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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2010/2000
of 18 September 2000
further amending Regulation (EEC) No 3905/88 as regards definitive anti-dumping duties on
imports of polyester yarn originating in Taiwan and Turkey**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission after consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

- (1) By Regulation (EEC) No 3905/88 ⁽²⁾, which was further amended by Regulation (EC) No 1074/96 ⁽³⁾ the Council imposed a definitive anti-dumping duty on imports of polyester textured filament yarn originating in Taiwan and Turkey.

B. REQUEST FOR A REVIEW

- (2) A request for an interim review of Regulation (EC) No 1074/96 by which the Council further amended Regulation (EEC) No 3905/88 was received from LeaLea Enterprise Co. Ltd. (hereinafter referred to as 'LeaLea'), a Taiwanese exporting producer of the product concerned subject to the anti-dumping measures in force.
- (3) This request pursuant to Article 11(3) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'), claimed a change in circumstances on the basis of which the measures in force were established to justify the initiation of a review. According to the request, a better production efficiency that led to a lasting drop in production costs reduced LeaLea's normal value. At the same time, LeaLea's export prices have increased. LeaLea claimed that, therefore, the existing measures should be repealed insofar as they apply to it.

- (4) As the request contained sufficient prima facie evidence, the Commission, after having consulted the Advisory Committee, decided to initiate an interim review ⁽⁴⁾ of Regulation (EC) No 1074/96.

- (5) This interim review was limited in scope to the examination of dumping of LeaLea.

C. PROCEDURE

- (6) The period of investigation of dumping covered the period from 1 April 1998 to 31 March 1999 (hereinafter referred to as the 'investigation period').
- (7) The Commission officially advised the representatives of the exporting country of the initiation of the interim review and gave all the parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (8) A submission was received from The International Rayon and Synthetic Fibres Committee, i.e. the complainant in the original case.
- (9) The Commission services sent a questionnaire and received detailed information from LeaLea as well as from one of its related companies.
- (10) The Commission services sought and verified all information they deemed necessary for the purpose of a determination of dumping and carried out investigations at the premises of the following companies:
- LeaLea Enterprise Co. Ltd., Taipei, Taiwan
 - Solelytex Industrial Corporation, Taipei, Taiwan, i.e. producer related to LeaLea.
- (11) The interested parties were informed of the facts and considerations on the basis of which it was intended to recommend a further amendment of Regulation (EC) No 3905/88 and were given an opportunity to comment. No comment was received within the deadline set for that purpose.

⁽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 347, 16.12.1988, p. 10.

⁽³⁾ OJ L 141, 14.6.1996, p. 45.

⁽⁴⁾ OJ C 143, 21.5.1999, p. 4.

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

- (12) 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 the Council Regulation imposing definitive measures refers to CN codes 5402 33 10 and 5402 33 90 which were applicable for the product classification at the time the Regulation was published.
- (13) 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

- (14) As in the previous investigation, this investigation has shown that the PTY produced in Taiwan by LeaLea and sold on the Taiwanese 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 CALCULATION**1. Normal value**

- (15) As far as the determination of normal value is concerned, it was first established whether LeaLea'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 the domestic sales volume of LeaLea was at least 5 % of its total sales volume to the Community.
- (16) For each of the types sold by LeaLea on its domestic market and found to be directly comparable to the types exported 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.

- (17) For the 10 product types meeting the 5 % test, an examination was also made as to whether the domestic sales of each type 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 (i. e. four types). In cases where the volume of sales of a type not made at a loss represented at least 10 %, but not more 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 (i. e. five types).
- (18) For the product types where the volume of domestic sales was lower than 5 % of the volume exported to the Community (i. e. four types), or where the volume of domestic sales not made at a loss was less than 10 % (i. e. one type), domestic sales of these 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 LeaLea 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 LeaLea's domestic sales of the like product. The profit margin was based on LeaLea's domestic sales of the like product made in the ordinary course of trade.

2. Export price

- (19) 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 prices paid or payable.

3. Comparison

- (20) The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability, i.e. transport costs, insurance costs, handling, loading and ancillary costs, credit costs and commissions.

4. Dumping margin

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

- (22) The comparison as described above showed the existence of a *de minimis* dumping for LeaLea (i. e. a dumping margin of 0,3 %).

F. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (23) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be said to be of a lasting nature. In this respect, it was found that LeaLea's output had considerably increased as compared to the original investigation period (i. e. 1 July 1993 until 30 June 1994) due to the setting up in 1997 of its own production facilities for both polymers and partially oriented yarn. The use of partially oriented yarn produced in-house led to a significant drop in production costs and a related fall in domestic prices of PTY which, together with an increase in export prices, can, at least partly, be considered as a lasting change.

G. CONCLUSION

- (24) The investigation found that dumping during the investigation period has been reduced to a *de minimis* level due to a fall in the normal value and an increase in export prices. These changes are considered to be of a lasting nature. This is particularly the case in respect of the reduction in the normal value, which is due to a better production efficiency that led to a lasting drop in production costs.
- (25) In the light of the foregoing, the Council considers that the measures currently in force for LeaLea should be repealed.
- (26) Since the repeal of the measures concerns only LeaLea, and not Taiwan as a whole, LeaLea remains subject to the proceeding and may be reinvestigated in any subsequent review carried out for Taiwan pursuant to Article 11 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EEC) No 3905/88 shall be replaced by the following:

'Article 2

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

Country	Manufacturer	Rate of duty	Additional TARIC code
Taiwan	Nan-Ya Plastics Corporation, Taipei	10,6 %	8162
	Shingkong Synthetic Fibres Corp., Taipei	7 %	8163
	Zig Sheng Ind. Co., Ltd, Taipei	7 %	8163
	Far Eastern Textiles Ltd, Taipei	6,6 %	8894
	Chung Shing Textile Co., Ltd, Taipei	5,5 %	8161
	Tuntex Distinct. Corp., Taipei	0 %	8160
	Hsin Pao Textile Co., Ltd, Taipei	0 %	8160
	LeaLea Enterprise Co., Ltd, Taipei	0 %	8160
	Others	16,1 %	8164
Turkey	Sasa-Artificial and Synthetic Fibres Inc., Adana	8,7 %	8166
	Nergis-Tekstil Sanayi Ve Ticaret A.S., Bursa	8,3 %	8167
	Korteks-Mensucat Sanayi Ve Ticaret A.S., Bursa	7,6 %	8892
	Others	15,2 %	8170

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 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 2011/2000**of 18 September 2000****imposing a definitive anti-dumping duty on imports of fluorspar originating in the People's Republic of China**

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, 11(2) and 11(3) thereof,

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

Whereas:

to Article 11(2) of the basic Regulation, the Commission initiated a review ⁽⁴⁾.

- (5) At the same time, the Commission decided to initiate a review, on its own initiative, pursuant to Article 11(3) of the basic Regulation, limited in scope to the form of the duty. This decision was based on the grounds that the effectiveness of the measures to remove the injury appeared to be undermined given the continuous decline of the market share held by the Community industry following the imposition of measures, and that export prices of Chinese fluorspar appeared to have remained below the level of the minimum price.

A. PROCEDURE**1. Measures in force**

- (1) In March 1994, definitive anti-dumping measures were imposed by Council Regulation (EC) No 486/94 ⁽²⁾ in the form of a variable duty associated with a minimum price of 113,50 ECU per tonne on imports of fluorspar originating in the People's Republic of China ('the PRC'). The original investigation period covered the period from 1 January 1991 to 30 March 1992.

2. Initiation of the review

- (2) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of fluorspar originating in the PRC ⁽³⁾, in December 1998, the Commission received a request to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (the 'basic Regulation').
- (3) The request was lodged by Eurometaux, ('the applicant') acting on behalf of Community producers representing more than 95 % of the total Community production of fluorspar.
- (4) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant

3. Investigation

- (6) The Commission officially advised the applicant Community producers, the exporters and producers in the exporting country, the importers as well as their representative associations known to be concerned, and the representatives of the exporting country of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set out in the notice of initiation. In addition, a producer in South Africa, which was chosen as analogue country, was advised and received a questionnaire. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (7) All the applicant Community producers replied to the questionnaire. Nine Chinese exporters/traders, all of them members of the China Chamber of Commerce of Metal, Mineral, and Chemical Importers and Exporters ('CCCMC'), replied to the exporters/traders questionnaire. In addition, Cometals, New York, United States of America, an independent trader of Chinese fluorspar, and CMC Trading AG, Zug, Switzerland, completed the exporters/traders questionnaire.
- (8) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the likelihood of a continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

⁽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 62, 5.3.1994, p. 1.

⁽³⁾ OJ C 276, 4.9.1998, p. 2.

⁽⁴⁾ OJ C 62, 4.3.1999, p. 3, as amended by OJ C 120, 1.5.1999, p. 23.

- (a) applicant Community producers
 - Minersa, Bilbao, Spain;
 - Nuova Mineraria Silius, Cagliari, Italy;
 - Sachtleben Bergbau, Lennestadt, Germany;
 - Sogerem, Albi, France.

(b) users in the Community:

- Ausimont SpA, Milan, Italy;
- Bayer, Leverkusen, Germany;
- Fluorsid, Assemini, Italy;
- ICI Chemicals, Runcorn, United Kingdom

- (9) The investigation of continuation or recurrence of dumping covered the period from 1 March 1998 to 28 February 1999, in particular the months of March and September 1998 and February 1999, ('IP'). The examination of continuation or recurrence of injury covered the period from 1 January 1993 up to 28 February 1999 (hereinafter referred to as 'the period examined').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (10) The product under consideration is fluorspar of both acid and ceramic grade presented in filter cake or in powder form, with a content of 97 % or less of calcium fluoride (CaF_2) falling under CN code ex 2529 21 00 (TARIC code 2529 21 00 10), as well as with a content of more than 97 % of calcium fluoride (CaF_2) falling under CN code ex 2529 22 00 (TARIC code 2529 22 00 10) ('fluorspar'). In order to produce fluorspar, ore has to be mined, crushed and floated. The result is fluorspar with various calcium fluoride contents. Fluorspar in filter cake form and in powder form differs only in its moisture content, but is perfectly interchangeable in its use. Fluorspar is used essentially as a feedstock in the manufacture of hydrofluoric acid. This product is largely employed in the production of fluorocarbons, the basic acid products for aerosols, refrigerants and plastic foam; the production of aluminium fluoride used in the aluminium sector and the production of fluorine chemicals such as solvents. Since all types of fluorspar have identical or similar physical and chemical characteristics and identical uses, as in the investigation leading to the measures presently reviewed, they are considered as one single product.

