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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 487/2004
of 11 March 2004
amending Regulation (EEC) No 3030/93 on common rules for imports of certain textile products
from third countries**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) As from 1 May 2004, the European Union will include ten new Member States. The Act of Accession establishes that the new Member States must apply the common trade policy concerning textiles and that the quantitative restrictions applied by the Community on imports of textile and clothing products are to be adjusted to take account of the accession. The quantitative restrictions applicable to imports of certain textile products from third countries into the enlarged Community should consequently be adjusted so as to cover imports into the 10 new Member States. This necessitates amendments to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾.
- (2) In the interests of preventing the enlargement of the Community from having restrictive effects on trade, it is appropriate, when amending the quantities, to use a methodology which takes into account, for the purpose of adjusting the new quota levels, the traditional levels and patterns of imports into the 10 new Member States. A formula consisting of the average of the last three years' imports into the 10 new Member States originating in third countries, adjusted pro rata temporis, would provide an appropriate reflection of these historic flows. The years 2000 to 2002 have been selected as the most significant, as they represent the latest available information about the 10 new Member States' imports in textiles and clothing.
- (3) Accordingly, Annexes V and VII to Regulation (EEC) No 3030/93 should be amended to list quota levels applicable from the date of the enlargement, namely 1 May 2004.
- (4) The quotas applicable to Vietnam should be those listed in the bilateral textile agreement between the European Community and the Socialist Republic of Vietnam, initiated on 15 February 2003 and approved by Decision 2003/453/EC⁽²⁾, pending compliance by Vietnam with the market access commitments under that agreement.
- (5) All provisions of Regulation (EEC) No 3030/93 should be reformulated to apply to imports into the 10 new Member States; consequently, the initials of the new Member States should be inserted in Annex III.
- (6) In order to enable certain operations to take place, it is necessary to insert into Regulation (EEC) No 3030/93 a transitional rule whereby textile products whose importation into the Community is otherwise subject to quantitative limits or surveillance, and which are shipped into the Community prior to 1 May 2004 but which enter the ten new Member States on or after 1 May 2004, will qualify for import authorisations that are granted automatically.
- (7) In order to provide legal cover for the operations in question, it is necessary to insert into Regulation (EEC) No 3030/93 a transitional rule whereby textile products which are shipped prior to 1 May 2004 from the acceding Member States out of the Community for processing, and which are re-imported into the 10 new Member States on or after 1 May 2004, are exempt from quantitative limits or presentation of an import authorisation.
- (8) Regulation (EEC) No 3030/93 should therefore be amended accordingly,

⁽¹⁾ OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 260/2004 (OJ L 51, 20.2.2004, p. 1).

⁽²⁾ OJ L 152, 20.6.2003, p. 41.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3030/93 is hereby amended as follows:

1. the following paragraph shall be added to Article 2:

‘9. The release for free circulation in one of the 10 new Member States acceding to the European Union on 1 May 2004, namely Czech Republic, Estonia, Cyprus, Lithuania, Latvia, Hungary, Malta, Poland, Slovenia and Slovakia, of textile products which are subject to quantitative limits or to surveillance in the Community and which have been shipped before 1 May 2004 and enter the 10 new Member States on or after 1 May 2004 shall be subject to presentation of an import authorisation. Such import authorisation shall be granted automatically and without quantitative limitation by the competent authorities of the Member State concerned, upon adequate proof, such as the bill of lading, that the products have been shipped before 1 May 2004.

Such licences shall be communicated to the Commission.’;

2. the following subparagraph shall be added to Article 5:

‘The release for free circulation of textile products sent from one of the ten new Member States acceding to the European Union on 1 May 2004 to a destination outside the Community for processing before 1 May 2004, and re-imported into the same Member State on or after that date, shall upon adequate proof, such as the export declaration, not be subject to quantitative limits or import authorisation requirements. The competent authorities of the Member State concerned shall provide information on those imports to the Commission.’;

3. in Annex III, the second indent of Article 28(6) shall be replaced by the following:

‘— two letters identifying the intended Member State of destination, or group of such Member States, as follows:

- AT = Austria
- BL = Benelux

- CY = Cyprus
- CZ = Czech Republic
- DE = Federal Republic of Germany
- DK = Denmark
- EE = Estonia
- EL = Greece
- ES = Spain
- FI = Finland
- FR = France
- GB = United Kingdom
- HU = Hungary
- IE = Ireland
- IT = Italy
- LT = Lithuania
- LV = Latvia
- MT = Malta
- PL = Poland
- PT = Portugal
- SE = Sweden
- SI = Slovenia
- SK = Slovakia’;

4. Annex V shall be replaced by the text set out in Part A of the Annex to this Regulation;

5. in Annex VII, the table shall be replaced by the table set out in Part B of the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 May 2004.

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

Done at Brussels, 11 March 2004.

For the Council
The President
M. HARNEY

ANNEX

PART A

ANNEX V

COMMUNITY QUANTITATIVE LIMITS

applicable in 2004

(The complete description of the goods is shown in Annex I)

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Argentina	GROUP IA		
	1	tonnes	6 010
	2	tonnes	8 551
	2a	tonnes	7 622
Belarus	GROUP IA		
	1	tonnes	1 532
	2	tonnes	4 334
	3	tonnes	225
	GROUP IB		
	4	1 000 pieces	1 135
	5	1 000 pieces	1 012
	6	1 000 pieces	854
	7	1 000 pieces	843
	8	1 000 pieces	1 062
	GROUP IIA		
	9	tonnes	347
	20	tonnes	307
	22	tonnes	473
	23	tonnes	243
	39	tonnes	219
	GROUP IIB		
	12	1 000 pairs	5 675
	13	1 000 pieces	2 574
	15	1 000 pieces	969
	16	1 000 pieces	176
	21	1 000 pieces	850
	24	1 000 pieces	764
	26/27	1 000 pieces	1 023
	29	1 000 pieces	352
	73	1 000 pieces	302
	83	tonnes	173
	GROUP IIIA		
	33	tonnes	370
	36	tonnes	1 178
	37	tonnes	441
	50	tonnes	186
	GROUP IIIB		
	67	tonnes	323
	74	1 000 pieces	346
	90	tonnes	189
	GROUP IV		
	115	tonnes	83
	117	tonnes	1 210
	118	tonnes	427

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Brazil ⁽⁵⁾	GROUP IA		
	1	tonnes	
	2	tonnes	
	2a	tonnes	
	3	tonnes	
	GROUP IB		
	4	1 000 pieces	
	6 ⁽¹⁾	1 000 pieces	
	GROUP IIA		
	9	tonnes	
	20	tonnes	
	22	tonnes	
	39	tonnes	
China ⁽²⁾ ⁽³⁾	GROUP IA		
	1	tonnes	4 770
	2 (*) ⁽¹⁾	tonnes	30 556
	of which 2a	tonnes	4 359
	3	tonnes	8 088
	of which 3a	tonnes	2 769
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	126 808
	5 ⁽¹⁾	1 000 pieces	39 422
	6 ⁽¹⁾	1 000 pieces	40 913
	7 ⁽¹⁾	1 000 pieces	17 093
	8 ⁽¹⁾	1 000 pieces	27 723
	GROUP IIA		
	9	tonnes	6 962
	20/39	tonnes	11 361
	22	tonnes	19 351
	23	tonnes	11 847
	GROUP IIB		
	12	1 000 pairs	132 029
	13	1 000 pieces	586 244
	14	1 000 pieces	17 887
	15	1 000 pieces ⁽¹⁾	20 131
	16	1 000 pieces	17 181
	17	1 000 pieces	13 061
	26	1 000 pieces ⁽¹⁾	6 645
	28	1 000 pieces	92 909
	29	1 000 pieces	15 687
	31	1 000 pieces	96 488
	78	tonnes	36 651
	83	tonnes	10 883
	GROUP III B		
	97	tonnes	2 861
	GROUP V		
	163 ⁽¹⁾	tonnes	8 481

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Hong Kong	GROUP IA		
	2	tonnes	14 172
	2a	tonnes	12 166
	3	tonnes	11 912
	3a	tonnes	8 085
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	58 250
	5	1 000 pieces	40 240
	6 ⁽¹⁾	1 000 pieces	79 703
	6a	1 000 pieces	68 857
	7	1 000 pieces	42 372
	8	1 000 pieces	59 172
	GROUP IIA		
	39	tonnes	2 444
	GROUP IIB		
	12	1 000 pairs	53 159
	13 ⁽¹⁾	1 000 pieces	117 655
	16	1 000 sets	4 707
	26	1 000 pieces	12 498
	29	1 000 sets	5 191
	31	1 000 pieces	35 442
	78	tonnes	14 658
	83	tonnes	792
India	GROUP IA		
	1	tonnes	55 398
	2	tonnes	67 539
	2a	tonnes	30 211
	3	tonnes	38 567
	3a	tonnes	7 816
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	100 237
	5	1 000 pieces	53 303
	6 ⁽¹⁾	1 000 pieces	13 706
	7	1 000 pieces	78 485
	8	1 000 pieces	58 173
	GROUP IIA		
	9	tonnes	15 656
	20	tonnes	29 049
	23	tonnes	31 206
	39	tonnes	9 185
	GROUP IIB		
	15	1 000 pieces	10 238
	26	1 000 pieces	24 712
	29	1 000 pieces	14 637
Indonesia	GROUP IA		
	1	tonnes	22 559
	2	tonnes	34 126
	2a	tonnes	12 724
	3	tonnes	31 250
	3a	tonnes	16 872
	GROUP IB		
	4	1 000 pieces	59 337
	5	1 000 pieces	58 725
	6 ⁽¹⁾	1 000 pieces	21 429
	7	1 000 pieces	15 694
	8	1 000 pieces	24 626
	GROUP II A		
	23	tonnes	32 405
	GROUP IIIA		
	35	tonnes	32 725

