positive development of its situation at a time when effective competition had been restored after the imposition in 1994 of anti-dumping measures concerning imports originating in Bulgaria and Poland and by the industry's investment in state of the art production capacity. However, owing to the pressure of the dumped imports on sales prices, in particular since 1997, it was

not able to benefit from the imposition of antidumping measures on imports originating in Poland and Bulgaria.

Despite this structurally viable background, it cannot be excluded however, that some companies of this industry would reduce or even cease their manufacturing activities for the product concerned in the Community if no measures against injurious dumping were taken. This conclusion is justified in view of the duration and extent of financial losses suffered owing to dumped imports (between 1997 and the IP, the Community industry has suffered increasing losses). Indeed, without measures, the price-depressive effect of the dumped imports will continue to frustrate all efforts of the Community industry to achieve a satisfactory margin of profitability.

On the other hand, the imposition of measures would enable this industry to maintain and restore its activities in the Community. With the adoption of anti-dumping measures, overall employment in the Community in relation to the product concerned would thus be secured and even expected to rise.

3. Interest of importers/traders

- (66) Almost all importers/traders which replied to the questionnaire have expressed their opposition to anti-dumping measures, as these would lower their already low profit margin and might force some of them to reduce personnel, to switch to other products or, in extreme cases, to cease activity. They claimed that the Community industry was unlikely to be able to satisfy demand during the peak season despite the low level of capacity utilisation. They therefore consider that any anti-dumping measures would not be in the interest of the Community, if as a consequence of these measures imports of UAN solutions would stop completely.

In this respect it should be noted, that, given the level and nature of the measures proposed, it is considered that imports will continue to take place, albeit at noninjurious prices. Furthermore, the investigation has established that the importers/traders as a rule do not only deal in UAN solutions but also, to a significant extent, in other fertilisers as well. Nevertheless, it cannot be excluded that some importers will face negative consequences after the imposition of anti-dumping measures.

4. Interest of users

- (67) Users of the product concerned are farmers in the Community. Demand for nitrogen fertilisers appears to be relatively inelastic and farmers tend to buy from the cheapest source available. Farmers therefore have benefited from low prices for UAN solutions in the most recent agricultural seasons.

However, the fact that there has been no cooperation from user-associations justifies the provisional conclusion that anti-dumping measures will most likely not have a decisive impact on the users. Were any anti-dumping measures to be imposed, the cost of UAN solutions for farmers would indeed be likely to increase. However, fertilisers represent only a very small part of total production costs so that the possible negative effects on farmers are unlikely to offset the positive effect of measures against injurious dumping.

5. Competition and trade distorting effects

- (68) With respect to the effects of possible measures on competition in the Community, some interested parties have argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition, and to an increase in the prices of UAN solutions.

However, some of the exporting producers concerned will probably continue to sell their products albeit at non-injurious prices, as they have an increasingly strong market position. The imposition of anti-dumping duties on those exporting producers for which higher dumping and injury margins were established is likely to lead to a drop in their sales volume and market share. However, other exporting producers concerned are not expected to be significantly affected given the level and the nature of the duties proposed. Finally, it cannot be excluded that once prices reach a level at which the effects of injurious dumping are removed, imports from other third countries will also be reoriented towards the Community market. Therefore, it is likely that there will still be a number of competitors to the Community producers on the market and in view of the large number of producers in the Community, as well as the transparency of the market, users will continue to have the choice of different suppliers of the product concerned.

On the basis of the above, competition will most likely remain strong after the imposition of anti-dumping measures. There will be an important number of actors in the market, which will be able to satisfy the demand.

Thus, the imposition of anti-dumping duties will be unlikely to limit the choice of the end users or weaken competition.

6. Conclusion on Community interest

- (69) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties.

H. PROVISIONAL MEASURES

1. Injury elimination level

- (70) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

For establishing the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

In order to establish the level of duty adequate to remove injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of UAN solutions sold by the Community industry on the Community market. The non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping. After consideration of various submissions by the complainants on that issue, the Commission came to the provisional conclusion that a profit margin of 5 % would allow the Community industry a profitability that it could have expected in the absence of the dumped imports. The difference resulting from this comparison was then expressed as a percentage of the total cif import value.

2. Provisional measures

a) *The five countries concerned*

- (71) In the light of the foregoing, it is considered that in accordance with Article 7(2) of the basic Regulation a provisional anti-dumping duty should be imposed at the level of the dumping margins found, except for Belarus for which the duty should be imposed at the level of the injury margin which is lower. For the reasons set out in recitals 15 and 19, the residual duties for Algeria and Lithuania have been set at the same level established for the sole producer in each country.

In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving the same general category of product, i.e. fertilisers, it is considered appropriate to impose the duties in the form of a specific amount per tonne.

On the basis of the above, the provisional duty amounts are as follows:

Country	Dumping margin	Basis for anti-dumping duty	Amount of duty (per tonne)
Algeria	13,3	13,3	EUR 9,42
— Fertilge Industries	13,3	13,3	EUR 9,42
Belarus	33,0	27,8	EUR 18,02
Lithuania	7,6	7,6	EUR 5,19
— JSC Achema	7,6	7,6	EUR 5,19
Russia	24,1	24,1	EUR 15,46
Ukraine	38,7	38,7	EUR 21,47

b) Slovak Republic

- (72) As imports originating in the Slovak Republic are provisionally considered not to have contributed to the material injury suffered by the Community industry, it is provisionally not considered appropriate to impose any anti-dumping duty on imports of UAN solutions originating in the Slovak Republic at this stage of the proceeding. However, the Commission will continue to investigate the matter before arriving at a definitive determination.

3. Undertakings

- (73) The exporting producer in Algeria has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The Commission considers that the undertaking offered by the exporting producer concerned can be accepted since it eliminates the injurious effect of the dumping. Furthermore, the regular and detailed reports which the company undertook to provide to the Commission will allow an effective monitoring.
- (74) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional on presentation to the relevant Member States' customs' services of a valid undertaking invoice issued by the exporting producer from whom the undertaking is accepted and containing the information listed in the Annex. Where no such invoice is presented or when it does not correspond to the product presented to the customs' services, the appropriate rate of anti-dumping duty will be payable in order to avoid circumvention of the undertaking.
- (75) In the event of a breach or withdrawal of the undertaking, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.
- (76) In accordance with Article 8(6) of the basic Regulation, the investigation of dumping, injury and Community interest will be completed, notwithstanding the acceptance of undertakings during the course of the investigation.

4. Final provision

- (77) In the interest 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 urea and ammonium nitrate solutions falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia, and Ukraine.
2. The amount of duty shall be equal to the fixed amount in euro per tonne of solution of urea and ammonium nitrate shown below for the countries concerned:

Country	Company	Amount of duty (per tonne)	TARIC additional code
Algeria	All companies	EUR 9,42	A999
Belarus	All companies	EUR 18,02	—
Lithuania	All companies	EUR 5,19	—
Russia	All companies	EUR 15,46	—
Ukraine	All companies	EUR 21,47	—

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.
4. Notwithstanding paragraph 1, the provisional duty shall not apply to imports of the product concerned manufactured and directly exported (i.e. shipped and invoiced) to the first independent customer in the Community acting as an importer by the company named in Article 2(1) when such imports are in conformity with Article 2(2).
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.
6. 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

1. The undertaking offered by the following company in connection with the anti-dumping proceeding concerning imports of urea and ammonium nitrate solutions falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia, and Ukraine is hereby accepted:

Country	Company	TARIC additional code
Algeria	Fertalge Industries SpA	A107

2. When the request for release for free circulation pursuant to an undertaking is presented, exemption from the duty shall be conditional on presentation to the relevant Member States' customs services of a valid undertaking invoice issued by the company mentioned in Article 2(1). The essential elements of the undertaking invoice are listed in the Annex to this Regulation. Imports accompanied by such an invoice shall be declared under the Taric additional code provided for in Article 2(1).

⁽¹⁾ OJ L 253, 11.10.1993, p. 40.

Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the undertaking invoice.

Article 3

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties which made themselves known within the time limit specified in the notice of initiation may make known their views in writing and apply to be heard orally by the Commission within 30 days 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 the date of its entry into force.

Article 4

This Regulation shall enter into force on the day following 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, 16 March 2000.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX

Elements to be indicated in the undertaking invoice referred to in Article 2(2)

1. The TARIC additional code under which the goods on the invoice may be customs cleared at Community borders (as specified in the Regulation).
 2. The exact description of the goods, including:
 - CN code,
 - the nitrogen ('N') content of the product (in percentages),
 - quantity (to be given in tonnes).
 3. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
 4. Name of the unrelated importer to which the invoice is issued directly by the company.
 5. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (company), and accepted by the European Commission through Regulation (EC) No 617/2000. I declare that the information provided in this invoice is complete and correct.'
-

COMMISSION REGULATION (EC) No 618/2000**of 22 March 2000****imposing a provisional countervailing duty on imports of stainless steel fasteners originating in Malaysia and the Philippines**

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 ⁽¹⁾, and in particular Article 12 thereof,

After consulting, the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) In June 1999 the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* ⁽²⁾ the initiation of an anti-subsidy proceeding with regard to imports into the Community of stainless steel fasteners (hereinafter referred to as 'SSF') originating in Malaysia, Singapore, Thailand and the Philippines and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged by the European Industrial Fasteners Institute (EIFI) on behalf of Community producers representing a major proportion of Community production of SSF. 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 Malaysia, Singapore, Thailand and the Philippines that it had received a properly documented complaint alleging that subsidised imports of SSF originating in Malaysia, Singapore, Thailand and the Philippines 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 Malaysia and the Philippines accepted the offers of consultation which were held with the Commission on 5 June 1999 with the Government of Malaysia and on 7 June 1999 with the Government of the Philippines. 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, raw material suppliers, users known to be concerned and the representatives of the exporting countries of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing.
- (5) The Commission sent questionnaires to all parties known to be concerned and received replies from the Governments of Malaysia, Singapore, Thailand and the Philippines, from the complaining Community producers, from seven raw material suppliers and from two exporting producers in Malaysia, one in Singapore, four in Thailand and two in the Philippines.
- (6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following companies and government institutions:
 - (a) *Complaining Community producers*
 - Bulnava srl, Milano (Italy)
 - Inox Viti snc di Cattinori Enrico & Bruno, Grumello Del Monte (Italy)
 - Tevi (Trafilerie e Viterie Italiane srl), Ponte Dell'Olio (Italy)
 - Torbesa (Tornilleria del Besos, SA), Barcelona (Spain)
 - Ugivis SA, Belley (France)
 - (b) *Government of Malaysia (GOM)*
 - Bank Negara Malaysia, Kuala Lumpur
 - Customs and Excise Department, Kuala Lumpur
 - Inland Revenue Board, Kuala Lumpur
 - Local Customs Offices, Ipoh and Penang
 - Malaysia External Trade Development Corporation, Kuala Lumpur
 - Malaysian Industrial Development Authority, Kuala Lumpur
 - Ministry of International Trade and Industry, Kuala Lumpur
 - Ministry of Taxation, Kuala Lumpur
 - (c) *Exporting producers in Malaysia*
 - Tigges Stainless Steel Fasteners Sdn. Bhd., Ipoh
 - Tong Heer Fasteners Co. Sdn. Bhd., Penang

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ C 181, 26.6.1999, p. 29.

- (d) *Government of Singapore (GOS)*
 — Central Bank of Singapore
 — Economic Development Board, Ministry of Trade and Industry
 — Ministry of Taxation
 — Trade Development Board, Ministry of Trade and Industry
- (e) *Exporting producer in Singapore*
 — Szu-I Fasteners, Ltd, Singapore
- (f) *Government of Thailand (GOT)*
 — Board of Investment, Bangkok
 — Customs Department, Bangkok, Samutprakarn
 — Department of Foreign Trade, Bangkok
 — EAGAT and Provincial Electricity Authority, Bangkok
 — Excise Department, Bangkok
 — Industrial Estate Authority of Thailand, Bangkok, Samutprakarn
 — Industrial Finance Corporation, Bangkok
 — Revenue Department, Bangkok
- (g) *Exporting producers in Thailand*
 — A.B.P. Stainless Fastener Co., Ltd, Ayutthaya
 — Chiao Pao Metal Co., Ltd (related company of Dura Fasteners Co., Ltd), Samutprakarn
 — Dura Fasteners Co., Ltd, Samutprakarn
 — Taiyo Fastener (Thailand) Co., Ltd (related company of Dura Fasteners Co., Ltd), Samutprakarn
- (h) *Government of the Philippines (GOP)*
 — Bureau of Custom, Manila
 — Bureau of Internal Revenue, Manila
 — Bureau of Investment, Manila
 — Department of Finance, Manila
 — Philippine Economic Zone Authority, Manila, Cavite
- (k) *Exporting producers in the Philippines*
 — Lu Chu Shin Yee Works (Philippines), Ltd, Cavite
 — Pilshin Works Corporation, (related company of Lu Chu Shin Yee Works Ltd), Cavite.
- (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 purpose 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 a company did not benefit from such scheme. In the case of the Philippines, which is a developing country included in the list contained in Annex VII of the WTO Agreement on Subsidies and Countervailing Measures, this threshold is raised to 0,3 %, unless the subsidisation level of the programmes below that threshold collectively exceeds 0,6 %. Furthermore, the benefit received by the exporting companies is expressed as a percentage of the denominator applicable to the subsidy scheme in ques-

tion, in accordance with Article 7 of the basic Regulation.

