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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 251/2001
of 7 February 2001
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 8 February 2001.

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

Done at Brussels, 7 February 2001.

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 7 February 2001 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	137,2
	204	39,3
	999	88,3
0707 00 05	052	106,4
	628	142,5
	999	124,5
0709 10 00	220	183,9
	999	183,9
0709 90 70	052	105,2
	204	63,7
	999	84,5
0805 10 10, 0805 10 30, 0805 10 50	052	59,4
	204	49,3
	212	36,2
	624	66,0
	999	52,7
0805 20 10	204	91,5
	999	91,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	66,4
	204	83,0
	600	91,8
	624	85,4
	999	81,7
0805 30 10	052	58,8
	600	59,4
	999	59,1
0808 10 20, 0808 10 50, 0808 10 90	400	100,3
	404	108,2
	720	118,9
	728	87,5
	999	103,7
0808 20 50	388	118,0
	400	100,6
	528	106,0
	999	108,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 252/2001**of 7 February 2001****fixing the maximum export refund for white sugar for the 26th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1531/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1531/2000 of 13 July 2000 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1531/2000 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the 26th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 26th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1531/2000 the maximum amount of the export refund is fixed at 44,189 EUR/100 kg.

Article 2

This Regulation shall enter into force on 8 February 2001.

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

Done at Brussels, 7 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 175, 14.7.2000, p. 69.

COMMISSION REGULATION (EC) No 253/2001**of 7 February 2001****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation 1527/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, and in particular Articles 1(2) and 3(1) thereof,

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 February 2001.

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 7 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 7 February 2001 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,70	—	0
1703 90 00 ⁽¹⁾	10,19	—	0

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 254/2001**of 7 February 2001****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular point (a) of the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Article 18 of Regulation (EC) No 2038/1999 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 2038/1999 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 19 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality; the latter is defined in Article 1 of Council Regulation (EC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar ⁽³⁾, as amended by Regulation (EC) No 3290/94 ⁽⁴⁾; furthermore, this refund should be fixed in accordance with Article 19(4) of Regulation (EC) No 2038/1999; candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995

laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽⁵⁾; the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.
- (5) In special cases, the amount of the refund may be fixed by other legal instruments.
- (6) The refund must be fixed every two weeks; whereas it may be altered in the intervening period.
- (7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 2038/1999, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 February 2001.

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

Done at Brussels, 7 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 89, 10.4.1968, p. 3.

⁽⁴⁾ OJ L 349, 31.12.1994, p. 105.

⁽⁵⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 7 February 2001 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	37,85 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	33,02 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	37,85 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	33,02 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4115
1701 99 10 9100	A00	EUR/100 kg	41,15
1701 99 10 9910	A00	EUR/100 kg	41,05
1701 99 10 9950	A00	EUR/100 kg	41,05
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4115

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 19 (4) of Regulation (EC) No 2038/1999.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

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

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

COMMISSION REGULATION (EC) No 255/2001**of 7 February 2001****imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 2238/2000 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 17 May 2000, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of integrated electronic compact fluorescent lamps originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated following a complaint lodged on 4 April 2000 by the European Lighting Companies Federation ('the complainant') on behalf of Community producers representing a major proportion of Community production of compact fluorescent lamps (integrated). The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient, after consultation, to justify the initiation of a proceeding.
- (3) The Commission officially advised the exporting producers and importers/traders known to be concerned as well as their associations, the representatives of the exporting countries concerned, users, suppliers and the complainant Community producers, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) A number of parties made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they

should be heard were granted the opportunity to be heard orally.

- (5) In view of the large number of Chinese exporting producers and Community importers listed in the complaint, the Commission decided to apply sampling in accordance with Article 17 of Regulation (EC) No 384/96 ('the basic Regulation'). In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers, as well as related and unrelated importers were requested to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period.
- (6) After examination of the information submitted by exporting producers and by unrelated importers in the Community, and due to the low level of cooperation from the Chinese exporting producers and the unrelated importers in the Community, it was decided that sampling was not necessary.
- (7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission services sent claim forms to the Chinese exporting producers known to be concerned. Claims for MET and IT were received from 10 exporting producers and two others claimed only IT.
- (8) The Commission sent questionnaires to parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the three complaining Community producers, five unrelated importers in the Community, 12 exporting producers with manufacturing facilities in the PRC, one related importer in the Community and one producer in the analogue country. The Commission sought and verified all the information it deemed necessary for the purposes of a preliminary determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

A. Exporting producers

— Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ C 138, 17.5.2000, p. 8.

- City Bright Lighting (Shenzhen) Ltd, Shenzhen
with the related exporter
Everbright Lighting (HK) Ltd, Hong Kong
- Deluxe Well Enterprises Ltd, Shenzhen
with the related exporter
Full Lam Development Ltd, Hong Kong
- Firefly Lighting Corporation Ltd, Xiamen
- Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen
with the related exporter
Neonlite Electronic & Lighting (HK) Ltd, Hong Kong
- Ningbo Super Trend Electron Co. Ltd, Ningbo
- Philips & Yaming Lighting Co. Ltd, Shanghai
with the related importer in the Community
Philips Lighting BV, the Netherlands
- Sanex Electronics Co. Ltd, Suzhou
- Shenzhen Zuoming Electronic Co. Ltd, Shenzhen
with the related exporter
Super Trend Lighting Ltd, Hong Kong
- Zhejiang Sunlight Group Co. Ltd, Shangyu

B. Analogue country producer

- Philips Mexicana SA de CV

C. Community producers

- Osram GmbH, München, Germany
- Philips Lighting BV, Eindhoven, Netherlands
- SLI Lighting Ltd, Shipley, United Kingdom

D. Unrelated importers/traders

- IDV GmbH, Langenselbold, Germany
- IKEA, Werne, Germany
- Omicron Lamps Ltd, Arlesey, United Kingdom
- Panda Trade SA, Gonesse, France
- SML Europa-Contact, Buchholz, Germany.

- (9) The investigation of dumping and injury covered the period from 1 January 1999 to 31 March 2000 ('investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 1996 to the end of the IP ('period under consideration').

2. Product concerned and like product

(a) Product concerned

- (10) The product concerned is electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot or integrated in the lamp foot ('the product

concerned'). The product concerned is currently classifiable within CN code ex 8539 31 90.

- (11) The industry usually refers to this product as 'compact fluorescent lamps (integrated)' or 'CFL-i'. They are designed to replace normal incandescent lamps and fit into the same lamp sockets as the incandescent lamps. The product concerned is produced in different types, depending on, *inter alia*, the lifetime, the wattage and the cover of the lamp. Despite these differences, all the types have the same basic physical and technical characteristics as well as the same uses. They are, therefore, considered as a single product for the purpose of this proceeding.

(b) Like product

- (12) The Commission found that CFL-i manufactured in the PRC and sold domestically as well as those exported to the Community and the product sold on the domestic market of the analogue country (Mexico), and the one manufactured and sold in the Community by the Community industry have basically the same physical and technical characteristics as well as the same uses. Therefore, these products are alike within the meaning of Article 1(4) of the basic Regulation.

- (13) Several exporting producers submitted that CFL-i produced in the Community could not be considered comparable to that produced and exported to the Community from the PRC on the grounds of the difference in the lifetime between these two products. It was alleged that the Community industry produce 'longlife' products with a lifetime above 8 000 hours while exports to the Community from China concerned only products with lifetimes up to 6 000 hours. However, the investigation has shown that all CFL-i are alike, as they have the same basic physical and technical characteristics and essentially the same uses. The detailed calculations of injury and undercutting margins were based on lamps with comparable lifetimes.

B. DUMPING

1. Normal value

(a) Market economy treatment

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

- (15) Claims for MET were received from 10 exporting producers. One of these companies later failed to submit its reply to the Commission's questionnaire and was considered as non-cooperating. The remaining nine MET claims were analysed on the basis of the five criteria required by Article 2(7)(c) of the basic Regulation. Two exporting producers fulfilled the required criteria:
- Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen, a wholly foreign owned company,
 - Philips & Yaming Lighting Co. Ltd, Shanghai, a joint venture between Philips Lighting BV (60 %) and a Chinese state-owned company (40 %). Despite the 40 % share holding by the state-owned company, it was found that sufficient safeguards existed which ensured that this company could not unduly influence the operation of the joint venture.
- (16) It was found that five exporting producers were operating under significant state influence either through direct management by state representatives or through constraints on business decisions such as limitations in selling on the domestic market. These companies were consequently unable to demonstrate that decisions regarding sales were made in response to market signals reflecting supply and demand and without significant State interference in this regard. The criterion set out in the first indent of Article 2(7)(c) of the basic Regulation was therefore not met and these exporters could not be granted market economy treatment.
- (17) Two other exporting producers did not have a clear set of basic accounting records, neither did they comply with international accounting standards and rules. These companies did not meet the criterion of accounting standards set out in the second indent of Article 2(7)(c) of the basic Regulation and therefore could not be granted market economy treatment.
- (18) In addition, the financial situation and production costs of two of these exporting producers, were significantly distorted due to the arbitrary valuation of assets. These companies did not therefore meet the criterion of absence of distortions from the former market economy system set out in the third indent of Article 2(7)(c) of the basic Regulation.
- (19) The exporting producers concerned and the Community industry were given an opportunity to comment on the above findings. Some exporting producers requested more details on the basis of which they were not granted MET. This information was provided and no further comments were received. The Advisory Committee was consulted and did not object to the Commission's conclusions.
- (b) *Determination of normal value for cooperating exporting producers granted MET*
- (20) For one exporting producer that was granted MET, which did have domestic sales, the Commission first determined whether the total volume of the domestic sales of the product concerned was representative in accordance with Article 2(2) of the basic Regulation, i.e. whether these sales represented 5 % or more of the sales volume of the product concerned exported to the Community.
- (21) The Commission then examined for this exporting producer whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community.
- (22) For those product types meeting the 5 % test, it was established whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.
- (23) Where, per product type, the volume of domestic sales above unit cost represented at least 80 % of sales and where the weighted average price was equal to or higher than the weighted average cost, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. All product types sold on the domestic market by this exporting producer were found to fall within this category.
- (24) As a result, normal value for this cooperating exporting producer was established on the basis of the domestic sales prices in accordance with Article 2(1) of the basic Regulation.
- (25) For the second exporting producer that was granted MET it was established that it did not have representative domestic sales of the product concerned. In the absence of domestic sales prices of the same product type by the other producer also granted MET, normal value was constructed. Constructed normal value was calculated in accordance with Article 2(3) of the basic Regulation by adding to this producer's cost of manufacturing a reasonable amount for selling, general and administration expenses ('SG & A') and for profit. The SG & A and profit were calculated on the basis of the

figures of the other exporting producer that was granted MET and had domestic sales in the ordinary course of trade, pursuant to Article 2(6)(a) of the basic Regulation. The SG & A figure was based on this producer's domestic sales made in representative quantities, while the profit figure was based on its domestic sales in the ordinary course of trade.

(c) *Determination of normal value for exporting producers not granted MET*

- (26) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that were not granted market economy treatment was established on the basis of the prices of the analogue country for products comparable to those sold by the Chinese exporting producers to the Community, per product type.
- (27) In the notice of initiation of this proceeding, the Commission proposed Mexico as an appropriate market economy third country for the purpose of establishing normal value for the PRC.
- (28) Objections to this proposal were raised by some of the exporting producers. The alternatives proposed were Brazil, China, Indonesia, Korea, Poland, Thailand, and the United Arab Emirates. The Commission contacted producers and their associations in Brazil, Indonesia, Korea and Thailand. The United Arab Emirates did not have domestic production of the product concerned during the IP. Only one producer in Korea initially agreed to cooperate, but then failed to provide the necessary information requested by the Commission.
- (29) One objection to the choice of Mexico, concerned the different voltage of operation of the products sold on the Mexican market when compared to those exported by the Chinese producers to the Community. In this respect the Commission's investigation confirmed that the voltage of the lamps sold on the Mexican and Community markets was different. Although the production process is the same, the electronic circuit and components of the ballast of the CFL-i were designed according to the voltage at which they need to operate. Moreover, the CFL-i sold on the Mexican market were more expensive to produce. However, it was possible for the Commission to quantify the impact of these differences in costs of production and sales prices because most of the exporting producers investigated produce the same product type of CFL-i to operate at different voltage levels. Therefore, it was provisionally

concluded that this difference could adequately be accounted for by adjusting the Mexican domestic sales prices downwards.

- (30) Another objection raised against the choice of Mexico, concerned the alleged lack of competition on the local market. However, the Commission found that Mexico had a strong competitive environment with almost 70 % of sales quantities being imported from various origins including from the PRC. Although the cooperating company is the sole local producer, other major world producers of the product concerned also sell directly on the Mexican market. Mexico's membership of NAFTA also contributes to create a competitive environment, which allows the cooperating producer to achieve reasonable but not excessive profits.
- (31) The cooperating Mexican producer was found to be related to a Community producer. In this respect it should be noted that this relationship does not, *per se*, render the information provided by the Mexican producer unreliable. It was found that the Mexican producer sold substantial quantities of the product concerned on the domestic market and that these sales were made in the ordinary course of trade. It was carefully checked whether the relationship in question had any distorting impact on costs of production and, consequently, on profitability of the Mexican producer concerned. No indication was found that this was the case.
- (32) In the light of the above, the Commission confirmed the choice of Mexico as an appropriate analogue country.
- (33) In order to establish whether sales in the Mexican market of the products comparable to those sold by the Chinese exporting producers to the Community were made in the ordinary course of trade, the domestic selling price was compared to the full cost of production (i.e. the cost of manufacturing plus SG & A expenses). Where the weighted average sales price was equal to or higher than the weighted average unit cost, and where 80 % or more of the volume of sales for a particular product type were at or above unit cost, normal value was established as the weighted average price of all the transactions. All types sold on the domestic market in the analogue country were found to fall within this category.
- (34) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating Mexican producer.

