

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1992/2000
of 18 September 2000
amending Regulation (EC) No 1001/97 imposing a definitive anti-dumping duty on imports of
polyester textured filament yarn originating in Malaysia**

THE COUNCIL OF THE EUROPEAN UNION,

C. PROCEDURE

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 11(3) thereof,

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

Whereas:

A. EXISTING MEASURES

- (1) By Regulation (EC) No 1001/97 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of polyester textured filament yarn originating in Malaysia. The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is 32,5 % except for the company Hualon Corporation (M) Sdn. Bhd. (Hualon), for which a 16,4 % rate applies.

B. REQUEST FOR A REVIEW

- (2) The Malaysian exporting producer, Hualon Corporation (M) Sdn. Bhd., lodged a request for an interim review of the anti-dumping measures applicable to it limited to the aspects of dumping pursuant to Article 11(3) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'). The request alleged that changed circumstances of a lasting nature have led to a stable or slightly reduced normal value and a considerable increase of its export price so that the continued imposition of measures to it was no longer necessary to counteract dumping. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review the Commission published a notice in the *Official Journal of the European Communities* ⁽³⁾ and commenced an investigation.

- (3) The investigation of dumping covered the period from 1 July 1998 until 30 June 1999 (hereinafter referred to as the 'investigation period').
- (4) The Commission officially advised the authorities of the exporting country of the initiation of the interim review and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (5) The Commission sent a questionnaire and received detailed information from the exporting producer concerned.
- (6) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping and carried out a verification visit at the premises of the exporting producer concerned.
- (7) The interested parties were informed of the facts and considerations on the basis of which it was intended to recommend the amendment of Regulation (EC) No 1001/97, and were given an opportunity to comment. Their comments were taken into account and, where appropriate, the findings were modified accordingly.

D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (8) The product under consideration is the same as in the previous investigation, i.e. polyester textured filament yarn (hereinafter referred to as 'PTY'). PTY is directly derived from partially oriented polyester yarn, and is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabrics. The product is currently classifiable within CN code 5402 33 00. It should be noted, however, that Regulation (EC) No 1001/97 refers to CN codes 5402 33 10 and 5402 33 90 which were applicable for the product classification at the time that Regulation was published.

⁽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 145, 5.6.1997, p. 1.

⁽³⁾ OJ C 218, 30.7.1999, p. 5.

- (9) There are different types of PTY, depending on the weight ('denier'), the number of filaments and the lustre. There are also different qualities, depending on the efficiency of the production process. However, no significant differences exist in the basic characteristics and uses of the different types and qualities of PTY. All types of PTY have been and are considered as one product for the purposes of this investigation.

2. Like product

- (10) As in the previous investigation, this investigation has shown that the PTY produced in Malaysia by Hualon and sold on the Malaysian market or exported to the Community has the same basic physical and chemical characteristics and the same uses, and therefore, is to be considered a like product within the meaning of Article 1(4) of the basic Regulation.

E. DUMPING

1. Normal value

- (11) As far as the determination of normal value is concerned, it was first established whether Hualon's total domestic sales of the like product were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, this was found to be the case since domestic sales volume of Hualon was at least 5 % of its total sales volume to the Community.
- (12) For each of the types sold by Hualon on its domestic market and found to be directly comparable to the ten types sold for export to the Community, it was examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. This was considered to be the case when, during the investigation period, the total domestic sales volume of a type represented 5 % or more of the total sales volume of the same type exported to the Community.
- (13) For those product types meeting the 5 % test, an examination was also made as to whether the domestic sales of each of these types could be regarded as having been made in the ordinary course of trade, by establishing the proportion of sales to independent customers of the type in question not made at a loss. In cases where sales of a type, not made at a loss, represented more than 80 % of the total domestic sales volume of that type, normal value was based on a weighted average price of all domestic sales made during the investigation period. In cases where the volume of sales, not made at a loss, of a type represented at least 10 %, but less than 80 % of the total domestic sales volume of that type, normal

value was based on a weighted average price of the sales not made at a loss only.

- (14) As a result of the methodology set out above, normal value for five types of PTY exported to the Community during the investigation period could be based on the domestic selling prices of comparable types of PTY.
- (15) For the remaining five product types exported to the Community during the investigation period, it was found that the volume of domestic sales was lower than 5 % of the volume exported to the Community. Thus, domestic sales of the five product types were considered insufficient within the meaning of Article 2(2) of the basic Regulation. For these types, normal value was constructed on the basis of the costs of manufacturing incurred by Hualon for the exported product type in question plus a reasonable amount for selling, general and administrative costs ('SG & A') and profits in accordance with Article 2(3) and (6) of the basic Regulation. The SG & A were based on Hualon's domestic sales of the like product. The profit margin was based on the Hualon's domestic sales of the like product made in the ordinary course of trade.
- (16) Hualon claimed that in calculating constructed normal value the profit of profitable domestic sales of certain types which were also exported to the Community should only be used. The claim was rejected because Article 2(6) of the basic Regulation provides that profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product.

2. Export price

- (17) Since all export sales of the product under consideration were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices paid or payable.

3. Comparison

- (18) For the purposes of a fair comparison by type on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport, insurance, handling, loading and ancillary costs, credit and commissions in accordance with Article 2(10) of the basic Regulation.

4. Dumping margin

- (19) The comparison was made between the weighted average normal value per product type and the weighted average export price for the same product type, in accordance with Article 2(11) of the basic Regulation.

- (20) The comparison as described above showed the existence of dumping for the company concerned. Due to the varying dumping margins of the different product types, an overall weighted average dumping margin was established in accordance with Article 2(12) of the basic Regulation. The dumping margin established, expressed as a percentage of the total cif value at Community frontier level, duty unpaid, is 3,2 %.
- (21) The dumping margin of this investigation, however, is considerably lower in comparison with the dumping margin established for the company concerned during the previous investigation, which amounted to 16,4 %.

F. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (22) In accordance with Article 11(3) of the basic Regulation, it was examined whether the changed circumstances that have led to the decrease of the dumping margin could be reasonably said to be of lasting nature. In this respect, it was found in particular that the production of PTY over the period 1996 to the investigation period has decreased considerably as raw materials were diverted to new production lines of other polyester yarns. Also, internal consumption of PTY increased significantly over the same period as it was directed to increase the production of products with higher added value. These two changes have decreased the volume of sales (domestic and export) of the product concerned significantly over the same period. These changes in the production and sales policies of the company are viewed as evidence that it is unlikely that there will be a recurrence of dumped exports at levels similar to those established in the previous investigation.

G. AMENDMENT OF MEASURES

- (23) In view of the finding of a lower dumping margin for the company concerned and as this situation is not considered to be of a short-term nature, measures imposed by Regulation (EC) No 1001/97 on exports of this company should be amended by amending that Regulation accordingly.

- (24) This review does not affect the date on which the measures imposed by Regulation (EC) 1001/97 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 1001/97 shall be replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of PTY falling within CN code 5402 33 00 and originating in Malaysia.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Malaysia	Duty	TARIC additional code
Hualon Corporation (M) Sdn. Bhd., Level 9, Wisma Goldhill, 67, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia	3,2 %	8933
Others	32,5 %	8900

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

Article 2

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

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

Done at Brussels, 18 September 2000.

For the Council

The President

H. VÉDRINE

**COUNCIL REGULATION (EC) No 1993/2000
of 18 September 2000**

imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of styrene-butadiene-styrene thermoplastic rubber originating in Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1091/2000 ⁽²⁾ (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of styrene-butadiene-styrene thermoplastic rubber (hereinafter referred to as 'SBS') falling within CN codes ex 4002 19 00 and ex 4002 99 and originating in Taiwan.
- (2) As a result of a parallel anti-subsidy investigation, provisional countervailing duties were imposed under Commission Regulation (EC) No 1092/2000 ⁽³⁾ on imports into the Community of SBS originating in Taiwan.

B. SUBSEQUENT PROCEDURE

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 20(1) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.
- (5) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definite anti-dumping duties on imports of SBS originating in Taiwan and the definite collection of amounts secured by way of provisional duties on these imports.

They were also granted a period within which they could make representations subsequent to this disclosure.

- (6) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.
- (7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) The product concerned is styrene-butadiene-styrene thermoplastic rubber, which is currently classifiable within CN codes ex 4002 19 00 and ex 4002 99.
- (9) One Community importer claimed that SBS imported from Taiwan has a different fluidity and resistance than SBS produced in the Community. However, the Commission investigation revealed that producers in Taiwan produce different types of SBS with exactly the same composition as those types produced in the Community. The investigation also showed that, although the quality of imports of SBS from Taiwan may have been lower for one company during the years 1995 and 1996 when this company started its production of SBS, the quality quickly attained a level comparable to the quality of SBS produced in the Community. Finally, the investigation showed that Community users do not make any quality differentiation between SBS from Taiwan and from the Community. The Commission concluded that SBS imported from Taiwan and SBS produced in the Community share the same characteristics and the same level of quality.
- (10) Another Community importer claimed that dry and oil-extended SBS should be considered as two different products, arguing that dry and oil-extended SBS are used by different industries. However, different producers and users of SBS confirmed to the Commission that many Community users, especially in the footwear industry, do not differentiate dry and oil-extended SBS. It is therefore concluded that the markets of dry and oil-extended SBS cannot be distinguished.
- (11) The same company also argued that dry and oil-extended SBS are close to other types of products, such as SIS (styrene-isoprene-styrene), which are also produced by the Community producers of SBS. The company claimed that there is no justification for distinguishing SBS from these other products. However, the

⁽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 124, 25.5.2000, p. 12.

⁽³⁾ OJ L 124, 25.5.2000, p. 26.

investigation showed that dry and oil-extended SBS have exactly the same physical composition of butadiene and styrene, the only difference being the addition of oil at the end of the production process. This physical composition clearly distinguishes SBS from other products such as SIS. It is therefore concluded that dry and oil-extended SBS should be considered as one distinct product for the purpose of this investigation.

- (12) As no other arguments were presented, the findings set out in recitals 13 to 16 of the provisional duty Regulation are hereby confirmed.

D. DUMPING

- (13) One producing exporter from Taiwan contested the method of calculation of the dumping margin, whereby normal values were compared to the prices of individual export transactions.
- (14) An examination of the time pattern of export prices during the investigation period, however, makes clear that most of the dumping took place during the latter half of that period. An average calculation would thus not reflect the full degree of dumping, in the sense of Article 2(11) of the basic Regulation.
- (15) The provisional findings as described in recital 25 of the provisional duty Regulation are therefore confirmed.
- (16) The definitive dumping margins expressed as a percentage of the cif import price at the Community border duty unpaid are the following:
- | | |
|---|--------|
| — Lee Chang Yung Chemical Industry Corp., Taipei: | 5,3 % |
| — Chi Mei Corp., Tainan: | 9,1 % |
| — Non cooperating exporting producer: | 20,0 % |

E. INJURY

1. Definition of the Community industry

- (17) Since no comments were received regarding the definition of the Community industry, the conclusions of recitals 31 and 32 of the provisional duty Regulation are hereby confirmed.

2. Consumption in the Community

- (18) Since no comments were received on consumption in the Community, its assessment as indicated in recital 33 of the provisional duty Regulation is hereby confirmed.

3. Imports of SBS from Taiwan to the Community

(a) *Volume of imports, market share, and average import price*

- (19) Since no comments were received concerning the volume of imports from Taiwan in the Community, the market share, and the average price of imports, the assessments indicated in recitals 34 to 37 of the provisional duty Regulation are hereby confirmed.

(b) Price undercutting

- (20) It is recalled that price undercutting was provisionally established on the basis of a comparison between the export price (cif Community frontier, duties paid) and prices charged by the Community industry (ex-works). The sales prices considered for similar product types were those to independent customers after deduction of discounts and rebates.
- (21) As mentioned in recital 9, some comments were received concerning the comparability of different product types but it was found that SBS imported from Taiwan and SBS produced in the Community share the same characteristics.
- (22) These comments did not affect the conclusions of the provisional Regulation, which led to an average price-undercutting margin, expressed as a percentage of the Community industry's average selling prices, of 12,3 %.

4. Economic situation of the Community industry

- (23) One Community importer pointed out that stocks and profitability have not been calculated for 1995. As stated in recitals 46 and 47 of the provisional duty Regulation, the exact figures of stocks and profitability could not be obtained accurately because of changes of accounting systems in one company and changes of structure in another company. In any event, the investigation showed that the profitability was higher in 1995 than in 1996. This reinforces the injury determination.
- (24) Since no other comments were received regarding the figures for production, capacity, sales volume, sales price, market share, stocks, profitability, investments and employment of the Community industry, the conclusions of recitals 40 to 49 of the provisional duty Regulation are hereby confirmed.

5. Conclusion

- (25) On the basis of the above it was concluded that the Community industry is suffering material injury as set out in recital 55 of the provisional duty Regulation.

F. CAUSATION

1. Effect of the dumped imports

- (26) The Government of Taiwan (GOT) and one Community importer claimed that the high level of market share of the Community industry (89 % during the investigation period) showed that the Community industry could not suffer injury caused by imports from Taiwan, with a much smaller market share (6,1 %). In the present case it has been determined that the imports from Taiwan, with a strong pressure on prices on a competitive and transparent market (12,3 % undercutting during the investigation period), represented a considerable pressure on the Community industry. In order to maintain its market share, the Community industry had to follow the downward price trend (– 47 % price reduction from 1995 to

the investigation period). As a result, the Community industry suffered heavy losses (profitability shifted from + 14,9 % to - 9,8 % from 1996 to the investigation period). Finally, it is considered that the high market share of the overall Community industry did not protect it from the unfair dumped competition of Taiwan, and that the price pressure due to Taiwanese imports is a major cause of the injury suffered by this industry.

- (27) The GOT claimed that the increased investments made by Community producers has created a stronger competition amongst those producers and resulted in injury caused by such competitive forces. However, the investigation revealed that investments, as stated in recital 48 of the provisional duty Regulation, have fluctuated since 1995 and do not show an upward trend as claimed by the GOT. The investments remained at a rather low level, which would correspond to normal upgrading of machinery. The most important investments were made by the producers prior to 1995 at the time they were establishing their production units.
- (28) The GOT also claimed that the injury suffered by the Community industry could be caused by an increase in the prices of raw materials. However, the prices of raw materials, as stated in recital 73 of the provisional duty Regulation, have been fluctuating since 1995 and do not show any particular trend. It is more likely that their variation is cyclical, and therefore they cannot reasonably explain the constant depreciation of SBS prices since 1995.
- (29) One Community importer argued that the injury suffered by the Community industry could be caused by an increase of costs of production and selling and general administration costs. However, the investigation revealed that, while these costs remained roughly at the same level over the period 1995 to 1999, the Community producers sales value decreased dramatically (by 39 %), due to the price decrease.

2. Conclusion

- (30) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of SBS from Taiwan have caused injury to the Community industry, as stated in recitals 74 and 75 of the provisional duty Regulation, is hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

- (31) Since no comments were received regarding the interest of the Community industry, the conclusions of recitals 77 to 81 of the provisional duty Regulation are hereby confirmed.

2. Impact on users

- (32) Following the adoption of the Regulation imposing provisional measures, two Community importers expressed concerns about the impact of measures on their customers. It should be noted that one of these companies imported from a Taiwanese producer which did not cooperate in this proceeding, and this importer was subject to a provisional cumulated subsidy and dumping duty rate of 28,2 %. However, if definitive measures are imposed, all importers will have the option to purchase SBS from Community producers, from one of the cooperating producers in Taiwan, or from another source not subject to measures.
- (33) As a result, it is estimated that the average price increase caused by definitive measures should be 1,1 %. It was confirmed during the investigation that such an increase in prices would be likely to have a limited impact on users. The impact of duties on several typical users was examined, where SBS accounted for 40 % of their cost of production. It was found that the imposition of measures would bring down the profitability by 0,3 % in average for that part of their business relating to SBS.
- (34) Furthermore, as most Community users purchase the main part of their SBS from Community producers, they would not experience any price increase for the greater part of their purchases.
- (35) Finally, since no further evidence was provided by the Community importers, and since the Community users did not make any comments, the conclusion of recital 86 of the provisional duty Regulation is hereby confirmed.

3. Conclusion

- (36) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of anti-dumping measures. The provisional findings are therefore confirmed.

H. DEFINITIVE COURSE OF ACTION

- (37) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by dumped imports from Taiwan.

1. Injury elimination level

- (38) As explained in recital 91 of the provisional duty Regulation, a non-injurious level of prices was determined by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 8 % which would cover the Community industry's cost of production and allow a reasonable profit to be obtained in the absence of dumped imports from the country concerned.