- (9) Definitive anti-dumping measures are currently in force concerning imports of SSF originating, inter alia, in Malaysia and Thailand by means of Council Regulation (EC) No 393/98 ⁽³⁾. An anti-absorption investigation concerning these measures was initiated on 6 May 1999 ⁽⁴⁾.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (10) The product under consideration is stainless steel fasteners, i.e. bolts, nuts and screws of stainless steel which are used to mechanically join two or more elements. The products described above fall within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.
- (11) Screws are fastener products with an external threading on the shank. They can either be used without any other part and fixed into wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head shapes (cup, socket, flat, hexagonal. etc.), shank lengths and diameters. The shank may be totally or partially threaded.
- (12) SSF are used by a variety of user industries and in a wide range of final applications where resistance to both atmospheric and chemical corrosion is necessary and where hygiene may also be essential, such as equipment for processing and storing food products, plants in the chemical industry, manufacture of medical equipment, public lighting equipment, shipbuilding, etc.
- (13) There are many types of SSF, each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made. However, all the products under consideration which fall under the general definition of fasteners have the same basic physical characteristics and the same uses and are distributed via the same distribution channels. No clear

⁽³⁾ OJ L 50, 20.2.1998, p. 1.

⁽⁴⁾ OJ C 125, 6.5.1999, p. 12.

dividing line exists between the many types of SSF. They are consequently considered as forming one single category of product for the purpose of the present investigation. It was however decided that, for technical investigation requirements, it would be appropriate to divide the product under consideration into 'types' and to gather and handle the data collected on the basis of those types. To this end, five criteria were considered ⁽⁵⁾. Each combination of these criteria, which is referred to as 'product control number' (hereafter 'PCN'), corresponds to a specific type of SSF.

- (14) In the course of the investigation, it was alleged that nuts (CN code 7318 16 30) should be excluded from the scope of the investigation given that no production of nuts existed in the Community. It should be noted, however, that the fact that a specific product type would not or no longer be produced by the Community industry is not in itself sufficient to determine whether it should be excluded from the scope of the anti-subsidy proceeding. The Commission found, in any event, that although a sizeable proportion of the Community consumption of nuts was imported, in particular from the countries concerned, the Community industry had also some production of nuts.
- (15) The part of the Community industry which has maintained a capacity for production of nuts may increase its production of nuts once a reasonable price level has been re-established on the Community market. In these circumstances it was not considered justifiable to remove nuts from the scope of the investigation.

2. Like product

- (16) The Commission found that SSF produced and sold on the respective domestic markets in Malaysia, Singapore, Thailand and the Philippines, and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry in the Community market have the same physical characteristics and uses. It was therefore concluded that all are like products within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

I. MALAYSIA

1. Introduction

- (17) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following alleged subsidy schemes were investigated:

⁽⁵⁾ These criteria are the following: (1) CN code; (2) type of raw material used; (3) DIN number, i.e. code number under which the product is classified within the 'DIN' nomenclature; (4) diameter in millimetres; (5) length in millimetres.

1. double deduction of business expenses:
 - (a) promotion of exports
 - (b) export credit premiums
 - (c) approved training
2. double deduction of insurance premiums for exporters
3. pioneer status
4. tax exemption on the value of increased exports
5. sales tax exemption on raw materials, machinery and equipment
6. export credit refinancing
7. industrial building allowance
8. import duty exemption
9. drawback of excise duties and sales tax
10. incentives for strategic projects
11. reinvestment allowance
12. capital allowance on capital expenditure in the provision of plant and machinery
13. infrastructure allowance
14. incentives for the promotion of Malaysian brand names.

2. Subsidy programmes that have been used by the exporting producers

Double deduction of business expenses for the promotion of exports

A. Legal basis

- (18) This programme is regulated by Section 41 of the Promotion of Investment Act (Act 327) of 1986 and Rule 4(2) of the Income Tax Rules of 1986, Chapter on the Promotion of Exports.

B. Eligibility

- (19) The double deduction is available to Malaysian manufacturing or agricultural companies, in respect of expenses incurred for the promotion of Malaysian products abroad. In order to obtain the benefit of the double deduction of expenses, a company has to exhibit Malaysian made products in an international trade fair which is recognised by the Malaysian authorities, and thereafter submit an application.

C. Amount

- (20) Any eligible company which incurred eligible expenses is allowed to deduct the double of the expenses from its income tax. In case the company is loss-making, the benefit may be carried over during the next four years. There is no fixed rate of deduction or a minimum or maximum amount.

D. Practical implementation

- (21) In order to obtain the benefit, a company makes a claim by completing an application form with the Ministry of International Trade and Industry (MITI). The applicant has to submit a cover letter, space rental invoice, photocopy of trade fair brochure and a letter from the Malaysian Trade Development Corporation. The letter of approval from MITI is submitted with the company's application to the inland revenue. The deduction from income tax can be claimed in the year following the fiscal year in which the trade fair took place.

E. Countervailability

- (22) The scheme constitutes a subsidy as the financial contribution by the Government of Malaysia (GOM) in the form of double deduction of expenses confers a benefit upon exporting producers i.e. a reduced tax liability.
- (23) The scheme constitutes a countervailable subsidy in the sense of Article 3(4)(a) of the basic Regulation. The double deduction constitutes a subsidy which is contingent upon export performance since the programme is available only with regard to expenses incurred in marketing products for export.

F. Calculation of the benefit

- (24) The benefit to the exporting producers should be calculated on the basis of the effect of the double deduction of costs on the taxes payable by exporting producers during the investigation period (i.e. the difference between the amount of tax paid with the benefit of the scheme and the amount that would have been paid without the benefit of the scheme). The amount of benefit should be allocated over the export turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %. This average interest rate was calculated on the basis of the monthly average lending rates by commercial banks during the investigation period.
- (25) One company benefited from this scheme and obtained a subsidy of 0,01 %.

Double deduction of insurance premiums for exporters**A. Legal basis**

- (26) This programme is regulated by Subsection 154 of the Income Tax Act of 1967 and the Income Tax Rules of 1995.

B. Eligibility

- (27) The double deduction is available for Malaysian manufacturing or agricultural companies in respect of premiums payable for insurance of cargo exported by that person or company, provided that the insurer is a company incorporated in Malaysia.

C. Amount

- (28) Any eligible company which incurred eligible expenses is allowed to deduct the double of the amount of the expenses incurred from its income tax. In case the company is loss making, the benefit may be carried over during the next four years. There is no fixed rate of deduction or a minimum or maximum amount.

D. Practical implementation

- (29) In order to obtain the benefit, a company makes a claim in its income tax return in the year of assessment after the expenditure has been incurred. Original receipts and a detailed calculation of the double expenses are to be attached to the income tax return.

E. Countervailability

- (30) The double deduction of insurance premiums for exporting producers constitutes a subsidy as there is a financial contribution by the GOM in the form of double deduction of expenses (i.e. a reduced tax liability) which confers a benefit upon exporting producers.
- (31) The scheme constitutes a countervailable subsidy in the sense of Article 3(4)(a) of the basic Regulation. The double deduction constitute a subsidy which is contingent upon export performance — and therefore deemed to be specific — since the programme is only available to exporting producers engaged in export transactions.

F. Calculation of the benefit

- (32) The benefit to the exporting producers corresponds to the effect of the double deduction of costs from the income tax payable by exporting producers during the investigation period (i.e. the difference between the amount of tax paid with the benefit of the scheme and the amount that would have been paid without the benefit of the scheme). The benefit should be allocated over the export turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.
- (33) One company benefited from this scheme and obtained a subsidy of 0,34 %.

Pioneer status

A. Legal basis

- (34) The pioneer status or investment tax allowance was established by the Promotion of Investments Act of 1986. The first schedule to the Promotions of Investment Order of 1994 contains the list of promoted activities and promoted products. The list of promoted activities was expanded in a second schedule in 1995. The Promotion of Investments Order of 1995 contains special rules for promoted products for high technology companies.

B. Eligibility

- (35) The investment tax allowance is available to all companies producing a 'promoted' product (manufacturing sector) or engaging in a 'promoted' activity (service sector). Promoted products are products which are listed in the schedule to the Promotion of Investments Act. Pursuant to Section 4 of the Act, the Minister of International Trade and Industry 'shall from time to time determine such activities or products as he may deem fit to be promoted activities or promoted products'. According to the Act, in order to promote a certain product, the Minister will take into consideration three criteria: (a) whether the production on a commercial scale is suitable to the economic requirements or development of Malaysia; (b) favourable prospects for further development; and (c) the national and strategic requirements of Malaysia. In practice, the Action Committee on Industries, a committee composed of representatives of MITI and the Department of Treasury evaluates if the proposed product will satisfy at least two of four criteria: (a) value added; (b) local content; (c) industrial linkage; and (d) technology measures by way of an increase in the number of managerial and technical employees in the company.

C. Amount of benefit

- (36) Any company which was granted pioneer status enjoys a tax exemption on 70 % of its statutory income. These exemptions are granted for a five-year period. In principle, no extension for the benefits are given except where the Minister decides that the activity is of national and strategic importance to Malaysia. Finally, companies which produce promoted products for high technology will obtain a 100 % tax exemption for a period of 10 years.

D. Practical implementation

- (37) In order to obtain the pioneer status, a company makes an application to the Malaysian Industrial Development Authority (MIDA), an agency under the Ministry of International Trade and Industry. MIDA will verify whether the future production falls within the list of

promoted products. If a company is granted the pioneer status, it submits a claim to the Inland Revenue Board together with the annual tax return containing the calculation of the claim for the tax incentive. The company can claim the first tax exemption in the tax year following the year of commencement of production.

E. Countervailability

- (38) The tax exemptions under the Promotion of Investments Act constitute countervailable subsidies in the sense of Article 3(2)(a) of the basic Regulation. The GOM has limited the access to the subsidy to enterprises which make a promoted product. Since the GOM has made the incentive available for the production of a limited number of products, it automatically limits the access to these enterprises which produce the products as defined in the Act. The product under consideration has been listed as a promoted product.
- (39) Furthermore, the GOM has wide discretion in the designation of promoted products. The criteria i.e. the suitability to the economic development of Malaysia, favourable prospects for further development and the national and strategic requirements of Malaysia, under which products can be classified as a promoted product are vague and cannot be considered as objective criteria in the meaning of Article 3(2)(b) of the basic Regulation. In this respect, it was established that there is no further definition of these criteria.
- (40) Finally, the GOM has provided for differentiated rates of tax exemption depending on the type of promoted product. As a consequence, the GOM favours certain enterprises over other enterprises because of the production of a 'more' promoted product.
- (41) Therefore, the scheme constitutes a subsidy as the financial contribution by the GOM in the form of tax exemption confers a benefit. It is a subsidy which is specific to certain enterprises in Malaysia pursuant to Article 3(2)(a) of the basic Regulation.

F. Calculation of the benefit

- (42) The benefit to the exporting producers should be calculated on the basis of the corporate income tax exemption and the resulting tax saving that was effectively granted to the exporting producers during the investigation period. The amount of benefit should be allocated over the total turnover during the investigation period. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.

- (43) Although the product under consideration was de-listed as a promoted product in the last amendment to the Promotion of Investments Act, one company producing the product under consideration is still eligible to claim the tax exemption for a period of five years. One company benefited from this scheme and obtained a subsidy of 1,87 %.

Sales tax exemptions

A. Legal basis

- (44) The legal basis of the scheme is found in Sections 4 and 11 of the Free Zones Act of 1990.

B. Eligibility

- (45) The sales tax exemption is available for companies which are located in free zones. The exemption is given to all imported machinery, equipment and raw materials used directly in the manufacturing process for the production of finished goods destined for export. The programme is under the responsibility of the Minister of International Trade and Industry.
- (46) Malaysia has a sales tax system with three different rates: 5 %, 10 % or 15 %. About 90 % of the goods are subject to a sales tax of 10 %. A few basic products such as books, food and certain types of machinery are exempted from sales tax.

C. Amount of benefit

- (47) Any company meeting the criteria, enjoys a 100 % exemption of sales tax on the value of the imported goods inclusive of the import duty (if paid).

D. Practical implementation

- (48) In order to obtain the benefit of this programme, a company makes an application to the State Director of Customs (From D). The application should contain the description of the goods, the country of origin and the specific function in the manufacturing process. The State Director will verify whether the imported good meets the criteria of Sections 4 and 11 of the Free Zones Act and if so, will approve the sales tax exemption.

E. Countervailability

- (49) The sales tax exemption appears to constitute a subsidy pursuant to Article 2(1) of the basic Regulation since it involves a revenue foregone for the GOM. It has been advanced by the GOM that this programme falls within the criteria of footnote 1 to Article 1(1)(a)(1)(ii) of the

WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), which refers to the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption. However, exporting companies located outside the free zones do not benefit from a general sales tax exemption. As a result, the sales tax exemption programme does not appear to fulfil the criteria necessary to apply footnote 1.

- (50) This programme is contingent upon export performance since it is limited to machinery, equipment and materials used directly in the manufacturing process for the production of finished goods destined for export and, in addition to, companies located in the free zones, are required to export at least 80 % of their production. As a result, the sales tax exemption constitutes a countervailable subsidy pursuant to Article 3(2)(a) and 3(4)(a) of the basic Regulation.

F. Calculation of the benefit

Raw materials

- (51) The majority of products in Malaysia have a sales tax rate of 10 %, except for certain products such as books, food and certain types of machinery. The normal payable sales tax for stainless steel wires used in the production of the product under consideration is 10 %.
- (52) The amount of subsidy is the difference between the amount of sales tax actually paid on raw materials and the amount of sales tax which would normally be payable (at the standard sales tax rate of 10 %) without the benefit of the exemption during the period of investigation. This amount should be allocated over the total export sales during the period of investigation. Since the benefits from sales tax exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant is received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rate of 11,5 %.

- (53) Both companies benefited from this scheme and obtained subsidies between 2,13 % and 6,71 %

Machinery and equipment

- (54) The machinery used by the two companies does not belong to the types of machinery generally exempted of sales tax. The normal sales tax rate payable for machinery is 10 %.

