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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1783/2000
of 16 August 2000
amending Regulation (EC) No 772/1999 imposing definitive anti-dumping and countervailing duties
on imports of farmed Atlantic salmon originating in Norway

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Articles 8(9) and 9 thereof,

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 ⁽²⁾, and in particular Articles 13(9) and 15 thereof,

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

Whereas:

- (3) On 26 September 1997, the Commission adopted Decision 97/634/EC ⁽³⁾, accepting undertakings offered in connection with the two abovementioned proceeding from the exporters listed in the Annex to the Decision and terminating the investigation in their respect.
- (4) On the same day, the Council, by Regulations (EC) No 1890/97 ⁽⁴⁾ and 1891/97 ⁽⁵⁾ imposed anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of those Regulations.
- (5) Regulations (EC) No 1890/97 and (EC) No 1891/97 set out the definitive findings and conclusions on all aspects of the investigations. The form of the duties having been reviewed, both Regulations were replaced by Regulation (EC) No 772/1999 ⁽⁶⁾.

A. Previous procedure

- (1) On 31 August 1996, the Commission announced, by two separate notices published in the Official Journal of the European Communities, the initiation of an anti-dumping proceeding ⁽⁷⁾ as well as an anti-subsidy proceeding ⁽⁸⁾, in respect of imports of farmed Atlantic salmon originating in Norway.
- (2) The Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings. As a result of this examination, it was established that definitive anti-dumping and countervailing measures should be adopted in order to eliminate the injurious effects of dumping and subsidisation. All interested parties were informed of the results of the investigation and were given the opportunity to comment thereon.

B. Obligations of exporters with undertakings

- (6) The text of the undertakings provides that failure to submit a quarterly report of all sales transactions to the first unrelated customer in the Community within a prescribed time-limit would, except in case of *force majeure*, be construed as a violation of the undertaking.
- (7) For the fourth quarter of 1999, one Norwegian company, Fryseriet AS, failed to present such a sales report within the prescribed time limits, despite a reminder sent to it 24 hours before the quarterly deadline. In addition, the company was given an opportunity to advise the Commission of any reasons which may have prevented it from sending its reports within the time limits. However, no explanation has been received in this regard.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

⁽²⁾ OJ L 288, 21.10.1997, p. 1.

⁽³⁾ OJ C 253, 31.8.1996, p. 18.

⁽⁴⁾ OJ C 253, 31.8.1996, p. 20.

⁽⁵⁾ OJ L 267, 30.9.1997, p. 81. Decision as last amended by Regulation (EC) No 2592/1999 (OJ L 315, 9.12.1999, p. 17).

⁽⁶⁾ OJ L 267, 30.9.1997, p. 1.

⁽⁷⁾ OJ L 267, 30.9.1997, p. 19.

⁽⁸⁾ OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Regulation (EC) No 2652/1999 (OJ L 325, 17.12.1999, p. 1).

- (8) Fryseriet AS received disclosure in writing concerning the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties against it. The company was also given an opportunity to submit comments and request a hearing. However, it did not react in this regard.
- (9) In view of the above, the conclusion has been reached that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic salmon originating in Norway and exported by Fryseriet AS.

C. Definitive duties

- (10) The investigations which led to the undertakings were concluded by a final determination as to dumping and injury by Regulation (EC) No 1890/97 and a final determination as to subsidisation and injury by Regulation (EC) No 1891/97. While both these Regulations were repealed by Regulation (EC) No 772/1999, the facts and considerations established therein remain valid (recital 19 of Regulation (EC) No 772/1999 refers thereto).
- (11) In accordance with Article 8(9) of Regulation (EC) No 384/96 and Article 13(9) of Regulation (EC) No 2026/97 respectively, the rate of the anti-dumping duty and the countervailing duty has to be established on the basis of the facts established within the context of the investigation which led to the undertaking.
- (12) In this regard, and in view of recital 107 of Regulation (EC) No 1890/97 and recital 149 of Regulation (EC) No 1891/97, it is considered appropriate that the definitive anti-dumping and countervailing duty rates be set at the level and in the form imposed by Regulation (EC) No 772/1999.

D. Amendment of the Annex to Regulation (EC) No 772/1999

- (13) The Annex to Regulation (EC) No 772/1999 exempting the parties listed therein from the anti-dumping and countervailing duties should therefore be amended so as to remove the exemption from Fryseriet AS.
- (14) In addition, by Commission Decision 2000/522/EC⁽¹⁾, the Commission accepted undertakings from five new exporters, namely Emborg Foods Norge AS, Helle Mat AS, Norsea Food AS, Salmon Company Fjord Norway AS and Stella Polaris AS and also announced that the names of two other Norwegian companies from which undertakings had been accepted had changed (namely Agnefest Seafood AS to Rosfjord Seafood AS and

Norway Seafoods ASA to Frionor AS). The Decision also made it known that another Norwegian company, Atlantic King Stranda A/S, had ceased trading and that its undertaking was no longer needed.

- (15) The Annex to Regulation (EC) No 772/1999 should, therefore, also be updated to take account of all these other changes,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 772/1999 is hereby replaced by the text in the Annex hereto.

Article 2

1. (a) Definitive countervailing and anti-dumping duties are hereby imposed on imports of farmed (other than wild) Atlantic salmon falling within CN codes ex 0302 12 00 (Taric codes: 0302 12 00 21, 0302 12 00 22, 0302 12 00 23 and 0302 12 00 29), ex 0303 22 00 (Taric codes: 0303 22 00 21, 0303 22 00 22, 0303 22 00 23 and 0303 22 00 29), ex 0304 10 13 (Taric codes: 0304 10 13 21 and 0304 10 13 29) and ex 0304 20 13 (Taric codes: 0304 20 13 21 and 0304 20 13 29) originating in Norway and exported by Fryseriet AS.
- (b) These duties shall not apply to wild Atlantic salmon (Taric codes: 0302 12 00 11, 0304 10 13 11, 0304 20 13 11). For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member States of landing are satisfied, by means of all customs and transport documents to be provided by interested parties, that it was caught at sea.
2. (a) The rate of the countervailing duty applicable to the net free-at-Community frontier price, before duty, shall be 3,8 %.
- (b) The rate of the anti-dumping duty applicable to the net free-at-Community frontier price, before duty, shall be EUR 0,32 per kilogram net product weight. However, if the free-at-Community-frontier price, including the countervailing and anti-dumping duties, is less than the relevant minimum price set out in paragraph 3, the anti-dumping duty to be collected shall be the difference between that minimum price and the free-at-Community-frontier price, including the countervailing duty.

⁽¹⁾ See page 47 of this Official Journal.

3. For the purpose of paragraph 2, the following minimum prices shall apply per kilogram net product weight:

Presentation of salmon	Minimum price EUR/kg net product weight	Taric code
Whole fish, fresh or chilled	2,925	0302 12 00 21
Gutted, head-on, fresh or chilled	3,25	0302 12 00 22
Gutted, headless, fresh or chilled	3,65	0302 12 00 23
Other, fresh or chilled, including 'steaks'	3,65	0302 12 00 29
Whole fish, frozen	2,925	0303 22 00 21
Gutted, head-on, frozen	3,25	0303 22 00 22
Gutted, headless, frozen	3,65	0303 22 00 23
Other, frozen, including 'steaks'	3,65	0303 22 00 29
Whole fish fillets, more than 300 gr each, fresh or chilled	5,19	0304 10 13 21
Other fish fillets or fillet portions, 300 gr, fresh or chilled	6,55	0304 10 13 29
Whole fish fillets, more than 300 gr each, frozen	5,19	0304 20 13 21
Other fish fillets or fillet portions, weighing 300 gr or less each, frozen	6,55	0304 20 13 29

Article 3

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

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

Done at Brussels, 16 August 2000.

For the Council
The President
H. VÉDRINE

ANNEX

'ANNEX

List of companies from which undertakings are accepted and thus exempted from the definitive anti-dumping and countervailing duties

UT No	Company Name	Taric additional code
3	Rosfjord Seafood AS	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/S	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Eurolaks AS	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd AS	8145
50	Fossen AS	8147

UT No	Company Name	Taric additional code
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Atlantis Filetfabrikk AS	8304
66	Hydro Seafood Norway AS	8159
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Misundfisk AS	8202
100	Naco Trading AS	8206
101	Namdal Salmon AS	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227

UT No	Company Name	Taric additional code
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Frionor AS	8314
128	Norwell AS	8316
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
144	Rolf Olsen Seafood AS	8254
145	Ryfisk AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Prima Nor AS	8259
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276

UT No	Company Name	Taric additional code
167	Fjord Seafood Leines AS	8278
168	SMP Marine Produkter AS	8279
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Food AS	8102
192	Westmarine AS	8625
193	F. Uhrenholt Seafood Norway AS	A033
194	Mesan Seafood AS	A034
195	Polaris Seafood AS	A035
196	Scanfish AS	A036
197	Normarine AS	A049
198	Oskar Einar Rydbeck	A050
199	Emborg Foods Norge AS	A157
200	Helle Mat AS	A158
201	Norsea Food AS	A159
202	Salmon Company Fjord Norway AS	A160
203	Stella Polaris AS	A161'

COUNCIL REGULATION (EC) No 1784/2000**of 11 August 2000****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ and in particular Articles 9 and 10(2) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 449/2000 ⁽²⁾, hereinafter the 'provisional Regulation', imposed a provisional anti-dumping duty on imports into the Community of malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand, whereas no duties were imposed on imports originating in Croatia and the Federal Republic of Yugoslavia because their market shares had provisionally been found to be *de minimis*.

B. SUBSEQUENT PROCEDURE

- (2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty on imports from Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand and not to adopt provisional measures on imports originating in Croatia and the Federal Republic of Yugoslavia, interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making their views known on the provisional findings.
- (3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.
- (4) Further verification visits were carried out at the premises of the following importers/traders which had replied to the questionnaire:
- Jannone SA, Spain,
 - Nefit BV, The Netherlands,
 - Thisa SA, Spain.
- (5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping

duty and the definitive collection of amounts secured by way of provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

- (6) The oral and written arguments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. THE INITIATION OF THE PROCEEDING

- (7) Some interested parties reiterated their claim concerning the non-inclusion of certain third countries in the investigation, namely Bulgaria, Poland, Turkey and the United States of America in the sense that this non-inclusion would be discriminatory and therefore invalidate the initiation of the proceeding.
- (8) In this respect, it is confirmed that no proceeding could be initiated as regards Bulgaria and Poland since no dumping existed on the basis of the evidence of normal value and export price information for the Bulgarian and Polish products provided by the complainant in the same manner as for the countries concerned by the present investigation. With regard to the imports from the United States of America and Turkey, the information available indicated *de minimis* import levels. This claim should therefore be rejected.

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

- (9) The provisional Regulation described the product under consideration as threaded malleable cast iron tube or pipe fittings ('malleable fittings' or 'fittings'), which are joined by a screwing joining system, falling within CN code ex 7307 19 10. This definition is hereby confirmed.
- (10) Following the disclosure of the provisional findings, one interested party argued that, in addition to CN code 7307 19 10, other CN codes should also fall within the scope of the investigation since the product under consideration was also imported into the Community under these latter codes. It claimed, moreover, that the investigation should be extended to unthreaded fittings, since these were imported into the Community, where they were threaded and sold.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.04.1998, p. 18).

⁽²⁾ OJ L 55, 29.2.2000, p. 3.

- (11) With respect to the first point, the imports of malleable fittings verified during the investigation had in all cases been done under CN code 7307 19 10 which, as set out in the Notice of Initiation, identifies the product under consideration. Consequently the import data used in the present investigation correctly relate to the product under consideration. If there were to be instances in which malleable fittings would be imported under other CN codes, this has to be considered as a misclassification, and the attention of customs officials will be duly drawn to this issue.
- (12) With regard to the second point, unthreaded fittings do not fall within the definition of the product under consideration. In fact, they are an intermediate product necessitating further manufacturing steps which give the product under consideration one of its essential characteristics, i.e. its joining mechanism. As a consequence, unthreaded fittings as such are not in competition with the product under consideration and are not interchangeable with it. Moreover, the investigation showed that the threading represents a significant step in the manufacturing process in terms of value added to the malleable fitting, in particular in consideration of the high level of labour involved in that step. Therefore, they cannot be considered to form one single product together with threaded malleable fittings, i.e. the product under consideration.
- (13) Given the above, the provisional findings as regards the product under consideration are hereby confirmed.

2. Like product

- (14) In recital 13, of the provisional Regulation, the Commission found that malleable fittings produced by the Community industry and sold on the Community market as well as malleable fittings produced in the countries concerned and exported to the Community were like products, since there were no differences in the basic physical and technical characteristics and uses of the existing different types of malleable fittings.
- (15) Following the disclosure of the provisional findings, certain interested parties argued that Community-produced malleable fittings were not a like product to those imported from the countries concerned, because the cast iron used for the Community-produced fittings was, in general, white heart, whereas black heart was used for the imported ones.
- (16) The investigation has shown that black heart and white heart fittings undergo a different annealing process. In the case of white heart fittings, it lasts 80 to 120 hours at a temperature of 1 100°. In the case of black heart fittings, it lasts between 50 to 80 hours, at a temperature

of 900°. These different processes result in a differing carbon content, white heart fittings being almost completely decarburised, whereas the carbon content of black heart fittings is reduced to a lesser degree. As a result, white heart fittings are in general somewhat more elastic, resistant and easier to galvanise than black heart fittings, which, in turn, are easier to thread and are somewhat more suitable for applications in which pressure tightness is of importance.

- (17) However, the investigation has shown that there is no difference in market perception distinguishing between white heart fittings and black heart fittings as in all respects other than the carbon content they have closely resembling characteristics, the same end uses and are thus interchangeable. This has been confirmed by the fact that the importers/traders which purchase both black heart malleable fittings from the countries concerned and white heart malleable fittings produced by the Community industry, sell them to the users without making a distinction between the two grades of material. As to the users of the product under consideration, the investigation has confirmed that they do not differentiate between white heart or black heart fittings to any significant degree.
- (18) This is also suggested by the fact that both white heart and black heart fittings are included in the European Standard EN 10242 and in the International standard ISO 49, which specify the requirements for the design and performance of the malleable fittings. As concerns, in particular, the grade of the material to be used, both white heart and black heart are admitted.

- (19) Given the above, and since no new evidence was submitted on this, the provisional findings as regards the like product are confirmed.

E. FINDINGS WITH RESPECT TO CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA

- (20) As regards Croatia and The Federal Republic of Yugoslavia, it is confirmed that the volume of imports originating in those countries represented 0,4 % and 0,3 % of the total Community consumption, respectively. As import volumes were considered negligible in accordance with Article 9(3) of the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (hereinafter the 'basic Regulation'), the proceeding should be terminated with the respect to imports originating in these two countries.

