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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1623/2003

of 11 September 2003

extending the definitive anti-dumping duty imposed by Regulation (EC) No 408/2002 on imports of certain zinc oxides originating in the People's Republic of China to imports of certain zinc oxides consigned from Vietnam, whether declared as originating in Vietnam or not, and to imports of certain zinc oxides originating in the People's Republic of China and mixed with silica

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 13 thereof,

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

Whereas:

in the PRC, as shown by a significant increase in imports of the same product from Vietnam while imports from the PRC had decreased substantially during the same time span.

(4) This change in the pattern of trade was alleged to stem both from the transshipment of zinc oxides originating in the PRC via Vietnam. In addition, it was further alleged that zinc oxides originating in the PRC are being mixed with other substances, such as silica, thereby falling outside the relevant TARIC code. It was further alleged that as the basic characteristics and uses of the product remain unchanged, there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duties on zinc oxides originating in the PRC.

A. PROCEDURE

1. Existing measures

(1) By Regulation (EC) No 408/2002 ⁽²⁾ (the original Regulation), the Council imposed definitive anti-dumping duties ranging from 6,9 % to 28 % on imports of zinc oxide with a purity of not less than 93 % zinc oxide (zinc oxides) originating in the People's Republic of China (the PRC).

(5) Finally, the applicant alleged that the remedial effects of the existing anti-dumping duties on zinc oxides originating in the PRC were being undermined both in terms of quantities and prices and that dumping was taking place in relation to the normal values previously established.

2. Request

(2) On 18 November 2002, the Commission received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 (the basic Regulation) to investigate the alleged circumvention of the anti-dumping measures imposed on imports of zinc oxides originating in the PRC. The request was submitted by Eurometaux on behalf of producers representing a major proportion of the Community production of zinc oxides.

(3) The request alleged that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of zinc oxides originating

3. Initiation

(6) The Commission initiated an investigation by Regulation (EC) No 2261/2002 ⁽³⁾ (the initiating Regulation) and, pursuant to Article 13(3) and Article 14(5) of the basic Regulation, directed the customs authorities to register imports of zinc oxides consigned from Vietnam, whether declared as originating in Vietnam or not, under TARIC code 2817 00 00 11, and imports of the zinc oxides mixed with other substances originating in the PRC under TARIC code 2817 00 00 19, as from 20 December 2002.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 62, 5.3.2002, p. 7.

⁽³⁾ OJ L 344, 19.12.2002, p. 12.

4. Investigation

- (7) The Commission advised the authorities of the PRC and Vietnam of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and Vietnam as well as to importers in the Community named in the request or known to the Commission from the original investigation. 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 initiating Regulation.
- (8) Five producers/exporters in the PRC submitted completed replies to the questionnaires whilst no reply was received from producers/exporters in Vietnam. Replies to the questionnaire were also submitted by four importers in the Community. The Commission carried out verification visits at the premises of the following companies:

Unrelated importers:

- Norkem Ltd, Knutsford, United Kingdom,
- Norkem BV, Enkhuizen, The Netherlands,
- Almiberia, SA, San Antonio de Benagéber, Spain,
- Explorer, srl, Sassuolo, Italy.

Chinese producers/exporters:

- Liuzhou Fuxin Chemical Industry Co. Ltd, Liuzhou, China,
- Liuzhou Nonferrous Metals Smelting Co. Ltd, Liuzhou, China, and its related exporter,
- Liuzhou Nonferrous Metals Smelting Import & Export Co. Ltd, Liuzhou, China.

5. Investigation period

- (9) The investigation period covered the period from 1 October 2001 to 30 September 2002 (the IP). Data was collected from 2000 up to the IP to investigate the change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Vietnam

- (10) No producers/exporters of zinc oxides in Vietnam cooperated in the investigation. It was made clear to the companies involved that non-cooperation may lead to the application of Article 18 of the basic Regulation. The Vietnamese Government (the Ministry of Trade), in reaction to the initiation of the investigation, made it clear that no exports of zinc oxides of Vietnamese origin to the Community have taken place throughout the year 2002, and that the Vietnamese authorities have not granted any certificates of Vietnamese origin for exports of zinc oxides.

(b) PRC

- (11) The five Chinese producers/exporters that cooperated in the investigation accounted for close to 100 % in volume of the total imports of zinc oxides declared under CN code 2817 00 00 from the PRC during the IP, as reported by Eurostat.
- (12) It should be noted that during the IP of the original investigation the cooperating companies in the current investigation represented only 22 % of the total exports to the Community. This means that the major part of the exported quantities in the original investigation were exported by companies that are non-cooperating in the current investigation. It was made clear to these non-cooperating companies that non-cooperation may lead to the application of Article 18 of the basic Regulation.
- (13) One Chinese Company, for which an individual duty had been established in the original investigation and which was subject to a periodical monitoring by the Commission⁽¹⁾ on a six-monthly basis, argued that it was not necessary for it to fill in the questionnaire since the Commission had previously visited the company in the context of the periodical monitoring and all the data requested in the present investigation were already available. It was informed that it should nevertheless reply to the questionnaire, since data collected for other purposes and for a different period were not sufficient for the purpose of the present investigation. The export data requested in the present investigation were not completely covered by the previously submitted monitoring reports. As the company did not submit any questionnaire response, they were informed that it would be treated as a non-cooperating party and that therefore, in their respect, findings would be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.

2. Product concerned and like product

- (14) The product concerned is, as defined in the original investigation, zinc oxide (chemical formula ZnO) with a purity of not less than 93 % zinc oxide, currently classifiable within CN code ex 2817 00 00 (TARIC code 2817 00 00 12).
- (15) The investigation has shown that the product concerned, zinc oxides, are imported into the Community presented in two different forms: either as zinc oxides or as zinc oxides mixed with silica. The investigation has also shown that the mixing of zinc oxides with silica does not alter the basic physical and chemical characteristics of the product concerned, as the zinc oxides maintain their molecular structure and their chemical properties intact. Furthermore, the investigation has shown that for instance in the case of the ceramic tile industry, which is one of the major users of zinc oxides, the product concerned must in any event be mixed with several other substances, including silica, in order to be used in the production of tiles.

⁽¹⁾ Recital 59 of the original Regulation.

(16) In the absence of cooperation and considering the change in the pattern of trade as described in recitals 20 and 21 it must be inferred that the zinc oxides exported to the Community from the PRC and those consigned from Vietnam have the same basic physical and chemical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

(17) On the basis of the information available, it is considered that zinc oxides presented mixed with silica still maintain their individual characteristics and should therefore be considered the same product as zinc oxides which are not presented in a mixed form. Consequently, zinc oxide mixed with silica and zinc oxide originating in the PRC are considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. Change in the pattern of trade

(18) As stated in recital 4 the change in the pattern of the trade was alleged to stem from two practices, either transshipment via Vietnam or by mixing of zinc oxides with other substances, such as silica.

(a) Zinc oxides consigned from Vietnam

(19) As no Vietnamese company cooperated in the investigation, exports from Vietnam to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data at CN level, which were the most appropriate information available in such a situation, were therefore used to establish the export prices and quantities from Vietnam to the Community.

(20) Imports of zinc oxides from Vietnam increased from 0 tonnes both in 2000 and 2001 to 6 523 tonnes at the end of the IP (September 2002). These imports from Vietnam commenced in fact in March 2002, thus at the same time as the imposition of the definitive duty. Imports into the Community of zinc oxides from the PRC decreased substantially, from 47 326 tonnes in 2000 (the IP of the original investigation) to 35 732 tonnes in 2001, and to 16 873 tonnes during the IP. This shows that a strong decrease of exports from the PRC has occurred after the initiation of the original anti-dumping investigation.

(21) According to data collected from Chinese trade statistics, before the imposition of the measures the exports of the product concerned from the PRC to Vietnam have been relatively stable, amounting to 1 643 tonnes in the year 2000 and to 2 029 tonnes in the year 2001. However, in the year 2002 these exports increased dramatically to 12 609 tonnes. In the period between the imposition of the duties in March 2002 and the end of the IP in

September 2002, the exports amounted to 8 482 tonnes. As indicated above, in the same time period, 6 523 tonnes have been exported to the Community from Vietnam. This shows that imports of zinc oxides originating in the PRC into Vietnam have increased substantially in the year 2002, at a pace very similar to the increase of exports from Vietnam to the Community in the same period.

(22) From the figures above it can be concluded that a clear change in the pattern of trade is established and coincided, in the case of both exporting countries, with the entry into force of the anti-dumping measures on the product concerned originating in the PRC in March 2002.

(b) Zinc oxides mixed with silica

(23) In the request it was alleged that zinc oxides originating in the PRC were presented mixed with other substances and declared under another customs heading when imported into the Community. The verification of the data of one cooperating importer has confirmed the fact that zinc oxides have been imported mixed with silica. These imports were purchased from a Chinese producer/exporter which did not cooperate in the investigation and they were declared, on the basis of binding tariff information (BTI) from the customs authorities of one Member State, under CN code 3824 90 99, which makes the imports concerned not subject to anti-dumping duties.

(24) For this importer, it has been established that the imports of zinc oxides presented mixed with silica started after the imposition of the measures in March 2002. However, in consideration of the fact that the cooperating importers only cover 65 % of the total imports to the Community it cannot be excluded that other non-cooperating importers have used the same practice. Indeed the request contained evidence that this practice may have been applied by at least another importer which did not cooperate in the investigation.

(25) Considering that the exporting companies cooperating in this investigation only represented 22 % of the exports during the IP of the original, but close to 100 % in the current investigation and that the total exports from the PRC into the Community have dropped from 47 367 tonnes to 16 873 tonnes, it is reasonable to conclude that part of this decrease could be explained by the imports of zinc oxides presented mixed with silica. Given the high percentage of non-cooperation, it was considered that significant quantities of zinc oxides presented mixed with silica may have been exported from China to the Community, declared under CN codes not subject to the duties.

- (26) Based on best evidence available pursuant to Article 18 of the basic Regulation, a change in the pattern of trade is established, which coincided with the entry into force of the anti-dumping measures on the product concerned originating in the PRC in March 2002.

4. Insufficient due cause or economic justification

- (27) In the absence of cooperation, and given the coincidence in time with the imposition of the anti-dumping measures on the product concerned originating in the PRC, it has to be concluded that the change in the pattern of trade stemmed from the imposition of the anti-dumping duty rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1), second sentence of the basic Regulation.
- (28) This conclusion is reinforced by the fact that no zinc oxides of Vietnamese origin have been exported to the Community, as declared by the Vietnamese authorities. Moreover, it can be inferred from the parallelism of the trends that the imports from the PRC to Vietnam were not meant for the Vietnamese market, but were meant to be re-exported. (See recitals 20 and 21).
- (29) As far as zinc oxides presented mixed with silica are concerned, no due cause or economic justification has been provided to explain the change in the pattern of trade. In fact, silica is a cheap material and in abundant supply in the Community in general and therefore there is no economical justification to transport the silica from China since this is unnecessarily increasing the total transport cost. Imports of zinc oxides presented mixed with silica coincided with the entry into force of the measures. The exporter of the mixture did not cooperate and in addition the importer did not bring forward any reasonable ground, other than avoiding the payment of anti-dumping duties, for carrying out the mixture in the country from which the goods were exported.
- (30) It is, therefore, concluded that no reasonable grounds, other than avoiding the existing anti-dumping duties on imports of zinc oxides originating in the PRC, could be established for the change in the pattern of trade observed.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products

- (31) It is evident from the trade flow analysis made in recitals 20 and 21 that a change in the pattern of Community imports occurred since the imposition of the measures, and that this marked change in trade flows undermined the remedial effects of the anti-dumping measures in terms of quantities imported into the Community market.
- (32) With regard to prices of the products consigned from Vietnam and in the absence of cooperation from exporters, Eurostat data revealed that export prices from

Vietnam were even lower than the export prices established for the PRC in the original investigation. Consequently, the prices of Vietnamese exports of the product concerned to the Community are below the injury elimination level of Community prices as established in the original investigation.

- (33) With regard to prices of the imported zinc oxides presented in a mixed form and given the non-cooperation, recourse had to be made to the best evidence available, i.e. the figures of the cooperating importer for which this practice had been observed. These data revealed that the import prices submitted by this company are below the injury elimination level of Community prices as established in the original investigation.
- (34) It is therefore concluded that the imports concerned undermine the remedial effects of the duty both in terms of quantities and prices.

6. Evidence of dumping in relation to the normal values previously established for like or similar products

- (35) In order to determine whether evidence of dumping could be found with respect to the product concerned exported to the Community from Vietnam during the IP and the imports of zinc oxides presented mixed with silica, export prices established on the basis of Eurostat data and the figures of the cooperating importer were used. As concerns imports from Vietnam it has been established that prices from Vietnam are more than 15 % lower than the Chinese export prices in the original investigation. As concerns the export prices for the zinc oxides presented mixed with silica, taking into account the quantity of silica in the mix, it has been established that these export prices are more than 22 % lower than the Chinese export prices in the original investigation.
- (36) It has to be recalled that Article 13(1) of the basic Regulation requires evidence of dumping in relation to the normal values previously established for the like or similar products but does not require the establishment of a new dumping margin. In accordance with Article 13(1) of the basic Regulation, the normal value previously established was the normal value used in the original investigation. At that time, the United States of America were found to be the appropriate market economy analogue country for the PRC.
- (37) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport, insurance and handling.