(55) The amount of subsidy is the difference between the amount of sales tax actually paid on machinery and the amount of sales tax which would normally be payable (at the standard sales tax rate of 10 % on that machinery) without the benefit of the exemption. The benefit should be allocated over the normal lifetime of the machinery which is 10 years for this industry in Malaysia. This amount should be allocated over total export sales during the period of investigation. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period. i.e. 11,5 %.

(56) Both companies benefited from this scheme and obtained subsidies between 0,03 % and 0,40 %.

Industrial Building Allowance

A. Legal basis

(57) The Industrial Building Allowance (IBA) is provided for under Schedule 3 of the Income tax Act 1967.

B. Eligibility

(58) A company is eligible for IBA if the company incurred qualifying building expenses provided that the applicant was the owner of the building and the building was in use for the purpose of the business. Pursuant to the Finance Act of 1983, the IBA is also applicable for buildings which are used as warehouses for the storage of goods for export or for storage of imported goods which will be processed and re-exported.

C. Practical implementation

(59) A company which has incurred eligible expenses can claim the IBA directly in the annual tax return. The amount of allowance claimed is verified by the Inland Revenue Board at the time of the regular tax audits.

D. Amount of benefit

(60) Pursuant to the Income Tax Act, the rates for IBA differ between constructed and purchased buildings. For constructed buildings, the rates are an initial allowance and an annual allowance of 10 % and 2 % respectively of the building expenditure. Purchased buildings are only given annual allowances equivalent to a permitted fraction of the purchase price.

E. Countervailability

(61) The standard IBA does not constitute a subsidy. Since the IBA complies with international accountancy standards on depreciation, it cannot be considered to constitute a financial contribution in the form of revenue foregone in the sense of Article 2(1)(a)(ii) of the basic

Regulation. In addition, the standard IBA forms a part of the standard depreciation practice for buildings used for production. It is applicable for the entire manufacturing and services sector without differentiating between industries. However, no assessment has been made of the 'special' IBA for warehouses for storage of goods since this IBA was not used by the exporting producers of the product under consideration.

Import Duty Exemption

A. Legal basis

(62) Pursuant to Section 11 of the Free Zones Act 1994, imported raw materials used directly in manufacturing are exempted from import duties. The same provisions allow importing machinery and equipment without the payment of import duties.

B. Eligibility

(63) In order to qualify for the import duty exemption on raw materials, machinery and equipment, a company must be located in a free zone and manufacture an approved product which is exported to a third market. It is also important to mention that any company which is located in a free zone has an obligation to export at least 80 % of its production.

C. Practical implementation

(64) As regards the imported raw materials, an application is made to the State Director of Customs using Form D which verifies whether the input can be directly used in the finished product. After approval, the imports made under this scheme are declared through Customs Form 8 to the customs authorities. The imports are registered and examined if they are in compliance with the declaration made in with the approval by the State Director of Customs. The verification of the customs department revealed that every entry of goods into the free industrial zone is verified to establish whether it constitutes an input which can be used in the production of a finished product. The imported machinery and equipment are automatically exempted.

D. Countervailability

Raw materials

(65) The import duty exemption appears to involve a subsidy pursuant to Article 2(1) of the basic Regulation. The GOM alleges that the import duty exemption does not constitute a subsidy pursuant to footnote 1 to Article 1(1)(a)(1)(ii) of the WTO Agreement on Subsidies and Countervailing Measures, which refers to the exemption of an exported product from duties or taxes borne by

the like product when destined for domestic consumption. The GOM has not been able to prove that it has in place and applies effectively a system or procedure to confirm whether raw materials imported in the free trade zone are consumed in the production of the exported products and in what amounts, as required by Annex II of the basic Regulation. The system put in place and administered by the GOM only ensures that a duty is charged on sales from the free zones to the domestic market, calculated on the basis of the duty rate applicable to the finished product. This leaves open the question of whether and to what extent the quantity of raw materials imported in a given period corresponds to the quantity incorporated in the exported finished products. Firstly, a duty charged on finished products does not necessarily, as claimed by the GOM, equal or exceed the duty paid on the corresponding amount of raw materials incorporated therein. There is no evidence that duty rates on finished products always exceed those on raw materials and moreover the result of such equation could not be predicted in case of a multi-product manufacturing process combining a plurality of inputs. Secondly, the system does not allow a proper verification of the correspondence between imported and exported quantities within the period. It fails to verify whether stocks are accumulated by the company during the investigation period, and furthermore it does not keep track of duty-free sales of goods within the export processing zone (EPZ) or between EPZs.

- (66) The incentive is therefore a subsidy since it provides a financial contribution by the GOM in the form of import duties foregone that are otherwise due and it confers a benefit on the recipient. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.

Machinery and equipment

- (67) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOM in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. The incentive does not involve and exemption concerning inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Article 3(2)(a) and 3(4)(a) of the basic Regulation.

F. Calculation of the benefit

Raw materials

- (68) The amount of subsidy is the difference between the amount of import duties actually paid on raw materials and the amount of import duties tax which would normally be payable without the benefit of the exemption during the period of investigation. This amount

should be allocated over export sales. Since the benefits from import duty exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant be received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rates of 11,5 %.

- (69) Both companies benefited from this scheme and obtained subsidies between 1,47 % and 2,54 %

Machinery and equipment

- (70) The amount of subsidy is the difference between the amount of import duties tax actually paid on machinery and the amount of import duties which would normally be payable without the benefit of the exemption. The benefit should be allocated over the normal lifetime of the machinery which is on average 10 years in Malaysia. The amount pertaining to the investigation period should be allocated over export sales. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 11,5 %.
- (71) Both companies benefited from this scheme and obtained subsidies between 0,03 % and 0,55 %.

Reinvestment allowance

A. Legal basis

- (72) The reinvestment allowance is given under schedule 7a of the Income Tax Act of 1967 (Act 53).

B. Eligibility

- (73) In order to qualify for the reinvestment allowance a company needs to have been in operation for at least 12 months, to have incurred capital expenditure on a factory, plant or machinery used in Malaysia for the purpose of a qualifying project and to have achieved a level of productivity as prescribed by the Minister of Finance (process efficiency standard). Subsection 8 of Act 451 defines a qualifying project as a project by a manufacturing company to expand its existing business that is approved by the Minister of Trade and Industry under the Industrial Coordination Act 1975. The reinvestment allowance is not available for companies enjoying pioneer status or receiving an investment tax credit.

C. Practical implementation

- (74) An application is made to the State Director of Taxation using a special application form in which the project is described in detail. The company also has to indicate whether an increase in productivity has occurred, whether the company is located in a promoted area and whether the process efficiency ratio for the product is positive or negative. Finally, the application has to be signed by the applicant and an external qualified auditor. When the application for reinvestment allowance is approved, the company can claim the benefit in its annual tax return. The benefit of the reinvestment allowance can be carried forward during five years.

D. Amount of benefit

- (75) The amount of benefit is normally 60 % of the eligible incurred expenses for the qualifying project which can be offset against up to 70 % of the statutory income. If the company is located in a promoted area or has achieved a prescribed level of productivity, 60 % of eligible expenses can be offset against up to 100 % of the statutory income.

E. Countervailability

- (76) The reinvestment allowance for companies non located in promoted areas does not constitute a countervailable subsidy in the sense of Article 3 of the basic Regulation. The GOM has not limited the access to the subsidy to certain enterprises and applies objective criteria in the granting of the subsidy. Since none of the exporting producers is located in promoted areas, the countervailability of this subsidy scheme for these areas has not been assessed.

3. Subsidy programmes not used by the exporting producers

- (77) The complainant alleged that the exporting producers of the product under consideration benefited from a number of other subsidy programmes. The questionnaire response and the verification revealed that the exporting producers did not use the below listed programmes.
- double deduction of export credit premiums
 - double deduction of expenses on approved training
 - tax exemption on the value of increased exports
 - export credit refinancing
 - drawback of excise duties and sales tax
 - incentives for strategic projects
 - capital allowance on capital expenditure in the provision of plant and machinery
 - infrastructure allowance
 - incentives for the promotion of Malaysian brand names.
- (78) Therefore, the Commission has not made an assessment as regards these programmes.

4. Amount of countervailable subsidy

- (79) It was established that the level of cooperation in this proceeding has been very high. Cooperating exporting producers covered virtually all exports from Malaysia to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producers.
- (80) The country-wide weighted average margin for subsidisation is above the applicable *de minimis* level.

(%)

	Double deductions	Pioneer status	Sales tax exemptions	Import duty exemptions	Total
Tong Heer Fasteners	0,01	1,87	7,11	2,57	11,56
Tigges Stainless Steel Fasteners	0,34	0	2,16	2,02	4,52

II. SINGAPORE

- (81) On the basis of the information contained in the complaint and in the replies to the Commission's questionnaires, the following programmes were investigated:

- double deduction for overseas investment
- double deduction for research and development
- double tax deduction scheme
- pioneer status
- investment allowance
- expansion incentive
- development and expansion incentive

- approved royalties incentive
- approved foreign loan scheme
- preferential financing scheme.

- (82) During the verification of the replies of the Government of Singapore and the exporting producer, the Commission established that none of the alleged subsidies has been used by the cooperating exporting producer. The Commission also verified whether other producers of the product under consideration exported the product under consideration. The Commission found that one other producer exported the product under consideration to the European Union. However, evidence was provided that this exporting producer did not benefit from the alleged subsidies.

- (83) For these reasons, it is considered appropriate not to make an assessment as regards the countervailability of the alleged subsidies.

III. THAILAND

1. Introduction

- (84) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following schemes, which allegedly involve the granting of countervailable subsidies:
- schemes available under the Investment Promotion Act:
 - exemption or reduction on duties on imports of machinery
 - exemption from corporate income tax
 - additional incentives for enterprises in special investment promotion zones
 - exemption of import duties on raw and essential materials,
 - schemes available under the Industrial Estate Authority Act (IEAA):
 - import duty exemption
 - exemption of payment of surcharge under the law for promotion of investment
 - value added tax exemption
 - exemption of excise tax on machinery, equipment and spare parts,
 - reduced electricity rates,
 - loans at preferential interest rates.
- (85) It was established that, during the investigation period, the cooperating exporting producers availed themselves only of schemes under the IEAA.

2. Subsidy programmes used by cooperating exporting producers

- (86) It was found that one exporter benefited from import duty exemptions on imported machinery (IEAA Section 48) which are granted only to companies located in an EPZ. An EPZ is an area which, from a customs point of view, is separate from the rest of Thailand. In order to be granted permission under the IEAA to establish a factory in an EPZ, a company has to fulfil, *inter alia*, an export requirement.
- (87) This scheme was found to be a subsidy as defined under Article 2 of the basic Regulation since it involves a financial contribution by the Government in the form of import duties forgone and a benefit is thereby conferred. The use of the scheme is limited to companies located in certain zones and is therefore specific under Article

3(2)(a) of the basic Regulation. Additionally, this scheme is contingent upon export performance and is thus specific under the provisions of Article 3(4)(a) of the basic Regulation.

3. Subsidy programmes not used by the exporting producers

- (88) The Commission established that, during the investigation period, the cooperating exporters did not avail themselves of any other subsidy programmes alleged in the complaints, i.e.:
- schemes under the Investment Promotion Act
 - schemes under the Industrial Estate Authority Act others than import duty exemptions
 - reduced electricity tariffs
 - loans at preferential rates.

4. Amount of countervailable subsidies

- (89) 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	IEAA section 48 (%)
Dura Fasteners Co., Ltd/Taiyo Fasteners (Thailand) Co., Ltd/Chiao Pao Metal Co., Ltd	0,24
A.B.P. Stainless Fastener Co., Ltd	0

- (90) It was established that the level of cooperation in this proceeding has been very high. Cooperating exporting producers covered virtually all exports from Thailand to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producers.
- (91) The weighted average country wide margin for all the exporting producers that cooperated in the investigation is *de minimis*, i.e. under 2 %. Under these circumstances, the subsidy margin for Thailand has to be considered negligible.

IV. PHILIPPINES

1. Introduction

- (92) On the basis of the information in the complaint and of the replies to the questionnaires, the following schemes were investigated, which allegedly involve the granting of countervailable subsidies:

- schemes available under the Omnibus Investment Code (OIC):
 - income tax holiday
 - additional deduction for incremental labour expenses
 - tax credit on domestic capital equipment
 - tax credit for import duties and taxes on raw materials
 - import tax and duty exemption of raw materials
 - import tax and duty exemption on machinery
 - import duty exemption and supplies and spare parts,
 - schemes available under the Special Economic Zones Act (SEZA):
 - income tax holiday
 - exemption from national and local taxes (gross income tax or 5 % special rate)
 - tax credit for training expenses
 - additional deduction for incremental labour expenses
 - tax credit on domestic capital equipment
 - tax credit for import substitution
 - import tax and duty exemption of raw materials
 - import tax and duty exemption on machinery
 - import duty exemption on supplies and spare parts
 - exemption from wharfage dues and export tax, duty, impost and fee
 - reduced rental and construction rates.
- (93) There are currently two SSF producers in the Philippines, Lu Chu Shin Yee Works (Philippines) Ltd, incorporated in 1988 (Lu Chu) and Pilshin Works Corporation, incorporated in 1997 (Pilshin). Both are subsidiaries of a Taiwanese company, Lu Chu Shin Yee Works (Taiwan) Ltd, a company that is subject to the anti-dumping measures currently in force. They are related companies and will therefore be regarded as one company (Lu Chu/Pilshin) in the following analysis.
- (94) During the verification visits it was established that, during the investigation period, the cooperating exporting producers only availed themselves of benefits under the SEZA.
- (95) SEZA (Republic Act No 7916 (1995)) provides for the creation, operation and administration of special economic zones (ecozones) in the Philippines, establishing for this purpose the Philippine Economic Zone Authority (PEZA). On 17 May 1999 PEZA issued implementing rules (PEZA Rules) relating to SEZA.
- (96) Ecozones are limited areas determined as such by the Government of the Philippines (GOP). They can be publicly or privately owned and/or operated. There are different types of ecozones, such as industrial estates, free trade zones, export processing zones and tourist recreational zones. As regards export processing zones, they are delimited areas which are not considered as part of the national custom territory. They are reserved for export-oriented companies.
- (97) In order to benefit from PEZA incentives, companies must obtain a registration with PEZA, which includes authorisation to operate within one of the ecozones in the country. There are several types of registration, e.g. export enterprises (must export more than 50 % of their turnover. 70 % if foreign ownership is above 40 %), domestic market enterprises, free trade enterprises, pioneer enterprises and service enterprises. Registered PEZA companies become automatically eligible for the various incentives available under the SEZA. Export enterprises located in EPZ have generally the right to additional incentives.
- (98) The exporting producer concerned is a PEZA registered export enterprise located in the Cavite EPZ. In the investigation period, it made use of the following schemes.
- Gross income tax (5 % special rate) (Section 24 SEZA)**
- (99) The gross income tax (GIT) consists of an option given to companies to pay a special income tax corresponding to 5 % of the gross income and be thus exempted from payment of all national and local taxes. Lu Chu availed itself of this incentive during the investigation period.