F. DUMPING

1. *Market economy countries*1.1. *Normal value*1.1.1. *Application of Article 18 of the basic Regulation*

- (21) As stated in Section 3.4 of the provisional Regulation, only one Japanese company and its related importer replied to the Commission's questionnaire for exporting producers. The information provided by the Japanese company, however, was incomplete and in some instances incorrect and findings had to be made in accordance with Article 18 of the Basic Regulation. After adoption of provisional measures, these findings were reviewed. This led to a substantially revised assessment of the normal value, as provisionally established.
- (22) The Thai exporting producer for which normal value was determined in accordance with Article 18 of the basic Regulation (see recital 96; of the provisional Regulation) claimed that the Commission should reconsider its decision to use as facts available the highest dumping margin found for transactions of this exporter in cases in which no normal value of other Thai companies was available.
- (23) This argument was rejected. The application of Article 18 of the basic Regulation in the present case is considered appropriate and necessary in order to avoid giving a bonus for non-cooperation, thus ensuring a fair treatment vis-à-vis all other parties, which had fully cooperated in the proceeding.

1.1.2. *Normal value based on domestic sales*

- (24) The Brazilian exporting producer claimed that Article 2(2) of the basic Regulation places the Commission under an obligation to investigate whether the prices of the domestic sales of product types sold at volumes below 5 % of the volume exported to the Community are representative for the Brazilian market. It also argued that, as the average profit margin of such sales was reasonably high, the prices of such sales were representative and should have been used to establish the normal value.
- (25) It is the consistent practise of the Community institutions not to use prices of products or product types that are not sold in representative quantities in order to determine the normal value. Only when sales volumes are equal to or exceed the 5 % threshold will the

Commission consider that the sales are sufficiently representative to form a basis for normal value. No factors were found which would justify a deviation from the normal practice by using a volume of sales lower than the 5 % threshold.

- (26) The Brazilian exporting producer stated that the Commission used different and inconsistent methodologies in order to establish the percentage of financing expenses and of other selling, general and administrative costs (S&A), on the basis of the turnover for the like product on the one hand and on the basis of total turnover on the other hand.
- (27) This argument cannot be accepted. The investigation revealed that the exporting producer was unable to show the correctness and reliability of the figures reported in the reply to the questionnaire and the Commission had therefore no option but to use facts available in accordance with Article 18 of the basic Regulation, in order to establish the amount of finance expenses and of other SG&A. Moreover, no evidence was provided showing that the approach followed by the Commission did not reasonably reflect the expenses incurred for sales of the like product.
- (28) The Czech exporting producer contested the fact that the Commission had considered the producing company, which was at the same time selling on the domestic market, and its related, wholly owned domestic sales company as one economic entity. It argued that the Commission should not have added the SG&A expenses of both companies in order to establish the cost of production, on the grounds that both companies sold the product concerned to different levels of trade.
- (29) As far as the SG&A expenses are concerned it is the Community Institutions' normal practice to consider all costs associated with the production and sale of the product under consideration, irrespective of the fact that these costs were incurred in one single company or in two or more companies forming one single entity. Moreover the investigation revealed that one of the characteristics of the two related companies in question was the absence of a clear distinction between the expenses borne by the respective legal entities. This was clearly confirmed during the verification when it was established that the related sales company was booking expenses in its accounting records that were in fact linked to the activity of the producing company. The approach taken at the provisional stage is therefore confirmed.

1.1.3. *Constructed normal value*

- (30) The Brazilian exporting producer contested the method used to establish the profit margin when constructing the normal value. It argued that only domestic sales of product types made in representative quantities in relation to the exported quantities should be taken into account. It furthermore argued that product types sold on the domestic market which were not exported at all and certain product types sold on the domestic market having a different threading than the ones exported to the Community should have been excluded. In addition, the company claimed that an adjustment for the profit margin of the latter types, allegedly having a higher profit margin, should at least have been granted. Finally, it claimed that loss-making sales should not have been excluded in order to establish the profit margin.
- (31) The profit margin used in order to construct normal value has been established in line with Article 2(6) of the basic Regulation, namely based on actual data pertaining to sales, in the ordinary course of trade, of the like product, by the Brazilian exporting producer under investigation. In order to consider whether sales were indeed made in the ordinary course of trade, the Community Institutions have applied their consistent practice as described in recital 23 of the provisional Regulation, which provides that loss making sales of a given product type are included in the profit calculation, except when they represent 20 % or more of the total quantity of that type sold on the domestic market. No information has been provided which would justify a deviation from normal practice and the results as provisionally established are therefore confirmed.
- (32) The cooperating Korean company disputed the Commission's methodology for calculating the domestic profit margin, claiming that the calculation of constructed normal values resulted in unreasonably high margins.
- (33) The profit margin used in the constructed value is the accurately assessed and actual profit realised on all sales in the ordinary course of trade on the domestic market, in line with Article 2(6) of the basic Regulation and the consistent practice of the Community institutions.
- (34) The same Korean company also submitted that certain selling expenses relating to domestic sales should be excluded from the domestic SG&A expenses included in the constructed normal values.
- (35) In fact, the relevant selling expenses incurred on domestic sales — packing and transportation costs — were already deducted to ensure a fair comparison between the normal value and the export price. This was done based on adjustments claimed and granted for these expenses in the form of domestic allowances. The correct approach adopted in the provisional Regulation is therefore confirmed.
- (36) The Korean company claimed that for certain exported product types which were not sold domestically normal value should have been calculated by reference to sales prices on the domestic market of closely resembling product types.
- (37) This argument can in principle be accepted. However, some of the product types sold domestically in sufficient quantities and that were presented as being comparable with product types for which no domestic sales existed were seen to differ substantially both in terms of cost of manufacturing and of their physical characteristics such as weight, size of exits etc. In order for the Commission to be able to use these prices to establish normal value the estimation and application of numerous and significant adjustments would have been required. It was therefore concluded and is hereby confirmed that the use of constructed normal values in such cases is the most accurate and appropriate basis for establishing normal value.
- ## 1.2. Export price
- (38) The Brazilian exporting producer argued that export sales made via the related importer in the Community were excluded without any justification.
- (39) It has been pointed out in recital 41 of the provisional Regulation that these sales represent a negligible part of the exports and could as such not have had a material impact on the findings. In fact, the dumping calculations excluding the quantities sold via the related importer cover more than 97 % of the total quantity exported to the Community, i.e. a fully representative quantity. It is therefore considered justified to exclude these sales.

1.3. Comparison

(40) The Brazilian exporting producer contested the fact that the Commission did not use the product control numbers (PCN's) identifying product types as proposed in the questionnaire for comparing normal values and export prices.

(41) It is confirmed that the originally proposed PCN's were not retained. This was done since the on-the-spot verification showed that product types with different characteristics resulting in different costs and market values were grouped under the same PCN's. In order to make a fair and accurate comparison between normal value and export price as required by Article 2 (10) of the Basic Regulation, the internal product categorisation of the company was used. This led to a comparison of normal values and export prices of identical product types.

(a) Physical characteristics

(42) The Brazilian exporting producer also claimed an adjustment for differences in physical characteristics between the domestic and export product types.

(43) It should be noted that where the Community Institutions compared domestic normal value and export prices of identical product types, no further allowance for differences in physical characteristics was warranted. For product types for which no identical types were sold on the domestic market in representative quantities and in the ordinary course of trade, the normal value was constructed based on the cost of manufacture of the exported types so that also for those types no further physical differences existed and therefore no further adjustment was warranted.

(44) One Thai exporting producer objected to the Community Institutions' decision to reject a level of trade adjustment (see recital 105 of the provisional Regulation). It claimed that price differences existed for certain product types depending on their physical characteristics.

(45) Although the company qualified its claim as a level of trade adjustment, it was in fact requesting an allowance for differences in physical characteristics. Following the disclosure of the Commission's provisional findings, the company substantially modified the claim made in the questionnaire reply so that it referred to other physical characteristics than the ones originally specified. The Community Institutions were no longer in a position to verify the substance of the newly alleged price difference at this late stage of the proceeding. In this respect it should be noted that the questionnaire sent to the exporter clearly indicated that it was essential for a claim to be made accurately and in time to allow the Commis-

sion to investigate it. Consequently, the claim was rejected and provisional findings are confirmed.

(b) Import charges and indirect taxes ('duty drawback')

(46) As announced in recital 47 of the provisional Regulation, the claim made by the Brazilian exporting producer for an adjustment to the normal value for refund of certain indirect taxes was further examined. This examination led to the conclusion that the claim made by the company was excessive and unjustified. The amount that was actually refunded on export sales made to the Community and at the same time borne by the product concerned when consumed in Brazil was only a fraction of the amount claimed. The allowance provisionally granted was therefore revised accordingly.

(c) Level of trade

(47) The Brazilian and the Czech exporting producer reiterated both their claim for an allowance to the normal value for differences in level of trade with regard to sales made to an OEM customer in the Community.

(48) Based on the clarifications provided by both companies, adjustments were made. This was done under Article 2 (10)(d)(ii) of the Basic Regulation, as the companies did not sell at both levels concerned on their domestic markets.

(d) Credit costs

(49) The cooperating Korean company alleged that it incurred no credit costs on export sales and that the calculations should be adjusted accordingly.

(50) This claim was found to be in contradiction with the company's questionnaire response. The Commission took into account the payment terms agreed with the customers both in the Community and in Korea and reported by the company in its own reply to the questionnaire. Consequently the claim was rejected.

(e) Currency conversions

(51) The Brazilian exporting producer claimed that the Commission should have used daily exchange rates, instead of the monthly average rates.

(52) Given the important devaluation of the Brazilian Real in January 1999 and the material impact on the dumping calculations, this argument was accepted and exceptionally daily rates were used for the definitive dumping calculations.

- (53) The same exporting producer also claimed that the Commission should have used the exchange rate at the date of payment of the invoice rather than at the date of the invoice.
- (54) The Basic Regulation provides in Article 2(10)(j) that currency conversions shall be made using the rate of exchange on the date of sale, which was considered to be the date of invoice. Other alternative dates are the date of contract, purchase order or order confirmation, but only if those more appropriately reflect the material terms of sale. However, the exchange rate at the date of payment cannot be used. Consequently the claim had to be rejected.

2. *Non-Market economy countries*

2.1. **Individual treatment**

- (55) As stated in the provisional Regulation, the Commission has further investigated the request for individual treatment made by one of the Chinese producers.
- (56) During the investigation period the company sold most of its production destined for export to a Chinese State-owned trader. Consequently, it had no control regarding prices, quantities or the destination of its export sales. These tasks were entirely under the control of the State-owned trader. Furthermore, the information provided on export activities was very incomplete, in particular regarding sales from the trader to customers in the Community since the trader did not cooperate.
- (57) Another Chinese producer claimed to be fully independent from State interference and stressed that its private status averted any risks of circumvention.
- (58) As in the above case the company made most of its export transactions via a Chinese State-owned trader and had no knowledge of the price charged to the Community customer by the trader. This State interference was sufficient to introduce a risk of possible future circumvention of the countrywide duty should this company receive its own individual duty rate. Consequently, the claim could not be accepted.
- (59) Finally, a third company alleged that the Commission applied the rules regarding individual treatment in a discriminatory manner by refusing to grant it such treatment while individual treatment was granted in another case with identical facts. It claimed that the reason for not receiving individual treatment was that it was subject to certain laws on foreign investment that provide for tax rebates and salary setting rules, and that other companies, in other anti-dumping proceedings, although subject to the same laws nevertheless did obtain individual treatment.

- (60) The company was specifically set up in order to obtain an income tax benefit. This tax benefit was only available for companies which export at least 70 % of their production and the investigation showed that this threshold was fully applied in practice. On this basis, it was decided that the company was not eligible for individual treatment. It is also pointed out that, as far as the alleged discrimination is concerned, no company in similar circumstances received individual treatment.
- (61) In the light of the above it is concluded that the three Chinese companies failed to demonstrate a degree of independence from the authorities so that the risk of circumvention of the countrywide duty is removed. Their requests for individual treatment are therefore rejected.

3. *Dumping margin for companies investigated*

- (62) In the absence of any comments by the interested parties it was decided to apply the methods set out in the provisional Regulation for cooperating and non cooperating companies.
- (63) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

3.1. **Brazil**

Indústria de Fundição Tupy Ltda: 34,8 %,

Others: 34,8 %.

3.2. **The Czech Republic**

Moravské Zelezářny a.s.: 26,1 %,

Others: 26,1 %.

3.3. **Japan**

Hitachi Metals Ltd: 47,3 %,

Others: 65,7 %.

3.4. **Korea**

Yeong Hwa Metal Co. Ltd: 13,4 %,

Others: 23,4 %.

3.5. **Thailand**

BIS Pipe Fitting Industry Company Ltd: 22,1 %,

Siam Fittings Co. Ltd: 12,4 %,

Thai Malleable Iron & Steel Co. Ltd: 6,3 %,

Others: 22,1 %.

3.6. **China**

All companies: 49,4 %.

Croatia and the Federal Republic of Yugoslavia

- (64) In view of the finding of *de minimis* market shares for the imports of the product concerned originating in both Croatia and the Federal Republic of Yugoslavia, it was decided not to calculate a dumping margin for imports of the product concerned from these countries.

G. DEFINITION OF THE COMMUNITY INDUSTRY

- (65) Two interested parties reiterated their claim that because one Community producer imported the product under consideration from certain countries concerned, i.e. from China and Thailand, it should not be considered as belonging to the Community industry. Moreover, it was claimed by some interested parties that certain Community producers imported malleable fittings from certain other third countries, namely Bulgaria and Turkey, and that therefore, likewise, they should not be considered as forming part of the Community industry.
- (66) As to the first point, the Commission further investigated the issue. However no evidence of any such imports was found.
- (67) As to the second point, the investigation confirmed that these imports, although having taking place in certain instances, were minimal by comparison with the Community-produced sales of the Community producers concerned, thus not affecting their status as producers of the like product in the Community.
- (68) Therefore, these arguments should be rejected. For these reasons, and in the absence of any other new information, the findings on the definition of the Community industry as described in recitals 133 and 134 of the provisional Regulation are confirmed.

H. INJURY**1. Imports from the countries concerned****1.1. Cumulative assessment of the effects of the imports concerned**

- (69) The interested parties concerned reiterated the argument that their imports should not be assessed cumulatively with the other imports concerned. These claims were further analysed, on the basis of the conditions set out in Article 3(4) of the basic Regulation.

1.1.1. Brazil

- (70) The Brazilian producing exporter reiterated its claim that exports of malleable fittings from Brazil should not be cumulated with the exports from the rest of the countries concerned, in view of the different trade patterns, in particular as regards the import volume and the pricing.