2. Export price

(a) *Individual treatment*

- (35) It is recalled that the abovementioned seven companies not fulfilling the MET criteria alternatively requested IT. Two other exporting producers claimed only IT. One of these companies later withdrew its claim for IT. The Commission sought and verified all the information they deemed necessary for the purposes of a determination of IT with regard to the eight companies in question. Six out of these eight exporting producers fulfilled the criteria on IT:

- Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou
- City Bright Lighting (Shenzhen) Ltd, in Shenzhen
- Deluxe Well Enterprises Ltd, Shenzhen
- Sanex Electronics Co. Ltd, Suzhou
- Shenzhen Zuoming Electronic Co. Ltd, Shenzhen
- Zhejiang Sunlight Group Co. Ltd, Shangyu.

- (36) The remaining two exporting producers did not fulfil the IT criteria. One was subject to constraints on its business decisions due to limitations on direct export sales, while the other faced excessive state intervention due to the exclusive management of the business by state representatives, thus presenting a high risk of circumvention. The exporting producers in this situation were:

- Firefly Lighting Corporation Ltd, Xiamen
- Ningbo Super Trend Electron Co. Ltd, Ningbo.

(b) *Determination of the export price*

- (37) The export prices for the cooperating exporting producers were established on the basis of the prices paid or payable for the product concerned when sold to the first independent customer in the Community in accordance with Article 2(8) of the basic Regulation.

- (38) However, one exporting producer made all Community sales through a related company in the Community. For this company the export prices were constructed on the basis of the prices at which the imported products were first resold to independent customers in the Community, in accordance with Article 2(9) of the basic Regulation. Adjustments were made for all costs incurred between importation and resale, including a reasonable margin for SG & A plus profit. A profit level of 5 % was determined on the basis of information on profits identified for the cooperating unrelated importers of the product concerned in the Community,

3. Comparison

- (39) For the purposes of a fair comparison between the normal value and the export price at an ex-works level due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of physical characteristics, level of trade, discounts and rebates, transport, insurance, handling, loading and ancillary costs, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

- (40) With regard to adjustments for differences in physical characteristics, it should be noted that Mexican production covered 17 product types, all of which were sold in the ordinary course of trade. For those product types exported by the Chinese exporting producers to the Community but not sold on the Mexican domestic market, normal values were determined by applying adjustments to the normal value of the closest-resembling product type sold on the Mexican market. Adjustments were made for differences in voltage, lifetime wattage and type of cover. To quantify these adjustments the Commission took into account information supplied not only by the producer in the analogue country but also by the exporting producers in the PRC. Cooperating exporting producers were invited to assess and comment on the impact of these differences both in terms of prices and costs.

- (41) One exporting producer that was granted market economy treatment claimed an adjustment for expenses incurred on domestic sales, such as provisions for bad debts and selling expenses. The exporting producer claimed that these expenses were not incurred when exporting to the Community. The claim was rejected because no evidence was found of how this alleged difference affected price comparability, as required by the basic Regulation.

4. Dumping margin

(a) *General*

- (42) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal values with the weighted average export prices, at the same level of trade. The provisional dumping margin was expressed as a percentage of the cif Community frontier price for the exporting producers concerned.

(b) *Dumping margins for the cooperating exporting producers granted MET/IT*

(43) The individual dumping margins are:

Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou	59,6 %
City Bright Lighting (Shenzhen) Ltd, Shenzhen	17,2 %
Deluxe Well Enterprises Ltd, Shenzhen	37,3 %
Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen	<i>de minimis</i>
Philips & Yaming Lighting Co. Ltd, Shanghai	61,8 %
Sanex Electronics Co. Ltd, Suzhou	21,2 %
Shenzhen Zuoming Electronic Co. Ltd, Shenzhen	6,0 %
Zhejiang Sunlight Group Co. Ltd, Shangyu	35,4 %

(c) *Country-wide dumping margin for other exporting producers*

(44) The investigation showed that the product concerned accounted for approximately 98 % of imports from the PRC into the Community under CN code 8539 31 90. This calculation was based on information supplied by the complainant and data collected during the on-spot verifications at the premises of the exporting producers in the PRC. It was thus estimated that the cooperation level was only about 30 %.

(45) The Commission calculated the country-wide dumping margin, on the basis of the export sales to the Community, made by the cooperating exporting producers not granted MET or IT. The Commission first established the weighted average of the dumping margins determined for these cooperating companies. With regard to the exporting producers that failed to reply to the Commission's questionnaire, that did not make themselves known or otherwise did not cooperate with the investigation, the determinations had to be based on facts available, in accordance with Article 18 of the basic Regulation. In view of the low level of cooperation and in order not to give a bonus for non-cooperation, it was concluded that the most appropriate information would be to use data relating to the most representative product types exported by the co-operating exporting producers not granted MET or IT. It was considered that none of the non-cooperating exporting producers dumped at a lower level. The country-wide dumping margin was established as the weighted average of the margins determined for these two groups of companies.

(46) In this respect it should be noted that the country-wide dumping margin was positively affected by the weighted average dumping margin established for the cooperating exporting producers that were not granted MET or IT but nevertheless replied to the Commission's questionnaire.

(47) The country-wide dumping margin for the PRC established on this basis is 74,4 %.

C. INJURY

(48) For the assessment of injury trends, the IP has been annualised (i.e. the data related to the 15-month period between January 1999 and March 2000 have been divided by 15 and multiplied by 12) where appropriate, in order to allow for comparisons with preceding calendar years.

1. Definition of the Community industry

(49) In the course of the proceeding Philips Lighting BV informed the Commission that it no longer wished to be treated as a member of the group of complainants. Therefore, data relating to Philips Lighting BV were not taken into account for the purpose of determining the Community industry and injury to the Community industry. It should be noted that the provisional conclusions concerning injury and causal link would not have been different had the data relating to Philips Lighting BV been taken into consideration.

(50) The two remaining cooperating Community producers account for more than 85 % of the Community production of CFL-i during the IP.

(51) Several exporting producers submitted that the complainants are themselves importing the product concerned from the PRC. In this respect, it emerged that the two remaining cooperating Community producers had indeed imported CFL-i from the country concerned and resold those imports. According to Article 4(1)(a) of the basic Regulation '[...] when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "the Community industry" may be interpreted as referring to the rest of the producers'. During the IP, on average 14,6 % of the total sales of CFL-i by these producers in the Community originated in the country concerned. However, despite these sales of imported CFL-i, the primary activity of these companies remained in the Community. Furthermore, the sales are explained by the need for the complainants to complete their product range so as to be able to satisfy demand, as well as by the attempt to defend themselves against low priced imports due to dumping. Consequently, the described trading activity of these producers did not affect their status as Community producers.

- (52) The two remaining Community producers are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (53) As the Community industry is thus constituted of only two producers, all figures relating to the latter had to be indexed for confidentiality reasons.

2. Community consumption

- (54) Community consumption was established on the basis of the sales volumes of the Community industry and of Philips Lighting BV on the Community market, Eurostat import figures concerning the volume of imports from the country concerned and from other third countries, duly adjusted where appropriate.
- (55) In this respect it was found that, as mentioned above, not only CFL-i are imported into the Community under CN code 8539 31 90, but other products as well. As a consequence, an estimate of the percentage of CFL-i in all products imported under this code was made for each country exporting CFL-i to the Community. These estimates were based on the questionnaire replies by cooperating importers that were found to trade the totality of the imports of CFL-i from certain countries, information provided by the complainant as well as by the Chinese exporting producers as verified by the Commission.
- (56) On this basis, Community consumption increased by 117 % between 1996 and the IP from 56,9 million units to 123,3 million units. Steep increases occurred in particular between 1997 and 1998 and between 1998 and 1999/IP.

3. Imports from the country concerned

(a) Volume and market share

- (57) The import volume of CFL-i originating in the country concerned increased by 261 % between 1996 and the IP, from 22,4 million units to 81,1 million units.
- (58) The market share of the imports originating in the country concerned increased from 39,5 % in 1996 to 65,8 % in the IP, an increase of 26,3 percentage points.

(b) Prices

(i) Price evolution

- (59) According to Eurostat data, the weighted average prices of imports originating in the country concerned decreased by 40 % between 1996 and the IP. More specifically, prices remained stable at EUR 1,5 in 1996 and 1997, but then fell sharply in 1998 and stayed at just below EUR 1 until the IP.

(ii) Undercutting

- (60) The Commission has examined whether the exporting producers of the country concerned undercut the prices of the Community industry during the IP. For this purpose, the exporting producers' prices have been duly adjusted to a cif level, whereas the Community producers' prices have been adjusted to an ex-works level. For the analysis of the price undercutting, the exported CFL-i as well as those manufactured in the Community by the Community industry, were grouped according to the lifetime, wattage and the type of cover of the lamp. Within each group, the weighted average ex-works prices charged by the Community producers were compared, at the same level of trade, to the weighted average export prices. Adjustments for differences in physical characteristics were made where appropriate.
- (61) One interested party claimed that the range of the product concerned has widened recently and that this fact would render a price comparison impossible.
- (62) In this respect it should be noted that, on the basis of the information gathered and verified, for most types exported to the Community from the country concerned comparable types produced in the Community were found.
- (63) The undercutting margins found on this basis expressed as a percentage of the Community producers' prices, are as follows:

Country: PRC	Price undercutting
Average undercutting margin	40,1 %
Undercutting margins of cooperating exporting producers only	Between 18,4 % and 49,6 %

4. Situation of the Community industry

(a) Production

- (64) The Community industry's production increased by 49 % between 1996 and the IP. The increase occurred steadily over the period under consideration.

(b) Capacity and capacity utilisation rates

- (65) The total production capacity of the Community industry also increased between 1996 and the IP, by 40 %. This was due to the installation of new production lines. The capacity utilisation increased by only 6 % during the same period and was at a low in 1998. At all times it remained below 70 %.

(c) *Inventories*

- (66) The stocks increased considerably between 1996 and the IP, by 52 %. Most of this increase was seen in 1999/IP. In the IP, stocks represented around 25 % of all sales.

(d) *Sales*

- (67) Between 1996 and the IP, the sales volume on the Community market of the product concerned produced in the Community increased by 16 %. It should be noted that in the same period the Community consumption increased by 117 %.

(e) *Market share*

- (68) Between 1996 and the IP, the Community industry lost almost half of its market share on the Community market (it was about 20 % in the IP), while in the same period overall consumption rose by 117 % and the market share of the imports originating in the country concerned increased by more than about 67 %, which represented a gain in market share of around 26 percentage points.

(f) *Growth*

- (69) While Community consumption increased by 117 % between 1996 and the investigation period, the sales volume of the Community industry increased by around 16 % and the volume of imports concerned by 261 %. The growing trend of the market was not followed by an increase of the Community industry's share of the market. On the contrary, its market share decreased by almost 50 % between 1996 and the investigation period, whereas the market share of imports concerned increased by 67 % during the same period.

(g) *Prices*

- (70) The Community producers' average net sales price of the product concerned produced and sold in the Community decreased by 30 % between 1996 and the IP. The fall was particularly marked as from 1998.

(h) *Profitability, return on investment, cash flow and ability to raise capital*

- (71) The weighted average profitability, expressed as profits/losses in relation to the net sales value of the products produced and sold in the Community deteriorated between 1996 and the IP. Profitability was highest in 1997 and decreased sharply to almost zero in the IP. The same deterioration occurred in the return on investment, expressed as profits/losses in relation to the net book value of investments.
- (72) The cash flow generated by the product produced and sold in the Community decreased sharply between 1997 and 1999. During the IP, it was still below a third of the 1996 level.

- (73) The Community industry was not found to be experiencing difficulties in their ability to raise capital on the basis of bank loans and financing from a mother company.

(i) *Employment, productivity and wages*

- (74) Employment of the Community industry increased between 1996 and 1998, however returned thereafter to the 1996 level (around 900), in an effort to reduce costs. Wages also increased in 1997 and then decreased in 1999/IP. Average productivity increased steadily over the period under consideration.

(j) *Investment*

- (75) The Community industry increased its investments between 1996 and the 1998, but reduced them subsequently. This development mainly relates to investments in new machinery and equipment carried out in order to increase capacity and to improve the efficiency and the productivity.

(k) *Magnitude of dumping margin*

- (76) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact is substantial.

5. Conclusion on injury

- (77) A deterioration of the situation of the Community industry during the period 1996-IP has been found, in particular in terms of reduced market shares, significant price undercutting, price depression and deterioration of profitability.
- (78) While the Community consumption expanded by 117 %, the Community industry could not benefit from this development. While its sales increased by only 16 % between 1996 and the IP, imports originating in the country concerned increased by 261 % during the same period.
- (79) In terms of the price development, the Community industry had to lower its sales prices continuously and significantly between 1996 and the IP. In addition, the investigation has shown that during the IP the imports concerned were made at prices clearly undercutting those of the Community industry. This development had a negative impact on the profitability of the Community industry, which substantially deteriorated as from 1997 to reach a very low level during the IP.
- (80) Several exporting producers submitted that the Community industry did not suffer injury. This argument was based on the situation shown by annual accounts and on the increase in production, sales and capacity utilisation experienced by the Community industry.