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Macao	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	15 051
	5	1 000 pieces	14 055
	6 ⁽¹⁾	1 000 pieces	15 179
	7	1 000 pieces	5 907
	8	1 000 pieces	8 257
	GROUP IIA		
	20	tonnes	244
	39	tonnes	307
	GROUP IIB		
	13	1 000 pieces	9 446
	15	1 000 pieces	651
	16	1 000 pieces	508
	26	1 000 pieces	1 322
	31	1 000 pieces	10 789
	78	tonnes	2 115
	83	tonnes	517
Malaysia	GROUP IA		
	2	tonnes	8 870
	2a	tonnes	3 406
	3 ⁽¹⁾	tonnes	18 594
	3a ⁽¹⁾	tonnes	7 652
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	21 805
	5	1 000 pieces	10 132
	6 ⁽¹⁾	1 000 pieces	12 831
	7	1 000 pieces	43 822
	8	1 000 pieces	10 500
	GROUP IIA		
	22	tonnes	18 573
Pakistan	GROUP IA		
	1 ⁽¹⁾	tonnes	25 961
	2	tonnes	51 252
	2a	tonnes	19 376
	3	tonnes	86 004
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	50 030
	5	1 000 pieces	14 849
	6	1 000 pieces	53 885
	7	1 000 pieces	36 205
	8	1 000 pieces	8 350
	GROUP IIA		
	9	tonnes	15 398
	20	tonnes	59 896
	39	tonnes	20 156
	GROUP IIB		
	26	1 000 pieces	35 434
	28	1 000 pieces	128 083
Peru	GROUP IA		
	1 ⁽¹⁾	tonnes	24 085
	2	tonnes	18 080
Philippines	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	32 787
	5	1 000 pieces	16 653
	6 ⁽¹⁾	1 000 pieces	15 388
	7	1 000 pieces	8 185
	8	1 000 pieces	9 275
	GROUP IIB		
	13	1 000 pieces	42 526
	15	1 000 pieces	5 213
	26	1 000 pieces	6 964
	31	1 000 pieces	26 364

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Singapore	GROUP IA		
	2	tonnes	5 895
	2a	tonnes	2 846
	3	tonnes	2 009
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	35 106
	5	1 000 pieces	19 924
	6 ⁽¹⁾	1 000 pieces	21 452
	7	1 000 pieces	17 176
	8	1 000 pieces	10 343
South Korea	GROUP IA		
	1	tonnes	932
	2	tonnes	6 290
	2a	tonnes	1 156
	3	tonnes	9 470
	3a	tonnes	5 156
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	16 962
	5	1 000 pieces	36 754
	6 ⁽¹⁾	1 000 pieces	6 749
	7	1 000 pieces	10 785
	8	1 000 pieces	34 921
	GROUP IIA		
	9	tonnes	1 721
	22	tonnes	22 841
	GROUP IIB		
	12	1 000 pairs	231 975
	13	1 000 pieces	17 701
	14	1 000 pieces	8 961
	15	1 000 pieces	12 744
	16	1 000 pieces	1 285
	17	1 000 pieces	3 524
	26	1 000 pieces	3 345
	28	1 000 pieces	1 359
	29 ⁽¹⁾	1 000 pieces	857
	31	1 000 pieces	8 318
	78	tonnes	9 358
	83	tonnes	485
	GROUP IIIA		
	35	tonnes	17 631
	50	tonnes	1 463
	GROUP IIIB		
	97	tonnes	2 783
	97a ⁽¹⁾	tonnes	889
Sri Lanka ^(*)	GROUP IB		
	6	1 000 pieces	
	7	1 000 pieces	
	8	1 000 pieces	

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Taiwan	GROUP IA		
	2	tonnes	5 994
	2a	tonnes	595
	3	tonnes	12 143
	3a	tonnes	4 485
	GROUP IB		
	4 ⁽¹⁾	1 000 pieces	12 468
	5	1 000 pieces	22 264
	6 ⁽¹⁾	1 000 pieces	6 215
	7	1 000 pieces	3 823
	8	1 000 pieces	9 821
	GROUP IIA		
	20	tonnes	369
	22	tonnes	10 054
	23	tonnes	6 524
	GROUP IIB		
	12	1 000 pairs	43 744
	13	1 000 pieces	3 765
	14	1 000 pieces	5 076
	15	1 000 pieces	3 162
	16	1 000 pieces	530
	17	1 000 pieces	1 014
	26	1 000 pieces	3 467
	28 ⁽¹⁾	1 000 pieces	2 549
	78	tonnes	5 815
	83	tonnes	1 300
	GROUP IIIA		
	35	tonnes	12 480
	GROUP IIIB		
	97	tonnes	1 783
	97a ⁽¹⁾	tonnes	807
Thailand	GROUP IA		
	1	tonnes	25 175
	2	tonnes	18 729
	2a	tonnes	4 987
	3 ⁽¹⁾	tonnes	34 101
	3a ⁽¹⁾	tonnes	9 517
	GROUP IB		
	4	1 000 pieces	55 198
	5	1 000 pieces	38 795
	6	1 000 pieces	16 568
	7	1 000 pieces	13 169
	8	1 000 pieces	6 856
	GROUP IIA		
	20	tonnes	15 443
	22	tonnes	7 478
	GROUP IIB		
	12	1 000 pairs	49 261
	26	1 000 pieces	11 460
	GROUP IIIB		
	97	tonnes	3 445
	97a ⁽¹⁾	tonnes	2 911

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Vietnam ⁽¹⁾ ⁽⁶⁾	GROUP IB		
	4	1 000 pieces	11 030
	5	1 000 pieces	3 658
	6	1 000 pieces	5 629
	7	1 000 pieces	3 094
	8	1 000 pieces	14 632
	GROUP IIA		
	9	tonnes	1 011
	20	tonnes	263
	39	tonnes	252
	GROUP IIB		
	12	1 000 pairs	3 189
	13	1 000 pieces	9 530
	14	1 000 pieces	507
	15	1 000 pieces	507
	18	tonnes	997
	21	1 000 pieces	21 462
	26	1 000 pieces	1 294
	28	1 000 pieces	3 998
	29	1 000 pieces	393
	31	1 000 pieces	4 503
	68	tonnes	487
	73	1 000 pieces	1 193
	76	tonnes	1 297
	78	tonnes	1 350
	83	tonnes	449
	GROUP IIIA		
	35	tonnes	691
	41	tonnes	833
	GROUP IIIB		
	10	1 000 pairs	0
	97	tonnes	6 345
			231
	GROUP IV		
	118	tonnes	0
			286
	GROUP V		
	161	tonnes	256

(*) Possibility to transfer to and from category 3 up to 40 % of the category to which the transfer is made.

⁽¹⁾ See appendix A.

⁽²⁾ See appendix B.

⁽³⁾ See appendix C.

⁽⁴⁾ The application of quantitative restrictions for Sri Lanka is not in application pursuant to the EC/Sri Lanka Memorandum of Understanding on market access in the textile sector, under which the European Community retains the right to reapply them under certain circumstances.

⁽⁵⁾ The application of quantitative restrictions for Brazil is not in application pursuant to the EC/Brazil Memorandum of Understanding on market access in the textile sector, under which the European Community retains the right to reapply them under certain circumstances.

⁽⁶⁾ These quotas will be increased to the levels indicated in Annex II, column 5 of the Agreement in the form of an Exchange of Letters amending the Agreement between the European Community and the Socialist republic of Vietnam on trade in textile and clothing products and other market opening measures initialled on 15 February 2003, subject to fulfilment of Vietnam of its commitments.

Appendix A to Annex V

Category	Third country	Remarks
1	Pakistan	The following additional quantities may be added to the relevant annual quantitative limit (tonnes): 509 These quantities may, subject to notification, be transferred to the relevant quantitative limits for category 2. Part of the quantity so transferred may be used on a pro rata basis for category 2(a)
	Peru	In addition to the quantitative limits shown in Annex V, an additional annual quantity of 900 tonnes of products falling within category 1 is reserved for imports into the Community for processing by the Community industry
2	China	For fabrics, below 115 cm in width (CN codes): 5208 11 90, ex 5208 12 16, ex 5208 12 96, 5208 13 00, 5208 19 00, 5208 21 90, ex 5208 22 16, ex 5208 22 96, 5208 23 00, 5208 29 00, 5208 31 00, ex 5208 32 16, ex 5208 32 96, 5208 33 00, 5208 39 00, 5208 41 00, 5208 42 00, 5208 43 00, 5208 49 00, 5208 51 00, 5208 52 10, 5208 53 00, 5208 59 00, 5209 11 00, 5209 12 00, 5209 19 00, 5209 21 00, 5209 22 00, 5209 29 00, 5209 31 00, 5209 32 00, 5209 39 00, 5209 41 00, 5209 42 00, 5209 43 00, 5209 49 90, 5209 51 00, 5209 52 00, 5209 59 00, 5210 11 10, 5210 12 00, 5210 19 00, 5210 31 10, 5210 32 00, 5210 39 00, 5210 41 00, 5210 42 00, 5210 49 00, 5211 11 00, 5211 12 00, 5211 19 00, 5211 31 00, 5211 32 00, 5211 39 00, 5211 41 00, 5211 42 00, 5211 43 00, ex 5211 49 10, 5211 49 90, 5212 11 10, 5212 11 90, 5212 13 90, 5212 14 10, 5212 14 90, 5212 21 10, 5212 21 90, 5212 23 10, 5212 23 90, 5212 24 10, 5212 24 90, ex 5811 00 00 and ex 6308 00 00) the following additional quantities may be exported to the Community by China (tonnes): 1 454 For fabrics of category 2 for medical gauze (CN codes: 5208 11 10 and 5208 21 10) the following additional quantities may be exported to the Community by China (tonnes): 2 009 Possibility of transfer to and from category 3 of up to 40 % of the category to which the transfer is made
3	Malaysia Thailand	The quantitative limits shown in Annex V include cotton fabric falling within category 2
3a	Malaysia Thailand	The quantitative limits shown in Annex V include cotton fabric other than unbleached or bleached falling within category 2(a)
4	China Hong Kong India Macao Malaysia Pakistan Philippines Singapore South Korea Taiwan	For the purpose of setting off exports against the agreed quantitative limits a conversion rate of five garments (other than babies' garments) of a maximum commercial size of 130 cm for three garments whose commercial size exceeds 130 cm may be applied for up to 5 % of the quantitative limits For Hong Kong, Macao and South Korea, this figure shall be 3 %, and for Taiwan 4 % The export licence concerning these products must bear, in box 9, the words "The conversion rate for garments of a commercial size of not more than 130 cm must be applied"