- (71) It should be noted that the dumping margin found for Brazil is substantial. As to the volume of imports, they were 4 188 tonnes in the IP, corresponding to a market share of 6,9 % and thus were far from being negligible.

- (72) As to the conditions of competition between imported products, and the conditions of competition between the imported products and the like Community product, the further analysis of the relevant factors has shown that although the trend of Brazilian import volumes and those of the imports from the other countries concerned were not in all cases identical during the injury investigation period, the difference among them was not such as to justify a non-cumulative assessment. Indeed, the trend of the Brazilian imports was found to be unstable, thus following a similar trend as compared with some of the other countries concerned, namely Japan, South Korea and Thailand. As regards the prices of the Brazilian imports, they were likewise found to be unstable: they increased between 1995 and 1996 by around 13 %, then gradually decreased between 1996 and 1998 by around 10 % in total and, finally, increased again between 1998 and the IP by around 2 %. A similarly unstable pattern was also found for almost all the other countries concerned. Therefore, although not being always identical during the IIP the difference among the prices was not such as to justify a non-cumulative assessment.

- (73) All the countries concerned operate within the same or similar channels of distribution, as confirmed by the fact that some traders imported or purchased the product under consideration from both various countries concerned and the Community producers.

- (74) As to market perception of the Brazilian imported products and the Community produced products, the investigation has confirmed that there is no difference, as evidenced also by the aforementioned similarities found in the distribution channels.

- (75) For these reasons, it is concluded that the effect of Brazilian imports should be assessed cumulatively with the effects of the imports originating in the other countries concerned.

1.1.2. The Czech Republic

- (76) The Czech producing exporter argued that exports of malleable fittings from the Czech Republic should not be cumulatively assessed with those originating in the other countries concerned on the grounds that they competed neither with the fittings imported from the other countries concerned nor with those manufactured and sold by most of the Community industry. The Czech exporting producer in this respect claimed that its fittings were mainly sold on a limited part of the Community market.

(77) The investigation has however shown that a significant proportion of the Czech exports was actually directed into several Member States. Moreover, even when considering that the rest of the Czech exports are concentrated in one Member State only, this cannot in itself be considered as an element on the basis of which a non-cumulative assessment could be justified in view of the size of this market, in view of the significant imports originating in the other countries concerned coming into this market and in view of the fact the Community industry also has significant sales in this market.

(78) On this basis, the provisional findings regarding the appropriateness of the cumulative assessment of imports from the Czech Republic are confirmed.

1.1.3. *The Republic of Korea*

(79) The Korean producing exporter argued that exports from the Republic of Korea should not be cumulated with those from the other countries concerned on the grounds of the specific technical characteristics of its product, which has taper external threads and taper internal threads (taper/taper fittings), with in the rest of the Community the malleable fittings generally have taper external threads and parallel internal threads (taper/parallel fittings). It was claimed that the Korean imports, which were only made to the United Kingdom market, were in competition only with the fittings of the sole British producer, which manufactured taper/taper fittings as well. It has been argued moreover that, during the IP, only a negligible part of the United Kingdom market was supplied by taper/parallel threaded fittings. As a consequence, injurious dumping could, if at all, only be assessed on a regional basis.

(80) As concerns any regional assessment of injurious dumping, it should be noted that not all the conditions set out in this respect in Article 4(1)(b) of the basic Regulation were met. Indeed, during the IIP, not only the British producer, but also other Community producers and exporting producers from the countries concerned and from other third countries sold the product under consideration on the United Kingdom market. The investigation showed moreover that, in particular in the IP, significant quantities of taper/parallel fittings have been sold in the United Kingdom market, representing a share of the local consumption of the product under consideration well above 20 %, which cannot be considered negligible.

(81) On this basis, the appropriateness of the cumulative assessment of the imports from Korea with those originating in the other countries concerned is confirmed.

1.1.4. *Thailand*

(82) The Thai producing exporter reiterated its claim that exports of malleable fittings from Thailand should not be cumulated with the exports from the rest of the countries concerned, in view of the fact that the Thai imports decreased over the IIP when expressed as a percentage of the total imports into the Community, i.e. comprising all imports both from the countries concerned and from the other third countries.

(83) It should be noted, firstly, that according to Article 3(3) of the basic Regulation, consideration shall be given to the volume of dumped imports which, when expressed in relative terms, has to be calculated in relation to production or consumption in the Community. In the current investigation, the imports from the countries concerned have been expressed in relation to the consumption in the Community. On this basis, the market share of Thailand was above 1 % during the IP, thus not negligible according to the Community legislation. Secondly, during the IP, the Thai imports constituted more than 3 % of the overall imports into the Community, thus being clearly above the WTO *de minimis* threshold.

(84) As to the import trends observed over the IIP and as shown above, the development of Thai imports was not different to the trends observed for the other countries concerned, justifying them not to be cumulated with these other countries. Therefore, having in addition regard to the findings on the dumping which is considerable, and the channels of distribution used, the appropriateness of the cumulative assessment of the imports from Thailand with those originating in the other countries concerned is confirmed.

1.1.5. *Conclusion on cumulation*

(85) On the basis of the above, the investigation has confirmed that the conditions of cumulation, as set out in Article 3(4) of the basic Regulation, are met since for all the countries concerned dumping margins above the *de minimis* level and volume of the imports negligible have been found. Furthermore, as concerns the conditions of competition between, on the one hand, the imported products and, on the other hand, the imported products and the like Community product, these were found to be comparable. Indeed, the investigation showed that, in all cases, the imported products and those of the Community industry have the same physical and technical characteristics, that the pricing trends are similar, significantly undercutting the Community industry's prices, and that all imported products as well as the Community-produced products are sold through the same or similar channels of distribution. Therefore, the provisional findings regarding the appropriateness of the cumulative assessment of the imports from the countries concerned are confirmed.

1.2. Price undercutting

1.2.1. *Adjustments for black and white heart fittings*

(86) Some interested parties claimed that adjustments should be made in the price comparison between imported products (black heart fittings) and the Community produced product (in general white heart fittings) on the grounds of the different perception of the market and of the difference in the production process (in particular in the annealing process, since white heart malleable fittings commanded a higher cost of production because of the increased energy consumption than black heart malleable fittings), which was reflected in the selling prices.

a) Market perception

(87) In this respect it has been found that, as described above (paragraph 2.2.), in those instances in which both black and white heart malleable fittings were sold by the same party, and therefore any distinction in market perception should have been observable, no such distinction was actually observed, in any event not in terms of pricing differences. As to the users of the product under consideration, the investigation has confirmed that they do not differentiate between white heart or black heart fittings. On the basis of the above, it was therefore not possible to grant an adjustments on the grounds of the alleged difference between white and black heart fittings.

b) Cost of production and selling price

(88) Moreover, as concerns alleged differences in the cost of production and any effects on the selling prices, the data available allowed the detailed verification of the manufacturing cost structure of both black and white heart fittings. While the energy consumption in order to obtain the complete decarburization of white heart fittings is greater than the energy consumption used to obtain the only partially decarburized black heart fittings, the investigation has shown not only that the cost for energy represents a small proportion of the total manufacturing cost, but also that in terms of actual energy consumption and the cost related thereto, the difference between the two processes is not significant and depends more on the specific production set up and its energy efficiency of the producer concerned.

(89) In addition, as concerns the selling prices, it was found that where Community-produced black heart and white heart fittings were sold on the same markets, the prices for black heart fittings, contrary to the claim by some interested parties, were in some cases even higher. More-

over, information available showed that in those cases where wholesalers and distributors purchased both black heart malleable fittings from the countries concerned and white heart malleable fittings from the Community industry, they often resold them at the same prices and did not specify the difference between the two in terms of the two grades of cast iron.

(90) These arguments are therefore rejected.

1.2.2. *Adjustments for market segments*

(91) Some interested parties claimed that the market of the malleable fittings falls into three segments, depending on the price bracket and the reliability of the product as manufactured by certain Community producers as well as by certain exporting producers. It was consequently claimed that the price comparison should be undertaken on the basis of three different market segments (high, medium, low) in which different Community and exporting producers were present.

(92) Although no elements were provided allowing any objective and clean division of the market in three specific segments, it was examined whether other methods of price comparison based on such alleged market segments would lead to different results of the price undercutting. As a result of this examination, no significant differences have been found as compared to the methodology applied at the provisional stage, i.e. the comparison of the weighted average ex-works prices of the Community producers to the weighted average export prices of each exporting producer concerned, for each type of malleable fittings.

(93) In conclusion, although the investigation has shown that certain differences in perceived segments may exist, no objective criteria are apparent in order to correspondingly categorise the Community industry and exporting producers. Therefore, the methodology applied at the provisional stage is confirmed.

1.2.3. *Conclusion on price undercutting*

(94) Before the above background, price undercutting margins were reviewed on the basis of the evidence submitted by interested parties and amended where appropriate. As regards Japan, the revised weighted average price undercutting expressed as a percentage of the Community industry's prices decreased to 16,2 %. With respect to the other countries concerned, the provisional weighted average price undercutting expressed as a percentage of the Community industry's prices are confirmed.

2. Situation of the Community industry

set in recital 160 of the provisional Regulation, are confirmed.

2.1. Choice of economic indicators

- (95) With respect to the injury assessment, one interested party argued that the determination of the impact of the dumped imports was not valid since certain injury factors set out in Article 3(4) of the WTO Anti-dumping Agreement had not been examined.
- (96) In this respect it should be noted that the WTO Anti-dumping Agreement and the basic Regulation do not require that each factor be analysed in the exactly same way. Moreover, in the specific case, all the relevant factors considered as having a bearing on the state of the Community industry have been taken into account in the context of the injury assessment. The claim is therefore rejected.

2.2. Analysis of trends

- (97) The Czech exporting producer further alleged that the Community industry had not suffered material injury in the sense of Article 3 of the basic Regulation since the Commission had in several instances taken 1995 as a starting point for its analysis whereas, had 1996 been taken as a starting point, several economic indicators would actually show a positive trend.
- (98) In this respect it should be noted, firstly, that dumping and the injury suffered by the Community industry must be found during the IP. In order to establish whether such injury exists, *inter alia*, the developments and trends found in the years preceding the IP are only used in order to have a better understanding of findings relating to the IP. In this current case, since the investigation period started in April 1998, it has been deemed appropriate, in order to obtain a meaningful picture of the evolution of the injury indicators, to take into account at least three calendar years (1995-1997) prior to the IP. Secondly, even if 1996 were taken as reference year, the result of the injury analysis would not change. On the contrary, the injury suffered by the Community industry would be even more evident in the development of certain injury indicators as profitability and stocks. The other injury indicators would have followed the same negative trend, with the exception of the investments, and of the production volume, the increase of which however resulted in higher stocks.
- (99) For these reasons, the above argument is rejected

2.3. Conclusion on injury

- (100) In view of the above, the provisional findings as regards the material injury suffered by the Community industry

I. CAUSATION

1. Impact of the imports concerned

- (101) Some interested parties claimed that the assessment of the causal link was flawed since the Community industry was able to increase its prices during the IIP, while the evolution of the production and the production capacity, as well as the decrease of the employment and the lack of profitability were caused by factors other than the dumped imports, namely, in particular, the Community industry's decision to rationalise production and the necessity to comply with the European environmental standards. Moreover one interested party questioned the provisional finding concerning the closure of the manufacturing plant of malleable fittings located in Germany, claiming that the producers facilities had actually been relocated to Austria and, as consequence, this element could not be considered as a sign of the injury suffered by the Community industry.
- (102) As a general remark it must be underlined that the injury suffered by the Community industry must be assessed by reference to the IP. As to the earlier years and the trends established over these years, they explain the background underlining the injury established. As regards the current proceeding, the investigation established that the Community industry overlook restructuring efforts in 1995, with the effect of and as evidenced by the decrease of production and employment, the significant level of investments and the low level of profitability in that particular year. The results of these restructuring efforts began to materialise in 1996, as indicated by the rising production and the better financial results (profitability improved by 3,6 percentage points between 1995 and 1996). However, these results and the further benefits which could have been reasonably expected to accrue to the Community industry from these efforts have been frustrated by the developments on the market. Indeed, as from 1996, the import volumes from the countries concerned began to increase and their prices started to decrease, whereas simultaneously, the Community industry began to suffer a continuous decline of its sales volume and market share, throughout the rest of the IIP. The contraction of the sales of the Community industry entailed a rise of its stocks and a decline of its profitability, which, although rising between 1995 and 1996, then decreased by 2,3 percentage points between 1996 and the IP to -9 %.

(103) As regards more specifically the development of the Community industry's sales prices, the investigation has shown that the rise of 5 % between 1995 and the IP of the average sales price of the Community industry occurred in two phases, one between 1995 and 1996, when the whole market experienced a general price increase, and the second one between 1997 and 1998, when only the Community industry and other third countries raised their prices, while the prices of the countries concerned decreased significantly. These price developments should be seen in the light of the fact that the price pressure of the imports concerned had an impact on the volume of the sales and on the market shares of the Community industry rather than on its price level. Indeed, when faced with low-priced imports originating in the countries concerned, the Community industry had the possibility of either maintaining its prices with a risk of losing market shares, or following the low prices of dumped imports with the aim of maintaining the sales volumes. It decided to maintain its prices, but the consequences on the sales volume had an impact on the profitability, which turned negative after 1996.

(104) Secondly, as to the development of the Community industry's production volumes, and in particular the aspect of the closure of the manufacturing plant located in Germany, the investigation has confirmed that this plant was indeed closed at the end of 1995 and that the related facilities were not relocated to Austria as claimed by one interested party. Actually only a small amount of stocks were transferred there.

(105) On the basis of the above, the findings as described in recital 170 of the provisional Regulation are confirmed.

2. Imports from other third countries

(106) Some interested parties questioned the provisional findings of the Commission on the effect on the situation of the Community industry of imports of the product under consideration from other third countries, namely Turkey, Bulgaria and Poland.

(107) According to Eurostat, during the IIP, imports from other third countries decreased in volume by around 14 % while market shares decreased by around 1 percentage point. As to the prices, they increased on average by around 15 % and were 17 % higher than the average prices of the imports from the countries concerned.

2.1. Turkey

(108) More specifically, as concerns Turkey, during the IP the weighted average price of imports was around 10 % higher than the weighted average price of the imports concerned and, during the IP, its market share remained stable at around 1 % of Community consumption.