2. Form and level of the duty

- (39) In accordance with Article 7(2) of the basic Regulation the anti-dumping duty rate should correspond to the dumping margin, unless the injury margin is lower.
- (40) This led to the following anti-dumping duty rates for the cooperating producers in Taiwan:
- Chi Mei Corporation: 9,1 %
 - Lee Chang Yung Chemical Industry Corporation: 5,3 %
- (41) For those exporting producers which did not reply to the Commission's questionnaire or did not otherwise make themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.
- (42) These producers represent around 70 % of the exports of the product under consideration from Taiwan to the Community. Therefore, it was considered appropriate to establish a residual dumping margin at a level higher than the highest dumping margin determined for a cooperating company. Accordingly, the residual dumping margin was established on the basis of the product types with the highest specific dumping margins, i.e. 20 %.

I. COLLECTION OF THE PROVISIONAL DUTY

- (43) In view of the magnitude of the dumping found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under Regulation (EC)

No 1091/2000 be definitively collected to the extent of the amount of definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of styrene-butadiene-styrene thermoplastic rubber, falling within CN codes ex 4002 19 00 and ex 4002 99 (TARIC codes: 4002 19 00 10, 4002 99 10 10 and 4002 99 90 91) and originating in Taiwan.

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

Company	Rate of duty	TARIC additional code
Chi Mei Corporation, Tainan, Taiwan	9,1 %	A127
Lee Chang Yung Chemical Industry Corporation, Taipei, Taiwan	5,3 %	A128
All other Taiwanese companies	20 %	A999

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

Article 2

The amounts secured by way of the provisional anti-dumping duties on imports originating in Taiwan under Regulation (EC) No 1091/2000 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.

Article 3

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

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

Done at Brussels, 18 September 2000.

For the Council
The President
H. VÉDRINE

**COUNCIL REGULATION (EC) No 1994/2000
of 18 September 2000**

imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of styrene-butadiene-styrene thermoplastic rubber originating in Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Articles 14 and 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1092/2000 ⁽²⁾ (hereinafter referred to as 'the provisional duty Regulation') provisional countervailing duties were imposed on imports into the Community of styrene-butadiene-styrene thermoplastic rubber (hereinafter referred to as 'SBS') falling within CN codes ex 4002 19 00 and ex 4002 99 and originating in Taiwan.
- (2) As a result of a parallel anti-dumping investigation, provisional anti-dumping duties were imposed under Commission Regulation (EC) No 1091/2000 ⁽³⁾ on imports into the Community of SBS originating in Taiwan.

B. SUBSEQUENT PROCEDURE

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 11(5) of Council Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.
- (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 countervailing duty on imports of SBS originating in Taiwan and the definitive collection of amounts secured by way of the provisional duty imposed on these imports.

They were also granted a period within which they could make representations subsequent to this disclosure.

- (6) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.
- (7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) The product concerned is styrene-butadiene-styrene thermoplastic rubber currently falling within CN codes ex 4002 19 00 and ex 4002 99.
- (9) One Community importer claimed that SBS imported from Taiwan has a different fluidity and resistance than SBS produced in the Community. However, the Commission investigation revealed that producers in Taiwan produce different types of SBS with exactly the same composition as those types produced in the Community. The investigation also showed that, although the quality of imports of SBS from Taiwan may have been lower for one company during the years 1995 and 1996 when this company started its production of SBS, the quality quickly attained a level comparable to the quality of SBS produced in the Community. Finally, the investigation showed that Community users do not make any quality differentiation between SBS from Taiwan and from the Community. The Commission concluded that SBS imported from Taiwan and SBS produced in the Community share the same characteristics and the same level of quality.
- (10) Another Community importer claimed that dry and oil-extended SBS should be considered as two different products, arguing that dry and oil-extended SBS are used by different industries. However, different producers and users of SBS confirmed to the Commission that many Community users, especially in the footwear industry, do not differentiate dry and oil-extended SBS. It is therefore concluded that the markets of dry and oil-extended SBS cannot be distinguished.
- (11) The same company also argued that dry and oil-extended SBS are close to other types of products, such as styrene-isoprene-styrene (hereinafter referred to as 'SIS'), which are also produced by the Community producers of SBS. The company claimed that there is no justification for distinguishing SBS from these other

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 124, 25.5.2000, p. 26.

⁽³⁾ OJ L 124, 25.5.2000, p. 12.

products. However, the investigation showed that dry and oil-extended SBS have exactly the same physical composition of butadiene and styrene, the only difference being the addition of oil at the end of the production process. This physical composition clearly distinguishes SBS from other products such as SIS. It is therefore concluded that dry and oil-extended SBS should be considered as one distinct product for the purpose of this investigation within the meaning of Article 1(4) of the basic Regulation.

- (12) As no other arguments were presented, the findings set out in recitals 15 to 18 of the provisional duty Regulation are hereby confirmed.

D. SUBSIDIES

- (13) The findings in the provisional duty Regulation concerning the countervailable subsidies obtained by the exporting producers are hereby definitively confirmed, unless it is expressly found otherwise in this document.

I. GENERAL ISSUES

1. Calculation of prevailing commercial interest rate

- (14) It had been provisionally decided to apply a general interest rate of 9 % for the purpose of this investigation. This rate was determined on the basis of the information obtained during the investigation which was considered appropriate for this purpose. The Government of Taiwan (hereinafter referred to as 'GOT') challenged the reliability of this rate.
- (15) In view of this claim, the generally applicable interest rate has been recalculated by the Commission. The relevant benchmark interest rate is set at 7,99 % and has been obtained by taking the average commercial interest rates charged during the investigation period by 8 major domestic banks in Taiwan. These interest rates are publicly available and are part of the monthly financial statistics published by the Economic Research Department of the Central Bank of the Republic of China.

2. Application of the interest rate in the calculation of the amount of the subsidy

- (16) The GOT argued that the methodology whereby interest is added to the face value of the subsidy cannot be applied to the alleged subsidisation amounts on tax credits since the tax credits, which the companies have claimed, are only utilised in the annual tax return which is made by 31 March of the following year. The GOT claimed therefore that no benefit is conferred on them until this date.

- (17) In response to this argument, it is considered that since the benefit consists of a reduction of direct tax which is payable every year, the benefit itself will recur annually. Therefore, the benefit should also include the interest element of not having to borrow an amount equal to such tax savings on the open market.

II. INDIVIDUAL SCHEMES

1. Loans at preferential interest rates: incentives for automation and anti-pollution incentives

- (18) These schemes were described in recitals 32 to 41 of the provisional duty Regulation. They are based on Article 21(1) of the Statute for Upgrading Industries (hereinafter referred to as 'SUI').
- (19) The GOT claimed that these loans are generally available to almost all Taiwanese companies and therefore they are not specific and accordingly not countervailable. It is claimed that eligibility is not limited to certain enterprises; that eligibility for the programme is objective.
- (20) As regards these claims, it was verified that the Taiwanese authorities limit access to 'investment in important enterprises or projects relating to industrial upgrading or improvement of industrial structure' which are 'in line with the government industrial policy for assisting the sound development of industries' (Article 21 of the SUI). The provisions of this Article cannot be considered objective since the criteria are not neutral, economic in nature and horizontal in application because it is known in advance that certain enterprises are more likely than others to be in a position to benefit from these loans just by reason of the type of business sector they are in. Therefore, benefits from this scheme will inevitably be more relevant to some sectors than to others. Thus, the above claim is rejected.
- (21) In conclusion, this scheme is considered specific because it is limited to certain enterprises within the meaning of Article 3(2)(a) of the basic Regulation. The provisional findings as described in recital 37 of the provisional duty Regulation are therefore confirmed.

Calculation of the subsidy amount

- (22) The benefits to the exporting producers have been calculated as explained in recitals 38 to 40 of the provisional duty Regulation.
- (23) The benefits obtained by the two companies mentioned in the provisional duty Regulation were 0,07 %. This is now reduced to 0,06 % for Chi Mei due to the change in the interest rate applied.

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

- (24) The legal bases for this alleged countervailable subsidy scheme are Additional notes 3 and 9 of Chapter 84, Additional notes 4 and 5 of Chapter 85 and Additional notes 1 and 2 of Chapter 90 of the Customs Import Tariff and Classification of Import & Export Commodities of the Republic of China (hereinafter referred to as the 'Customs Code').
- (25) The GOT claimed that this Customs programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involved a financial contribution by the GOT in the form of import duties which are otherwise due being foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.
- (26) The GOT also claimed that this scheme, which is described in recitals 44 to 54 of the provisional duty Regulation, is treated as a regular part of the domestic Customs schedule. Even if the Customs programme were a subsidy, it is not countervailable under Article 3(2)(a) of the basic Regulation.
- (27) In particular, it was claimed that the access to this import duty exemption scheme is available to all Taiwanese companies who wish to purchase equipment which is not produced locally and it cannot therefore be considered specific because the range of companies who wish to take advantage of such an exemption is not limited and is administered on the basis of objective and neutral criteria.
- (28) The provisions of the Additional notes of the Customs Code are considered not to be economic in nature and horizontal in application of Article 3(2)(b) of the basic Regulation since the use of this scheme is limited only to certain enterprises. In order to benefit from this scheme, enterprises must be incorporated and qualified manufacturers or technical service industries who will use this scheme to import machinery, equipment and instruments for prevention of air pollution, water contamination, noise or vibration, or for environmental inspection and test or wastage disposal, research and experiment or for examination and analysis under the headings of the specific Chapters of the Customs Code.
- (29) The above claims are rejected and the provisional findings, as described in recital 52 of the provisional duty Regulation, confirmed.

Calculation of the subsidy amount

- (30) The benefits to the exporting producers have been calculated as explained in recital 53 of the provisional duty Regulation.
- (31) The benefits obtained by the two exporting companies were 0,05 % and 0,04 % respectively.

3. Import duty exemption: imports of raw material

- (32) This alleged countervailable subsidy scheme, which is described in recitals 55 to 60 of the provisional duty Regulation has as its legal basis Additional note 6 of Chapter 29 of the Customs Code.
- (33) The GOT claimed that this programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involved a financial contribution by the GOT in the form of import duties which are otherwise due being foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.
- (34) The GOT claimed that this scheme is treated as a regular part of the domestic Customs schedule. Even if the Customs programme were a subsidy, it is not countervailable under Article 3(2)(a) of the basic Regulation.
- (35) It was claimed that such import duty exemptions for imports of raw materials not produced or sufficiently available on the local market are not in fact limited to certain enterprises, because the criteria for allowing such exemptions are objective and neutral.
- (36) This scheme is explicitly limited to given manufacturers, which are subject to the factory administration rules, for the importation of specifically listed raw materials, in this case chemicals, which are exclusively used in the manufacturing of plastics, artificial fibre, rubber and petrochemical intermediates by chemical reaction, and provided that, in addition, such chemicals are not yet produced or sufficiently supplied in Taiwan. As a result, the Commission finds that this scheme is explicitly limited to certain enterprises which comply with the conditions contained in the provisions of the specific Additional note of the Customs Code. Such conditions are not considered to be neutral or economic in nature and horizontal in application.
- (37) One exporter pointed out that it would appear that all calculations have been made at company level, except for the import duty exemption for raw materials; the company therefore argued that the level of this subsidy should also be calculated at company level.

(38) In reply to this argument it should be clear that if the benefit of a subsidy is limited to a particular product, the denominator for allocation of subsidy amount should reflect only sales (or exports) of that product. If this is not the case, the denominator should be the recipient's total sales (or exports).

(39) The Commission, in its calculations, has followed this approach, as was correctly stated by the companies, for the import duty exemption on raw materials. In this particular case, benefits were only identified for the product concerned and consequently the corresponding sales denominator was used. For all other described schemes, it was found that the benefits were not limited to a particular product and therefore the total sales was used as denominator.

(40) The provisional findings as described in recital 60 of the provisional duty Regulation are therefore confirmed.

Calculation of the amount of the subsidy

(41) The benefits to the exporting producers have been calculated as explained in recital 62 of the provisional duty Regulation.

(42) The benefits obtained by the two exporting companies concerned range from 0,61 % to 0,97 %.

4. Tax credits and tax exemptions

(43) Since no comments were received regarding these schemes, the conclusions of recitals 22 to 31 of the provisional duty Regulation are hereby confirmed.

5. Amount of countervailable subsidies

(44) The following domestic subsidy rates for the cooperating companies were established:

	Chi Mei Corporation	Lee Chang Yung Chemical Industry Corporation
Tax credits and tax exemptions	0,42 %	0,32 %
Loans at preferential interest rates	0,06 %	0,07 %
Import duty exemption	1,02 %	0,65 %
Total amount of subsidy	1,50 %	1,04 %

E. INJURY

1. Definition of the Community industry

(45) Since no comments were received regarding the definition of the Community industry, the conclusions of

recital 67 of the provisional duty Regulation are hereby confirmed.

2. Consumption in the Community

(46) Since no comments were received on consumption in the Community, its assessment as indicated in recital 68 of the provisional duty Regulation is hereby confirmed.

3. Imports of SBS from Taiwan to the Community

(a) *Volume of imports, market share, and average import price*

(47) Since no comments were received concerning the volume of imports from Taiwan in the Community, the market share, and the average price of imports, the assessments indicated in recitals 69 to 72 of the provisional duty Regulation are hereby confirmed.

(b) *Price undercutting*

(48) It is recalled that price undercutting was provisionally established on the basis of a comparison between the export price (cif Community frontier, duties paid) and prices charged by the Community industry (ex-works). The sales prices considered for similar product types were those to independent customers after deduction of discounts and rebates.

(49) As mentioned in recital 9, some comments were received concerning the comparability of different product types but it was found that SBS imported from Taiwan and SBS produced in the Community share the same characteristics.

(50) These comments did not affect the conclusions of the provisional Regulation, which led to an average price-undercutting margin, expressed as a percentage of the Community industry's average selling prices, of 12,3 %.

4. Economic situation of the Community industry

(51) One Community importer pointed out that stocks and profitability have not been calculated for 1995. As stated in recitals 81 and 82 of the provisional duty Regulation, the exact figures of stocks and profitability could not be obtained accurately because of changes of accounting systems in one company and changes of structure in another company. In any event, the investigation showed that the profitability was higher in 1995 than in 1996. This reinforces the injury determination.

(52) Since no other comments were received regarding the figures for production, capacity, sales volume, sales price, market share, stocks, profitability, investments and employment of the Community industry, the conclusions of recitals 76 to 84 of the provisional duty Regulation are hereby confirmed.

- (53) On the basis of the above it was concluded that the Community industry has suffered material injury as set out in recital 90 of the provisional duty Regulation.

F. CAUSATION

1. Effect of the subsidised imports

- (54) The GOT and one Community importer claimed that the high level of market share of the Community industry (89 % during the investigation period) showed that the Community industry could not suffer injury caused by imports from Taiwan, with a much smaller market share (6,1 %). In the present case it has been determined that the imports from Taiwan, with a strong pressure on prices in a competitive and transparent market (12,3 % undercutting during the investigation period), represented a considerable pressure on the Community industry. In order to maintain its market share, the Community industry had to follow the downward price trend (– 47 % price reduction from 1995 to the investigation period). As a result, the Community industry suffered heavy losses (profitability shifted from + 14,9 % to – 9,8 % from 1996 to the investigation period). Finally, it is considered that the high market share of the Community industry did not protect it from the unfair subsidised competition of Taiwan, and that the price pressure due to Taiwanese imports is a major cause of the injury suffered by this industry.

2. Other factors

- (55) The GOT claimed that the increased investments made by Community producers have created a stronger competition amongst those producers and resulted in injury caused by such competitive forces. However, the investigation revealed that investments have fluctuated since 1995, as stated in recital 83 of the provisional duty Regulation, and do not show any upward trend as claimed by the GOT. The investments remained at a rather low level, which would correspond to normal upgrading of machinery. The most important investments were made by the producers prior to 1995 at the time they were establishing their production units.
- (56) The GOT also claimed that the injury suffered by the Community industry could be caused by an increase in the prices of raw materials. However, the prices of raw materials, as stated in recital 108 of the provisional duty Regulation, have been fluctuating since 1995 and do not show any particular trend. It is more likely that their variation is cyclical, and therefore they cannot reasonably explain the constant depreciation of SBS prices since 1995.
- (57) One Community importer argued that the injury suffered by the Community industry could be caused by an increase of production and selling costs and general administration costs. However, the investigation revealed that, while these costs remained roughly at the same

level over the period 1995 to 1999, the Community producers sales value decreased dramatically (by 39 %) due to the decrease in prices.

3. Conclusion

- (58) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of SBS from Taiwan have caused injury to the Community industry, as stated in recitals 110 and 111 of the provisional duty Regulation, is hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

- (59) Since no comments were received regarding the interest of the Community industry, the conclusions of recitals 113 to 117 of the provisional duty Regulation are hereby confirmed.