Category	Third country	Remarks
5	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 700 For products of category 5 (other than anoraks, windcheaters, waister jackets and the like) of fine animal hair falling within CN codes: 6110 12 10, 6110 12 90, 6110 19 10 and 6110 19 90, the following sublimits apply within the quantitative limits established for category 5 (1 000 pieces): 250
6	China	The figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 1 274 The following additional quantities of shorts (CN codes 6203 41 90, 6203 42 90, 6203 43 90 and 6203 49 50) may be exported by China to the Community (1 000 pieces): 1 266
	Brazil ⁽¹⁾ Hong Kong India Indonesia Macao Malaysia Philippines Singapore South Korea Sri Lanka ⁽²⁾ Taiwan	For the purpose of setting off exports against the agreed quantitative limits a conversion rate of five garments (other than babies' garments) of a maximum commercial size of 130 cm for three garments whose commercial size exceeds 130 cm may be applied for up to 5 % of the quantitative limits For Macao this figure shall be 3 % and for Hong Kong it shall be 1 % Utilisation of the conversion rate for Hong Kong is limited in respect of long trousers to the subceiling shown below The export licence concerning these products must bear, in box 9, the words "The conversion rate for garments of a commercial size of not more than 130 cm must be applied"
	Hong Kong	Within the quantitative limits laid down in Annex V there are the following subceilings for long trousers falling within CN codes: 6203 41 10, 6203 42 31, 6203 42 33, 6203 42 35, 6203 43 19, 6203 49 19, 6204 61 10, 6204 62 31, 6204 62 33, 6204 62 39, 6204 63 18, 6204 69 18, 6211 32 42, 6211 33 42, 6211 42 42 and 6211 43 42 (1 000 pieces): 56 292 The export licence covering these product should be endorsed "category 6 A"
7	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 755
8	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 1 220
13	Hong Kong	The quantitative limits shown in Annex V cover only products of cotton or synthetic fibres falling within CN codes: 6107 11 00, ex 6107 12 00, 6108 21 00, ex 6108 22 00 and ex 6212 10 10 In addition to the quantitative limits shown in Annex V, the following specific quantities were agreed for exports of products (of wool or regenerated fibres) falling within CN codes: ex 6107 12 00, ex 6107 19 00, ex 6108 22 00, ex 6108 29 00 and ex 6212 10 10 (tonnes): 3 002 The export licence covering these products should be endorsed "category 13 S"

Category	Third country	Remarks
15	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 371
26	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (1 000 pieces): 370
28	Taiwan	In addition to the quantitative limits laid down in Annex V, specific quantities were agreed for exports of bib and brace overalls, breeches and shorts falling within CN codes: 6103 41 90, 6103 42 90, 6103 43 90, 6103 49 91, 6104 61 90, 6104 62 90, 6104 63 90 and 6104 69 91: 1 226 368 pieces
29	South Korea	In addition to the quantitative limits laid down in Annex V, additional quantities are reserved for martial arts (judo, karate, kung fu, taekwondo or the like) clothing (1 000 pieces): 454
97a	South Korea Taiwan Thailand	Fine nets (CN codes: 5608 11 19 and 5608 11 99)
163	China	These figures include the following quantities reserved for European industry for a period of 180 days each year (tonnes): 400
All categories subject to quantitative limits	Vietnam	Vietnam shall reserve 30 % of its quantitative limits for firms belonging to the Community textile industry for a period of four months beginning on 1 January of each year, on the basis of lists provided by the Community before 30 October of the preceding year'

- (¹) The application of quantitative restrictions for Brazil is not in application pursuant to the EC/Brazil Memorandum of Understanding on market access in the textile sector, under which the European Community retains the right to reapply them under certain circumstances.
- (²) The application of quantitative restrictions for Sri Lanka is not in application pursuant to the EC/Sri Lanka Memorandum of Understanding on market access in the textile sector, under which the European Community retains the right to reapply them under certain circumstances.

Appendix B to Annex V

Third country	Category	Unit	2004
	The following quantities made available for the year 2004, may be used exclusively at European fairs:		
China	1	tonnes	317
	2	tonnes	1 338
	2a	tonnes	159
	3	tonnes	196
	3a	tonnes	27
	4	1 000 pieces	2 061
	5	1 000 pieces	705
	6	1 000 pieces	1 689
	7	1 000 pieces	302
	8	1 000 pieces	992
	9	tonnes	294
	12	1 000 pairs	843
	13	1 000 pieces	3 192
	20/39	tonnes	372
	22	tonnes	332

Flexibilities provided for in Article 7 of and Annex VIII to Regulation 3030/93 for China are applicable to the above categories and amounts.

Appendix C to Annex V

COMMUNITY QUANTITATIVE LIMITS

(The complete description of the goods is shown in Annex IB)

Third country	Category	Unit	Quota levels applicable from 1 May 2004
China	GROUP I ex 20 ⁽¹⁾	tonnes	59
	GROUP IV		
	115	tonnes	1 413
	117	tonnes	684
	118	tonnes	1 513
	122	tonnes	220
	GROUP V		
	136A	tonnes	462
	156 ⁽²⁾	tonnes	3 986
	157 ⁽²⁾	tonnes	13 738
	159 ⁽²⁾	tonnes	4 352

⁽¹⁾ Categories marked by "ex" cover products other than those of wool or fine animal hairs, cotton or synthetic or artificial textile materials.

⁽²⁾ For these categories, China undertakes to reserve, as a priority 23 % of the quantitative limits concerned for users belonging to the textile Community industry during 90 days beginning on 1 January of each year.

PART B

'COMMUNITY QUANTITATIVE LIMITS FOR GOODS RE-IMPORTED UNDER OPT

applicable for 2004

(The complete description of the goods is shown in Annex I)

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Belarus	GROUP IB		
	4	1 000 pieces	4 432
	5	1 000 pieces	6 179
	6	1 000 pieces	7 526
	7	1 000 pieces	5 586
	8	1 000 pieces	1 966
	GROUP IIB		
	12	1 000 pairs	4 163
	13	1 000 pieces	419
	15	1 000 pieces	3 228
	16	1 000 pieces	736
	21	1 000 pieces	2 403
	24	1 000 pieces	526
	26/27	1 000 pieces	2 598
	29	1 000 pieces	1 221
	73	1 000 pieces	4 679
	83	tonnes	622
	GROUP IIIB		
	74	1 000 pieces	816
China	GROUP IB		
	4	1 000 pieces	337
	5	1 000 pieces	746
	6	1 000 pieces	2 707
	7	1 000 pieces	724
	8	1 000 pieces	1 644
	GROUP IIB		
	13	1 000 pieces	888
	14	1 000 pieces	660
	15	1 000 pieces	679
	16	1 000 pieces	1 032
	17	1 000 pieces	868
	26	1 000 pieces	1 281
	29	1 000 pieces	129
	31	1 000 pieces	10 199
	78	tonnes	105
	83	tonnes	105
	GROUP V		
	159	tonnes	9
India	GROUP 1B		
	7	1 000 pieces	4 987
	8	1 000 pieces	3 770
	GROUP IIB		
Indonesia	15	1 000 pieces	380
	26	1 000 pieces	3 555
	GROUP 1B		
	6	1 000 pieces	2 456
	7	1 000 pieces	1 633
	8	1 000 pieces	2 045

Third country	Category	Unit	Community quantitative limits
			Quota levels applicable from 1 May 2004
Macao	GROUP IB 6	1 000 pieces	335
	GROUP IIB 16	1 000 pieces	906
Malaysia	GROUP IB 4	1 000 pieces	594
	5	1 000 pieces	594
	6	1 000 pieces	594
	7	1 000 pieces	383
	8	1 000 pieces	308
Pakistan	GROUP IB 4	1 000 pieces	8 273
	5	1 000 pieces	4 148
	6	1 000 pieces	7 096
	7	1 000 pieces	3 372
	8	1 000 pieces	4 704
	GROUP IIB 26	1 000 pieces	4 604
Philippines	GROUP IB 6	1 000 pieces	738
	8	1 000 pieces	221
Singapore	GROUP IB 7	1 000 pieces	1 283
Sri Lanka ⁽¹⁾	GROUP IB 6	1 000 pieces	
	7	1 000 pieces	
	8	1 000 pieces	
Thailand	GROUP IB 5	1 000 pieces	416
	6	1 000 pieces	417
	7	1 000 pieces	653
	8	1 000 pieces	416
	GROUP IIB 26	1 000 pieces	633
Vietnam	GROUP IB 4	1 000 pieces	1 064
	5	1 000 pieces	811
	6	1 000 pieces	757
	7	1 000 pieces	1 417
	8	1 000 pieces	3 286
	GROUP IIB 12	1 000 pairs	3 348
	13	1 000 pieces	1 024
	15	1 000 pieces	329
	18	tonnes	385
	21	1 000 pieces	2 235
	26	1 000 pieces	209
	31	1 000 pieces	1 869
	68	tonnes	156
	76	tonnes	532
	78	tonnes	371

⁽¹⁾ The application of quantitative restrictions for Sri Lanka is not in application pursuant to the EC/Sri Lanka Memorandum of Understanding on market access in the textile sector, under which the European Community retains the right to reapply them under certain circumstances.