2. Subsidy programmes that have been used by the exporting producers

General

- (95) SEZA (Republic Act No 7916 (1995)) provides for the creation, operation and administration of special

A. Eligibility

- (100) The GIT is available to companies registered with PEZA, except to enterprises providing certain services (e.g. custom services, freight forwarding, banking and insurance) within ecozones.

B. Practical implementation

- (101) PEZA companies may elect to apply GIT on its annual income tax return. The income tax form includes the option for the company to determine the amount due for the fiscal year by applying the special 5 % rate on gross income instead of the usual rate (33 % according to the last amendment to the Internal Revenue Code) on the company's net income. According to Rule XX of PEZA Rules, the gross income to be determined for purposes of computing the GIT refers to net revenues derived from the business within the ecozone net of a list of allowable deductions corresponding to the costs directly imputable to the production, including depreciation and financial charges associated with fixed assets.
- (102) Applicant's tax return is firstly submitted to PEZA, which verifies and states the company's entitlement to the GIT, and subsequently to the Bureau of Internal Revenue which carries out the ordinary tax review.
- (103) By opting for the GIT, the company is automatically exempted from ordinary income tax, which for years 1998 and 1999 was respectively 34 % and 33 % of net income. Moreover, the GIT incentive implies exemption from all local taxes. These taxes vary by jurisdiction and include, *inter alia*, real property, business, local franchise, professional, community taxes.

C. Countervailability

- (104) The GIT incentive constitutes a subsidy under Article 2 of the basic Regulation because it involves a financial contribution by the GOP in the form of income taxes and local taxes foregone that are otherwise due, and it confers a benefit on the recipient. Since access to this incentive is limited to companies that are authorised by the GOP to locate and operate in certain areas (ecozones), it is deemed to be specific within the meaning of Article 3(2)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (105) The benefit to Lu Chu/Pilshin has been calculated on the basis of data referring to the tax year 1998, that is the most recent period for which a tax return was available.
- (106) The benefit to Lu Chu/Pilshin is the difference between the amount of tax actually paid for the year 1998 and the amount that would have been paid at the normal rate of tax. The latter includes the national income tax at the ordinary rate of 34 % and some local taxes normally collected within the jurisdiction in which Lu Chu/Pilshin is located: community tax, real property tax and municipal licence tax. Since this subsidy is equivalent to a one-time grant, the benefit calculated in this way is

increased by the interest rate calculated over the investigation period, at the average commercial lending rate of the period. i.e. 15.1 %. Allocated over the total sales during the investigation period, the subsidy obtained by Lu Chu/Pilshin amounts to 0,58 %.

Import duty exemption on machinery, raw materials, supplies and spare parts (Sections 4(c) and 23 SEZA)

Introduction

- (107) Rule XV of PEZA Rules provides that machinery, raw materials, supplies and spare parts brought into an EPZ by an export enterprise to be employed in its manufacturing process shall, under certain conditions, be exempted from import duties.
- (108) As explained above, EPZ are not part of the customs territory of the country. Traffic from and to the area is restricted and subject to the control of PEZA and Bureau of Customs.

Exemption on imports of machinery

A. Eligibility

- (109) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (110) In order to avail itself of the import duty exemption on imported machinery, an EPZ located company must submit an application for import permit to the PEZA. Permission is granted by PEZA, upon checking that the machinery is related to the production of the company.

C. Countervailability

- (111) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. The incentive does not involve an exemption concerning inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Article 3(2)(a) and 3(4)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (112) The benefit to the exporting producer, i.e. Lu Chu, has been calculated on the basis of unpaid customs duty due on imports of capital goods by spreading this

amount across a period which reflects the normal depreciation of such assets in the industry concerned. This period has been established at 10 years, which is considered to reflect the normal service life of this type of machinery in this industry in the Philippines. The amount pertaining to the investigation period should be allocated over export sales. Since subsidies under this scheme are equivalent to one-time grants, in order to encompass the full benefit to the recipient, the amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 15,1 %. The resulting amount has been allocated over total exports during the investigation period, giving an amount of subsidy of 0,05 %. Since this amount of subsidy is below 0,3 %, and the Philippines is all Annex VII country, it is considered that no benefit was received by the exporting producer in accordance with recital 8 above.

Exemption on imports of raw materials

A. Eligibility

- (113) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (114) Companies located in EPZ wishing to benefit from duty exemption on imported raw materials must submit an application to PEZA — including details concerning, shipper, import and goods imported — in order to obtain the permit to tranship the cargo from the port of entry into the EPZ. Officials of PEZA and the Bureau of Customs cross-check the imported goods at the port of entry and make sure that they are delivered into the EPZ. PEZA keeps a company file in which it registers the individual imports.
- (115) A comparable procedure is applied when companies export their finished products. They must request an export permission from the PEZA. PEZA officials check the cargo prior to leaving the zone and make sure it is delivered as such to the port of shipment, where it will be cross-checked by the Bureau of Customs. The export is registered in the company's file kept by PEZA. In case a company wants to sell a part of its production domestically, it has to obtain authorisation by PEZA. Only authorised local sales can leave the PEZA.
- (116) According to the GOP, companies selling goods domestically are required to pay the import duty on the corresponding quantity of raw materials imported, to be calculated by PEZA and the Bureau of Customs on the basis of a pre-defined formula of manufacturing. However, the GOP did not provide any evidence on

whether and how this formula is actually established and applied.

- (117) The GOP also submitted that PEZA carries out, at regular intervals, a verification of the companies raw material stock in order to ensure that goods are re-exported within the six months. In the negative, companies are required to pay the import duty on the raw materials which have not been re-exported. However, the GOP did not provide any evidence on whether and how this verification is actually carried out.

C. Countervailability

- (118) The incentive appears to involve a subsidy as defined under Article 2(1) of the basic Regulation. The GOP has not been able to prove that it has in place and applies effectively a system or procedure to confirm whether raw materials imported in the EPZ are consumed in the production of the exported products and in what amounts, as required by Annex II of the basic Regulation. The GOP did not provide any evidence to support its claim that a formula of manufacturing is applied to establish the link between exports of finished products and imports of raw materials. Moreover, the GOP did not submit any evidence on whether and how it actually carries out verifications of the company's stock.
- (119) The incentive constitutes a subsidy since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.
- (120) Lu Chu has a relatively straight forward production process: the only raw material used is stainless steel wire rod which is processed (cut and shred) into fasteners, i.e. Lu Chu's only finished products. In the course of the investigation, the GOP and the Commission conducted and examination of the actual inputs involved in accordance with Annex II to the basic Regulation. During the investigation period, Lu Chu imported the totality of the raw materials and exported the totality of the finished products (i.e. it did not purchase or sell on the domestic market). No significant difference was found between import and export quantities during the investigation period, nor did the company's stock at the end of the period reach an anomalous level.
- (121) The Commission considers that there is sufficient evidence that, during the IP, raw materials imported by Lu Chu in exemption from import duties have been actually consumed in the production of the exported

products. Furthermore, given the commercial structure and operation of this company, there are no indications that this situation will change in the coming years. Consequently, it is provisionally found that Lu Chu/Pilshin did not obtain a subsidy under this programme.

Exemption on imports of spare parts and supplies

A. Eligibility

- (122) Export enterprises located in an EPZ may avail themselves of this incentive.

B. Practical implementation

- (123) In order to benefit from the import duty exemption on imported spare parts and supplies, companies located in the EPZ must submit an application for import permit to the PEZA. Permission is granted by PEZA, upon checking that the goods are related to the production of the company.

C. Countervailability

- (124) The incentive constitutes a subsidy under Article 2(1) of the basic Regulation, since it provides a financial contribution by the GOP in the form of import duties foregone that are otherwise due and it confers a benefit to the recipient. There is no evidence that the exemption involved concerns inputs that are consumed in the production process. As it is limited to companies located in certain areas and furthermore contingent upon export performance, it is specific within the meaning of Articles 3(2)(a) and 3(4)(a) of the basic Regulation.

D. Calculation of the subsidy amount

- (125) The benefit to the exporting producer has been calculated on the basis of unpaid customs duty due on the total imports of supplies and spare parts. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Since the benefits from import duty exemptions are obtained regularly

during the investigation period, they are equivalent to a series of grants made between the first and the last day of the investigation period. In these cases, it is normal practice to assume that an average grant be received at the mid-point of the investigation period. Hence, the interest to be added is on the whole amount of non-paid duties over a period of six months, by using the average commercial lending rate of 15,1 %. The resulting amount has been allocated over total exports during the investigation period, giving an amount of subsidy of 3,33 %.

3. Subsidy programmes not used by the exporting producers

- (126) The Commission established that, during the investigation period, the cooperating exporters did not avail themselves of any other subsidy programmes alleged in the complaints, i.e.:

- other incentives under the SEZA,
- reduced rental and construction rates,
- incentives under the OIC, the only exception being the import tax and duty exemption on raw materials, which was used by the company Pilshin. However, since the amount of subsidy it received under this scheme is below 0,3 %, and the Philippines is an Annex VII country, it is considered that no benefit was received, as explained in recital 8 above.

4. 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 producer Lu Chu/Pilshin is 3,91 %.

- (128) It was established that the level of cooperation in this proceeding has been very high. The cooperating exporting producer covered virtually all exports from the Philippines to the Community during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producer.

(%)

Company	Gross Income Tax	Import duty exemption	Total
Lu Chu Shin Yee Works, Ltd/Pilshin Works Corporation	0,58	3,33	3,91

D. COMMUNITY INDUSTRY

1. Community Producers

- (129) In the Community, SSF are manufactured by the following companies:

- producers who lodged the complaint and cooperated in the investigation:

- Bulnava srl, Milan, (Italy)
- Inox Viti snc di Cattinori Enrico & Bruno, Grumello Del Monte (Italy)
- Tevi (Trafilerie e Viterie Italiane srl), Ponte Dell'Olio (Italy)
- Torbesa (Tornillería del Besos. SA), Barcelona (Spain)
- Ugivis SA, Belley (France),

— other producers who were not complainants but did not oppose to the proceeding.

(130) It was found that, during the IP, certain complaining Community producers had purchased SSF from various sources outside the Community, including the countries concerned. However, the volume of these purchases represented a negligible share of total production (i.e. less than 2 %). It was therefore considered that these purchases were in accordance with standard commercial practice of producers who had to supplement their own range of products with small purchases of imported SSF.

(131) Based on the above, the output of all these companies constitute the Community production within the meaning of Article 9(1) of the basic Regulation.

2. Community industry

(132) It was examined whether the complainant Community producers represented a major proportion of total Community production of SSF and arrived at the conclusion that they produced 70 % of the total Community production during the IP. It has therefore been concluded that the complainants constitute the Community industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.

E. INJURY

1. Preliminary remarks

(133) The analysis of injury should be seen in the light of the anti-dumping measures provisionally imposed on the product under consideration through Commission Regulation (EC) No 1732/97 ⁽⁶⁾ and confirmed by Regulation (EC) No 393/98 ⁽⁷⁾. The latter imposed a definitive anti-dumping duty on imports of SSF originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.

(134) Furthermore, since the investigation has concluded that the exporting producers in Singapore did not benefit from the alleged subsidies and given that the subsidy margin for Thailand has been found to be negligible, the injury analysis has been limited to imports of SSF originating in Malaysia and the Philippines.

2. Community consumption

(135) Community consumption was based on the questionnaire replies (volume of sales of the Community industry), Eurostat information (volume of imports) and the complaint (non-complaining Community producers volume of sales).

(136) On the above basis, the apparent Community consumption increased from 79 388 tonnes in 1996 to 80 080 tonnes in 1997, it decreased to 60 977 tonnes in 1998 and to 58 680 tonnes in the IP, which represents all overall decrease of 26 %. Consumption increased slightly (by 1 %) from 1996 to 1997, but it registered a sharp decline in 1998 (24 % over the previous year) and an additional decrease of 4 % in the IP.

(137) It should be noted that the development of apparent consumption is largely influenced by the behaviour of the stockholders on the Community market given that they act as intermediaries between all producers of SSF, both Community producers and exporting producers. The apparent consumption figures therefore reflect the purchases made by the stockholders during the period considered and not necessarily those made by users.

(138) In the previous anti-dumping proceeding it was found that consumption had massively increased between 1994 and 1995 due to the purchases made by stockholders (from 59 900 to 86 500 tonnes). In this context, the abrupt decrease between 1997 and 1998 (from 80 080 to 60 977 tonnes, followed by an additional decrease in the IP to 58,680) coincides with the imposition of the anti-dumping measures mentioned above and brought the level of imports to that of 1994. This development indicated that imports before the imposition of the above mentioned anti-dumping measures were well above the purchases made by users.