2. Like product

- (11) As established in the previous investigation and confirmed in this investigation, fluorspar exported to the Community from the PRC, fluorspar manufactured and sold by the Community industry on the Community market and fluorspar produced and sold on the

domestic market of the analogue country, are identical or bear a close resemblance in their basic physical and chemical characteristics and in their uses.

This conclusion was reached taking into account the fact that fluorspar is mined and processed in similar ways, despite differences in methods of extraction, in CaF_2 content of the deposit and in production method which may vary from producer to producer world-wide and also within the Community. This is confirmed by the fact that both the Community producers and the Chinese exporters have a number of common customers.

- (12) In view of the above, the fluorspar exported to the Community, that sold on the domestic market in South Africa and that produced and sold on the Community market are to be considered a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

- (13) Despite the imposition of anti-dumping measures, the volume of imports of fluorspar from the PRC grew significantly during the period of enforcement of the measures going from 62 935 tonnes in 1995 to 155 200 tonnes in the year 1998, which covers the main part of the IP as defined in recital 9. It has been examined whether dumping continued or was likely to continue during the IP.

1. Normal value

(a) Analogue country

- (14) Normal value for imports from the PRC was based, in accordance with Article 2(7) of the basic Regulation, on data from a market economy third country. South Africa was selected in the original investigation as an appropriate market economy third country. It was, therefore, envisaged in the notice of initiation of this review to retain this country for the determination of normal value. One cooperating exporter/trader and several Community users of fluorspar submitted that South Africa was inappropriate on the grounds that the access to raw materials in South Africa is more difficult than in the PRC. In particular, it was submitted that mines of fluorspar in South Africa do not enjoy the same natural advantages as those in the PRC, and that as a result the extracting and processing costs are higher in South African mines than in Chinese mines; however, these parties did not argue that the circumstances prevailing during the previous investigation had changed. These parties suggested Mexico and Kenya as alternative analogue countries in which, it was claimed, the natural conditions were comparable to those prevailing in the PRC.

- (15) In this respect, the Commission sought cooperation in countries where fluorspar was known to be produced in sufficient quantities. In particular, a request for cooperation was addressed to one producer in South Africa, one in Morocco, four in Mexico, and one in Kenya. Only the South African producer cooperated fully. None of the other companies approached responded to the questionnaire within the time limit set for the response. The Kenyan producer submitted an incomplete response beyond the time-limit.
- (16) Given that cooperation of a representative South African producer was obtained, and as other countries were considered less appropriate as analogue countries, this country was retained as analogue country.
- (17) It should be noted in this respect that the South African cooperating producer had representative domestic sales (see recital 20), whereas the above mentioned Kenyan producer did not have any domestic sales.
- (18) The extraction method, quality and production process of the South African producer can be considered as similar to that of the Chinese producers, as established in the investigation that led to the measures under review. The alleged difference in access to raw materials between South Africa and the PRC has been duly treated as in the original investigation when comparing export price and normal value (see recital 26). All parties were duly informed on the final selection of South Africa as analogue country.

(b) Normal value determination

- (19) Normal value was established on the basis of the information provided by the cooperating South African producer. The name of the company is not disclosed herewith as its cooperation could only be secured provided a strict guarantee of confidential treatment of its identity would be granted by the Commission.
- (20) In accordance with Article 2 of the basic Regulation, it was first examined whether domestic sales of the product concerned were representative in relation to the Chinese exports to the Community. The domestic sales of the South African cooperating producer were found to represent slightly less than 5 % of the total Community imports from the PRC during the IP, while being generally above 5 % during the period of enforcement of measures. In these circumstances, the Commission considered that the domestic sales in South Africa were representative for Chinese exports to the Community. It was further established that domestic sales were made in the ordinary course of trade, i.e. domestic prices provided for the recovery of all cost. Therefore, the selling price in the domestic market was used as basis for the calculation of normal value.

2. Export price

- (21) In accordance with Article 17 of the basic Regulation, given that the number of Chinese exporters/traders, members of CCCMC, willing to cooperate was large, the investigation was limited to a sample of the export transactions made by nine of the above-mentioned exporters/traders. Their export transactions collectively accounted for a representative volume of exports, i.e. 70 % of the total imports into the Community of the product concerned from the PRC in 1998, the period for which data was available at the time of the selection of the sample.
- (22) As the Chinese exporters/traders sold for export to unrelated importers in the Community, the export price was established, in accordance with Article 2(8) of the basic Regulation, on the basis of the export prices actually paid or payable for export to the Community.
- (23) The cif Community border prices used were based on the prices declared by the cooperating US exporter/trader Cometals and the calculated prices resulting from the data submitted by the cooperating Chinese exporters/traders. Given that the cooperating Chinese exporters/traders sold to the Community on a fob ex-PRC basis, their cif values were determined by adding to those prices a reasonable amount for ocean freight and insurance as established on the basis of information submitted by cooperating Community users.

3. Comparison

- (24) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (25) Adjustments for differences in physical characteristics, transport, insurance, handling charge and credit were made.
- (26) Two adjustments, in respect of physical characteristics, deserve special consideration:
- Chinese exports of fluorspar to the Community market are made in wet form, whereas domestic sales made by the cooperating South African producer on the South African market are made in dry form. As in the previous investigation, an adjustment to the normal value was made and has been based on a reasonable estimate of the difference in market value between fluorspar presented in dry and wet form, i.e. cost of drying plus a reasonable amount for SG&A and profit.

— The investigation that led to the imposition of the measures under review established that the PRC enjoys natural advantages over South Africa by reason of the easier access to raw material which, in turn, has an impact on the purity of the product, and that in this respect certain costs are incurred in South Africa but not in the PRC. Accordingly, in order to offset this difference affecting price comparability, an adjustment to normal value was granted within the framework of the original investigation. Given that the natural advantage in question continued to exist, it was decided for the purpose of the present review to apply the same adjustment to the normal value as in the original investigation.

- (27) The cooperating Chinese exporters/traders claimed an adjustment for differences in levels of trade on the basis that the South African cooperating producer sells to users and the Chinese exporters/traders sell to importer/traders. After further analysis of the matter, it was concluded that there was a difference in levels of trade that merited an adjustment. Since the cooperating South African producer does not sell to the two different levels of trade under consideration, the adjustment was estimated, pursuant to Article 2(10)(d)(ii), as 10 % of its gross margin in accordance with the established practice of the Community Institutions.

4. Dumping margin

- (28) The comparison of the weighted average export price with the weighted average normal value showed still the existence of dumping during the IP, the dumping margin being equal to the amount by which the normal value exceeded the export price (expressed as a percentage of the cif import prices at the Community border, duty unpaid). However, the dumping margin found was lower than that established in the original investigation. It should also be noted that the reduced level of dumping is in essence due to the rise in export prices which reflect the Chinese export licence system and the form of the anti-dumping duty (i.e. the variable duty).

5. Conclusion on likelihood of continuation of dumping

- (29) Since dumping was found to exist during the IP, there is no reason to believe that dumping will not continue should the anti-dumping measures currently applicable be repealed.

D. LIKELIHOOD OF RECURRENCE OF DUMPING

1. Preliminary remarks

- (30) Further to the establishment of the continuation of dumping during the IP, the likelihood of recurrence of dumping, should the measures in question be removed, was examined. For that purpose, the following factors were examined: the evolution of Chinese export prices from 1993 to the IP, the impact of the export licence system introduced by the Chinese authorities in 1994 and the situation in the PRC as regards fluorspar production, production capacity and stocks.

2. Evolution of Chinese export prices to the Community

- (31) Parallel to the imposition of anti-dumping measures, export prices of Chinese fluorspar have progressively increased and have, on average and on a cif at Community frontier basis, come close to the minimum price of ECU 113,5 per dry metric tonne. In particular prices went from ECU 86 in 1993 to ECU 111 per dry metric tonne in 1998. This appears to indicate that the minimum price acted as an incentive for a price increase. Therefore, it is likely that the removal of the measures would reverse the situation and bring about a decrease of export prices.

3. The impact of the Chinese export licence system

- (32) The Chinese government introduced in 1994 a regulatory system consisting of an annual export quota combined with an export licence fee that covered a number of minerals including fluorspar. It should be noted that the introduction of the export licence system coincided with the imposition of anti-dumping duties on fluorspar, and the existence of anti-dumping duties on other minerals covered. The declared object was to stabilise the exported volumes of fluorspar and other minerals, as well as preventing export prices from falling under the pressure of internal competition. It actually had an impact in increasing the Chinese export prices to the Community. The quota was lifted in 1998, and reintroduced in 1999, while the export licence fee has remained in force since its introduction. Export licences are auctioned and awarded to the highest bidders or to the bidders that are above the average price.
- (33) The export licence system has been substantially modified several times since its introduction, including a temporary suppression of the quota system in 1998. Therefore, should prevailing conditions in international markets vary, or the scheme be perceived as not fulfilling its objectives, the Chinese administration might decide to amend the system or to remove it altogether without prior notice. This in turn might lead to decreasing export prices, in particular if the anti-dumping measures currently in force were repealed.

- (34) In any event, in view of the fact that the system described above is run autonomously by the authorities of the exporting country, it should not have any influence on the decision of the Community institutions whether or not to renew anti-dumping measures in the framework of an investigation carried out pursuant to Article 11(2) and 11(3) of the basic Regulation.