- (38) In accordance with Articles 2(11) and (12) of the basic Regulation, the comparison of a weighted average normal value as established in the original investigation and the weighted average of export prices during this investigation's IP expressed as a percentage of the cif price at the Community frontier duty unpaid, showed dumping for both the imports of the zinc oxides consigned from Vietnam and the imports of the zinc oxides presented mixed with silica.

C. MEASURES

- (39) In view of the above finding of circumvention within the meaning of Article 13(1), second sentence, of the basic Regulation and in accordance with Article 13(1), first sentence, of the basic Regulation, the existing anti-dumping measures on the product concerned originating in the PRC should be extended to the same product consigned from Vietnam, whether declared as originating in Vietnam or not.

- (40) Considering that it was found that in some cases zinc oxides are presented mixed with silica with the only purpose of obtaining a different customs classification and avoiding payment of the duties, it is necessary to ensure that the duties imposed on zinc oxides are collected also in those cases where the product concerned is imported as zinc oxides presented mixed with silica. In these cases, the duties should be collected in proportion to the content of zinc oxides in the presented mixed form.

- (41) The duty extended should be the one applicable to all other companies as established in Article 1(2) of the original Regulation.

- (42) In accordance with Article 14(5) of the basic Regulation, which provides that measures may be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of zinc oxides consigned from Vietnam and of zinc oxides presented mixed with silica originating in the PRC which entered the Community under registration imposed by the initiating Regulation.

- (43) The circumvention takes place outside the Community. Article 13 of the basic Regulation is aiming at countering circumvention practices without affecting operators which can prove that they are not involved in such practices, but it does not contain a specific provision providing for the treatment of exporters which could establish that they are not involved in circumvention practices. Therefore, it appears necessary to introduce a possibility for exporters which have not exported the product concerned during the IP and are not related to any exporters or producers subject to the extended anti-dumping duty to request an exemption from the

measures on these imports. Exporters concerned which would consider to lodge a request for an exemption from the extended anti-dumping duty would be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. An exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and taking into account the likelihood of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. The request would have to be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to production and export sales. Importers could still benefit from exemption from the measures to the extent that their imports are from exporters which are granted such an exemption, and in accordance with Article 13(4).

- (44) Where exemption is considered appropriate, the Commission would, after consultation of the Advisory Committee, propose the amendment of the Regulation accordingly.

D. PROCEDURE

- (45) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the definitive anti-dumping duty in force and were given the opportunity to comment. No comments which were of a nature to change the above conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty of 28 % imposed by Regulation (EC) No 408/2002 on imports of zinc oxide (chemical formula: ZnO) with a purity of not less than 93 % zinc oxide, normally declared under CN code ex 2817 00 00 (TARIC codes 2817 00 00 12 and 2817 00 00 18) originating in the People's Republic of China, is hereby extended to imports of zinc oxide (chemical formula: ZnO) with a purity of not less than 93 % zinc oxide, consigned from Vietnam (whether declared as originating in Vietnam or not) (TARIC code 2817 00 00 12) and to imports of zinc oxide presented mixed with silica, but where the purity of the zinc oxide itself is not less than 93 % zinc oxide. In the latter case, the duty should be collected in proportion to the content of zinc oxide with a purity of not less than 93 % zinc oxide in the mixture originating in the People's Republic of China (TARIC code 3824 90 99 87).

2. The duty extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Regulation (EC) No 2261/2002 and Article 13(3) and Article 14(5) of Regulation (EC) No 384/96.

3. The provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the Community and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate B
Office: J-79 05/17
B-1049 Brussels
Fax (32 2) 295 65 05
Telex COMEU B 21877.

2. The Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping duty imposed by Regulation (EC) No 408/2002 from the duty extended by Article 1, and propose the amendment of the Regulation accordingly.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 2261/2002.

Article 4

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

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

Done at Brussels, 11 September 2003.

For the Council

The President

F. FRATTINI

COMMISSION REGULATION (EC) No 1624/2003
of 17 September 2003
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 1947/2002 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 17 September 2003 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	117,1
	060	103,4
	064	129,8
	092	107,3
	094	81,8
	999	107,9
0707 00 05	052	120,2
	999	120,2
0709 90 70	052	115,6
	999	115,6
0805 50 10	388	65,4
	524	47,7
	528	51,0
	999	54,7
0806 10 10	052	79,9
	064	95,2
	999	87,6
0808 10 20, 0808 10 50, 0808 10 90	388	77,2
	400	62,2
	508	35,3
	512	85,0
	720	66,8
	800	160,2
	804	86,5
	999	81,9
0808 20 50	052	102,8
	064	48,7
	388	82,0
	999	77,8
0809 30 10, 0809 30 90	052	113,9
	624	111,9
	999	112,9
0809 40 05	052	74,5
	060	68,0
	064	63,4
	066	65,1
	624	116,3
	999	77,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1625/2003

of 17 September 2003

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽³⁾, as last amended by Regulation (EC) No 807/2003 ⁽⁴⁾,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽¹⁾, and in particular Article 5 thereof,

HAS ADOPTED THIS REGULATION:

Article 1

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

The following Member States shall issue on 21 September 2003 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

United Kingdom:

- 150 tonnes originating in Botswana,
- 600 tonnes originating in Namibia,
- 30 tonnes originating in Swaziland.

Whereas:

Article 2

(1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of October 2003 for the following quantities of boned beef and veal:

(2) The applications for import licences submitted between 1 and 10 September 2003, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.

Botswana:	12 135,5 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	2 758 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	4 490 tonnes.

(3) The quantities in respect of which licences may be applied for from 1 October 2003 should be fixed within the scope of the total quantity of 52 100 tonnes.

(4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine,

Article 3

This Regulation shall enter into force on 21 September 2003.

⁽¹⁾ OJ L 348, 21.12.2002, p. 5.

⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.

⁽⁴⁾ OJ L 122, 16.5.2003, p. 36.

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

Done at Brussels, 17 September 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

COMMISSION REGULATION (EC) No 1626/2003**of 17 September 2003****on the issue of import licences for rice originating in the least developed countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 ⁽¹⁾, as amended by Regulation (EC) No 814/2003 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1401/2002 of 31 July 2002 laying down detailed rules for the opening and administration of the tariff quotas for rice, originating in the least developed countries, for the marketing years 2002/2003 to 2008/2009 ⁽³⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Regulation (EC) No 1401/2002 opened a tariff quota for a quantity of 3 329 tonnes of husked rice equivalent for the 2003/2004 marketing year.

- (2) The quantities in respect of which applications have been submitted exceed the quantities available. It is therefore necessary to set a reduction percentage applicable to the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

For applications for import licences for rice originating in the least developed countries referred to in Article 9 of Regulation (EC) No 2501/2001, submitted during the first five working days of September 2003 pursuant to Regulation (EC) No 1401/2002 and notified to the Commission, licences shall be issued for the quantities given in the applications submitted multiplied by a reduction percentage of 93,8878 %.

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 346, 31.12.2001, p. 1.

⁽²⁾ OJ L 116, 13.5.2003, p. 1.

⁽³⁾ OJ L 203, 1.8.2003, p. 42.

**COMMISSION REGULATION (EC) No 1627/2003
of 17 September 2003**

**imposing a provisional anti-dumping duty on imports of sodium cyclamate originating in the
People's Republic of China and Indonesia**

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 1972/2002 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 19 December 2002, the Commission announced, by a notice 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 sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia.
- (2) The proceeding was initiated as a result of a complaint lodged in November 2002 by a Spanish producer, Productos aditivos SA, representing the total Community production. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the applicant Community producer, the exporting producers, importers and users known to be concerned and the representatives of the PRC and Indonesia 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 exporting producers in the PRC and Indonesia, as well as the sole Community producer, importers, users and suppliers, made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.
- (5) The Commission sought, by means of questionnaires sent to all known parties, and verified to the possible extent the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest. In this regard, the Commission received questionnaire responses from the following companies:
 - (a) *producer in the Community*
 - Productos aditivos SA, Barcelona, Spain;
 - (b) *importers/traders and users in the Community*
 - La Casera, SA (Cadbury Schweppes), Madrid
 - Palatinit GmbH, MannheimVerification visits were also carried out at the premises of the abovementioned companies;
 - (c) *exporting producers in the People's Republic of China*
 - Fang Da Food Additive (Shen Zhen) Limited
 - Fang Da Food Additive (Yang Quan) Limited

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ C 318, 19.12.2002, p. 7.

- Zhong Hua Fang Da (HK) Ltd (related exporter in Hong Kong)
- Golden Time Enterprise (Shenzhen) Co. Ltd
- Rainbow Rich Industrial Ltd (related exporter in Hong Kong);

(d) *exporting producer in Indonesia*

- PT. Golden Sari, Bandar Lampung

The dumping verification visits to the PRC and Indonesia which normally take place before provisional findings are made, were cancelled due to the introduction of travel restrictions because of SARS. A notice concerning the consequences of SARS on anti-dumping and anti-subsidy investigations has been published in the *Official Journal of the European Union* ⁽¹⁾. Verification visits were, however, carried out in respect of those exporting producers which requested market economy treatment ('MET') before those travel restrictions had been adopted.

- (6) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period ('period considered').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. General

- (7) Sodium cyclamate is a commodity product used as a food additive, permitted in the European Community and in many other countries as a sweetener for low-caloric and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.
- (8) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. This content, limited by legislation (Directive 94/35/EC), defines the quality of the cyclamate. Cyclamate can be found in two different forms: hydrated (HC), with 15 % of water of crystallisation; and anhydrous (AC), with a content of up to 1 % of moisture. These two degrees of moisture do not modify the main characteristics and uses of cyclamate; it only varies in degree of sweetening power; the HC is less sweet due to the water content. Prices vary due to the same reason. The anhydrous is approximately 15 % more expensive than the hydrated form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2. The product concerned

- (9) The product under consideration is sodium cyclamate originating in the PRC and Indonesia, currently classifiable under CN code ex 2929 90 00.
- (10) The investigation has shown that all types of the product concerned, despite differences in the form of presentation, have the same physical, and chemical characteristics and are used for the same purposes. Therefore and for the purpose of the present anti-dumping proceeding all types of the product concerned are regarded as one product concerned.

3. Like product

- (11) No differences were found between the product concerned and the sodium cyclamate produced and sold on the domestic market in the PRC and Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect of the PRC. Indeed, that cyclamate has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.
- (12) Likewise, no differences were found between the product concerned and the sodium cyclamate produced by the applicant and sold on the Community market. They both share the same physical and chemical characteristics and uses.
- (13) Consequently, sodium cyclamate sold on the domestic market of the PRC and Indonesia and exported to the Community as well as sodium cyclamate produced and sold in the Community are considered as alike to the product concerned within the meaning of Article 1(4) of Regulation (EC) No 384/96 ('the basic Regulation').

⁽¹⁾ OJ C 191, 13.8.2003, p. 2.

C. DUMPING

1. Indonesia

1.1. *Normal value*

- (14) One exporting producer in Indonesia responded to the Commission's questionnaire. The dumping verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.
- (15) In these circumstances, it was examined whether the information provided in the questionnaire response concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by this exporting producer was deficient and unclear to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.
- (16) The average Indonesian price reported in the complaint has therefore been used to establish the provisional normal value. The cooperating exporting producer was informed and was given an opportunity to comment. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate a revised normal value based on the questionnaire reply.

1.2. *Export price*

- (17) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producer could not be verified. It was examined whether the information provided in the questionnaire response concerning export prices could form a basis for a provisional dumping calculation. It was found that the information provided in this regard by this exporting producer was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available to the Commission services which could have enable the Commission's services to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, facts available had also to be used for the provisional determination of the export price. In this respect, the average import price for Indonesia as reported in Eurostat statistics was used to establish export price. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate an individual export price based on the questionnaire reply.

1.3. *Comparison*

- (18) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no reliable or verified information concerning costs and expenses was available at this stage of the investigation, and failing any other available more reliable data being available, the relevant costs reported in the complaint had to be used as facts available in order to make the necessary adjustments for differences in transport and insurance costs.

1.4. *Dumping margin*

- (19) The normal value and export price established as explained above were compared in accordance with Article 2(11) of the basic Regulation on an weighted average to weighted average basis.

- (20) The provisional dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for Indonesia 25,5 %.

2. The People's Republic of China

2.1. Market economy treatment ('MET')

- (21) 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 producers which were found to meet the criteria laid down in Article 2(7)(c), i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:
1. business decisions and costs are made in response to market conditions;
 2. accounting records are independently audited and applied for all purposes;
 3. there are no significant distortions carried over from former non-market economy system;
 4. legal environment and stability is provided by bankruptcy and property law;
 5. currency exchanges are carried out at the market rate.
- (22) Three Chinese producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. Two of them were related companies.
- (23) The Commission sought all information deemed necessary and verified all information submitted in the MET applications at the premises of the companies in question.
- (24) For all three companies it was established that, overall, their decisions regarding prices and costs were made without significant State interference within the meaning of Article 2(7)(c) and that costs and prices reflected market values. These companies had accounts independently audited in line with international accounting standards and their production costs and financial situation was not subject to significant distortions carried over from the former non-market economy system. Finally, there were bankruptcy and property laws guaranteeing legal certainty and stability and the exchange rate conversions were carried out at the market rate. Consequently, it was concluded that the following three companies fulfilled the conditions set out in Article 2(7)(c) of the basic Regulation:
- Fang Da Food Additive (Shen Zhen) Limited
 - Fang Da Food Additive (Yang Quan) Limited
 - Golden Time Enterprise (Shenzhen) Co. Ltd.
- (25) It was therefore decided to grant MET to all three companies. The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry has been given an opportunity to comment. However, no comments were received concerning the MET decision.