2.2. Bulgaria

(109) As to Bulgaria, although the import volumes increased during the IIP from 43 to 1 109 tonnes, in relative terms these imports are not such as to alter the conclusions on the causal link between the injury suffered by the Community industry and the imports from the countries concerned: indeed, in the IP, they represented 1,8 % of the total market as compared to a market share of 28,6 % of the imports concerned. In addition, during the IIP their price increased by around 11 % and, in the IP, was around 5 % higher than the weighted average price of the imports concerned.

2.3. Poland

(110) With respect to Poland, market shares remained fairly stable during the IIP, and the average price was around 27 % higher than the average price of the imports concerned.

2.4. Conclusion on other third countries

(111) In conclusion, given the above, even if imports from other third countries may have contributed to the material injury suffered by the Community industry, it is hereby confirmed that they are not such to have broken the causal link between the dumping and the injury found.

3. Substitution effect

(112) Some interested parties questioned the provisional findings as regards the substitution of fittings made of materials such as copper and plastic for those made of malleable cast iron and the effect of this alleged substitution on the situation of the Community industry.

(113) The issue has been further investigated and it has been confirmed that indeed the substitution of cast iron by different materials, such as copper and plastic, took place mainly in the 1980's. Afterwards, the substitution effect slowed down and the utilisation of malleable fittings remained stable, in particular for those uses where physical durability, resistance as well as a specific tensile strength and elongation are required. Therefore, any substitution effect cannot have significantly contributed to the injury suffered by the Community industry as evidenced by the relatively stable consumption established in the course of the present investigation.

4. Conclusion on causation.

(114) In the light of the above, the provisional findings as described in recitals 155 to 170, of the provisional Regulation on causation are confirmed.

J. COMMUNITY INTEREST

1. *Interest of users*

- (115) One interested party claimed that the interest of the fire protection industry had not been duly taken into account.
- (116) It should be noted that no users belonging to the fire protection industry made themselves known during the investigation. This fact can be considered in itself as an indication that this sector is not significantly concerned by the imposition or non-imposition of anti-dumping measures. This conclusion is reinforced by the findings established for the cooperating users belonging to other sectors, for which the product under consideration represents around 1 % of their total costs.

2. *Conclusion on Community interest*

- (117) In the absence of any further new information on Community interest and on the basis of the facts available, the findings as described in recitals 171 to 179 of the provisional Regulation are confirmed.

K. DEFINITIVE ANTI-DUMPING MEASURES

1. *Injury elimination level*

- (118) For the purpose of establishing the level of measures definitively to be imposed, it is hereby confirmed that the prices of the dumped imports should be increased to a non-injurious level. On the basis of the injury margin thus established and of the dumping margins found, whichever is the lower in accordance with Article 9(4) of the basic Regulation, the level of duty then established. In the absence of any new information, the methodology used for establishing the injury margin as described in recital 181 of the provisional Regulation is hereby confirmed.

2. *Croatia and Yugoslavia*

- (119) As the market shares found were *de minimis* it is proposed not to impose any anti-dumping duty on imports of malleable fittings originating in Croatia and Yugoslavia and to terminate the proceeding in respect of imports originating in these countries.

3. *Definitive duties*

- (120) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed on the imports originating in the remaining countries concerned.
- (121) As regards the residual duty to be applied to the noncooperating exporting producers, in those cases where the level of cooperation has been high, the residual duty was fixed at the level of the highest anti-dumping duty found for the cooperating exporting producers. In those cases where the level of cooperation has been low, the residual duty was fixed at the level of the highest dumping or injury margin found for a representative range of exported types of the cooperating producing exporters, whichever was the lower.
- (122) On the basis of the above, the proposed definitive duty rates, expressed as a percentage of the cif Community border price, customs duty unpaid, are as follows:

Country	Company	Definitive duty (%)
Brazil	Indústria de Fundação Tupy Ltda	34,8
	Others	34,8
Czech Republic	Moravské Zelezárny a.s.	26,1
	Others	26,1

Country	Company	Definitive duty (%)
Japan	Hitachi Metals Ltd	26,9
	Others	33,6
Republic of Korea	Yeong Hwa Metal Co. Ltd	13,4
	Others	23,4
Thailand	BIS Pipe Fitting Industry Company Ltd	22,1
	Siam Fittings Co. Ltd	12,4
	Thai Malleable Iron & Steel Co. Ltd	6,3
	Others	22,1
China	All companies	49,4

- (123) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾, 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.

4. Undertakings

- (124) It will be recalled that the exporting producer in the Czech Republic has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. Subsequent to the imposition of provisional anti-dumping measures, also the exporting producer in Korea and one of the exporting producers in Thailand have offered price undertakings in accordance with Article 8(1) of the basic Regulation. The Commission considers that the undertakings offered can be accepted since they eliminate the injurious effect of the dumping. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow an effective monitoring. Furthermore, the sales structure of these exporters is such that the Commission considers that there is little risk of circumventing the undertaking offered.
- (125) The Japanese exporting producer also made proposals for offering an undertaking. However, the level of cooperation of this company throughout the investigation, and the accuracy and reliability of the data it had provided was poor (See recital 21). Therefore, the Commission was not, therefore, satisfied that an undertaking from this company could be effectively monitored. Furthermore, the structure of the company's export sales' sector, with more than one related importer involved, was considered to increase the risk of circumvention. The offers were therefore rejected.

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate C
DM 24 8/38
Rue de la Loi/Wetstraat 200
B-1049 Bruxelles/Brussel.

- (126) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the relevant Member States' customs' services of a valid undertaking invoice issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex. Where no such invoice is presented or when it does 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 undertakings.
- (127) In the event of a breach or withdrawal of the undertakings an anti-dumping duty may be imposed, pursuant to Articles 8(9) and 10 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of threaded malleable cast iron tube or pipe fittings, falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Definitive duty (%)	TARIC additional code
Brazil	34,8	—
Czech Republic	26,1	A999
Japan	33,6	A999
People's Republic of China	49,4	—
Republic of Korea	23,4	A999
Thailand	22,1	A999

3. The above rates shall not apply to the products manufactured by the companies listed below, which shall be subject to the following anti-dumping duty rates:

Country	Company	Definitive duty (%)	TARIC additional code
Japan	Hitachi Metals Ltd Seavans North 2-1, Shibaura 1-Chome Minato-Ku Tokyo 105-8614 Japan	26,9	A092
Republic of Korea	Yeong Hwa Metal Co Ltd 363-6, Namyang-dong, Chinhae, Kyongman Republic of Korea	13,4	A093

Country	Company	Definitive duty (%)	TARIC additional code
Thailand	BIS Pipe Fitting Industry Co Ltd 107 Moo 4, Petchkasem Rd., Omnoi, Kratumban Samutsakorn 74130 Thailand	22,1	A094
	Siam Fittings Co. Ltd 100/1-100/2, Moo 2, Settakit 1 Road, Omnoi, Krathumban Samutsakorn 74130 Thailand	12,4	A095
	Thai Malleable Iron & Steel Co. Ltd 469/19 Rama III Road, Yannawa, Bangkok 10120 Thailand	6,3	A096

4. Notwithstanding Article 1 (1), the definitive duty shall not apply to imports realised for free circulation in accordance with the provisions of Article 2.

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

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and sold for export to the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set in paragraph 2 are met.

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the competent Member State's customs services of a valid 'Undertaking Invoice' issued by the exporting companies mentioned in paragraph 3 containing the essential elements listed in the Annex to this Regulation. 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'.

3. Imports accompanied by an 'undertaking invoice' shall be declared under the following TARIC additional codes:

Company	Country	TARIC additional code
Czech Republic	Moravské Zelezárny a.s. Repcinska 86 77900 Olomouc 9 Czech Republic	A097
Republic of Korea	Yeong Hwa Metal Co. Ltd 363-6, Namyang-dong, Chinhae Kyongman Korea	A093
Thailand	BIS Pipe Fitting Industry Co. Ltd 107 Moo 4, Petchkasem Rd., Omnoi, Kratumban Samutsakorn 74130 Thailand	A094

Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 449/2000 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 4

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

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

Done at Brussels, 11 August 2000.

For the Council

The President

H. VÉDRINE

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:
 - the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question), including type number, diameter, and surface,
 - CN code,
 - quantity (to be given in units),
3. The description of the terms of the sale, including:
 - price per unit,
 - 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 449/2000 or Decision C(2000)XXX. I declare that the information provided in this invoice is complete and correct.'

COMMISSION REGULATION (EC) No 1785/2000
of 17 August 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 18 August 2000.

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

Done at Brussels, 17 August 2000.

For the Commission

Philippe BUSQUIN

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 17 August 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	61,9
	999	61,9
0709 90 70	052	71,3
	999	71,3
0805 30 10	388	60,6
	524	57,1
	528	65,8
	999	61,2
0806 10 10	052	92,6
	064	92,0
	400	180,7
	508	135,1
	600	93,8
	624	121,9
	999	119,3
	388	84,4
	400	84,1
	508	92,8
0808 10 20, 0808 10 50, 0808 10 90	512	84,7
	800	161,1
	804	61,4
	999	94,8
	052	94,7
	388	75,1
	720	116,4
0808 20 50	999	95,4
	052	109,7
	999	109,7
0809 30 10, 0809 30 90	064	53,5
	066	49,1
0809 40 05	994	36,2
	999	46,3

⁽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 1786/2000
of 17 August 2000
amending the rates of the refunds applicable to certain products from the milk sector exported in
the form of goods not covered by Annex I to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the markets in the milk and milk products sector ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 31(3) thereof,

Whereas:

- (1) The rates of the refunds applicable from 18 August 2000 to the products listed in the Annex, exported in the form of goods not covered by Annex I to the Treaty, were fixed by Commission Regulation (EC) No 1705/2000 ⁽³⁾, as amended by Regulation (EC) No 1771/2000 ⁽⁴⁾.

- (2) It follows from applying the rules and criteria contained in Regulation (EC) No 1705/2000 to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of refund fixed by Regulation (EC) No 1705/2000 are hereby altered as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 August 2000.

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

Done at Brussels, 17 August 2000.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 195, 1.8.2000, p. 28.

⁽⁴⁾ OJ L 204, 11.8.2000, p. 33.

ANNEX

to the Commission Regulation of 17 August 2000 amending the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description	Rate of refund
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):	
	(a) On exportation of goods of CN code 3501	—
	(b) On exportation of other goods	49,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):	
	(a) Where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 2571/97 are exported	60,04
	(b) On exportation of other goods	76,00
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):	
	(a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 2571/97 are exported	75,00
	(b) On exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	177,25
	(c) On exportation of other goods	170,00

COMMISSION REGULATION (EC) No 1787/2000
of 17 August 2000
altering the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 31(3), last indent thereof,

Whereas:

- (1) The export refunds on milk and milk products were fixed by Commission Regulation (EC) No 1660/2000 ⁽³⁾, as amended by Regulation (EC) No 1765/2000 ⁽⁴⁾.
- (2) It follows from the application of the detailed rules contained in Regulation (EC) No 1660/2000 to the information known to the Commission that the export

refunds for the products listed in the Annex hereto should be altered to the amounts set out therein,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds referred to in Article 31 of Regulation (EC) No 1255/1999 on products exported in the natural state, as fixed in the Annex to amended Regulation (EC) No 1660/2000 are hereby altered, in respect of the products set out in the Annex hereto, to the amounts set out therein.

Article 2

This Regulation shall enter into force on 18 August 2000.

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

Done at Brussels, 17 August 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 192, 28.7.2000, p. 21.

⁽⁴⁾ OJ L 204, 11.8.2000, p. 18.

ANNEX

to the Commission Regulation of 17 August 2000 amending the export refunds on milk and milk products

(in EUR/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0401 10 10 9000	970	2,327	0402 21 91 9900	+	101,20
	***	—	0402 21 99 9100	+	76,50
0401 10 90 9000	970	2,327	0402 21 99 9200	+	77,10
	***	—	0402 21 99 9300	+	77,90
0401 20 11 9100	970	2,327	0402 21 99 9400	+	83,30
	***	—	0402 21 99 9500	+	85,20
0401 20 11 9500	970	3,597	0402 21 99 9600	+	92,40
	***	—	0402 21 99 9700	+	96,50
0401 20 19 9100	970	2,327	0402 21 99 9900	+	101,20
	***	—	0402 29 15 9200	+	0,4900
0401 20 19 9500	970	3,597	0402 29 15 9300	+	0,6700
	***	—	0402 29 15 9500	+	0,7060
0401 20 91 9100	970	4,551	0402 29 15 9900	+	0,7600
	***	—	0402 29 19 9200	+	0,4900
0401 20 91 9500	+	—	0402 29 19 9300	+	0,6700
0401 20 99 9100	970	4,551	0402 29 19 9500	+	0,7060
	***	—	0402 29 19 9900	+	0,7600
0401 20 99 9500	+	—	0402 29 91 9100	+	0,7650
0401 30 11 9100	+	—	0402 29 91 9500	+	0,8330
0401 30 11 9400	970	10,50	0402 29 99 9100	+	0,7650
	***	—	0402 29 99 9500	+	0,8330
0401 30 11 9700	970	15,77	0402 91 11 9110	+	—
	***	—	0402 91 11 9120	+	—
0401 30 19 9100	+	—	0402 91 11 9310	+	—
0401 30 19 9400	+	—	0402 91 11 9350	+	—
0401 30 19 9700	970	15,77	0402 91 11 9370	+	10,90
	***	—	0402 91 19 9110	+	—
0401 30 31 9100	+	38,32	0402 91 19 9120	+	—
0401 30 31 9400	+	59,85	0402 91 19 9310	+	—
0401 30 31 9700	+	66,00	0402 91 19 9350	+	—
0401 30 39 9100	+	38,32	0402 91 19 9370	+	10,90
0401 30 39 9400	+	59,85	0402 91 31 9100	+	—
0401 30 39 9700	+	66,00	0402 91 31 9300	+	12,90
0401 30 91 9100	+	75,22	0402 91 39 9100	+	—
0401 30 91 9400	+	110,55	0402 91 39 9300	+	12,90
0401 30 91 9700	+	129,01	0402 91 51 9000	+	—
0401 30 99 9100	+	75,22	0402 91 59 9000	+	—
0401 30 99 9400	+	110,55	0402 91 91 9000	+	41,60
0401 30 99 9700	+	129,01	0402 91 99 9000	+	41,60
0402 10 11 9000	+	49,00	0402 99 11 9110	+	—
0402 10 19 9000	+	49,00	0402 99 11 9130	+	—
0402 10 91 9000	+	0,4900	0402 99 11 9150	+	—
0402 10 99 9000	+	0,4900	0402 99 11 9310	+	—
0402 21 11 9200	+	49,00	0402 99 11 9330	+	—
0402 21 11 9300	+	67,00	0402 99 11 9350	+	0,2790
0402 21 11 9500	+	70,60	0402 99 19 9110	+	—
0402 21 11 9900	+	76,00	0402 99 19 9130	+	—
0402 21 17 9000	+	49,00	0402 99 19 9150	+	—
0402 21 19 9300	+	67,00	0402 99 19 9310	+	—
0402 21 19 9500	+	70,60	0402 99 19 9330	+	—
0402 21 19 9900	+	76,00	0402 99 19 9350	+	0,2790
0402 21 91 9100	+	76,50	0402 99 31 9110	+	—
0402 21 91 9200	+	77,10	0402 99 31 9150	+	0,2900
0402 21 91 9300	+	77,90	0402 99 31 9300	+	0,2490
0402 21 91 9400	+	83,30	0402 99 31 9500	+	0,4290
0402 21 91 9500	+	85,20	0402 99 39 9110	+	—
0402 21 91 9600	+	92,40	0402 99 39 9150	+	0,2900
0402 21 91 9700	+	96,50	0402 99 39 9300	+	0,2490