3. Cumulation

(139) It was examined whether imports of SSF originating in Malaysia and the Philippines should be assessed cumulatively in accordance with Article 8(4) of the basic Regulation.

(140) In this respect it was found that the amount of counter-vailable subsidies was more than *de minimis* as defined in Article 14(5) of the basic Regulation and the volume of imports from each of these countries was not negligible.

(141) As mentioned above, it was also found that SSF imported from both countries concerned as well as SSF produced and sold by the Community industry were alike in all respects. It should be noted that imports of SSF from both countries are produced to the same quality standards as Community products, usually a DIN standard or an ISO standard, they are interchangeable and were marketed in the Community during the same period through comparable sales channels and under similar commercial conditions. The imported SSF were considered therefore to compete with each other and with the SSF produced in the Community.

⁽⁶⁾ OJ L 243, 5.9.1997, p. 17.

⁽⁷⁾ See footnote 3.

- (142) In the light of the above, it was considered that all the criteria set out in Article 8(4) of the basic Regulation were met by imports originating in Malaysia and the Philippines, i.e. the countervailable subsidies from each of these countries were more than *de minimis*, the volume of imports was not negligible, and a cumulative assessment of the effects of the imports was appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community products. The imports from Malaysia and the Philippines were therefore examined cumulatively.

4. Volume and market share of subsidised imports

- (143) The volume of the subsidised imports into the Community of SSF originating in the countries concerned increased by 16 % during the period considered. They increased from 6 280 tonnes in 1996 to 7 433 tonnes in 1997, 7 917 tonnes in 1998 and fell to 7 293 tonnes in the IP.
- (144) The market share held by these countries increased from 7,9 % in 1996 to 9,3 % in 1997 and 13 % in 1998, reaching 12,4 % in the IP, which represents an increase of 4,5 percentage points over the period considered, with a particular increase since 1997.

5. Prices of the subsidised imports

Price evolution

- (145) The prices of imports from the countries concerned, per kg, as reported by Eurostat decreased from EUR 2,91 in 1996 to EUR 2,7 in 1997 and EUR 2,73 in 1998, further decreasing to EUR 2,58 in the IP. It should be noted that the prices of the imports from the countries concerned have been consistently and significantly lower than the Community industry's prices during the period considered.

Price undercutting

- (146) As regards price undercutting, the SSF imported from the countries concerned and those produced and sold by the Community industry on the Community market were categorised by PCN (i.e. type of SSF). For each type of SSF, a comparison was made between the exporting producers' and the Community industry's average selling prices net of all rebates and taxes, calculated on the basis of sales to the first unrelated customer duly adjusted, when appropriate, to take into account the differences in distribution channels. The difference was then expressed as a percentage of the Community industry's prices.
- (147) In order to arrive at a comparable level of trade with the sales of the Community industry, the import prices from the countries concerned were adjusted to take into account customs duty payable (including the anti-dumping duty in the case of Malaysia), post-importation

costs (including handling, financing and transport costs) and repackaging costs in accordance with Article 28 of the basic Regulation. The adjustments for post-importation costs and repackaging costs were based on facts available, i.e. information received from importers during the previous anti-dumping investigation.

- (148) Based on the above methodology, undercutting margins, expressed as a percentage of the Community industry's weighted average price, have been found for both countries, ranging from 10 % to 20 %, in the case of Malaysia and reaching 31 % in the case of the Philippines.

6. Situation of the Community industry

Volume of sales and market share

- (149) The Community industry's sales on the Community market increased by 31 % over the period considered, going from 14 131 tonnes in 1996 to 18 758 tonnes in 1997, to 19 216 tonnes in 1998 and decreasing to 18 520 tonnes in the IP.
- (150) The market share held by the Community industry increased over the period considered, rising from 17,8 % in 1996 to 23,4 % in 1997, 31,5 % in 1998 and to 31,6 % in the IP. The overall increase in market share can be attributable to an increase of sales while consumption declined following the imposition of anti-dumping duties. Major exporters to the Community other than the countries subject to anti-dumping duties also increased their market shares for the same reason.

Prices

- (151) The weighted average selling price of SSF sold by the Community industry on the Community market showed an overall 17 % decrease during the period considered. Prices decreased from EUR 3,65/kg in 1996 to EUR 3,22/kg in 1997, EUR 3,23/kg in 1998 and EUR 3,02/kg in the IP.

- (152) It should be noted that, according to the information provided by the co-operating raw material suppliers, the price of the raw materials concerned decreased by 5,6 % between 1998 and the IP, while the Community industry's prices of SSF incorporating this raw material fell by 6,3 %. As the cost of raw material purchases represented 56,7 % of the Community industry's full cost in the IP, it has been found that the Community industry's prices of SSF have decreased well above the decline in the costs of raw materials. This situation can thus be characterised as one of price depression.

Profitability

- (153) The Community industry's return on sales went from 0,1 % in 1996 to 2,3 % in 1997, to 1,8 % in 1998 and to a loss of -0,8 % in the IP.

- (154) If this downward trend were to persist, the selling prices of the producers in the Community industry would soon be close to their marginal costs, as in a highly competitive and transparent market it is not possible to maintain profits, even at the expense of market share, by unilaterally charging higher prices. The weighted average loss of – 0.8 % in the IP represents the worst result since 1996.

Production, capacity and capacity utilisation

- (155) The production of the Community industry increased by 21 % over the period considered, going from 15 620 tonnes in 1996 to 18 857 tonnes in 1997 and 20 272 tonnes in 1998 falling to 18 857 tonnes in the IP.
- (156) Capacity of the Community industry increased by 22 % in the period considered. It should be noted, however, that a large part of this increase took place in 1997, at a time when the Community industry expected an increase in sales due to the imposition of anti-dumping duties in the above mentioned proceeding. Between 1998 and the IP capacity remained stable.
- (157) Capacity utilisation increased from 60 % to 62 % between 1996 and 1997. It further increased to 63 % in 1998, but it fell to 59 % in the IP.

Stocks

- (158) The Community industry's stocks increased 30 % over the period considered, rising from 3 331 tonnes in 1996 to 4 435 tonnes at the end of the IP.

Investments

- (159) Investments increased overall by 32 %, going from EUR 1,6 million in 1996 to EUR 2,1 million in the IP. Investment fluctuated over the period considered (EUR 8,8 million in 1997 and EUR 4,09 million in 1998). A reasonable level of investment in machinery is needed in the SSF industry in order to maintain competitiveness as well as to comply with environmental requirements.

Employment

- (160) Employment increased from 386 persons in 1996 to 453 in the IP, i.e. 17 % over the period considered. The increase in employment took place mostly in 1997 (438 employees against 386 in the previous year) and coincided with changes in the structure of some companies during 1997 as well as with an increase in capacity.

Productivity

- (161) Productivity of the Community industry, measured in tonnes per employee, improved 10 % over the period considered. It improved substantially between 1996 and 1997 (by 8 %), it continued to improve between 1997

and 1998 (by 8 %) and it fell by 5 % between 1998 and the IP.

7. Conclusion on injury

- (162) It is concluded that the Community industry suffered significant price pressure from the subsidised imports originating in the countries concerned over the period considered, which were found to considerably undercut the Community industry's prices in the IP and which significantly increased in terms of import volume. As a consequence, the Community industry was unable to increase or even maintain the level of its selling prices despite the restored, effective competition from the countries subject to anti-dumping duties.
- (163) In this context, the Community industry's financial situation deteriorated, reaching a weighted average loss of – 0,8 % in the IP, and could not be redressed due *inter alia* to the ability of the countries concerned to depress prices.
- (164) Following the imposition of provisional anti-dumping measures in 1997, the situation of the Community industry improved between 1997 and 1998 in terms of production and sales. However, between 1998 and the IP the situation of the Community industry deteriorated in terms of production (a 7 % decrease in the volume produced), sales (a 3,6 % decrease in the volume sold), and profitability (from 1,8 % to – 0,8 %). In view of the above, it has been provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8(2) of the basic Regulation.

F. CAUSATION OF INJURY

- (165) In order to reach its conclusion on the cause of the injury suffered by the Community industry, the Commission examined the impact of all known factors and their consequences on the situation in that industry. Such analysis ensures that any injury caused by factors other than subsidised imports is not attributed to the subsidised imports.

1. Effects of the subsidised imports

- (166) There is a clear coincidence between the significant price undercutting found during the IP and the deterioration of the prices of the Community industry and its profitability in the same period. The significant price pressure from the subsidised imports between 1998 and the IP coincided with a severe decrease in the prices of the Community industry, leading to losses of – 0,8 % during the IP.
- (167) Following the imposition of the anti-dumping measures mentioned above, the Community industry was able to increase its production, sales and to improve profitability. However, the increase of imports from the countries concerned between 1997 and 1998 and the sharp

decrease in the sales prices, in particular between 1998 and the IP, coincided with a deterioration of the situation of the Community industry, namely with regard to its profitability. The Community industry was unable to benefit either from its spare capacity or the re-establishment of effective competition following the imposition of anti-dumping measures. The pressure from subsidised imports did not allow the Community industry to improve its profitability.

- (168) It has therefore been concluded that the increase in imports reaching a significant level of the Community market during the IP, the depressed prices and the deteriorating situation of the Community industry, in particular in terms of financial losses, can be attributed to the persistent low prices of the imports from the countries concerned.

2. Effect of other factors

- (169) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the subsidised imports. In particular, the Commission examined the development of consumption, the evolution and impact of imports from third countries, and the effect of changes in the cost of raw materials.

Consumption

- (170) It was considered whether the development of consumption was a material cause in the deterioration of the situation of the Community industry, namely as regards its profitability.
- (171) It should be noted that while consumption strongly decreased between 1996 and the IP (by 26 %), the volume of sales of the Community industry during the same period increased by 31 % and its share of the Community market increased over the same period by 13,8 percentage points. Despite this increase in sales, the Community industry's prices have seriously decreased between 1996 and the IP with the consequent deterioration of its profitability.
- (172) In view of the above, it is unlikely that the contraction in demand has contributed to the deterioration of the situation of the Community industry.

Imports from other third countries

- (173) As regards imports from other third countries, it was found that these imports lost a significant share of the Community market, which declined from 64,8 % in 1996 to 42,3 % in the IP.

Singapore

- (174) As mentioned above, the investigation has shown that exporting producers in Singapore did not benefit from the alleged subsidies. Although imports from this country have registered a significant increase during the period considered (167 %), the prices of those imports

based on Eurostat were higher than the selling prices of the Community industry over the period considered. In view of the above, it does not appear that imports from Singapore have materially contributed to the injury suffered by the Community industry.

Thailand

- (175) As mentioned above, the investigation has shown that the subsidy margin for Thailand is negligible. Imports from Thailand have kept an increased presence in the Community market at prices below those charged by the Community industry. It should be noted that the anti-dumping measures concerning imports of SSF from Thailand are based on the dumping margins found in the previous anti-dumping proceeding.
- (176) It is therefore considered that imports from Thailand might have also contributed to the injury suffered by the Community industry.

Other third countries

- (177) It was found that the total market share held by other third countries decreased during the period considered by 29 percentage points mainly due to the decrease in imports from the countries subject to anti-dumping duties.
- (178) It was therefore considered that these imports did not contribute to the injury suffered by the Community industry to all extent that could break the causal link between the subsidised imports and the injury suffered by the Community industry.

Raw materials

- (179) It was examined whether the injury suffered by the Community industry could be attributed to an increase in the costs of raw materials.
- (180) It was found that the price of the raw material commonly used in the production of SSF, i.e. stainless steel wire rod, charged by the raw material suppliers responding to the questionnaires decreased during the period considered. This trend was accompanied by a fall in the price of nickel, the main input of stainless steel wire rod. It should be noted that the cooperating raw material suppliers represented a major proportion of the total purchases of stainless steel wire rod made by the Community industry.
- (181) In view of the above, it is considered that the price of the raw material did not contribute to the injury suffered by the Community industry.

3. Conclusion on causation

- (182) In the light of the above, it is concluded that the imports from the two countries concerned taken in isolation have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General considerations

- (183) On the basis of the information submitted it has been provisionally examined, whether despite the subsidy and injury findings, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in the present case.
- (184) In order to assess the impact of possible measures, Community interest questionnaires were sent to all interested parties in the upstream and downstream industries known to the Commission at the time of the initiation of the proceeding. Information on Community interest was also requested from the Community industry. Only seven raw-material suppliers, one non-complainant Community producer and the Community industry responded to the questionnaires.

2. The supplier industry

Situation of the raw material suppliers

- (185) The raw material used in the production of SSF is stainless steel wire rod. This raw material is produced by the major stainless steel makers in Europe who supply the entirety of the raw materials consumed by the Community industry.
- (186) There are a number of different grades of stainless steel wire rod that can be used in this type of production. Nevertheless, the two most commonly used grades, by both the Community industry and the producers in the countries concerned, are austenitic steel type A2 (AISI 304 grade) and A4 (AISI 316). These grades of steel are mainly used on account of their heat and corrosion resistance and their superior strength.
- (187) On the basis of the information supplied by the cooperating raw material suppliers, it was found that they employed 14 520 people in the IP, of which approximately 625 were specifically concerned by the production of the raw material concerned. Their total turnover in the IP was EUR 3,3 billion of which EUR 135 million related to the raw materials concerned. Their total turnover decreased by 20 % between 1996 and the IP. Sales in the Community of the raw material concerned decreased by 2,6 % in the same period from EUR 103,2 million in 1996 to EUR 100,6 million in the IP.
- (188) As regards the profitability on the sales of the raw materials concerned in the Community, a weighted average loss of -6,9 % was found in the IP.

Effect of imposition/non-imposition of measures

- (189) Although the companies producing the raw materials concerned do supply other non-Community markets and may, theoretically, be able to redirect their sales to these markets, any major decline in the sales on the Community market, which represents 77,5 % of their

total sales in volume of the raw material concerned, is likely to have a substantial effect on them. It should also be noted that some of these non-Community markets are highly protected.