2.2. Normal value for MET companies

- (26) Following the decision to grant MET, the companies were requested to submit a full questionnaire reply including domestic sales information and information on cost of production of the product concerned and the like product. The verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.

- (27) In these circumstances, it was examined whether the information provided in the questionnaire responses concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by all Chinese producers was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producers to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producers. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.
- (28) Therefore, in line with the usual practice with regard to economies in transition, like the PRC, an analogue country was selected. Prices in Indonesia were considered a reasonable surrogate for prices in the PRC because Indonesia has a competitive domestic market where at least three producers operate. Since the product under investigation is only produced in the Community, the PRC and Indonesia, the Commission concluded that Indonesia can provisionally be used as an analogue country in this case.
- (29) The average Indonesian price reported in the complaint has therefore been used to establish provisional normal values for all Chinese exporting producers. The cooperating exporting producers were informed and were given an opportunity to comment. However, the investigation continues and should the information they provided be completed and clarified, the Commission will calculate individual normal values for each exporting producer for which market economy treatment has been granted.

2.3. Export prices for MET companies

- (30) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producers could not be verified on spot. However, it was found that all cooperating exporting producers sold the product concerned to independent customers in the Community via related companies in Hong Kong. Furthermore, the Commission established that the average export price as reported in their questionnaire responses was in line with the average import price obtained from Eurostat statistics.
- (31) It was therefore considered appropriate to establish export price on the basis of the average price reported by each one of the cooperating exporting producers for which market economy treatment was granted. Thus, an individual dumping margin for each one of these exporting producers could be provisionally calculated.

2.4. Comparison for MET companies

- (32) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no verified or other reliable information concerning costs and expenses was available at this stage of the investigation, the relevant costs reported in the complaint had to be considered to be the best facts available and they were used to make the necessary adjustments for differences in transport and insurance costs.

2.5. Dumping margin for MET companies

- (33) For the three exporting producers which were granted MET, the normal value as established above, was compared with the export price of the product concerned on an average to average basis for each company, as provided for under Article 2(11) of the basic Regulation. Given that two of the three exporting producers were related companies, an average dumping margin was calculated in accordance with the standard practise of the Commission for these related exporting producers.

2.6. Dumping margin for exporting producers without MET

- (34) Given that the total export volumes as reported by the cooperating exporting producers were significantly lower than the import volume reported in Eurostat statistics during the IP, it was provisionally concluded that there was significant non-cooperation (around 47 % of total imports of the product concerned in the Community). The export price for any non-cooperating exporting producer was therefore established on the basis of the average Eurostat import price for the PRC during the IP.
- (35) For all non-cooperating companies, a countrywide dumping margin was calculated by comparing the normal value in the complaint with the export price calculated on the basis of the average Eurostat import price (see recital 34).

2.7. Provisional dumping margins for PRC

- (36) The provisional dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

Fang Da Food Additive (Shen Zhen) Limited	5,8 %
Fang Da Food Additive (Yang Quan) Limited	5,8 %
Golden Time Enterprise (Shenzhen) Co. Ltd	23,4 %
All other companies	29,5 %

D. COMMUNITY INDUSTRY

- (37) Sodium cyclamate is manufactured in the Community by a sole company, the complainant, Productos aditivos SA. It is deemed to constitute the 'Community industry' within the meaning of Article 4(1) of the basic Regulation and will hereinafter be referred to as such.

E. INJURY

1. Community consumption

- (38) Community consumption was based on the combined volume of imports of the product concerned into the Community based on Eurostat statistics and the total verified sales of the Community industry on the Community market.
- (39) Community consumption of sodium cyclamate was approximately 7 640 tonnes during the IP. This figure is some 50 % higher than at the start of the period considered. The increase between 2000 and 2001 was 12,7 % and 27,4 % between 2001 and the IP.

Community consumption

	1999	2000	2001	IP
Sodium cyclamate (in tonnes)	5 093	5 317	5 996	7 641
<i>Index</i>	100	104	118	150

2. Imports of sodium cyclamate into the Community

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

- (40) The Commission examined whether imports from all countries concerned should be assessed cumulatively pursuant to Article 3(4) of the basic Regulation. According to that Article the effects of imports: 'shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions between the imported products and the like Community product'.
- (41) Taking into account the conditions laid down in Article 3(4) of the basic Regulation, the Commission recalls that the dumping margins found ranged from 5,7 % to 29,5 % for the PRC and was 25,5 % for Indonesia, i.e. well above the *de minimis* level.
- (42) In addition, between 1999 and the IP, imports from the two countries concerned showed an upward trend, and, above all, hold a significant share of the Community market. Indeed, despite a slight decrease in the course of the IP for Indonesia, the volume of imports from each of the two countries and corresponding market shares were found during the IP significantly above the *de minimis* level. Furthermore, the prices of these imports were all in the same range.
- (43) Finally, the Commission's analysis revealed that the products concerned imported from the countries under investigation were entirely interchangeable between themselves as well as with the like product produced and sold by the Community industry. All products were also sold with similar pricing policies to the same type of customers.
- (44) It was therefore provisionally concluded that a cumulative assessment of the effects of the imports from the PRC and Indonesia was appropriate, in accordance with Article 3(4) of the basic Regulation.

(b) Volume and market share of imports

- (45) The Chinese cooperating exporting producers sold for export to the Community the product concerned via related companies in Hong Kong. The investigation found that there was no production of sodium cyclamate in Hong Kong, no indeed anywhere else other than in the PRC, Indonesia, and the Community. Therefore, the Eurostat data concerning the volume of imports from Hong Kong were considered together with the relevant data concerning the PRC. On the basis of Eurostat data, the volume of imports from the PRC and Indonesia increased over the period considered. The increase of imports was particularly marked between 2000 and the IP when they more than doubled.

Total dumped imports (tonnes)

	1999	2000	2001	IP
<i>Index</i>	100	104	155	235

- (46) The market share of the dumped imports increased by 56 % during the period considered. This increased market share was wholly taken from the share previously held by the Community industry.

Market share of dumped imports

	1999	2000	2001	IP
<i>Index</i>	100	99	131	156

(c) *Effect of the dumped imports on prices in the Community market*

- (47) According to Eurostat data, the average price of the dumped imports from the countries concerned fluctuated between 1999 and the IP. The prices for the PRC have been established on the basis of average Eurostat data reported for both the PRC and Hong Kong. Though this showed an increase of 20 % between 1999 and 2000, the overall trend for the whole period considered is a fall of 8 %.

Dumped imports price per kg

	1999	2000	2001	IP
<i>Index</i>	100	120	102	92

(d) *Price undercutting*

- (48) For the determination of price undercutting the Commission analysed price data for the IP. The sales prices of the Community industry is the average net ex works sales price to unrelated customers provided in the questionnaire replies and verified on the spot after deduction of discounts, rebates and levies. This was compared to the average import price of the cooperating Chinese exporting producers and the Eurostat import price for the PRC and Indonesia. These prices were at cif level and an appropriate adjustment was made to include any customs duties normally paid on importation.
- (49) On that basis, the existence of price undercutting was provisionally established for imports from the PRC and Indonesia. The level of undercutting, expressed as a percentage of the Community industry's average selling price was up to 18 % for the PRC and around 20 % for Indonesia.

3. Situation of the Community industry(a) *Preliminary remark*

- (50) In order to respect confidential business information, it has been necessary to present information concerning the Community industry in indexed form.
- (51) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1999 (the base year) to the IP.

(b) *Production, capacity and capacity utilisation*

<i>Index</i>	1999	2000	2001	IP
Production (in tonnes)	100	93	95	90
Capacity (in tonnes)	100	100	100	100
Capacity utilisation	100	92	95	90

- (52) During the period considered, the Community industry production decreased by 10 %. As production capacity remained unchanged during the same period the capacity utilisation decreased by 10 % in line with the development of production.

(c) *Sales volume, sales price, market share and growth***Sales in the Community**

	1999	2000	2001	IP
Volume (in tonnes) Index	100	105	96	101
Market share Index	100	100	82	67
Sales price (euro/kg) Index	100	100	103	97

- (53) Although Community consumption increased sharply between 2000 and the IP, the volume of sales of the Community industry has not risen. Consequently, its market share fell sharply as shown above. This is to be seen in contrast with the development of imports from Indonesia and the PRC whose combined market share increased considerably over the period considered.
- (54) The Community industry lost 33 % of its market share between 1999/2000 and the IP.
- (55) Average sales prices of the Community industry decreased during the period considered. The decrease was particularly marked between 2001 and the IP when sales prices decreased by 5,8 %.

(d) *Stocks*

- (56) As a result of falling sales, stocks of own produced sodium cyclamate increased significantly between 2000 and the IP. The figure for the IP, which represents only nine months of 2002, has been annualised.

Stocks (tonnes)

	1999	2000	2001	IP (2002)
<i>Index</i>	100	68	101	130

(e) *Profitability*

- (57) The Community industry's profitability has fallen sharply over the period, leading to considerable losses being incurred during the IP.

Profitability

	1999	2000	2001	IP
<i>Index</i>	100	34	36	- 11

(f) *Investments, return on investment, cash flow and the ability to raise capital*

	1999	2000	2001	IP
Investments (in EUR) Index	100	199	483	38
Return on investment Index	100	36	37	- 11
Cash flow (in EUR) Index	100	47	47	9

- (58) Major investments, were made during the period considered, particularly in 2001. It should be noted that the Community producer is a well-established company having a long tradition in the sodium cyclamate production, which dates from around 1960. Therefore, new investments were necessary in order to be able to maintain the state of the art facilities and to remain competitive. The investments made during the analysis period were mainly replacement investments. A substantial amount was also invested because of environmental regulations introduced by the Spanish authorities.
- (59) Due to the change of market conditions and more specifically the decline of market sales prices, new investments during the IP were to a large extent postponed or cancelled, in spite of the further expansion of Community consumption.
- (60) The return on investment, expressed as the relation between the net profits of the Community industry and the net book value of its investments, followed the profitability trend and decreased by 111 % during the analysis period.
- (61) The Community industry's cash flow deteriorated by 91 % during the period considered, in line with the trend of profitability.
- (62) The investigation established that it became more difficult for the Community industry to raise capital during the analysis period in particular because of the losses suffered during the IP.

(g) *Employment, productivity and wages*

	1999	2000	2001	IP
Employment Index	100	107	107	107
Average employment cost per employee (in '000 EUR) Index	100	105	102	110
Productivity (per employee) Index	100	86	89	84

- (63) Employment for the product under consideration was stable over the period considered. The productivity per employee (established on the basis of the number of tonnes produced divided by the number of employees) decreased between 1999 and the IP. The average employment cost per employee increased by 10 % over the period considered.

(h) *Magnitude of dumping, past dumping or subsidisation*

- (64) The impact on the Community industry of the magnitude of the actual margin of dumping cannot be considered negligible given the volume and the prices of the imports concerned.
- (65) Indeed, the investigation has shown that overall the imports originating in the PRC and Indonesia were sold at dumped prices on the Community market during the IP. Price pressure on Community prices would have been lower or even non-existent without dumping.
- (66) Furthermore, there were no indications that the Community industry was recovering, during the IP, from the effects of any past dumping or subsidisation.

4. Conclusion on injury

- (67) During the period considered the presence of low-priced dumped imports from the PRC and Indonesia significantly increased on the Community market and the main relevant injury indicators for the Community industry showed a negative development.
- (68) Some economic indicators pertaining to the situation of the Community industry, such as sales and employment, showed slight positive developments over the period considered, but this was because of rising consumption. Most indicators, however, worsened substantially during the same period, for example, prices, market share, stocks, profitability, return on investments and cash flow.

- (69) Taking into account all factors, in particular the fall in sales prices of the Community industry at a time of rising consumption and the consequent financial losses and falling levels of investment during the IP, it is provisionally considered that the Community industry has suffered material injury.

F. CAUSATION OF INJURY

1. Introduction

- (70) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports of sodium cyclamate originating in the PRC and Indonesia 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

- (71) Dumped imports from the PRC and Indonesia increased by 135 % over the period considered. This increase took place at a faster pace than that of the Community consumption, which increased by 50 % during the same period. These increased imports and rising consumption coincided with a period of rather stable sales for the Community industry. The market share of the dumped imports from the two countries concerned increased by 56 % during the period considered. This increased market share of imports coincided with a commensurate fall in the market share of the Community industry in the IP. It is therefore clear that the imports took over the part of the market share lost by the Community producer.
- (72) These increased imports also coincided with falling prices and losses for the Community industry. With consumption rising fast and significant undercutting taking place it can be seen that the rising level of imports will have caused this price pressure. The low price levels of the dumped imports also caused price suppression and the Community industry could not increase prices to cover costs increases. In addition, the Community could not increase its capacity utilisation, as should have been the case given the increase in consumption observed over the period considered, and thus benefit from lower costs.

3. The effects of other factors

(a) *The export performance of the Community industry*

- (73) The volume of exports outside the EC fluctuated during the period considered, but represented only between 15 % to 18 % of the total sales volume of the Community industry during that period. The average export prices were always higher than the sales prices on the Community market. The presence of Chinese and Indonesian producers on the export markets has led to reduced profits on the exports of the Community industry. It was noted that on markets where these producers were not present, the price levels could be maintained and profits made. Nevertheless, contrary to sales in the Community, exports were still earning profits during the IP and therefore could not have contributed significantly to the injury suffered by the Community industry.