COMMISSION REGULATION (EC) No 488/2004
of 16 March 2004
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⁾, 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 17 March 2004.

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

Done at Brussels, 16 March 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 16 March 2004 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	95,6
	204	82,0
	212	125,1
	999	100,9
0707 00 05	052	133,1
	068	141,1
	096	88,7
	204	20,5
	220	147,3
	999	106,1
0709 10 00	220	77,3
	999	77,3
0709 90 70	052	110,5
	204	51,0
	999	80,8
0805 10 10, 0805 10 30, 0805 10 50	052	43,1
	204	46,6
	212	60,8
	220	48,0
	400	65,3
	624	60,6
	999	54,1
0805 50 10	052	53,0
	400	46,9
	600	51,3
	999	50,4
0808 10 20, 0808 10 50, 0808 10 90	060	45,0
	388	84,0
	400	105,0
	404	89,3
	508	71,7
	512	85,8
	524	73,5
	528	82,0
	720	83,5
	800	99,6
	999	81,9
0808 20 50	388	72,9
	512	79,3
	528	69,7
	999	74,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 489/2004
of 16 March 2004**

amending Regulation (EC) No 20/2002 laying down detailed rules for implementing the specific supply arrangements for the outermost regions introduced by Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom) ⁽¹⁾, and in particular Article 22 and the second paragraph of Article 26 thereof,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) ⁽²⁾, and in particular Article 34 and the second paragraph of Article 38 thereof,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) ⁽³⁾, and in particular Article 20 and the second paragraph of Article 24 thereof,

Whereas:

- (1) Article 16(1) and Article 17(1) of Commission Regulation (EC) No 20/2002 ⁽⁴⁾ concern respectively the French overseas departments and the Azores and Madeira and lay down that processors can export processed products containing raw materials that have benefited from the specific supply arrangements in the context of regional trade or dispatch them in the context of traditional trade flows, within annual quantity limits to be set by the Commission.
- (2) The annual maximum quantities that can be exported or dispatched from the French overseas departments and the Azores and Madeira should therefore be fixed in Regulation (EC) No 20/2002.
- (3) Using in particular geographical proximity as the criterion, the third countries to which exports can be sent in the context of regional trade from the French overseas departments and the Azores and Madeira

should be established, and the appropriate measures for monitoring such operations and applying the penalties required should be laid down.

- (4) In accordance with Article 16(2), Article 17(2) and Article 19(2) of Regulation (EC) No 20/2002, the authorisation to export or dispatch processed products not containing raw materials that have benefited from the specific supply arrangements is subject to an attestation from the processor. The processor declares in this attestation that the processed products for export or dispatch do not contain raw materials imported or introduced under specific supply arrangements. The penalties for making a false declaration should be laid down.
- (5) Regulation (EC) No 20/2002 should therefore be amended.
- (6) The measures laid down in this Regulation are in accordance with the opinions of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 20/2002 is hereby amended as follows:

1. Article 16 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'Processors who have declared, under Article 9(3), their intention to export, in the context of regional trade, or dispatch, in the context of traditional trade flows, processed products containing raw materials which have benefited from the specific supply arrangements, may do so within the limits of the annual quantities indicated in Annex I to the third countries listed in Annex II. The competent authorities shall take the necessary measures to ensure that these operations do not exceed the annual quantities fixed.'

⁽¹⁾ OJ L 198, 21.7.2001, p. 11. Regulation as amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1.).

⁽²⁾ OJ L 198, 21.7.2001, p. 26. Regulation as amended by Regulation (EC) No 1782/2003.

⁽³⁾ OJ L 198, 21.7.2001, p. 45. Regulation as last amended by Regulation (EC) No 1782/2003.

⁽⁴⁾ OJ L 18, 11.1.2002, p. 1. Regulation as last amended by Regulation (EC) No 1174/2003 (OJ L 164, 2.7.2003, p.3).

- (ii) the following subparagraph is inserted after the first subparagraph:

'Processors who have exported the products referred to in the preceding subparagraph in the context of regional trade to one of the third countries listed in Annex II must present the documents referred to in Article 16 of Regulation (EC) No 800/1999 with a view to possible checks by the competent authorities which shall, if necessary, recover the benefit granted under the specific supply arrangements and temporarily suspend the processor's registration, or revoke it.';

- (b) the second subparagraph of paragraph 2 is replaced by the following:

'The competent authorities shall carry out the necessary checks to ensure the accuracy of the attestations referred to in the first subparagraph. They shall recover, where necessary, the benefit granted under the specific supply arrangements and shall temporarily suspend the processor's registration, or revoke it.';

- (c) paragraph 3 is replaced by the following:

'3. Processing operations which, within the limit of the quantities set out in Annex I, may give rise to regional trade exports or traditional consignments must meet, *mutatis mutandis*, the processing conditions laid down in the provisions on the inward processing arrangements and the procedure for processing under customs control specified in Regulations (EEC) No 2913/92 and (EEC) No 2454/93, with the exception of all usual forms of handling.'

2. Article 17 is amended as follows:

- (a) paragraph 1 is amended as follows:

- (i) the first subparagraph is replaced by the following:

'Processors who have declared, under Article 9(3), their intention to export, in the context of regional trade, or dispatch, in the context of traditional trade flows, processed products containing raw materials which have benefited from the specific supply arrangements, may do so within the limits of the annual quantities indicated in Annex III to the third countries listed in Annex IV. The competent authorities shall take the necessary measures to ensure that these operations do not exceed the annual quantities fixed.';

- (ii) the following subparagraph is inserted after the first subparagraph:

'Processors who have exported the products referred to in the preceding subparagraph in the context of regional trade to one of the third countries listed in

Annex IV must present the documents referred to in Article 16 of Regulation (EC) No 800/1999 with a view to possible checks by the competent authorities which shall, if necessary, recover the benefit granted under the specific supply arrangements and temporarily suspend the processor's registration, or revoke it.';

- (b) the second subparagraph of paragraph 2 is replaced by the following:

'The competent authorities shall carry out the necessary checks to ensure the accuracy of the attestations referred to in the first subparagraph. They shall recover, where necessary, the benefit granted under the specific supply arrangements and shall temporarily suspend the processor's registration, or revoke it.';

- (c) paragraph 3 is replaced by the following:

'3. Processing operations which, within the limit of the quantities set out in Annex III, may give rise to regional trade exports or traditional consignments must meet, *mutatis mutandis*, the processing conditions laid down in the provisions on the inward processing arrangements and the procedure for processing under customs control specified in Regulations (EEC) No 2913/92 and (EEC) No 2454/93, with the exception of all usual forms of handling.'

3. Article 19 is amended as follows:

- (a) the first subparagraph of paragraph 1 is replaced by the following:

'Processors who have declared, under Article 9(3), their intention to export, in the context of regional trade, or dispatch, in the context of traditional trade flows, processed products containing raw materials which have benefited from the specific supply arrangements, may do so within the limits of the annual quantities indicated in Annex V. The competent authorities shall take the necessary measures to ensure that these operations do not exceed the annual quantities fixed.';

- (b) the second subparagraph of paragraph 2 is replaced by the following:

'The competent authorities shall carry out the necessary checks to ensure the accuracy of the attestations referred to in the first subparagraph. They shall recover, where necessary, the benefit granted under the specific supply arrangements and shall temporarily suspend the processor's registration, or revoke it.';

(c) paragraph 3 is replaced by the following:

‘3. Processing operations which, within the limit of the quantities set out in Annex V, may give rise to regional trade exports or traditional consignments must meet, *mutatis mutandis*, the processing conditions laid down in the provisions on the inward processing arrangements and the procedure for processing under customs control specified in Regulations (EEC) No 2913/92 and (EEC) No 2454/93, with the exception of all usual forms of handling.’

4. In the Annex the heading ‘Annex’ is replaced by ‘Annex V’.

5. The text of the Annex hereto is added as Annexes I to IV.

Article 2

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, 16 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'ANNEX I

Maximum quantities of processed products which can be exported or dispatched annually from the French overseas territories in the context of regional trade or traditional consignments**(Article 9(3) and Article 16)****Réunion**

<i>(quantity in kilograms (or litres *))</i>		
CN code	to the European Community	to third country
1005 90 00	—	250 000
1101 00	—	5 000 000
1507 90 90	—	*38 000
1508 90 90	—	*2 000
1512 11 91	—	*250 000
1515 29 90	—	*5 000
2103 90 90	—	15 000
2203 00	*2 530	—
2309 90	—	8 000 000

Martinique

<i>(quantity in kilograms (or litres *))</i>		
CN code	to the European Community	to third country
0403 10	—	3 276
1101 00	—	269 500
2309 90	—	350 000

Guadeloupe

<i>(quantity in kilograms (or litres *))</i>		
CN code	to the European Community	to third country
1101 00	—	500 000
2309 90	—	500 000

ANNEX II

Third countries to which processed products are exported from the French overseas territories in the context of regional trade**(Article 9(3) and Article 16)**

Réunion: Mauritius, Madagascar, Mayotte and the Comoros Islands

Martinique: Lesser Antilles (*)

Guadeloupe: Lesser Antilles (*)

French Guiana: Brazil, Surinam and Guyana

(*) Lesser Antilles: Virgin Islands, Saint Kitts and Nevis, Antigua and Barbuda, Dominica, Saint Lucia, Saint Vincent and the Grenadines, Barbados, Trinidad and Tobago, Sint Maarten, Anguilla.