- (190) Taking into account that the total Community production of the raw materials concerned represents more than a negligible proportion of the total turnover and employment of the companies concerned, and the fact that the total turnover of these companies decreased during the period considered, it can be considered that in the event of the imposition of measures they could benefit from a higher sales volumes and an improvement on their negative profitability level registered in the IP.
- (191) On the other hand, should measures not be imposed, the downward trend in the companies' turnover would be more difficult to reverse, as sales of the raw material concerned are likely to decline. In addition to this, the loss of further employment would be inevitable if the Community industry reduces its purchases of the raw material concerned.

3. The Community industry

Nature and structure of the Community industry

- (192) The Community industry is composed of small and medium-sized companies located in France, Spain and Italy. Production is capital intensive and highly automated. It should be noted that SSF are finished products which do not undergo any further transformation, and are mainly consumed by end-user industries that incorporate SSF into various applications.
- (193) The range of SSF is highly standardised and both the Community industry and the exporting producers in the countries concerned produce SSF to agreed norms (DIN or ISO standards). Given this high degree of standardisation and the bargaining power of the major stockholders in the Community, which act both as importers of SSF produced in third countries and wholesalers of SSF produced in the Community, prices of SSF, and in particular the most common SSF types, are extremely sensitive to dumped or subsidised imports.

Effects of the imposition/non-imposition of measures on the Community industry

- (194) Given that the injury found has taken the form of a severe price depression caused by the price undercutting, which resulted in a deterioration of the profitability of the Community industry, it is expected that, following the imposition of countervailing duties, the volume of SSF sold by the Community industry will increase and, more importantly, the prices of SSF on the Community market will also rise. This increase in prices would enable the Community industry to reach an acceptable level of profitability, allowing the companies to continue trading and make the necessary investments.

(195) Should measures not be imposed, it is likely that the negative trend of the Community industry will continue, leading in the long term to the closure of at least some companies. The Community industry is particularly marked by a low capacity utilisation and a negative financial situation. In this context, a future loss of employment is probable.

(196) In conclusion, and taking into account that the analysis of the Community industry showed that it is structurally viable, it is expected that measures would give the industry the opportunity to recover from the injury suffered. It is expected that prices and its volumes sold in the Community will increase, allowing the Community industry to regain profitability. Therefore, it is considered to be in the interest of the Community industry to impose measures.

4. Importers and traders

(197) The distribution of SSF in the Community is characterised by a significant number of importers/traders who hold large stocks of the product under consideration. In essence, the importers/traders act between producers (Community and third-country) and users and their behaviour on the market strongly influences the prices of SSF. It was found that the Community industry still relies on the well-established distribution network of importers/traders for a large percentage of its sales.

(198) No response to the Community interest questionnaire was received from any importer/trader concerned. The Commission has therefore based its analyses on facts available as well as on substantiated arguments made by certain importers/traders concerned.

(199) The previous anti-dumping investigation found that importers/traders could control the levels of supply and thus prices through both their access to dumped imports before the imposition of duties and their bargaining power over third countries and the Community industry. This has been confirmed in the current investigation as the information provided by a major importer/trader showed that its overall level of stocks decreased in 1996, increased in 1997 (the provisional anti-dumping duty was imposed on 4 September 1997) and declined in 1998 (the definitive anti-dumping duty was imposed on 16 February 1998).

(200) An importer has claimed that the imposition of countervailing duties will have as an effect the closure of the Community market to the traditional suppliers from the Far East. It was also claimed that since the Community industry is incapable of meeting all the Community demand of SSF, importers/trade who act as stockists will suffer substantial economic damages.

(201) As regards the closure of the Community market to imports, it should be mentioned that the exporting countries already subject to anti-dumping duties have generally continued to supply the Community market after the imposition of those measures. Furthermore, a number of alternative sources of supply exist not subject to measures which represented around 19 % of the Community consumption during the IP (excluding Malaysia and the Philippines).

(202) The Commission also examined the impact of any countervailing measure on the economic situation of importers/traders in the light of the measures already imposed in the previous anti-dumping proceeding. In this context, it is worth noting that no importer/trader has completed the questionnaire in the present proceeding, which could indicate that the anti-dumping measures imposed in 1998 did not have a significant impact on them.

(203) In any event, the impact of any countervailing duty on the situation of importers/traders should also be seen in the light of the fact that these parties trade in a multitude of products. Indeed, the Commission found in the previous anti-dumping investigation that the product under consideration represented an average around 30 % of the importers/traders' total turnover.

(204) Should countervailing measures be imposed, it is considered that prices of SSF on the Community market will increase. Although the prices of the subsidised imports will in all likelihood increase to the full extent of the duty, prices of the Community products may not increase to the same extent. This increase in prices is likely to have a negative impact on importers and traders who may see their margins reduced. However, it should be noted that the importers, who also act to a large extent as traders, may choose to increase their purchases from the Community industry and obtain discounts for larger volumes. Indeed, the investigation has shown that, subsequently to the imposition of anti-dumping measures in the previous proceeding, the Community industry increased its sales of SSF to importers/traders.

(205) In the light of the above, it is considered that if measures are imposed, it is unlikely that the situation of importers/traders will significantly be affected.

5. Users

Nature and structure of user industries

(206) Firstly, it should be mentioned that no user of the product under consideration has cooperated in the present proceeding. Furthermore, no information has been provided by users showing that the analysis carried out in the previous anti-dumping investigation on imports of SSF was inaccurate as regards the impact of those measures on users.

(207) Secondly, information gathered in the course of the investigation shows that SSF are to a large extent sold to users through the intermediate of importers/traders acting as stockists.

(208) Thirdly, SSF are used in a wide variety of applications: foodstuffs, catering, pharmaceutical, medical equipment, household appliances (white goods), automobile, maritime and shipbuilding, building and construction, environment, energy, chemical and petrochemical, and transport. In view of the type of user industry involved, it is not incorrect to conclude that the SSF represent a very small percentage of the costs of the final products. Therefore any countervailing measure imposed on SSF imported from the countries concerned is not likely to substantially increase the cost of the final product for the user.

Effect of imposition/non-imposition of measures

(209) Given the lack of cooperation from users in the present proceeding, the supply channels and the type of users concerned, the impact of any countervailing duty on users is likely to be very marginal as the prices of SSF stand for a marginal proportion of the cost of production of the final product.

(210) Furthermore, should countervailing measures be imposed, it is unlikely that supply constraints would occur, given the existence of alternative sources of supply not covered by measures. including the Community industry.

6. Conclusion on Community interest

(211) The investigation has shown that the imposition of measures can be expected to allow the Community industry to increase prices and volumes and therefore to restore profitability, with consequent beneficial effects on the competitive conditions on the Community market. The imposition of countervailing duties is also expected to benefit raw material suppliers.

(212) Whilst any negative effects are likely to ensue for the importers/traders from the likely price increase, the extent of these may be reduced by decreasing margins or by increasing the prices charged to the user industry. The user industry, in turn, is unlikely to suffer serious consequences from such an increase given the low incidence of SSF on their final products.

(213) In the light of the above, the Commission considers that no compelling reasons exist for not imposing measures in the present case. Consequently, the imposition of countervailing duties would not be against the interest of the Community.

H. PROVISIONAL MEASURES

(214) On the basis of the conclusions on subsidisation, injury, causal link and Community interest, the Commission considered it necessary to adopt provisional countervailing measures.

1. Injury elimination level

(215) 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.

(216) To that effect, the Commission considered that the removal of such injury requires that the industry should be in a position where the prices of the imports of the product concerned originating in the countries concerned should be increased to a non-injurious level.

(217) For the purposes of calculating the necessary price increase, i.e. the injury margin, the Commission considered that the prices of subsidised imports had to be compared with the actual sales prices of the Community industry plus a reasonable level of profit which the industry might be expected to obtain in the absence of injurious subsidisation from the countries concerned.

(218) On this basis, the weighted average export prices for those products used in the determination of price undercutting were compared, on a cif Community frontier level, adjusted to take account of customs duty paid and allowance in respect of post-importation costs and repackaging costs, with the actual weighted average selling prices charged by the Community industry, increased, where appropriate, to reach a reasonable pre-tax profit margin on turnover, in this case established at 5 %. This profit margin is an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious subsidisation. This profit margin is the same as that used in the previous anti-dumping investigation concerning imports of the same product originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.

(219) Based on the above methodology, substantial injury elimination levels have been found for both countries.

2. Provisional measures

(220) In view of the wide diversity of product types, an *ad valorem* duty appears to be the most appropriate measure. 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.

- (221) As regards Malaysia, for both exporting producers anti-dumping duties are currently in force, at the rates of 7,0 % and 5,7 % respectively. The level of the duty imposed within this proceeding shall therefore take into account the totality of the domestic subsidy plus the excess of export subsidy amount over the existing anti-dumping duty. As summarised in the table below, one Malaysian exporting producer should be subject to a provisional countervailing duty (in addition to the existing anti-dumping duties) of 4,5 %. As for the second exporting producer, the countervailing duty should be nil, since the existing anti-dumping duty exceeds the export subsidy amount.
- (222) Given that the companies cooperating in the proceeding covered virtually all imports from this country, the residual duty should be set equal to the highest level found for co-operating companies. Thus, the residual countervailing duty should be set at 4,5 %, in addition to the existing residual anti-dumping duty of 7,0 %.

(%)

Company	Total subsidy	Export subsidy	Existing AD duty	Proposed CVD
Tong Heer Fasteners	11,56	9,69	7,0	4,5
Tigges Stainless Steel Fasteners	4,52	4,52	5,7	0
Others			7,0	4,5

- (223) The following rates of duty should therefore apply for the Malaysian cooperating producers:
- Tong Heer Fasteners: 4,5 %
- Tigges Stainless Steel Fasteners: 0 %.
- (224) As regards the Philippines, the following rates of duty should apply for the cooperating producer:
- Lu Chu Shin Yee Worla, Ltd/Pilshin Works Corporation: 3,9 %.
- (225) 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 highest rate established for any cooperating exporting producer, i.e. 4,5 % for Malaysia and 3,9 % for the Philippines.
- (226) The individual company countervailing duty rates specified in this Regulation were established on the basis of the provisional 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'.
- (227) 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⁽⁸⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. 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.

⁽⁸⁾ European Commission
Trade Directorate
General Directorate E
DM 24 — 5/77
Rue de la Loi/Wetstraat 200
B-1019 Brussels.

I. FINAL PROVISION

- (228) 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,

ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of stainless steel fasteners and parts thereof falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 and originating in Malaysia and the Philippines.

2. The rate of the duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Malaysian producers	Rate of duty (%)	TARIC additional code
Tong Heer Fasteners	4,5	A104
Tigges Stainless Steel Fasteners	0	A105
All other companies	4,5	A999

Philippines producers	Rate of duty (%)	TARIC additional code
Lu Chu Shin Yee Works, Ltd/Pilshin Works Corporation	3,9	A106
All other companies	3,9	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 products referred to in paragraph 1 shall be subject to a security, equivalent to the amount of the provisional duty.

Article 2

Interested parties which made themselves known within the time limit specified in the notice of initiation of this investigation may make known their views in writing and apply to be heard orally by the Commission within a period of time fixed pursuant to Article 30 of Regulation (EC) No 2026/97.

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

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, 22 March 2000.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 619/2000
of 23 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 23 March 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	154,0
	204	116,9
	999	135,4
0707 00 05	052	109,0
	068	130,6
	628	146,6
	999	128,7
0709 10 00	220	309,8
	999	309,8
0709 90 70	052	114,4
	204	51,3
	628	116,0
	999	93,9
0805 10 10, 0805 10 30, 0805 10 50	052	48,3
	204	36,2
	212	46,0
	220	28,2
	600	41,1
	624	52,4
	999	42,0
0805 30 10	052	33,7
	220	71,3
	600	60,6
	999	55,2
0808 10 20, 0808 10 50, 0808 10 90	039	90,1
	388	90,1
	400	79,8
	404	85,6
	508	78,4
	512	92,4
	528	89,6
	720	56,6
	999	82,8
	052	77,4
0808 20 50	388	68,1
	512	67,2
	528	69,2
	720	71,3
	999	70,6

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 620/2000
of 23 March 2000
amending Council Regulation (EC) No 1722/1999 as regards the import of durum wheat and
residues of certain cereals originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1722/1999 of 29 July 1999 on the import of bran, sharps and other residues of the sifting, milling or other working of certain cereals originating in Algeria, Morocco and Egypt and the import of durum wheat originating in Morocco ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) The advantages granted under the Cooperation Agreement between the European Community and Morocco, in force since 1978, concerning the import of bran, sharps and durum wheat were implemented by Regulation (EC) No 1722/1999.
- (2) That Cooperation Agreement is replaced, from 1 March 2000, by the new Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States ⁽²⁾, of the one part, and the Kingdom of Morocco, of the other part. The advantages deriving from the earlier Cooperation Agreement expire on that date.
- (3) Regulation (EC) No 1722/1999 should therefore be amended so as to remove any reference to products originating in Morocco.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

Article 1

Regulation (EC) No 1722/1999 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

This Regulation lays down provisions applicable to the special arrangements for the import of bran, sharps and other residues of the sifting, milling or other working of certain cereals originating in Algeria and Egypt.'

2. Article 2 is replaced by the following:

'Article 2

The customs duties applicable to imports into the Community of bran, sharps and other residues of sifting, milling or other working of certain cereals falling within CN codes 2302 30 10 to 2302 40 90 and originating in Algeria shall be 40 % of the amount laid down in the Common Customs Tariff subsequently reduced by EUR 7,25 per tonne.'

3. Article 4 is replaced by the following:

'Article 4

Articles 2 and 3 shall apply to all imports for which the importer can furnish proof that the export charge was levied by Algeria or Egypt as appropriate in accordance with Article 21 of the Cooperation Agreement with Algeria and Article 20 of the Cooperation Agreement with Egypt.'