2. Impact on users

- (60) Following the adoption of the Regulation imposing provisional measures, two Community importers expressed concerns about the impact of the counter-vailing measures on their customers. It should be noted that one of these companies imported from a Taiwanese producer which did not cooperate in this proceeding, and this importer was subject to a provisional cumulated subsidy and dumping duty rate of 28,2 %. However, if definitive measures are imposed, all importers will have the option to purchase SBS from Community producers, from one of the cooperating producers in Taiwan, or from another source not subject to measures.
- (61) As a result, it is estimated that the average price increase caused by definitive measures should be 1,1 %. It was confirmed during the investigation that such an increase in prices would likely have a limited impact on users. The impact of duties on several typical users was examined, where SBS accounted for 40 % of their cost of production. It was found that the imposition of measures would bring down the profitability by 0,3 % on average for that part of their business relating to SBS.
- (62) Furthermore, as most Community users purchase the main part of their SBS from Community producers, they would not experience any price increase for the greater part of their purchases.
- (63) Finally, since no further evidence was provided by the Community importers, and since the Community users did not make any comments, the conclusion of recital 123 of the provisional duty Regulation is hereby confirmed.

3. Conclusion

- (64) The new arguments received regarding the determination of the Community interest are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of countervailing measures. The provisional findings are therefore confirmed.

H. DEFINITIVE COURSE OF ACTION

- (65) In view of the conclusions reached regarding subsidies, injury, causation and Community interest, it is considered that definitive countervailing measures should be taken in order to prevent further injury being caused to the Community industry by subsidised imports from Taiwan.

1. Injury elimination level

- (66) As explained in recital 127 of the provisional duty Regulation, the non-injurious level of prices was determined by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 8 % which would cover the Community industry's production costs and allow a reasonable profit to be obtained in the absence of subsidised imports from the country concerned.

2. Form and level of the duty

- (67) In accordance with Article 24(1) of the basic Regulation no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. The subsidy schemes concerned by this proceeding did not constitute export subsidies within the meaning of Article 3(4)(a) of the basic Regulation. As such, the subsidies affect both the export prices and the domestic prices of the exporting producers, thus not affecting the margin of dumping.

- (68) In accordance with Article 15(1) of the basic Regulation the countervailing duty rate should correspond to the subsidy margin, unless the injury margin is lower.

- (69) This led to the following countervailing duty rates for the cooperating producers in Taiwan:

— Chi Mei Corporation	1,5 %
— Lee Chang Yung Chemical Industry Corporation	1,0 %

- (70) As explained in recital 129 of the provisional duty Regulation, the two cooperating exporting companies accounted for less than 30 % of the SBS imported into the European Community during the period of investigation and originating in Taiwan.

- (71) The investigation has revealed the existence of countervailable subsidies which are available to the non-cooperating exporters. It is considered that the absence of cooperation is the result of the use and benefit by those producers of the countervailable subsidies at a level

above the *de minimis* level. In accordance with the provisions of Article 28 of the basic Regulation and based on the information contained in the complaint and the findings of the investigation, and in order to avoid rewarding non-cooperation, it is considered appropriate to establish a residual level of countervailing duty at 8,2 %.

I. COLLECTION OF THE PROVISIONAL DUTY

- (72) In view of the amount of the countervailable subsidies found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty under Regulation (EC) No 1092/2000 should be definitively collected at the rate of the duties definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of styrene-butadiene-styrene thermoplastic rubber, falling within CN codes ex 4002 19 00 and ex 4002 99 (TARIC codes: 4002 19 00 10, 4002 99 10 10 and 4002 99 90 91) and originating in Taiwan.

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

Company	Rate of duty	TARIC additional code
Chi Mei Corporation, Tainan, Taiwan	1,5 %	A127
Lee Chang Yung Chemical Industry Corporation, Taipei, Taiwan	1,0 %	A128
All other Taiwanese companies	8,2 %	A999

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

Article 2

The amounts secured by way of the provisional countervailing duty imposed on imports originating in Taiwan under Regulation (EC) No 1092/2000 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

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, 18 September 2000.

For the Council

The President

H. VÉDRINE

**COUNCIL REGULATION (EC) No 1995/2000
of 18 September 2000**

imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in the Slovak Republic

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 9 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 617/2000 ⁽²⁾ (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of solutions of urea and ammonium nitrate (UAN) falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia and Ukraine and accepted, on a provisional basis, an undertaking offered by an exporting producer in Algeria.
- (2) In the same Regulation, it was provisionally concluded that no anti-dumping duty should be imposed on imports of the product concerned originating in the Slovak Republic, also subject to the same investigation, since these imports were not found to have caused material injury to the Community industry.

B. SUBSEQUENT PROCEDURE

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures on imports of solutions of UAN originating in Algeria, Belarus, Lithuania, Russia and Ukraine ('disclosure'), several interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

- (5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.
- (6) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (7) As outlined in recital 8 of the provisional Regulation, the product concerned is solutions of UAN, a liquid nitrogen fertiliser used in agriculture. Whatever their nitrogen content, all solutions of UAN are considered to have the same basic physical and chemical characteristics and therefore constitute a single product for the purpose of this investigation.
- (8) In view of the above and since no new arguments were put forward by any of the parties concerned with respect to the Commission's provisional findings on the product concerned and the considerations made on the like product, the facts and findings as set out in recitals 8 and 9 of the provisional Regulation are confirmed.

D. DUMPING

1. Algeria

(a) Normal value

- (9) The cooperating exporting producer claimed that its cost of production had been miscalculated because the Commission had not taken into account the fact that no import duty was paid on imported raw materials used in manufacturing the product concerned for export. It also claimed that the Commission had incorrectly determined the transport costs from the factory to the port.
- (10) Both claims were examined. As far as the import duty is concerned, the claim was found to be correct. The constructed normal value was therefore recalculated

⁽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 75, 24.3.2000, p. 3.

taking into account this element. With regard to transport costs, the claim was rejected, since no information to support it had been provided. The remaining findings on normal value, as set out in recitals 11 and 12 of the provisional Regulation, are confirmed.

(b) *Export price, comparison*

- (11) In the absence of any comments under these headings, the provisional findings, as set out in recitals 13 and 14 of the provisional Regulation, are confirmed.

(c) *Dumping margin*

- (12) In the absence of any comments concerning the methodology used for the calculation of the dumping margin, the methodology described in recital 15 of the provisional Regulation is confirmed. On this basis, the definitive dumping margin for the cooperating exporting producer, expressed as a percentage of the cif Community frontier price, is now 9,7 %.

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

2. Lithuania

(a) *Normal value*

- (13) The Lithuanian producer objected to the Commission's provisional findings, claiming that its normal value, which had been constructed in the absence of domestic sales of the product concerned, was too high and had resulted in an excessive dumping margin (7,6 %). In particular, it claimed that its selling, general and administrative (SG & A) expenses had been overstated and that these same expenses had been taken from a different set of accounts (the audited accounts for 1998) to that used for calculating the manufacturing cost (internal management accounts covering the investigation period, June 1998 to May 1999), thereby distorting the results.
- (14) Since it was found that there were no domestic sales of the product concerned, the amounts for SG & A expenses had to be determined in accordance with Article 2(6) of Regulation (EC) No 384/96 (hereafter referred to as the 'Basic Regulation'). As there were no other Lithuanian producers whose SG & A amounts could be used, the sole Lithuanian producer's SG & A amounts were determined for 'the same general category of products for the exporter or producer in question in the domestic market of the company of origin'. In this regard, it should be mentioned that the company did not originally provide any information at all on its global SG & A expenses in its reply to the questionnaire. In fact, this information was provided following a deficiency letter by the Commission but when sent was not only incorrect, but incomplete in that financial expenses

had been omitted. It had therefore been considered appropriate to make use of a reliable source of information (the 1998 audited accounts) for the purposes of the provisional determination.

- (15) Following the publication of the provisional Regulation, the SG & A expenses were recalculated on the basis of the same internal management accounts which had been used in the provisional findings to determine the manufacturing cost of the product concerned. The Commission requested further clarification of the company's figures and reviewed all the information it had obtained since the beginning of the investigation. It reached the conclusion that the figures provided a basis which was indeed reliable enough to be used. As a result of the recalculation of SG & A expenses, the normal value was adjusted downwards.
- (16) Following disclosure of the definitive findings, the Lithuanian producer raised further objections.

In general terms, the company claimed that the revised methodology had led to a number of inconsistencies due to the fact that the accounts used for the determination of SG & A expenses were incomplete or inaccurate. Regarding this general comment, it should be noted that these were the same accounts used for the determination of the cost of manufacturing, and had not been contested by the company at the provisional stage — indeed, the company had argued strongly that these accounts should also be used for determining the SG & A expenses.

The company then made a number of specific claims. Firstly, it claimed that the internal management accounts covering the investigation period understated both its total and its domestic turnover. The claim was rejected because the company had had sufficient opportunity since the beginning of the investigation to provide a complete and accurate picture of its situation. It had made no mention of the possible inaccuracy of the figures it had provided until it had decided to contest the definitive findings and even then did not provide an explanation for the turnover discrepancies.

Secondly, the company claimed that its export SG & A costs were understated in the management accounts because the latter did not include SG & A costs for exports to markets other than the Community; consequently, the Commission should have deducted a larger amount from its total SG & A costs in order to arrive at the correct amount for domestic SG & A. This claim was rejected because the costs in question represented an extremely high proportion of the income from export sales to these other markets, compared with exports to the Community, and because no mention of this inconsistency had been made earlier in the proceeding and no explanation for the failure to include these expenses being missing in the management accounts had been provided.

Thirdly, the company claimed that some of its financial expenses were not attributable to the production of UAN since a large part of its business consisted of holding activities. Here it should be pointed out that fertiliser production accounts for the vast bulk of the company's business and, moreover, that the company failed to include any data on financial expenses in its reply to the questionnaire, arguing that no such expenses were attributable to UAN. It is considered that all expenses which are not directly attributable to a particular product should nonetheless be attributed and that, in the absence of any more reasonable approach, turnover is an appropriate basis for allocation of these expenses. This claim was therefore rejected, except in respect of 'financial brokerage expenses', which, it was found, did not need to be taken into account since they would have had no impact on the definitive findings.

Fourthly, it was claimed that the general and administrative expenses (G & A) should only have been included insofar as they related to production activities. The company produced a table containing figures prepared on this basis by its external auditors. This claim was rejected because the auditors, in a letter to which the table was attached, had expressly declined to give an opinion on the figures. In addition, the argument in the preceding paragraph concerning the across-the-board allocation of costs is equally relevant here. A similar claim contesting the allocation of G & A expenses incurred in connection with trading activities, and for which no supporting evidence was provided, was also rejected.

- (17) The complainant, the European Fertilisers Manufacturers' Association (EFMA), also made comments on the method of constructing normal value for the Lithuanian producer and claimed that the Commission should have made adjustments in respect of:

- depreciation rates, on the grounds that those applied by the producer were too low and were not in line with those applied in Western Europe, and by the Community industry in particular,
- fixed asset valuations, on the grounds that the producer's assets were not valued in accordance with international accounting standards,
- the gas price, judged to be too low, charged by the Russian gas supplier, resulting in an abnormally low cost of production. The complainant suggested that the Commission recalculate the producer's gas costs on the basis of figures obtained from a Community gas supplier showing what was considered to be the lowest reasonable price the Lithuanian producer could be expected to have paid for gas in the investigation period.

All three claims were examined. As far as concerns depreciation, most, but by no means all, of the rates used by the Lithuanian producer were longer than those used by Community producers, but were nonetheless mostly within the range of variation found in the Community; however, the depreciation charge, as a

percentage of the cost of production, was not significantly different from that typically found in the Community industry. Moreover, the rates were in line with Lithuanian accounting practices. The fixed asset valuations were also found to be stated in accordance with national accounting standards. These claims were therefore rejected.

With regard to the claim concerning gas prices, this question had already been thoroughly examined at the provisional stage of the proceeding and it had been concluded that there was no evidence to suggest that the prices charged were not reliable, or did not reflect the true cost of supply. Moreover, the price paid for gas by the Lithuanian producer was found not to be lower than the price advanced by the complainant. This claim, too, was therefore rejected.

(b) *Export price, comparison*

- (18) In the absence of any comments under these headings, the provisional findings, as set out in recitals 17 and 18 of the provisional Regulation, are confirmed.

(c) *Dumping margin*

- (19) In the absence of any comments concerning the methodology used for the calculation of the dumping margin, the methodology described in recital 19 of the provisional Regulation is confirmed. On this basis, the definitive dumping margin for the cooperating exporting producer, taking into account the changes mentioned above, and expressed as a percentage of the cif Community frontier price, is 5,8 %.

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

3. Belarus, Russia, Ukraine

(a) *Analogue country*

- (20) In the absence of any comments concerning the choice of Lithuania as market economy third country, the provisional conclusion as set out in recital 22 of the provisional Regulation is confirmed.

(b) *Russia*

(i) *Individual treatment*

- (21) One cooperating exporting producer requested that its claim for individual treatment be reconsidered on the grounds that, with respect to its export sales, it was not subject to any interference by the State. In support of this claim, it advanced the following arguments:

- the conditions and terms of its export sales were determined freely,

- the company's supervisory board was elected annually by the shareholders, the majority of whom were private companies or individuals. All but one of the board's members were independent from the State,
- exchange rate conversions were carried out at the market rate.

- (22) The Commission reviewed the claim for individual treatment focusing its analysis, at this definitive stage, mainly on those areas having a direct impact on the company's export activities. On this basis, it considered that the arguments put forward by the company were valid, and, since it was also considered that the level of state interference was not such as to permit circumvention of measures if exporters are given different rates of duty, the company's claim has been accepted.
- (23) The complainant objected strongly to the granting of individual treatment to this producer at the definitive stage, given that the Commission had rejected the request at the provisional stage on the grounds that it was 'not sufficiently free of State influence'. This fact alone should have been enough to stop the Commission reversing its decision. It argued that the Russian State's discounting of gas prices gave its fertiliser producers an unfair competitive advantage and that their export sales could therefore not be considered to be truly market-based transactions. It also expressed concern about the increased potential for circumvention of the duties, because the individual margin was slightly lower than the countrywide margin.

It should be pointed out that decisions taken at the provisional stage are always reviewed in the light of comments received and may be modified before definitive findings are reached. Whilst it remained true that the State had an influence in the setting of gas prices, the determination of normal value on the basis of constructed value in the analogue country rendered this argument irrelevant. Moreover, the company had been found to be free to decide what quantities to export and at what prices. In any event, accepting this argument would be tantamount to denying individual treatment to all companies which did not qualify for market economy status (i.e. because it did not meet the criteria laid down at Article 2(7)(c) of the Basic Regulation). As to the added risk of circumvention, reference is made to recital 23 dealing with the independence of the Russian company concerned from the State.

(ii) Comparison

- (24) The complainant also questioned the basis on which the normal value had been compared to the export price, i.e. on a fob (ex-exporting country frontier) basis. It argued that the use of this method had distorted the findings because it did not adequately take into account the

differences in internal transport costs in market and non-market economy countries, and that if the comparison had been made on an ex-works basis, the dumping margin would have been significantly greater.

The comparison of normal value with the export price should be made at the genuinely similar commercial stage, whether this is fob or ex-works. In the present case, the product concerned is a bulk product, for which the transport costs account for a very high proportion of the selling price. After careful examination of the arguments, it is considered that the fob comparison does indeed give an undue advantage to companies whose geographical location, if they were located in a market economy country, would prohibit them from exporting bulk products, and has therefore, for the purposes of the definitive determination, changed the basis of the comparison from fob to ex-works. The appropriate adjustments were therefore made to the export price in respect of the costs for transport from ex-works to port and for port services.

(iii) Dumping margin

- (25) The individual dumping margin for the cooperating exporting producer granted individual treatment, and the countrywide dumping margin for all other producers were recalculated using the revised normal value of the Lithuanian producer (see recitals 13 to 15).

On this basis, the dumping margins, expressed as a percentage of the cif Community frontier price, are:

JSC Nevinnomyssky Azot:	28,5 %
All other companies:	41,0 %.

(c) Belarus

(i) Comparison

- (26) In view of the change in the basis of comparison from fob to ex-works level (see recital 24), the appropriate adjustments were made to the export price in respect of the costs for transport from ex-works to port and for port services.