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0402 99 39 9500	+	0,4290	0404 90 29 9160	+	96,50
0402 99 91 9000	+	0,4890	0404 90 29 9180	+	101,20
0402 99 99 9000	+	0,4890	0404 90 81 9100	+	0,4900
0403 10 11 9400	+	—	0404 90 81 9910	+	—
0403 10 11 9800	+	—	0404 90 81 9950	+	0,1750
0403 10 13 9800	+	—	0404 90 83 9110	+	0,4900
0403 10 19 9800	+	—	0404 90 83 9130	+	0,6700
0403 10 31 9400	+	—	0404 90 83 9150	+	0,7060
0403 10 31 9800	+	—	0404 90 83 9170	+	0,7600
0403 10 33 9800	+	—	0404 90 83 9911	+	—
0403 10 39 9800	+	—	0404 90 83 9913	+	—
0403 90 11 9000	+	48,20	0404 90 83 9915	+	—
0403 90 13 9200	+	48,20	0404 90 83 9917	+	—
0403 90 13 9300	+	66,40	0404 90 83 9919	+	—
0403 90 13 9500	+	69,90	0404 90 83 9931	+	—
0403 90 13 9900	+	75,20	0404 90 83 9933	+	—
0403 90 19 9000	+	75,80	0404 90 83 9935	+	0,2790
0403 90 31 9000	+	0,4820	0404 90 83 9937	+	0,2900
0403 90 33 9200	+	0,4820	0404 90 89 9130	+	0,7650
0403 90 33 9300	+	0,6640	0404 90 89 9150	+	0,8330
0403 90 33 9500	+	0,6990	0404 90 89 9930	+	0,4601
0403 90 33 9900	+	0,7520	0404 90 89 9950	+	0,6600
0403 90 39 9000	+	0,7580	0404 90 89 9990	+	0,7522
0403 90 51 9100	970	2,327	0405 10 11 9500	+	165,85
	***	—	0405 10 11 9700	+	170,00
0403 90 51 9300	+	—	0405 10 19 9500	+	165,85
0403 90 53 9000	+	—	0405 10 19 9700	+	170,00
0403 90 59 9110	+	—	0405 10 30 9100	+	165,85
0403 90 59 9140	+	—	0405 10 30 9300	+	170,00
0403 90 59 9170	970	15,77	0405 10 30 9500	+	165,85
	***	—	0405 10 30 9700	+	170,00
0403 90 59 9310	+	38,32	0405 10 50 9100	+	165,85
0403 90 59 9340	+	59,20	0405 10 50 9300	+	170,00
0403 90 59 9370	+	59,20	0405 10 50 9500	+	165,85
0403 90 59 9510	+	59,20	0405 10 50 9700	+	170,00
0403 90 59 9540	+	59,20	0405 10 90 9000	+	176,22
0403 90 59 9570	+	59,20	0405 20 90 9500	+	155,49
0403 90 61 9100	+	—	0405 20 90 9700	+	161,71
0403 90 61 9300	+	—	0405 90 10 9000	+	216,00
0403 90 63 9000	+	—	0405 90 90 9000	+	170,00
0403 90 69 9000	+	—	0406 10 20 9100	+	—
0404 90 21 9100	+	49,00	0406 10 20 9230	037	—
0404 90 21 9910	+	—		039	—
0404 90 21 9950	+	7,40		097	—
0404 90 23 9120	+	49,00		098	37,68
0404 90 23 9130	+	67,00		400	—
0404 90 23 9140	+	70,60		***	37,68
0404 90 23 9150	+	76,00	0406 10 20 9290	037	—
0404 90 23 9911	+	—		039	—
0404 90 23 9913	+	—		097	—
0404 90 23 9915	+	—		098	35,05
0404 90 23 9917	+	—		400	—
0404 90 23 9919	+	—		***	35,05
0404 90 23 9931	+	7,40	0406 10 20 9300	037	—
0404 90 23 9933	+	9,00		039	—
0404 90 23 9935	+	10,90		097	—
0404 90 23 9937	+	12,90		098	15,39
0404 90 23 9939	+	13,50		400	—
0404 90 29 9110	+	76,50		***	15,39
0404 90 29 9115	+	77,10			
0404 90 29 9120	+	77,90			
0404 90 29 9130	+	83,30			
0404 90 29 9135	+	85,20			
0404 90 29 9150	+	92,40			

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0406 10 20 9610	037	—	0406 20 90 9990 0406 30 31 9710	+	—
	039	—		037	—
	097	51,11		039	—
	098	51,11		097	17,88
	400	—		098	9,54
0406 10 20 9620	***	51,11	0406 30 31 9730	400	—
	037	—		***	17,88
	039	—		037	—
	097	51,83		039	—
	098	51,83		097	26,24
0406 10 20 9630	400	—	0406 30 31 9910	098	13,99
	***	51,83		400	—
	037	—		***	26,24
	039	—		037	—
	097	57,86		039	—
0406 10 20 9640	098	57,86	0406 30 31 9930	097	17,88
	400	—		098	9,54
	***	57,86		400	—
	037	—		***	17,88
	039	—		037	—
0406 10 20 9650	097	85,03	0406 30 31 9950	039	—
	098	85,03		097	26,24
	400	—		098	13,99
	***	85,03		400	—
	037	—		***	26,24
0406 10 20 9660 0406 10 20 9830	039	—	0406 30 39 9500	037	—
	097	70,86		039	—
	098	70,86		097	38,17
	400	—		098	20,36
	***	70,86		400	—
0406 10 20 9850	+	—	0406 30 39 9700	***	38,17
	037	—		037	—
	039	—		039	—
	097	26,28		097	26,24
	098	26,28		098	13,99
0406 10 20 9870 0406 10 20 9900 0406 20 90 9100 0406 20 90 9913	400	—	0406 30 39 9930	400	—
	***	26,28		***	38,17
	037	—		037	—
	039	—		039	—
	097	31,87		097	38,17
0406 20 90 9915	098	31,87	0406 30 39 9950	098	20,36
	400	—		400	—
	***	31,87		***	38,17
	037	—		037	—
	039	—		039	—
0406 20 90 9917	097	58,77	0406 30 90 9000	097	43,16
	098	58,77		098	23,02
	400	23,80		400	—
	***	58,77		***	43,16
	037	—		037	—
0406 20 90 9919	039	—	0406 40 50 9000	039	—
	097	77,56		097	90,00
	098	77,56		098	90,00
	400	31,70		400	—
	***	77,56		***	45,28
0406 20 90 9919	037	—	0406 40 50 9000	037	—
	039	—		039	—
	097	92,10		097	90,00
	098	92,10		098	90,00
	400	37,60		400	—
	***	92,10		***	90,00

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0406 40 90 9000	037	—	0406 90 33 9951	037	—
	039	—		039	—
	097	92,42		097	78,66
	098	92,42		098	68,98
	400	—		400	—
0406 90 13 9000	***	92,42	0406 90 35 9190	***	78,66
	037	—		037	33,29
	039	—		039	33,29
	097	116,37		097	121,56
	098	101,62		098	105,71
0406 90 15 9100	400	45,30	0406 90 35 9990	400	46,20
	***	116,37		***	121,56
	037	—		037	—
	039	—		039	—
	097	120,25		097	121,56
0406 90 17 9100	098	105,01	0406 90 37 9000	098	105,71
	400	46,70		400	30,20
	***	120,25		***	121,56
	037	—		037	—
	039	—		039	—
0406 90 21 9900	097	120,25	0406 90 61 9000	097	116,37
	098	105,01		098	101,62
	400	46,70		400	45,30
	***	120,25		***	116,37
	037	—		037	47,01
0406 90 23 9900	039	—	0406 90 63 9100	039	47,01
	097	117,54		097	129,64
	098	102,90		098	112,00
	400	33,50		400	43,00
	***	117,54		***	129,64
0406 90 25 9900	037	—	0406 90 63 9900	037	42,83
	039	—		039	42,83
	097	103,92		097	128,55
	098	90,36		098	111,41
	400	—		400	48,10
0406 90 27 9900	***	103,92	0406 90 69 9100	***	128,55
	037	—		037	34,22
	039	—		039	34,22
	097	102,80		097	124,18
	098	89,77		098	107,11
0406 90 31 9119	400	—	0406 90 69 9910	400	36,80
	***	102,80		***	124,18
	037	—		+	—
	039	—		037	—
	097	93,10		039	—
0406 90 33 9119	098	81,30	0406 90 73 9900	097	124,18
	400	—		098	107,11
	***	93,10		400	36,80
	037	—		***	124,18
	039	—		037	—
0406 90 33 9119	097	85,71	0406 90 75 9900	039	—
	098	74,72		097	106,91
	400	19,20		098	93,28
	***	85,71		400	39,60
	037	—		***	106,91
0406 90 33 9919	039	—	0406 90 76 9300	037	—
	097	85,71		039	—
	098	74,72		097	108,07
	400	19,20		098	93,90
	***	85,71		400	16,70
0406 90 33 9919	037	—		***	108,07
	039	—		037	—
	097	78,60		039	—
	098	68,29		097	96,98
	400	—		098	84,68
	***	78,60		400	—
				***	96,98

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0406 90 76 9400	037	—	0406 90 85 9999	+	—
	039	—	0406 90 86 9100	+	—
	097	108,62	0406 90 86 9200	037	—
	098	94,85		039	—
	400	17,40		097	102,23
	***	108,62		098	86,17
0406 90 76 9500	037	—		400	20,80
	039	—		***	102,23
	097	102,45	0406 90 86 9300	037	—
	098	90,24		039	—
	400	17,40		097	103,32
	***	102,45		098	87,41
0406 90 78 9100	037	—		400	22,80
	039	—		***	103,32
	097	102,26	0406 90 86 9400	037	—
	098	87,50		039	—
	400	—		097	108,62
	***	102,26		098	92,87
0406 90 78 9300	037	—		400	25,80
	039	—		***	108,62
	097	105,98	0406 90 86 9900	037	—
	098	92,78		039	—
	400	—		097	117,90
	***	105,98		098	102,43
0406 90 78 9500	037	—		400	30,20
	039	—		***	117,90
	097	104,35	0406 90 87 9100	+	—
	098	91,91	0406 90 87 9200	037	—
	400	—		039	—
	***	104,35		097	85,19
0406 90 79 9900	037	—		098	71,81
	039	—		400	18,60
	097	86,27		***	85,19
	098	75,02	0406 90 87 9300	037	—
	400	—		039	—
	***	86,27		097	94,89
0406 90 81 9900	037	—		098	80,27
	039	—		400	21,00
	097	108,62		***	94,89
	098	94,85	0406 90 87 9400	037	—
	400	35,80		039	—
	***	108,62		097	96,33
0406 90 85 9910	037	33,32		098	82,36
	039	33,32		400	23,00
	097	117,90		***	96,33
	098	102,43	0406 90 87 9951	037	—
	400	44,60		039	—
	***	117,90		097	106,68
0406 90 85 9991	037	—		098	93,15
	039	—		400	31,80
	097	117,90		***	106,68
	098	102,43	0406 90 87 9971	037	—
	400	30,20		039	—
	***	117,90		097	106,68
0406 90 85 9995	037	—		098	93,15
	039	—		400	25,80
	097	108,07		***	106,68
	098	93,90	0406 90 87 9972	097	45,63
	400	—		098	39,68
	***	108,07		400	—
				***	45,63

Product code	Destination (*)	Amount of refund	Product code	Destination (*)	Amount of refund
0406 90 87 9973	037	—	2309 10 19 9100	+	—
	039	—	2309 10 19 9200	+	—
	097	104,74	2309 10 19 9300	+	—
	098	91,46	2309 10 19 9400	+	—
	400	18,10	2309 10 19 9500	+	—
	***	104,74	2309 10 19 9600	+	—
0406 90 87 9974	037	—	2309 10 19 9700	+	—
	039	—	2309 10 19 9800	+	—
	097	113,19	2309 10 70 9010	+	—
	098	99,26	2309 10 70 9100	+	13,85
	400	18,10	2309 10 70 9200	+	18,47
	***	113,19	2309 10 70 9300	+	23,09
0406 90 87 9975	037	—	2309 10 70 9500	+	27,70
	039	—	2309 10 70 9600	+	32,32
	097	114,45	2309 10 70 9700	+	36,94
	098	101,25	2309 10 70 9800	+	40,63
	400	24,00	2309 90 35 9010	+	—
	***	114,45	2309 90 35 9100	+	—
0406 90 87 9979	037	—	2309 90 35 9200	+	—
	039	—	2309 90 35 9300	+	—
	097	103,92	2309 90 35 9400	+	—
	098	90,36	2309 90 35 9500	+	—
	400	18,10	2309 90 35 9700	+	—
	***	103,92	2309 90 39 9010	+	—
0406 90 88 9100	+	—	2309 90 39 9100	+	—
0406 90 88 9300	037	—	2309 90 39 9200	+	—
	039	—	2309 90 39 9300	+	—
	097	83,50	2309 90 39 9400	+	—
	098	70,90	2309 90 39 9500	+	—
	400	22,80	2309 90 39 9600	+	—
	***	83,50	2309 90 39 9700	+	—
2309 10 15 9010	+	—	2309 90 39 9800	+	—
2309 10 15 9100	+	—	2309 90 70 9010	+	—
2309 10 15 9200	+	—	2309 90 70 9100	+	13,85
2309 10 15 9300	+	—	2309 90 70 9200	+	18,47
2309 10 15 9400	+	—	2309 90 70 9300	+	23,09
2309 10 15 9500	+	—	2309 90 70 9500	+	27,70
2309 10 15 9700	+	—	2309 90 70 9600	+	32,32
2309 10 19 9010	+	—	2309 90 70 9700	+	36,94
			2309 90 70 9800	+	40,63

(*) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

However:

— '097' covers destination codes from 072 to 083 inclusive,

— '098' covers destination codes 053, 060, 070 and from 091 to 096 inclusive,

— '970' covers the exports referred to in Articles 36(1)(a) and (c) and 44(1)(a) and (b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by ***.