- (81) In respect of the first point, it should be noted that the annual accounts refer to all the activities of the companies concerned which includes products other than the product concerned. However, the investigation is focused on the activity related to CFL-i only, which represents less than 5 % of the total activity, and, as shown above, the Community industry suffered material injury as far as CFL-i are concerned.
- (82) As far as the second point is concerned, following the sharp increase in demand of the product concerned, between 1996 and the IP the Community industry indeed increased its production and the capacity utilisation. Although sales have risen, they did not increase to the extent that was expected given the growth in the market with the result of increasing inventories. Moreover other injury indicators such as prices, profitability, return on investment and cash flow have clearly deteriorated
- (83) The situation of the Community industry is thus found to have deteriorated to such an extent that it is provisionally concluded that the Community industry has suffered material injury in the IP.

D. CAUSATION

1. Introduction

- (84) According to Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of CFL-i originating in the country concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. Effect of the dumped imports

- (85) Between 1996 and the IP, dumped imports from the country concerned significantly increased in terms of volume (261 %) and market share (from 39,5 % to 65,8 %). As regards the export prices, they decreased substantially between 1997 and 1998 and continued to remain at these low levels. The increase of the imports from the PRC coincided with this significant price drop. Moreover, the prices of the Community industry were, during the IP, significantly undercut by those of the dumped imports. All this coincided with the deterioration of the situation of the Community industry in terms of price reductions, reduced market shares as well as a deteriorating profitability.
- (86) The above should be seen in the light of the fact that price is one of the main criteria for customers when purchasing CFL-i.

3. Effect of other factors

(a) Imports from other third countries

- (87) The investigation showed that Poland and Hungary were the only other third countries from which the product concerned was imported at a level exceeding *de minimis* into the Community. The import volume of CFL-i from these third countries, as well as their market share, indeed increased substantially, by 291 % and by around 6 percentage points, to around 15 % in the IP, respectively.
- (88) However, these imports were wholly undertaken by two companies that formerly manufactured the product concerned in the Community, but recently decided to relocate their production activities to other third countries. The investigation showed that, at least for one of the two companies that fully cooperated in the proceeding this decision was partly due to the aggressive price policy of the Chinese exporting producers.
- (89) One exporting producer claimed that one cause of the material injury suffered by the Community industry is that imports originating in Poland and Hungary undercut the prices of the Community industry.
- (90) However, on the basis of Eurostat data, the average prices of those imports were significantly higher than the prices of CFL-i originating in the PRC. Moreover, it emerged from the investigation that since the prices reported by Eurostat relate to all products imported under the relevant CN code, some of which are significantly cheaper than CFL-i (for instance, magnetic CFL), the actual prices for CFL-i would be even higher. For instance, during the IP, non-CFL-i items under the relevant CN code represented between 56 % and 79 % in volume.
- (91) Given the above, it was provisionally concluded that these imports did not break the causal link between dumping and injury.

(b) Further factors

- (92) The Commission also examined whether any other factors might have contributed to the injury suffered by the Community industry, having regard to, in particular, a possible contraction in demand, developments in technology and productivity of the Community industry, its export performance and its imports of the product concerned.
- (93) As to the development of demand given that the apparent consumption of CFL-i increased considerably during the period under consideration, the material injury suffered by the Community industry cannot be attributed to a contraction of demand on the Community market.

- (94) In relation to the developments in technology and the productivity of the Community industry, the Community industry has maintained and even increased sales levels between 1996 and the IP. It also carried out considerable investments and installed new production lines, thereby increasing its productivity in order to limit its losses in market shares and competitiveness. It was therefore provisionally concluded that these developments did not represent a cause of material injury.
- (95) Concerning the export performance, the Community industry has increased its sales in export markets, where it was likewise in competition with the exporting producers concerned, by 136 % between 1996 and the IP. It should be noted that export sales accounted for between 30 % to 40 % of the total sales of the Community industry during the IP. On this basis, the Community industry has shown itself to be competitive. The export activity cannot therefore have contributed to the injury suffered by the Community industry.
- (96) Several exporting producers submitted that the complainants are themselves importing the product concerned from the PRC thereby contributing to the injury suffered.
- (97) In this respect, these imports are explained by the need for the complainants to complete their product range so as to be able to satisfy demand. In addition, the volume of imports carried out by the Community industry represents only 4 % of the total volume of imports of the product concerned originating in the country concerned. It was therefore provisionally concluded that the imports of the product concerned originating in the country concerned and carried out by the Community industry are unlikely to have caused the injury and in any event were not such as to break the causal link between dumping and injury.

4. Conclusion on causation

- (98) The substantial increase in volume and market share of the imports originating in the country concerned as well as the considerable decrease in their sales prices and the level of price undercutting found during the IP coincided in time with the material injury suffered by the Community industry. In addition, no other factors were found which were such to break the causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.
- (99) In view of the above, it is provisionally concluded that the dumped imports caused the material injury suffered by the Community industry.

E. COMMUNITY INTEREST

1. Preliminary remark

- (100) In accordance with Article 21 of the basic Regulation, the Commission examined the issue of Community interest. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the

importers/traders and the users/consumers of the product concerned to the extent that the relevant parties submitted the information requested in this respect.

- (101) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, 38 importers/traders, one association of consumers of the product concerned (Bureau Européen des Unions de Consommateurs (BEUC)), two associations of traders and one association of producers. The Community producers and six importers/traders replied. BEUC did not reply to the questionnaires nor did it submit any other information.
- (102) On this basis it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures in this particular case.

2. Community industry

- (103) If measures are taken, the Community industry will be able to regain at least part of its lost market share with a consequent positive impact on profitability.
- (104) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions of the market. It obtained profit margins around 5 % to 8 % in 1996 and 1997, when the impact of dumped imports was less felt on the market, it made considerable investments and it had a good export performance.
- (105) The Community industry suffered material injury caused by dumped imports originating in the country concerned. If measures are not imposed, a further deterioration of the situation of the Community industry is probable. It is also likely that the remaining Community producers may decide to relocate the production outside the Community or to shut down plants in order to react to competition from dumped imports. This would entail a further loss of employment, including highly qualified research and development ('R & D') staff. Indeed, CFL-i are high-tech products which necessitate important R & D efforts. The price-depressive effect of the dumped imports would continue to frustrate all efforts of the Community industry to regain market shares and to reach a satisfactory margin of profitability. Not taking measures would jeopardise the new investments carried out, including in R & D, which are necessary in order to fully benefit from the expansion of the market and ensure the long-term presence of the industry.

3. Importers/traders

- (106) Questionnaire replies were received from six importers. After having sent its questionnaire reply, one importer decided not to cooperate further. Therefore five verification visits were carried out. The five co-operating unrelated importers represented 14,1 % of total imports of CFL-i from the country concerned during the IP. The number of effective staff in these companies related to the CFL-i business was less than one hundred.
- (107) In respect of two of these importers, representing together less than 1 % of total imports from the PRC and having around 25 employees, their business is very much dominated by CFL-i and therefore negative effects of the imposition of duties on these importers cannot be excluded. However, two other of these five importers also deal with a wide range of other products, while the fifth exclusively trades with an exporting producer for which no duties are imposed and they will therefore not be significantly affected by the duties.
- (108) In addition, it should be noted that, as mentioned, one Chinese exporting producer did not sell at dumped prices. Some importers also purchase CFL-i from Community producers and there are additional sources of supply from other third countries. Importers thus will be able to purchase from sources not dumping the product concerned.
- (109) On the basis of the above and given the large number of importers not cooperating in the proceeding, it is provisionally concluded that anti-dumping measures will not have such a negative impact on importers as a whole as to outweigh the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.

4. Users/consumers

- (110) Users of the product concerned are private households, industry and a large number of commercial establishments such as shops, restaurants etc. On average, users tend to buy from the cheapest source available and have therefore benefited from low prices for CFL-i in recent years.
- (111) With respect to possible consequences for users it has to be noted that BEUC did not reply to the questionnaire nor did it submit any other information.
- (112) Any significant price increase appears indeed unlikely as no or low duties are imposed for some Chinese exporting producers. Importers have so far practised considerable mark-ups, and alternative sources of supply from other third countries with no duties are available.

Therefore it is unlikely that importers would pass on the duties or any significant part thereof to their customers.

- (113) Rather, the imposition of anti-dumping measures does not rule out the possibility of a general price decrease in the medium term, as the market is expanding and as all producers will benefit from growing economies of scale, the benefits of which they can pass on to consumers.
- (114) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a decisive impact on users.
- (115) Several interested parties submitted that anti-dumping duties would run counter to the principles of the European energy policy, as they would increase the price and thus reduce the sales of energy saving lamps and incite users to buy more incandescent lamps that consume more energy.
- (116) In this respect, the Community interest analysis focuses on the economic impact on the economic operators concerned. It should be noted that, as pointed out above, it is unlikely that the price for CFL-i will increase significantly. Even if it would increase (in the unlikely event that the duties are fully passed on to the consumers), it is unlikely that consumers would be discouraged from buying CFL-i, as, given the economic benefits due to the energy saving effect, it would still be economically viable to buy CFL-i.

5. Competition and trade distorting effects

- (117) With respect to the effects of possible measures on competition in the Community, most of the exporting producers concerned, given their strong market positions, will probably continue to sell their products albeit at non-injurious prices. Indeed, the fact that for some of them no or very low duties are imposed shows that Chinese exporting producers are able to operate under fair market conditions. The imposition of anti-dumping duties on those exporting producers for which higher dumping and injury margins were established, is indeed likely to lead to a decrease in their sales volume and market share. However, given the overall range of duties imposed, it is likely that there will still be a significant number of major competitors on the Community market, including producers in Poland and Hungary. Users and consumers will continue to have the choice of different suppliers of the product concerned.

6. Conclusion on Community interest

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

F. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (119) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.
- (120) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.
- (121) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of comparisons, per product type, at the same level of trade, of the weighted average export price, with the corresponding non-injurious price of CFL-i sold by the Community industry on the Community market.
- (122) The non-injurious price has been obtained by deducting from the sales price of the Community industry its average actual profit and by adding a profit margin that may reasonably be reached in the absence of injurious dumping. In view of the financial situation of the Community industry in previous years (1996/97) and taking into account the need for long-term investments, a profit margin of 8 % has been found appropriate.
- (123) The difference resulting from the comparison between the weighted average export price, as established for the undercutting calculations, and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value. As for the calculation of the undercutting margins, this comparison was carried out by appropriate groups of types.

2. Provisional measures

- (124) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lowest margins in accordance with the lesser duty

rule. The duty should accordingly be set at the level of the injury margins found for Philips & Yaming, and the dumping margins found for the remaining exporting producers.

- (125) As regards the country-wide duty to be applied to the remaining exporting producers, it was determined at the level of the country-wide dumping margin because that was lower than the residual injury margin.
- (126) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (127) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

G. FINAL PROVISION

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

⁽¹⁾ European Commission
Directorate-General Trade
Directorates B and C
TERV 00/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot or integrated in the lamp foot falling within CN code ex 8539 31 90 (TARIC code 8539 31 90 91), and originating in the People's Republic of China.

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

Manufacturer	Rate of duty (%)	TARIC additional code
Changzhou Hailong Electronics & Light Fixtures Co., Ltd Luoyang, Changzhou, Jiangsu Changzhou 213104 People's Republic of China	59,6	A234
City Bright Lighting (Shenzhen) Ltd Shenzhen People's Republic of China	17,2	A235
Deluxe Well Enterprises Ltd Block 17-18, Hong Qiao Tao Industrial Zone Bao An Yuan, Shenzhen People's Republic of China	37,3	A236
Lisheng Electronic & Lighting (Xiamen) Co., Ltd, Xiamen People's Republic of China	0,0	A237
Philips & Yaming Lighting Co., Ltd 1805 Hu Yi Highway Malu Jia Ding District Shanghai 201801 People's Republic of China	39,2	A238
Sanex Electronics Co., Ltd Xin Su Industrial Area, Jiangsu Suzhou 215001 People's Republic of China	21,2	A239
Shenzhen Zuoming Electronic Co. Ltd Shenzhen, Guangdong People's Republic of China	6,0	A240
Zhejiang Sunlight Group Co., Ltd 129 Fengshan Road, Zhejiang Shangyu 213104 People's Republic of China	35,4	A241
All other companies	74,4	A999

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

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

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 7 February 2001.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 256/2001**of 7 February 2001****fixing, for January 2001, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽³⁾,

Having regard to Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽⁴⁾, as last amended by Regulation (EC) No 1642/1999 ⁽⁵⁾, and in particular Article 1(3) thereof,

Whereas:

- (1) Article 1(2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion rates applicable during the month of storage. That specific rate must be fixed each month for the previous month. However, in the case of the reimbursable

amounts applying from 1 January 1999, as a result of the introduction of the agrimonetary arrangements for the euro from that date, the fixing of the conversion rate should be limited to the specific exchange rates prevailing between the euro and the national currencies of the Member States that have not adopted the single currency.