4. Chinese production, production capacity and stocks

- (35) No cooperation was obtained from any Chinese producer of fluorspar. The Chinese authorities and the CCCMC were informed that, in the absence of full cooperation, the responses provided by various Chinese parties concerned by the review would be considered to be deficient. No information was submitted within the time limit specified. The Commission had consequently, in accordance with Article 18 of the basic Regulation, to base its findings in respect of production, production capacity and stocks of Chinese fluorspar on the basis of the facts available. The information used stems from market research in the sector, information provided by a leading world trader of the product concerned as well as from public information available from other anti-dumping authorities.
- (36) In this respect an increase in Chinese production capacity of fluorspar and a build up of stocks have been found during the investigation which poses the risk of an increase of Chinese exports that could trigger a world-wide price depression. Indeed, Chinese production capacity of acid grade fluorspar has increased by 26 % between 1993 and 1998. The capacity increase has also led to a reduced utilisation of capacity that was estimated to be 59 % in 1998 for acid grade fluorspar. Large amounts of Chinese stocks were found to have been built up. This creates a situation that is particularly volatile given that Chinese production of acid-grade fluorspar represents around 52 % of world production and Chinese exports correspond to 38 % of world output.

5. Conclusion on recurrence of dumping

- (37) Taking into account that:
- exports of fluorspar to the Community originating in the PRC were found to be made at dumped prices during the IP,
 - the evolution of Chinese cif export prices largely depends on the existence of the anti-dumping measures under review and on an export licence system introduced and run autonomously by the PRC government,

- given the possible temporary nature of the export licence system, this system cannot be considered as a guarantee that current export prices will be maintained,
- Chinese producers of fluorspar have dramatically increased their production capacity, have built up enormous stocks and currently have a very low utilisation of capacity,

it is concluded that there is a likelihood that dumping will continue at largely increased quantities, should the measures in force be removed.

E. COMMUNITY INDUSTRY

- (38) The investigation has shown that the cooperating Community producers represent more than 95 % of the total Community production of the product concerned during the IP. Therefore, these producers constitute the Community industry within the meaning of Article 4(1) and 5(4) of the basic Regulation. Hereinafter they will be referred to as the Community industry.

F. ANALYSIS OF THE SITUATION IN THE COMMUNITY FLUORSPAR MARKET

1. Consumption in the Community Market

- (39) Apparent consumption was based on the combined volume of sales to unrelated parties into the Community market by the Community industry, the information on the volume of total imports from the PRC reported in the exporters/traders' questionnaires, imports from other third countries as reported by Eurostat as well as data from the national statistical offices of Austria, Finland and Sweden for the import data prior to 1995.
- (40) Sales of Community producers to related parties which transform fluorspar internally have been considered to take place in a captive market and were therefore excluded from the assessment of the Community consumption and, more generally, the situation of the Community industry. This conclusion was reached in view of the fact that the fluorspar intended for the captive market was not in competition with the fluorspar available in the Community and that the sales of that product to related parties were made at transfer prices.
- (41) The applicant claimed that some imports originating in Namibia and South Africa should be excluded from the calculation of consumption since these imports were made to users in the Community related to the exporters concerned and thus were made on a captive market.

(42) It was found that both countries exported the product concerned to both related and unrelated companies. Furthermore, the related parties in the Community purchased the product concerned also from unrelated sources. Given that no clear separation could be established between these two types of sales, it was therefore concluded that all imports should be included in the calculation of the Community consumption.

(43) On this basis, the consumption in the Community market evolved from around 284 300 tonnes in 1993, to 392 700 tonnes in 1994, to 400 900 tonnes in 1995, to 470 700 tonnes in 1996, to 491 800 tonnes in 1997 and to 496 200 tonnes in 1998. Consumption of fluorspar in the Community has increased by 75 % over the period considered, especially between 1993 and 1994 (+ 38 %) and between 1995 and 1996 (+ 17 %). This increase in consumption is linked to the developments of the demand for aluminium and the increasing demand for fluorocarbons (refrigerants) as well as their specific fluorspar requirements. This increase is also attributable to the development of new downstream applications for fluorspar.

2. Imports from the country concerned

(a) *Import volume, share of the imports and market share of the imports concerned*

(44) The volume of imports of fluorspar originating in the PRC increased significantly from around 60 400 tonnes in 1993, to 62 900 tonnes in 1994, to 68 500 tonnes in 1995, to 109 300 tonnes in 1996, to 128 800 tonnes in 1997 and to 155 200 tonnes in 1998. Chinese imports of fluorspar into the Community have continuously increased during the period considered by about 157 %, growing at a higher pace than the Community consumption.

(45) The share of imports from the PRC of the total imports of fluorspar into the Community has fluctuated between 26,7 % and 50,6 %. The highest import share was reached in the IP.

(46) The share of the Community market held by the imports from the PRC developed from 21,3 % in 1993, to 16 % in 1994, to 17,1 in 1995, to 23,2 % in 1996, to 26,2 % in 1997 and to 31,3 % in 1998. This is equivalent to an overall increase of 10 points over the period examined. The decrease in market share in 1994 and 1995 can be explained by both the introduction of the anti-dumping measures in March 1994 and the Chinese export licence system introduced in April 1994.

(b) *Price evolution and price behaviour of the imports concerned*

(i) *Price evolution*

(47) According to the exporters/traders' questionnaire replies it was found that the prices of Chinese fluorspar, have

increased by 29 % between 1993 and the IP to reach a level on a cif Community frontier basis slightly below the minimum price of 113,5 euro/tonne. In particular, between 1993 and 1997, prices of Chinese fluorspar have continuously increased from 86,06 ECU/tonne to 114,58 ECU/tonne. The decrease in Chinese prices between 1997 and 1998 coincided with the elimination of the Chinese export quota which triggered a general decrease in Chinese export prices to all export markets.

(ii) *Price behaviour*

(48) In order to examine the price behaviour of Chinese imports during the IP, a price comparison was made on the basis of the average sales prices of the Community industry and the average sales price of the cooperating Chinese exporters/traders and non-EC traders to unrelated importers in the Community adjusted to the same level of trade.

(49) Chinese prices during this time period were lower by a margin of around 12 % than those of the Community industry. It should be noted that the undercutting margin in the previous investigation amounted to 41 %.

3. Economic situation of the Community industry

(a) *Production*

(50) The production of the Community industry increased by 32 % over the period examined going from around 276 000 tonnes in 1993 to around 363 800 tonnes in 1998. A peak of around 372 300 tonnes was reached in 1995.

(b) *Production capacity*

(51) The production capacity of the Community industry was calculated on the basis of the flotation capacity, which represents the bottleneck of the fluorspar production. It went from 518 000 tonnes in 1993 to 502 000 in 1998, representing a decrease of 3 % during the period examined.

(c) *Capacity utilisation*

(52) The capacity utilisation of the Community industry increased from 53 % in 1993 to 60 % in 1994, to 72 % in 1995, to 68 % in 1996 and 1997, and to 72 % in 1998. The low levels of 1993 and 1994 can be explained by the effects of the dumped imports as established in the previous investigation. It is only after 1994 that the anti-dumping measures started to have an effect allowing the Community industry to operate at higher capacity utilisation levels.

(d) Sales volume

- (53) The sales of the Community industry in the Community increased from around 120 000 tonnes in 1993 to around 189 000 tonnes in 1998. The increase in sales was in particular noticeable in 1995, when the Community industry increased its sales to 191 600 tonnes by decreasing its prices. This was done in order to maintain its share of the Community market.

(e) Market share

- (54) The Community industry's share of the Community market decreased from 42,1 % in 1993 to 38,1 % in 1998, with a peak in 1995. The market share of 47,8 % attained in 1995 corresponds to a general decrease in imports into the Community that year which was the result of low prices charged by the Community industry to the detriment of its profitability. After 1995, the market share decreased regularly, dropping by 4 percentage points compared to 1993.

(f) Price development

- (55) The average price for sales of fluorspar of the Community industry in the Community market decreased between 1993 and 1995 and increased globally between 1995 and 1998 with a peak in 1997. The low price level in 1995 corresponds to the strategy of the Community industry outlined above of trying to maintain market share by decreasing its price level. Between 1995 and 1997, the price level of the Community industry increased, coinciding with the steady increase of both Chinese prices and demand of fluorspar. Between 1997 and 1998, prices of the Community industry slightly decreased, coinciding with a decrease in the Chinese import prices.

(g) Profitability

- (56) The profitability of the Community industry, expressed in percentage of the net sales went from -11,8 % in 1993 to 0,9 % in 1998.

(h) Employment

- (57) Employment of the Community industry went from 696 employees in 1993 to 689 employees in 1998.

(i) Stocks

- (58) The stocks of the Community producers decreased steadily from around 50 000 tonnes in 1993 to 28 400 tonnes in 1998 which is equivalent to a decrease of 43 %. Stocks represented 18 % of production in 1993 and 8 % in 1998.

(j) Investments

- (59) The total investments of the Community industry related to fluorspar increased from around 2,2 Mio ECU in 1993 to 9,4 Mio ECU in 1998.

(k) Conclusion

- (60) After the imposition of the anti-dumping measures in 1994, the situation of the Community industry improved overall. Continued efforts to rationalise the production process and new investments were made. However, although the situation has improved globally, the period in which the measures were in force has not allowed the Community industry to fully recover from the past effects of the dumped imports, especially as far as profitability is concerned. Indeed, the profitability of the Community industry remained negative between 1993 and 1997. As from 1997 the profitability of the Community industry improved, coinciding with an overall improvement in its sales prices in the Community and in its productivity. However, the Community industry is only just above break-even and its financial results remain clearly below what this type of industry could achieve under normal market conditions.
- (61) It is therefore concluded that although the situation of the Community industry has improved subsequent to the imposition of anti-dumping measures, it has not fully recovered and continues to be in a precarious situation.

4. Impact of the imports concerned

- (62) The investigation has shown that, despite the imposition of the anti-dumping measures in March 1994, Chinese exports to the Community market have continued to increase. Indeed, imports of fluorspar from the PRC increased by 157 % between 1993 and 1998 and their share of the Community market increased from 21,3 % to 31,3 %. Over the same period, sales of the Community industry increased by 58 % but they lost market share to the benefit of Chinese imports. Their share of the Community market decreased from 42,1 % to 38,1 %.
- (63) As regards prices, prices of the Chinese imports increased by 29 % over the period considered. This development in prices has to be seen in the light of the introduction of the anti-dumping measures in March 1994 and the Chinese export licence system introduced in 1994 which has contributed to the increase of the Chinese prices world-wide. The increase in prices is more significant as from 1996, coinciding with an improvement in the sales prices and a reduction of the losses of the Community industry.