Where no destination (+) is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1(2) and (3).

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

COMMISSION REGULATION (EC) No 1788/2000**of 17 August 2000****temporarily suspending the issuing of export licences for certain milk products and determining what proportion of the amounts covered by pending applications for export licences may be allocated**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products ⁽³⁾, as amended by Regulation (EC) No 1596/1999 ⁽⁴⁾, and in particular Article 10(3) thereof,

Whereas:

Uncertainty is a feature of the market in certain milk products. It is necessary to prevent speculative applications that may lead to a distortion in competition between traders. The issuing of

export licences for the products concerned should be temporarily suspended, and licences for some of these products should not be issued in respect of applications pending,

HAS ADOPTED THIS REGULATION:

Article 1

1. The issuing of export licences for milk products falling within CN code 0402 10 is hereby suspended on 18 August 2000, excluding licences for destination '970'.

2. No export licences shall be issued for milk products falling within CN code 0402 10 for which applications submitted from 14 to 16 August 2000 are still pending, excluding applications for licences for destination '970'.

Article 2

This Regulation shall enter into force on 18 August 2000.

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

Done at Brussels, 17 August 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 20, 27.1.1999, p. 8.

⁽⁴⁾ OJ L 188, 21.7.1999, p. 39.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 July 2000

relating to a proceeding pursuant to Article 86(3) of the EC Treaty

(notified under document number C(2000) 2267)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2000/521/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86(3) and Article 82 thereof,

Having given the Spanish authorities, Aeropuertos Españoles y Navegación Aérea ('AENA'), Iberia Líneas Aéreas de España ('Iberia'), Aviación y Comercio S.A. ('Aviaco') and Binter Canarias S.A. ('Binter') the opportunity to make known their views on the objections raised by the Commission regarding the system of discounts on landing fees in use at Spanish airports,

Whereas:

I. THE FACTS

(a) **The relevant state measure**

- (1) In 1999, Spanish airports handled 63 million departing passengers, of which 32 million flew to intra-Community and 25 million to domestic destinations. All 41 Spanish airports, which are solely responsible for commercial traffic, are administered by AENA.
- (2) According to the Spanish constitution, the Spanish Government is responsible for commercial airports for which there is a 'general interest'. This 'general interest' has been declared to exist for all commercial airports in Spain.
- (3) The Spanish airports' landing fees system, as well as its details, are set out by Royal Decrees 1064/1991 ⁽¹⁾ and 1268/1994 ⁽²⁾ as well as by Article 83(3) of Law 41/1994 (the Finance Law ⁽³⁾).
- (4) Article 7 of Royal Decree 1064/1991 as amended by Article 1 of Royal Decree 1268/94, distinguishes three categories of airports, which are managed by AENA, according to the importance of their traffic.

⁽¹⁾ BOE (Spanish Official Journal) No 163, 9.7.1991, p. 22730.

⁽²⁾ BOE (Spanish Official Journal) No 157, 2.7.1994, p. 21317.

⁽³⁾ BOE (Spanish Official Journal) No 312, 30.12.1994, p. 37510.

Table 1
Categories of Spanish Airports

First category	Second category	Third category
Madrid-Barajas/Palma de Mallorca/ Barcelona/Gran Canaria/Málaga/ Tenerife-Sur/Alicante/Lanzarote/ Sevilla/Valencia/Menorca ⁽¹⁾ /Ibiza ⁽¹⁾	Fuerteventura/Bilbao/Santiago de Compostela/Tenerife-Norte/ Menorca ⁽²⁾ /Ibiza ⁽²⁾	Others

⁽¹⁾ From 1 April to 30 September for Menorca and Ibiza.

⁽²⁾ From 1 October to 31 March for Menorca and Ibiza.

- (5) Article 1 of Royal Decree 1064/91 provides that 'The landing fee constitutes a tax which is calculated according to the use of the runway by the aircraft and the provision of services specific to this usage, other than flight assistance...'.
(6) Article 7 of Royal Decree 1064/91 provides the details of the respective fees. For national flights the landing fees are based on the maximum take-off weight corresponding the categories set out in the following table:

Table 2
Domestic landing fees in Spain in 2000

Weight of the aircraft (in tonnes)	First category	Second category	Third category
< 10 t	ESP 694/t	ESP 624/t	ESP 521/t
Between 10 and 100 t	ESP 796/t	ESP 716/t	ESP 597/t
> 100 t	ESP 893/t	ESP 803/t	ESP 670/t

- (7) Article 7 distinguishes between domestic, intra-Community and extra-Community flights. As regards international flights, the following table sets out the present landing fees:

Table 3
International landing fees in Spain in 2000

Weight (tonnes)	Extra-Community flights			Intra-Community flights and EEA		
	First category	Second category	Third category	First category	Second category	Third category
< 10 t	ESP 940/t	ESP 833/t	ESP 694/t	ESP 751/t	ESP 676/t	ESP 563/t
Between 10 and 100 t	ESP 1 061/t	ESP 955/t	ESP 796/t	ESP 861/t	ESP 775/t	ESP 646/t
> 100 t	ESP 1 191/t	ESP 1 072/t	ESP 894/t	ESP 967/t	ESP 870/t	ESP 723/t

- (8) As a second measure concerning landing fees, Article 7 of Royal Decree 1064/91 grants discounts according to the number of landings per month at a specific airport. For the first 50 landings no discounts are granted. For the 51st to the 100th landing a discount of about 9 % is granted. The discounts increase further with the number of landings per month. As can be seen from the following table, the most important discounts are only available for airlines which have more than 200 landings per month.

Table 4

Discounts on landing fees at Spanish airports in 2000

Number of operations per month	Discount
1 to 50	0 %
51 to 100	9 %
101 to 150	17 %
151 to 200	26 %
More than 200	35 %

- (9) Finally, in 1998 the Spanish Government introduced a discount of 15 % to 70 % for scheduled flights to the Canary Islands, the Balearic Islands and Melilla.
- (10) Article 9 of Royal Decree 1268/94 states that: 'AENA, a public undertaking responsible for the exploitation and the management of airports, is the managing organisation for the fees imposed by this Royal Decree.'
- (11) Article 83(3) of Law 41/1994 (the Finance Law) defines the actual level of landing fees to be paid by the airlines.

(b) The relevant undertakings and services

- (12) AENA is a public undertaking set up by Article 82 of the Finance Law of 1990. The Finance Law grants AENA the exclusive right to administer the airport infrastructure of 41 airports on the Spanish territory. AENA is also in charge of air traffic control.
- (13) AENA receives fees in return for the services it provides in connection with the landing and take-off of aeroplanes, which use the infrastructure, which is managed by AENA.
- (14) Iberia is a Spanish airline of which the State holds 84,74 %. Iberia's main activity is passenger transport to and from Spain's 10 main cities, 24 European cities and 34 cities located outside the Community. In 1998, Iberia transported about 21,8 million and 6,2 million passengers worldwide and in Europe, respectively.
- (15) Iberia controls 100 % of the airline Binter and about 99,9 % of Aviaco and 99,5 % of Viva Air.

(c) The landing charges

- (16) In its Airport Economics Manual ⁽⁴⁾, the International Civil Aviation Organisation (ICAO), recommends that its members base their charges on the maximum take-off weight (MTOW) of the aircraft. The landing charge is defined as follows:

'Charges and fees collected for the use of runways, taxiways and apron areas, including associated lighting, as well as for the provision of approach and aerodrome control.'

- (17) The charge is imposed to cover all 'operation and maintenance costs, and administrative costs attributable to those areas and their associated vehicles and equipment, including the expense of all labour, maintenance materials, power and fuels' ⁽⁵⁾.

⁽⁴⁾ Airport Economics Manual — Document 9562.1991 ICAO.

⁽⁵⁾ See footnote 4.

(d) The main arguments of the Spanish authorities and AENA

- (18) On 28 April 1997, the Commission sent the Spanish authorities a letter of formal notice, pointing out that the existing system of discounts and the differentiation of landing fees according to the origin of the flight discriminate in favour of national airlines. On 21 October 1997, the Spanish authorities replied that the discount system would apply to all airlines, irrespective of their nationality and that the discounts granted would be smaller than the ones addressed in Commission Decision 95/364/EC concerning the system of discounts on landing fees at Brussels National Airport ⁽⁶⁾. Most of the discounts granted to Spanish airlines would arise from domestic flights. Hence they would not affect trade between Member States.
- (19) The Spanish authorities undertook to reduce the difference in landing charges between national and intra-Community flights step by step. By 1999 the price difference would be eliminated.
- (20) However, in 1997 landing fees for both domestic and intra-Community flights increased on average by 8 %. While in 1998 intra-Community flights increased slightly less than domestic flights, no further harmonisation has taken place in 1999 and 2000.
- (21) On 23 June 1999, the Spanish authorities proposed to abolish price discrimination according to the origin of the flight and to dismantle discounts in several steps, starting on 1 January 2000. By 1 January 2002 the discounts would be completely abolished with the exception of the Canary Islands.
- (22) Spain requested a transitional period to phase out the discount system because an immediate elimination of the entire system would have severe repercussions for the Spanish air transport system as a whole. In addition, Spain requested an exception for the Canary Islands. In the view of the Spanish authorities, such an exception, in line with Article 299 of the EC Treaty, is necessary for reasons of economic and social cohesion. It would be justified as compensation for the Islands' remote location and to support their economic development, in particular tourism.
- (23) As can be seen from Tables 1 to 4, the differentiation of landing fees according to the origin of the flight has not yet been abolished. In addition, the first step of dismantling the discount system, as announced for 1 January 2000, has not been taken.

II. LEGAL ASSESSMENT

(a) Legal provisions and procedural regulations applicable

- (24) Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty ⁽⁷⁾, as last amended by Regulation EC No 1216/1999 ⁽⁸⁾ was rendered inapplicable to the transport sector by Council Regulation No 141 ⁽⁹⁾, as last amended by Regulation No 1002/67/EEC ⁽¹⁰⁾, to take account of the distinctive features of the transport sector. Consequently, the scope of Regulation No 141 and, therefore, the procedural regulations specific to the transport sector, are limited to anti-competitive practices arising in connection with the transport market.
- (25) Council Regulation (EEC) No 3975/87 ⁽¹¹⁾, as last amended by Regulation (EEC) No 2410/92 ⁽¹²⁾, determines the ways in which Articles 81 and 82 of the Treaty are applied to air transport services.
- (26) However, services associated with access to airport facilities are not directly part of the air transport services provided to passengers. Those activities are therefore not covered by the procedural regulations specific to the transport sector, but instead fall under Regulation No 17 for the purposes of applying Articles 81 and 82 of the Treaty or Articles 53 and 54 of the EEA Agreement.

⁽⁶⁾ OJ L 216, 12.9.1995, p. 8.

⁽⁷⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽⁸⁾ OJ L 148, 15.6.1999, p. 5.

⁽⁹⁾ OJ L 124, 28.11.1962, p. 2751/62.

⁽¹⁰⁾ OJ L 306, 16.12.1967, p. 1/67.

⁽¹¹⁾ OJ L 374, 31.12.1987, p. 1.

⁽¹²⁾ OJ L 240, 24.8.1992, p. 18.

(b) Article 86(1)

- (27) Article 86(1) states that 'in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89'.
- (28) AENA is a public undertaking within the meaning of Article 86(1) of the EC Treaty.
- (29) Royal Decrees 1064/1991 and 1268/1994 and Law 41/1994 (Finance Law) (Article 85(3)) which fix the landing fees and the discounts, as referred to in point 3, are State measures for the purposes of Article 86(1).

(c) Article 82

- (30) There is no doubt that AENA, whose core activity is to provide airlines with access services to civil airport facilities in return for a fee, is, according to the settled case law of the Court, an undertaking within the meaning of Article 82 of the Treaty.

The relevant market

- (31) As the Court of Justice held in its judgment in the 'Port of Genoa case' ⁽¹³⁾, the organisation of port activities for third parties at a single port may constitute a relevant market for the purposes of Article 82. Likewise, the Court considered piloting services in the Port of Genoa to constitute the relevant market in its judgment in 'Corsica Ferries II' ⁽¹⁴⁾:
- (32) The Court based its reasoning on the fact that if an operator wishes to offer a transport service on a given maritime route, access to port installations situated at either end of that route is essential to the provision of the service.
- (33) This reasoning can easily be transposed to the air transport sector and access to airports. The relevant market is the market in services linked to access to airport infrastructures for which a fee is payable. More specifically, the services in question are those linked to the exploitation and maintenance of runways, the use of taxiways and aprons, and approach guidance for civil aircraft. The market definition is the same as that applied in the Decision 95/364/EC on Brussels National Airport and in Decision ⁽¹⁵⁾ 1999/198/EC regarding the system of discounts on landing charges in use at Finnish airports and 1999/199/EC ⁽¹⁶⁾ on landing charges in use at Portuguese airports.
- (34) The markets for passenger and freight transport on short and medium-haul routes within the EEA constitute a neighbouring but distinct market which is affected by the impact of an abuse on the part of the undertaking in question on the market for landing and take-off services. The effects of an abuse of a dominant position held by AENA would also be felt in this market.
- (35) The 41 airports administered by AENA are interchangeable only to a limited extent and each can therefore be regarded as a distinct geographic market.
- (36) The airlines operating domestic or intra-EEA scheduled or charter flights to and from Spain are obliged to use the airports administered by AENA. The distances between the different airports are considerable and each has its own, well-defined catchment area. One of the few international airports not administered by AENA that could serve the same geographic area, i. e. Lisbon, is several hundred kilometres away from Madrid the busiest Spanish airport and even further from other Spanish airports and, moreover, it is not linked by an adequate rail infrastructure. Thus it does not constitute a realistic alternative.

⁽¹³⁾ Case C-179/90 *Merci Convenzionali Porto di Genova SpA v. Siderurgica Gabrielli SpA*, [1991] ECR I-5889, p. 5923.

⁽¹⁴⁾ Case C-18/93 *Corsica Ferries Italia Srl v. Corpo dei Piloti del Porto di Genova*, [1994] ECR I-1783.

⁽¹⁵⁾ OJ L 69, 16.3.1999, p. 24.

⁽¹⁶⁾ OJ L 69, 16.3.1999, p. 31.

- (37) Lisbon and Madrid could possibly be regarded as competitors where an airline uses one or the other as a hub airport. However, this does not have to be established in the present case since flights of this type are a negligible proportion of the total volume of traffic at Madrid.
- (38) This being the case, for many passengers travelling to and from Spain, the domestic and intra-EEA flights that use the AENA-administered airports are not interchangeable with the services offered at other EEA airports.
- (39) Airlines operating domestic or intra-EEA flights to and from Spain have no option, therefore, but to use the airports administered by AENA, along with the airport facility access services provided in these airports.