(ii) Dumping margin

- (27) The dumping margin for Belarus was recalculated using the revised normal value of the Lithuanian producer (see recitals 13 to 15).
- (28) The cooperating exporting producer claimed that it had not been given adequate disclosure of the provisional findings and therefore had been prevented from making any substantive or meaningful comment on the dumping margin calculation. In addition, it claimed that the quantities exported had been miscalculated because

returns had not been taken into account and because some of the UAN exported had a nitrogen content of 30 % instead of the more usual 32 %. Finally, it claimed that the cif value had been wrongly calculated.

- (29) As far as the amount of information contained in the disclosure document on the provisional findings is concerned, it is considered that the information provided was the maximum possible without breaching the duty of confidentiality to the sole Lithuanian producer in respect of its own normal value.
- (30) With regard to the other claims, the available information was reviewed and the export quantities adjusted. As regards the calculation of the cif value, the methodology adopted in the provisional Regulation is confirmed.
- (31) In the absence of any other comments concerning the determination of the dumping margin, the methodology set out in recital 31 of the provisional duty Regulation is confirmed. On this basis, the countrywide dumping margin, expressed as a percentage of the cif Community frontier price, is 55,0 %.

(d) *Ukraine*

(i) *Comparison*

- (32) In view of the change in the basis of comparison from fob to ex-works level (see recital 24), the appropriate adjustments were made to the export price in respect of the costs for transport from ex-works to port and for port services.

(ii) *Dumping margin*

- (33) The Commission recalculated the Ukrainian dumping margin using the revised normal value of the Lithuanian producer (see recitals 13 to 15).

On this basis, the countrywide dumping margin, expressed as a percentage of the cif Community frontier price, is 50,4 %.

E. DEFINITION OF THE COMMUNITY INDUSTRY

- (34) In the absence of any comments or new information the provisional findings as described in recitals 35 and 36 of the provisional Regulation on the definition of the Community industry are confirmed.

F. INJURY

1. Cumulation

- (35) The complainant questioned the decumulation of the Slovak Republic, without however submitting any new information. In this respect it is underlined, in particular, that both the volumes and market shares of the imports originating in the Slovak Republic were the lowest of all countries concerned and that their prices did not undercut those of the Community industry. The provisional findings regarding the appropriateness of the

decumulation of imports originating in the Slovak Republic are therefore confirmed.

- (36) The Algerian exporting producer submitted that imports originating in Algeria should be assessed separately, on the grounds of a low dumping margin, a small average market share and a small undercutting margin. In this respect, it should be outlined that the dumping margin for the imports originating in Algeria is above the *de minimis* level and the volume of these imports during the investigation period is not negligible. Furthermore, as to the conditions of competition, there was an upward trend in the volume of imports, the price behaviour of the Algerian exporting producer was comparable to that of the other exporting producers in the other countries concerned and price undercutting was found for these imports which used the same channels of trade. For these reasons, and in accordance with Article 3(4) of the Basic Regulation, the provisional findings as described in recital 41 of the provisional Regulation are confirmed.

2. Price undercutting

- (37) The exporting producer in Belarus submitted that the customs duty applicable for imports originating in Belarus was 6,8 % in 1998 and 6,5 % in 1999 while the Commission, in the calculation of the cif Community frontier value, ex-quay, duty paid, had used 6,5 % for all imports. The cif value was recalculated accordingly, which did not, however, change the range for the undercutting margin for imports originating in Belarus mentioned in recital 46 of the provisional Regulation.
- (38) Since the customs duty applicable for imports originating in Russia also changed in 1999, the undercutting margin for imports originating in Russia was also accordingly recalculated. The revised weighted average price undercutting expressed as a percentage of the Community industry's prices amounts to 6,5 %. Otherwise, the methodology set out in recital 46 of the provisional duty Regulation is confirmed.

3. Situation of the Community industry

- (39) Certain parties submitted that for the injury analysis the situation in 1995 should be compared to that in the investigation period, and not the situation in 1997 to that in the investigation period. In this respect it should be clarified that material injury in the investigation period is one of the conditions to be fulfilled before anti-dumping measures can be taken. It should be noted that the Basic Regulation does not require injury to occur throughout the whole period covering the examination of injury. Indeed this would amount to a requirement that the situation of the Community industry must have been continuously deteriorating over a period of four to five years before measures could be imposed. In order to establish whether such injury exists, *inter alia*, the preceding years and the developments and trends found between them and the investigation period serve as reference. In the current case, the investigation covered the period between 1995 and the investigation

period and not just 1995 and the investigation period as suggested by these parties. Taking into account developments throughout this period, a marked deterioration of the situation of the Community industry has been found in particular between 1997 and the investigation period. In view of the above, the provisional findings as regards the material injury suffered by the Community industry are therefore confirmed.

G. CAUSATION

- (40) Certain exporting producers submitted that the Commission underestimated the impact of the Chinese decision to ban imports of urea as from April 1997 on the worldwide oversupply. In this respect it should be noted that the existence or not of a situation of oversupply, whatever its importance, does not provide a justification for dumped imports causing injury to the Community industry. Therefore, in the absence of any new information, the findings as described in recitals 62 and 63 of the provisional Regulation are confirmed.

H. COMMUNITY INTEREST

- (41) In the absence of any new information the provisional findings as described in recitals 64 to 69 of the provisional Regulation are confirmed.

I. ANTI-DUMPING MEASURES

1. Termination of the proceeding in respect of the Slovak Republic

- (42) In the light of the conclusions set out in recital 60 of the provisional Regulation, i.e. that no price undercutting has been found, that the import volume was relatively low and the market share small and stable, the proceeding concerning imports originating in the Slovak Republic is hereby terminated without the imposition of measures.

2. Injury elimination level

- (43) For the purposes of establishing the level of definitive measures to be imposed, it is confirmed that the prices of the dumped imports should be increased to a level where injurious dumping is eliminated.
- (44) The complainant submitted that a profit margin of 5 % was not realistic and that a higher level of profit should be used in determining a non-injurious price level. However, as a profit margin of 5 % has been used in previous anti-dumping cases concerning solutions of

UAN and in the absence of elements pointing to a change in circumstances requiring a new evaluation, it is concluded that a margin of 5 % remains an appropriate level of profit.

- (45) Furthermore, the methodology used for establishing the injury margin as described in recital 70 of the provisional Regulation was confirmed.

- (46) The injury margin for Belarus was revised to take into account the fact that the customs duty applicable for imports originating in Belarus was 6,8 % in 1998 and 6,5 % in 1999 while, as mentioned above, the Commission, in the calculation of the cif Community frontier value, ex-quay, duty paid, used 6,5 % for all imports. The cif value was recalculated accordingly. The new injury margin for imports originating in Belarus is 27,5 %.

- (47) Since the customs duty applicable for imports originating in Russia also changed in 1999, the injury margins for imports originating in Russia were also accordingly recalculated. Furthermore, since individual treatment was granted to one Russian exporting producer, an individual injury margin was calculated accordingly. The new injury margins for imports originating in Russia however remain below the dumping margins found.

3. Undertakings

- (48) The undertaking accepted at the provisional stage from the Algerian exporting producer was revised in order to adjust the minimum import price on the basis of the definitive findings for the producer (see recitals 9 to 12 above).

Undertakings offered by the two cooperating Russian companies were rejected. One was rejected because the company concerned was not an exporting producer from whom such undertaking could be accepted, but an intermediate trader, purchasing the product concerned from a non-cooperating producer and selling it to a related company for export. The other undertaking offer was rejected because the company is an integrated producer of fertilisers, and therefore has a wide range of marketing options open to it when faced with measures on one of its products. It should be stressed that in these circumstances, the monitoring of the undertakings would have proved impracticable.

The undertaking offered by the cooperating Belarus exporting producer was rejected on similar grounds.

4. Form and level of the definitive measures

- (49) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the Basic Regulation, definitive anti-dumping duties should be imposed at the level of the injury margins found, which are lower than the dumping margins. For the reasons set out in recitals 15 and 19 of the provisional Regulation, it is confirmed that the residual duties for Algeria and Lithuania should be set at the level established respectively for the sole producer in each country.
- (50) In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving fertilisers, it is confirmed that the duties should be imposed in the form of a specific amount per tonne. These duties amount to:

Country	Dumping margin	Basis for anti-dumping duty	Amount of duty (per tonne)
Algeria			
— Fertalge Industries	9,7	9,7	EUR 6,88
Belarus	55,0	27,5	EUR 17,86
Lithuania			
— JSC Achema	5,8	5,8	EUR 3,98
Russia			
— JSC Nevinnomyssky Azot	28,5	27,4	EUR 17,80
— All other companies	41,0	32,0	EUR 20,11
Ukraine	50,4	45,7	EUR 26,17

- (51) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the country-wide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.
- (52) Any claim requesting the application of this individual company anti-dumping duty rate (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.

J. COLLECTION OF THE PROVISIONAL DUTIES

- (53) In view of the extent of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by Regulation (EC) No 617/2000, should be definitively collected at the rate of the duty definitively imposed,

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution falling within CN code 3102 80 00 and originating in Algeria, Belarus, Lithuania, Russia and Ukraine.

2. The amount of duty in euro per tonne shall be as shown below for the countries concerned:

Country	Company	Amount of duty (per tonne)	TARIC additional code
Algeria	All companies	EUR 6,88	A999
Belarus	All companies	EUR 17,86	—
Lithuania	All companies	EUR 3,98	—
Russia	JSC Nevinnomyssky Azot 357030 Russian Federation, Stavropol region Nevinnomyssk, Nizyaev st. 1	EUR 17,80	A176
	All other companies	EUR 20,11	A999
Ukraine	All companies	EUR 26,17	—

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

6. The proceeding concerning imports of solutions of urea and ammonium nitrate originating in the Slovak Republic shall be terminated.

Article 2

1. Imports pursuant to the undertaking offered by:

Company	Country	TARIC additional code
Fertalge Industries spa 12, Chemin AEK Gadouche Hydra Alger	Algeria	A107

and accepted by the Commission, when released for free circulation, shall be exempted from the anti-dumping duty set in Article 1(2) when they are manufactured and directly exported and invoiced to an importing company in the Community by the company mentioned above and declared under the appropriate TARIC additional code.

⁽¹⁾ OJ L 253, 11.10.1993, p. 40.

2. The exemption shall be conditional upon presentation to the relevant Member State's customs services of a valid undertaking invoice issued by the exporting company containing the essential elements listed in the Annex to Regulation (EC) No 617/2000.

Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 617/2000 on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine 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.

Article 4

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

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

Done at Brussels, 18 September 2000.

For the Council

The President

H. VÉDRINE

COMMISSION REGULATION (EC) No 1996/2000
of 21 September 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 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 21 September 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	85,5
	999	85,5
0707 00 05	628	145,8
	999	145,8
0709 90 70	052	67,1
	999	67,1
0805 30 10	052	70,1
	388	71,4
	524	58,6
	528	66,5
0806 10 10	999	66,7
	052	81,5
	064	58,3
	400	213,1
0808 10 20, 0808 10 50, 0808 10 90	999	117,6
	388	206,1
	400	57,9
	512	87,9
	800	203,5
	804	66,3
0808 20 50	999	124,3
	052	86,2
	064	56,6
0809 30 10, 0809 30 90	999	71,4
	052	145,1
	624	192,1
0809 40 05	999	168,6
	052	67,6
	060	64,9
	064	72,2
	066	90,5
	400	140,1
	624	249,9
	999	114,2

⁽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 1997/2000
of 21 September 2000
amending Regulation (EEC) No 2273/93 determining the intervention centres for cereals**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 5 thereof,

Whereas:

- (1) The intervention centres are determined in the Annex to Commission Regulation (EEC) No 2273/93 ⁽³⁾, as last amended by Regulation (EC) No 2083/1999 ⁽⁴⁾. Some Member States have asked for that Annex to be amended and their requests should be granted.
- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 2273/93 is amended as follows:

1. In the 'Belgique/België' section:

The 'Poperinge' centre is replaced by 'Farciennes'.

2. In the 'Bundesrepublik Deutschland' section:

(a) The 'Oerbke bei Fallingsbostel' centre is replaced by 'Rethem/Aller';

(b) The 'Semmenstedt' centre is replaced by 'Frellstedt'.

3. In the 'France' section, the amendments are as follows:

Departments	Centres deleted	Centres added
'Aube-10'	'Thennelières (common wheat)'	'Buchères (common wheat)'
'Isère-38'	'Salaise-sur-Sanne (barley)'	
'Oise-60'	'Creil (common wheat, durum wheat, barley, maize)'	'Nogent-sur-Oise (common wheat, durum wheat, barley, maize)'
'Rhône-69'		'Villefranche-sur-Saône (maize)'

4. In the 'Sverige' section:

The 'Nyköping' centre is renamed 'Nyköping-Oxelösund'.

Article 2

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

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 207, 18.8.1993, p. 1.

⁽⁴⁾ OJ L 256, 1.10.1999, p. 48.

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

Done at Brussels, 21 September 2000.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1998/2000**of 21 September 2000****amending Regulation (EC) No 1374/98 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products, and Regulation (EC) No 174/1999 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**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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 26 thereof,

HAS ADOPTED THIS REGULATION:

Article 1

Whereas:

Article 1 of Regulation (EC) No 1374/98 is replaced by the following:

'Article 1(1) Article 1 of Commission Regulation (EC) No 1374/98 of 29 June 1998 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 1491/2000 ⁽⁴⁾, lays down the quantities for which an import licence is not required.

Without prejudice to Title II of Regulation (EC) 1291/2000, all imports into the Community of any of the products referred to in Article 1 of Regulation (EC) No 1255/1999 (hereinafter referred to as "milk products") shall be subject to the presentation of an import licence.'

Article 2(2) Article 2 of 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 ⁽⁵⁾, as last amended by Regulation (EC) No 1961/2000 ⁽⁶⁾, stipulates the cases where an export licence is not required.

Article 2 of Regulation (EC) No 174/1999 is replaced by the following:

'Article 2(3) Article 5(1) of Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽⁷⁾ sets 150 kg as the maximum quantity of milk products for which no licence need be submitted. To clarify matters, the relevant provisions of Regulations (EC) No 1374/98 and (EC) No 174/1999 should be adapted and special provisions should be introduced for exports of milk products derogating from some of the provisions of Regulations (EC) No 800/1999 and (EC) No 1291/2000.

Refunds shall be granted only on presentation of an export licence, the one exception being the cases referred to in the first and fourth indents of Article 5(1) of Regulation (EC) No 1291/2000.

For the purposes of the fourth indent of Article 5(1) of Regulation (EC) No 1291/2000, where several separate codes in the refunds nomenclature as laid down by Commission Regulation (EEC) No 3846/87 ⁽²⁾ or in the combined nomenclature are entered in an export declaration, the particulars relating to each code shall be deemed to constitute a separate declaration.'*Article 3*⁽¹⁾ OJ L 160, 26.6.1999, p. 48.⁽²⁾ OJ L 193, 29.7.2000, p. 10.⁽³⁾ OJ L 185, 30.6.1998, p. 21.⁽⁴⁾ OJ L 168, 8.7.2000, p. 10.⁽⁵⁾ OJ L 20, 27.1.1999, p. 8.⁽⁶⁾ OJ L 234, 16.9.2000, p. 10.⁽⁷⁾ OJ L 152, 24.6.2000, p. 1.

This Regulation shall enter into force on 1 October 2000.

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

Done at Brussels, 21 September 2000.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1999/2000
of 21 September 2000
on the sale by tender of beef held by certain intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) The application of intervention measures in respect of beef has created stocks in several Member States. In order to prevent an excessive prolongation of storage, part of these stocks should be sold by tender.
- (2) The sale should be made subject to the rules laid down by Commission Regulation (EEC) No 2173/79 ⁽²⁾, as last amended by Regulation (EC) No 2417/95 ⁽³⁾, subject to certain special exceptions which are necessary.
- (3) With a view to ensuring a regular and uniform tendering procedure, measures should be taken in addition to those laid down in Article 8(1) of Regulation (EEC) No 2173/79.
- (4) Provision should be made for derogations from Article 8(2)(b) of Regulation (EEC) No 2173/79, in view of the administrative difficulties which application of that provision creates in the Member States concerned.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

1. The sale shall take place of:
 - approximately 347 tonnes of bone-in beef held by the French intervention agency,
 - approximately 5 tonnes of boneless beef held by the French intervention agency,
 - approximately 14 tonnes of boneless beef held by the United Kingdom intervention agency,
 - approximately 9 tonnes of boneless beef held by the Danish intervention agency,

— approximately 124 tonnes of boneless beef held by the Irish intervention agency.

Detailed information concerning quantities is given in Annex I.

2. Subject to the provisions of this Regulation the products referred to in paragraph 1 shall be sold in accordance with Regulation (EEC) No 2173/79, in particular Titles II and III thereof.