4. Article 5 is deleted.

Article 2

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

It shall apply from 1 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 203, 3.8.1999, p. 16.

⁽²⁾ OJ L 70, 18.3.2000, p. 2.

**COMMISSION REGULATION (EC) No 621/2000
of 23 March 2000**

initiating a 'new exporter' review of Council Regulation (EC) No 1950/97 imposing a definitive anti-dumping duty on imports of sacks and bags made of polyethylene or polypropylene originating, inter alia, in India, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (hereinafter referred to as 'the Basic Regulation'), as last amended by Regulation (EC) No 905/98 ⁽²⁾, and in particular Article 11(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. Request for a review

- (1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the Basic Regulation. The application was lodged by Subham Polymers Ltd (hereinafter referred to as 'the applicant'), an exporting producer in India.

B. Product

- (2) The product concerned is the same as that described in Article 1 of Council Regulation (EC) No 1950/97 ⁽³⁾ (hereinafter referred to as 'the Regulation'), as amended by Regulation (EC) No 96/1999 ⁽⁴⁾, woven sacks and bags of a kind used for packaging of goods, not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like of woven fabrics weighing 120 g/m² or less. The product is currently classifiable within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90. These codes are given for information only.

C. Existing measures

- (3) The measures currently in force are a definitive anti-dumping duty imposed by the Regulation, under which imports into the Community of the product concerned originating in India and produced by this company are subject to a definitive antidumping duty of 36,0 %, with the exception of imports from several companies specifically mentioned, which are subject to a lesser duty. The Regulation was subsequently amended by Regulation (EC) No 96/1999.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ L 276, 9.10.1997, p. 1.

⁽⁴⁾ OJ L 11, 16.1.1999, p. 1.

D. Grounds for the review

- (4) The applicant alleges that it did not export the product concerned to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 1994 to 31 March 1995 (hereinafter referred to as 'the original investigation period').

The applicant further alleges that it has begun exporting the product concerned to the Community after the end of the investigation period, and that it is not related to any of the exporting producers of the product concerned which are subject to the abovementioned anti-dumping measures.

E. Procedure

- (5) Community producers known to be concerned have been informed of the above application and have been given an opportunity to comment. No comments have been received.
- (6) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a review pursuant to Article 11(4) of the Basic Regulation with a view to determining the applicant's individual margin of dumping and, should dumping be found, the level of duty to which its imports of the product concerned into the Community should be subject.

(a) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

F. Repeal of the duty in force and registration of imports

- (7) Pursuant to Article 11(4) of the Basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product concerned originating in India which are produced and sold for export to the Community by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of that Regulation, in

order to ensure that, should the review result in a determination of dumping in respect of the applicant, anti-dumping duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

G. Time limits

- (8) In the interest of sound administration, time limits should be stated within which:
- interested parties may make themselves known to the Commission, present their views in writing, and submit information to be taken into account during the investigation,
 - interested parties may make a written request to be heard by the Commission.

H. Non-cooperation

- (9) In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the relevant time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.
- (10) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available,

HAS ADOPTED THIS REGULATION:

Article 1

A review of Regulation (EC) No 1950/97 is hereby initiated pursuant to Article 11(4) of Regulation (EC) No 384/96, in order to determine if, and to what extent, imports of sacks and bags made of polyethylene or polypropylene falling within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00 (3923 21 00 10), ex 3923 29 10 (3923 29 10 10) and ex 3923 29 90 (3923 29 90 10), originating in India, produced and sold for export to the Community by Subham Polymers Ltd (TARIC additional code: A108), India, should be subject to the anti-dumping duty imposed by Regulation (EC) No 1950/97.

Article 2

The anti-dumping duty imposed by Regulation (EC) No 1950/97 is hereby repealed with regard to imports of the product identified in Article 1.

Article 3

The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports identified in Article 1 of this Regulation. Registration shall expire nine months following the date of entry into force of this Regulation.

Article 4

Interested parties if their representations are to be taken into account during the investigation must make themselves known to the Commission, present their views in writing and submit information within 40 days from the date of entry into force of this Regulation, unless otherwise specified. Interested parties may also apply in writing to be heard by the Commission within the same time limit. This time limit applies to all interested parties, including parties not named in the application, and it is consequently in the interest of these parties to contact the Commission without delay.

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified), and must indicate the name, address, e-mail address, telephone and fax, and/or telex numbers of the interested party.

Any information relating to the matter and any request for a hearing should be sent to the following address:

European Commission
Trade Directorate-General
DM-24 8/38
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877.

Article 5

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

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

Done at Brussels, 23 March 2000.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 622/2000**of 23 March 2000****fixing the maximum export refund on oats in connection with the invitation to tender 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 organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1253/1999 ⁽²⁾,

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

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 March 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1897/1999, the maximum refund on exportation of oats shall be EUR 56,90/t.

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 233, 3.9.1999, p. 10.

⁽⁶⁾ OJ L 303, 26.11.1999, p. 3.

**COMMISSION REGULATION (EC) No 623/2000
of 23 March 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⁽¹⁾, as last amended by Regulation (EC) No 1253/1999⁽²⁾,

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

Whereas:

- (1) An invitation to tender for the refund and/or the tax for the export of rye to all third countries except Estonia, Latvia, Lithuania, Poland, the Czech Republic, the Slovak Republic, Hungary, Romania, Bulgaria and Slovenia was opened pursuant to Commission Regulation (EC) No 1758/1999⁽⁵⁾, as amended by Regulation (EC) No 506/2000⁽⁶⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in

Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 March 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1758/1999, the maximum refund on exportation of rye shall be EUR 64,99/t.

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 210, 10.8.1999, p. 3.

⁽⁶⁾ OJ L 62, 9.3.2000, p. 22.

COMMISSION REGULATION (EC) No 624/2000**of 23 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1253/1999 ⁽²⁾,

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

Whereas:

- (1) An invitation to tender for the refund and/or the tax for the export of barley to all third countries except for the United States of America and Canada was opened pursuant to Commission Regulation (EC) No 1701/1999 ⁽⁵⁾, as amended by Regulation (EC) No 2322/1999 ⁽⁶⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 March 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1701/1999, the maximum refund on exportation of barley shall be EUR 27,99/t.

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 201, 31.7.1999, p. 27.

⁽⁶⁾ OJ L 280, 30.10.1999, p. 77.

**COMMISSION REGULATION (EC) No 625/2000
of 23 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1253/1999 ⁽²⁾,

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

Whereas:

- (1) 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 ⁽⁵⁾, as amended by Regulation (EC) No 2011/1999 ⁽⁶⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 March 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 30,75/t.

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 201, 31.7.1999, p. 55.

⁽⁶⁾ OJ L 248, 21.9.1999, p. 23.

**COMMISSION REGULATION (EC) No 626/2000
of 23 March 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 ⁽¹⁾, as last amended by Regulation (EC) No 1253/1999 ⁽²⁾,

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

Whereas:

- (1) 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 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria

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

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) 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 17 to 23 March 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 33,50/t.

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 248, 21.9.1999, p. 19.

COMMISSION REGULATION (EC) No 627/2000**of 23 March 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⁽¹⁾, as last amended by Regulation (EC) No 1253/1999⁽²⁾, and in particular Article 13 (2) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 24 March 2000.

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

Done at Brussels, 23 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

ANNEX

**to the Commission Regulation of 23 March 2000 fixing the export refunds on cereals and on wheat or rye flour,
groats and meal**

(EUR/t)			(EUR/t)		
Product code	Destination ⁽¹⁾	Amount of refund	Product code	Destination ⁽¹⁾	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	01	0	1101 00 15 9100	01	42,00
1001 90 91 9000	—	—	1101 00 15 9130	01	39,25
1001 90 99 9000	03	20,75	1101 00 15 9150	01	36,25
	02	0	1101 00 15 9170	01	33,50
1002 00 00 9000	03	55,00	1101 00 15 9180	01	31,25
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	18,00	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	0 ⁽²⁾
1005 10 90 9000	—	—	1103 11 10 9400	01	0 ⁽²⁾
1005 90 00 9000	03	25,00	1103 11 10 9900	—	—
	02	0	1103 11 90 9200	01	0 ⁽²⁾
1007 00 90 9000	—	—	1103 11 90 9800	—	—
1008 20 00 9000	—	—			

⁽¹⁾ The destinations are identified as follows:

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

⁽²⁾ 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).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1999

concerning and aid scheme implemented by Spain in favour of horticultural products intended for industrial processing in Extremadura in the 1997/98 marketing year

(notified under document number C(1999) 5207)

(Only the Spanish text is authentic)

(2000/237/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1257/1999 ⁽²⁾,

The parties concerned having been given notice, in accordance with the first subparagraph of Article 88(2) of the Treaty, to submit their comments ⁽³⁾,

Whereas:

February 1999 requesting confirmation of the existence of the aid and the date of its introduction.

(3) By letter dated 26 February 1999, the Office of the Spanish Permanent Representative to the European Union sent the Commission the information it had requested in its letter dated 8 February 1999.

(4) By letter dated 14 June 1999, the Commission informed Spain of its decision to open the procedure provided for in Article 88(2) of the Treaty with respect to the aid scheme. In its letter, the Commission gave notice to Spain to send its comments.

(5) The Commission Decision to open the procedure was published in the *Official Journal of the European Communities* ⁽⁵⁾. The Commission gave notice to the interested parties to submit their comments on the aid scheme.

I. PROCEDURE

(1) The Government of Extremadura Ministry of Agriculture and Trade Order of 8 July 1998 lays down the aid for horticultural products intended for industrial processing for the 1997/98 marketing year. The Order was published in the *Diario Oficial de Extremadura* ⁽⁴⁾.

(2) The Commission, not having received notification of the State aid from the Spanish authorities in accordance with Article 88(3) of the Treaty, sent a letter on 8

(6) Spain submitted its comments by letter dated 19 July 1999.

(7) The Commission received comments on the scheme from the interested parties. It forwarded those comments to Spain by letter dated 17 November 1999, giving Spain the opportunity to make any observations on them. The Commission received no such observations from Spain.

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

⁽³⁾ OJ C 233, 14.8.1999, p. 37.

⁽⁴⁾ *Diario Oficial de Extremadura* No 84, 23 July 1998, p. 5807.

⁽⁵⁾ See footnote 3.

II. DETAILED DESCRIPTION OF THE AID MEASURE

- (8) The Order of 8 July 1998 provides for aid for horticultural products intended for industrial processing in the 1997/98 marketing year.
- (9) The beneficiaries of the aid are growers in Extremadura who signed contracts with processors to supply horticultural products in the 1997/98 marketing year. The maximum aid per farmer is ESP 500 000.
- (10) Producer groups may sign contracts on behalf of their members. In such cases, the group may receive an additional grant equal to 1 % of the value of its members' production, up to a maximum of ESP 1 million per group.
- (11) The products for which the aid can be paid and the amounts concerned are as follows:
- peppers for the production of ground red pepper (designation of origin): ESP 5/kg
 - peppers for the production of ground red pepper: ESP 1,5/kg
 - ground industrial peppers: ESP 1,5/kg
 - industrial gherkins: ESP 5/kg
 - cabbages for dehydration: ESP 1,5/kg
 - onions for dehydration/freezing: ESP 1,5/kg
 - broccoli for dehydration/freezing: ESP 1,5/kg
 - cauliflower for dehydration/freezing: ESP 1,5/kg
 - spinach for freezing: ESP 1,5/kg
 - leeks for dehydration: ESP 1,5/kg
 - broad beans for freezing: ESP 1,5/kg
 - potatoes for freezing: ESP 1,5/kg.

- (12) The maximum quantities eligible for aid are as follows:
- 9 500 t of peppers for ground red pepper (designation of origin Pimentón de la Vera),
 - 4 000 t of peppers for ground red pepper and industrial peppers,
 - 250 t of industrial gherkins and
 - 15 000 t of the remaining products.

Where the total quantity exceeds those limits, a coefficient is applied to the production of each farmer eligible for aid.

- (13) The Order of 8 July 1998 is based on Government of Extremadura Decree 84/1993 of 6 July 1993 establishing a system of aid for horticultural products intended for industrial processing ⁽⁶⁾. The Decree lays down that the products eligible for aid, the amount of the aid and the maximum quantity eligible for aid are to be laid down for each marketing year by an Order.

- (14) In its letter dated 14 June 1999, the Commission informed Spain that the aid scheme for horticultural products, in which the amount of aid depended on the quantities produced and which could infringe Articles 28 and 29 of the Treaty, did not appear to fulfil the conditions for any of the derogations provided for in Article 87(3) of the Treaty.

In its letter, the Commission recommended that the Spanish Government abolish the aid for potatoes.

III. COMMENTS SUBMITTED BY THE INTERESTED PARTIES

- (15) The European Union of the Potato Processing Industries submitted comments on the aid scheme by letter dated 6 September 1999. It shares the Commission's opinion that the Spanish Government should abolish the aid for potatoes.

IV. COMMENTS SUBMITTED BY SPAIN

- (16) Spain said that establishing and maintaining the food industry by means of a link between production and processing, in the form of contractual relations, guaranteed a minimum price and the supply of quality raw materials. The link helped maintain production and the rural population in the areas concerned.
- (17) The development and cultivation of irrigated autumn and winter vegetables in Extremadura provides a socio-economic alternative which is very important for the development of rural areas and has allowed a balance to be maintained between products for the fresh market and products for processing by means of maximum guaranteed quantities which have effectively limited production and marketing opportunities.
- (18) The aid has not conferred any advantage on those concerned. In fact, it was intended solely to achieve a particular structural objective and, as soon as that had been accomplished, the aid scheme was suspended and there are no plans to reintroduce it.

⁽⁶⁾ *Diario Oficial de Extremadura* No 82, 13 July 1993, p. 2071.