ANNEX III

Maximum quantities of processed products which can be exported or dispatched annually from the Azores and Madeira in the context of regional trade and traditional consignments**(Article 9(3) and Article 17)****Azores***(quantity in kilograms (or litres *))*

CN code	to the European Community	to third country
1905 90 45	—	50 000
2203 00	—	*100 000

Madeira*(quantity in kilograms (or litres *))*

CN code	to the European Community	to third country
0401	—	1 000 000
1101 00	60 000	600 000
1102 20	3 000	500 000
1704	4 600	10 000
1902 19	25 500	600 000
1905	18 200	300 000
2009	3 800	—
2202	*18 700	*3 000 000
2203 00	*2 500	*1 000 000
2208	*9 000	*20 000

ANNEX IV

Third countries to which processed products are exported from the Azores and Madeira in the context of regional trade**(Article 9(3) and Article 17)**

Azores: Morocco, Cape Verde and Guinea-Bissau.

Madeira: Morocco, Cape Verde and Guinea-Bissau.'

**COMMISSION REGULATION (EC) No 490/2004
of 16 March 2004**

concerning the provisional authorization of a new use of an additive already authorized in feeding-stuffs (*Saccharomyces cerevisiae*)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs ⁽¹⁾, as last amended by Regulation (EC) No 1756/2002 ⁽²⁾, and in particular Articles 3 and 9e(1) thereof,

Whereas:

(1) Directive 70/524/EEC provides that no additive may be put into circulation unless a Community authorisation has been granted.

(2) In the case of additives referred to in Part II of Annex C to Directive 70/524, which includes micro-organisms, provisional authorisation of a new use of an additive already authorised may be given if the conditions laid down in that Directive are satisfied, and if it is reasonable to assume, in view of the available results, that when used in animal nutrition it has one of the effects referred to in Article 2(a) of that Directive. Such provisional authorisation may be given for a period not exceeding four years in the case of additives referred to in Part II of Annex C to that Directive.

(3) The use of the micro-organism preparation of *Saccharomyces cerevisiae* (CBS 493.94) has been provisionally authorised, for the first time, for calves by Commission Regulation (EC) No 1436/1998 ⁽³⁾, for cattle for fattening by Commission Regulation (EC) No 866/1999 ⁽⁴⁾ and for dairy cows by Commission Regulation (EC) No 937/2001 ⁽⁵⁾. These authorisations have been last modified by Commission Regulation (EC) No 2200/2001 ⁽⁶⁾.

(4) New data were submitted in support of an application to extend the authorisation of this additive to horses.

(5) The assessment of the application for authorisation submitted in respect of the new use of this additive, shows that the conditions provided for in Directive 70/524/EEC for provisional authorisation are satisfied.

(6) The European Food Safety Authority (Scientific Panel on Additives and Products or Substances Used in Animal Feed) delivered a favourable opinion on 13 November 2003 on the safety of the additive when used in the animal category horses, under the conditions of use set out in the annex to this Regulation.

(7) The use of this additive for horses should therefore be provisionally authorised for a period of four years.

(8) The assessment of the application shows that certain procedures should be required to protect workers from exposure to the additive set out in the Annex. Such protection should be assured by the application of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁷⁾, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council ⁽⁸⁾.

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

HAS ADOPTED THIS REGULATION

Article 1

The preparation belonging to the group 'Micro-organisms' as set out in the Annex is provisionally authorised for use as additive in animal nutrition under the conditions laid down in that Annex.

Article 2

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

⁽¹⁾ OJ L 270, 14.12.1970, p. 1.

⁽²⁾ OJ L 265, 3.10.2002, p. 1.

⁽³⁾ OJ L 191, 7.7.1998, p. 15.

⁽⁴⁾ OJ L 108, 27.4.1999, p. 21.

⁽⁵⁾ OJ L 130, 12.5.2001, p. 25.

⁽⁶⁾ OJ L 299, 15.11.2001, p. 1.

⁽⁷⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁸⁾ OJ L 284, 31.10.2003, p. 1.

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

Done at Brussels, 16 March 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX

No (or EC No)	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimu content	Maximu content	Other provisions	End of period of authori-sation
					CFU/kg of complete feedingstuff			
*Micro-organisms								
5	<i>Saccharomyces cerevisiae</i> CBS 493.94	Preparation of <i>Saccharomyces cerevisiae</i> containing a minimum of: 1 × 10 ⁸ CFU/g additive	Horses	—	4 × 10 ⁹	2,5 × 10 ¹⁰	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. The quantity of <i>Saccharomyces cerevisiae</i> in the daily ration must not exceed 4.17 × 10 ¹⁰ CFU for 100 kg of body weight. Use permitted from two months post weaning onwards.	17.3.2008 20.3.2008'

II

(Acts whose publication is not obligatory)

COUNCIL

**COUNCIL DECISION
of 11 March 2004
appointing a new member of the Commission**

(2004/250/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 215 thereof,

Whereas:

On 10 March 2004 Ms Anna DIAMANTOPOULOU resigned from her post as a member of the Commission. She should be replaced for the remainder of her term of office,

HAS DECIDED AS FOLLOWS:

Article 1

Mr Stavros DIMAS is hereby appointed a member of the Commission for the period from 11 March 2004 to 31 October 2004.

Article 2

This Decision shall take effect on 11 March 2004.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 11 March 2004.

For the Council
The President
M. HARNEY

COMMISSION

COMMISSION DECISION

of 24 July 2002

declaring a concentration to be compatible with the common market and with the EEA Agreement

(Case COMP/M.2698 — Promatech/Sulzer)

(notified under document number C(2002) 2807)

(Only the English text is authentic)

(Text with EEA relevance)

(2004/251/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, and in particular Articles 8(2) and 22(3) thereof,

Having regard to the Commission's decision of 16 April 2002 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations ⁽³⁾,

Having regard to the final report of the Hearing Officer in this case ⁽⁴⁾,

Whereas:

Article 22 of Regulation (EEC) No 4064/89 ('the Merger Regulation'), from Spain, Italy, the United Kingdom, Germany and France, respectively, to investigate a proposed concentration by which the undertaking Promatech SpA (Promatech) would acquire the mechanical textile division (Sulzer Textile) of the undertaking Sulzer Ltd. On 11 and 13 February 2002, two further such requests were received from Portugal and Austria, respectively.

- (2) The Commission found that the abovementioned requests meet the requirements laid down in Article 22(3) of the Merger Regulation. The authorities of the referring Member States had dispatched to the Commission documentation at their disposal consisting mainly of parties' submissions and results of preliminary investigations. This information was completed thereafter by the parties to the operation.

- (3) After a careful examination of the proposed concentration, the Commission concluded that the operation raised serious doubts as to its compatibility with the common market and with the EEA Agreement. The Commission identified serious competitive concerns in the market for rapier weaving machines or, alternatively, in a further segmented market for negative rapier weaving machines, in western Europe, that is to say, in the EEA member States and Switzerland. On 16 April 2002, the Commission accordingly initiated proceedings in this case pursuant to Articles 6(1)(c) and 22(4) of the Merger Regulation and Article 57 of the EEA Agreement.

I. INTRODUCTION

- (1) On 7, 11, 18, 19 and 21 December 2001 the Commission received requests for a joint referral, pursuant to

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ OJ C 67, 17.3.2004.

⁽⁴⁾ OJ C 67, 17.3.2004.

II. THE PARTIES TO THE OPERATION

- (4) Promatech is a company incorporated in Italy that manufactures, sells and distributes weaving machines and spare parts. Promatech is controlled by the Radici Group, which is active in the chemicals industry, plastics, engineering, packaging, weaving industries, synthetic fibres and textile industries sectors, and Miro Radici Group, that operates in the textile sector.
- (5) Sulzer Ltd is a holding company incorporated in Switzerland with major activities in various fields, such as medical implants, heavy engineered pumps and building infrastructure material. The Sulzer Group is also engaged, primarily through its wholly owned subsidiary Sulzer Textil AG (Switzerland) and other directly or indirectly owned subsidiaries, in the design, manufacture, marketing, sale and distribution of weaving machines, as well as in after-sales services for weaving machines.

III. CONCENTRATION

- (6) The proposed operation consists in the acquisition of the whole mechanical-textile division of Sulzer by Promatech, by means of purchase of shares. The proposed transaction would thus give Promatech sole control over a number of companies throughout the world, including sales companies, which are wholly owned by Sulzer. The proposed transaction consists also in the purchase of 11 sales branches throughout the world, which are controlled by Sulzer but managed by companies belonging to the Sulzer Group.
- (7) The proposed operation constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (8) The concentration under examination has no Community dimension, since the thresholds of Article 1 of the Merger Regulation are not met. Promatech's turnover is EUR [...] (*) million worldwide and EUR [...] * million EU-wide (figures for the year 2000). The turnover of the Sulzer activities which are subject to acquisition is EUR [...] * million worldwide and EUR [...] * million EU-wide (figures for the year 2000).