(b) *Investments of the Community industry*

- (74) Large investments have been made during the period considered. New investments were necessary in order to be able to maintain the state of the art facilities and to remain competitive. The investments made during the period considered were mainly replacement investments. Though a substantial amount of investment was also made because of environmental regulations introduced by the Spanish authorities. It is noted that these investments have not increased the capacity. They did not, therefore, negatively affect the situation of the Community industry.

(c) *Any other factors*

- (75) Injury cannot result from other imports as there are only imports into the Community from Indonesia and the PRC. Moreover, injury cannot be the result of a change in the pattern of consumption as demand increased during the period considered significantly. The Commission's services are not aware of any other factors that may have significantly contributed to injury.

4. Conclusion on causation

- (76) The investigation has shown that large quantities of the dumped imports caused the prices of the Community industry to fall significantly as it fought unsuccessfully to maintain market share and a satisfactory capacity utilisation. Moreover, there was price undercutting and price suppression, as price increases, which would normally have occurred to cover increased costs, could not be implemented. Over the same period, the volume of imports from the countries concerned and their market share continued to increase sharply.
- (77) Given the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally concluded that these other factors did not contribute significantly to the material injury suffered by the Community industry. Therefore, it is provisionally concluded that the material injury suffered by the Community industry, as evidenced by its loss-making situation, negative returns on sales and investments and difficulties in raising capital, was caused by dumped imports.

G. COMMUNITY INTEREST

1. General remarks

- (78) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. The investigation

- (79) The Commission sent questionnaires to importers; industrial users of the product concerned as well as other interested parties who made themselves known within the time limit set in the notice of initiation.
- (80) In total 26 questionnaires were sent out, but only three replies, from one user and two importers/traders, of the product concerned were received. However, several companies chose to submit comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate, i.e. where supported by actual evidence.
- (81) The cooperating companies which replied to the Commission's questionnaires are the following:
- user:*
- La Casera, SA (Cadbury Schweppes), Madrid
- importers/traders:*
- Palatinit GmbH, Mannheim
- Brenntag Nordic Food, Glostrup.
- (82) These replies and submissions formed the basis for the Community interest analysis.

3. Interests of Community suppliers

- (83) As already explained above, no supplier replied to the questionnaire. However, the two main suppliers of raw material (cyclohexylamine) sent letters to the Commission and argued that measures would be in their interest.
- (84) They commented that any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the industry itself but may have some negative knock-on effect for the industry's suppliers of raw materials.

4. Interest of importers

- (85) Two unrelated importers/traders replied to the questionnaire within the time limit and cooperated with the investigation. One of them was positive on a possible adoption of anti-dumping measures, whilst the other one was rather reluctant.
- (86) The absence of further cooperation of importers in this case leads to the provisional conclusion that should any measures be imposed, they will not have any significant impact on the situation of unrelated importers and traders of sodium cyclamate in the Community. Clearly, however, any duty that reduces imports will have some impact on importers as quantities imported are likely to fall to a certain degree.
- (87) Some other importers made the point that Community production is insufficient to meet demand and that imports were therefore necessary. It is clear that Community production cannot meet consumption needs in the Community, but it is not considered that the proposed measures will substantially reduce supply from the countries under investigation, since sodium cyclamate is the cheapest sweetener used by the soft drinks industry and its contribution to their cost minor (see recital 90).

5. Interest of users

- (88) Major users of sodium cyclamate include producers of soft drinks, tabletop tablets and the pharmaceutical industry. Thirteen of these users were sent questionnaires but only one, a producer of soft drinks, chose to reply. Although this user was against the imposition of measures, no element as to the likely impact of anti-dumping measures on the users has been shown. In any event, given the decrease in price on the Community market since 1999 and the level of the measures proposed, no significant impact is foreseen for final consumers.
- (89) Concerning the beverage industry, the effect of the imposition of any anti-dumping measure would not be significant. The level of sodium cyclamate used in the production of soft drinks is exceedingly small. In fact, it is considerably less than 0,5 % of the cost of production.
- (90) The Commission sought to quantify the possible financial impact of measures on the operations of the cooperating user by taking into account both the origins of their sodium cyclamate purchases and its share in their overall manufacturing costs in the IP. As the proposed measures are based on the dumping margins found, it was considered for the purposes of this exercise that the prices of imports from the countries concerned would increase by the proposed duty rates. The impact would be significantly below 1 % of the overall manufacturing costs.
- (91) The table-top tablet producers and the pharmaceutical industry have not made representations in this investigation. The Commission, therefore, considers that an increase in costs, if any, applicable to this sector when compared to overall costs can be considered as negligible.
- (92) Some other users also made the point that Community production is insufficient to meet demand and that imports were therefore necessary. It is clear that Community production cannot meet consumption needs in the Community, but it is not considered that the proposed measures will substantially reduce supply from the countries under investigation.

6. Interest of the Community industry

- (93) It should be noted that the Community industry's loss making situation has resulted from its difficulty to compete with the low-priced dumped imports, which already held a significant market share at the beginning of the period considered and which have increased their market share considerably during that period.
- (94) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then at least be able to increase the volume and, perhaps to a limited extent, prices of its sales, thereby generating the necessary level of return to justify continued investment in its production facilities. It should be noted in this respect that the potential for price increases is, if any, fairly limited in view of the substantial undercutting margins found and the level of the measures proposed. The non-imposition of measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition to consumers.
- (95) It is therefore provisionally concluded that the imposition of provisional anti-dumping measures is in the interest of the Community industry.

7. Competition and trade distorting effects

- (96) The Commission considered the possible competition and trade distorting effects of measures in the light of the investigation and comments made by interested parties. These comments merely focused on the continued need for imports of the product concerned into the Community because of the inability of the Community industry to fully satisfy demand.
- (97) While it is true that production in the Community is, at present, insufficient to meet demand for sodium cyclamate, it should also be noted that there is no indication that the re-establishment of open and fair market conditions will prevent producers in third countries from competing in the Community market or, consequently, reduce quality and diversity of supply. Anti-dumping measures would merely remove the distortion of competition arising from dumping. Indeed, where the level of the anti-dumping measures is equal to the dumping margin, but lower than the amount required to remove fully the injury, it is only the unfair element of the exporters' price advantage which will be eliminated. In such a situation, the exporters can fully compete on the basis of their actual competitive advantage.
- (98) It was also found that neither importers, nor users would not be unduly affected by the imposition of measures. It is therefore in the interest of users and consumers that the Community industry is allowed to operate under conditions of fair competition so that domestic supplies continue to be available.
- (99) In view of the above, it is concluded that the imposition of provisional measures would help to maintain competition on the Community market.

8. Conclusion on Community interest

- (100) On the basis of the above, it is provisionally concluded that the imposition of provisional anti-dumping measures would not be against the Community interest.

H. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (101) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (102) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

- (103) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 10 % of turnover. It should be noted that this figure was selected in view of the profit levels achieved in 1999; i.e. before the substantial leap in market share of the dumped imports. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 10 % to the cost of production.
- (104) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. These differences were in all cases above the dumping margin found.

2. Provisional measures

- (105) As the injury elimination level is higher than the dumping margin established, the provisional measures should be based on the latter. The rate of the provisional anti-dumping duty for the PRC and Indonesia should be as follows:

	AD duty rate
The People's Republic of China	
Fang Da Food Additive (Shen Zhen) Limited Gong Le Industrial Estate Xixian County, Bao An Shenzhen 518102 PRC	5,8 %
Fang Da Food Additive (Yang Quan) Limited Da Lian Dong Lu, Economic and Technology Zone Yangquan City Shanxi 045000 PRC	5,8 %
Golden Time Enterprise (Shenzhen) Co. Ltd Shanglilang, Cha Shan Industrial Area, Buji Town Shenzhen City Guangdong Province PRC	23,4 %
All other companies	29,5 %
Indonesia	
All companies	25,5 %

- (106) 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 countrywide 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'.

- (107) 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.

I. FINAL PROVISION

- (108) 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 purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price for products manufactured by the companies listed below shall be as follows:

	Rate of duty %	TARIC additional code
The People's Republic of China		
Fang Da Food Additive (Shen Zhen) Limited Gong Le Industrial Estate Xixian County, Bao An Shenzhen 518102 PRC	5,8 %	A471
Fang Da Food Additive (Yang Quan) Limited Da Lian Dong Lu, Economic and Technology Zone Yangquan City Shanxi 045000 PRC	5,8 %	A472
Golden Time Enterprise (Shenzhen) Co. Ltd Shanglilang, Cha Shan Industrial Area, Buji Town Shenzhen City Guangdong Province PRC	23,4 %	A473
All other companies	29,5 %	A499
Indonesia		
All companies	25,5 %	

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 provision of a security, equivalent to the amount of the provisional duty.

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

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

Article 3

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

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, 17 September 2003.

For the Commission

Pascal LAMY

Member of the Commission

**COMMISSION REGULATION (EC) No 1628/2003
of 17 September 2003**

imposing a provisional anti-dumping duty on imports of large rainbow trout originating in Norway and the Faeroe Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 ⁽¹⁾ of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Regulation (EC) No 1972/2002 ⁽²⁾, (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 19 December 2002, the Commission announced by way of a notice published in the *Official Journal of the European Communities* ⁽³⁾, the initiation of an anti-dumping proceeding concerning imports of large rainbow trout originating in Norway and the Faeroe Islands.
- (2) The proceeding was initiated following a complaint lodged in November 2002 by the Finnish Fish Farmers' Association and the Åland Islands Fish Farmers' Association (the complainant) on behalf of producers representing a major proportion, in this case more than 30 %, of the total Community production of large rainbow trout. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised producers/exporters and importers known to be concerned as well as their associations, the authorities of Norway, the Home Government of the Faeroe Islands, users and 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 producers/exporters in Norway and the Faeroe Islands, as well as producers and importers in the Community 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.
- (5) In view of the apparent large number of producers/exporters of the product concerned in Norway and the Faeroe Islands and the large number of Community producers of the like product, sampling was envisaged in the notice of initiation for the determination of dumping and injury. Sampling was also envisaged in the notice of initiation in respect of importers of the product concerned into the Community.
- (6) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resultant injury and Community interest. Verification visits were carried out at the following companies:
 - (a) *Sampled Community producers*
 - Viviers de France, Castets, France,
 - Napapiirin Kala Oy, Vanttauskoski, Finland,
 - Savon Taimen Oy, Rautalampi, Finland,
 - Flisö Fisk Ab, Mariehamn, Finland,
 - Saaristomeren Kala Oy, Uusikaupunki, Finland,
 - Linnatien Lohi Ky, Kuivaniemi, Finland,
 - Kames Fish, Kilmelford, United Kingdom;

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ C 318, 19.12.2002, p. 2.

- (b) *Sampled producers in Norway*
 - Firda Sjøfarmer AS, Byrknesøy,
 - Hydroteck AS, Kristiansund,
 - Sjøtroll Havbruk AS, Bekkjærviik;
 - (c) *Sampled exporters in Norway*
 - Coast Seafood AS, Måløy,
 - Hallvard Lerøy AS, Bergen,
 - Sirena Norway AS, Florø;
 - (d) *Sampled exporting producers in the Faeroe Islands*
 - P/F PRG Export and its related producer P/F Luna, Gøta,
 - P/F Vestsalmon and its related producer P/F Vestlax, Kollafjørður;
 - (e) *Related importers in the Community*
 - Vestlax Hirtshals AS, Hirtshals, Denmark;
 - (f) *Unrelated importers in the Community*
 - Lohikunta, Turku, Finland,
 - Kesko Food Ltd, Helsinki, Finland.
- (7) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from January 1999 to the end of the IP (analysis period).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. General

- (8) Rainbow trout is a species of fish originally native to North America. It is not native to European waters and does not naturally breed in Europe. Therefore, rainbow trout sold on the Community market is generally of farmed origin. The farming of large rainbow trout in the Community, as well as in Norway and the Faeroe Islands, is regulated at national level by means of licences, as is common for most aquacultural activities. The production cycle of farmed rainbow trout begins with the adult fish spawning in fresh water. The young fish (or smolt) are then ongrown in fresh, brackish or salt water principally in large cages or pens. In general, the production cycle lasts between two and three years.

2. Product concerned

- (9) The product concerned is large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads on and gills, gutted, weighing more than 1,2 kg or with heads off, gilled and gutted, weighing more than 1 kg) or in the form of fillets (weighing over 0,4 kg) originating in Norway and the Faeroe Islands and normally declared under CN codes 0302 11 20, 0303 21 20, 0304 10 15 and 0304 20 15 (the product concerned). Before 1 January 2003, the product concerned was normally declared under CN codes ex 0302 11 90, ex 0303 21 90, ex 0304 10 11 and ex 0304 20 11. The CN classification corresponds to the different presentations of the product (fresh or chilled whole fish, fresh or chilled fillets, frozen whole fish and frozen fillets). All these presentations were found to be sufficiently similar for them to constitute a single product for the purpose of the proceeding.

3. Like product

- (10) The product concerned produced and exported to the Community from Norway and the Faeroe Islands and that produced and sold on the Community market by Community producers are similar in all their essential physical characteristics and in their uses. Moreover, no differences were found between the product concerned as exported and large rainbow trout, which were produced and sold on the exporters' domestic market. In this regard, it is to be noted that there is no domestic market for the product concerned in the Faeroe Islands.