- (2) Application of these provisions will lead to the fixing, for January 2001, of the specific exchange rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific exchange rate to be used for converting the amount of the reimbursement of the storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 into national currency for January 2001 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 February 2001.

It shall apply with effect from 1 January 2001.

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

Done at Brussels, 7 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 349, 24.12.1998, p. 1.

⁽⁴⁾ OJ L 159, 1.7.1993, p. 94.

⁽⁵⁾ OJ L 195, 28.7.1999, p. 3.

ANNEX

to the Commission Regulation of 7 February 2001 fixing, for January 2001, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector

Specific exchange rate		
EUR 1 =	7,46431	Danish kroner
	8,90035	Swedish kroner
	0,634435	Pound sterling

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 December 2000

concerning the approval of an Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the Generalised System of Preferences (Norway and Switzerland), providing that goods with content of Norwegian or Swiss origin shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement)

(2001/101/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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

Having regard to Article 66(4) and (5) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽¹⁾,

Whereas:

(1) To enable the Community, Swiss and Norwegian customs authorities to issue replacement Form A certificates of origin in order to facilitate, in particular, the movement of goods originating in developing countries which benefit from the generalised preferences granted by the European Community, Switzerland and Norway, an Agreement should be concluded between the Community, Switzerland and Norway under which they mutually recognise their components as originating in the developing countries concerned under the bilateral cumulation of origin rules.

(2) Further to the mandate given by the Council to the Commission on 29 March 1996, negotiations to that effect took place between the European Community, Switzerland and Norway and led to an Agreement in the form of an Exchange of Letters which it is in the Community's interest to approve,

Article 1

The Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement), is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) authorised to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Article 3

The President of the Council shall, on behalf of the Community, give the notification provided for by the Agreement in the form of an Exchange of Letters.

Done at Brussels, 5 December 2000.

For the Council
The President
C. PIERRET

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1602/2000 (OJ L 188, 26.7.2000, p. 1).

AGREEMENT

in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement)

A. Letter from the European Community

Sirs,

1. The European Community and Switzerland acknowledge that each Party applies similar rules of origin, for the purposes of the Generalised System of Preferences (GSP), with the following general principles:
 - definition of the concept of originating products based on the same criteria,
 - provision for regional cumulation of origin,
 - provisions for applying cumulation to materials which originate, in terms of the GSP-rules, in the European Community, Switzerland or Norway,
 - a percentage-tolerance for non-originating materials,
 - provisions for direct transport of goods from the beneficiary country,
 - provisions for the issue and acceptance of replacement certificates of origin Form A (hereinafter referred to as replacement certificates),
 - requirement for administrative cooperation, with the competent authorities in the beneficiary countries, on the matter of certificates of origin Form A.
2. The European Community and Switzerland recognise that materials, originating in the European Community, in Switzerland or in Norway (in terms of the GSP-rules), which, in a GSP-beneficiary country, have been processed and incorporated into a product originating in a GSP-beneficiary country, shall be considered as originating in that beneficiary country.

The customs authorities of the European Community, Switzerland or Norway shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification of the movement certificate EUR.1 corresponding to the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol 3 to the Agreement EC-Switzerland, in Annex B of the EFTA Convention or in Protocol 4 of the Agreement on the European Economic Area are to be applied *mutatis mutandis*.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonised System.

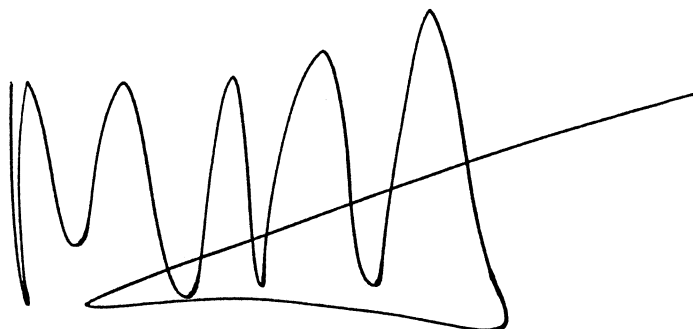
3. The European Community and Switzerland hereby undertake, by mutual agreement, to accept replacement certificates, issued by each other's customs authorities to replace certificates of origin Form A issued by the competent authorities of a GSP-beneficiary country, under the following conditions:
 - this procedure shall apply only to certificates of origin Form A, and not to any other document certifying origin,
 - the replacement certificate shall be issued at the re-exporter's written request,
 - the goods shall have remained under customs supervision in the European Community or in Switzerland, as the case may be, and shall not have been subject to operations other than unloading, reloading, splitting of consignments or any operation designed to preserve them in good condition,
 - the customs office, under whose control the goods are placed, shall write off the corresponding amount against the original certificate of origin Form A and enter on it the serial number(s) of the corresponding replacement certificate(s),

- the goods concerned shall not be subject to a derogation from the rules of origin,
 - the customs authorities of the European Community and of Switzerland shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification; in particular, and at the request of the country of destination, the authorities of the country in which the replacement certificate is issued shall carry out the procedure for the subsequent verification of the corresponding original certificate of origin Form A.
4. The replacement certificate shall be established in the following manner :
- the top right-hand box of the replacement certificate shall indicate the name of the intermediary country where it is issued,
 - box 4 shall contain the words 'replacement certificate' or 'certificat de remplacement', as well as the date of issue of the original certificate of origin Form A and its serial number,
 - the name of the re-exporter shall be given in box 1,
 - the name of the final consignee may be given in box 2,
 - all particulars of the re-exported products appearing on the original certificate must be transferred to boxes 3 to 9,
 - references to the re-exporter's invoice must be given in box 10,
 - the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of destination shall be taken from the original certificate of origin Form A. This box shall be signed by the re-exporter. A re-exporter who signs this box in good faith shall not be responsible for the accuracy of the particulars entered on the original certificate of origin Form A,
 - the customs office which is requested to perform the operation should note on the original certificate of origin Form A the weights, numbers and nature of the goods forwarded and indicate thereon the serial numbers of the corresponding replacement certificate or certificates. It shall keep the request of the replacement certificate as well as the original certificate of origin Form A for at least three years,
 - a photocopy of the original certificate of origin Form A may be annexed to the replacement certificate.
5. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application. In this case, the designated authorities of the other Party shall be notified in advance.
6. This Agreement shall enter into force on a mutually-agreed date, once the European Community and Switzerland have notified each other of the completion of the internal procedures required for the incorporation, into their respective GSP-schemes, of the provision for cumulation with each other's originating materials.

I would be grateful if your Government would confirm its agreement to the foregoing.

Done at Brussels, 14 December 2000.

For the Council of the European Union



B. Letter from Switzerland

Sirs,

I have the honour to acknowledge receipt of your letter which reads as follows:

1. The European Community and Switzerland acknowledge that each Party applies similar rules of origin, for the purposes of the Generalised System of Preferences (GSP), with the following general principles:
 - definition of the concept of originating products based on the same criteria,
 - provision for regional cumulation of origin,
 - provisions for applying cumulation to materials which originate, in terms of the GSP-rules, in the European Community, Switzerland or Norway,
 - a percentage-tolerance for non-originating materials,
 - provisions for direct transport of goods from the beneficiary country,
 - provisions for the issue and acceptance of replacement certificates of origin Form A (hereinafter referred to as replacement certificates),
 - requirement for administrative cooperation, with the competent authorities in the beneficiary countries, on the matter of certificates of origin Form A.
2. The European Community and Switzerland recognise that materials, originating in the European Community, in Switzerland or in Norway (in terms of the GSP-rules), which, in a GSP-beneficiary country, have been processed and incorporated into a product originating in a GSP-beneficiary country, shall be considered as originating in that beneficiary country.

The customs authorities of the European Community, Switzerland or Norway shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification of the movement certificate EUR.1 corresponding to the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol 3 to the Agreement EC-Switzerland, in Annex B of the EFTA Convention or in Protocol 4 of the Agreement on the European Economic Area are to be applied *mutatis mutandis*.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonised System.

3. The European Community and Switzerland hereby undertake, by mutual agreement, to accept replacement certificates, issued by each other's customs authorities to replace certificates of origin Form A issued by the competent authorities of a GSP-beneficiary country, under the following conditions:
 - this procedure shall apply only to certificates of origin Form A, and not to any other document certifying origin,
 - the replacement certificate shall be issued at the re-exporter's written request,
 - the goods shall have remained under customs supervision in the European Community or in Switzerland, as the case may be, and shall not have been subject to operations other than unloading, reloading, splitting of consignments or any operation designed to preserve them in good condition,
 - the customs office, under whose control the goods are placed, shall write off the corresponding amount against the original certificate of origin Form A and enter on it the serial number(s) of the corresponding replacement certificate(s),
 - the goods concerned shall not be subject to a derogation from the rules of origin,
 - the customs authorities of the European Community and of Switzerland shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification; in particular, and at the request of the country of destination, the authorities of the country in which the replacement certificate is issued shall carry out the procedure for the subsequent verification of the corresponding original certificate of origin Form A.

4. The replacement certificate shall be established in the following manner:
 - the top right-hand box of the replacement certificate shall indicate the name of the intermediary country where it is issued,
 - box 4 shall contain the words “replacement certificate” or “certificat de remplacement”, as well as the date of issue of the original certificate of origin Form A and its serial number,
 - the name of the re-exporter shall be given in box 1,
 - the name of the final consignee may be given in box 2,
 - all particulars of the re-exported products appearing on the original certificate must be transferred to boxes 3 to 9,
 - references to the re-exporter's invoice must be given in box 10,
 - the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of destination shall be taken from the original certificate of origin Form A. This box shall be signed by the re-exporter. A re-exporter who signs this box in good faith shall not be responsible for the accuracy of the particulars entered on the original certificate of origin Form A,
 - the customs office which is requested to perform the operation should note on the original certificate of origin Form A the weights, numbers and nature of the goods forwarded and indicate thereon the serial numbers of the corresponding replacement certificate or certificates. It shall keep the request of the replacement certificate as well as the original certificate of origin Form A for at least three years,
 - a photocopy of the original certificate of origin Form A may be annexed to the replacement certificate.
5. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application. In this case, the designated authorities of the other Party shall be notified in advance.
6. This Agreement shall enter into force on a mutually-agreed date, once the European Community and Switzerland have notified each other of the completion of the internal procedures required for the incorporation, into their respective GSP-schemes, of the provision for cumulation with each other's originating materials.

I would be grateful if your Government would confirm its agreement to the foregoing.'

I have the honour to confirm the agreement of my Government to the above.

Done at Brussels, 14 December 2000.

On behalf of the Federal Council of the Swiss Confederation



A. Letter from the European Community

Sirs,

1. The European Community and Norway acknowledge that each Party applies similar rules of origin, for the purposes of the Generalised System of Preferences (GSP), with the following general principles:
 - definition of the concept of originating products based on the same criteria,
 - provision for regional cumulation of origin,
 - provisions for applying cumulation to materials which originate, in terms of the GSP-rules, in the European Community, Norway or Switzerland,
 - a percentage-tolerance for non-originating materials,
 - provisions for direct transport of goods from the beneficiary country,
 - provisions for the issue and acceptance of replacement certificates of origin Form A (hereinafter referred to as replacement certificates),
 - requirement for administrative cooperation, with the competent authorities in the beneficiary countries, on the matter of certificates of origin Form A.
2. The European Community and Norway recognise that materials, originating in the European Community, in Norway or in Switzerland (in terms of the GSP-rules), which, in a GSP-beneficiary country, have been processed and incorporated into a product originating in a GSP-beneficiary country, shall be considered as originating in that beneficiary country.

The customs authorities of the European Community, Norway or Switzerland shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification of the movement certificate EUR.1 corresponding to the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol 3 to the Agreement EC-Switzerland, in Annex B of the EFTA Convention or in Protocol 4 of the Agreement on the European Economic Area are to be applied *mutatis mutandis*.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonised System.

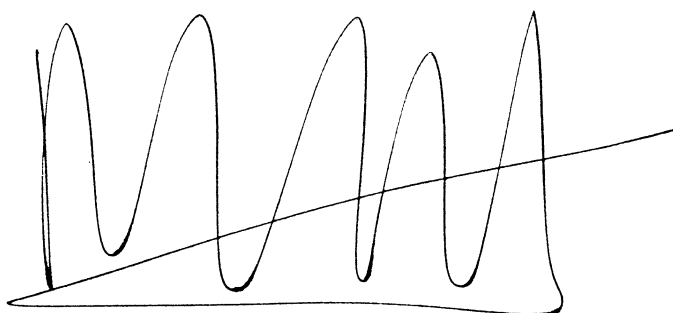
3. The European Community and Norway hereby undertake, by mutual agreement, to accept replacement certificates, issued by each other's customs authorities to replace certificates of origin Form A issued by the competent authorities of a GSP-beneficiary country, under the following conditions:
 - this procedure shall apply only to certificates of origin Form A, and not to any other document certifying origin,
 - the replacement certificate shall be issued at the re-exporter's written request,
 - the goods shall have remained under customs supervision in the European Community or in Norway, as the case may be, and shall not have been subject to operations other than unloading, reloading, splitting of consignments or any operation designed to preserve them in good condition,
 - the customs office, under whose control the goods are placed, shall write off the corresponding amount against the original certificate of origin Form A and enter on it the serial number(s) of the corresponding replacement certificate(s),
 - the goods concerned shall not be subject to a derogation from the rules of origin,
 - the customs authorities of the European Community and of Norway shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification; in particular, and at the request of the country of destination, the authorities of the country in which the replacement certificate is issued shall carry out the procedure for the subsequent verification of the corresponding original certificate of origin Form A.