- (64) In July 1998, the Ministry for Foreign Trade and Economic Cooperation (MOFTEC) eliminated the export quota maintaining only the licence fee. Coinciding with this, Chinese prices decreased, notably in the second half of 1998 and in 1999, showing the potential for a decrease in the prices of Chinese fluorspar in the absence of anti-dumping measures.

5. Import volumes and import prices of other third countries

- (65) The volume of fluorspar imports from other third countries increased by 46 % over the period examined from some 104 100 tonnes in 1993 to 151 700 tonnes in 1998. However, the market share of the above-mentioned countries decreased globally between 1993 and 1998 from 36,6 % to 30,6 %.
- (66) As regards the prices of these other exporting countries, it is noted that they increased by 20 % between 1993 and 1998. However, they remained on average lower than the Chinese prices with the exception of Morocco. In the case of Namibia and South Africa, the fact that average export prices are lower than the Chinese prices should be seen in the light of the fact that part of the exports to the Community are made to related Community users, likely at transfer prices. As regards Kenya and Mexico, their fluorspar prices appear to reflect a higher percentage of impurities, which command lower prices as they entail additional costs for the users.
- (67) On the basis of the above, it is considered that imports of fluorspar from other third countries have had a limited impact on the economic situation of the Community industry. Furthermore, it indicates that the Chinese exporters were able to significantly improve their position in the Community to the detriment not only of the Community industry, but also of other third countries.

G. LIKELIHOOD OF CONTINUATION OF INJURY

- (68) In order to assess the likely effect of the expiry of the measures in force, the following factors were examined: the situation of the fluorspar industry in the PRC, the behaviour of Chinese imports of fluorspar in other third countries and the likely consequences of the removal of the anti-dumping measures on the situation of the Community industry.

1. Analysis of the situation of the fluorspar industry in the PRC

(a) Production, production capacity, stocks

- (69) The applicant argued that production and production capacity of fluorspar in the PRC have substantially increased in the period considered, reaching levels well above annual world consumption. It was further argued

that if measures are removed, there is a threat of a further increase of dumped Chinese imports.

- (70) The Chinese exporters/traders claimed that it was very unlikely that exports of fluorspar to the Community would increase if measures were repealed given the increase in domestic consumption and the controls imposed by the Chinese authorities to production and production capacity.

- (71) A number of Community users claimed that the current level of production and production capacity in the PRC during the IP did not constitute a threat to the Community industry given that internal consumption was growing, third countries which did not traditionally purchase from the PRC, such as India, were starting to import Chinese fluorspar and it was expected that Chinese exports will focus on the United States of America (hereinafter referred to as the US) market, given the expected increased demand in that market.

- (72) According to the information available and as mentioned in recital 36, it should be noted that Chinese production and Chinese production capacity have steadily increased over the period examined. Indeed, the Chinese production capacity has increased from 1,9 million tonnes in 1993 to 2,4 million tonnes in 1998. The production has increased from 0,8 million tonnes to 1,4 million tonnes over the same years. At the same time, utilisation of capacity has been low, estimated at 59 % in 1998. Chinese domestic consumption is estimated to be at around 300 000 tonnes per year. Furthermore, during that same period, large amount of Chinese stocks have been built up.

- (73) With such a huge production capacity and the possible dropping of the Chinese licence system, there is a likelihood that large quantities, above the current imports volume, of dumped Chinese fluorspar, could revert to the Community market in the absence of anti-dumping measures.

(b) The Chinese export licence system

- (74) As already mentioned in recital 32, in April 1994, the Chinese authorities introduced an export licence system consisting of an annual export quota combined with an export licence fee on Chinese exports of fluorspar.

- (75) The system has undergone some changes over recent years: the export quota was lifted mid 1998, thus from the second half of 1998 only the export licence fee remained in force. At the beginning of 1999, the Chinese authorities reintroduced the quota. In 1998, the licence fee was about ECU 20,3 per tonne on average. This implies that if exports are made at a level of ECU 113,5, the actual export price without licence fee would be ECU 93,2.

- (76) The applicant claimed that the Chinese licence system could be abolished soon, raising fears that Chinese exports of fluorspar to the Community would increase at lower prices, should the anti-dumping measures be allowed to expire.
- (77) The Chinese exporters/traders argued that the licence system was intended to protect the resources of fluorspar and ensure stability and reliability in the fluorspar market and that there was no reason to assume that the system would be abolished soon. They further stated that, should the anti-dumping measures not be continued, the licence system would not be lifted.
- (78) It was considered that any presumption on the future development of the licence system is rather speculative. However, an analysis of the Chinese licence system shows that it has been substantially modified several times since its introduction, including a suppression of the export quota in 1998. Furthermore, the considerable amount of the Chinese licence fee shows the potential of Chinese fluorspar producers to sell at very low prices. In addition, the existence of an export licence system conceived and administered by a third country government for the purpose of the preservation of the resources cannot be relied on to conclude whether or not injurious dumping would continue.

(c) Evolution of Chinese export prices to the Community

- (79) The anti-dumping measures appear to have led to a progressive increase in the export prices practised by the Chinese exporters. Therefore, the removal of measures could reverse the situation and bring along a decrease of export prices as shown by the experience during 1998 and the considerable amount of the Chinese export licence fee.
- (80) Furthermore, a number of instances were found in 1998 where users purchased Chinese fluorspar below the minimum price and had therefore to pay anti-dumping duties.

2. Likely consequences of the removal of the anti-dumping measures on the situation of the Community industry

- (81) In the first place, it is noted that after the IP, one of the applicant Community producers ceased its fluorspar production when it lost its biggest customer to Chinese competition. The fact that this took place at a time when anti-dumping measures were in force, shows the potential of further injury to the Community industry should anti-dumping measures be eliminated.

- (82) Secondly, the investigation has shown that even with the anti-dumping measures in force, the prices of the Community industry were under pressure from the imports concerned. It is expected that in the absence of measures, prices, which the investigation has shown have been positively affected by the anti-dumping measures, would start to decrease and price undercutting would continue at higher levels. The potential for the decrease in Chinese prices is reflected in the amounts paid for the export licence fee, which amounted to ECU 20,3 on average in 1998. When deducting this amount from the export price, the undercutting margin could be estimated at 26,7 %. It is expected that such a price undercutting would result in severe losses to the Community industry.
- (83) Thirdly, it is expected that in the absence of anti-dumping measures large volumes of low priced dumped imports of fluorspar will be present on the Community market. Community producers will then likely lose further sales volume and market share to the Chinese exporters.

3. Conclusion on the likelihood of continuation of injury

- (84) Taking into account that:
- Chinese producers of fluorspar had dramatically increased their production capacity, had built up large stocks and had a very low capacity utilisation level,
 - the evolution of Chinese cif export prices has been considerably influenced by the anti-dumping measures in force and the existence of an export licence system imposed by the PRC government. This system cannot be considered as a guarantee that export prices will be maintained, in the absence of anti-dumping measures,
 - the prices that the Chinese exporters would charge in the absence of anti-dumping measures are potentially very low in particular if account is taken of the amount of the export licence fee paid, which indicates a strong likelihood of continuation of undercutting,
 - the situation of the Community industry is still precarious,
 - the fact that a number of instances have been found where the users in the Community have purchased Chinese fluorspar below the minimum import price,

it is concluded that the injury caused by Chinese dumped imports is likely to continue should the measures in force be removed and the situation of the Community industry could even further deteriorate in such an event.

H. COMMUNITY INTEREST

(85) According to Article 21 of the basic Regulation, it was examined whether it could be clearly concluded that maintaining the anti-dumping measures would not be in the Community interest. The determination of the Community interest was based on an appreciation of all the various interests involved taken as a whole, i.e. those of the Community industry, the importers as well as the users of the product concerned.

(86) It should be recalled that, in the previous investigation, the adoption of anti-dumping measures consisting of a minimum price was considered not to be against the interest of the Community. It should be noted that the present investigation is a review, which requires an analysis of a situation in which anti-dumping measures are already in place. Consequently, the timing and nature of the present investigation allows an assessment of any negative undue impact by the anti-dumping measures under review.

(87) In order to assess the likely impact of a continuation or non continuation of the measures, the Commission requested information in the form of questionnaires from all interested parties mentioned above. No importers replied to the questionnaire. Nine users replied to the questionnaires.

1. Interest of the Community industry

(88) The investigation has shown that the Community industry has benefited from the anti-dumping measures in place. In recent years, it has made considerable efforts to improve its productivity through rationalisation. Indeed, the productivity of the Community industry has increased by 33 % during the period examined and investments have been made constantly throughout that same period. The level of investments has been especially high in 1998, showing that this industry is viable and determined to remain in operation.

(89) However, the situation of the Community industry still remains difficult, notably in terms of profitability. In this context, any change in the commercial environment of the product concerned may have a significant adverse effect on the situation of the Community fluorspar industry.

(90) In view of the above, it was considered that without the continuation of the measures, the situation of the Community industry is likely to deteriorate. The continuation of the measures would, therefore, be in the interest of the Community industry.

2. Interest of the importers

(91) None of the unrelated importers replied to the questionnaires. The lack of cooperation could be an indication that the anti-dumping measures imposed in March 1994 have not had a significant adverse effect on importers. This can be supported by the fact that imports from the

PRC have continuously increased during the period examined and thus importers have been able to continue sourcing from the PRC.

(92) In view of the above, it is therefore concluded that a continuation of the measures would not lead to a deterioration of their economic situation in the future.

3. Interest of the user industry

(a) Preliminary remarks

(93) Fluorspar is a basic raw material for a large number of downstream products with very high value added. The first transformation step of fluorspar is the production of hydrofluoric acid (hereinafter referred to as 'HF') which is in turn used for the production of fluorocarbons (input for refrigerants, solvents, foamings), aluminium fluoride (for aluminium production) and other chemical derivatives.

(b) Data gathered from cooperating parties

(94) In 1998, the cooperating users purchased the totality of the imports of fluorspar from the PRC and around 80 % of the sales of fluorspar made by the Community industry.