Dominant position

- (40) The Court of Justice has held that an undertaking vested with a legal monopoly in a substantial part of the common market may be regarded as occupying a dominant position within the meaning of Article 82 of the Treaty ⁽¹⁷⁾.
- (41) Each of the AENA-managed airports is in a dominant position as there is normally only one commercial airport for each geographic market and high entry barriers exist with regard to the construction of new airports. AENA administers all 41 commercial airports in Spain which account for the largest part of civil air traffic in Spain. AENA is a public undertaking which, as a result of the dominant position of the airports it administers and of the exclusive right to administer these airports, holds a dominant position on the market for aircraft landing and take-off services, for which the charge in question is levied.

Substantial part of the common market

- (42) In 1999, the AENA-administered airports had a total traffic of 63 million passengers of which intra-Community flights account for approximately 32 million passengers. These airports handled more than 584 000 tonnes of freight. As an illustration, the traffic volume of airports with more than 2 million passengers a year, which account for about 82 percent of total traffic, is set out in the following table:

Table 5

Traffic volume in Spanish airports

Airport	Total passengers (millions)	Freight (tonnes)
Madrid-Barajas	13,708	291 250
Palma de Mallorca	9,498	26 958
Barcelona	8,487	84 413
Gran Canaria	4,484	42 493
Tenerife-Sur	4,286	11 754
Málaga	4,232	9 546
Alicante	2,671	6 353
Lanzarote	2,305	6 645
Ibiza	2,081	4 614

Source: Spanish authorities (1999 figures)

⁽¹⁷⁾ Case C-41/90 Höfner and Elser v. Macrotron [1991] ECR I-1979, paragraph 28 and Case C-260/89 ERT v. DRP [1991] ECR I-2925, paragraph 31.

- (43) The relevant Spanish legislation establishes the same fee structure for all airports in Spain. Considering the substantial amount of international traffic in the 16 airports listed in the first and second category of Table 1 each of these airports could be considered to be a substantial part of the common market ⁽¹⁸⁾.
- (44) However, this does not have to be established here, as AENA holds a dominant position on the market for aircraft landing and take-off services on all the 41 airports for commercial civil traffic in Spain and therefore in geographic markets which add up to cover the whole of Spain, which is a substantial part of the common market.

Abuse of a dominant position

- (45) The system of landing fees and discounts has the effect of applying dissimilar conditions to airlines for equivalent transactions linked to landing and take-off services, thereby placing them at a competitive disadvantage.
- (46) This follows from the reasoning of Advocate General Van Gerven on the case 'Corsica Ferries' ⁽¹⁹⁾, which can be applied to the existing discount system as well as to the price differentiation according to the origin of the flight:

'What is important is that there is no connection between those differences in tariffs and the nature of the piloting service offered, which is precisely the same in both cases (...). For my part, I consider that what is involved here is clearly an instance of the form of abuse of a dominant position which is covered by indent (c) of the second paragraph of Article 86(2)c ⁽²⁰⁾ of the EC Treaty, namely "applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage". In this respect, a parallel may be drawn with the situation at issue in the case of United Brands (Judgment in Case 27/76 United Brands [1978] ECR 207): there the Court held that the discriminatory pricing policy practised by UBC, which invoiced distributor/ripeners at prices which differed from one Member State to another for identical quantities and types of bananas constituted an abuse of a dominant position on the ground that "these discriminatory practices, which varied according to the circumstances of the Member States, were just so many obstacles to the free movement of goods" (paragraph 232) and that "a rigid partitioning of national markets was thus created at price levels which were artificially different, placing certain distributor/ripeners at a competitive disadvantage, since compared with what it should have been, competition had thereby been distorted" (paragraph 233). The same reasoning can be applied *mutatis mutandis* in the present case: the differentiated tariffs charged by the Corporation constitute an obstacle to freedom to provide intra-Community shipping transport services and place persons providing such services at a disadvantageous competitive position.'

(a) Discounts based on landing frequency

- (47) The lowest discount is granted for between 51 and 100 landings a month. This threshold is sufficiently low to allow a number of airlines, both national and foreign, to benefit from the discount. However, larger discounts benefit Spanish airlines in particular, such as Iberia, Binter Canarias, Spanair, Air Europa or Air Nostrum, which all enjoy the largest category of discounts. This can be seen from the following table.

Table 6

Average discount for the main airlines in 1999

Average discount	Main airlines benefiting from the discount in 1999
0 to 5 %	Swiftair, Easy Jet, Eurowings, Premiair A/S, Aerolloyd, Air Litoral, Air Consul, Debonair, etc.
5 to 10 %	Sabena, Portugalia, KLM, Air Berlin, L.T.U., Britannia Airways, European Air Transport
10 to 15 %	Aero Madrid, Condor, Navegación y Servicios Aéreos, Hapag Lloyd, BA, Alitalia

⁽¹⁸⁾ Case C-179/90 and Case C-266/96 Corsica Ferries [1998] ECR I-3949.

⁽¹⁹⁾ Paragraph 34 and footnote 61.

⁽²⁰⁾ Now Article 82(2)(c).

Average discount	Main airlines benefiting from the discount in 1999
15 to 20 %	Air Atlantic, Air France, Binter Mediterráneo, Lufthansa, Atlantic Airways
20 to 25 %	Iberia, Binter Canarias, Spanair, Air Europa, Air Nostrum

Source: AENA.

- (48) Every landing after the 200th qualifies for a discount of 35 %, with no limit on the number of landings thereafter. Thus, airlines which carry out significantly more than 200 landings a month, such as Iberia, benefit from a proportionally higher overall discount. On any given route on which Iberia is in competition with other carriers, using the same type of aircraft, it receives average discounts of up to 25 % on the landing charges thereby placing the other carriers at a competitive disadvantage. The average discounts received by other airlines, in return for equivalent services provided by AENA, are considerably smaller. The de facto effect of this system, therefore, is to favour the national carriers, in particular, Spanair, Binter, Air Europa, Air Nostrum and Iberia. In 1999, Iberia alone received about 62 % of all discounts on landing fees granted by AENA.
- (49) While very different discounts are available, the service provided by AENA requires the same work irrespective of the individual airline. There exists no objective reason which would justify the different treatment since the services provided, such as approach control and use of apron areas, have the same substantive content for all airlines.
- (50) Business practices considered to be normal may constitute an abuse within the meaning of Article 82 of the Treaty if they are carried out by an undertaking which holds a dominant position. There must be an objective justification for any difference in the treatment of its various clients by an undertaking in a dominant position.
- (51) As the only means available to a carrier for providing air transport services to a given town, airports have a dominant position as regards a very high proportion of their traffic. Airlines therefore have no choice and, as a result, the airport faces little risk that an airline would change airport as a result of a lower fee offered elsewhere. In these circumstances, unless it can put forward objective reasons, airports are not allowed to favour certain airlines in comparison to others.
- (52) The existence of economies of scale, the aim of reducing air traffic noise or air congestion, for example, could be regarded as objective reasons. However, in the case of landing and take-off services such economies of scale do not exist. The services provided do not depend on the individual owner of the aircraft or whether they are rendered to the first or the tenth aircraft of the same airline.
- (53) Thus, the fact that AENA has applied dissimilar conditions to its commercial customers for the provision of equivalent services, thereby placing some of them at a competitive disadvantage, constitutes an abuse of a dominant position within the meaning of point (c) of the second subparagraph of Article 82.

(b) The differentiation of charges according to type of flight (domestic or international)

- (54) The differentiation of tariffs according to type of flight, i. e. either domestic or intra-Community, is also an infringement of the Treaty.

- (55) In this respect, the judgment of the Court of Justice in the *Corsica Ferries* ⁽²¹⁾ case is unequivocal:

‘Article 90(1) and Article 86 ⁽²²⁾ of the EC Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory.’

- (56) Applying the reasoning of Advocate General Van Gerven quoted in point 46 to the airports sector, it becomes apparent that the system of differentiated landing fees has the effect of applying dissimilar conditions for equivalent landing and take-off services supplied to airlines. This places airlines operating EEA services at a competitive disadvantage in comparison to airlines providing domestic services. The differentiation of landing fees according to the origin of the flight therefore constitutes an abuse of a dominant position within the meaning of point (c) of the second paragraph of Article 82.

Effect on trade between Member States

- (57) In its judgment in the *Corsica Ferries* case, the Court of Justice recognised that discriminatory practice which affect undertakings providing transport services between two Member States, may affect trade between Member States.
- (58) The following table below shows the volume of intra-Community flights as a proportion of the total traffic for Spanish airports:

Table 7
Passenger traffic for Spanish airports

Airport	International passengers (%)	Intra-Community passengers (%)	Domestic passengers (%)	Total (millions)
Madrid-Barajas	20	29	51	13,708
Palma de Mallorca	3	74	23	9,498
Barcelona	9	38	53	8,487
Gran Canaria	4	64	32	4,484
Tenerife-Sur	3	80	17	4,286
Málaga	6	70	24	4,232
Alicante	3	74	23	2,671
Lanzarote	2	72	26	2,305
Ibiza	3	71	26	2,081

Source: Spanish authorities (1999 figures).

- (59) When all airports are taken together, with 32 million passengers the traffic volume between Spain and other Member States of the Community exceeds the domestic traffic volume of 25 million passengers. In the case of the Canary Islands, the intra-Community traffic is more than twice that of the intra-Spain traffic.
- (60) The traffic between Spain and EEA countries is also substantial. In 1998 there were about 871 thousand passengers travelling on direct flights between Norway and Spain.
- (61) Given the volume of traffic between Spain, the Community and the EEA, the effect of the measures in question on cross-border trade is appreciable.

⁽²¹⁾ Cited above, point 45.

⁽²²⁾ Now Article 86(1) and Article 82.

(d) Examination of Article 86(1)

- (62) AENA is a public undertaking within the meaning of Article 86(1). By Royal Decrees 1064/91 and 1268/94 and Law 41/1994 (the Finance Law), the Spanish State obliges AENA to apply landing charges at Spanish airports which differ according to the origin of the flight and to grant discounts depending on the number of landings per month. This measure is incompatible with Article 82 of the Treaty and Article 54 of the EEA Agreement. Since it is enacted by the Spanish State, the latter is therefore infringing Article 86(1) read in conjunction with Article 82 of the Treaty, and Article 59(1) read in conjunction with Article 54 of the EEA Agreement.

(e) Article 86(2): the justification of the measure

- (63) In their response to the Commission's letter of formal notice, the Spanish authorities pointed out that the system of discounts applies to all airlines, irrespective of whether they are Spanish or foreign. They claim that it does not therefore lead to discrimination. However, while it is correct that the discount system does not discriminate *de jure* against foreign airlines, as has been pointed out in practice it grants an advantage to Spanish airlines, by lowering their landing charges. There is no economic justification, such as the existence of economies of scale, for the discount system.
- (64) As a second justification, the Spanish authorities argue that most of the discounts granted to Spanish airlines stem from domestic traffic or extra-Community traffic, and would thus not affect intra-EEA traffic. However, this justification does not apply in respect of the main beneficiary, Iberia, which receives almost one quarter of its discounts from intra-Community flights, 55 % of discounts are granted for domestic flights, 22 % for extra-Community and 23 % for intra-Community flights. In addition, the present system leads to lower domestic charges while imposing higher charges on intra-EEA traffic for equivalent services. Given the importance of intra-Community flights in total traffic handled at Spanish airports, there is therefore an affect on trade between Member States.
- (65) The Spanish authorities have agreed, in principle, to abolish the discount system over a transitional period until 2002. Such a transition appears to be unjustified. The Spanish authorities have not provided any evidence that earlier abolition of the discount system would be technically impossible or that it would cause unreasonably high cost. In addition, as a result of Decisions 95/364/EC, 1999/198/EC and 1999/199/EC, the Spanish authorities have been aware of the Commission position already for a considerable period of time. Granting a period of transition therefore does not seem to be justified.
- (66) Spain wishes to continue operating the present discount system for the Canary Islands on the grounds that this would be justified for regional and cohesion reasons and in order to promote the Islands as a tourist destination.
- (67) These justifications cannot be accepted. The goal of promoting increased usage of the Canary Islands as a tourist destination could be achieved by nondiscriminatory discounts accessible to all airlines operating services to and from the Canary Island airports.
- (68) In addition, it is not obvious that the present system of landing fees would in fact help to develop the Canary Islands as a tourist destination. For the Canary Islands, the intra-Community traffic is more than twice as large as domestic traffic. As pointed out, the present discount system *de facto* discriminates against (non-Spanish) European airlines. By imposing higher costs on European airlines, the discount system also generates higher travelling costs for the Canary Island's main source of tourists, i.e. European tourists from outside Spain.

(f) Public service obligations

- (69) The Spanish authorities have not invoked the derogation provided for in Article 86(2) of the Treaty to justify the introduction and maintenance of such a system of discounts on landing charges.

- (70) Moreover, the Commission considers that, in the case at issue, application of the competition rules does not obstruct performance of the particular task assigned to AENA, which is to maintain and operate the Spanish airports. Nor would it obstruct any specific public-service task assigned to an airline. The conditions and arrangements governing the imposition by a Member State of public service obligations on intra-Community scheduled air services are specified in Article 4 of Council Regulation (EEC) No 2408/92 on access to intra-Community air routes ⁽²³⁾.
- (71) The derogation provided for in Article 86(2) of the Treaty does not, therefore, apply.

(g) Conclusion

- (72) The foregoing analysis establishes that the system of landing charges used by AENA entails the levying, for no objective reason, of different charges, depending on the number of monthly landings or the origin of the flight (domestic or intra-EEA), in respect of the same runway, taxiway, apron area and approach control services.
- (73) In view of the above, the Commission considers that the State measure referred to in recitals 1 to 11, as applied in the Spanish airports, in so far as it obliges the public undertaking AENA to apply the above-mentioned system, constitutes an infringement of Article 86(1) of the Treaty, read in conjunction with Article 82 thereof, and with Article 59 of the EEA Agreement, read in conjunction with Article 54 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The system of discounts on landing charges and the differentiation of landing charges according to the origin of the flight, provided for by Royal Decrees 1064/91 and 1268/94 and Law 41/1994, constitute a measure incompatible with Article 86(1) of the Treaty, read in conjunction with Article 82 thereof, and with Article 59 of the EEA Agreement, read in conjunction with Article 54 thereof.

Article 2

Spain shall bring to an end the infringement referred to in Article 1 and shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to that end.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 26 July 2000.