Article 2

1. Notwithstanding Articles 6 and 7 of Regulation (EEC) No 2173/79, the provisions of and Annex to this Regulation shall serve as a general notice of invitations to tender.

The intervention agencies concerned shall draw up a notice of invitation to tender which shall include the following:

- (a) the quantities of beef offered for sale, and
- (b) the deadline and place for submitting tenders.

2. Interested parties may obtain the details of the quantities available and the places where the products are stored from the addresses listed in Annex II to this Regulation. The intervention agencies shall, in addition, display the notice referred to in paragraph 1 at their head offices and may publish it in other ways.

3. For each product mentioned in Annex I the intervention agencies concerned shall sell first the meat which has been stored the longest.

4. Only tenders which reach the intervention agencies concerned by 12 noon on 9 October 2000 shall be considered.

5. Notwithstanding Article 8(1) of Regulation (EEC) No 2173/79, a tender must be submitted to the intervention agency concerned in a closed envelope, bearing the reference to the Regulation concerned. The closed envelope must not be opened by the intervention agency before the expiry of the tender deadline referred to in paragraph 4.

6. Notwithstanding Article 8(2)(b) of Regulation (EEC) No 2173/79, tenders shall not indicate in which cold store or stores the products are held.

Article 3

1. Member States shall provide the Commission with information concerning the tenders received not later than the working day following the deadline set for the submission of tenders.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 251, 5.10.1979, p. 12.

⁽³⁾ OJ L 248, 14.10.1995, p. 39.

2. After the tenders received have been examined a minimum selling price shall be set for each product or the sale will not proceed.

Article 4

The security provided for in Article 15(1) of Regulation (EEC) No 2173/79 shall be EUR 300/t.

Article 5

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

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I —
ANEXO I — LIITE I — BILAGA I

Estado miembro	Productos ⁽¹⁾	Cantidad aproximada (toneladas)
Medlemsstat	Produkter ⁽¹⁾	Tilnærmet mængde (tons)
Mitgliedstaat	Erzeugnisse ⁽¹⁾	Ungefähre Mengen (Tonnen)
Κράτος μέλος	Προϊόντα ⁽¹⁾	Κατά προσέγγιση ποσότητα (τόνοι)
Member State	Products ⁽¹⁾	Approximate quantity (tonnes)
État membre	Produits ⁽¹⁾	Quantité approximative (tonnes)
Stato membro	Prodotti ⁽¹⁾	Quantità approssimativa (tonnellate)
Lidstaat	Producten ⁽¹⁾	Hoeveelheid bij benadering (ton)
Estado-Membro	Produtos ⁽¹⁾	Quantidade aproximada (toneladas)
Jäsenvaltio	Tuotteet ⁽¹⁾	Arvioitu määrä (tonneina)
Medlemsstat	Produkter ⁽¹⁾	Ungefärlig kvantitet (ton)

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

FRANCE	— Quartiers avant	298
	— Quartiers arrière	49

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

UNITED KINGDOM	— Intervention fillet (INT 15)	11
	— Intervention rump (INT 16)	3
FRANCE	— Entrecôte (INT 19)	5
	— Tranche grasse (INT 12)	0,1
DANMARK	— Interventionsforfjerding (INT 24)	9
IRELAND I	— Intervention striploin (INT 17)	0,2
	— Intervention topside (INT 13)	39,4
	— Intervention silverside (INT 14)	7,7
	— Intervention rump (INT 16)	1,2
	— Intervention thick flank (INT 12)	0,2
	— Intervention forequarter (INT 24)	0,6
	— Intervention shoulder (INT 22)	0,9
	— Intervention shank (INT 11)	0,2
	— Intervention shin (INT 21)	0,1
	— Intervention brisket (INT 23)	3,3
	— Intervention flank (INT 18)	0,8
	— Intervention forerib (INT 19)	2,1
IRELAND II	— Intervention topside (INT 13)	4,6
	— Intervention silverside (INT 14)	3,6
	— Intervention rump (INT 16)	0,1
	— Intervention shoulder (INT 22)	59,6

-
- (¹) Véanse los anexos V y VII del Reglamento (CEE) n° 2456/93 de la Comisión (DO L 225 de 4.9.1993, p. 4), cuya última modificación la constituye el Reglamento (CE) n° 562/2000 (DO L 68 de 16.3.2000, p. 22).
- (¹) Se bilag V og VII til Kommissionens forordning (EØF) nr. 2456/93 (EFT L 225 af 4.9.1993, s. 4), senest ændret ved forordning (EF) nr. 562/2000 (EFT L 68 af 16.3.2000, s. 22).
- (¹) Vgl. Anhänge V und VII der Verordnung (EWG) Nr. 2456/93 der Kommission (ABl. L 225 vom 4.9.1993, S. 4), zuletzt geändert durch die Verordnung (EG) Nr. 562/2000 (ABl. L 68 vom 16.3.2000, S. 22).
- (¹) Βλέπε παραρτήματα V και VII του κανονισμού (ΕΟΚ) αριθ. 2456/93 της Επιτροπής (ΕΕ L 225 της 4.9.1993, σ. 4), όπως τροποποιήθηκε τελευταία από τον κανονισμό (ΕΚ) αριθ. 562/2000 (ΕΕ L 68 της 16.3.2000, σ. 22).
- (¹) See Annexes V and VII to Commission Regulation (EEC) No 2456/93 (OJ L 225, 4.9.1993, p. 4), as last amended by Regulation (EC) No 562/2000 (OJ L 68, 16.3.2000, p. 22).
- (¹) Voir annexes V et VII du règlement (CEE) n° 2456/93 de la Commission (JO L 225 du 4.9.1993, p. 4). Règlement modifié en dernier lieu par le règlement (CE) n° 562/2000 (JO L 68 du 16.3.2000, p. 22).
- (¹) Cfr. allegati V e VII del regolamento (CEE) n. 2456/93 della Commissione (GU L 225 del 4.9.1993, pag. 4), modificato da ultimo dal regolamento (CE) n. 562/2000 (GU L 68 del 16.3.2000, pag. 22).
- (¹) Zie de bijlagen V en VII bij Verordening (EEG) nr. 2456/93 van de Commissie (PB L 225 van 4.9.1993, blz. 4), laatstelijk gewijzigd bij Verordening (EG) nr. 562/2000 (PB L 68 van 16.3.2000, blz. 22).
- (¹) Ver anexos V e VII do Regulamento (CEE) n.º 2456/93 da Comissão (JO L 225 de 4.9.1993, p. 4). Regulamento com a última redacção que lhe foi dada pelo Regulamento (CE) n.º 562/2000 (JO L 68 de 16.3.2000, p. 22).
- (¹) Katso komission asetuksen (ETY) N:o 2456/93 (EYVL L 225, 4.9.1993, s. 4), sellaisena kuin se on viimeksi muutettuna asetuksella (EY) N:o 562/2000 (EYVL L 68, 16.3.2000, s. 22), liitteet V ja VII.
- (¹) Se bilagorna V och VII i kommissionens förordning (EEG) nr 2456/93 (EGT L 225, 4.9.1993, s. 4), senast ändrad genom förordning (EG) nr 562/2000 (EGT L 68, 16.3.2000, s. 22).
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ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II —
BIJLAGE II — ANEXO II — LIITE II — BILAGA II

Direcciones de los organismos de intervención — Interventionsorganernes adresser — Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρέμβασης — Addresses of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de intervenção — Interventioelinten osoitteet — Interventionsorganens adresser

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Tél. (33-1) 44 68 50 00; télex 215330; télécopieur (33-1) 44 68 52 33

IRELAND

Department of Agriculture and Food
Johnston Castle Estate
Country Wexford
Ireland
Tel. (353-53) 634 00 - fax (353-53) 428 42

UNITED KINGDOM

Intervention Board Executive Agency
PO Box 1AW
Hampshire Court
Newcastle-upon-Tyne NE 99 1AW
United Kingdom
Tel. (44-191) 273 96 96; fax (44-191) 226 18 39

COMMISSION REGULATION (EC) No 2000/2000**of 21 September 2000****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1701/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

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

Whereas:

- (1) An invitation to tender for the refund on exportation of common wheat to all third countries was opened pursuant to Commission Regulation (EC) No 1701/2000 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 15 to 21 September 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1701/2000, the maximum refund on exportation of common wheat shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 195, 1.8.2000, p. 18.

COMMISSION REGULATION (EC) No 2001/2000
of 21 September 2000
concerning tenders notified in response to the invitation to tender for the export of rye issued in
Regulation (EC) No 1740/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

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

Whereas:

- (1) An invitation to tender for the refund for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1740/2000 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92

and on the basis of the tenders notified, to make no award.

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 15 to 21 September 2000 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 1740/2000.

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 199, 5.8.2000, p. 3.

COMMISSION REGULATION (EC) No 2002/2000**of 21 September 2000****fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽³⁾, as last amended by Regulation (EC) No 1667/2000 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.
- (2) Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽⁵⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.
- (3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.
- (4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. Whereas it is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. Whereas the fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

- (5) Now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC ⁽⁶⁾, it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.
- (6) Pursuant to Article 4(3) and (5) of Regulation (EC) No 1520/2000 provides that a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Council Regulation (EEC) No 1722/93 ⁽⁷⁾, as last amended by Commission Regulation (EC) No 87/1999 ⁽⁸⁾, for the basic product in question, used during the assumed period of manufacture of the goods.
- (7) Spirituous beverages are considered less sensitive to the price of the cereals used in their manufacture. However, Protocol 19 of the Act of Accession of the United Kingdom, Ireland and Denmark stipulates that the necessary measures must be decided to facilitate the use of Community cereals in the manufacture of spirituous beverages obtained from cereals. Accordingly, it is necessary to adapt the refund rate applying to cereals exported in the form of spirituous beverages.
- (8) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.
- (9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 193, 29.7.2000, p. 3.

⁽⁵⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁶⁾ OJ L 275, 29.9.1987, p. 36.

⁽⁷⁾ OJ L 159, 1.7.1993, p. 112.

⁽⁸⁾ OJ L 9, 15.1.1999, p. 8.

Article 2

Where a refund certificate issued before 14 July 2000 is used, and with regard to the goods listed in the Annex to Regulation (EEC) No 1722/1993, a reduced rate of refund which takes account of the amount of the production refund shall apply.

However, if, at the time the export declaration is accepted and, in support of his application for payment of the export refund, the operator provides proof that, with regard to the basic products used to manufacture the goods to be exported, the production refund provided for under Regulation (EEC) No 1722/93 has not been and will not be applied for, the rate of

refund which does not take account of the amount of the production refund shall apply.

The proof referred to in the previous paragraph shall consist of the presentation by the exporter of a declaration by the processor of the basic product in question which attests that, with regard to this product, the production refund provided for under Regulation (EEC) No 1722/93 has not been and will not be applied for. This declaration shall be verified in accordance with Article 16(1) of Regulation (EC) No 1520/2000.

Article 3

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

**to the Commission Regulation of 21 September 2000 fixing the rates of the refunds applicable to certain cereals
and rice products exported in the form of goods not covered by Annex I to the Treaty**

CN code	Description of products ⁽¹⁾	(EUR/100 kg) Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
1001 10 00	Durum wheat: – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America – in other cases	— —	— —
1001 90 99	Common wheat and meslin: – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America – in other cases: – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where the first paragraph of Article 2 applies – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases	— — — — —	— — — — —
1002 00 00	Rye	3,898	3,898
1003 00 90	Barley – where goods falling within subheading 2208 ⁽³⁾ are exported – in other cases	— —	— —
1004 00 00	Oats	2,893	2,893
1005 90 00	Maize (corn) used in the form of: – starch: – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where the first paragraph of Article 2 applies – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases – glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 ⁽⁴⁾ : – – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where the first paragraph of Article 2 applies – – where goods falling within subheading 2208 ⁽³⁾ are exported – – in other cases – where goods falling within subheading 2208 ⁽³⁾ are exported – other (including unprocessed) Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize: – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽²⁾ – – where the first paragraph of Article 2 applies – – where goods falling within subheading 2208 ⁽³⁾ are exported – in other cases	1,719 1,719 0,666 2,737 1,034 1,034 0,500 2,053 0,666 2,737 1,719 1,719 0,666 2,737	1,719 1,719 0,666 2,737 1,034 1,034 0,500 2,053 0,666 2,737 1,719 1,719 0,666 2,737

(EUR/100 kg)			
CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
ex 1006 30	Wholly-milled rice:		
	– round grain	12,500	12,500
	– medium grain	12,500	12,500
	– long grain	12,500	12,500
1006 40 00	Broken rice	2,400	2,400
1007 00 90	Sorghum	—	—

⁽¹⁾ As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1520/2000 shall be applied (OJ L 177, 15.7.2000, p. 1).

⁽²⁾ The goods concerned fall under CN code 3505 10 50, unless Article 2 applies.

⁽³⁾ Goods listed in Annex B of Council Regulation (EEC) No 1766/92 or referred to in Article 2 of Regulation (EEC) No 2825/93.

⁽⁴⁾ For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

COMMISSION REGULATION (EC) No 2003/2000
of 21 September 2000
fixing the export refunds on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽³⁾, as last amended by Regulation (EC) No 1667/2000 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

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

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

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

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 193, 29.7.2000, p. 3.

⁽⁵⁾ OJ L 147, 30.6.1995, p. 55.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 25.

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 21 September 2000 fixing the export refunds on products processed from cereals and rice

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
1102 20 10 9200 ⁽¹⁾	A00	EUR/t	38,32	1104 23 10 9100	A00	EUR/t	41,06
1102 20 10 9400 ⁽¹⁾	A00	EUR/t	32,84	1104 23 10 9300	A00	EUR/t	31,48
1102 20 90 9200 ⁽¹⁾	A00	EUR/t	32,84	1104 29 11 9000	A00	EUR/t	0,00
1102 90 10 9100	A00	EUR/t	0,00	1104 29 51 9000	A00	EUR/t	0,00
1102 90 10 9900	A00	EUR/t	0,00	1104 29 55 9000	A00	EUR/t	0,00
1102 90 30 9100	A00	EUR/t	52,07	1104 30 10 9000	A00	EUR/t	0,00
1103 12 00 9100	A00	EUR/t	52,07	1104 30 90 9000	A00	EUR/t	6,84
1103 13 10 9100 ⁽¹⁾	A00	EUR/t	49,27	1107 10 11 9000	A00	EUR/t	0,00
1103 13 10 9300 ⁽¹⁾	A00	EUR/t	38,32	1107 10 91 9000	A00	EUR/t	0,00
1103 13 10 9500 ⁽¹⁾	A00	EUR/t	32,84	1108 11 00 9200	A00	EUR/t	0,00
1103 13 90 9100 ⁽¹⁾	A00	EUR/t	32,84	1108 11 00 9300	A00	EUR/t	0,00
1103 19 10 9000	A00	EUR/t	38,98	1108 12 00 9200	A00	EUR/t	43,79
1103 19 30 9100	A00	EUR/t	0,00	1108 12 00 9300	A00	EUR/t	43,79
1103 21 00 9000	A00	EUR/t	0,00	1108 13 00 9200	A00	EUR/t	43,79
1103 29 20 9000	A00	EUR/t	0,00	1108 13 00 9300	A00	EUR/t	43,79
1104 11 90 9100	A00	EUR/t	0,00	1108 19 10 9200	A00	EUR/t	36,48
1104 12 90 9100	A00	EUR/t	57,86	1108 19 10 9300	A00	EUR/t	36,48
1104 12 90 9300	A00	EUR/t	46,29	1109 00 00 9100	A00	EUR/t	0,00
1104 19 10 9000	A00	EUR/t	0,00	1702 30 51 9000 ⁽²⁾	A00	EUR/t	42,90
1104 19 50 9110	A00	EUR/t	43,79	1702 30 59 9000 ⁽²⁾	A00	EUR/t	32,84
1104 19 50 9130	A00	EUR/t	35,58	1702 30 91 9000	A00	EUR/t	42,90
1104 21 10 9100	A00	EUR/t	0,00	1702 30 99 9000	A00	EUR/t	32,84
1104 21 30 9100	A00	EUR/t	0,00	1702 40 90 9000	A00	EUR/t	32,84
1104 21 50 9100	A00	EUR/t	0,00	1702 90 50 9100	A00	EUR/t	42,90
1104 21 50 9300	A00	EUR/t	0,00	1702 90 50 9900	A00	EUR/t	32,84
1104 22 20 9100	A00	EUR/t	46,29	1702 90 75 9000	A00	EUR/t	44,96
1104 22 30 9100	A00	EUR/t	49,18	1702 90 79 9000	A00	EUR/t	31,20
				2106 90 55 9000	A00	EUR/t	32,84

⁽¹⁾ No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

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

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

The numeric destination codes are set out in Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

COMMISSION REGULATION (EC) No 2004/2000
of 21 September 2000
altering the export refunds on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽³⁾, as last amended by Regulation (EC) No 1667/2000 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) The export refunds on products processed from cereals and rice were fixed by Regulation (EC) No 2003/2000 ⁽⁵⁾.
- (2) It follows from applying the rules, criteria and other provisions contained in Regulation (EC) No 2003/2000 to the information at present available to the Commis-

sion that the export refunds at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products, exported in the natural state, listed in Article 1(1)(d) of Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EEC) No 3072/95 and subject to Regulation (EC) No 1518/95 ⁽⁶⁾, as fixed in the Annex to Regulation (EC) No 2003/2000 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 193, 29.7.2000, p. 3.