(*) Parts of the text of this decision have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

IV. COMPETITIVE ASSESSMENT

A. PRODUCT MARKET DEFINITION

1. SHUTTLE AND NON-SHUTTLE WEAVING MACHINES

- (9) The economic sector involved in the proposed merger is the manufacturing and sale (including spare parts and servicing) of weaving machines. Weaving machines are one of the main types of textile machinery, a segment that comprises a number of other broad categories of machines, such as spinning machines or knitting machines ⁽¹⁾.
- (10) Weaving machines may be subdivided according to the technology used for the transportation of the weft thread from one side of the machine to the other and its insertion through the warp thread. Weaving machines are generally divided accordingly into:
- (i) shuttle machines; and
 - (ii) non-shuttle machines.
- (11) Shuttle machines appear to be technically obsolete, with a small production capacity and a very low operating speed. They are widely used in south-east Asia and China for the manufacture of low-cost textiles. In Europe, shuttle machines are almost exclusively used for the production of luxury textiles, where their low speed does not affect significantly the final price of the product. In any event, sales of shuttle machines are negligible in Europe nowadays (see table).

TABLE 1

Shipments of shuttle weaving machines in 2 000 (units)

Africa	313
America	0
Asia and Oceania	16 470
Western Europe	1

Source: International Textile Machinery Shipment Statistics, volume 23/2000.

- (12) Neither the parties to the operation nor generally their main competitors are active in the production of shuttle weaving machines. The parties have submitted that shuttle weaving machines do not form part of the same market as non-shuttle weaving machines. This submission has been confirmed by the Commission market investigation.

⁽¹⁾ See in this regard the reports of the International Textile Manufacturers Federation (ITMF), in particular the *International Textile Machinery Shipment Statistics* (volume 23/2000).

2. NON-SHUTTLE WEAVING MACHINES

(a) *Overview of the various types of non-shuttle weaving machines*

(13) Depending on the method used for inserting or weaving the weft thread through the warp thread, non-shuttle weaving machines can be further subdivided into:

(i) positive rapier weaving machines;

(ii) negative rapier weaving machines;

(iii) air-jet weaving machines;

(iv) projectile weaving machines;

(v) water-jet weaving machines;

(vi) multiphase weaving machines.

(14) Each of these types of machines can be distinguished by virtue of differences in their technology, their range of applications, and cost.

(15) Positive rapier looms are the most versatile weaving machine available. Weft insertion is achieved through the use of metal grips, called rapiers, which pull the weft thread to the centre of the loom, where it is actively transferred to the other rapier head which brings it to the other side of the loom. The rapier head is mounted on a rod. They are intended for specialised textile production of high quality. Productivity levels are lower than for negative rapier looms while energy consumption is comparatively higher making them among the more expensive machines not only to buy but also to run. They can produce a spectrum of materials ranging from the finest pure silk to woollen and worsted fabrics destined for the fashion industry, and from upholstery and decorative fabrics to heavy industrial fabrics made from wire, jute and carbon fibre. They are currently produced by Dornier and, to a lesser extent, by Promatech and Panter.

(16) Negative rapier machines come second (after positive rapier) in terms of versatility and are able to produce high quality fabrics of sophisticated design. Weft insertion is achieved by the use of metal grips, called rapiers, one of which transports the weft thread to the centre of the loom, where it is transferred passively to the other rapier which brings it to the other side of the loom. The design and development of the rapier head itself involves sophisticated technology involving both patents and know-how. The rapier head is mounted on a tape. These machines are moderately expensive, have an average energy consumption and an average speed. They are produced primarily by Promatech, Sulzer, Picanol and,

to a lesser extent, Panter. Tsudakoma is manufacturing a limited number of negative rapier looms exclusively for the Japanese market, where they are used to manufacture traditional Japanese textiles.

(17) Air-jet machines are characterised by a jet of compressed air which is used to insert the weft into the warp. Air-jet looms are highly productive but less versatile than rapier looms. They are best suited to lightweight fabrics. They are moderately versatile and can be used to produce a significant variety of fabrics although heavy fabrics like denim significantly increase the energy consumption. Energy consumption is relatively high (compared to rapier or water-jet, for example), but because of a relatively low number of moving parts, replacement costs for spare parts are relatively low. They require considerable infrastructure involving air compressors and high pressure air-piping in order to become operational. This infrastructure can cost between 15 % and 25 % of the overall machine value. Typically they are used by weavers catering to a predictable and unchanging demand for a particular fabric. They are produced by Promatech, Picanol, Dornier, Tsudakoma and Toyota.

(18) Projectile machines are characterised by a projectile which is used to insert the weft into the warp. The technology was developed in the 1950s and can be considered mature. Projectile looms are relatively expensive, with a wide range of application and a relatively low energy consumption, and are suitable for the production of high to medium quality textiles. Projectile looms accommodate larger widths than other looms. They also have a longer life span than any other loom. Projectile looms have similar technical characteristics to rapier looms but are also significantly more expensive than most other looms (with the exception of multiphase looms). Due to their relatively high price and average productivity levels projectile looms are a product for niche markets⁽¹⁾. This machine type is almost exclusively produced by Sulzer⁽²⁾.

(19) Water-jet looms are characterised by a jet of water which is used to insert the weft into the warp. They are relatively inexpensive; their energy consumption is low and their productivity high. On the other hand they have a limited field of application, since they can only be used to manufacture water-repellent fabrics, mainly synthetics. Due to the corrosive action of the water, the life-span of a water-jet loom tends to be shorter than that of other looms. Water-jet looms are mainly used in Asia⁽³⁾. Neither of the parties produces water-jet looms.

⁽¹⁾ There were only around 1 000 projectile looms sold worldwide in 2000, and around 200 in western Europe (EEA and Switzerland). This accounts for 2 % of all looms sold worldwide and 4 % of all looms sold in western Europe.

⁽²⁾ Two Russian producers manufacture a small number of projectile looms but these are not sold in western Europe.

⁽³⁾ According to statistics supplied by the International Textile Manufacturers Federation (ITMF) 97,5 % of all water-jet looms were sold in Asia (22 368 out of 22 940). Only 45 machines were sold in western Europe.

- (20) Multiphase looms are the latest development in weaving machine technology. They are currently sold only to selected trial customers ⁽¹⁾. They have an extremely high productivity and although their running costs are high, they need low manning levels. They are designed for use in a limited number of applications, mainly the mass production of low quality fabrics. Sulzer is the only company producing this type of machine.
- (21) The differences between the various machines, in terms of both technical characteristics and price, are summarised in the following table:

TABLE 2

Comparison of different technologies of non-shuttle weaving machines*(in thousand EUR)*

	Versatility	Productivity	Energy consumption	Price range
Positive rapier	Widest	Medium	Medium	[...]*
Negative rapier	Very wide range	Medium-high	Medium-low	[...]*
Projectile	Wide	Low-medium	Low-medium	[...]*
Air-jet	Medium	High	High	[...]* ⁽¹⁾
Water-jet	Low	High	Low	[...]*
Multiphase	Low	Highest	Highest	[...]*

⁽¹⁾ Does not include the cost for the necessary infrastructure (e.g. air compressor and piping).

Source: information submitted by the parties.

(b) The parties' submission with regard to product market delineation

- (22) The notifying parties submit that there is a single relevant product market which includes all types of shuttleless weaving machine, without distinction between the different types (air-jet, water-jet, negative rapier, positive rapier, multiphase and projectile). They argue that the various forms of weaving machine have a high degree of substitutability since users can, to a significant extent, switch from type to type. On the demand side, the parties argue that each type of machine is substitutable in terms of speed, flexibility (the possibility of changing the type of production), quality of final product, application and after-sales service. On the supply side, the parties submit that any producer of one type of machine can switch production to the other types without incurring significant costs or risks.

(c) Demand-side substitution**(i) General characteristics of demand**

- (23) The Commission's investigation has revealed that the majority of sales of weaving machinery in western Europe is to customers replacing or extending existing weaving machinery. The Commission's investigation also indicates that a textile producer will replace a weaving machine on average once every seven to ten years although this period may vary with technological advances which may stimulate demand or where weavers decide to upgrade their machinery in order to increase productivity within installations and thereby reduce costs.

(ii) Technical barriers to switching between various machine types

- (24) The various different types of weaving machine are not significantly substitutable from a demand-side perspective. All six machines vary considerably in terms of their technical use (feasibility and versatility) and in terms of their suitability for each particular application.

⁽¹⁾ In the year 2000, a total of four multiphase looms were sold, two in western Europe and two in the USA.

- (25) As regards feasibility, some textiles can only be woven on one particular machine whereas others can be woven on a range of different machines; at one end of the spectrum is silk which is most suitable for production on a rapier machine. At the other end are synthetic fibres which can be woven on any machine. Within these two ends of the spectrum there are intermediate fabrics which can be made on various types of machine. An example of a more versatile fabric would be shirting which can be woven on either rapier or air-jet machines. However this does not mean that for all shirt weavers these two machines are a reasonable alternative each for the other. In general there will always be one machine type which is better suited to a particular fabric from a technical perspective and which is more suited economically to the weaver's overall production profile. Much will depend on the nature of his business — on the size and sophistication of his customer base and the consistency and predictability of his production, that is to say, depending on whether he has to produce a large quantity of the same fabric or smaller quantities of fabrics of different types. For example air-jet machines are not suitable for 'short runs' because the setting of the threads requires considerable investment of time and labour. Accordingly, a weaver who produces small quantities of different patterns or fabrics would not find an air-jet machine a suitable alternative to a rapier.
- (26) Each machine can also be differentiated according to its level of versatility, that is to say, the range of yarns, fabric styles and number of colours which can be woven on the machine. The spectrum of versatility runs from the positive rapier which is the most versatile machine to the water-jet which is the most limited in terms of the range of fabrics and styles which it can produce. For example delicate fabrics involving complex, unbalanced weaves are most suitable for production on rapier machines. Air-jet looms are more suited to 'long runs' (production of the same fabric over an extended period) because of the time and cost involved in re-setting the machine after each stop, whereas rapier would be more suited for a weaver whose order book tends towards 'short runs' (production of limited quantities of a particular style of fabric).
- (27) The parties have indicated that, in the absence of any new factor, customers tend to re-purchase the same kind of machine that they have already installed. In other words, according to the parties themselves, there is in practice little switching between the six machine types. The results of the Commission's investigation confirm the very limited substitutability of the different types of weaving machine. In particular, the vast majority of sales of each machine type is made to customers replacing the same machine type. For example the parties estimate that 90 % of negative rapier European customers continue to buy negative-rapier machines. The remaining 10 % may buy positive rapier (3 %), air-jet (3 %) or projectile (4 %). In relation to positive rapier the investigation has revealed that the rate of switching is even lower. Virtually all weaving machine producers have stated during the course of the investigation that customers almost invariably indicate a preference for a particular type of machine at the outset and only a small minority will be persuaded to change to another type of machine during the course of the negotiation.