(95) In 1998, these cooperating companies represented a turnover of 26 465 Mio ECU out of which 682 Mio ECU (2,6 %) related to fluorspar derivative applications. The fluorspar user industry is composed of small, medium size and large companies which made significant investments in 1998. The weighted average profitability of the fluorspar derivatives sector has increased from 3,7 % in 1996 to 6,3 % in 1998.

(96) The investigation has shown that fluorspar represents around 30 % of the total costs of production of HF and between 5 % to 20 % for HF derivatives.

(c) Arguments raised by the users

(i) Dependence on imports

(97) Some users claimed that the maintenance of the measures is not in the interest of the Community given that the users are dependent on imports in view of the limited production capacity available in the Community. In this respect they argued that the continuation of the anti-dumping measures could create a shortage of supply in the Community whereas the demand for fluorspar is rising due to a combination of technological and regulatory developments.

- (98) The Community industry did not dispute that imports from third countries are necessary to meet the Community demand for fluorspar. It claimed that the aim of anti-dumping measures is not to keep imports out of the Community but to ensure that these imports are made at fair prices.
- (99) The investigation has shown that the anti-dumping measures in force have not prevented the Chinese imports from entering the Community market. Indeed, between 1994 and 1998 imports from the PRC increased by 146 %, following an increase in demand for fluorspar. At the same time, the Community industry also increased its sales by 58 %.
- (100) In view of the above, the maintenance of the measures is not likely to prevent users from sourcing from the PRC, whereas the maintenance of a safety net will assist the Community industry in fully recovering from the injury suffered. From the above it is also unlikely that shortages of supply could occur should anti-dumping measures be maintained.

(ii) Competition disadvantages

- (101) Some users claimed that the anti-dumping measures imposed on Chinese fluorspar will lead to artificially high fluorspar prices in the Community and will result in the fluorspar users being placed at a competitive disadvantage as regards their Community competitors not sourcing from the PRC and also as regards their competitors internationally. This would result in a relocation of HF production to the US and the PRC where access to fluorspar would be cheaper with consequent loss of jobs, investments and profits in the Community in high value added industries which are vital for the future competitiveness of the Community fluorspar user industry.
- (102) The Community industry has argued that during the period of application of the measures, the downstream industry has made significant investments in the Community, contradicting the argument of relocation.
- (103) It was found that between 1996 and 1998, significant investments were made by the fluorspar user industry in the Community. Furthermore, prices of fluorspar in the US have been found to be higher than in the Community. Indeed during 1998, prices of Chinese imports into the US were 7 % higher than those of the Chinese imports in the Community market. Profits of the users have increased on average from 3,7 % in 1996

to 6,3 % in 1998 notwithstanding the anti-dumping measures in force.

- (104) As regards, more specifically, the relocation of the HF production in the PRC, it should be noted that HF is a highly dangerous product that is not suitable for travelling over long distances. This means in practice that the relocation of the HF production in the PRC would entail the relocation of the entire downstream industry in the PRC. Information provided by cooperating users relating to the period when anti-dumping measures were applicable seems to contradict the above. Indeed, users have made significant investments in the Community in downstream production during the period of application of anti-dumping measures. In view of the above, the relocation of the entire downstream industry in the PRC, should anti-dumping measures be allowed to continue, does not appear likely.
- (105) In view of the above, the maintenance of anti-dumping measures in their current form is not expected to cause any competitive disadvantages for the user industry.

(iii) Alternative sources of supply

- (106) A number of large fluorspar derivatives producers have to rely on imports of fluorspar. It was claimed by the users that there are significant impurities in non-Chinese fluorspar, i.e. in Kenyan and Mexican fluorspar, which explains why the main reliable source of supply is the PRC. Therefore, the continuation of the anti-dumping measures on imports from the PRC would hamper the access of users to good quality fluorspar.
- (107) Firstly, it should be noted that, despite the differences in purity, imports from other countries have increased during the period of application of anti-dumping measures, following an increase in demand. For example, imports from Mexico have been multiplied by six while imports from Kenya have increased by 57 %. The above appears to indicate that such fluorspar is suitable for certain downstream applications.
- (108) Secondly, the substantial increase of imports from the PRC indicates that the measures imposed in 1993 have not had the effect of excluding Chinese imports from the Community market but have resulted in an increase in prices.
- (109) It is therefore concluded that the continuation of the current anti-dumping measures is not likely to result in a reduced access to fluorspar of all qualities for users.

4. Conclusion on Community interest

- (110) Having analysed the various interests involved it has been found that the continuation of the anti-dumping measures is likely to result in a relatively stable price for fluorspar in the Community market, which during the period of application of the measures in force appeared not to have any negative effects on the economic situation of the users. Furthermore, leaving the Community industry without protection against the dumped imports could aggravate its precarious situation and endanger its viability.
- (111) In view of the above, it is concluded that there are no compelling reasons on grounds of Community interest against the maintenance of the anti-dumping measures in the present case.

I. INTERIM REVIEW

- (112) The Chinese exporters/traders argued that the initiation of the interim review, limited in scope to the form of the measures, was illegal since no evidence had been presented which would suggest the need to change the form of the measure. In this respect they argued that the request for a review according to Article 11(2) of the basic Regulation did not contain any information on the ineffectiveness of the anti-dumping measures in place.
- (113) It should be mentioned that the interim review limited to the form of the measures was initiated ex officio by the Commission. The initiation was based on the grounds that information contained in the request for a review according to Article 11(2) of the basic Regulation presented by the applicant contained indications of the undermining of the effectiveness of the measures concerned.
- (114) The investigation has shown that, although the Community industry lost market share during the period examined, the anti-dumping measure in its current form has allowed the Community industry to increase its prices and therefore to reduce its losses, in particular during the time period between 1996 and 1998. However, the duration of the measure has not allowed the Community industry to fully recover, namely in terms of profitability. Therefore, as far as the effectiveness of the measure is concerned, its current form appears to be appropriate to fully restore the situation of the Community industry and should consequently not be modified.
- (115) Finally, as far as users are concerned, the investigation has shown that the anti-dumping measures in their current form have not significantly affected the economic situation of users.

- (116) It is therefore concluded that the anti-dumping measures should be maintained in their current form.

J. ANTI-DUMPING MEASURES

- (117) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were granted a period within which to make representations subsequent to disclosure. Representations made after final disclosure were duly taken into consideration.
- (118) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping duty calculated on the basis of the minimum price of ECU 113,50 per dry metric tonne on imports of fluorspar originating in the People's Republic of China imposed by Regulation (EC) No 486/94 should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of fluorspar presented in filter cake or powder form, falling within CN code ex 2529 21 00 (TARIC code 2529 21 00 10) or CN code ex 2529 22 00 (TARIC code 2529 22 00 10), originating in the People's Republic of China.
2. The duty shall be equal to the difference between a minimum price of EUR 113,50 per tonne (dry net weight) and the net, free-at-Community-frontier price, before customs clearance.
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 minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community frontier price, before customs clearance.
4. 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*.

⁽¹⁾ OJ L 253 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1662/1999 (OJ L 197, 20.7.1999, p. 25).

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 2012/2000
of 21 September 2000**

**amending Annex 4 to Protocol No 9 to the 1994 Act of Accession and Regulation (EC) No 3298/94
with regard to the system of ecopoints for heavy goods vehicles transiting through Austria**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Austria, Finland and Sweden, and in particular Articles 11(2) and 16 of Protocol No 9 thereto,

Acting in accordance with the procedure laid down in Protocol No 9,

Whereas:

- (1) Protocol No 9 provides for a special regime concerning the transit of heavy goods vehicles through Austrian territory based on a system of Rights of Transit (ecopoints). The distribution scale of ecopoints to the Member States is given by Annex 4 to the Protocol.
- (2) Article 11(2)c of Protocol No 9 requires the Commission to adopt appropriate measures in accordance with paragraph 3 of Annex 5 thereto if the number of transit journeys through Austria requiring ecopoints in any year exceeds the reference figure established for 1991 by more than 8 %.
- (3) Paragraph 3 of Annex 5 to the Protocol lays down rules in order to establish a revised number of ecopoints that shall be made available in case the 1991 reference figure is exceeded.
- (4) The threshold established in the abovementioned Article 11(2)c was exceeded in 1999. The application of the calculation method laid down by paragraph 3 of Annex 5 will lead to a reduction of the overall number of available ecopoints.
- (5) Protocol No 9 must be applied in accordance with the fundamental freedoms established by the Treaty. It is therefore imperative to take measures which are capable of ensuring the free movement of goods and the full functioning of the internal market.
- (6) To impose the whole reduction of ecopoints solely in 2000 would have the disproportionate effect of stopping, to all intents and purposes, transit traffic through Austria. As a result, the reduction in the total number of ecopoints should be spread over the years 2000 to 2003.
- (7) Proportionality of the reduction of ecopoints also requires that those Member States who contributed most to the 8 % threshold being exceeded should have their allocations of ecopoints cut to ensure that the total reduction is met. This calls for a revision of the distribution key of ecopoints to the Member States.
- (8) To ensure the most efficient use of the available number of ecopoints, measures shall be undertaken further to encourage Member States to return unused ecopoints to the Commission for redistribution.
- (9) More intensive use of rail freight in combined transport, in particular of the 'Rollende Landstraße', is less environmentally damaging than road freight and has the potential of relieving the pressure on the number of ecopoints available. Its more efficient use, inter alia by reviewing the way in which places are reserved, should be urgently promoted. The effects of such efforts should be monitored.
- (10) Annex 4 to Protocol No 9 and Commission Regulation (EC) No 3298/94 ⁽¹⁾ should be amended accordingly.

⁽¹⁾ OJ L 341, 30.12.1994, p. 20. Regulation as amended by Commission Regulation (EC) No 1524/96 (OJ L 190, 31.7.1996, p. 13).