⁽⁵⁾ See page 41 of this Official Journal.

⁽⁶⁾ OJ L 147, 30.6.1995, p. 55.

ANNEX

to the Commission Regulation of 21 September 2000 altering the export refunds on products processed from cereals and rice

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
1102 20 10 9200 ⁽¹⁾	A00	EUR/t	45,58	1104 23 10 9100	A00	EUR/t	48,84
1102 20 10 9400 ⁽¹⁾	A00	EUR/t	39,07	1104 23 10 9300	A00	EUR/t	37,44
1102 20 90 9200 ⁽¹⁾	A00	EUR/t	39,07	1104 29 11 9000	A00	EUR/t	0,00
1102 90 10 9100	A00	EUR/t	0,00	1104 29 51 9000	A00	EUR/t	0,00
1102 90 10 9900	A00	EUR/t	0,00	1104 29 55 9000	A00	EUR/t	0,00
1102 90 30 9100	A00	EUR/t	65,77	1104 30 10 9000	A00	EUR/t	0,00
1103 12 00 9100	A00	EUR/t	65,77	1104 30 90 9000	A00	EUR/t	8,14
1103 13 10 9100 ⁽¹⁾	A00	EUR/t	58,61	1107 10 11 9000	A00	EUR/t	0,00
1103 13 10 9300 ⁽¹⁾	A00	EUR/t	45,58	1107 10 91 9000	A00	EUR/t	0,00
1103 13 10 9500 ⁽¹⁾	A00	EUR/t	39,07	1108 11 00 9200	A00	EUR/t	0,00
1103 13 90 9100 ⁽¹⁾	A00	EUR/t	39,07	1108 11 00 9300	A00	EUR/t	0,00
1103 19 10 9000	A00	EUR/t	38,98	1108 12 00 9200	A00	EUR/t	52,10
1103 19 30 9100	A00	EUR/t	0,00	1108 12 00 9300	A00	EUR/t	52,10
1103 21 00 9000	A00	EUR/t	0,00	1108 13 00 9200	A00	EUR/t	52,10
1103 29 20 9000	A00	EUR/t	0,00	1108 13 00 9300	A00	EUR/t	52,10
1104 11 90 9100	A00	EUR/t	0,00	1108 19 10 9200	A00	EUR/t	36,48
1104 12 90 9100	A00	EUR/t	57,86	1108 19 10 9300	A00	EUR/t	36,48
1104 12 90 9300	A00	EUR/t	46,29	1109 00 00 9100	A00	EUR/t	0,00
1104 19 10 9000	A00	EUR/t	0,00	1702 30 51 9000 ⁽²⁾	A00	EUR/t	51,04
1104 19 50 9110	A00	EUR/t	52,10	1702 30 59 9000 ⁽²⁾	A00	EUR/t	39,07
1104 19 50 9130	A00	EUR/t	42,33	1702 30 91 9000	A00	EUR/t	51,04
1104 21 10 9100	A00	EUR/t	0,00	1702 30 99 9000	A00	EUR/t	39,07
1104 21 30 9100	A00	EUR/t	0,00	1702 40 90 9000	A00	EUR/t	39,07
1104 21 50 9100	A00	EUR/t	0,00	1702 90 50 9100	A00	EUR/t	51,04
1104 21 50 9300	A00	EUR/t	0,00	1702 90 50 9900	A00	EUR/t	39,07
1104 22 20 9100	A00	EUR/t	46,29	1702 90 75 9000	A00	EUR/t	53,48
1104 22 30 9100	A00	EUR/t	49,18	1702 90 79 9000	A00	EUR/t	37,12
				2106 90 55 9000	A00	EUR/t	39,07

⁽¹⁾ No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

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

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

The numeric destination codes are set out in Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

COMMISSION REGULATION (EC) No 2005/2000
of 21 September 2000
fixing the export refunds on cereal-based compound feedingstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

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

refund should be granted in respect of the quantity of cereal products present in the compound feedingstuff.

- (4) Furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export.
- (5) However, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported.
- (6) The refund must be fixed once a month; whereas it may be altered in the intervening period.
- (7) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 51.

ANNEX

to the Commission Regulation of 21 September 2000 fixing the export refunds on cereal-based compound feedingstuffs

Product codes benefiting from export refund:

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

Cereal products	Destination	Unit of measurement	Amount of refunds
Maize and maize products: CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10	A00	EUR/t	27,37
Cereal products excluding maize and maize products	A00	EUR/t	0,00

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

COMMISSION REGULATION (EC) No 2006/2000
of 21 September 2000
altering the export refunds on cereal-based compound feedingstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular the third subparagraph of Article 13 (3) thereof,

Whereas:

- (1) The export refunds on cereal-based compound feedingstuffs were fixed by Regulation (EC) No 2005/2000 ⁽³⁾.
- (2) It follows from applying the rules, criteria and other provisions contained in Regulation (EC) No 2005/2000 to the information at present available to the Commis-

sion that the export refunds at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on cereal-based compound feedingstuffs covered by Regulation (EEC) No 1766/92 and subject to Regulation (EC) No 1517/95 ⁽⁴⁾, as fixed in the Annex to Regulation (EC) No 2005/2000 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 22 September 2000.

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

Done at Brussels, 21 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ See page 46 of this Official Journal.

⁽⁴⁾ OJ L 147, 30.6.1995, p. 51.

ANNEX

to the Commission Regulation of 21 September 2000 altering the export refunds on cereal-based compound feedingstuffs

Product codes benefiting from export refund:

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

Cereal products	Destination	Unit of measurement	Amount of refunds
Maize and maize products: CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10	A00	EUR/t	32,56
Cereal products excluding maize and maize products	A00	EUR/t	0,00

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 April 2000

on the State aid implemented by the Federal Republic of Germany for System Microelectronic Innovation GmbH, Frankfurt/Oder (Brandenburg)

(notified under document number C(2000) 1063)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/567/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 14 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾ and having regard to their comments,

Whereas:

subject of several meetings between Commission representatives and representatives of the *Land* of Brandenburg; however, the latter were not in a position to provide the Commission with further information about the firm. On 9 June 1997 the case was registered as State aid No NN 80/97.

- (2) By letter dated 5 August 1997 ⁽⁵⁾, the Commission informed the German authorities of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. The decision was published in the *Official Journal of the European Communities* ⁽⁶⁾. The Commission accordingly changed the case number to C 45/97. In addition, interested third parties were invited to submit comments within one month of the date of publication.

I. PROCEDURE

- (1) After it had been reported in a press article of 22 August 1996 in the *Handelsblatt* that the *Land* of Brandenburg planned to grant aid of DEM 10 million to the firm System Microelectronic Innovation GmbH (SMI), Frankfurt/Oder, the Commission requested further information on 2 September 1996 ⁽³⁾ and 23 January 1997 ⁽⁴⁾. Despite these requests no official communication, let alone a formal notification, has been forthcoming from the German authorities. The case has also been the

- (3) The German authorities responded to the decision to initiate the procedure by letters of 6 October 1997 (registered as received on 6 October 1997) and 29 January 1998 (registered as received on 30 January 1998). They submitted further information by letters of 28 November 1998 (registered as received on 5 January 1999), 15 March 1999 (registered as received on 16 March 1999), 7 June 1999 (registered as received on 9 June 1999), 12 July 1999 (registered as received on 13 July 1999) and 29 July 1999 (registered as received on 30 July 1999). In this last letter the German authorities

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 352, 20.11.1997, p. 3.

⁽³⁾ Letter D/52388.

⁽⁴⁾ Letter D/50321.

⁽⁵⁾ Letter D/6624.

⁽⁶⁾ See footnote 2.

announced that a new investor for MD & D, a subsidiary of SIMI, had been found and that further details would be provided. As the German authorities failed to provide any further information, the Commission sent additional questions to them on 1 December 1999. The German authorities replied on 23 December 1999. As the reply was still not satisfactory, the Commission sent a final set of questions to them on 13 January 2000, stating that it would take a definitive decision on the basis of the information in its possession. On 7, 14 and 24 February 2000 and 6 March 2000 the German authorities submitted for the last time information concerning SIMI and MD & D.

- (4) Only one reaction from a third party, supporting the Commission's decision to initiate the procedure, was received by letter of 8 December 1997 (registered as received on 23 December 1997). It was forwarded to the German authorities. Their comments were received by letter dated 21 July 1998 (registered as received on 22 July 1998).

II. BACKGROUND

- (5) Before unification, VEB/Kombinat Halbleiterwerk Frankfurt/Oder was the market leader in its field in the Comecon area, with 8 500 employees. Its main activity was the production of customised circuits. It was situated in the *Land* of Brandenburg. On 1 March 1993 the original firm Mikroelektronik und Technologie Gesellschaft mbH (MTG) was renamed Halbleiter Electronic Frankfurt (O) GmbH (HEG) and was to continue the main activities of MTG. On the same day a joint venture was created between HEG and Synergy Semiconductor Corporation (SSC), United States, which acquired 49 % of MTG's shares. In January 1993 MTG also sold its remaining 51 % to the Treuhandanstalt privatisation agency (THA), which awarded grants totalling DEM 63 million in support of the survival of HEG. On 1 December 1993 HEG was renamed System Mikroelektronik GmbH (SMI). On 28 June 1994 the THA transferred its 51 % holding in the firm to the *Land* of Brandenburg, which in turn assigned administration of this holding to C & L Treuarbeit Deutsche Revision. On 25 April 1997 SMI had to file for bankruptcy and became SMI i.G. (SMI in Gesamtvollstreckung). The bankruptcy proceedings were opened on 1 July 1997. At that time 370 employees were still working for SMI.

- (6) SMI i.G. ceased trading on 30 June 1997. On 29 January 1998 the German authorities notified details of the bankruptcy proceedings. The administrator decided that the firm should continue in operation. For this purpose, on 30 June 1997 he founded a new company (Auffanggesellschaft) named Silicium Mikroelektronik Integration GmbH Frankfurt/Oder (SIMI), with a capital of

DEM 50 000, that was to continue the business with about 105 employees. All the shares in SIMI were owned by SMI i.G. On 1 July 1997 the administrator founded a wholly owned subsidiary of SIMI, Microelectronic Design & Development GmbH (MD & D), whose intended activities would be in the field of consulting, marketing, development and design of microelectronic products and services.

- (7) On 29 January 1999 the German Government informed the Commission that the grants from the *Land* of Brandenburg totalled DEM 70,3 million and not DEM 67 million, as stated in a 'concept book' sent informally to the Commission by the *Land* of Brandenburg at the beginning of 1997 ⁽⁷⁾. It was stated that these measures had been authorised by the *Land* Ministry of Finance.
- (8) The *Land* of Brandenburg, together with the bankruptcy administrator, then tried to sell SIMI to a private investor. In the course of the privatisation efforts, the administrator planned to sell the shares of SIMI and the assets of SMI i.G. to Integrated Semiconductor Technologies GmbH (IST). The contract was suspended as IST was unable to satisfy its general terms until 25 June 1999.
- (9) When the negotiations with IST finally broke down, the German authorities informed the Commission on 29 July 1999 of new negotiations with Megaxess Inc., USA, one of the partners of IST. These negotiations were successful in the end and SIMI was sold to Megaxess. By contract of 28 June 1999, 80 % of the shares of MD & D were sold to Megaxess. The remaining 20 % were bought by three employees of MD & D. On 14 July 1999 MD & D acquired the shares of SIMI at their nominal value of DEM 50 000 and the assets of SMI i.G. for DEM 1,7 million. In other words, the subsidiary took over the shares of the Auffanggesellschaft SIMI, the former parent company, and the assets of the original firm SMI.

III. FINANCIAL MEASURES

3.1. Financial measures in favour of SMI

- (10) According to the information submitted by the German Government, SMI received the following financial support from two different sources:

THA

(in DEM million)

Overview	
1993 investment premium	45
Liquidity premium	18
Removals in 1995 (not specified)	1,8
Total	64,8

⁽⁷⁾ Owing to a lack of information, the Commission did not specify the exact amount in its decision to initiate the procedure, indicating its doubts in this respect. For this reason, the amount of aid for the purpose of the decision initiating the procedure is deemed to be the full amount of aid granted by the *Land* of Brandenburg and specified in the present decision (DEM 70,3 million).

Land of Brandenburg

(in DEM million)

Overview	
1993 to 1997 loss compensation by way of loans	70,3
Total	70,3

- (11) As shown above, the financial support from the THA was used for investment (DEM 63 million) and for unspecified removals (DEM 1,8 million), while the support of DEM 70,3 million from the *Land* of Brandenburg was used to cover losses between 1993 and 1997. The overall amount of financial support was therefore DEM 135,1 million.
- (12) The *Land* of Brandenburg had lodged its claims during the bankruptcy procedure, whereas no claim was made for repayment of the financial support from the THA.

3.2. Financial measures in favour of SIMI

- (13) According to the German Government, SIMI benefited from the following financial measures:
- On 29 July 1997 the *Land* provided a loan of DEM 4 million to enable continuation of the activity of SMI i.G. The loan had to be repaid by 30 June 1999 and the interest rate was 3 % above the market rate. According to the information provided by the German Government in its letter of 7 February 2000, it had not yet been repaid.
 - SIMI was expected to have a negative result of up to DEM 1 million for the twelve-month period up to June 1998, and this was to be covered by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS — successor to the THA).

3.3. Financial measures in favour of MD & D

- (14) Since, according to the German authorities, MD & D has not and will not receive any aid, the present assessment will be limited to the financial measures in favour of SMI and SIMI.

IV. COMMISSION DECISION TO INITIATE THE PROCEDURE UNDER ARTICLE 88(2) OF THE EC TREATY

- (15) When it initiated the procedure, the Commission assumed that the *Land* of Brandenburg had tried in vain to privatise SMI in the years prior to the opening of the bankruptcy procedure (Gesamtvollstreckung) in 1997.
- (16) According to unofficial information in the 'concept book' transmitted by the German authorities in early 1997, the firm received aid totalling DEM 131 million from the THA and from the *Land* of Brandenburg between 1993 and 1997. However, it remained unclear whether this represented all the aid granted to SMI. Owing to a lack of information, it could not be ascer-

tained whether any of the exemptions under Article 87 of the EC Treaty was applicable.

- (17) Until then, no official information had been submitted to the Commission enabling it to analyse the aid granted in the past to SMI, despite its official request that a formal notification be made. The Commission also had no practical information about the future plans for the firm.

Moreover, it did not become clear whether the financial assistance from the THA in 1993 constituted grants or loans. It could not, therefore, be checked whether it was compatible with 1992 Treuhand regime applicable at the time ⁽⁸⁾.

This was also the case as regards the loans from the *Land*.

Furthermore, the Commission was unable to clarify whether the sale of SMI (at the time still HEG) to SSC complied with the Community competition rules.

- (18) The Commission therefore enjoined ⁽⁹⁾ the German authorities to provide all the necessary information that would allow it to evaluate the compatibility with Article 92 (now Article 87) of the EC Treaty of the aid already granted and that still to be granted. Despite the Commission's injunction, the German authorities have not yet made a formal notification.

V. REACTION OF THIRD PARTIES

- (19) The Commission received only one comment from a third party in reaction to the initiation of the procedure. The Swedish Electronic Component Manufacturers Association (SECA) supported the Commission's decision because of the competitive advantage allegedly gained as a result of the aid by SMI over other firms operating on the same market.
- (20) The German authorities replied that, as SECA did not specify the market in question, no answer was possible.

VI. REACTION OF THE GERMAN AUTHORITIES

- (21) In response to the injunction of 6 October 1997, the German authorities declared that the grants totalling DEM 64,8 million made in 1993 to SMI by the THA were based on the second THA regime and thus compatible with Community legislation. However, nothing was said about the DEM 70,3 million in loans made by the *Land*. In their letter of 7 February 2000 the German authorities declared that these loans had been granted on normal market conditions.

⁽⁸⁾ E 15/92, which allowed loans but not grants.