- (11) It is therefore provisionally concluded that, in accordance with Article 1(4) of the basic Regulation and for the purpose of this investigation, all types of large rainbow trout produced in the Faeroe Islands, those produced and sold in Norway and those produced and sold by the Community industry on the Community market are alike to those exported from Norway and the Faeroe Islands to the Community.

C. SAMPLING FOR THE DETERMINATION OF DUMPING

- (12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, pursuant to Article 17 of the basic Regulation, producers/exporters were requested, in accordance with Article 17(2), to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of large rainbow trout. The Commission also contacted known associations of producers/exporters, the authorities of Norway and the Home Government of the Faeroe Islands. These parties raised no objections to the use of sampling.

Norway

- (13) 141 companies came forward and provided the requested information within the time limit set for this purpose. They represented practically all Norwegian exports of the product concerned to the Community in the IP.
- (14) It was apparent from the companies' replies to the sampling exercise that, in general, a clear distinction in functions exists between farmers (producers) who produce large rainbow trout and traders (exporters) who sell it domestically and for export. In most instances, producers sell the majority of their production to Norwegian exporters and are generally unaware of the final destination of the product and of its final price. At the same time, it is recognised that Norwegian exporters are in most cases traders. They do not necessarily cover the whole domestic market as producers may make some direct sales to customers on the domestic market. Exporters generally act independently of the producers in that the prices at which they sell the product concerned do not systematically bear a direct relationship to the costs incurred by the producers in the farming of large rainbow trout.
- (15) For this reason, a representative sample of exporters was selected in order to be in a position to identify the goods exported to the Community and the prices at which they were exported. Also, in order to have a complete overview of the Norwegian domestic market and to be able to verify that the prices in such a domestic market were actually made in the ordinary course of trade, it was considered necessary to also select a sample of producers so that their costs of production and sales on the domestic market could also be taken into account.
- (16) The selection of samples was made in consultation with, and with the consent of the Norwegian Seafood Federation and the Norwegian Seafood Association. The samples of producers and exporters were established primarily based on the significance of production and export volumes respectively.
- (17) The samples that were established comprised six companies: three producers and three exporters. On the basis of their replies to the sampling return, these companies represented approximately 35 % of Norwegian production of the product concerned and 40 % of Norwegian export sales to the Community. Questionnaires were sent to all sampled companies.
- (18) The Norwegian Seafood Federation, the Norwegian Seafood Association as well as all cooperating Norwegian companies, whether or not retained for the sample, were informed of the choice of the samples and given the opportunity to make comments. These parties were also informed of the possibility that a single country-wide dumping margin might be established. None of the parties objected either to the choice of the samples or the possible determination of a country-wide margin.

The Faeroe Islands

- (19) 24 individual companies (15 of which belonged to larger groups) came forward and provided the requested information within the time limit set for this purpose. Only eight of the 24 companies indicated exports of the product concerned to the Community during the IP. Together, these eight companies accounted for all such exports.
- (20) The production and sales of the product concerned in the Faeroe Islands is carried out by vertically integrated groups of companies that both produce and export the product concerned. Therefore, only a sample of exporting producers was selected. In accordance with Article 17(1) of the basic Regulation, the selection of the sample was based on the largest representative volume of exports, which could reasonably be investigated within the time available.
- (21) Two exporting producers were chosen to constitute the sample in consultation with and with the consent of the Faeroe Fish Farmers' Association. The two companies selected in the sample represented, according to the replies to the sampling exercise, approximately 45 % of Faeroese production and a similar percentage of Faeroese exports to the Community of the product concerned. Questionnaires were sent for completion to both sampled companies.
- (22) None of the remaining exporting producers requested an individual treatment in accordance with Article 17(3) of the basic Regulation. The cooperating exporting producers, which were not finally retained in the sample, were therefore informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. These companies were given an opportunity to make comments in relation to the samples. However, no comments were received.

D. DUMPING**1. Norway***(a) General*

- (23) The investigation confirmed the distinction in functions between producers and exporters referred to in recital 14. In cases where production and export are distinct functions performed by different companies, it is practically impossible to identify the producer of the exported goods in question, and in any case, the producer of such exported goods cannot be deemed to be responsible for the level of the export price eventually charged for their goods by the exporters. As a result of this situation, it was concluded that the establishment of individual dumping margins would be impracticable and that a single country-wide dumping margin should be established for Norway.
- (24) Accordingly, it was decided that a weighted average normal value and a weighted average export price would be calculated for Norway as a whole. These would be based on the information submitted by the sampled exporters and producers.

(b) Normal value

- (25) In considering normal value, it is noted that Article 2(2) of the basic Regulation provides for it to be based on sales of the like product on the domestic market where they are representative and made in the ordinary course of trade.

(i) Representativity of sales volume

- (26) The Commission examined whether the domestic sales of each exporter had been made in representative quantities. In this respect, it is noted that any quantities sold to other exporters, the final destination of which could not be determined by the sampled exporter, were disregarded.
- (27) It was established that the overall domestic sales of each of the three sampled exporters were representative in that their volume exceeded 5 % of their overall sales of the product concerned to the Community.

- (28) It was then examined whether the domestic sales of each sampled exporter were representative for each product type i.e. whether the domestic sales of each product type exceeded 5 % of the sales volume of the same product type to the Community. The elements taken into account in defining the product types were the quality of the product concerned (superior, ordinary or other), its conditioning (fresh/chilled or frozen) and its presentation (whole fish gutted head on, whole fish gutted head off or in fillets). The investigation established that each of the sampled exporters had representative domestic sales for only certain product types. For these product types, it was then examined for each exporter whether such domestic sales were made in the ordinary course of trade as described below. For the remaining product types where domestic sales were not representative, normal value had to be constructed.

(ii) Ordinary course of trade test and cost of acquisition

- (29) In determining whether the domestic sales of the sampled exporters were made in the ordinary course of trade, and for the reasons explained in recitals 14, 24 and 25, information gathered from the sampled producers concerning their costs and selling prices was taken into account. Therefore, for each product type sold by the exporters, a 'cost of acquisition' was established in the following manner.
- (30) The sampled producers' profitable domestic sales to independent customers were used to calculate the cost of acquisition for the sampled exporters for each product type. Sales by producers to customers known to them as traders were not taken into account in this calculation, as in the majority of cases, the products were not destined for domestic consumption.
- (31) In cases where it was found that domestic sales to independent customers by product type were not profitable, the Commission based the cost of acquisition on each sampled producer's cost of production for each product type plus a reasonable amount for selling, general and administrative costs (SG & A) and profits. These amounts were determined, in accordance with Article 2(6) of the basic Regulation, on the basis of the SG & A and profits of the profitable sales made by the producer concerned since less than 80 % but more than 10 % of such sales were profitable.
- (32) The results of the above exercise were then weighted by the quantities sold domestically by the producers to independent customers to give an overall cost of acquisition for each product type sold by the sampled producers.
- (33) At the same time, the investigation revealed that fillet product types exported to the Community by the sampled exporters (and in most cases also sold by them on the domestic market) were not produced by the sampled producers. Therefore, the Commission based the cost of acquisition for these fillet product types on the weighted average cost of acquisition established for fresh, gutted head on superior quality fish (the most sold type of product). This cost was then increased to reflect the percentage difference between the exporters' domestic selling prices for the fillet product types and for fresh, gutted head-on superior quality fish.
- (34) On the basis of information concerning the cost of acquisition as calculated in recitals 30 to 33, the proportion of domestic sales made in the ordinary course of trade was then determined for each exporter overall and in respect of each product type where the sales were found to be representative. For this purpose, the average selling price by product type was compared to its unit cost, which was calculated by adding to the cost of acquisition for each product type, the SG & A costs of the exporter in question incurred in all domestic sales of the product concerned.

(iii) Calculation of normal value

- (35) In cases where the sales volume of a product type, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the unit cost, normal value was based on the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

- (36) In cases where the volume of profitable sales of a product type represented 80 % or less but at least 10 % of the total sales volume of that type, or where the weighted average price of that type was below the unit cost, normal value was based on the weighted average of profitable domestic sales of that type only.
- (37) For those product types where the volume of profitable sales represented less than 10 % of the total sales volume of that type on the domestic market, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value could not be based on domestic prices. It is recalled that, as noted in recital 28, normal value was also constructed for those product types not sold domestically in representative quantities.
- (38) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In this regard, the Commission used constructed normal value, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the cost of acquisition a reasonable amount for SG & A and for profits. The amounts for SG & A and profits were established in accordance with the first sentence of Article 2(6) of the basic Regulation.
- (39) The normal values, as established above, were then weighted on the basis of the quantities sold to the Community, so as to arrive at an average normal value for Norway.

(c) *Export price*

- (40) In the majority of cases, export sales were made to independent customers in the Community. In these cases, the export price was established, in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.
- (41) One exporter made sales of the product concerned to a related company in the Community. In this case, an export price was constructed, in accordance with Article 2(9) of the basic Regulation, on the basis of the price charged by the related company to the first independent buyer, after deduction of the appropriate amounts for all costs incurred between importation and resale including duties and taxes and a reasonable profit.
- (42) The same exporter also made sales of the product concerned to a second related company in the Community. However, the large rainbow trout thus exported was transformed by this related company into products which no longer came within the definition of the product concerned, prior to its sale to independent customers. These export sales were therefore not taken into account for the purposes of determining the margin of dumping.
- (43) Finally, the export prices established, as indicated above, for each exporter in the sample, were weighted on the basis of the quantities sold to their respective customers in the Community, so as to arrive at an average export price for Norway.

(d) *Comparison*

- (44) The average normal value and average export price obtained as indicated above were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.
- (45) In this regard, it is to be noted that the sampled producers claimed a number of adjustments in respect of physical differences between the various quality grades of the product concerned (superior, ordinary and other quality fish). The sampled producers firstly made a claim in respect of certain costs relating to 'Japan quality' trout (a fish of superior quality with strict skin and flesh colour requirements beyond those required for markets other than Japan) which they considered were not relevant in the consideration of the production costs for the product concerned exported to the Community. They secondly claimed a reduction in the production costs for non-superior quality grades by the absolute difference in average sales prices, expressed in NOK/kg, between superior and non-superior quality grades.

- (46) These claims made by the sampled producers under Article 2(10)(a) of the basic Regulation could not be accepted. In respect of the claim for 'Japan quality' trout, it must be noted that the sampled producers could not substantiate that all Japan quality trout were destined for the Japanese market nor that the specific costs relating to such fish had not in fact been incurred by all fish during the production cycle. As regards the second claim, it should be noted that it had the effect of eliminating certain costs rather than reallocating them over all units of production. Moreover, the sampled producers did not have an established system to identify costs on the basis of differences between the various quality grades of the product concerned and had never utilised the methodology proposed before. Therefore, for all the above reasons and in the absence of a more appropriate method, it was decided in accordance with the provisions of Article 2(5) of the basic Regulation, to allocate costs on the basis of turnover.
- (47) In addition to the above, allowances for differences in discounts, rebates, transport, insurance, handling, loading and ancillary costs, credit and after-sales costs were granted in relation to the export price, where applicable and supported by verified evidence. Similarly, in relation to the normal value, allowances for differences in transport, insurance, handling, loading and ancillary costs and credit costs were granted where applicable and where supported by verified evidence.

(e) *Dumping margin*

- (48) 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 value with the weighted average export price.
- (49) This comparison showed the existence of dumping. The dumping margin provisionally established for Norway as a whole, expressed as a percentage of the cif at Community frontier price is 26,3 %.

2. The Faeroe Islands

(a) *Normal value*

- (50) In view of the fact that there is no domestic market for the product concerned in the Faeroe Islands, normal value was established, in accordance with Article 2(3) of the basic Regulation, on the basis of the cost of production of the companies in the sample, plus a reasonable amount for SG & A and for profits.
- (51) Since there is neither a domestic market for the product concerned nor for the same general category of product in the Faeroe Islands, the amounts for SG & A and profits to be added to the cost of production of the sampled exporting producers were established in accordance with Article 2(6)(c) of the basic Regulation. These amounts were therefore based on the weighted average SG & A costs and profits incurred in domestic sales by companies producing and selling the same general category of products in a third country, i.e. Chile, in the recent past. This method was considered to be the most reasonable in this situation as the production and sales structure for the aquaculture industry in that country is similar to that in the Faeroe Islands (i.e. the production and sale of the same general category of products in Chile and the Faeroe Islands is carried out by integrated companies).

(b) *Export price*

- (52) Both of the sampled exporting producers made export sales to unrelated customers in the Community during the IP. In accordance with Article 2(8) of the basic Regulation, the export price for these transactions was established on the basis of export prices actually paid or payable.
- (53) In addition, one of the sampled exporting producers also made sales in the IP to a related company in the Community. However, the large rainbow trout thus exported was subsequently transformed by the related company prior to sale to independent customers in the Community into products, which no longer came within the definition of the product concerned. Consequently, these export sales were not taken into account for the purposes of determining the margin of dumping.