4. The replacement certificate shall be established in the following manner :
- the top right-hand box of the replacement certificate shall indicate the name of the intermediary country where it is issued,
 - box 4 shall contain the words 'replacement certificate' or 'certificat de remplacement', as well as the date of issue of the original certificate of origin Form A and its serial number,
 - the name of the re-exporter shall be given in box 1,
 - the name of the final consignee may be given in box 2,
 - all particulars of the re-exported products appearing on the original certificate must be transferred to boxes 3 to 9,
 - references to the re-exporter's invoice must be given in box 10,
 - the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of destination shall be taken from the original certificate of origin Form A. This box shall be signed by the re-exporter. A re-exporter who signs this box in good faith shall not be responsible for the accuracy of the particulars entered on the original certificate of origin Form A,
 - the customs office which is requested to perform the operation should note on the original certificate of origin Form A the weights, numbers and nature of the goods forwarded and indicate thereon the serial numbers of the corresponding replacement certificate or certificates. It shall keep the request of the replacement certificate as well as the original certificate of origin Form A for at least three years,
 - a photocopy of the original certificate of origin Form A may be annexed to the replacement certificate.
5. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application. In this case, the designated authorities of the other Party shall be notified in advance.
6. This Agreement shall enter into force on a mutually-agreed date, once the European Community and Norway have notified each other of the completion of the internal procedures required for the incorporation, into their respective GSP-schemes, of the provision for cumulation with each other's originating materials.

I would be grateful if your Government would confirm its agreement to the foregoing.

Done at Brussels, 29 January 2001.

For the Council of the European Union

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

B. Letter from Norway

Sirs,

I have the honour to acknowledge receipt of your letter which reads as follows:

- '1. The European Community and Norway acknowledge that each Party applies similar rules of origin, for the purposes of the Generalised System of Preferences (GSP), with the following general principles:
 - definition of the concept of originating products based on the same criteria,
 - provision for regional cumulation of origin,
 - provisions for applying cumulation to materials which originate, in terms of the GSP-rules, in the European Community, Norway or Switzerland,
 - a percentage-tolerance for non-originating materials,
 - provisions for direct transport of goods from the beneficiary country,
 - provisions for the issue and acceptance of replacement certificates of origin Form A (hereinafter referred to as replacement certificates),
 - requirement for administrative cooperation, with the competent authorities in the beneficiary countries, on the matter of certificates of origin Form A.
2. The European Community and Norway recognise that materials, originating in the European Community, in Norway or in Switzerland (in terms of the GSP-rules), which, in a GSP-beneficiary country, have been processed and incorporated into a product originating in a GSP-beneficiary country, shall be considered as originating in that beneficiary country.

The customs authorities of the European Community, Norway or Switzerland shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification of the movement certificate EUR.1 corresponding to the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol 3 to the Agreement EC-Switzerland, in Annex B of the EFTA Convention or in Protocol 4 of the Agreement on the European Economic Area are to be applied *mutatis mutandis*.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonised System.

3. The European Community and Norway hereby undertake, by mutual agreement, to accept replacement certificates, issued by each other's customs authorities to replace certificates of origin Form A issued by the competent authorities of a GSP-beneficiary country, under the following conditions:
 - this procedure shall apply only to certificates of origin Form A, and not to any other document certifying origin,
 - the replacement certificate shall be issued at the re-exporter's written request,
 - the goods shall have remained under customs supervision in the European Community or in Norway, as the case may be, and shall not have been subject to operations other than unloading, reloading, splitting of consignments or any operation designed to preserve them in good condition,
 - the customs office, under whose control the goods are placed, shall write off the corresponding amount against the original certificate of origin Form A and enter on it the serial number(s) of the corresponding replacement certificate(s),
 - the goods concerned shall not be subject to a derogation from the rules of origin,
 - the customs authorities of the European Community and of Norway shall provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification; in particular, and at the request of the country of destination, the authorities of the country in which the replacement certificate is issued shall carry out the procedure for the subsequent verification of the corresponding original certificate of origin Form A.

4. The replacement certificate shall be established in the following manner :
- the top right-hand box of the replacement certificate shall indicate the name of the intermediary country where it is issued,
 - box 4 shall contain the words “replacement certificate” or “certificat de remplacement”, as well as the date of issue of the original certificate of origin Form A and its serial number,
 - the name of the re-exporter shall be given in box 1,
 - the name of the final consignee may be given in box 2,
 - all particulars of the re-exported products appearing on the original certificate must be transferred to boxes 3 to 9,
 - references to the re-exporter's invoice must be given in box 10,
 - the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of destination shall be taken from the original certificate of origin Form A. This box shall be signed by the re-exporter. A re-exporter who signs this box in good faith shall not be responsible for the accuracy of the particulars entered on the original certificate of origin Form A,
 - the customs office which is requested to perform the operation should note on the original certificate of origin Form A the weights, numbers and nature of the goods forwarded and indicate thereon the serial numbers of the corresponding replacement certificate or certificates. It shall keep the request of the replacement certificate as well as the original certificate of origin Form A for at least three years,
 - a photocopy of the original certificate of origin Form A may be annexed to the replacement certificate.
5. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application. In this case, the designated authorities of the other Party shall be notified in advance.
6. This Agreement shall enter into force on a mutually-agreed date, once the European Community and Norway have notified each other of the completion of the internal procedures required for the incorporation, into their respective GSP-schemes, of the provision for cumulation with each other's originating materials.

I would be grateful if your Government would confirm its agreement to the foregoing.'

I have the honour to confirm the agreement of my Government to the above.

Done at Brussels, 29 January 2001.

For the Government of the Kingdom of Norway



COMMISSION

COMMISSION DECISION

of 19 July 2000

on State aid granted by Austria to Lenzing Lyocell GmbH & Co KG

(notified under document number C(2000) 2454)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/102/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE AND BACKGROUND

(1) In several letters and at various meetings in 1994 and 1995, Austria informed the EFTA Surveillance Authority and the Commission that it intended to grant State aid to the company Lenzing Lyocell GmbH & Co KG, Heiligenkreuz (LLG). LLG forms part of the Austrian Lenzing Group, one of the world's largest producers of viscose fibres. Beginning in 1995, LLG established a new production plant at the Business Park Heiligenkreuz-Szentgotthard (Business Park) to manufacture Lyocell, a new type of man-made staple fibre, produced from natural cellulose in wood pulp. Only Lenzing AG and the British chemicals group Courtaulds plc ⁽²⁾ have patent rights to produce this fibre. The Business Park is a cross-border project between Austria and Hungary. LLG is situated in the Province of Burgenland, Austria's only Article 87(3)(a) region. Investment costs amounted to EUR 138 million.

(2) Austria intended to provide investment aid of up to 40 % of eligible costs on the basis of the previously approved regional aid scheme N 589/95. In response to Austria's written request of 30 August 1995, the Commission informed Austria by letter of 5 October 1995 that if grants were provided under this approved regional scheme, no individual notification would be required. The Commission also reminded Austria that it had to inform the Commission in due time before providing any State guarantees.

(3) By letter dated 21 April 1997, Austria forwarded to the Commission application forms for ERDF co-financing on two large-scale investment projects at the Business Park, carried out by the companies Business Park Heiligenkreuz (BPH) and Wirtschaftspark Heiligenkreuz Servicegesellschaft mbH (WHS). In these documents, Austria stated that the interest of LLG had had an important impact on the development activities in the Business Park by BPH. Furthermore, Austria stated that WHS would invest in a utility centre to provide basic process utilities, such as electricity, process steam, fresh water, cooling water, compressed air, and waste-water treatment primarily to LLG. Austria also indicated that the Province of Burgenland would have to provide grants to WHS to cover expected negative cash flows resulting from the supply of infrastructure service at prices guaranteed over a period of 30 years.

(4) The Commission started to re-investigate the case and informed Austria by letter dated 23 December 1997 that it had transferred the case to the NN-register for non-notified State aid. Further meetings and correspondence failed to clarify the Commission's concerns. Austria argued that a number of aid measures would be covered by approved or existing aid schemes.

⁽¹⁾ OJ C 9, 13.1.1999, p. 6.

⁽²⁾ In July 1998 Courtaulds plc became part of Akzo Nobel, an international pharmaceuticals, coatings, chemicals and fibres company based in the Netherlands.

- (5) On 14 October 1998, the Commission decided to initiate the formal investigation procedure under Article 88(2) of the EC Treaty on the following measures and informed Austria by letter of 29 October 1998:
- (a) state guarantees for grants and loans totalling EUR 50,3 million;
 - (b) low land prices of EUR 4,4 per m² for 120 hectares of industrial land;
 - (c) price guarantees for basic process utilities (electricity, gas, water, etc.) over a period of 30 years.
- (6) In the same letter, the Commission called on Austria to provide all necessary information to enable an assessment to be made of a number of measures which Austria claimed were covered by existing or approved schemes.
- (7) The Commission's decision was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission received five sets of comments from interested parties which it passed on to Austria. The comments, all negative, were submitted by three competitors, one fibre association and the Permanent Representation of the United Kingdom to the European Union.
- (8) By letters of 15 March and 16 and 28 April 1999, Austria replied to the Commission's letter of 29 October 1998. From these replies it became clear that several of the aid measures were not covered by any approved or existing scheme. The Commission thus had to assess these measures as new aid directly under the provisions of Article 87 of the EC Treaty. Furthermore, environmental aid seemed not to have been granted under correct application of Austria's Environmental Aid Act ⁽⁴⁾. As the preliminary examination also led to serious doubts about the compatibility of these aid measures with the common market, the Commission decided on 23 June 1999 to extend the formal investigation procedure to the following measures:
- (a) ad-hoc investment aid of EUR 0,4 million for the land purchase;
 - (b) ad-hoc equity participation of EUR 21,8 million over 30 years and a 1 % p.a. return;
 - (c) company-specific infrastructure connections involving an unknown aid amount;
- (d) environmental aid of EUR 5,4 million, possibly granted in incorrect application of the Environmental Aid Act.
- (9) The decision to extend the formal investigation procedure was published in the *Official Journal of the European Communities* ⁽⁵⁾ and interested parties were invited to comment. The Commission received three sets of comments from interested parties, namely from two industrial associations which commented favourably on the aid measures, and from the United Kingdom Permanent Representation, which took a negative view.
- (10) Austria replied by letter of 4 October 1999 and, after another meeting with Commission staff on 8 December 1999, provided further information by letters of 25 February and 27 April 2000.
- (11) In addition to the aid for the measures referred to in points 5, 6 and 8, for which the Commission initiated the formal investigation procedure, LLG had been granted further financial measures. These concerned EUR 24,7 million in grants by the Province of Burgenland, of which EUR 14 million were granted according to the regional aid scheme 'Burgenland investment allowance programme' approved under number N 589/95. Moreover, EUR 12,6 million were granted under the Federal Labour Act to train new personnel. Finally, a grant of EUR 0,8 million for training is considered a general measure, not constituting aid. In its decisions to initiate and to extend the formal investigation procedure, the Commission noted that the total amount of all the aid measures appeared to exceed the regional aid ceiling of 40 % net grant equivalent.

2. DESCRIPTION OF THE FINANCIAL MEASURES

- (12) *Measure 1: State guarantees for grants and loans of EUR 50,3 million*

In its decision to initiate the procedure, the Commission doubted that LG had paid commercial rates for several guarantees and that they were provided under approved or existing schemes. By letters of 15 March 1999 and 24 February and 27 April 2000, Austria reported the following facts on committed state guarantees for grants and loans:

⁽³⁾ See footnote 1.

⁽⁴⁾ *Bundesgesetzblatt* No 185/1993.

⁽⁵⁾ OJ C 253, 4.9.1999, p. 4.