For the Commission

Mario MONTI

Member of the Commission

⁽²³⁾ OJ L 240, 24.8.1992, p. 8.

COMMISSION DECISION

of 26 July 2000

amending Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway

(notified under document number C(2000) 2299)

(2000/522/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 905/98 ⁽²⁾, and in particular Article 8 thereof,

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 ⁽³⁾, and in particular Article 13 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) On 31 August 1996, the Commission announced, by two separate notices published in the *Official Journal of the European Communities*, the initiation of an anti-dumping proceeding ⁽⁴⁾ as well as an anti-subsidy proceeding ⁽⁵⁾ in respect of imports of farmed Atlantic salmon originating in Norway.
- (2) The Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings. As a result of this examination, it was established that definitive anti-dumping and countervailing measures should be adopted in order to eliminate the injurious effects of dumping and subsidisation. All interested parties were informed of the results of the investigation and were given the opportunity to comment thereon.
- (3) On 26 September 1997, the Commission adopted Decision 97/634/EC ⁽⁶⁾, accepting undertakings offered in connection with the two above-mentioned proceedings from the exporters listed in the Annex to the Decision and terminating the investigations in their respect.

- (4) On the same day, the Council, by Regulations (EC) No 1890/97 ⁽⁷⁾ and (EC) No 1891/97 ⁽⁸⁾ imposed anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of those Regulations.

- (5) The above-mentioned Regulations set out the definitive findings and conclusions on all aspects of the investigations. The form of the duties having been reviewed, Regulations (EC) No 1890/97 were replaced by Council Regulation (EC) No 772/1999 ⁽⁹⁾.

B. OBLIGATIONS OF EXPORTERS WITH UNDERTAKINGS

- (6) The text of the undertakings provides that failure to submit a quarterly report of all sales transactions to the first unrelated customer in the Community within a prescribed time-limit would, except in case of *force majeure*, be construed as a violation of the undertaking.
- (7) For the fourth quarter of 1999, one Norwegian company, Fryseriet AS, failed to present such a sales report within the prescribed time limit, despite a reminder sent to it 24 hours before the quarterly deadline. The company was subsequently given an opportunity to inform the Commission of any reasons which may have prevented its report from being received within the time limit, however, no reply was received.
- (8) Fryseriet AS was then sent disclosure in writing concerning the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties against it. The company was also given an opportunity to submit comments and request a hearing, however, as before, it did not react.
- (9) In view of the above, it is considered necessary to withdraw acceptance of the undertaking offered by Fryseriet AS and to impose definitive anti-dumping and countervailing duties against it. Accordingly, the name of this company should be deleted from the Annex to Decision 97/634/EC which lists the companies from which undertakings are accepted.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ L 288, 21.10.1997, p. 1.

⁽⁴⁾ OJ C 253, 31.8.1996, p. 18.

⁽⁵⁾ OJ C 253, 31.8.1996, p. 20.

⁽⁶⁾ OJ L 267, 30.9.1997, p. 81. Decision as last amended by Regulation (EC) No 2592/1999, (OJ L 315, 9.12.1999, p. 17).

⁽⁷⁾ OJ L 267, 30.9.1997, p. 1.

⁽⁸⁾ OJ L 267, 30.9.1997, p. 19.

⁽⁹⁾ OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Regulation (EC) No 2652/1999, (OJ L 325, 17.12.1999, p. 1).

- (10) In parallel to this Decision, the Council, by Regulation (EC) No 1783/2000 ⁽¹⁾, has also withdrawn the exemption from the anti-dumping and countervailing duties granted to this company.

C. NEW EXPORTERS

- (11) Following the original imposition of definitive anti-dumping and countervailing duties, several Norwegian companies have made themselves known to the Commission claiming to be new exporters and requested, in accordance with Article 2 of Regulation (EC) No 772/1999 in conjunction with Article 11(4) of Regulation (EC) No 2026/97 that the exemption to the duties be extended to them.
- (12) In this regard, five such exporters, Emborg Foods Norge AS, Helle Mat AS, Norsea Food AS, Salmon Company Fjord Norway AS and Stella Polaris AS demonstrated that they had not exported the product concerned to the Community during the investigation period which led to the current anti-dumping and countervailing duties ('the original investigation period').
- (13) These companies also showed that they are not related to any of the companies in Norway which are subject to anti-dumping and countervailing duties. In addition, they provided evidence of exports of the product concerned to the Community after the original investigation period, or proof that they had entered into an irrevocable contractual obligation to export a significant amount of the product concerned to the Community.
- (14) The companies concerned have offered undertakings which are identical to those previously offered by other Norwegian companies exporting farmed Atlantic salmon originating in Norway. By doing so, they have all agreed to provide the Commission with regular and detailed information concerning their exports to the Community.
- (15) Since undertakings on such terms can be monitored effectively by the Commission, and their acceptance would eliminate the injurious effects of dumping and subsidisation, the offers are considered acceptable.
- (16) The companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance of the undertakings given by them are based.
- (17) Their names should therefore be added to the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

D. CHANGE OF NAME

- (18) Two other Norwegian exporters with undertakings, Agnefest AS and Norway Seafoods ASA advised the Commission that the names of the companies have changed to Rosfjord Seafood AS and Frionor AS respectively. The Commission has therefore verified and confirmed that there were no changes to the corporate structure which warranted a more detailed examination of the appropriateness of the companies maintaining their undertakings.
- (19) Accordingly, the names of these companies should be amended in the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

E. CESSATION OF TRADING BY A NORWEGIAN COMPANY

- (20) The Commission has also been advised that another Norwegian company from which an undertaking was accepted, Atlantic King Stranda A/S, has ceased to trade and has been wound up. Accordingly, the name of this company should be deleted from the list of companies in the Annex to Decision 97/634/EC.

F. AMENDMENT OF THE ANNEX TO DECISION 97/634/EC

- (21) The Advisory Committee has been consulted on all of the above changes and amendments to Decision 97/634/EC and has raised no objections.
- (22) For the sake of clarity, however, an updated version of Annex to Decision 97/634/EC should be published herewith, showing the exporters whose undertakings are currently in force.

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 97/634/EC is hereby replaced by the Annex hereto.

Article 2

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

Done at Brussels, 26 July 2000.

For the Commission

Pascal LAMY

Member of the Commission

⁽¹⁾ See page I of this Official Journal.

ANNEX

LIST OF COMPANIES FROM WHICH UNDERTAKINGS ARE ACCEPTED

UT No	Company name	TARIC additional code
3	Rosfjord Seafood A/S	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/S	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Eurolaks A/S	8140
44	Euronor A/S	8141
46	Fiskeforsyningen A/S	8143
47	Fjord Aqua Group A/S	8144
48	Fjord Trading Ltd A/S	8145
50	Fossen A/S	8147

UT No	Company name	TARIC additional code
51	Fresh Atlantic A/S	8148
52	Fresh Marine Company A/S	8149
58	Grieg Seafood A/S	8300
60	Haafa fisk A/S	8302
61	Hallvard Lerøy A/S	8303
62	Atlantis Filetfabrikk A/S	8304
66	Hydro Seafood Norway A/S	8159
67	Hydrotech-gruppen A/S	8428
72	Inter Sea A/S	8174
75	Janas A/S	8177
76	Joh. H. Pettersen A/S	8178
77	Johan J. Helland A/S	8179
79	Karsten J. Ellingsen A/S	8181
80	Kr Kleiven & Co. A/S	8182
82	Labeyrie Norge A/S	8184
83	Lafjord Group A/S	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export A/S	8188
92	Marine Seafood A/S	8196
93	Marstein Seafood A/S	8197
96	Memo Food A/S	8200
98	Misundfisk A/S	8202
100	Naco Trading A/S	8206
101	Namdal Salmon A/S	8207
104	Nergård A/S	8210
105	Nils Williksen A/S	8211
107	Nisja Trading A/S	8213
108	Nor-Food A/S	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks A/S	8218
113	Norexport A/S	8223
114	Norfi Produkter A/S	8227

UT No	Company name	TARIC additional code
115	Norfood Group A/S	8228
116	Norfra Eksport A/S	8229
119	Norsk Akvakultur A/S	8232
120	Norsk Sjømat A/S	8233
121	Northern Seafood A/S	8307
122	Nortrade A/S	8308
123	Norway Royal Salmon Sales A/S	8309
124	Norway Royal Salmon A/S	8312
126	Frionor A/S	8314
128	Norwell A/S	8316
130	Nova Sea A/S	8235
134	Ok-Fish Kvalheim A/S	8239
137	Pan Fish Sales A/S	8242
140	Polar Seafood Norway A/S	8247
141	Prilam Norvège A/S	8248
142	Pundslett Fisk	8251
144	Rolf Olsen Seafood A/S	8254
145	Ryfisk A/S	8256
146	Rørvik Fisk- og fiskematforretning A/S	8257
147	Saga Lax Norge A/S	8258
148	Prima Nor A/S	8259
151	Sangoltgruppa A/S	8262
153	Scanfood A/S	8264
154	Sea Eagle Group A/S	8265
155	Sea Star International A/S	8266
156	Sea-Bell A/S	8267
157	Seaco A/S	8268
158	Seacom A/S	8269
160	Seafood Farmers of Norway Ltd A/S	8271
161	Seanor A/S	8272
162	Sekkingstad A/S	8273
164	Sirena Norway A/S	8275
165	Kinn Salmon A/S	8276

UT No	Company name	TARIC additional code
167	Fjord Seafood Leines A/S	8278
168	SMP Marine Produkter A/S	8279
172	Stjernelaks A/S	8283
174	Stolt Sea Farm A/S	8285
175	Storm Company A/S	8286
176	Superior A/S	8287
178	Terra Seafood A/S	8289
180	Timar Seafood A/S	8294
182	Torris Products Ltd A/S	8298
183	Troll Salmon A/S	8317
188	Vikenco A/S	8322
189	Wannebo International A/S	8323
190	West Fish Norwegian Salmon A/S	8324
191	Nor-Fa Food A/S	8102
192	Westmarine A/S	8625
193	F. Uhrenholt Seafood Norway A/S	A033
194	Mesan Seafood A/S	A034
195	Polaris Seafood A/S	A035
196	Scanfish A/S	A036
197	Normarine A/S	A049
198	Oskar Einar Rydbeck	A050
199	Emborg Foods Norge A/S	A157
200	Helle Mat A/S	A158
201	Norsea Food A/S	A159
202	Salmon Company Fjord Norway A/S	A160
203	Stella Polaris A/S	A161

COMMISSION DECISION

of 10 August 2000

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain malleable cast iron tube or pipe fittings originating in Brazil, Croatia, the Czech Republic, the Federal Republic of Yugoslavia, Japan, the People's Republic of China, the Republic of Korea and Thailand and terminating the proceeding in respect of imports originating in Croatia and the Federal Republic of Yugoslavia

(notified under document number C(2000) 2452)

(2000/523/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

B UNDERTAKINGS

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⁾ (the basic Regulation), as last amended by Regulation (EC) No 905/98 ⁽²⁾, and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A PROCEDURE

- (1) By Regulation (EC) No 449/2000 ⁽³⁾, the Commission imposed a provisional anti-dumping duty on imports into the Community of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand, but imposed no duties on imports originating in Croatia and the Federal Republic of Yugoslavia because their market shares were found to be *de minimis*, and accepted the price undertaking offered by the exporting producer in the Czech Republic.
- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Community interest. The definitive findings and conclusions of the investigation are set out in Council Regulation (EC) No 1784/2000 ⁽⁴⁾ imposing a definitive anti-dumping duty on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand.
- (3) The investigation confirmed the provisional findings of injurious dumping relating to imports originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand.

- (4) Following the adoption of provisional anti-dumping measures, the only cooperating exporting producer in the Republic of Korea and one of the cooperating exporting producers in Thailand, offered acceptable price undertakings (within the meaning of Article 8(1) of the Basic Regulation).
- (5) According to those undertakings, the exporting producers in question have offered to sell to their unrelated customers at minimum prices.
- (6) The Commission considers that the undertakings offered by the exporting producers concerned can be accepted since they eliminate the injurious effect of the dumping by means of minimum prices established for each product type and an *ad valorem* duty for the types which were not exported to the Community during the investigation period. Moreover, the regular and detailed reports of their sales which the companies have undertaken to provide to the Commission will allow effective monitoring. Furthermore, the sales structure of these exporting producers is such that the Commission considers that the risk of circumvention of the agreed undertakings is limited.
- (7) In order to ensure observance of the undertakings and their effective monitoring, when the request for release for free circulation pursuant to the undertakings is presented, exemption from duty is conditional upon presentation to the relevant Member States' customs' services of valid 'undertaking invoice' issued by the exporting producers from whom the undertaking is accepted and containing the information listed in the Annex to Regulation (EC) 1784/2000. 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 shall be payable in order to avoid circumvention of the undertakings.
- (8) In the event of a breach, or withdrawal of the undertakings, or if there are reasons to believe that the undertakings have been breached, a provisional or definitive anti-dumping duty may be imposed pursuant to Article 8(9) and (10) of the basic Regulation.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ L 55, 29.2.2000, p. 3.

⁽⁴⁾ See page 8 of this Official Journal.

C TERMINATION OF THE PROCEEDING

- (9) As regards Croatia and the Federal Republic of Yugoslavia, the volumes of imports originating in those countries were considered negligible in accordance with Articles 9(3) and 5(7) of the basic Regulation. Accordingly, the proceeding should be terminated with respect to imports originating in these two countries,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by the producers listed below, in the context of the anti-dumping proceeding concerning imports of certain malleable cast iron tube or pipe fittings originating in Brazil, Croatia, the Czech Republic, the Federal Republic of Yugoslavia, Japan, the People's Republic of China, the Republic of Korea and Thailand are hereby accepted.

Country	Manufacturer	Taric additional code
Republic of Korea	Yeog Hwa Metal Co. Ltd. 363-6, Namyang-dong, Chinhae, Kyongman, Korea	A093
Thailand	BIS Pipe Fitting Industry Company Ltd. 107 Moo 4, Petchkasem Road, Omnoi, Kratumban Samutsakorn 74130, Thailand	A094

Article 2

The anti-dumping proceeding concerning imports of certain malleable cast iron tube or pipe fittings originating in Croatia and the Federal Republic of Yugoslavia is hereby terminated.

Article 3

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

Done at Brussels, 10 August 2000.

For the Commission

Pascal LAMY

Member of the Commission

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1752/2000 of 8 August 2000 prohibiting fishing for whiting by vessels flying the flag of Spain**

(Official Journal of the European Communities L 201 of 9 August 2000)

On page 3, in the signature:

for: 'Franz FISCHLER',

read: 'Philippe BUSQUIN'.