⁽⁹⁾ OJ C 119, 7.4.1997, pp. 4 and 8.

- (22) As regards the financial measures in favour of SIMI, the German authorities claimed in their supplementary reply of 29 January 1998 that they could not be considered as aid because, as a new legal firm, SIMI could not be regarded as being in difficulty. The guidelines for rescuing and restructuring firms in difficulty⁽¹⁰⁾ were not therefore applicable.

VII. ASSESSMENT

- (23) The European semiconductor industry enjoyed rapid growth and large profits until 1995. Given the globalisation of the production process and the size of the main producers in Europe or elsewhere, the target of these players is the world market. However, intra-Community trade is also important and there is keen competition on the market. For this reason, the measures in favour of both SMI and SIMI are likely to affect trade and to distort competition between firms in the semiconductor market.
- (24) Consequently, the individual measures have to be examined in the light of Article 87(1) of the EC Treaty since the funds are granted out of State resources and thus threaten to distort competition, to affect trade between Member States and to confer an advantage on investors in that they are relieved of costs which they would otherwise have to bear themselves.
- (25) It can be deduced from the information available to the Commission that, in view of their situation, both firms were to be regarded as firms in difficulty. Both SMI and SIMI were suffering heavy losses when the aid was granted. SMI subsequently became insolvent and went into liquidation. SIMI was from the outset a wholly owned subsidiary of SMI, with very limited capital and no assets of its own, and could operate only by availing itself of SMI's assets for a monthly fee of DEM 12 000. Under these circumstances, even though SIMI was a new legal entity, it could not operate under normal market conditions and must therefore be regarded as a firm in difficulty. Moreover, for a long time it proved impossible to find an investor willing to take over the activity of these firms. Lastly, the Commission would note that, in spite of the injunction addressed to the German authorities, the latter did not provide substantial evidence that SMI and SIMI were not firms in difficulty.

7.1. Financial measures in favour of SMI

- (26) The following financial measures were undertaken in favour of SMI:
- Grants totalling DEM 64,8 million from the THA
- According to the German authorities, these measures, which were undertaken in 1993 and 1995, were based on the second and third THA

regimes⁽¹¹⁾. However, in the Commission's view, they were not covered by those regimes.

The THA regimes applied only to loans and guarantees and not to grants, except in case of privatisations. However, in the case of SMI, the grants were part of a transaction whereby the THA sold only 49 % of the shares of SMI to SSC. As a result, the THA remained the majority shareholder in SMI. According to the German authorities, the company was at the time 'privatised' via the sale to the private investor SSC. They argued that the THA regimes did not provide any indication whether it was a condition that the majority of a firm's shares had to be transferred from a public to a private body in order for this to be regarded as a privatisation. They also claimed that, under Article 295, the EC Treaty was without prejudice to the system of property ownership in the Member States. Consequently, in their view, a public owner could also be an investor, with the result that grants could be made. Accordingly, the abovementioned transaction could also be regarded as a privatisation within the meaning of the guidelines. Grants were therefore permitted.

In the Commission's view, this contract within the meaning of the THA regimes cannot be regarded as a 'privatisation'.

Under those regimes, grants were authorised in the case of privatisation precisely because of THA's unique and unprecedented task, namely the transformation of a planned State economy into a market economy⁽¹²⁾. Nevertheless, such aid can attain its objective only if publicly owned enterprises are sold and control of them transferred to private investors. Under these circumstances, the principle set out in Article 295, according to which the Treaty must in no way prejudice the rules in Member States governing the system of property ownership, does not imply that any sale of shares in a public enterprise is to be regarded as a privatisation. In the present case, a public body retained a majority holding in the firm and full control over its activities, while private shareholders had only a minority holding.

Therefore, the total amount of DEM 64,8 million granted as aid cannot be deemed to be covered by the second and third THA regimes.

The financial measures in question cannot, therefore, be considered to be covered by an approved scheme and need to be assessed individually within the

⁽¹¹⁾ E 15/92 and N 768/94 respectively.

⁽¹²⁾ See the Commission decision concerning the first THA regime (case NN 108/91).

⁽¹⁰⁾ OJ C 368, 23.12.1997, p. 12.

framework of the present procedure. The THA held 51 % of SMI's shares when it made the grants, but it did not increase its holding as a result and no similar contribution was made by the other shareholders. The Commission considers that no private investor would have invested such an amount under these circumstances. Therefore, the grants constitute State aid within the meaning of Article 87(1) of the EC Treaty. Moreover, these measures should also have been notified in advance to the Commission on an ad hoc basis pursuant to Article 88(3) of the EC Treaty. The German authorities did not comply with this notification requirement since the THA grants were made without the Commission's prior approval. Consequently, the aid was granted illegally.

- Loans of DEM 70,3 million from the *Land* of Brandenburg to SMI

The German authorities argued that these loans were granted on normal market conditions. However, when they were granted, SMI was a firm in difficulty, with substantial losses and mounting debt. The Commission assumes that, under these circumstances, no private lender would have granted such loans. It should also be noted that, in spite of the injunctions addressed to them, the German authorities failed to provide substantial evidence that the *Land* of Brandenburg behaved like a private lender. Therefore, the Commission concludes that the loans also constitute State aid within the meaning of Article 87(1) of the EC Treaty. The aid has been authorised by the *Land* Ministry of Finance but was not notified to, or approved by, the Commission. Neither it was based on an aid scheme previously approved by the Commission. Consequently, pursuant to Article 88(3) of the EC Treaty, it too should have been notified. By not notifying the aid, Germany has failed to comply with this requirement. Consequently, this aid was also granted illegally.

7.2. Financial measures in favour of SIMI

- (27) The following financial measures were undertaken in favour of SIMI:

- DEM 4 million loan from the *Land* of Brandenburg to the newly created SIMI

The loan was based on an authorisation by the *Land* Ministry of Finance in 1997. It also ranks as aid within the meaning of Article 87(1) of the EC Treaty

because no private bank or private investor would have provided financing to a firm in difficulty that had no capital or assets of its own without appropriate guarantees.

- DEM 1 million loss compensation granted by the BvS for the twelve-month period until June 1998

Since the BvS did not receive consideration for its grant, this measure must also be considered as State aid within the meaning of Article 87(1) of the EC Treaty.

- (28) The Commission would point out that, in the decision to institute the procedure against SMI i.G., it mentioned all past and future aid for the firm. When aid was granted to SIMI, all of its shares were owned by SMI i.G. and no private investor could be found. Since there were no indications that SIMI was commercially independent of the parent company, it has to be assumed that SMI i.G. effectively controlled SIMI. The measures in favour of SIMI can therefore be regarded as measures in favour of SMI i.G., with the result that they were also covered by the decision to initiate the procedure. In their letter of February 2000, the German authorities expressly concurred with this view. Accordingly, these measures must be included in the present decision. They should have been notified pursuant to Article 88(3) of the EC Treaty. By not notifying the aid, Germany has failed to comply with this requirement. For this reason, these aid measures were also granted illegally.

VIII. COMPATIBILITY OF THE AID MEASURES WITH THE TREATY

- (29) It should now be examined whether the aid measures can be exempted from the basic prohibition in Article 87(1) of the EC Treaty. The Commission has also examined whether the exemptions set out in Article 87(2) and (3) of the EC Treaty apply. The exemptions in Article 87(2) could serve as a basis for rendering the aid compatible with the common market. However, the aid measures (a) do not have a social character and are granted to individual consumers, (b) do not make good the damage caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. The exemptions in Article 87(3)(b) and (d), which refer to projects of common European interest and to the promotion of culture and heritage conservation, do not apply either. Nor did the German authorities attempt to justify the aid on the grounds enumerated above.
- (30) As to the exemption in Article 87(3)(a), the Commission has taken into consideration the fact that the new German *Länder* rank as assisted areas under that provision where the standard of living is abnormally low and where there is serious underemployment⁽¹³⁾. Nevertheless, it should be first be pointed out that, in accordance

⁽¹³⁾ N 464/93, letter of 22 April 1994 (ref. SG(94) D/5633); N 613/96, letter of 23 January 1997 (ref. SG(97) D/488).

with point 2 of the Guidelines on national regional aid ('regional guidelines')⁽¹⁴⁾ an individual ad hoc aid payment made to a single firm may have a major impact on competition in the relevant market, and its effects on regional development are likely to be too limited. Therefore, the Commission considers that, unless it can be shown otherwise, such aid does not fulfil the requirements of those guidelines. The German Government did not provide any evidence that the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed. Second, in accordance with footnote 10 in the regional guidelines, ad hoc aid for firms in difficulty is governed by specific rules (rescue and restructuring guidelines) and is not conceived of as regional aid. Third, the aid measures described above do not appear to be linked to any specific investment and must therefore be regarded as operating aid. Point 4.15 of the regional guidelines stipulates that such aid may be granted only if (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate. Moreover, in accordance with point 4.17, operating aid must be limited in time and progressively reduced. The German authorities have failed to show that these conditions are met. Since some of these measures may be classed as investment aid, the recipient's contribution to their financing must, in accordance with point 4.2 of the regional guidelines, be at least 25 % so as to ensure that the productive investment aided is viable and sound. In the present case this condition was not met either.

- (31) The aid provided by the BvS and the *Land* of Brandenburg for SMI and SIMI was described as restructuring aid designed to restore the viability of a firm in difficulty. Therefore, the Commission has examined in particular the exemption in Article 87(3)(c) for 'aid to facilitate the development of certain economic activities [...] where such aid does not adversely affect trading conditions to an extent contrary to the common interest' since the predominant objective of the aid is the restructuring of a firm in difficulty. Such aid may be considered compatible with the common market if the relevant criteria are met. These criteria are set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁵⁾, which have been in force since 1994, and in the Commission's Eighth Report on Competition

Policy⁽¹⁶⁾ for the preceding period. Under both sets of rules, rescue aid may be granted only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; restructuring aid may be granted only on the basis of an appropriate restructuring plan.

8.1. Aid in favour of SMI

- (32) The sine qua non of all restructuring plans is that they must restore the long-term viability and health of the firm within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. Despite numerous letters and requests for information sent to them by the Commission, the German authorities have never submitted any restructuring plan that would have enabled it to ascertain that SMI would return to viability within a reasonable time scale.
- (33) It would even seem that the financial efforts made by the THA and the *Land* of Brandenburg were never based on a restructuring plan. The 'concept book' cannot be regarded as a restructuring plan as it is not part of the official information submitted to the Commission that would allow the aid to be examined. The aid from the *Land* of Brandenburg was granted exclusively in the form of loss compensation, which is allowed only within the framework of a restructuring designed to enable the company to make a better start. In this case, however, the aid was apparently paid to keep afloat a firm which would otherwise have disappeared from the market.
- (34) It has not been demonstrated either whether the other conditions laid down in the rescue and restructuring guidelines, notably those relating to undue distortion of competition and necessity of the aid, have been met.
- (35) Ultimately, however, despite all the efforts made, neither the viability of SMI could be restored nor the bankruptcy of the firm averted.
- (36) As the conditions set out in the guidelines have not been met, the aid measures in favour of SMI cannot be exempted on the basis of Article 87(3)(c) of the EC Treaty. In the light of the abovementioned facts, both the grants from the BvS totalling DEM 64,8 million and the loans from the *Land* of Brandenburg totalling DEM 70,3 million are incompatible with the common market within the meaning of Article 87(1) of the EC Treaty.

⁽¹⁴⁾ OJ C 74, 10.3.1998, p. 9. In accordance with point 6.1 of these guidelines, the Commission will assess the compatibility of regional aid with the common market on the basis of these guidelines as soon as they are applicable.

⁽¹⁵⁾ See footnote 10. These guidelines have been recently replaced (OJ C 288, 9.10.1999, p. 2). However, point 101(b) of the new guidelines provides that the applicable guidelines for non-notified aid are those in force at the time such aid was granted.

⁽¹⁶⁾ See paragraphs 177, 227 and 228.

8.2. Aid in favour of SIMI

- (37) SIMI was set up as an Auffanggesellschaft to take over the assets of SMI. Normally, the rescue and restructuring guidelines do not apply to firms set up with assets since they are relieved of the liabilities of the original company and cannot therefore be regarded as being in difficulty. However, exceptions are the 'Auffanglösungen' ⁽¹⁷⁾ for firms in the new *Länder*, which involved not simply a sale of assets but also continuation of the entire activity of the firm in bankruptcy (*Gesamtvollstreckung*). For these new firms, when the guidelines were applied, account was taken of the enormous difficulties they faced mainly owing to a lack of capital and obsolete plant. Consequently, the granting of restructuring aid to SIMI is justified because of the — in historical and economic terms — exceptional situation that existed at the time of the transition from a planned economy to a market economy and in view of the special role played by the BvS (successor to the THA) during the transition period. It goes without saying that this exception is limited to the new German *Länder*.
- (38) By letter of 30 January 1998, the German authorities submitted a restructuring plan for SIMI. However, since the plan covered only the period from the opening of bankruptcy proceedings until mid-1998 and since no other plan was submitted for the ensuing period, it is not to be regarded as a sound restructuring plan within the meaning of the guidelines. During the period covered by the plan, the firm's return to viability was not ensured. Hence, the main criterion of the rescue and restructuring guidelines was not met.
- (39) As no private investor was found to take over SIMI, the Commission was unable to assess the proportionality of the aid and whether the investor would have made a significant contribution to the restructuring plan.
- (40) Since the conditions set out in the rescue and restructuring guidelines have not been met, the aid measures in favour of SIMI cannot be exempted on the basis of Article 87(3)(c) of the EC Treaty. In the light of the abovementioned facts, both the DEM 4 million loan from the *Land* of Brandenburg and the amount of DEM 1 million granted by the BvS are incompatible with the common market within the meaning of Article 87(1) of the EC Treaty.

⁽¹⁷⁾ See Commission approvals dated 16 April 1997 and 30 April 1997: State aids Nos N 874/96 and NN 139/96 for Union Werkzeugmaschinen GmbH (letter D/3428 of 2 May 1997) and State aid No N 887/96 for Foron Haus- und Küchentechnik GmbH (letter D/4047 of 28 May 1997); see also the new guidelines for rescuing and restructuring firms in difficulty, footnote 15.

IX. REPAYMENT OF THE AID

- (41) On the assumption that effective competition should be restored in the case of aid measures which are both unlawful and incompatible with the common market, Article 14(1) of Council Regulation (EC) No 659/1999 provides that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. The Commission has accordingly decided that Germany should recover the aid from the beneficiary.
- (42) Having regard to recent changes affecting the beneficiary of the aid, the Commission considers it appropriate to define further the extent of the obligation to recover the aid.
- (43) In accordance with Commission practice and the case law of the Court of Justice, aid must be recovered from the firm which actually received it. Where the beneficiary has subsequently been sold, aid must be recovered from the purchaser, irrespective of whether the corresponding amounts were or were not taken into account in the conditions of sale. In this respect, no conflicting principle of national law can stand in the way of the full application of Community law ⁽¹⁸⁾.

9.1. Aid granted to SIMI

- (44) In so far as the present decision concerns aid granted to SIMI, it should be noted that its shares were sold to MD & D on 14 July 1999. Therefore, this aid must be recovered from MD & D.

9.2. Aid granted to SMI

- (45) In so far as the present decision concerns aid granted to SMI, the Commission considers that, in order properly to implement a Commission decision requiring the recovery of State aid, the Member State must behave as a private creditor would and with at least the same care that it would itself exercise if it were collecting, say, tax or social security debts. Domestic law must not be applied in a less favourable way than it would be applied to a claim made purely under domestic law, or in such a way that collection is rendered impossible or extremely difficult. Generally speaking, this means that the Member State must seek to collect the debt at once and must use all available means to do so, where possible taking measures to enforce its claim against all available assets of the debtor and seeking the liquidation of the debtor firm if it is unable to repay the debt.

⁽¹⁸⁾ See Case C-303/88 Italy v Commission [1991] ECR I-1433, paragraph 60.