- (a) on 2 July 1996 the State-owned Wirtschaftsservice Burgenland AG (hereinafter WiBAG) granted LLG on the basis of an approved scheme ⁽⁶⁾ a guarantee for an European Recovery Programme (ERP) loan of EUR 14,5 million. This guarantee runs until the end of 2004, covering two linearly degressive amounts of outstanding credit;
- (b) on 28 June 1996 a consortium of commercial and public banks including Erste Bank and Hypo-Bank Burgenland AG provided a guarantee for an ERP loan of EUR 21,8 million which, like the guarantee referred to in (a), runs until the end of 2004;
- (c) on 18 October 1996 WiBAG provided a guarantee for a EUR 1,4 million loan that had been granted from the ERP Fund to LLG as an interest subsidy. The guarantee applies only in the event that LLG does not fulfil its contractual obligations in connection with the subsidy;
- (d) on 17 December 1996 WiBAG provided a guarantee to the Federal Ministry of Labour and Social Affairs for EUR 10,35 million that the latter ministry had granted to LLG;
- (e) on 23 December 1996 and 8 July 1997 WiBAG provided another guarantee to the Federal Ministry of Labour and Social Affairs for EUR 2,25 million that the ministry had disbursed in connection with EU co-financing for regional aid.
- (13) *Measure 2: Low prices of EUR 4,4 per m² for 120 hectares of land*
- (14) By letter dated 19 September 1995, Austria stated that LLG on 29 May 1995 bought 120 hectares of land directly from several private landowners for EUR 4,4 per m². In documents submitted on 21 April 1997, Austria stated that, at the Business Park, BPH planned to sell land with railway access for EUR 32,5 per m² and land without railway access for EUR 25,3 per m². The Commission therefore had serious doubts whether the land price of EUR 4,4 per m² could be considered a market price.
- (15) By letter of 15 March 2000, Austria clarified that at the beginning of the contract negotiations between LLG and the private owners all land was designated as agricultural land in the land destination plan (Flächenwidmungsplan). However, at the date of signature, i.e. 29 May 1995, the designation had been changed to industrial use. LLG bought the land completely undeveloped and had to arrange all the necessary onsite infrastructures itself.
- (16) *Measure 3: Fixed prices over 30 years for basic process media*
- In point 6 of the side-letter to the Burgenland Vertrag, the Province of Burgenland undertook to provide LLG with basic process media, i.e. electricity, process-steam, process-water, cooling, pressurised air, water treatment and waste disposal. The Province of Burgenland guaranteed fixed prices for all these services for a period of 30 years, the prices being geared to the average electricity price in the EU.
- (17) Austria explained that such price guarantees were necessary at the time when the Business Park was only just being developed, but that in any case the prices represented market prices. In particular, Austria took the view that the basic process utilities would be delivered by private undertakings and should therefore be considered market prices.
- (18) In its decision of 14 October 1998 initiating the formal investigation procedure, the Commission requested evidence that the prices were market prices, in particular because it had the following indications to the contrary:
- (a) a private utility would not have entered into a contract to provide basic process utilities at fixed prices over 30 years, when at the same time LLG had the option to terminate the contract already after five years;

The Province of Burgenland made commitments in a contract (Burgenland Vertrag), signed on 21 March 1995 by the Province of Burgenland and 14 June 1995 by LLG. One of several aid measures in the contract concerns the commitment to offer to LLG at least 100 hectares of land appropriate for the intended industrial use of LLG and not costing more than EUR 44 per m². In a side-letter, the Province of Burgenland undertook to provide more land under the same conditions.

⁽⁶⁾ Notified under N 542/95: Richtlinie betreffend die Übernahme von Bürgschaften, fiktive Kredite und Darlehen gemäß dem Gesetz vom 24. März 1994, Landesgesetzblatt No 33/1994, über Maßnahmen zur Gewährleistung der wirtschaftlichen Entwicklung im Burgenland, Landes-Wirtschaftsförderungsgesetz 1994-WiföG.

- (b) in its ERDF cofinancing application, Austria had indicated that the Province of Burgenland would have to provide grants to the utility operator WHS to cover expected negative cash flows from the provision of basic process utilities to LLG.
- (19) The Commission asked Austria to provide proof that LLG was paying commercial prices to WHS, including depreciation for fixed capital costs of the utility centre. Similar evidence was requested for the waste-water treatment plant operated by the Abwasserverband Bezirk Jennersdorf.
- (20) By letter of 25 February 2000, Austria submitted a declaration by LLG that it was waiving all price guarantees for all basic process media.
- (21) *Measure 4: Ad-hoc investment aid of EUR 0,4 million for the land purchase*
- As specified in Article 2 point 2.2 of the Burgenland Vertrag, the Province of Burgenland granted EUR 0,4 million in aid for the acquisition of land. The sum was transferred to LLG on 16 October 1995.
- (22) By letter of 15 March 1999, Austria stated that it had granted the aid as ad-hoc aid, and not under any approved or existing aid scheme. Austria also declared that the aid was investment aid and was justified by its regional objective as described in the Burgenland Vertrag. In its decision of 23 June 1999 to extend the formal investigation procedure, the Commission requested further justification of the regional significance of the investment aid which LLG had received for the acquisition of land.
- (23) *Measure 5: Ad-hoc equity participation of EUR 21,8 million over 30 years and a 1 % annual return*
- On 28 June 1995 and 13 July 1995, WiBAG and LLG signed a contract on a dormant equity participation (echte stille Beteiligung), whereby WiBAG provided capital of EUR 21,8 million. The participation procures WiBAG a 1 % annual return on its invested capital. As specified in the most recent side-contract, WiBAG will ask for a market-oriented return after expiry of the 30 years. The dormant partnership capital thus resembles a soft loan with a 30-year maturity. Austria stated that, due to the abnormally low return on investment, it was clear that WiBAG did not act as a market-economy investor.
- (24) In its letter of 15 March 1999, Austria stated that this participation was not granted under any existing or approved aid scheme. As explained in its decision of 23 June 1999, the Commission therefore examined the aid as ad hoc aid under the provisions of Article 87 of the EC Treaty. It is not clear from the equity participation contract that the capital provided had an investment purpose. Moreover, the Commission noted that no investment costs or investment-timetables had been fixed as a precondition for the capital injection. Finally, the Commission considered the regional justification of the aid to be insufficient.
- (25) *Measure 6: Company-specific infrastructure connections of an unknown aid amount*
- In Article 4 of the 'Burgenland Vertrag', the Province of Burgenland undertook to build the infrastructure for supplying LLG with electricity, process-water, telecommunications, water treatment and waste disposal and to provide access to the site with appropriate road and railway facilities. The Province of Burgenland was to pay for this infrastructure development. BPH developed and paid for the infrastructure at the Business Park. It provided access to LLG's site with roads, railway, water supply, sewage treatment, electricity, natural gas and telecommunications. Companies in Austria are usually required to pay a fee for State-provided infrastructure developments.
- (26) Austria consistently argued that this infrastructure investment did not constitute state aid to LLG as any company at the Business Park could take advantage of the infrastructure. The Commission held that, as evident from Austria's letter dated 21 April 1997, the development of the Business Park took into account specific requirements of LLG and that, for example, the railway access to LLG's site could be used only by LLG. The Commission therefore held that LLG benefited from company-specific infrastructure connections. Austria also argued that BPH was a private investor. The Commission requested evidence of this.
- (27) Finally, Austria claimed that LLG was simply benefiting from its geographic proximity to the place where the infrastructure was in any case being developed for the Business Park. In its decision of 23 June 1999, the Commission had already pointed out that, from the descriptions provided on the connections and taking account of the current information on the establishment of other companies, there was no basis to conclude that the measures were general measures for the Business Park.

(28) *Measure 7: Environmental aid of EUR 5,4 million*

By letter dated 11 January 1996, the State-owned Österreichische Kommunalkredit AG (ÖKK) stated that it was providing on behalf of the Federal State an environment-related investment grant of EUR 5,4 million on environmentally related investments of EUR 11,1 million. The aid was provided under Article 12(5) of the Environmental Aid Act (Umweltförderungsgesetz) and the corresponding scheme of 1993 (Förderungsrichtlinien). The Act and the scheme were notified to the EFTA Surveillance Authority as existing aid, registered under N 93/148, and were in force at the time the grant was provided in 1996.

(29) The aid was provided in two instalments. The first instalment amounted to EUR 1,9 million and included 50 % cofinancing by the ERDF for research and development activities. The second instalment amounted to 36 million. Austria had provided a list of eligible cost items for investments in machinery and process units. The aid intensity amounts to 50 % for pilot projects. In its decision of 23 June 1999, the Commission endorsed this classification as pilot project.

(30) In its decision of 23 June 1999, the Commission expressed the following doubts as to the correct application of the existing aid scheme:

- (a) the environmental scheme stipulates that eligible projects must relate to production methods for the reduction of pollution. The Commission asked Austria to provide evidence for such pollution reduction potential of the particular investment, i.e. the environmental benefit that can be attributed to it;
- (b) in providing evidence of the environmental benefit of the LLG production process as compared with traditional viscose production processes, Austria would have to demonstrate why specific items were considered eligible for environmental aid and what were their eligible costs.

3. ASSESSMENT OF THE AID MEASURES

(31) *Measure 1: State guarantees for grants and loans of EUR 50,3 million*

Austria has stated that the EUR 14,5 million guarantee that WiBAG granted to LLG was granted on the basis of an approved guarantee scheme⁽⁷⁾. The main condition

of this scheme is the required innovative character of the new investment. As Austria has demonstrated that the investment concerns an innovative product and an innovative production process, the Commission considers this condition and other conditions of the scheme fulfilled. The measure is therefore existing aid.

(32) In order to determine whether the regional aid ceiling has been complied with, the Commission calculates the aid equivalent of the guarantee. The Commission bases its calculation on the price the creditor would have to pay under normal market conditions for a similar guarantee. By means of declarations from the private bank Oberbank, Austria has provided evidence that a 0,625 % annual fee would have been a market price for such a guarantee for LLG. In view of this, and in view of the decreasing amounts to be covered, the Commission calculates the aid equivalent to amount to EUR 0,47 million.

(33) Regarding the guarantee on a loan of EUR 21,8 million granted by a consortium of commercial and public banks, Austria has made it clear that LLG pays commercial rates, i.e. 0,625 % annually, as stated in paragraph 32. The Commission therefore considers no State aid to be involved.

(34) The guarantee that WiBAG granted to the ERP covers a grant of EUR 1,4 million. In its letter of 15 March 1999, Austria explained that this guarantee merely concerns cession of right between ERP and WiBAG in case LLG does not fulfil important contractual obligations. Austria has made it clear that this is a standard clause in grant contracts. Austria also explained that the guarantee provided by WiBAG had not been a precondition for the ERP grant. The Commission therefore takes the view that what is involved is simply the cession of rights to reclaim the subsidy between two state institutions. As this guarantee does not commit State resources or confer a benefit on LLG, the Commission considers this guarantee not to constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(35) The two guarantees WiBAG provided to the Federal Ministry of Labour and Social Affairs covering EUR 10,35 million and EUR 2,25 million also concern cessations of rights between two State institutions. For the same reasons as those set out for the measure above, the Commission does not consider them State aid.

⁽⁷⁾ See footnote 6.

- (36) *Measure 2: Low prices of EUR 4,4 per m² for 120 hectares of land*

Presenting the contracts and statements of the main sellers, Austria provided conclusive evidence that the company acquired the land directly from private individuals for a price that was at least twice the level for comparable farmland. The individuals had not received any other benefits from state resources or LLG. Some other owners had refused to sell.

- (37) The Commission noted the change in the land destination plan from agricultural use to industrial use. Austria declared that the change of designation took place before LLG and the private sellers signed the purchase contracts. Austria also pointed out that the LLG plot, although legally speaking not part of the Business Park, was part of the same overall Business Park concept and BPH had at the same time paid the same price for all the land in the Business Park.

- (38) From the above elements the Commission concludes that LLG did not benefit from any company-specific, State measure or received any transfers of State resources. There is therefore no State aid element hidden in the land price of EUR 4,4 per m² paid by LLG.

- (39) In drawing this conclusion the Commission also had regard to its assessment of the fact that future companies in the Business Park could acquire developed land at a price at least six times as high as that paid by LLG. Austria responded by emphasising that LLG had acquired its land undeveloped and had paid all the development costs itself. Austria also presented calculations, the investment plan and balance sheets of the park developer BPH. These calculations showed that the price difference can be almost fully explained by the development costs BPH incurred for the plots. The remaining price difference can be explained by costs for infrastructure connections of the individual plots in the Business Park. As future purchasers of land would have to pay for these connections while LLG did not have to pay for any connections to infrastructure, the Commission had also queried this point (see measure 6, recitals 58 to 60). However, Austria agreed to make LLG pay a major share of the infrastructure connection costs for the Business Park. Consequently, there remain no unexplained cost differences between the land purchase price of LLG and

the considerably higher price that BPH planned to charge for other developed plots of land.

- (40) *Measure 3: Fixed prices over 30 years for basic process media*

In its decision of 14 October 1998, the Commission requested evidence that the prices for services were market prices. Such prices would in particular have to cover the costs for depreciation of investments in fixed capital incurred by WHS in setting up the utility centre and by Abwasserverband Bezirk Jennersdorf (ABJ) for constructing the waste-water treatment plant.

- (41) Austria has provided the following evidence:

- (a) a detailed model calculation carried out by a renowned energy provider, showing that the prices for basic process media agreed with WHS are higher than if LLG had, with the help of this energy provider, built the utility centre itself. According to this calculation, WHS charges LLG prices that are about 5 % higher than would have been the costs of self provision;
- (b) WHS operates an up-to-date energy-efficient combined heat and power plant whose costs in general compare rather favourably with other energy and process media providers. As in such a plant different media are simultaneously generated, it is not easily possible to compare prices for individual media with those of other providers. Prices can, however, be compared with a comparable media centre at Lenzing AG, the parent company of LLG. Internal calculations show that the same mix of media would be available at considerably lower costs at the main location at Lenzing, outside Burgenland;
- (c) comparisons with other waste-water treatment plants showed that the waste-water treatment price of EUR 0,5 per m³ represents a normal market price. Austria also demonstrated that full costs of the treatment plant, including full depreciation for investments, would be less than EUR 0,4 per m³. The price structure can be regarded as normal in the waste-water sector. In addition to these cost-covering prices and so as to remove any remaining doubts on possible state aid, Austria confirmed in writing that LLG was now prepared to pay a further EUR 0,3 million in connection costs for surface water drainage;

(d) on 25 February 2000 LLG declared in writing that it was waiving all price guarantees for all basic process media. This removed any aid element that might be inherent in the 30 year price guarantee as stipulated in the 'Burgenland Vertrag'. LLG paid the market prices referred to above already before the date of this waiver.