- (11) The Committee set up by Article 16 of Protocol No 9 did not deliver an opinion on the measures provided in the proposal. In accordance with Article 16(3) of Protocol No 9 the Commission shall without delay submit to the Council a proposal relating to the measures to be taken,

HAS ADOPTED THIS REGULATION:

Article 1

Annex 4 to Protocol No 9 to the Act of Accession of Austria, Finland and Sweden shall be amended as follows:

Year (1)	Percentage of ecopoints (2)	Ecopoints for EU-15 (3)
2000	48,5 %	11 428 150
2001	47,2 %	11 121 897
2002	43,5 %	10 250 317
2003	39,6 %	9 321 531'

Article 2

Regulation (EC) No 3298/94 is hereby amended as follows:

1. The second subparagraph of Article 6(2) shall be replaced by the following:

'In the circumstances provided for in Article 11(2)(c) of Protocol No 9, the number of ecopoints shall be reduced. The reduction shall be calculated using the method laid down in point 3 of Annex 5 to Protocol No 9. The reduction of ecopoints thus calculated shall be spread over several years.'

2. The following paragraph shall be added to Article 7:

'3. Each year the Commission shall note the number of ecopoints allocated to each Member State that, on 1 February, were valid for use the previous year and remain unused and were not returned to the Commission in accordance with paragraph 2. If the quantity not used is greater than 2 % of a Member State's allocation of ecopoints, the Commission shall subtract an equivalent quantity of ecopoints from the Member State's allocation for that year. This quantity of ecopoints shall be added to the EU Reserve for that year.'

3. The following Article shall be added:

'Article 14b

The Commission shall monitor the activities undertaken by Austria and other Member States to improve the level of service provided in combined transport across the Alps. A first report shall be produced by the Commission in 2001.'

4. Annex D is replaced by the following:

'ANNEX D

DISTRIBUTION OF ECOPOINTS 2000-2003

Country	2000	2001	2002	2003
I	3 789 047	3 688 365	3 401 686	3 076 080
D	3 548 525	3 453 294	3 182 073	2 898 150
A	1 519 487	1 476 911	1 355 433	1 274 152
NL	934 373	909 981	840 560	750 500
GR	455 749	443 800	409 792	366 994
DK	306 414	298 415	275 649	246 115
B	240 765	234 349	216 080	195 793

Country	2000	2001	2002	2003
UK	64 309	62 630	57 852	51 654
S	57 042	55 553	51 315	45 817
F	37 829	36 841	34 031	30 385
LUX	37 829	36 841	34 031	30 385
SF	34 986	34 072	31 473	28 101
E	9 079	8 842	8 167	7 292
IRL	7 566	7 368	6 806	6 077
P	3 026	2 947	2 722	2 431
RESERVE EU	382 105	371 688	342 547	311 605
TOTAL	11 428 150	11 121 897	10 250 317	9 321 531'

Article 3

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

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

Done at Brussels, 21 September 2000.

For the Council

The President

H. VÉDRINE

COMMISSION REGULATION (EC) No 2013/2000
of 25 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 26 September 2000.

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

Done at Brussels, 25 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 25 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	81,6
	999	81,6
0707 00 05	052	91,1
	628	145,8
	999	118,5
0709 90 70	052	69,2
	999	69,2
0805 30 10	052	64,6
	388	68,2
	524	55,6
	528	63,3
	999	62,9
0806 10 10	052	81,3
	064	83,1
	400	208,4
	999	124,3
	388	206,1
0808 10 20, 0808 10 50, 0808 10 90	400	53,0
	512	87,9
	800	206,3
	804	65,2
	999	123,7
0808 20 50	052	99,4
	064	58,0
	999	78,7
0809 30 10, 0809 30 90	052	137,2
	624	192,1
	999	164,6
0809 40 05	052	67,6
	060	69,5
	064	60,8
	066	82,4
	400	140,1
	624	172,0
	999	98,7

⁽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 2014/2000**of 25 September 2000****opening an invitation to tender for the refund for the export of common wheat to certain ACP States**

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 Commission 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) With a view to supplying the markets of the ACP countries, favoured partners of the Community, significant quantities of common wheat are required for the 2000/2001 marketing year. These markets are usually supplied on the basis of regular contracts to ensure stable prices for the ACP countries over a certain period. It is therefore necessary to issue a specific invitation to tender to ensure that users in certain ACP States have access to common wheat under conditions appropriate to the highly competitive situation on the world market.
- (2) The detailed procedural rules governing invitations to tender as regards the fixing of the export refund are laid down in Regulation (EC) No 1501/95. The commitments on the part of the tenderer include an obligation to lodge an application for an export licence. Compliance with this obligation may be ensured by requiring tenderers to lodge a tendering security of EUR 12 per tonne when they submit their tenders.
- (3) In order to ensure the smooth operation of the export tendering procedure it is appropriate to prescribe a minimum quantity to be tendered for and a time limit and form for the communication of tenders submitted to the competent authorities.
- (4) Provision should be made for a security lodgement scheme which ensures that the aims are met while avoiding excessive costs for the operators.
- (5) In addition to the conditions laid down in Article 32 of Commission Regulation (EC) No 1291/2000 ⁽⁵⁾, provision should be made for the release for consumption in the ACP State(s) laid down in this Regulation.

- (6) 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

1. Tenders shall be invited for the export refund concerning common wheat, as provided for in Article 4 of Regulation (EC) No 1501/95.
2. The common wheat must be exported to an ACP State or to several States within one of the groups of ACP States listed in Annex I.
3. The invitation shall remain open until 17 May 2001. During this period weekly awards shall be made, for which the quantities and the time limits for the submission of tenders shall be as prescribed in the notice of invitation to tender.

Article 2

A tender shall be valid only if it relates to an amount of not less than 1 000 tonnes for the ACP States listed in Annex I.

Article 3

The security referred to in Article 5(3a) of Regulation (EC) No 1501/95 shall be EUR 12 per tonne.

Article 4

1. Tenders shall only be admissible if:
 - the tenderer provides written proof from an official body in the ACP country of destination or a company having its overseas subsidiary in the said country, that he has concluded for the quantity in question a commercial supply contract for common wheat for export to an ACP State or to several States within one of the groups of ACP States listed in Annex I. That contract may cover only those deliveries to be made during the 2000/2001 marketing year for quantities traditionally supplied; such proof shall be lodged with the competent authorities at least two working days before the date of the partial invitation to tender against which the tender is to be submitted,
 - they are accompanied by an application for an export licence for the destination in question.

The proof provided for in the first indent shall also indicate the quality provided for in the contract, the time limit for delivery and the price terms.

The Member State shall send the Commission a copy of the said proof forthwith, for information.

⁽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 152, 24.6.2000, p. 1.

2. Tenders may not exceed the quantity laid down in the commercial contract submitted. The tenderers may not submit simultaneously several bids on the basis of the same contract.

When transmitting the tenders submitted, the Member States shall inform the Commission of the above, mentioning if necessary the names of the tenderers involved.

Article 5

1. The licence obliges the operator to export to the ACP State or States for which the licence application was submitted. However, for ACP States and up to a limit of 30 % of the quantity for which the licence was issued, the operator may effect his contract at another destination on condition that it belongs to the same group of countries listed in Annex I.

2. The export licences shall be issued as soon as the successful tenderers have been selected.

3. Article 9 of Regulation (EC) No 1291/2000 notwithstanding, the rights deriving from the licence referred to in this Article shall not be transferable.

Article 6

The obligation to export and import into one of the countries of destination listed in Annex I shall be covered by a security amounting to EUR 20 per tonne, lodged on issue of the export licence.

The amount of EUR 20 per tonne must be released within 15 working days of the date on which the successful tenderer supplies proof of entry for consumption into the ACP State or States referred to in Article 1(2). This proof shall be supplied in accordance with Articles 16 and 49 of Commission Regulation (EC) No 800/1999 ⁽¹⁾.

Article 7

1. Notwithstanding Article 23(1) of Regulation (EC) No 1291/2000, export licences issued under Article 8(1) of Regulation (EC) No 1501/95 shall, for the purpose of determining

their period of validity, be deemed to have been issued on the day on which the tender was submitted.

2. Export licences issued in connection with the invitations to tender pursuant to this Regulation shall be valid from their date of issue, as defined in paragraph 1, until the end of the sixth month following that of issue.

Article 8

1. The Commission shall decide, pursuant to the procedures laid down in Article 23 of Regulation (EEC) No 1766/92:

- to fix a maximum export refund, taking account in particular of the criteria laid down in Article 1 of Regulation (EC) No 1501/95, or
- to make no award.

2. Where a maximum export refund is fixed, the contract shall be awarded to the tenderer or tenderers whose bids are equal to or lower than the maximum refund.

Article 9

Tenders submitted must reach the Commission through the intermediary Member States, at the latest one and a half hours after expiry of the period for the weekly submission of tenders as specified in the notice of invitation to tender. They must be communicated in the form indicated in Annex II, to the telex or fax numbers in Annex III.

If no tenders are received, Member States shall inform the Commission of this within the time limit indicated in the preceding paragraph.

Article 10

The time limits fixed for the submission of tenders shall correspond to Belgian time.

Article 11

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, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 102, 17.4.1999, p. 11.

ANNEX I

Groups of ACP States signatories to the Lomé Convention

Group I	Group II	Group III
Mauritania	Chad	Seychelles
Mali	Central African Republic	Comoros
Niger	Benin	Madagascar
Senegal	Cameroon	Mauritius
Gambia	Equatorial Guinea	Angola
Guinea-Bissau	São Tomé and Príncipe	Zambia
Guinea	Gabon	Malawi
Cape Verde	Congo	Mozambique
Sierra Leone	Democratic Republic of Congo	Namibia
Liberia	Rwanda	Botswana
Côte-d'Ivoire	Burundi	Zimbabwe
Ghana	Burkina Faso	Lesotho
Togo		Swaziland
		Djibouti
		Ethiopia
		Eritrea

ANNEX II

Weekly tender for the refund for the export of common wheat to certain ACP States

(Regulation (EC) No 2014/2000)

Closing date for the submission of tenders (date/time)

1	2	3
Number of tenderer	Quantity in tonnes	Amount of export refund in EUR per tonne
1		
2		
3		
etc.		

ANNEX III

The only numbers to use to call Brussels [DG AGRI/C/1] are:

— Fax: — (02) 295 25 15,
— (02) 296 49 56,

— Telex: — 22037 AGREC B,
— 22070 AGREC B (Greek characters).

**COMMISSION REGULATION (EC) No 2015/2000
of 25 September 2000
prohibiting fishing for Northern prawn by vessels flying the flag of Sweden**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98 ⁽³⁾, as last amended by Commission Regulation (EC) No 1902/2000 ⁽⁴⁾, lays down quotas for Northern prawn for 2000.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.