(iii) Economic barriers to switching between weaving machine types

- (28) The results of the Commission's investigation also indicate that there are significant economical barriers to switching from one type of machine to another. Prices differ significantly for the six product types: positive rapier weaving machines are typically priced between EUR [...] and EUR [...]; negative rapier between EUR [...] and EUR [...] and air-jet from EUR [...] to EUR [...]. Water-jet remains the cheapest option (but then it is not suitable for non-synthetic applications) with prices ranging from EUR [...] to EUR [...]. That results in a differential of approximately [10 to 30 %] between negative rapier and air-jet and [35 to 45 %] as between water-jet (one of the least versatile machines) and positive rapier (the most versatile). The price differential between the most expensive version of the projectile machine and water-jet (the cheapest machine) is in excess of 400 %.

- (29) The six machine types are highly differentiated in economic terms. These differences lie not only in the initial price, as explained, but also in the manning levels needed to run the machine; the amount of energy consumed; running costs in terms of spare parts consumption and servicing needed; and productivity in terms of speed of fabric production.
- (30) Almost all customers have also indicated that switching from an existing installed base (the type and brand of weaving machines already installed) to another machine type entails high costs in terms both of personnel training and of spare parts inventory.

(iv) No constraining effects as between machine types

- (31) Not all the abovementioned factors carry equal weight for every weaver. For some weavers, versatility may take priority over productivity and energy savings. For example, in the case of certain weavers producing for the fashion industry (where demand for new fabric designs is constantly changing and where there is little predictability), versatility and feasibility may have to take priority over running costs. On the other hand, for weavers involved in mass production of low quality fabrics versatility may be of low priority and running costs may be the most important selection criterion.
- (32) In these circumstances it is difficult to see how the price of one type of machine could have a significant constraining effect on the price of the other machine types. Indeed the parties have not claimed that they are aware of any such constraining effects or that their pricing policy involves any link between the prices of the various machines in their own product range. According to a number of producers, price increases in a particular machine type are decided independently of possible increases in any other machine type. Nor have they witnessed any change in the demand for a particular machine type in consequence of a price increase in another machine type.

(v) Demand side substitutability as between rapier and other machine types

- (33) As mentioned, prices vary considerably as between rapier and the other machine types. For example, projectile weaving machines are at least 50 % more expensive than the average rapier loom.
- (34) In addition, air-jet looms need a specific infrastructure in the plant to be operational. Since an air-jet loom does not have its own compressor, the plant needs one or more central compressors and high-pressure air-piping to connect the weaving machines with the compressor. Promatech submits that the cost of this infrastructure is generally about 15 % to 25 % of the overall machine purchase value, and installations of fewer than 12 weaving machines are generally uneconomical in western Europe. These facts have been generally confirmed by the Commission's investigation of the market. For small weaving mills, therefore, switching from rapier machines to air-jet weaving machines is not an option. According to the parties, 43 % of their clients have 10 machines or fewer.
- (35) The Commission's investigation has revealed that there is limited substitutability as between rapier and other machine types. The Commission has found little evidence to suggest that customers of rapier would switch to another type of machine should the price of these machines increase by 5 % to 10 % relative to the other types. This is so because:
 - (i) customers are reluctant to change their installed base;
 - (ii) rapier customers need versatility and are not able for technical reasons to switch to other technologies, such as air-jet or projectile, in the event of a 5 % to 10 % increase in the price of rapier;
 - (iii) a significant number of rapier customers lack the critical minimum size to switch to air-jet looms economically.

- (36) As for the distinction between positive and negative rapier weaving machines, although there are indications that neither technology is generally substitutable for the other from a demand point of view, the question can be left open for the purposes of this decision, since it does not affect the competitive assessment of the case.

(d) *Supply-side substitutability*

- (37) Promatech has submitted that, from the supply side, it is possible to switch from the production of one type of weaving machine to another with a moderate financial investment. However, the Commission market investigation has not confirmed this.
- (38) On the contrary, the weaving machine manufacturers contacted by the Commission have indicated that to switch production from one technology to another would entail appreciable investment and considerable risks (both commercial and financial). Switching technologies requires substantial changes in the production processes, at significant cost (several million euro), since the basic technologies, machinery and know-how are dissimilar. One competitor has pointed out that the development of a technology by a manufacturer not present in that particular segment would involve the following risks:
- (i) the extensive research and development needed may not result in a viable commercial technology;
 - (ii) the existence of patents held by competitors often prevents manufacturers from producing new technologies or requires them to adopt costly alternative solutions; and
 - (iii) late entry in a new technology requires the overcoming of obstacles such as low reputation levels, absence of an installed base and substantial capital investment as against the depreciated development costs of existing players.
- (39) Finally, according to the estimations of the various weaving machine producers, a switch in production as between different technologies would require between two and five years.
- (40) Those factors seem to be confirmed by the fact that the majority of manufacturers of non-shuttle weaving machines tend to concentrate production in no more than two or three technologies. Indeed, only Sulzer (negative rapier, projectile and multiphase), Promatech (negative and positive rapier and air-jet) and Tsudakoma (negative rapier, air-jet and water-jet) manufacture three different types of weaving machine; Picanol (negative rapier and air-jet), Dornier (positive rapier and air-jet), Panter (positive and negative rapier) and Toyota (air-jet and water-jet) produce two different types, while the smaller producers produce only one type (Van de Wiele, which produces negative rapier, and Vuts and Trustfin, that produce air-jet). Moreover, and more importantly, late entrants in any given technology are extremely rare (see recital 86).

3. CONCLUSION

- (41) On the basis of the foregoing, it must be concluded that rapier weaving machines form a separate product market from other types of non-shuttle weaving machines. As to the distinction between positive and negative rapier, for the purposes of this decision, the question whether or not they constitute separate product markets can be left open.
- (42) The relevant product market for the assessment of the proposed concentration is therefore the market for negative rapier weaving machines or, alternatively, the market for all rapier machines (including both positive and negative).

B. GEOGRAPHIC MARKET DEFINITION

1. PRELIMINARY REMARKS

- (43) The parties to the operation have submitted that the market(s) for non-shuttle weaving machines is (are) worldwide, based on the existence of low transport costs, substantial trade flows between the EU and third countries and similarities in terms of prices and technical characteristics.
- (44) In particular, Promatech claims that transport costs do not represent a significant part of the final price, estimating that the average transportation costs account for around 2,1 % of the price paid for each weaving machine. Further, Promatech submits that all weaving machine manufacturers produce machines in their country of origin and export the product worldwide, and there are no barriers to trade. Moreover, Promatech points to the existence of import and export flows into and from the European Union. In that respect, Promatech indicates that there are two Japanese producers already active in Europe (Toyota and Tsudakoma) and forecasts that Chinese producers, although not present in Europe as yet, will enter the European market in the coming years. Finally, Promatech submits that the conditions of competition are homogeneous worldwide and that there are no technical differences between the products manufactured all over the world.
- (45) The market investigation conducted by the Commission has confirmed that the scope of the markets for weaving machines is broader than national. As for the exact geographic definition, however, the market investigation has revealed that, contrary to the parties' submission, the relevant markets for the purposes of the assessment of the proposed merger are narrower than worldwide.

2. THE MARKET FOR RAPIER WEAVING MACHINES

(a) *Existing trade flows*

- (46) Trade flows in the sector of rapier weaving machines are very significant within the countries of the EEA and between Switzerland and the EEA member States.
- (47) The majority of these countries (Spain, the United Kingdom, France, Portugal, Austria, the Netherlands, Denmark, Greece and Sweden) do not have any significant national production of rapier weaving machines and acquire all their supplies of rapier from other countries within this area ⁽¹⁾. As for the west European countries with a manufacturing industry of rapier weaving machines (Italy, Belgium, Germany and Switzerland), although the current pattern of purchases shows a significant level of national production, a high percentage of acquisitions come from other countries within the considered area (approximately 19 % to 75 % in 2001).
- (48) By contrast with the significant trade flows within western Europe, there have been traditionally no imports of rapier weaving machines into this market from countries outside the area. Indeed, the west European market for rapier weaving machines is supplied exclusively by west European manufacturers.
- (49) Not only is there a current (and historical) absence of imports into western Europe, there is also a lack of alternative sources for supplies (in terms of the geographic location of suppliers) of rapier weaving machines for west European customers, as is explained in section (b).

(b) *Absence of effective alternative sources of supply located in other geographic areas*

- (50) Worldwide, the most significant weaving machine manufacturing industries, other than the west European producers, are located in Japan and China. However, neither the Japanese nor the Chinese weaving machine producers appear to constitute viable alternative sources for the supply of rapier machines to west European customers in the short to medium term.

⁽¹⁾ According to the available data, in 2001 there were no purchases of negative rapier weaving machines in Luxembourg, Ireland, Finland, Iceland or Norway.