(c) Comparison

- (54) The comparison between normal value and export price was made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.
- (55) It is noted that the Faeroese sampled exporting producers also claimed adjustments to the cost of production for physical differences between the various types of the product concerned (superior, ordinary and other quality fish) based on the absolute differences in average sales prices observed in their sales to the Community market during the IP.
- (56) For the reasons noted above in respect of the same claim made by the Norwegian sampled producers (see recital 45), this claim could not be accepted in the form in which it had been made. Therefore, in the absence of a more appropriate method, it was decided, in accordance with the provisions of Article 2(5) of the basic Regulation, to allocate costs on the basis of turnover.
- (57) In addition to the above, allowances for differences in transport costs, ocean freight and insurance costs, credit costs, discounts and rebates have been granted where applicable and justified.

(d) Dumping margins

- (58) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margins were established on the basis of a comparison of a weighted average normal value with a weighted average of export prices. On the basis of this comparison, the dumping margins, expressed as a percentage of the cif at Community frontier price are the following:

P/F PRG Export (for goods produced by P/F Luna) 54,5 %

P/F Vestsalmon (for goods produced by P/F Vestlax) 28,1 %

- (59) In accordance with Article 9(6) of the basic Regulation, where an examination has been limited by the application of sampling pursuant to Article 17 of the same Regulation, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average dumping margin established for the parties in the sample. The dumping margin thus calculated for these companies is 40,5 %. With regard to the residual dumping margin for any non-cooperating exporting producers in the Faeroe Islands, it is noted that the level of cooperation from parties in the Faeroe Islands was considered to be good. Therefore, it is provisionally concluded that the residual dumping margin for all other companies should be based on the highest dumping margin found for the sampled cooperating exporting producers, i.e. 54,5 %.

E. COMMUNITY INDUSTRY*(a) Sampling*

- (60) In view of the large number of producers of large rainbow trout in the Community, the application of sampling was foreseen in the notice of initiation for the assessment of injury. The selection of the sample of Community producers was based on the largest representative volume of production and sales that could be reasonably investigated within the time available in accordance with Article 17 of the basic Regulation. All Community producers were therefore requested in the notice of initiation to provide basic information on their production, sales volumes and prices and their precise activities with regard to the production of the product concerned during the IP.
- (61) On the basis of the information provided to the Commission, nine companies operating in four Member States, were initially selected in the sample. Questionnaires were sent to all nine companies.

(b) *Sampled Community producers*

- (62) Out of the nine selected companies, two withdrew their cooperation and were therefore excluded from the proceeding. Another expressly supported the proceeding and replied to the questionnaire, without, however, being able to provide its sales to unrelated customers on a transaction-by-transaction basis. This was because almost all of its sales were made to a related company, which went bankrupt. All other selected companies provided full and complete questionnaire replies. On-the-spot verification visits were carried out at the premises of the six sampled companies as well as one related company, Napapiirin Kala Oy, all mentioned in recital 6(a). These companies accounted for 16 % of the total Community production of large rainbow trout during the IP.

(c) *Definition of the Community industry*

- (63) The complainant Community producers (both the sampled and non-sampled) together with the Community producers supporting the complaint (both sampled and non-sampled), which responded to the sampling exercise and were not subsequently excluded from the proceeding, account for more than 25 % of Community production of the product concerned. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the basic Regulation.
- (64) One interested party alleged that the complainants should be regarded as a regional industry and should be considered as constituting the Community industry within the terms of Article 4(1)(b) of the basic Regulation. This argument was provisionally rejected because the dumped imports from Norway and the Faeroe Islands are not concentrated in the Finnish market and do not cause injury solely to the producers of that country. The conditions of Article 4(1)(b) are therefore not met.

F. INJURY

(a) *Apparent Community consumption*

- (65) Apparent consumption of farmed large rainbow trout in the Community was established on the basis of the production figures for the cooperating producers and the production of the other Community producers, and by adding imports and deducting exports, using data derived from Eurostat. As the Eurostat figures report net weights for four different CN codes, i.e. fresh, or chilled fish gutted head-on or head-off, fresh, or chilled fillets and frozen gutted fish or fillets, certain adjustments were made to convert net weights to round weights or 'whole fish equivalents', as the industry in general performs comparisons on this basis. Therefore, the import figures for 'fresh, chilled and frozen trout excluding fillets' and for 'fresh, chilled and frozen trout fillets' were divided respectively by the conversion factors of 0,83 and 0,52. It should be noted that the CN codes concerned might also cover other types of fish not included in the scope of this proceeding, such as portion-sized trout. However, given the origins reported, such quantities can be considered negligible. With regard to exports, the same methodology was used in order to convert net weights to whole fish equivalents. However, in this case as many Community exporting producers produce significant quantities of portion-sized rainbow trout, the export figures were adjusted on the basis of the ratio of production of large rainbow trout in each Member State over the total production of rainbow trout of that Member State, using the information of the Federation of European Aquaculture Producers contained in the complaint.
- (66) It should be noted that the Community consumption also includes the large rainbow trout that is subsequently transformed via further processing.
- (67) On the above basis, the apparent consumption of large rainbow trout on the Community market increased, between 1999 and the IP, by 18 %, from 44 000 tonnes to around 52 000 tonnes.

Apparent consumption in the Community	1999	2000	2001	IP
Tonnes	43 831	49 970	50 485	51 893
<i>Index 1999 = 100</i>	100	114	115	118

Source: Questionnaire replies of the Community industry, complaint, Eurostat.

(b) *Cumulative assessment of the effects of the imports concerned*

- (68) The Commission examined whether imports of large rainbow trout originating in Norway and the Faeroe Islands should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (69) In that regard, the dumping margins established in relation to the imports from Norway and the Faeroe Islands were found to be 26,3 and 54,5 % respectively, i.e. not below the *de minimis* level of 2 % set forth in Article 9(3) of the basic Regulation. The volume of imports from Norway and the Faeroe Islands was not negligible.
- (70) As regards the conditions of competition, the investigation showed that the product concerned imported from Norway and the Faeroe Islands were alike in all their essential physical characteristics. Furthermore, on that basis, large rainbow trout imported from Norway and the Faeroe Islands was interchangeable and was marketed in the Community during the analysis period through comparable sales channels and under similar commercial conditions. Moreover, it is recalled that the imported product was found to be alike to large rainbow trout produced in the Community and as such competes under the same conditions of competition.
- (71) It was argued that imports originating in the Faeroe Islands should not be cumulated with imports from Norway for the investigation as their volumes were *de minimis* for the years 1999 to 2001 and were only above *de minimis* during the IP. It was further argued that imports from the Faeroe Islands will decrease after the IP for two reasons. Firstly, it was alleged that the prevailing favourable selling conditions in Japan in the period 1999 to 2001, which encouraged the Faeroese farmers to start farming large rainbow trout, no longer exist. Secondly, it was alleged that Faeroese farmers have taken up the production of salmon again, and that this will result in a reduction of the production of large rainbow trout and subsequently of their market share in the Community. As far as the first argument is concerned, the question whether or not import volumes are negligible is defined on the basis of the imports which took place during the IP and these were found to represent 2 % of the Community market. As far as the second argument is concerned, it should be noted that, in accordance with Article 6(1) of the basic Regulation, information relating to a period subsequent to the IP shall, normally, not be taken into account. Moreover, the arguments in question were based on mere assumptions and were not supported by facts. It was therefore considered that they were not manifest, undisputed and lasting, and were provisionally rejected.
- (72) In the light of the above, the Commission services provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from Norway and the Faeroe Islands should therefore be examined cumulatively.

(c) *Volume of the imports concerned and market share*

- (73) The volume of imports of the product concerned originating in Norway and the Faeroe Islands derived from Eurostat using the methodology as described in recital 65 increased from approximately 1 700 tonnes in 1999 to over 9 000 tonnes in the IP.

	1999	2000	2001	IP
Volume of imports (tonnes)	1 657	1 766	5 979	9 264
<i>Index 1999 = 100</i>	100	107	361	559

- (74) During the analysis period, the dumped imports from Norway and the Faeroe Islands increased their share of the Community market from 3,8 % in 1999 to 17,9 % in the IP. The sharp increase in imports (14,1 percentage points) over the analysis period has absorbed the major part of the increase in consumption that occurred in the Community market over the same period.

	1999	2000	2001	IP
Market share	3,8 %	3,5 %	11,8 %	17,9 %

(d) *Effect of the dumped imports on prices in the Community market*

(i) *Import prices*

- (75) Price information for the imports concerned was derived from Eurostat data based on the import volumes established using the methodology described in recital 65. This information showed that between 1999 and the IP, the average cif prices of imports originating in Norway and the Faeroe Islands decreased by 27 %. The decrease is particularly steep after 2000, which coincides with the dramatic upsurge of imports from Norway and the Faeroe Islands.

	1999	2000	2001	IP
Prices in EUR/kg of whole fish equivalent	2,52	3,06	2,19	1,84
<i>Index 1999 = 100</i>	100	121	87	73

Source: Eurostat.

(ii) *Price undercutting and price depression*

- (76) For the purpose of calculating the level of price undercutting in the IP, the prices of the product concerned sold by the sampled Community industry producers were compared to the prices of imports of the sampled exporting producers on the Community market during the IP on the basis of weighted average prices per product type of large rainbow trout, net of all rebates and taxes to unrelated customers.
- (77) The elements taken into account in defining the product types were the quality of the product concerned (superior, ordinary or other), its conditioning (fresh/chilled or frozen) and its presentation (whole fish gutted head on, whole fish gutted head off or in fillets). The prices of the sampled Community industry producers were taken at an ex-works (post processing) level and at levels of trade considered to be comparable to those of the imports concerned. The cif prices of the sampled exporting producers were adjusted to include customs duties and in the case of one exporting producer in the Faeroe Islands an adjustment was made in order to bring product types sold by this exporter to a comparable level with those sold by the sampled Community producer.
- (78) This comparison showed that during the IP, the products concerned originating in Norway and the Faeroe Islands were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, as follows: Norway on average by 6,3 % and Faeroe Islands in the range between 1 % and 21,4 %.
- (79) It should also be noted that the prices of the Community industry were depressed and that the Community industry as a whole came close to being loss-making during the IP, whilst several companies were actually loss-making.

(e) *Economic situation of the Community industry*

(i) Preliminary remarks

- (80) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry, in this regard it should be noted that this industry has not been subject to dumping or subsidisation in the past. Due to the use of sampling, the injury indicators have been established partially for the sampled companies and partially for the Community industry as a whole. The sales prices, profitability, return on investment, cash flow and wages have been established on the basis of information from the sampled companies. The other injury indicators: production capacity, production, market shares and employment, have been established on a Community industry level.

(ii) Production capacity, production, capacity utilisation

- (81) The Community industry's production capacity remained stable during the analysis period. This stable picture is mainly explained by the fact that the production level depends on the environmental licences which are issued in most Member States and are renewed every 5 to 10 years. Over the same period, the Community industry increased its production by 8 % and its capacity utilisation rate by five percentage points.

	1999	2000	2001	IP
Production capacity in tonnes of whole fish equivalent	15 065	15 050	15 085	15 104
<i>Index 1999=100</i>	100	100	100	100
Production in tonnes of whole fish equivalent	10 854	12 153	11 154	11 671
<i>Index 1999=100</i>	100	112	103	108
Production/capacity utilisation rates	72 %	81 %	74 %	77 %

Source: Questionnaire replies of the Community industry.

(iii) Stocks

- (82) It is noted that farmed large rainbow trout is a perishable product, which unless frozen, has a shelf-life of less than two weeks. As the sampled Community industry producers do not keep stocks of fresh large rainbow trout after harvest and do not, to any significant degree, freeze their production, stock levels are not considered to be a meaningful indicator of injury in this investigation.

(iv) Market share and growth

- (83) For the sake of a consistent and meaningful analysis, it was considered appropriate to assess the market share of the Community industry on the basis of the production figures of large rainbow trout during the analysis period, as was done for the Community consumption in recital 65, rather than on the sales of the product concerned.
- (84) On this basis the market share held by the Community industry decreased by two percentage points over the analysis period. While Community consumption increased by 18 % over the same period, the volume of the imports concerned increased almost sixfold. Thus, the Community industry lost part of its market share, whereas the imports concerned managed to increase theirs. The Community industry was therefore unable to take full advantage of the growth of the market between 1999 and the IP.

	1999	2000	2001	IP
Market share	24,8 %	24,3 %	22,1 %	22,5 %

- (85) It should be recalled that the general market share held by all Community producers (both cooperating and non-cooperating) is much higher (34,5 % for the IP), as the above percentages refer only to the market share held by the Community industry as defined in recital 63.

(v) Employment, productivity and wages

- (86) The level of employment of the Community industry decreased over the analysis period by 11 %. Over the same period, its productivity, measured as output per person employed per year, increased by 21 %. This increase in output per person is mainly due to investment in new equipment. In addition, several companies have had to lay off people due to the severe situation facing the industry without being able in the short term, due to the production cycle of the product, to decrease production volumes.

	1999	2000	2001	IP
Number of employees	185	170	173	16
<i>Index 1999 = 100</i>	100	92	93	89
Productivity: production/employee	100	122	110	121

Source: Questionnaire replies of the Community industry.

- (87) The total wage bill of the sampled Community industry producers remained relatively stable during the IP. Over the analysis period, the average wage per employee increased by 8 %. After remaining stable in 2000, wages increased by 4 % in 2001 with a further increase of 4 % being recorded during the IP.

	1999	2000	2001	IP
Wages per employee in EUR	24 328	24 345	25 221	26 216
<i>Index 1999 = 100</i>	100	100	104	108

Source: Questionnaire replies of the sampled Community industry.