- (3) According to the information received by the Commission, catches of Northern prawn in Norwegian waters south of 62° 00'N by vessels flying the flag of Sweden or registered in Sweden have exhausted the quota allocated for 2000. Sweden has prohibited fishing for this stock from 7 September 2000. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of Northern prawn in Norwegian waters south of 62° 00'N by vessels flying the flag of Sweden or registered in Sweden are hereby deemed to have exhausted the quota allocated to Sweden for 2000.

Fishing for Northern prawn in Norwegian waters south of 62° 00'N by vessels flying the flag of Sweden or registered in Sweden is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 7 September 2000.

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

Done at Brussels, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 341, 31.12.1999, p. 1.

⁽⁴⁾ OJ L 228, 8.9.2000, p. 50.

COMMISSION REGULATION (EC) No 2016/2000
of 25 September 2000
on the supply of milk products as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated milk powder to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

pursuant to Council Regulation (EC) No 1292/96 as Community food aid ⁽²⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 195/99 (A1); 398/98 (A2)
2. **Beneficiary** ⁽²⁾: Euronaid, PO Box 12, 2501 CA Den Haag, The Netherlands, tel. (31-70) 330 57 57; fax 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: India; A2: Mali
5. **Product to be mobilised:** vitaminised skimmed-milk powder
6. **Total quantity (tonnes net):** 180
7. **Number of lots:** 1 in 2 parts (A1: 30 tonnes; A2: 150 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (I.B.(1))
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (6.3, A and B.2)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (I.B.(3))
 - language to be used for the markings: A1: English; A2: French
 - supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the supply contract
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 30.10-19.11.2000
 - second deadline: 13.11-3.12.2000
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 10.10.2000
 - second deadline: 24.10.2000
20. **Amount of tendering guarantee:** EUR 20 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, Bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; Telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** ⁽⁴⁾: refund applicable on 20.9.2000, fixed by Commission Regulation (EC) No 1937/2000 (OJ L 232, 14.9.2000, p. 9)

LOT B

1. **Action No:** 232/99
2. **Beneficiary** ⁽²⁾: Euronaid, PO Box 12, 2501 CA Den Haag, The Netherlands, tel. (31-70) 330 57 57; fax 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Pakistan
5. **Product to be mobilised:** whole milk powder
6. **Total quantity (tonnes net):** 225
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (I.C.(1))
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (6.3, A and B.2)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (I.C.(3))
 - language to be used for the markings: English
 - supplementary markings: —
11. **Method of mobilisation of the product:** The Community market
The whole milk powder must be manufactured after the award of the supply contract
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 30.10-19.11.2000
 - second deadline: 13.11-3.12.2000
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 10.10.2000
 - second deadline: 24.10.2000
20. **Amount of tendering guarantee:** EUR 20 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, Bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; Telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** ⁽⁴⁾: refund applicable on 20.9.2000, fixed by Commission Regulation (EC) No 1951/2000 (OJ L 233, 15.9.2000, p. 19)

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50; fax (32-2) 296 20 05)
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of that Regulation is that referred to in point 22 of this Annex.
- The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32-2) 296 20 05).
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:
- health certificate issued by an official entity stating that the product was processed under excellent sanitary conditions which are supervised by qualified technical personnel. The certificate must state the temperature and duration of the pasteurisation, the temperature and duration in the spray-drying-tower and the expiry date for consumption,
 - veterinary certificate issued by an official entity stating that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious/contagious disease during the 12 months prior to the processing.
- (⁶) Notwithstanding OJ C 114 of 29.4.1991, point I.A(3)(c) is replaced by the following: 'the words "European Community".'
- (⁷) Shipment to take place in 20-foot containers, condition FCL/FCL.
- The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
- The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
- The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.
-

COMMISSION REGULATION (EC) No 2017/2000
of 25 September 2000
on the supply of white sugar as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated white sugar to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

pursuant to Council Regulation (EC) No 1292/96 as Community food aid ⁽²⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

White sugar shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 359/98 (A1); 390/98 (A2)
2. **Beneficiary** ⁽²⁾: EuronAid, PO Box 12, 2501 CA Den Haag, Nederland, tel.: (31-70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: India; A2: Mali
5. **Product to be mobilised:** white sugar
6. **Total quantity (tonnes net):** 80
7. **Number of lots:** 1 in 2 parts (A1: 20 tonnes; A2: 60 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾ ⁽⁹⁾: see OJ C 114, 29.4.1991, p. 1 (V.A(1))
9. **Packaging** ⁽⁷⁾ ⁽⁸⁾: see OJ C 267, 13.9.1996, p. 1 (11.2 A 1.b, 2.b and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (V.A(3))
 - Language to be used for the markings: A1: English; A2: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** sugar produced in the Community in accordance with Article (1.2) of Council Regulation (EC) No 2038/1999 (OJ L 252, 29.9.1999, p. 1) as follows: A or B sugar (points (e) and (f))
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 30.10-19.11.2000
 - second deadline: 13.11-3.12.2000
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 10.10.2000
 - second deadline: 24.10.2000
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, Bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; tlx: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** ⁽⁴⁾: refund applicable on 20.9.2000, fixed by Commission Regulation (EC) No 1937/2000 (OJ L 232, 14.9.2000, p. 9)

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50), fax (32-2) 296 20 05)
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
- The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32-2) 296 20 05).
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— health certificate.
- (⁶) Notwithstanding OJ C 114 of 29.4.1991, point V.A(3)(c) is replaced by the following: 'the words "European Community"'.
- (⁷) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁸) Shipment to take place in 20-foot containers, condition FCL/FCL.
- The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
- The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
- The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.
- (⁹) The rule provided at the second indent of Article 18(2)(a) of Commission Regulation (EEC) No 2103/77 (OJ L 246, 27.9.1977, p. 12), as last amended by Regulation (EC) No 260/96 (OJ L 34, 13.2.1996, p. 16), is binding for determination of the sugar category.
-

COMMISSION REGULATION (EC) No 2018/2000
of 25 September 2000
on the supply of fishery products as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated fishery products to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

under Council Regulation (EC) No 1292/96 as Community food aid ⁽²⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Fishery products shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 388/98
2. **Beneficiary** ⁽²⁾: EuronAid, PO Box 12, 2501 CA Den Haag, Nederland, tel.: (31-70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Mali
5. **Product to be mobilised:** Sardines (*Sardina pilchardus* Walbaum)
6. **Total quantity (tonnes net):** 54
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾: (Tinned headless sardines in vegetable oil, (2000 fishing; CN code 1604 13 19)
9. **Packaging** ⁽⁶⁾: see OJ C 267, 13.9.1996, p. 1 (14.0A, B and C.2)
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (VIII.A(3))
 - Language to be used for the markings: French ('Maquereaux' must be replaced by 'sardines')
 - Supplementary markings: 'Date d'expiration ...' (date of manufacture plus 2 years). In case the required markings cannot be printed on the tins, they must be printed either on an outer packaging of each tin or on self-adhesive labels fixed on the tins. The expiry date and the date of manufacture shall be printed on the tins and not on the self-adhesive labels.
11. **Method of mobilisation of the product:** the Community market
The product must originate from the Community.
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** Abidjan
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 30.10-19.11.2000
 - second deadline: 13.11-3.12.2000
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 10.10.2000
 - second deadline: 24.10.2000
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, Bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; tlx: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** —

Notes:

- (¹) Supplementary information: Torben Vestergaard (Tel. (32-2) 299 30 50), fax: (32-2) 296 20 05).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
 - health certificate (+ expiry date).
- (⁵) Notwithstanding OJ C 114, point VIII.A(3)(c) is replaced by the following: 'the words "European Community"'.
(⁶) Shipment to take place in 20-foot containers, FCL/FCL.

The supplier will be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

The supplier must submit to the beneficiary's agent a complete packing list of each container, specifying the number of metal canisters belonging to each action number as specified in the invitation to tender notice.

The supplier must seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.

COMMISSION REGULATION (EC) No 2019/2000

of 25 September 2000

amending Regulation (EC) No 1701/2000 opening an invitation to tender for the refund for the export of common wheat to all third countries

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) Commission Regulation (EC) No 2014/2000⁽⁵⁾, opens an invitation to tender relating to the export of common wheat to certain ACP States. The destinations laid down in Commission Regulation (EC) No 1701/2000⁽⁶⁾ should therefore be amended.
- (2) Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products⁽⁷⁾, as last amended by Regulation (EC) No 1557/2000⁽⁸⁾, requires that, where refunds vary according to destination, payment of the refund be made conditional, *inter alia*, on presentation of proof that the product has been imported in its unaltered state into the third country or into one of the third countries for which the refund applies. That proof is required under the invitation to tender opened by Regulation (EC) No 2014/2000 for exports of common wheat to certain ACP States. Exports to other third countries, under the invitation to tender opened by Regulation (EC) No 1701/2000 are carried out under less favourable conditions. The risk of fraud is therefore small. In order to avoid obstructing these exports to other third countries, proof of arrival should not be required. Certificates

drawn up by the competent authorities of the Member States stating that the products have left the territory of the Community on board a vessel suitable for sea transport may be considered to provide a sufficient guarantee.

- (3) 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

Regulation (EC) No 1701/2000 is amended as follows:

1. the title is replaced by the following:

‘opening an invitation to tender for the refund for the export of common wheat to all third countries except certain ACP States’;

2. Article 1(2) is replaced by the following:

‘2. The invitation to tender shall cover common wheat for export to all third countries except ACP States listed in Annex III.’;

3. the following Article 4a is added after Article 4:

Article 4a

Notwithstanding Article 16 of Commission Regulation (EC) No 800/1999^(*), proof of completion of customs formalities for release for consumption shall not be required for payment of refunds fixed in a contract awarded under this tender, in so far as the operator provides proof that a quantity of at least 1 500 tonnes of cereal product have left the customs territory of the Community on board a vessel suitable for sea transport.

(*) OJ L 102, 17.4.1999, p. 11.’;

4. the title of Annex I is replaced by the following:

‘Weekly tender for the refund for the export of common wheat to all third countries except certain ACP States’;

5. the following Annex III is added:

⁽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⁾ See page 23 of this Official Journal.