- (46) As with the collection of any debt, a Member State acting as an ordinary creditor must seek to ensure that there is no danger that the collection of the debt might be contested or annulled; in doing so, it must make use of all the means available under domestic law, e.g. under provisions governing fraud perpetrated at the expense of creditors or suspected agreements prior to insolvency proceedings.
- (47) It is possible, indeed likely, that in a liquidation stemming from insolvency proceedings all the firm's remaining assets will be sold. In itself this raises no particular problem as the sale takes place under the supervision of a liquidator, who is required to seek the best possible result in the interests of creditors, with the proceeds of the sale of the assets being used to satisfy their claims. However, the proceeds of the sale of the assets might not be sufficient to pay off all the firm's debts and, in order to ensure full repayment, a liquidation is not therefore without importance in terms of competition. Competing firms which might have suffered injury as a result of the incompatible State aid will have the opportunity to fill the gap in the market left by the liquidated firm and themselves to buy the assets being sold with a view to using them more efficiently.
- (48) Nevertheless, in order to prevent its decision from being frustrated and to ensure that all distortions of competition are eliminated, the Commission has a duty, if necessary, to require that recovery proceedings should not be confined to the initial recipient but should instead be extended to include any firm that continues the business of the initial firm using the transferred production plant, in so far as there are aspects of the transfer on either side which indicate that the business is in fact being continued. Examples of considerations of this kind would be what is transferred (assets and liabilities, staff, consolidated assets), the purchase price, the identity of the shareholder, the owner of the initial firm and the buyer, the time at which the transfer takes place (after investigations have begun, after the initiation of the formal investigation procedure or after adoption of the final decision), and the commercial character of the transfer. Such considerations also apply when the business is transferred in the course of insolvency proceedings.
- (49) After initiating the procedure in this case and shortly before adopting its final decision, the Commission learnt that the bankruptcy administrator had sold SMI's assets to MD & D on 14 July 1999. The object and effect of this move may be to place these assets beyond the scope of the Commission decision. This would be in contradiction with the Commission's duty to prevent frustration of its decision and with the duty of Member States to ensure that the obligations imposed by a Commission decision are complied with.
- (50) In the present case, SMI's assets were sold to MD & D together with SIMI's shares. The assets sale was necessary in order to allow MD & D to take over SIMI's activities since SIMI had always made use of SMI's assets, thereby benefiting from the aid granted formally to SMI.
- (51) The assets sale took place shortly after 28 June 1999, when the same administrator sold 80 % of the shares of MD & D to Megaxess and the remaining 20 % to employees of MD & D. It is therefore evident that all these transactions are closely connected and that they amount to a transfer of all the assets owned by SMI and used by SIMI to MD & D's new shareholders, in such a way as to shelter them from the recovery of illegal State aid. Under these circumstances, the respective prices paid for MD & D's shares, on the one hand, and for SMI's assets and SIMI's shares, on the other, have no bearing on the assessment of the overall transaction.
- (52) The transactions of 28 June and 14 July 1999 took place during the investigation procedure. In other words, the assets of the parent company and the shares of its wholly owned subsidiary were transferred to a wholly owned subsidiary of the subsidiary during the current procedure and pending a decision on the aid granted to the parent company and to its subsidiary. Therefore, Megaxess and the other buyers of MD & D, and of course MD & D itself, were perfectly aware of the existence of the present procedure and should, in any case, have taken it into account. They could have also asked the Commission to explain the possible consequences of its future decision for MD & D. Lastly, the Commission notes that the German authorities have expressly acknowledged in their letter of 7 February 2000 that the investigation procedure concerned not only SMI and SIMI, but also MD & D. Therefore, the Commission considers it necessary to make it clear in this decision that the term 'the recipient' encompasses not only SIMI and SMI but also MD & D and any other firm to which SMI's, SIMI's or MD & D's assets have been or will be transferred in order to evade the consequences of this decision.
- ## X. CONCLUSION
- (53) Taking the above facts into account, the Commission concludes that the grants amounting to DEM 64,8 million from the THA for SMI, the amount of DEM 70,3 million granted by the *Land* of Brandenburg to SMI, the DEM 4 million loan from the *Land* of Brandenburg to SIMI and the DEM 1 million grant from the BvS to SIMI are to be regarded as aid to which none of the exemptions in Article 87(2) and (3) applies.

- (54) The unlawful and incompatible aid paid to the firm must be recovered. This assessment is not affected by the fact that SMI was subject to bankruptcy proceedings. In addition, all the abovementioned aid must also be recovered from MD & D since it acquired SIMI's shares and SMI's assets were transferred to it in order to evade the consequences of this decision or, in any event, with such an effect in mind. Lastly, the aid must be recovered from any other undertaking to which SMI's, SIMI's or MD & D's assets have been or will be transferred in order to evade the consequences of this decision.
- (55) Recovery of the aid, including interest from the date on which it was paid, must be effected in accordance with German law ⁽¹⁹⁾.
- (56) According to the case law of the Court of Justice, the relevant national procedural provisions must not render impossible in practice the recovery required by Community law. Any procedural or other difficulties in implementing the measure do not have any influence on its lawfulness ⁽²⁰⁾.

HAS ADOPTED THIS DECISION:

Article 1

The grants totalling DEM 64,8 million made by the Treuhandanstalt and the loans totalling DEM 70,3 million granted by the *Land* of Brandenburg to System Microelectronics Innovation GmbH, Frankfurt/Oder i.G. (SMI), are incompatible with the common market.

Article 2

The grant of DEM 1 million made by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben and the loan of DEM 4 million granted by the *Land* of Brandenburg to System Micro-

electronic Innovation GmbH Frankfurt/Oder (SIMI), are likewise incompatible with the common market.

Article 3

1. Germany shall take all necessary measures to recover from the beneficiaries the aid referred to in Articles 1 and 2 unlawfully made available to them.
2. Recovery shall be effected in accordance with the procedures of national law. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.
3. For the purposes of this Article, the term 'beneficiaries' shall encompass SMI, SIMI and Mikroelektronik Design & Development GmbH (MD & D) as well as any other firm to which SMI's, SIMI's or MD & D's assets have been or will be transferred in order to evade the consequences of this decision.

Article 4

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

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 April 2000.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁹⁾ Commission letter to the Member States of 4.3.1991 (SG(91) D/4577); see also Case C-142/87 Belgium v Commission [1990] ECR I-959.

⁽²⁰⁾ See footnote 19 (paragraphs 58 to 63).

COMMISSION DECISION

of 8 September 2000

amending Decision 96/301/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt

(notified under document number C(2000) 2531)

(2000/568/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

tary Measures Part 4: Pest Surveillance — Requirements of the Establishment of Pest-Free Areas.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, and in particular Article 16(3) thereof,

Whereas:

- (1) Where a Member State considers that there is an imminent danger of the introduction into its territory of *Pseudomonas solanacearum* (Smith) Smith, the cause of potato brown rot, from a third country, it may temporarily take any additional measures necessary to protect itself from that danger.
- (2) In 1996, on the basis of continued interceptions of *Pseudomonas solanacearum* (Smith) Smith in potatoes originating in Egypt, several Member States — France, Finland, Spain and Denmark — adopted measures to implement a ban on potatoes originating in Egypt, with a view to ensuring more efficient protection against the introduction of *Pseudomonas solanacearum* (Smith) Smith from Egypt into their respective territories.
- (3) The Commission, by Decision 96/301/EC⁽²⁾, required Member States temporarily to take additional measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt. Furthermore as a result of unacceptable numbers of interceptions of *Pseudomonas solanacearum* (Smith) Smith on imports of potatoes originating in Egypt during the import season 1996/97 and 1997/98, Decision 96/301/EC was amended and further strengthened by Decision 98/105/EC⁽³⁾ and again by Decision 98/503/EC⁽⁴⁾, with the result that the import into the Community of potatoes originating in Egypt was banned except where the potatoes originated in pest free areas established in accordance with the FAO International Standard for Phytosanitary

- (4) Cases of *Pseudomonas solanacearum* (Smith) Smith continued to be found in imports of potatoes originating in Egypt during 1998/99, and as a consequence the import into the territory of the Community of tubers of *Solanum tuberosum* L. originating in Egypt was prohibited between 3 April 1999 and the beginning of the 1999/2000 import season.
- (5) The situation was then reassessed: Egypt informed the Commission that administrative measures had been strengthened to control the processes of harvesting, handling and packing of potatoes by the Egyptian Central Administration for Plant Quarantine. Moreover Egypt confirmed that improved measures were taken against exporters who violate Egyptian instructions on the export of potatoes destined to the EU.
- (6) Egypt also informed the Commission that they would apply a strict control system to ensure and maintain freedom within 'approved pest-free areas' from the above pathogen.
- (7) In the light of the Egyptian assurances, the Commission considered it appropriate, by Decision 1999/842/EC⁽⁵⁾, to remove the prohibition on the import of potatoes from officially approved 'pest-free areas' for the 1999/2000 import season.
- (8) During the 1999/2000 season, the situation improved significantly and only 1 interception of *Pseudomonas solanacearum* (Smith) Smith on imports of potatoes originating in Egypt was recorded. Thus it appears that restricting imports to potatoes originating in 'pest-free areas' is effective to prevent the introduction of this pathogen.
- (9) Therefore it should be possible to permit for the import season 2000/2001 the entry into the territory of the Community of *Solanum tuberosum* L. which originate in Egypt from pest-free areas which have been approved in Egypt in accordance with the said FAO International Standard.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ OJ L 115, 9.5.1996, p. 47.

⁽³⁾ OJ L 25, 31.1.1998, p. 101.

⁽⁴⁾ OJ L 225, 12.8.1998, p. 34.

⁽⁵⁾ OJ L 326, 18.12.1999, p. 68.

- (10) The Commission will ensure that Egypt makes available all technical information in relation to surveying and monitoring necessary for the approval of such 'pest-free areas' in accordance with the said FAO International Standard in order to enable the Commission to carry out the necessary assessment for its aforesaid action. Such technical information shall be sufficiently detailed to give evidence that the specific risk factors both in the delta and in the desert region are sufficiently addressed while establishing the approved PFAs in Egypt.
- (11) The effects of the emergency measures will be assessed continually, in the import season 2000/2001, and whereas possible consequences will be considered if it is established that the conditions laid down in this Decision have not been complied with.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health (hereinafter referred to as the Committee),

HAS ADOPTED THIS DECISION:

Article 1

Decision 96/301/EC is hereby amended as follows:

1. The text of Article 1a is replaced by the following:

'1. By way of derogation to Article 1, for the import season 2000/2001, the entry into the territory of the Community of tubers of *Solanum tuberosum* L. which originate in Egypt shall be permitted from the "pest-free areas" referred to in paragraph 2, provided that the measures applicable to tubers grown in these areas and laid down in the Annex of this Decision, are complied with.

2. The Commission shall establish whether "pest-free areas" have been approved in Egypt for the import season 2000/2001 in accordance with the "FAO International Standard for Phytosanitary Measures Part 4: Pest Surveillance — Requirements for the Establishment of Pest-Free Areas", in particular point 2.3 thereof, and shall compile a "list of approved pest-free areas", including identification details of the fields located in the above "approved pest-free areas". The Commission shall convey this list to the Committee and to the Member States.'

2. In Article 1b, '1999/2000' is replaced by '2000/2001'.
3. In Article 2, '30 August 2000' is replaced by '30 August 2001'.
4. In Article 4, '30 September 2000' is replaced by '30 September 2001'.
5. The text in point 1(c), third indent, of the Annex to the Decision, '1999/2000' is replaced by '2000/2001' and '1 December 1999' is replaced by '1 December 2000'.
6. In point 1(c), last indent, of the Annex to the Decision, '1 December 1999' is replaced by '1 December 2000'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 8 September 2000.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION

of 8 September 2000

for the purchase by the Community of foot-and-mouth disease antigens and for the formulation, production, bottling and distribution of vaccines against foot-and-mouth disease

(notified under document number C(2000) 2629)

(Text with EEA relevance)

(2000/569/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽¹⁾, as last amended by Regulation (EC) No 1258/1999 ⁽²⁾, and in particular Article 14 thereof,Having regard to Council Decision 91/666/EEC of 11 December 1991 establishing Community reserves of foot-and-mouth disease vaccines ⁽³⁾, as last amended by Decision 1999/762/EC ⁽⁴⁾, and in particular Articles 5 and 7 thereof,

Whereas:

- (1) In conformity with Decision 91/666/EEC, the purchase of antigens is a part of the Community action to establish Community reserves of foot-and-mouth disease vaccines.
- (2) By Commission Decision 93/590/EC of 5 November 1993 for the purchase by the Community of foot-and-mouth disease antigens within the framework of the Community action concerning reserves of foot-and-mouth disease vaccines ⁽⁵⁾, as last amended by Decision 2000/112/EC ⁽⁶⁾, arrangements were made for purchase of A5, A22 and O1 foot-and-mouth disease antigen.
- (3) By Commission Decision 97/348/EC of 23 May 1997 for the purchase by the Community of foot-and-mouth disease antigens and for the formulation, production, bottling and distribution of vaccines against foot-and-mouth disease ⁽⁷⁾, as last amended by Decision 2000/112/EC, arrangements were made for purchase of A22 Iraq, C1 and ASIA1 foot-and-mouth disease antigen.
- (4) By Commission Decision 2000/77/EC of 17 December 1999 for the purchase by the Community of foot-and-mouth disease antigens and for the formulation, production, bottling and distribution of vaccines against foot-and-mouth disease ⁽⁸⁾, arrangements were made for purchase of certain doses of A Iran 96, A Iran 99, A Malaysia 97, SAT1, SAT2 (East African and Southern African strains) and SAT3 foot-and-mouth disease antigen.

- (5) By Commission Decision 2000/494/EC ⁽⁹⁾ the Community assisted Turkey to control foot-and-mouth disease in Thrace by providing vaccine reconstituted from Community antigen stocks which have to be replaced.
- (6) Due to the disease situation, provisions must be made for the purchase by the Community of additional quantities and strains of foot-and-mouth disease antigens and their storage and for the formulation, production, bottling and distribution of vaccines against foot-and-mouth disease.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. The Community shall purchase as soon as possible the following strains of foot-and-mouth disease antigen:

- A Malaysia 97: 1 500 000 doses,
- SAT1: 1 500 000 doses,
- SAT2 (Southern Africa): 1 500 000 doses,
- SAT2 (East Africa): 1 500 000 doses,
- SAT3: 1 500 000 doses,
- ASIA1: 1 500 000 doses,
- O1 — Manisa: 1 500 000 doses,
- A22 — Iraq: 1 500 000 doses.

2. The Community shall make arrangements for the storage of antigen and the formulation, production, bottling and distribution of vaccines against foot-and-mouth disease produced from antigens referred to in paragraph 1.

3. The maximum cost of the measures referred to in paragraphs 1 and 2 shall be up to EUR 2 650 000.

4. The action referred to above shall be organised by the Commission before 31 December 2000.

Article 2

The measures mentioned in Article 1(1) and (2) shall be carried out by the Commission in cooperation with the supplier designated by call for tender.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19.⁽²⁾ OJ L 160, 26.6.1999, p. 103.⁽³⁾ OJ L 368, 31.12.1991, p. 21.⁽⁴⁾ OJ L 301, 24.11.1999, p. 6.⁽⁵⁾ OJ L 280, 13.11.1993, p. 33.⁽⁶⁾ OJ L 33, 8.2.2000, p. 21.⁽⁷⁾ OJ L 148, 6.6.1997, p. 27.⁽⁸⁾ OJ L 30, 4.2.2000, p. 35.⁽⁹⁾ OJ L 199, 5.8.2000, p. 85.

Article 3

1. To meet the objectives of Articles 1 and 2 the Commission shall conclude contracts without delay.

2. The Director General of the Directorate General for Health and Consumer Protection shall be authorised to sign the contracts on behalf of the European Commission.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 8 September 2000.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION
of 19 September 2000
on import licences in respect of beef and veal products originating in Botswana, Kenya,
Madagascar, Swaziland, Zimbabwe and Namibia

(notified under document number C(2000) 2610)

(2000/570/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1706/98 of 20 July 1998 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 715/90 ⁽¹⁾, and in particular Article 30 thereof,

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

Whereas:

- (1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.
- (2) The applications for import licences submitted between 1 and 10 September 2000, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.
- (3) The quantities in respect of which licences may be applied for from 1 October 2000 should be fixed within the scope of the total quantity of 52 100 tonnes.
- (4) This Decision is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems on importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽³⁾, as last amended by Directive 97/79/EC ⁽⁴⁾,

HAS ADOPTED THIS DECISION:

Article 1

The following Member States shall issue on 21 September 2000 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Germany:

- 1 000 tonnes originating in Botswana,
- 500 tonnes originating in Namibia;

United Kingdom:

- 500 tonnes originating in Botswana,
- 355 tonnes originating in Namibia,
- 30 tonnes originating in Swaziland,
- 2 000 tonnes originating in Zimbabwe.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of October 2000 for the following quantities of boned beef and veal:

— Botswana:	9 776 tonnes,
— Kenya:	142 tonnes,
— Madagascar:	7 579 tonnes,
— Swaziland:	2 853 tonnes,
— Zimbabwe:	1 585 tonnes,
— Namibia:	6 608 tonnes.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 19 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 215, 1.8.1998, p. 12.

⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.

⁽⁴⁾ OJ L 24, 30.1.1998, p. 31.