V. ASSESSMENT OF THE AID

Article 87(1) of the Treaty

- (19) Article 43 of Regulation (EC) No 2200/96 lays down that Articles 87 and 88 of the Treaty apply to the production and marketing of the products referred to in Article 1(2) of that Regulation.
- (20) Under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.
- (21) Spain produces 115 451 000 t of vegetables. There is a significant volume of trade in those products between Spain and the rest of the Community; for example, in 1998 Spain imported 28 782 000 t of vegetables from the other Member States and exported 28 782 000 t to them ⁽⁷⁾.
- (22) The measures concerned could therefore affect trade in vegetables between the Member States, since that trade is affected by aid which favours operators active in one Member State over those in others. The measures have a direct and immediate affect on the production costs of undertakings producing and processing fruit and vegetables in Spain. They therefore confer an economic advantage over undertakings which do not have access to comparable aid in other Member States. They therefore distort or threaten to distort competition.
- (23) In the light of the above, the aid in question must be considered to be State aid fulfilling the criteria laid down in Article 87(1) of the Treaty.

Possible derogations under Article 87 of the Treaty

- (24) Derogations may, however, be granted from the principle of incompatibility laid down in Article 87(1) of the Treaty.
- (25) In the case in question, the derogations provided for in Article 87(2) clearly do not apply. Neither have they been claimed by the Spanish authorities.
- (26) The derogations provided for in Article 87(3) of the Treaty must be interpreted strictly when examining a regional or sectoral aid scheme or any individual application of general aid schemes. In particular, they can be granted only where the Commission concludes

that the aid is necessary to achieve one of the objectives of the derogations. Allowing any other aid to benefit from those derogations would permit damage to trade between Member States and distortion of competition without this being justified by the Community interest and would allow operators in certain Member States to obtain undue advantage.

- (27) The Commission takes the view that the aid in question was not granted as regional aid for new investment or to create employment, nor to provide horizontal compensation for shortcomings in infrastructures suffered by all the region's undertakings, but as operating aid for the agricultural sector. Consequently, it is clearly sectoral aid which must be assessed in the light of Article 87(3)(c).
- (28) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (29) The aid scheme must be assessed, in particular, in the light of that provision.
- (30) Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products ⁽⁸⁾, amended by Regulation No 49 ⁽⁹⁾, applies to the aid for potatoes, a product listed in Annex I to the Treaty not subject to the common organisation of the markets. The only provisions of the Treaty which apply are Article 88(1) and the first sentence of Article 88(3), and the Commission can therefore only formulate comments. In its letter dated 14 June 1999, it recommended that the Spanish Government abolish the aid concerned.
- (31) In accordance with the Commission's constant practice in applying Articles 87 to 89 of the Treaty, any aid whose amount depends on the quantities produced must be considered operating aid incompatible with the common market ⁽¹⁰⁾.
- (32) Such aid has no lasting effect on the development of the sector concerned, since its immediate effects disappear with the measure itself. On the other hand, a direct consequence of such aid is an improvement in the production and marketing opportunities of the operators concerned compared with other operators not receiving comparable aid (both within the country and in the other Member States). (See the judgment of the Court of First Instance of the European Communities of 8 June 1995 in Case T-459/93, *Siemens SA v Commission* ⁽¹¹⁾).

⁽⁸⁾ OJ 30, 20.4.1962, p. 993/62.

⁽⁹⁾ OJ 53, 1.7.1962, p. 1571/62.

⁽¹⁰⁾ Precedents: aid N 51/92, N 741/94, N 623/92, N 214/91 and NN 24/93.

⁽¹¹⁾ [1995] ECR II-1675.

⁽⁷⁾ Source: Eurostat 1998.

- (33) In addition, account must be taken of the fact that this aid (with the exception of that for potatoes) is for products subject to a common organisation of the market and that the powers of the Member States to intervene in the operation of those organisations are limited, they being the exclusive responsibility of the Community. The Court of Justice has consistently held that the common organisations of the market must be considered comprehensive and exhaustive systems which preclude the Member States from adopting derogations or measures which conflict with them (see, *inter alia*, the judgement of 26 June 1979 in Case 177/78, *Pigs and Bacon v McCarren* ⁽¹²⁾).
- (34) Furthermore, the beneficiaries of the aid scheme are Extremaduran growers of vegetables intended for industrial processing, signing contracts to supply their production to processors in the region.
- (35) This requirement constitutes a restriction on the free circulation of goods between Member States and an infringement of Article 29 of the Treaty, since, in order to receive the aid, growers are obliged to sell their production to processors in the region. This requirement constitutes a restriction on the despatch of those products to the other Member States.

Conclusion

- (36) In the light of the above and the applicable Community rules, the Commission takes the view that, as regards the derogations provided for in Article 87(3)(a) and (c) for aid to promote or facilitate the economic development of certain regions or the development of certain activities, the aid examined could adversely affect trading conditions to an extent contrary to the common interest.
- (37) The aid (with the exception of that for potatoes) must consequently be considered as an infringement of Community rules and therefore ineligible for any of the derogations provided for in Article 87(3) of the Treaty.

VI. CONCLUSIONS

- (38) Since the aid in question was not notified to the Commission in accordance with Article 88(3) of the Treaty, its granting was illegal, given that it was granted before the Commission could decide on its compatibility with the common market.
- (39) Furthermore, for the reasons set out above, the aid (with the exception of that for potatoes) is incompatible with the common market, since it is covered by Article 87(1) of the Treaty but is not eligible for any of the derogations provided for in paragraphs 2 and 3 of that Article.

⁽¹²⁾ [1979] ECR 2161.

- (40) Where aid is incompatible with the common market, the Commission must make use of the possibility offered by the judgment of the Court of Justice of 12 July 1973 in Case 70/72, *Commission v Germany* ⁽¹³⁾, confirmed by the judgments of 24 February 1987 in Case 310/85, *Deufil v Commission* ⁽¹⁴⁾, and of 20 September 1990 in Case C-5/89, *Commission v Germany* ⁽¹⁵⁾, and require the Member State to recover from the recipients all the aid granted illegally. The requirement to recover aid is also laid down in Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁶⁾ (now Article 88). Recovery is necessary in order to re-establish the previous situation by abolishing all the financial advantages enjoyed unduly by the beneficiaries since the aid was granted.
- (41) The aid granted (with the exception of that for potatoes) must be repaid in full.
- (42) Repayment must be made in accordance with Spanish law. The amounts to be repaid must include interest from the date the aid was granted to its actual recovery. The interest must be calculated on the basis of the commercial rate, taking as a reference the rate used to calculate the grant equivalent of regional aid ⁽¹⁷⁾.
- (43) This Decision does not prejudice the conclusions the Commission may draw, if necessary, for the financing of the common agriculture policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The State aid scheme implemented by Spain by means of Government of Extremadura Ministry of Agriculture and Trade Order of 8 July 1998 laying down the aid for horticultural products intended for industrial processing for the 1997/98 marketing year, with the exception of the aid for potatoes, is incompatible with the common market.

Article 2

Spain shall abolish the aid scheme referred to in Article 1.

Article 3

1. Spain shall adopt all measures necessary to recover from the beneficiaries all aid referred to in Article 1 which has been granted illegally.

⁽¹³⁾ [1973] ECR 813.

⁽¹⁴⁾ [1987] ECR 901.

⁽¹⁵⁾ [1990] ECR I-3437.

⁽¹⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁷⁾ OJ C 74, 10.3.1998, p. 9.

2. Recovery shall be immediate and in accordance with the procedures laid down in Spanish law, provided that these permit the immediate and effective implementation of this Decision. The amounts to be repaid must include interest from the date the aid was made available to the beneficiaries to its actual recovery. The interest must be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

Article 4

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

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 22 December 1999.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION
of 9 March 2000
amending Decision 97/830/EC as regards points of entry for Germany

(notified under document number C(2000) 501)

(Text with EEA relevance)

(2000/238/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs ⁽¹⁾, and in particular Article 10(1) thereof,

After consulting the Member States,

Whereas:

- (1) The Commission, in Decision 97/830/EC ⁽²⁾, as amended by Decision 98/400/EC ⁽³⁾, adopted measures imposing special conditions on the importation of pistachios and certain products derived from pistachios originating in, or consigned from Iran.
- (2) It is necessary to add to Annex II to Decision 97/830/EC two more points of entry for Germany through which those pistachios and products may be imported.

- (3) For the sake of clarity, therefore, Annex II should be replaced,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 97/830/EC is replaced by the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 9 March 2000.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 175, 19.7.1993, p. 1.
⁽²⁾ OJ L 343, 13.12.1997, p. 30.
⁽³⁾ OJ L 176, 20.6.1998, p. 37.

ANNEX

‘ANNEX II

List of points of entry through which pistachios and products derived from pistachios originating in, or consigned from Iran may be imported into the European Community

Member State	Point of entry
BELGIQUE-BELGIË	Antwerpen
DANMARK	All Danish harbours and airports and all border stations
DEUTSCHLAND	HZA Lörrach — ZA Weil am Rhein-Autobahn, HZA Stuttgart — ZA Flughafen, HZA München-Flughafen, HZA Hof — ZA Schirnding, HZA Weiden — ZA Furth im Wald-Schaffberg, HZA Weiden — ZA Waidhaus-Autobahn, Bezirksamt Reinickendorf von Berlin, Abteilung Finanzen, Wirtschaft und Kultur, Veterinär- und Lebensmittelaufsichtsamt, Grenzkontrollstelle, HZA Frankfurt (Oder) — ZA Autobahn, HZA Cottbus — ZA Forst-Autobahn, HZA Bremen — ZA Neustädter Hafen, HZA Bremerhaven — ZA Container Terminal, HZA Bremerhaven — ZA Rotersand, HZA Hamburg-Freihafen-Abfertigungsstelle, HZA Hamburg-Freihafen — ZA Ericus-Abfertigungsstelle Südbahnhof, HZA Hamburg-Freihafen — ZA Köhlflleetdamm, HZA Hamburg-St. Annen — ZA Altona, HZA Hamburg-Waltershof-Abfertigungsstelle, HZA Hamburg-Waltershof — ZA Flughafen, HZA Frankfurt am Main-Flughafen, HZA Braunschweig-Abfertigungsstelle, HZA Hannover-Abfertigungsstelle, HZA Lüneburg — ZA Stade, Stadtverwaltung Dresden, Lebensmittelüberwachungs- und Veterinäramt, Grenzkontrollstelle Dresden-Friedrichstadt (für Bahntransport), Landratsamt Weisseritzkreis, Lebensmittelüberwachungs- und Veterinäramt, Grenzkontrollstelle (für Straßentransport), Landratsamt Niederschlesischer Oberlausitzkreis Lebensmittelüberwachungs- und Veterinäramt, Grenzkontrollstelle Ludwigsdorf (für Straßentransport), HZA Itzehoe — ZA Pinneberg, HZA Trier — ZA Idar-Oberstein, ZA Oldenburg — ZA Wilhelmshaven
ΕΛΛΑΔΑ	Αθήνα, Πειραιάς, Ελευσίνα, Αερολιμένας Αθηνών, Θεσσαλονίκη, Βόλος, Πάτρα, Ηράκλειο Κρήτης, Αερολιμένας Κρήτης, Εύζωνοι, Ειδομένη, Ορμένιο, Κήποι, Κακαβιά, Νίκη, Προμαχώνας, Πύθιο, Ηγουμενίτσα, Κρυσταλλοπηγή
ESPAÑA	Algeciras (Puerto), Alicante (Aeropuerto, Puerto), Almería (Aeropuerto, Puerto), Barcelona (Aeropuerto, Puerto), Bilbao (Aeropuerto, Puerto), Cádiz (Puerto), Cartagena (Puerto), Gijón (Aeropuerto, Puerto), Huelva (Puerto), A Coruña-Santiago de Compostela (Aeropuerto, Puerto), Las Palmas de Gran Canaria (Aeropuerto, Puerto), Madrid-Barajas (Aeropuerto), Málaga (Aeropuerto, Puerto), Palma de Mallorca (Aeropuerto), Pasajes-Irún (Aeropuerto, Puerto), Santa Cruz de Tenerife (Aeropuerto, Puerto), Santander (Aeropuerto, Puerto), Sevilla (Aeropuerto, Puerto), Tarragona (Puerto), Valencia (Aeropuerto, Puerto), Vigo-Vilagareia (Aeropuerto), Marín (Puerto), Vitoria (Aeropuerto), Zaragoza (Aeropuerto)
FRANCE	Marseille (Bouches-du-Rhône) Le Havre (Seine-Maritime)
IRELAND	All harbours, airports and border stations
ITALIA	Ufficio Sanità marittima ed aerea di Ancona Ufficio Sanità marittima ed aerea di Bari Ufficio Sanità marittima ed aerea di Genova Ufficio Sanità marittima di Livorno Ufficio Sanità marittima ed aerea di Napoli Ufficio Sanità marittima di Ravenna Ufficio Sanità marittima di Salerno Ufficio Sanità marittima ed aerea di Trieste Dogana di Ferneti-Interporto Monrupino (Trieste)
LUXEMBOURG	Centre douanier, Croix de Gasperich, Luxembourg
NEDERLAND	Rotterdam
ÖSTERREICH	HZA Graz, Nickelsdorf, Spielfeld, HZA Wien

Member State	Point of entry
PORTUGAL	Lisboa
SUOMI-FINLAND	Helsinki
SVERIGE	Göteborg
UNITED KINGDOM	Channel Tunnel Terminal, Dover, Felixstowe, Gatwick Airport, Goole Grangemouth, Harwich, Heathrow Airport, Heysham, Hull, Immingham, Ipswich, King's Lynn, Leith, Liverpool, London (including Tilbury and Thamesport), Manchester Airport, Manchester Container Port, Manchester including Ellesmere Port, Middlesbrough, Newhaven, Poole, Shoreham, Southampton'