⁽⁶⁾ OJ L 195, 1.8.2000, p. 18.

⁽⁷⁾ OJ L 102, 17.4.1999, p. 11.

⁽⁸⁾ OJ L 179, 18.7.2000, p. 6.

'ANNEX III

Groups of ACP States signatories to the Lomé Convention

Group I	Group II	Group III
Mauritania Mali Niger Senegal Gambia Guinea Bissau Guinea Cape Verde Sierra Leone Liberia Côte-d'Ivoire Ghana Togo	Chad Central African Republic Benin Cameroon Equatorial Guinea São Tomé and Príncipe Gabon Congo Democratic Republic of Congo Rwanda Burundi Burkina Faso	Seychelles Comores Madagascar Mauritius Angola Zambia Malawi Mozambique Namibia Botswana Zimbabwe Lesotho Swaziland Djibouti Ethiopia Eritrea'

Article 2

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

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

Done at Brussels, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2020/2000**of 25 September 2000****amending Regulation (EEC) No 207/93 defining the content of Annex VI to Council Regulation (EEC) No 2092/91 and amending Section C of Annex VI to Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1437/2000 ⁽²⁾, and in particular Article 5(7) and (8) and Article 13 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 207/93 ⁽³⁾, as last amended by Regulation (EC) No 345/97 ⁽⁴⁾, has defined the content of Annex VI to Regulation (EEC) No 2092/91 and has laid down detailed rules for implementation of the provisions of Article 5(4) of that Regulation.
- (2) The detailed rules for the implementation of the regime of Member States' provisional authorisations pursuant to Article 5(3)(b) and 5(5a)(b) of Regulation (EEC) No 2092/91, laid down in Article 3 of Regulation (EEC) No 207/93, have to be reviewed in order to take into account certain difficulties currently experienced by Member States.
- (3) It has appeared that certain products in Section C of Annex VI are available in sufficient quantities in the Community from organic farming. Therefore those products should be deleted from Section C of Annex VI.
- (4) A period of grace should be allowed for certain withdrawn conventional products to permit the utilisation of existing stocks and the adaptation of the industry to the new requirements.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 14 of Regulation (EEC) No 2092/91,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EEC) No 207/93 is replaced by the following text:

'Article 3:

1. As long as an ingredient of agricultural origin is not included in Section C of Annex VI to Regulation (EEC) No 2092/91, that ingredient may be used according to the

derogation provided for in Article 5(3)(b) and Article 5(5a)(b) of that Regulation on the following conditions:

- (a) that the operator has notified to the competent authority of the Member State all the requisite evidence showing that the ingredient concerned satisfies the requirements of Article 5(4) of Regulation (EEC) No 2092/91; and
- (b) that the competent authority of the Member State has provisionally authorised, in accordance with the requirements of Article 5(4) of Regulation (EEC) No 2092/91, the use for a maximum period of three months after having verified that the operator has taken the necessary contacts with the other suppliers in the Community to ensure himself on the unavailability of the ingredients concerned with the required quality requirements; without prejudice of the provisions of paragraph 6, the Member State may prolong this authorisation maximum three times for seven months each; and
- (c) no decision has been taken, in accordance with the provisions of paragraphs 4 or 6 that a granted authorisation with regard to the ingredient concerned shall be withdrawn.

2. Where an authorisation as referred to in paragraph 1 has been granted, the Member State shall immediately notify to the other Member States and to the Commission, the following information:

- (a) the date of the authorisation and in case of a prolonged authorisation, the date of the first authorisation;
- (b) the name, address, telephone, and where relevant, fax and e-mail of the holder of the authorisation; the name and address of the contact point of the authority which granted the authorisation;
- (c) the name and, where necessary, the precise description and quality requirements of the ingredient of agricultural origin concerned;
- (d) the type of products for the preparation of which the requested ingredient is necessary;
- (e) the quantities that are required and the justification for those quantities;
- (f) the reasons for, and expected period of, the shortage;
- (g) the date on which the Member State sends this notification to the other Member States and the Commission.

The Commission and/or Member States may make this information available to the public.

⁽¹⁾ OJ L 198, 22.7.1991, p. 1.⁽²⁾ OJ L 161, 1.7.2000, p. 62.⁽³⁾ OJ L 25, 2.2.1993, p. 5.⁽⁴⁾ OJ L 58, 27.2.1997, p. 38.

3. Where a Member State submits comments to the Commission and to the Member State which granted the authorisation, which show that supplies are available during the period of the shortage, the Member State shall consider withdrawal of the authorisation or reducing the envisaged period of validity, and shall inform the Commission and the other Member States of the measures it has taken or will take, within 15 days from the date of receipt of the information.

4. At the request of a Member State or at the Commission's initiative, the matter shall be submitted for examination to the Committee referred to in Article 14 of Regulation (EEC) No 2092/91. It may be decided, in accordance with the procedure laid down in Article 14, that a granted authorisation shall be withdrawn or its period of validity amended, or where appropriate, that the ingredient concerned be included in Section C of Annex VI.

5. In case of a prolongation as referred to in paragraph 1(b), the procedures of paragraphs 2 and 3, will apply.

6. Where a Member State wants to ensure that an ingredient from conventional production can still be used after the third prolongation of the authorisation referred to in paragraph 1(b), this Member State shall, together with the notification for the third prolongation of a granted authorisation notify a request for inclusion of the ingredient in Annex VI, Section C. As long as no decision has entered into force in accordance with the procedure referred to in Article 14, in order to include the ingredient in Annex VI,

Section C or to withdraw the authorisation, the Member State may continue to prolong the authorisation for successive periods of seven months in due respect of the conditions of paragraphs 1, 2 and 3.'

Article 2

Section C of Annex VI to Regulation (EEC) No 2092/91 is replaced by the Annex to this Regulation.

Article 3

The following crop products may be used under the same conditions as products listed in Section C of Annex VI to Regulation (EEC) No 2092/91 until six months from entry into force of this Regulation:

Acerola (*Malpighia punicifolia*), cashew nuts (*Anacardium occidentale*), fenugreek (*Trigonella foenum-graecum*), papayas (*Carica papaya*), pine kernels (*Pinus pinea*), allspice (*Pimenta dioica*), cardamom (*Fructus cardamomi (minoris) (malabariensis)*), *Elettaria cardamomum*), cinnamon (*Cinnamomum zeylanicum*), clove (*Syzygium aromaticum*), ginger (*Zingiber officinale*), curry composed of: coriander (*Coriandrum sativum*), mustard (*Sinapis alba*), fennel (*Foeniculum vulgare*), ginger (*Zingiber officinale*), as well as fats and oils, whether or not refined but not chemically modified from palm, rape, safflower, sesame and soya.

Article 4

This Regulation shall enter into force on the seventh 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, 25 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'SECTION C. INGREDIENTS OF AGRICULTURAL ORIGIN WHICH HAVE NOT BEEN PRODUCED ORGANICALLY, REFERRED TO IN ARTICLE 5(4) OF REGULATION (EEC) No 2092/91

- C.1. Unprocessed vegetable products as well as products derived therefrom by processes referred to under definition 2(a) of the introduction of this Annex:
- C.1.1. Edible fruits, nuts and seeds:
- | | |
|---------------------------|--------------------------|
| acorns | <i>Quercus</i> spp. |
| cola nuts | <i>Cola acuminata</i> |
| gooseberries | <i>Ribes uva-crispa</i> |
| maracujas (passion fruit) | <i>Passiflora edulis</i> |
| raspberries (dried) | <i>Rubus idaeus</i> |
| red currants (dried) | <i>Ribes rubrum</i> |
- C.1.2. Edible spices and herbs:
- | | |
|-------------------|---|
| nutmeg | <i>Myristica fragrans</i> , until 31.12.2000 only |
| pepper green | <i>Piper nigrum</i> , until 30.4.2001 only |
| pepper (Peruvian) | <i>Schinus molle</i> L. |
| horseradish seeds | <i>Armoracia rusticana</i> |
| lesser galanga | <i>Alpinia officinarum</i> |
| safflower flowers | <i>Carthamus tinctorius</i> |
| watercress herb | <i>Nasturtium officinale</i> |
- C.1.3. Miscellaneous:
- algae, including seaweed, permitted in conventional foodstuffs preparation
- C.2. Vegetable products, processed by processes as referred to under definition 2(b) of the introduction of this Annex
- C.2.1. Fats and oils whether or not refined, but not chemically modified, derived from plants other than:
- | | |
|-----------|-------------------------------------|
| cocoa | <i>Theobroma cacao</i> |
| coconut | <i>Cocos nucifera</i> |
| olive | <i>Olea europaea</i> |
| sunflower | <i>Helianthus annuus</i> |
| palm | <i>Elaeis guineensis</i> |
| rape | <i>Brassica napus</i> , <i>rapa</i> |
| safflower | <i>Carthamus tinctorius</i> |
| sesame | <i>Sesamum indicum</i> |
| soya | <i>Glycine max</i> |
- C.2.2. The following sugars, starches and other products from cereals and tubers:
- beet sugar, until 1.4.2003 only
- fructose
- rice paper
- unleavened bread paper
- starch from rice and waxy maize, not chemically modified
- C.2.3. Miscellaneous:
- | | |
|-------------------|---|
| coriander, smoked | <i>Coriandrum sativum</i> until 31.12.2000 only |
| pea protein | <i>Pisum</i> spp. |
- rum, only obtained from cane sugar juice
- kirsch prepared on the basis of fruits and flavourings as referred to in section A.2 of this Annex
- mixtures of crops permitted in conventional foodstuffs preparation, and giving colouring and tasting qualities to confectionary, only for preparation of "Gummi Bärchen", until 30.9.2000 only
- mixtures of the following peppers: *Piper nigrum*, *Schinus molle* and *Schinus terebinthifolium*, until 31.12.2000 only

C.3.

Animal products:

aquatic organisms, not originating from aquaculture, and permitted in conventional foodstuffs preparation

buttermilk powder

until 31.8.2001 only

gelatin

honey

until 28.2.2001 only

lactose

until 31.8.2001 only

whey powder "herasuola"