(42) As Austria demonstrated that LLG has paid and will pay prices for basic process media that are higher than would have been the cost of self provision, that these prices are higher than those at other company locations and that the prices cover the full costs of provision, including depreciation on investments, the Commission accepts Austria's argument that price guarantees were necessary only because at the time LLG decided on its investment, there was no infrastructure at all in place. Since furthermore these price guarantees have been waived, the Commission considers that the contracts between WHS and LLG, and between the ABJ and LLG, contain no element of State aid. Finally, in view of the evidence provided, the Commission sees no need to further assess Austria's argument that the media providers are private companies and act as such.

(43) *Measure 4: Ad-hoc investment aid of EUR 0,4 million for the land purchase*

In its letter of 15 March 1999, Austria states that the aid was granted as ad hoc regional investment aid. New aid is notifiable pursuant to Article 88(3) of the EC Treaty. Austria thus failed to fulfil its Treaty obligation by granting the aid without prior approval of the Commission.

(44) Where new individual aid is granted, the Commission has to assess its compatibility with the common market directly in the light of Article 87 of the EC Treaty. Article 87(1) stipulates that, save as otherwise provided in the EC Treaty, any aid granted by a Member State or through State resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(45) The ad hoc grant of investment aid provides a benefit to LLG helping it to significantly reduce its investment costs. The aid thus has a significant and sustained positive impact on LLG's financial position. In the area of Lyocell production, Akzo Nobel, an international phar-

maceuticals, coatings, chemicals and fibres company based in the Netherlands is LLG's main competitor. In addition, LLG might also be in competition to a number of other fibre producers situated in several Member States. The overall fibre market suffers from overcapacity. The stated measures, therefore, may be liable to affect the economic position of competitors from other Member States. Consequently, the measures constitute aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, as they may distort or threaten to distort competition and affect trade between Member States.

(46) Article 87 of the EC Treaty allows exemptions from the principle of incompatibility of State aid with the common market. Under Article 87(2) of the EC Treaty, certain types of aid are compatible with the common market. However, the aid in question neither (a) has a social character, granted to individual consumers, nor (b) does it make good the damage caused by natural disasters or exceptional occurrences, nor (c) is the aid granted to the economy of certain areas of the Federal Republic of Germany. Nor does the exemption provided for in Article 87(3)(b) EC Treaty for projects of common European interest apply.

(47) Article 87(3)(c) of the EC Treaty contains an exemption for aid that favours the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Such aid is governed by specific Community guidelines. However, the Commission considers that none of the Community guidelines, such as those for rescue and restructuring, for research and development, for the environment, for small and medium-sized enterprises and for employment and training, could apply.

(48) Austria stated in its letter of 15 March 1999 that the aid has a regional objective for the Province of Burgenland. The EC Treaty establishes an exemption for regional aid under Article 87(3)(a), stating that aid may be considered compatible with the common market if it promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. For initial investment aid, point 4.4 of the relevant Community guidelines on national regional aid sets out the conditions for a possible exemption⁽⁸⁾. As the Court of Justice established in the Hytasa case, the Commission has to assess such aid as to its fulfilment of the requirements of regional aid under Article 87(3)(a) and prohibit the aid if it considers it incompatible with the common market.

⁽⁸⁾ OJ C 74, 10.3.1998, p. 9.

- (49) By letter of 4 October 1999, Austria provided further evidence on the regional significance of the aid and made it clear that the aid was granted as part of the overall package of the 'Burgenland Vertrag'. As such, there is a clear link between the purpose of this regional investment aid and the eligible costs and the envisaged investment timetable that were provided earlier. The 'Burgenland Vertrag' also describes the regional significance of the aid. By letter of 4 October 1999, Austria provided further information on the regional significance of the aid and on the proportionality of the aid package to any anticipated distortion of European competition. In particular Austria emphasised the difficult economic situation in the Province of Burgenland (Süd-Burgenland) where the project will lead to the creation of 150 new permanent and highly skilled jobs. The investment is also expected to generate catalytic effects for the region by attracting other companies to settle in the region and by the indirect employment created in the region, mainly with suppliers and customers.
- (50) Austria believes the competition impact will be very limited. In its view, no unnecessary production capacity will be created by LLG, because the product Lyocell is sold as a new product for which the market outlook is favourable. For this reason, there are also no over-capacities in Europe on the market for Lyocell fibres.
- (51) As regards the regional significance of the aid, the Commission has now sufficient information to assess the regional importance of LLG's project for the Province of Burgenland, in particular as the link between investment costs and the regional objective has been clarified by Austria.
- (52) Regarding the competition impact, the Commission has to consider in this particular case whether Lyocell and viscose fibres belong to two distinct product markets or the same product market. As the development trend and market products for Lyocell are quite different from the general downward trend of the overall viscose fibres market, and since they must therefore be regarded as separate markets, the Commission concluded that the competition impact of LLG's investment will be relatively small. The Commission noted already in its Decision of 23 June 1999 that Austria considered the product market for Lyocell fibres to be distinct from the general viscose fibres market. This appraisal was confirmed by the comments received from interested parties. In addition, the Commission also referred in the abovementioned Decision to its similar conclusions in its Decision of 30 June 1998 in the merger case IV/M.1182 Akzo Nobel/Courtaulds⁽⁹⁾. Taking into account the fact that the product qualities of Lyocell are viewed as different by customers and considering also the significantly higher prices (about twice as high) for Lyocell (and Tencel) fibres as compared to normal viscose fibres, the Commission considers, for the purpose of this case, the two product markets to be sufficiently distinct to regard the competition impact as relatively limited.
- (53) In view of the above assessment and since land is eligible under the guidelines on national regional aid (point 4.8), the Commission can approve this ad hoc regional investment aid provided that the overall level of aid stays below the regional aid ceiling for the Province of Burgenland, 40 % net grant equivalent (see assessment in recitals 54 to 66).
- (54) *Measure 5: Provision of equity capital of EUR 21,8 million*
- By letter of 15 March 1999, Austria confirmed that the capital participation had not been granted under any approved aid scheme. In its decision of 23 June 1999, the Commission determined the aid character of the measure, which was to be regarded as a soft loan. Following Austria's written declarations that market rates will have to be charged after the 30 year time period, this soft loan has a 30-year maturity and confers a 1 % return on capital to WiBAG.
- (55) With regard to measure 5, Austria provided by letter of 4 October 1999 further evidence on the regional importance of the aid and made it clear that the aid was granted as part of the overall package of the Burgenland Vertrag. As such, the purpose of this regional investment aid is clearly linked to the eligible costs and the envisaged investment timetable that were provided earlier. With regard to measure 5 the Commission therefore endorses the regional justification of this equity capital provision.
- (56) The Commission has satisfied itself that the measure is permissible as eligible costs under the guidelines on national regional aid. As specified in the Burgenland Vertrag, the capital was used for investment in plant and machinery. The Commission therefore regards the regional nature of the aid as justified.
- (57) Austria claims that the aid equivalent of the equity capital is EUR 12,3 million, calculated by applying market interest rates. However, the Commission has published reference interest rates it uses when calculating ex-ante the grant equivalent of such an interest

⁽⁹⁾ OJ C 265, 22.8.1998, p. 28.

subsidy scheme for loans⁽¹⁰⁾. The reference rates are supposed to reflect the average level of interest rates charged, in the various Member States, on medium and long-term loans (five to 10 years) backed by normal security. The equity measure, however, covers a 30-year period. The Commission considers it reasonable and appropriate, on the basis of its experience, to use current interest rates for the remaining 25 years in order to make the relevant period as short as possible, and to use for the past years the reference rate in force at the date the aid was granted. Accordingly, the grant equivalent of the aid is EUR 15,38 million.

Park. In this assessment the Commission has considered Austria's argument that LLG was the site's first and lead investor. Therefore granting favourable conditions to the company would be in the commercial interest of both BPH and WHS. These claims were substantiated by financial data and the original argumentation documents at the time of setting up the park.

(58) *Measure 6: Company-specific infrastructure connections of an unknown aid amount*

(60) The Commission concludes that there is no element of State aid involved in the provision of infrastructure by WHS and BPH to LLG.

By letter of 27 April 2000, Austria presented new agreements between LLG and BPH, as well as between LLG and WHS, under which LLG will participate in the infrastructure costs that were incurred in providing connections. Under these agreements, LLG will pay a total of EUR 0,7 million for roads, waste-water treatment facilities, electricity, gas and other pipes from the utility centre, water provision and fire protection facilities. This, according to Austria, represents 24 % of the overall costs for these infrastructure facilities in the Business Park. In addition to these costs, LLG will in future itself bear further costs of EUR 2,4 million to develop the infrastructure connections on its own plot. Finally, LLG will pay for the railway link a fee of EUR 0,3 million over 15 years.

(61) *Measure 7: Assessment of the environmental aid of EUR 5,37 million*

In order to consider the approved Environmental Aid Act correctly applied, the Commission had to check that the investment to be aided was clearly for 'production methods for the reduction of pollution' (Herstellungsmaßnahmen zur Verringerung von Umweltbelastung), as stipulated in Article 23(1)(1), in conjunction with Article 1(1) of the corresponding aid guidelines. Austria reiterated in its reply of 4 October 1999 that the environmental benefit of the specified equipment could be demonstrated only in comparison with the old Viscose production process.

(59) From its assessment of these contracts and the complete information, provided partly in the form of an independent report, on the finances of the developers WHS and BPH, the Commission concludes that, since it is now paying for the connections, LLG does not benefit from any specific infrastructure development at the Business

(62) Austria argues that the new Lyocell process is a product innovation. As such, there is no other measure for comparison than the closest possible predecessor process, which is the regular viscose production process. Austria further holds that the assessment according to the Environmental Aid Act does not have to be based on a comparison of the final products and their relevant markets, but allows focusing on the production process for the closest possible alternatives. In support of this argumentation, Austria has provided further evidence on the application of this scheme. By letter of 25 February

⁽¹⁰⁾ See Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

2000, Austria provided as further support all the documents underpinning the decision of the ÖKK.

- (63) The Commission also requested further information on the eligible costs, their clear attribution to certain equipment parts, the environmental potential of this equipment, and the avoidance of any double counting with other eligible costs, including the questions on simultaneous research and development financing. By letter of 4 October 1999, Austria clarified the exact costs of the eligible items and ruled out the possibility of any double counting in relation to research and development aid provided by EU cofinancing. The attribution of eligible cost items is now, after finalisation of the investment, clearly demonstrable.
- (64) Regarding the environmental potential of the investment, Austria provided further clarification by letter of 4 October 1999. This included statements that, with these eligible equipment parts, LLG was going beyond minimum specifications in pursuit of additional environmental benefits. Furthermore, by letter of 25 February 2000, Austria provided an expert opinion detailing the environmental potential of the relevant equipment items, also in quantitative terms. The Commission regards this expert opinion as further evidence of the high additional environmental contribution of the investment.
- (65) The Commission concludes that Austria has established that, in this instance, the viscose production process constitutes the next best alternative for environmental benefit comparison purposes. Considering the new information on eligible costs and the environmental potential of these cost items, the Commission concludes that Austria has correctly applied the approved environmental aid scheme N 93-148. The Commission can thus calculate the aid intensity to be 50 % of eligible costs for a pilot project, and considers this aid existing aid.
- (66) *Calculation of the overall aid intensity*
- The Commission had to verify that the overall amounts of regional investment aid granted to LLG would not exceed the maximum allowable aid ceiling for regional aid in the Province of Burgenland. This ceiling at the time the aid was granted was 40 % net grant equivalent. For the purposes of this assessment, the Commission also took account of the other measures to assist the company detailed in paragraph 11. Discounted in time, the Commission determines investment aid of EUR 54,9 million gross, which, after taxes, represents a net grant equivalent of EUR 39,7 million. Relative to eligible costs of EUR 108,7 million, this aid represents an aid intensity of 37 %, i.e. below the regional aid ceiling of 40 %.
- (67) In the case of the environmental aid of EUR 5,37 million on eligible costs of EUR 10,74 million, the maximum aid intensity of 50 % admissible for pilot projects under the environmental aid scheme N 93-148 is complied with.

4. CONCLUSION

- (68) Measures 1(b) to (e), 2, 3 and 6 are not considered to be State aid within the meaning of Article 87(1) of the EC Treaty. Measures 4, 5 and 7 are ad hoc regional investment aid. Measures 1(a) and 7 are existing aid as they represent correct application of approved aid programmes. The Commission considers the proposed investment aid of EUR 54,9 million (EUR 39,7 million net) on eligible costs of EUR 108,7 million and the environmental aid of EUR 5,37 million to be compatible with the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Austria has granted to Lenzing Lyocell GmbH & Co KG (LLG), Heiligenkreuz, through the provision of guarantees amounting to EUR 35,80 million (a guarantee by a consortium of commercial and public-sector banks amounting to EUR 21,8 million and three guarantees by the Wirtschaftspark Heiligenkreuz Servicegesellschaft mbH (WHS) amounting to EUR 1,4 million, EUR 10,35 million and EUR 2,25 million) and through a land price of EUR 4,4 per m² for the acquisition of 120 hectares of industrial land, through fixed-price guarantees by the Province of Burgenland for the provision of process utilities and through the provision of aid of an unknown amount in the form of the creation of company-specific infrastructure does not constitute aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

The aid which Austria has granted to LLG through the provision of a guarantee amounting to EUR 14,5 million by WiBAG complies with the guarantee guidelines approved by the Commission under number N 542/95.