(vi) Sales prices

- (88) The sampled Community industry producers' average net sales price increased from a figure of EUR 2,9 per kilogram in 1999 to reach a peak of EUR 3,1 in 2000. A significant fall in price was then observed between 2000 and 2001. This fall continued in the IP, with average prices reaching to their lowest level of EUR 2,5 per kilogram. The steep decrease in prices from 2000 onwards coincided with the surge of dumped imports on the Community market from Norway and the Faeroes Islands.

	1999	2000	2001	IP
Sales prices to unrelated customers in the EC in EUR/kg of whole fish equivalent	2,86	3,09	2,75	2,54
<i>Index 1999 = 100</i>	100	108	96	89

Source: Questionnaire replies of the sampled Community industry.

(vii) Profitability

- (89) The sampled Community industry producers' return on net sales in the Community market, before taxes, suffered a marked deterioration during the IP due to the low prices prevailing on the market. During the same period, the Community industry improved its productivity and diversified its production. These factors resulted in lower unit production costs as the Community industry was able to spread its fixed costs over a greater volume of production. During the analysis period, the profitability of the sampled Community industry producers' sales in the Community to unrelated customers developed as follows:

	1999	2000	2001	IP
Profitability	11,5 %	16,1 %	13,8 %	0,5 %
<i>Index 1999 = 100</i>	100	140	120	4

Source: Questionnaire replies of the sampled Community industry producers.

- (90) The sampled Community industry producers taken as a whole were profitable in the years 1999 to 2001 reaching levels which are considered necessary given the high risk nature of the industry. However, in parallel to the sharp price decrease that occurred in the IP, profitability decreased dramatically and several of the sampled companies recorded losses during the IP. In addition, a number of cooperating producers reconsidered their production plans for future years with the result that fewer smolts were put to the water in 2002.

(viii) Investments and return on investments

- (91) The level of investments in the production of the product concerned made by the sampled Community industry producers increased during the analysis period from approximately EUR 500 000 to more than EUR 800 000. This investments increase focused mainly on the replacement of existing assets and the acquisition of additional and/or new equipment with the aim of better handling existing production and thereby improving productivity.
- (92) The sampled Community industry producers' return on investment, which expresses their pre-tax result as a percentage of the average opening and closing net book value of assets employed in the production of the product concerned, was positive during the period 1999 to 2001, reflecting their profit-making situation. In the IP, as their level of profitability declined sharply to just merely break-even point, their return on investment fell sharply to just 2 %. In general, the industry is not very capital intensive and the level of investments accounts for a relatively small part of total production costs.

	1999	2000	2001	IP
Investments in EUR '000	483	714	604	832
<i>Index 1999 = 100</i>	100	148	125	172
Return on investments	59 %	69 %	77 %	2 %

Source: Questionnaire replies of the sampled Community industry.

(ix) Cash flow

- (93) The sampled Community industry producers recorded a net cash inflow from operating activities during the analysis period. However, when expressed as a percentage of turnover, the net cash inflow showed a marked decline in percentage terms, especially during the IP.

	1999	2000	2001	IP
Cash flow in EUR '000	1 919	2 034	2 140	398
<i>Index 1999 = 100</i>	100	106	112	21
Cash flow expressed as percentage of turnover	15 %	20 %	17 %	4 %

Source: Questionnaire replies of the sampled Community industry producers.

(x) Magnitude of dumping margin

- (94) 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 Norway and the Faeroe Islands, this impact is substantial.

(f) Conclusion on injury

- (95) The examination of the abovementioned factors shows that between 1999 and the IP, the dumped imports increased sharply in terms of volume and market share. In fact, their volume increased by almost sixfold during the analysis period and they achieved a market share of approximately 18 % in the IP. It is to be noted that in the IP, they accounted for approximately 85 % of total imports of the product concerned into the Community. Moreover in the IP, the sales prices of the Community industry were substantially undercut (up to a maximum of 21,4 %) by those of the imports concerned.
- (96) During this period certain injury indicators, such as production and capacity utilisation developed positively (+ 8 % and + five percentage points respectively). However, in light of the increase in Community consumption of 18 % during the same period, these indicators should have developed in a more positive manner. The Community industry, faced by the increasing volume of dumped imports at low prices, has had to reduce its number of employees. The increase in productivity per employee during the period is partly a reflection of that reduction in employment.
- (97) The Community industry lost market share during the analysis period at a time when total Community consumption grew from approximately 44 000 tonnes to nearly 52 000 tonnes. The Community industry suffered a dramatic decline in profitability (- 11 percentage points), cash flow (- 11 % of turnover) and return on investments (- 57 percentage points).
- (98) In the light of the foregoing it is provisionally concluded that the Community industry has suffered material injury, characterised by severe price depression, declining profitability as well as declining returns on investment, within the meaning of Article 3 of the basic Regulation.

G. CAUSATION

(a) Introduction

- (99) In order to reach its conclusions on the cause of the injury suffered by the Community industry and in accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined the impact of all known factors and their consequences on the situation in that industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

(b) *Effects of the dumped imports*

- (100) Between 1999 and the IP, dumped imports from Norway and the Faeroe Islands increased dramatically in volume (over 550 %) and in market share (from 3,8 % in 1999 to 17,9 % in the IP). Their price decreased substantially during the analysis period and undercut significantly the Community's industry prices in the IP. In this regard, it should be noted that the large rainbow trout market is a competitive and transparent market. Thus, price undercutting in a market with such characteristics is a detrimental factor that diverts trade towards Norwegian and Faeroese dumped imports.
- (101) The prices of the dumped imports were below those of the Community industry throughout the analysis period. Moreover, they exerted a pressure, which forced the Community industry to decrease its own prices. In this regard, it should be noted that the Community industry is very fragmented, and thus cannot impose its prices on the market.
- (102) The declining prices and loss in market share experienced by the Community industry coincided with a number of other negative developments in its overall economic situation. The Community industry went from recording levels of profitability considered appropriate for an industry of this nature to a barely breakeven situation in the IP. It also recorded a sharp deterioration in its cash flow and return on investment during the IP. These factors, coupled with the fact that the Community industry was not able to take advantage of the growing Community market, due to the depressed prices, had the effect that in spite of rationalisations and investments, it suffered material injury during the period. The expansion of the dumped imports market share and the drop in the prices coincided with the sharp change in the conditions for the Community industry.

(c) *Effects of other factors*

Performance of other Community producers

- (103) As regards the production and sales volumes of the other Community producers, they have decreased slightly in terms of volume (2 %) between 1999 and the IP and they have decreased steeply in terms of market share (13,4 %). No indication was found that the prices of other Community producers were lower than those of the cooperating Community industry. Therefore, it is provisionally concluded that the products produced and sold by the other Community producers did not contribute to the injury suffered by the Community industry.

Imports from other third countries

- (104) According to information derived from Eurostat, the volume of imports originating in other third countries (e.g. Turkey, Chile) increased by 22 % over the analysis period, i.e. in line with consumption, to reach a level of approximately 1 700 tonnes (whole fish equivalent) in the IP. This corresponds to a market share of 3,3 %. Over the same period, the prices of these imports decreased by 9 % (from 2,35 EUR/kg in 1999 to 2,15 EUR/kg in the IP). However, it is noted that the average price of these imports was above that of the imports originating in Norway and the Faeroe Islands during the IP. It is therefore provisionally concluded that imports from third countries have not materially contributed to the injury suffered by the Community industry.
- (105) No other factors, which could at the same time have injured the Community industry, were raised by interested parties or identified during the course of the investigation.

(d) *Conclusion on causation*

- (106) The negative situation of the Community industry coincided with a sharp increase in imports from Norway and the Faeroe Islands and a substantial price undercutting by these imports.

- (107) As to the imports from other third countries, in view of their market share during the IP which was very low in relation to that of the imports concerned, and also in view of the average prices which appeared to be higher than those of the imports concerned during the IP, it is provisionally concluded that the effect of these other factors was not such as to break the causal link between the dumped imports and the injury suffered by the Community industry.
- (108) It is therefore provisionally concluded that the dumped imports originating in Norway and the Faeroe Islands have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

H. COMMUNITY INTEREST

- (109) In order to assess the Community interest, the Commission carried out an investigation into the likely effects of the imposition/non-imposition of anti-dumping measures on the economic operators concerned. In addition to the Community producers and importers, the Commission requested information from all interested parties known to be concerned such as users and consumers associations.

(a) Interest of the Community industry

- (110) The Community industry is mainly composed of small and medium-sized companies. The production process depends greatly on the biological cycle of large rainbow trout and substantial economies of scale cannot be achieved as production levels are monitored by the authorities through environmental licences. Even so, the Community industry still has the possibility to increase production somewhat within the limitations of its existing licences, as its capacity utilisation rate is currently around 77 %.
- (111) The imposition of measures is expected to prevent a further distortion of the market and a deterioration of prices. This would enable the Community industry to recover lost market share, while still selling at cost covering prices, which again will lead to lower unit costs due to higher productivity. In conclusion, it is expected that mainly the decrease in unit costs (due to a higher capacity utilisation and subsequently the higher productivity) and to a lesser extent a slight price increase, will allow the Community industry to improve its financial situation, without distorting the consumers market.
- (112) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend of the financial situation of the Community industry will continue. The Community industry is particularly marked by a loss of revenue due to depressed prices, market share and insufficient profitability. Indeed, in view of the decreasing revenue and the material injury suffered during the IP, it is most likely that the financial situation of the Community industry will deteriorate further in the absence of any measures. This would ultimately lead to cuts in production and more closures of production sites, which would therefore threaten employment and investments in the Community.
- (113) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would allow the Community industry to recover from the injurious dumping.

(b) Interest of unrelated importers/traders in the Community

- (114) In view of the apparent large number of importers of the product concerned, and in order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, importers or representatives acting on their behalf were requested in the notice of initiation to make themselves known and to provide basic information concerning their sales volumes and prices for the product concerned during the IP. As the number of companies providing this information was limited, the Commission decided not to apply sampling and questionnaires were sent to all importers which made themselves known. Two companies replied to the questionnaire. Both companies imported large rainbow trout from Norway.

- (115) Both claimed that the product concerned imported from Norway is of a better quality than that produced in the Community. They argued that the imposition of anti-dumping measures would lead to a reduction in the availability of good quality large rainbow trout from Norway, especially during the summer and early autumn when Finnish producers, because of the production cycle for large rainbow trout, are not able to fully supply the market. Regarding the first argument, it has been established that both the product concerned and the product produced by the Community industry producers are like products. The quality of the product is determined by its general appearance including its flesh and skin colour. These factors were taken into account in the comparison of the different product types imported and those types produced and sold by the Community industry. It should also be noted that the majority of the sales of the Community industry were of superior quality fish. As far as product availability is concerned, it is firstly noted that the Finnish market is not considered to be a closed market and that there are supplies from Finnish producers on a year round basis, even if there are seasonal variations. Secondly, the imposition of anti-dumping measures would not affect at all the alleged advantage of the Norwegian imports during the periods of the year when the supply in the Community is apparently lacking. These imports will therefore continue to satisfy the supply in the Community market. The arguments were therefore provisionally rejected.
- (116) Therefore, it can be provisionally concluded that the likely effects of the imposition of anti-dumping measures on unrelated importers/traders would not be significant.

(c) Interest of users and consumers

- (117) No user or consumer associations made themselves known within the time limit set in the notice of initiation. The Commission services therefore also contacted the associations of users and consumers known from the recent salmon investigations and invited them to submit information regarding the ongoing proceeding. However, no replies were received either from individual users, their representative associations or from consumer associations. Given the non-cooperation of these parties, it can be provisionally concluded that the imposition of any anti-dumping measure would not unduly affect their situation.

(d) Competition and trade distorting effects

- (118) With respect to the effects of possible measures on competition in the Community, it appears likely that the exporting producers concerned will be able to continue to sell large rainbow trout, albeit at non-injurious prices, as they have a strong market position. This taken with the large number of producers in the Community and imports from other third countries will ensure that users and retailers will continue to have a wide choice of different suppliers of the product concerned at reasonable prices.
- (119) Thus, there will be an important number of actors in the market, which will be able to satisfy the demand. On the basis of the above, it is therefore provisionally concluded that competition will most likely remain strong after the imposition of anti-dumping measures.

(e) Conclusion on Community interest

- (120) In the light of the above, it is provisionally concluded that no compelling reasons exist against imposing measures in the present case and that the application of measures would be in the interest of the Community.

I. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

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

- (122) The provisional measures should be imposed at a level sufficient to eliminate the injurious effect caused to the Community industry by the dumped imports, without exceeding the dumping amounts found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.
- (123) It is considered that in the period 1999 to 2001 there was a normal competitive situation on the Community market where the Community industry, in the absence of injurious dumping, made a normal profit margin which, on average exceeded the level of 12 %. Moreover, a profit level of 12 % is considered necessary in order to take into account the high-risk nature of this industry. Consequently, on the basis of the information available, it was preliminarily found that a profit margin of 12 % of turnover could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping.
- (124) The required price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price was obtained by adjusting the sales price of each sampled Community industry producer to a break-even point and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.
- (125) The injury elimination margins found were as follows:

Country	Company	Injury margin
Norway	Countrywide margin	21,4 %
Faeroe Islands	P/F PRG Export (for goods produced by P/F Luna)	49,1 %
	P/F Vestsalmon (for goods produced by P/F Vestlax)	16,8 %
	All other cooperating companies	33,4 %

With regard to the residual injury elimination margin for any non-cooperating exporting producers in the Faeroe Islands, it is noted that the level of cooperation from parties in the Faeroe Islands was considered to be good. Therefore, it is provisionally concluded that the residual injury elimination margin for all other companies should be based on the highest injury elimination margin found for the sampled cooperating exporting producers, i.e. 49,1 %.

2. Provisional measures

- (126) 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 of large rainbow trout originating in Norway and the Faeroe Islands at the level of the injury elimination margins found as these were, in all cases, lower than the dumping margins found.
- (127) The individual company anti-dumping duty rates specified in this Regulation in respect of companies located in the Faeroe Islands 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 countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the Faeroe Islands 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'.

- (128) 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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

J. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

A provisional anti-dumping duty is hereby imposed on imports of large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads on and gills, gutted, weighing more than 1,2 kg or with heads off, gilled and gutted, weighing more than 1 kg) or in the form of fillets (weighing over 0,4 kg) originating in Norway and the Faeroe Islands, currently classifiable within CN codes 0302 11 20, 0303 21 20, 0304 10 15 and 0304 20 15.

The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by all companies in Norway shall be 21,4 %. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the companies listed below in the Faeroe Islands shall be as follows:

Company	Provisional duty	TARIC additional code
P/F Luna, FO-510 Gøta	49,1 %	A474
P/F Vestlax, PO Box 82, FO-410 Kollafjørður	16,8 %	A475
P/F Alistødin Á Bakka, Bakkavegur FO-625 Glyvrrar	33,4 %	A476
P/F Atlantic Seafarm, FO-900 Vágur,	33,4 %	A477
East Salmon, Box 177, FO-700 Klaksvík	33,4 %	A478
Funningslaks PF, Miðrás 3, FO-100 Tórshavn	33,4 %	A479
Gulín PF, Miðrás 3, FO-100 Tórshavn	33,4 %	A480
P/F Hellisvað, FO-727 Árnafjørður	33,4 %	A481
Kalbaks Laksaaling PF, Í Brekkum 1, FO-530 Fuglafjørður	33,4 %	A482
Navir, P/F, Argjabodagøta 7, FO-160 Argir	33,4 %	A483
All other companies	49,1 %	A999

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

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

Article 3

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

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, 17 September 2003.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1629/2003**of 17 September 2003****on the issue of import licences for rice originating in the ACP States and the overseas countries and territories against applications submitted in the first five working days of September 2003 pursuant to Regulation (EC) No 638/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽¹⁾,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽²⁾,

Having regard to Commission Regulation (EC) No 638/2003 of 9 April 2003 laying down detailed rules for applying Council Regulation (EC) No 2286/2002 and Council Decision 2001/822/EC as regards the arrangements applicable to imports of rice originating in the African, Caribbean and Pacific States (ACP States) and the overseas countries and territories (OCT) ⁽³⁾, and in particular Article 17(2) thereof,

Whereas:

Examination of the quantities for which applications have been submitted shows that licences for the September 2003 tranche should be issued for the quantities applied for reduced, where appropriate, by the percentages not covered and fixing the quantities carried over to the subsequent tranche,

HAS ADOPTED THIS REGULATION:

Article 1

1. Import licences for rice against applications submitted during the first five working days of September 2003 pursuant to Regulation (EC) No 638/2003 and notified to the Commission shall be issued for the quantities applied for reduced, where appropriate, by the percentages set out in the Annex hereto.

2. The available quantities carried over to the subsequent tranche are set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 348, 21.12.2002, p. 5.

⁽²⁾ OJ L 314, 30.11.2001, p. 1.

⁽³⁾ OJ L 93, 10.4.2003, p. 3.

ANNEX

Reduction percentages to be applied to quantities applied for under the tranche for September 2003 and quantities carried over to the following tranche

Origin/Product	Reduction percentage		Quantity carried over to the tranche for October 2003 (tonnes)
	Netherlands Antilles and Aruba	Least-developed OCTs	Netherlands Antilles, Aruba and least-developed OCTs
OCT (Article 10) — CN code 1006	3,6353	— ⁽¹⁾	7 463,768

⁽¹⁾ Issue for the quantity applied for.

Origin/product	Reduction percentage	Quantity carried over to the tranche for October 2003 (tonnes)
ACP (Article 3(1)) — CN codes 1006 10 21 to 1006 10 98, 1006 20 and 1006 30	91,3183	—

COMMISSION REGULATION (EC) No 1630/2003
of 17 September 2003
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1298/2002 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.
- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.

- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 ⁽⁵⁾ as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 189, 18.7.2002, p. 8.

⁽⁵⁾ OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽²⁾				
	Third countries (except ACP and Bangla- desh) ⁽¹⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	256,79	85,54	124,05	6,79	192,59
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	256,79	85,54	124,05	6,79	192,59
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 345, 10.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 9.4.2003, p. 3).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	256,79	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	280,24	209,84	271,99	296,51	—
(b) fob price (EUR/tonne)	—	—	—	245,29	269,81	—
(c) Sea freight (EUR/tonne)	—	—	—	26,70	26,70	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1631/2003**of 17 September 2003****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽³⁾, as last amended by Regulation (EC) No 806/2003, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽⁴⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽⁵⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽⁶⁾, as last amended by Regulation (EC) No 1258/2003 ⁽⁷⁾, fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

(3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 282, 1.11.1975, p. 49.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 282, 1.11.1975, p. 77.

⁽⁴⁾ OJ L 282, 1.11.1975, p. 104.

⁽⁵⁾ OJ L 305, 19.12.1995, p. 49.

⁽⁶⁾ OJ L 145, 29.6.1995, p. 47.

⁽⁷⁾ OJ L 177, 16.7.2003, p. 5.

ANNEX

to the Commission Regulation of 17 September 2003 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 90	Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as “65 % chickens”, or otherwise presented, frozen	85,9	10	01
0207 14 10	Boneless cuts of fowl of the species <i>Gallus domesticus</i> , frozen	175,9	42	01
		174,7	43	02
		228,2	22	03
		210,3	27	04
0207 25 10	“80 % turkey” carcasses, frozen	81,2	29	01
0207 27 10	Boneless cuts of turkey, frozen	236,7	18	01
		233,1	19	04
1602 32 11	Preparations of uncooked fowl of the species <i>Gallus domesticus</i>	201,2	26	01
		195,0	28	02
		180,8	34	03

⁽¹⁾ Origin of imports:

- 01 Brazil
- 02 Thailand
- 03 Argentina
- 04 Chile.

COMMISSION REGULATION (EC) No 1632/2003
of 17 September 2003
fixing the export refunds on eggs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 8 of Regulation (EEC) No 2771/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) The present market situation in certain third countries and that regarding competition on particular third country markets make it necessary to fix a refund differentiated by destination for certain products in the egg sector.

(3) It follows from applying these rules and criteria to the present situation on the market in eggs that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time.

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of codes of products for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2771/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 September 2003.

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

Done at Brussels, 17 September 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 49.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

ANNEX

to the Commission Regulation of 17 September 2003 fixing the export refunds on eggs

Product code	Destination	Unit of measurement	Amount of refund
0407 00 11 9000	E12	EUR/100 pcs	1,70
0407 00 19 9000	E12	EUR/100 pcs	0,80
0407 00 30 9000	E09	EUR/100 kg	6,00
	E10	EUR/100 kg	25,00
	E13	EUR/100 kg	3,00
0408 11 80 9100	E14	EUR/100 kg	40,00
0408 19 81 9100	E14	EUR/100 kg	20,00
0408 19 89 9100	E14	EUR/100 kg	20,00
0408 91 80 9100	E15	EUR/100 kg	75,00
0408 99 80 9100	E14	EUR/100 kg	19,00

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

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are defined as follows:

E09 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR, Russia and Turkey.

E10 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines.

E12 all destinations except the United States of America, Estonia, Lithuania and Bulgaria.

E13 all destinations except Switzerland, Estonia, Lithuania, Bulgaria and those of E09 and E10.

E14 all destinations except Switzerland, Estonia and Bulgaria.

E15 all destinations except Switzerland, Estonia, Lithuania and Bulgaria.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 September 2003

amending Decision 93/402/EEC as regards imports of fresh meat from Argentina

(notified under document number C(2003) 3285)

(Text with EEA relevance)

(2003/658/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽¹⁾, as last amended by Regulation (EC) No 807/2003 ⁽²⁾, and in particular Article 14(3) thereof,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽³⁾, and in particular Article 8(4) thereof,

Whereas:

(1) Commission Decision 93/402/EEC of 10 June 1993 concerning animal health conditions and veterinary certification for imports of fresh meat from South American countries ⁽⁴⁾, as last amended by Decision 2003/576/EC ⁽⁵⁾, applies to Argentina, Brazil, Chile, Colombia, Paraguay and Uruguay.

(2) The Commission was informed of an outbreak of foot-and-mouth disease in Paraguay close to the border with Argentina and Decision 2003/576/EC was taken to suspend the importation of de-boned and matured

bovine meat from the departments of Ramón Lista in the province of Formosa and Rivadavia in the province of Salta in Argentina.

(3) However, the Argentine authorities have notified an outbreak of foot-and-mouth disease in the department of General José de San Martín, also in the province of Salta.

(4) The Argentine veterinary authorities immediately put in place measures to avoid the further spread of the disease within Argentine territory, in particular providing for vaccination of and movement controls for animals of the susceptible species. The Argentine authorities immediately informed the Commission Services about these measures.

(5) However, in view of the potential risk of disease and following the action taken by the competent veterinary authorities of Argentina, importation of de-boned and matured bovine meat into the EU should be suspended on a regional basis from the departments of General José de San Martín, Rivadavia, Orán, Iruya, and Santa Victoria in the province of Salta and from the department of Ramón Lista in the province of Formosa.

(6) Decision 93/402/EEC should be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 302, 31.12.1972, p. 28.

⁽²⁾ OJ L 122, 16.5.2003, p. 36.

⁽³⁾ OJ L 18, 23.1.2003, p. 11.

⁽⁴⁾ OJ L 179, 22.7.1993, p. 11.

⁽⁵⁾ OJ L 196, 2.8.2003, p. 43.

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 93/402/EEC is replaced by the text in the Annex to this Decision.

Article 2

The Member States shall amend the measures they apply to imports so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 3

This Decision shall apply from 17 September 2003.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 17 September 2003.

For the Commission

David BYRNE

Member of the Commission

ANNEX

'ANNEX I

Description of territories of South America established for animal health certification purposes

COUNTRY	TERRITORY		DESCRIPTION OF TERRITORY
	CODE	VERSION	
Argentina	AR	1/2001	Whole country
	AR-1	5/2002	The provinces of Buenos Aires, Catamarca, Chaco, Córdoba, Corrientes, Entre Ríos, Formosa (except the territory of Ramón Lista), Jujuy, La Pampa, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta (except the departments of General José de San Martín, Rivadavia, Orán, Iruya, and Santa Victoria), San Juan, San Luis, Santa Fe, Santiago del Estero, and Tucumán.
	AR-3	1/2002	Chubut, Santa Cruz and Tierra del Fuego
Brazil	BR	1/1993	Whole country
	BR-1	2/2001	The States of Rio Grande do Sul, Paraná, Minas Gerais (except regional delegations of Oliveira, Passos, São Gonçalo de Sapucaí, Setelagoas and Bambuí), São Paulo, Espírito Santo, Mato Grosso do Sul (except for the municipalities of Sete Quedas, Sonora, Aquidauana, Bodoquena, Bonito, Caracol, Coxim, Jardim, Ladário, Miranda, Pedro Gomes, Porto Murtinho, Rio Negro, Rio Verde of Mato Grosso and Corumbá), Santa Catarina, Goiás and the regional units of Cuiabá (except for the municipalities of San Antonio de Leverger, Nossa Senhora do Livramento, Poconé and Barão de Melgaço), Cáceres (except for the municipality of Cáceres), Lucas do Rio Verde, Rondonópolis (except for the municipality of Itiquira), Barra do Garças and Barra do Bugres in Mato Grosso.
	BR-2	1/2002	Mato Grosso do Sul, municipality of Sete Quedas
Chile	CL	1/1993	Whole country
Colombia	CO	1/1993	Whole country
	CO-1	1/1993	The zone included within the following borderlines: from the point where the Murri River flows into the Atrato River, downstream along the Atrato River to where it flows into the Atlantic Ocean; from this point to the Panamanian border following the Atlantic coastline to Cabo Tiburón; from this point to the Pacific Ocean following the Colombian-Panamanian border; from this point to the mouth of the Valle River along the Pacific Coast and from this point along a straight line to the point where the Murri River flows into the Atrato River.
	CO-2	1/1993	The municipalities of Arboletas, Necoclí, San Pedro de Urabá, Turbo, Apartado, Chigorodó, Mutatá, Dabeiba, Uramitá, Murindó, Riosucio (right bank of the Atrato river) and Frontino.
	CO-3	1/1993	The zone included within the following borderlines: from the mouth of the Sinu River on the Atlantic Ocean, upstream along the Sinu River to its headwaters of Alto Paramillo, from this point to Puerto Rey on the Atlantic Ocean, following the borderline between the Department of Antioquia and Córdoba, and from this point to the mouth of the Sinu River along the Atlantic Coast.
Paraguay	PY	1/1993	Whole country
	PY-1	1/2002	Chaco central and San Pedro areas
Uruguay	UY	1/2001	Whole country'