The environmental aid amounting to EUR 5,37 million complies with the environmental aid guidelines approved by the Commission under number N 93/148.

Article 3

The individual aid which Austria has granted in the form of aid amounting to EUR 0,4 million for land acquisition and in the form of equity capital amounting to EUR 21,8 million is compatible with the common market.

Article 4

This Decision is addressed to the Republic of Austria.

Done at Brussels, 19 July 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission

COMMISSION DECISION
of 31 October 2000
concerning the support given by the Netherlands to NS Cargo for a shuttle link between
Rotterdam and Prague

(notified under document number C(2000) 3270)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2001/103/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2)(1) thereof,

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

Whereas, in accordance with said Articles, those concerned have been called upon to comment ⁽¹⁾,

Whereas:

(1) In its letter of 28 April 1995 the Netherlands informed the Commission of a single payment of investment support to NS Cargo for combined transport equipment amounting to NLG 500 000 that were to be used for a shuttle link involving combined transport between Rotterdam and Prague. That notification received the registration N 484/95.

(2) In its decision of 20 September 1995 ⁽²⁾, the Commission decided to raise no objection to the action of which it had been notified and which it considered to comply with Article 3(1)(e) of Council Regulation (EEC) No 1107/70 ⁽³⁾. The support was paid to NS Cargo on 8 November 1995. In their letter of 13 May 1996 the Hamburg-based terminal operated HHLA, and others, appealed to the Court of First Instance against the Commission's decision (Case T 69/96). That Court has so far not delivered any final ruling on this matter.

(3) As part of preparations for its defence in this case before the Court of First Instance, the Dutch Government provided the Commission with information which raised doubts concerning the type of support. The new information, indeed, seemed to indicate that the support to NS Cargo was intended not for investment purposes, but

in order to cover the operating costs of the shuttle link. As a rule operating support is not permitted under Community law. On 21 April 1999 the Commission then decided to initiate the procedure provided for by Article 88(2) of the EC Treaty (Case C 30/99). The Dutch Government was informed of that decision by letter SG(99)/D 3169 of 4 May 1999, which requested the Netherlands to comment within one month of the letter's being posted.

(4) In its letter of 29 June 1999 the Dutch Government stated that it would ask the recipient of the support provided, NS Cargo, to repay the amount involved and ask the Commission to terminate the procedure.

(5) The Commission's letter of 4 May 1999 was published in the *Official Journal of the European Communities*, for comment, on 24 July 1999 ⁽⁴⁾. Two terminal operators, a port authority, a chamber of commerce and a national government had reacted within the deadline mentioned in the announcement.

(6) The Commission's Directorate-General for Transport passed on its comments to the Dutch Government in its letter of 6 September 1999. It was also stated in the Commission's letter that terminating the procedure could only be contemplated if the Dutch Government furnished proof that the amount involved in the support had, in fact, been reimbursed.

(7) In its letter of 20 July 2000 the Dutch Government confirmed that NS Cargo had repaid that amount on 22 May 2000, and also furnished proof that the subsidy, including the interest due, together totalling NLG 636 536,50 had been transferred to the account of the Dutch Ministry of Transport, Public Works and Water Management,

⁽¹⁾ OJ C 213, 24.7.1999, p. 23.

⁽²⁾ OJ C 391, 28.12.1996, p. 15.

⁽³⁾ OJ L 130, 15.6.1970, p. 1.

⁽⁴⁾ See footnote 1.

HAS DECIDED AS FOLLOWS:

Article 1

The Commission shall terminate the procedure introduced on 21 April 1999 since there is no longer any reason to continue this.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 31 October 2000.

For the Commission
Loyola DE PALACIO
Vice-President

COMMISSION DECISION**of 25 January 2001****amending Decision 93/693/EC establishing a list of semen collection centres approved for the export to the Community of semen of domestic animals of the bovine species from third countries***(notified under document number C(2001) 156)***(Text with EEA relevance)****(2001/104/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 9(1), thereof,

Whereas:

- (1) Commission Decision 93/693/EC ⁽²⁾, as last amended by Decision 2000/564/EC ⁽³⁾, establishes a list of semen collection centres approved for the export to the Community of semen of domestic animals of the bovine species from third countries.
- (2) The competent veterinary services of Canada have forwarded a request for one addition to the list of semen collection centres officially approved for the export from Canada to the Community of semen of domestic animals of the bovine species.
- (3) Guarantees regarding compliance with the requirements specified in Article 9 of Directive 88/407/EEC have been received by the Commission from Canada.
- (4) It is therefore necessary to amend the list of approved centres in Canada.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

The following semen collection centre is added to the list concerning Canada in the Annex to Decision 93/693/EC:

CA		CAN 114	Independent Breeders Service Ltd PO Box 3608 Airdrie, Alberta T4B 2B8	
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Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 January 2001.

For the Commission

David BYRNE

Member of the Commission⁽¹⁾ OJ L 194, 22.7.1988, p. 10.⁽²⁾ OJ L 320, 22.12.1993, p. 35.⁽³⁾ OJ L 236, 20.9.2000, p. 33.

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

DECISION OF THE STANDING COMMITTEE OF THE EFTA STATES

No 1/2000/SC

of 2 October 2000

establishing a Financial Instrument Committee

THE STANDING COMMITTEE OF THE EFTA STATES,

Having regard to the Agreement on the European Economic Area as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as the EEA Agreement, and in particular Part VI thereof, and Decision of the EEA Joint Committee No 47/2000 of 22 May 2000 establishing an EEA Financial Instrument,

Having regard to the modalities of implementation as laid down in the Annex to Joint Committee Decision No 47/2000,

HAS DECIDED AS FOLLOWS:

Article 1

For the management of the EEA Financial Instrument, established by Decision of the EEA Joint Committee No 47/2000, a Financial Instrument Committee, hereinafter referred to as the Committee, is hereby established.

Article 2

Each EFTA State for which the Agreement on a Standing Committee of the EFTA States has entered into force shall be represented in the Committee and shall have one vote. The European Commission may be invited to participate in the deliberations of the Committee as appropriate.

Article 3

The Committee shall appoint a Liaison Officer who shall at the same time serve as the Secretary of the Committee. The Liaison Officer shall ensure close and continuous cooperation in particular between the Committee, the beneficiary States, the European Commission and the monitoring agents pertaining to the operation of the EEA Financial Instrument.

Article 4

Decisions by the Committee shall be taken by unanimity unless otherwise provided in its rules of procedure.

Article 5

The Committee shall take the decisions necessary for the proper functioning of the EEA Financial Instrument. It shall, in particular, approve projects for funding, approve the monitoring and payment plan for every project, supervise the overall functioning of the assistance notably on the basis of monitoring reports and authorise payments to the beneficiaries according to the payment plan on the basis of the monitoring reports.

Article 6

The Committee shall determine, on the basis of Joint Committee Decision No 47/2000, the amount of the instalments to be paid to an account established by the Financial Instrument Committee. On the basis of the principle for cost sharing agreed by the Standing Committee at its 74th meeting on 22 June 2000, the Financial Instrument Committee shall calculate the share of, and the amount to be paid by, each EFTA State. Calls for payment shall be issued by the Liaison Officer.

Article 7

The Rules of Procedure of the Committee are attached to this Decision.

Article 8

The Committee shall semi-annually submit a report on its activities and on the operation of the EEA Financial Instrument to the Standing Committee.

Article 9

This Decision shall take immediate effect.

Article 10

This Decision shall be published in the EEA section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 2 October 2000.

For the Standing Committee

The Chairman

Gunnar SNORRI GUNNARSSON

The Secretary-General

William ROSSIER

ANNEX

RULES OF PROCEDURE FOR THE FINANCIAL INSTRUMENT COMMITTEE*Article 1***Members/alternates**

1. Each EFTA State for which the Agreement on a Standing Committee of the EFTA States has entered into force shall have one full member on the Committee, duly appointed in writing by the respective member State's relevant authority. Each full member may have one or more alternate(s), whose name(s) shall be notified to the Committee in writing by the full member or the relevant authority by which he or she has been appointed. When acting for a member an alternate shall have the same rights and obligations as a member. Any changes in the representation shall be notified in writing to the Committee without undue delay.
2. Each member may be assisted by one or more expert(s).

*Article 2***Chairman/Vice-Chairman**

1. The Committee shall elect a Chairman and a Vice-Chairman for a term of one year. Each of them may be re-elected.
2. The conduct of business shall be in the hands of the Chairman.
3. Should the Chairman be absent from a meeting of the Committee, the Vice-Chairman shall take his place. Should the Vice-Chairman also be absent, the Committee shall elect a Chairman for that meeting.

*Article 3***Observers**

The Chairman may invite representatives of the EIB, the European Commission, the monitoring agent(s) or other relevant parties to attend meetings of the Committee as observers or providers of project information.

*Article 4***Secrecy of meetings**

Meetings of the Committee shall be held in private, unless the Committee decides otherwise by unanimous vote.

*Article 5***Convening of meetings**

Meetings of the Committee shall be convened by the Chairman after consulting the Secretary. A meeting shall also be convened, without undue delay, whenever a member so requests in writing, stating the subject to be discussed.

*Article 6***Meeting place**

Meetings of the Committee shall normally take place at the premises of the EFTA Secretariat in Brussels.

*Article 7***Provisional agenda**

The Secretary shall, in consultation with the Chairman, draw up a provisional agenda for each meeting. The invitation to the meeting and the provisional agenda shall be communicated to the members as a rule not later than one week before the meeting. The provisional agenda shall be accompanied by all necessary working documents.

*Article 8***Inclusion of items on the agenda**

The agenda shall include any item the inclusion of which has been requested by a member not later than 10 days before the meeting.

*Article 9***Quorum**

Two members shall constitute a quorum.

*Article 10***Voting**

1. Decisions on procedural questions shall be taken by majority vote. Other decisions shall be taken unanimously. A decision shall be regarded as taken unanimously if no member casts a negative vote.
2. However, if in a draft decision it is proposed that an application for a grant be rejected, the decision shall be regarded as taken if one member casts a positive vote.

*Article 11***Representation**

A member may authorise another member to vote on his behalf. The Secretary shall be notified in writing of such an authorisation before the beginning of the meeting.

*Article 12***Written procedure**

Decisions may be taken by written procedure if all members are in agreement thereon.

*Article 13***Preparation of draft decisions on applications for grants and the written procedure for such decisions**

1. Draft decisions on applications for grants shall be prepared by the Secretary and forwarded to the members together with any relevant information, sufficiently early to be decided upon within two months after submission of the application in its final and acceptable form. Receipt shall be confirmed by each member to the Secretary without undue delay.
2. Notwithstanding Article 12, the Chairman, after consulting the Secretary, shall decide whether an application shall be dealt with by written procedure or at a meeting.
3. In case of written procedure the following shall apply.
 - (a) If in a draft decision it is proposed that an application be approved.
 - the draft decision shall be regarded as adopted if at least two members approve it and inform the Secretary thereof within two weeks from the date it was transmitted by him,
 - the draft decision shall be regarded as rejected if within the same time period any member rejects it.
 - (b) If in a draft decision it is proposed that an application be rejected,
 - the draft decision shall be regarded as adopted if any member approves it and informs the Secretary thereof within two weeks from the date it was transmitted by him.

If the Committee has not taken a decision within two weeks from the date the draft decision was transmitted by the Secretary, a meeting of the Committee shall be convened.

*Article 14***Approval of the text of a decision**

The text of a decision taken by the Committee shall be approved before the end of the meeting. The text of a decision taken by written procedure shall be circulated to the members by the Secretary as soon as possible after the decision has been taken.

*Article 15***Summary record**

After each meeting of the Committee a summary record of the deliberations shall be made by the Secretary.

*Article 16***Secrecy of the deliberations**

1. The deliberations of the Committee shall be confidential.
2. Information concerning trade secrets or other confidential matters which has been submitted to the Committee shall not be revealed to any unauthorised person.

*Article 17***Review of the rules of procedure**

These Rules of Procedure shall be reviewed before the lapse of 12 months from their adoption.

CORRIGENDA

Corrigendum to Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC

(Official Journal of the European Communities L 306 of 7 December 2000)

On page 4, Article 9(2):

For: '2. Decisions amending Decisions referred to in Article 10(1) shall be adopted by the Commission where they do not comprise substantial changes to the nature of the programmes referred to in the said paragraph and, as regards the financial element, where they do not exceed 20 % of the total amount allocated for the programme in question, subject to a limit of EUR 4 million. The CARDS Committee referred to in Article 10 shall be notified of all revised decisions.'

Read: '2. Decisions amending Decisions adopted in accordance with the procedure referred to in Article 10(2) shall be adopted by the Commission where they do not comprise substantial changes to the nature of the original programmes and actions and, as regards the financial element, where they do not exceed 20 % of the total amount allocated for the programme or action in question, subject to a limit of EUR 4 million. The CARDS Committee referred to in Article 10 shall be notified of all amended decisions.'

Corrigendum to the Agreement between the European Community and the Republic of Cyprus adopting the terms and conditions for the participation of the Republic of Cyprus in Community programmes in the fields of training, education and youth

(Official Journal of the European Communities L 29 of 31 January 2001)

On page 40, final formula:

for: 'Done at Brussels, 22 December 2000.'

read: 'Done at Brussels on the eleventh day of January in the year two thousand and one.'