- (51) Japanese producers focus almost exclusively on air-jet and water-jet technologies, which are particularly suited to the characteristics of the textile industry in the Far East (low labour and energy costs, use of synthetic fabrics), which is in rapid expansion. Of the two main Japanese manufacturers, Toyota does not manufacture rapier machines at all, while Tsudakoma produces only a very small number of negative rapier machines. Moreover, Tsudakoma's limited production of negative rapier machines is particularly adapted to the demands of the Japanese traditional textile industry and is sold exclusively in Japan. Nothing in the market investigation suggests that the Japanese weaving machine manufacturers intend to start or develop production of rapier weaving machines according to the standards of the west European textile industry. Japanese producers seem to have more incentives for continued expansion in the growing Far East markets rather than for switching to or developing alternative weaving technologies more adapted to the west European market.
- (52) With regard to China, the other important (non-European) manufacturing industry worldwide, the market investigation has revealed that Chinese manufacturers focus on lowgrade traditional rapier machines which require high manning levels and are therefore unsuited to areas with high labour costs, such as western Europe (where industry requires capital-intensive rather than labour-intensive policies). The Chinese production of negative rapier machines is sold almost exclusively in their large local market, where they compete with the more sophisticated production of European and Japanese manufacturers.
- (53) There are indeed important technological differences between Chinese negative rapier weaving machines and those produced and marketed in Europe. According to a European weaving machine producer, rapier machines manufactured in China are 20 to 25 years behind the European ones in technological terms. The market investigation has confirmed that Chinese manufacturers do not appear to be sufficiently advanced in the development of rapier weaving technology to be able to make significant sales outside the Far East in the coming years. Moreover, for the Chinese manufacturers to start exporting into Europe, they will have not only to overcome their technological underdevelopment (building up the relevant know-how, obtaining the necessary patents, development of cutting-edge weaving machine technology) and the reputational barriers (establishing of a brand/reputation), but also to establish marketing, servicing and distribution networks in Europe.
- (54) Furthermore, it is doubtful whether Chinese producers have the economic incentives to try to enter the European market for rapier weaving machines. According to the figures provided by Promatech, based on ITMF (International Textiles Manufacturers Federation) statistics, while sales of negative rapier and projectile machines have increased in the last five years in Asia and Oceania (+ 7 % between 1996 and 2000), sales in western Europe have decreased during the same period (- 11 %). Given the expected growth of the Chinese textile industry in the coming years and the stagnation of the European market, the economic interest of Chinese producers is more likely to lie in the consolidation of their local market sales rather than in expansion into western Europe.

TABLE 3

Evolution of shipments of rapier and projectile weaving machines (units)

	Western Europe	Asia and Oceania
1996	4 905	13 327
1997	5 003	15 358
1998	6 100	6 559
1999	4 476	8 528
2000	4 378	14 241

Source: information submitted by the parties.

(c) ***Access to distribution networks and proximity of reliable after-sales services and availability of spare parts***

- (55) The market investigation has revealed how important it is for any manufacturer wishing to enter the west European market to have access to:
- (i) distribution networks and sales representatives;
 - (ii) after-sales services, including the provision of spare parts and accessories.
- (56) European producers conduct the majority of their sales of weaving machines through independent sales agents, who are normally bound by exclusive (with regard to weaving machines) distribution agreements with the manufacturers. Promatech has pointed out that these independent agents are normally 'multi-product' agents, since they distribute other types of textile machinery apart from weaving machines (such as spinning or knitting machines) and producers of weaving machines frequently change their sales agents. Hence, according to Promatech, a new entrant could easily distribute its weaving machines through existing networks of independent agents.
- (57) Other producers, however, submit that manufacturers and agents rather tend to maintain their commercial relationships over time and that, in particular, since the installed base of a manufacturer's machines is a key element for the business prospects of a sales agent it is unlikely that a sales agent will terminate a contract with an established producer in favour of a new entrant in the market. As for the possibility for new entrants to contact 'multi-product' agents not already linked to weaving machine producers, it should be noted that, since most sales of weaving machines in the west European market consist in weavers replacing or extending their installed machines, these agents will be in a disadvantageous position as compared with distributors already active in the market.
- (58) Any new entrant in the west European market should also have access to a network of service centres, in order to provide customers with timely and effective technical support. These servicing activities include the provision of spare parts, and possibly accessories as well, for the weaving machines sold. As Promatech has pointed out, in Europe spare parts are not normally delivered together with the machines, as opposed to other geographic areas where it is common practice to include in the supply of looms a certain number of spare parts (generally for the first two years of the running of the machine).
- (59) A sales agent's commission largely derives from sales of spare parts. The volume of spare parts requested by customers depends directly on the size of the installed base of machines of a particular producer in the agent's territory. According to a competitor of the parties, the stronger the installed base of a manufacturer, the higher the commission for the sales agent representing that manufacturer. It would therefore be difficult for a new entrant to persuade sales agents to terminate their commercial relationship with a producer and start distributing the products of a new entrant in the market.
- (60) According to one market participant contacted by the Commission, given the above requirements, it would take on average between three to five years for a manufacturer of weaving machines established elsewhere in the world to enter the European market. The majority of weaving machine producers have confirmed the importance of both sales agents and servicing centres for selling into the west European area.

(d) ***Views of customers***

- (61) The Commission's market investigation has confirmed that customers in western Europe do not consider imports of rapier weaving machines from outside this area as a viable alternative source of supply.

- (62) Among the reasons quoted by customers was their high degree of dependence on the technical performance of the machine for their own production. The reliability of the machines, and in particular the proximity of trustworthy after-sales service and the availability of spare parts and accessories are therefore of the utmost importance. The market investigation has also confirmed that the reputation of a manufacturer in a determined region is another important factor that customers take into account when deciding their purchases of negative rapier weaving machines.

(e) *Particular characteristics of demand*

- (63) There also exist differences between western Europe and other geographic areas as regards the renewal of a customer's installed machine base. According to Promatech, while European (and North American) clients change their weaving machines every five years, customers based in Africa, Asia and South America normally replace their machines every 10 years on average. This difference is mainly due to the fact that European customers replacing their machines are normally driven by technological evolution (modernisation and development of weaving machines) with the objective of producing a better product with a higher economic value. Most of the weaving machines replaced in western Europe and North America are sold as second-hand machines in Africa, Asia and South America.
- (64) In general, as the parties have put forward and the market investigation has confirmed, weaving machine replacement in Europe and North America is mainly motivated by the customers' need to improve performance (higher speed and efficiencies) and reduce maintenance costs, namely spare parts and after-sales service costs. As a result, many European weavers replace a machine before the end of its natural (physical) life cycle ⁽¹⁾. Asian, African and South American customers, on the other hand, seem to base their decision to buy a weaving machine mainly on its purchase price, though the parties predict that this trend might change in the future, owing to a growing tendency on the part of these producers to take technological considerations into account in their purchase policies.
- (65) Finally, a significant number of sales in western Europe are linked to customers extending existing installations or replacing technology, rather than to greenfield projects (setting up a new plant or refitting an existing plant). Greenfield projects are more numerous in developing markets, such as in the Far East. The presence of more new entrants in this latter area means that there is a lesser emphasis in these markets, as compared with western Europe, on brand loyalty and the importance of a customer's installed machine base in subsequent purchasing decisions.

(f) *Conclusion*

- (66) In the light of the foregoing it is to be concluded that the market for rapier weaving machines (or alternatively the market for negative rapier machines) is western Europe, that is to say, the area comprising the territory of the EEA member States and Switzerland.
- (67) According to this geographic market definition, therefore, the territories of the seven referring Member States (Spain, Italy, the United Kingdom, Germany, France, Portugal and Austria) form an integral part of a single relevant market for the purposes of the application of Article 22(5) of the Merger Regulation ⁽²⁾.

⁽¹⁾ According to Promatech, although the concerns relating to technological development account for the early replacement of weaving machines in western Europe, the physical life of the machines also depends on the geographic area in which customers are based and on maintenance conditions. In Europe and North America, customers try to maximise the performance of weaving machines, and this results in great wear and tear.

⁽²⁾ See Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paragraph 100.

C. COMPATIBILITY WITH THE COMMON MARKET

- (68) In accordance with Article 2(3) of the Merger Regulation, a concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it is to be declared incompatible with the common market.
- (69) The Court of Justice ⁽¹⁾ has defined the concept of dominance as a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition from being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, of consumers. Such a position does not preclude the existence of some competition but enables the undertaking which profits from it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment.
- (70) The existence of a dominant position may derive from several factors which, taken separately, are not necessarily determinative; amongst these factors, a highly important one is the existence of very large market shares. In addition, the relationship between the market shares of the undertakings involved in the concentration and their competitors, especially those of the next largest, is relevant evidence of the existence of a dominant position ⁽²⁾.
- (71) The factors taken into account in order to assess whether or not the concentration would create or strengthen a dominant position in the west European market for all rapier weaving machines or, alternatively, in the west European market for negative rapier weaving machines, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it, are set out in recitals 72 to 104.

1. HORIZONTAL EFFECTS

A. *Rapier machines*(a) **Market shares**

- (72) The following table indicates the shares of the parties and each of their main competitors in rapier machines:

TABLE 4

Market shares in all rapier weaving machines (in volume)

	Promatech	Sulzer	Combined entity	Dornier	Picanol	Van de Wiele	Panter
2001	[40-50]*	[15-25]*	[65-75]*	[5-15]*	[5-10]*	[1-5]*	[1-5]*
2000	[45-55]*	[15-25]*	[65-75]*	[5-15]*	[5-10]*	[1-5]*	[1-5]*
1999	[45-55]*	[15-25]*	[65-75]*	[5-15]*	[5-10]*	[1-5]*	[1-5]*

Source: information submitted by the parties and their competitors.

⁽¹⁾ See Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paragraphs 38 and 39; see also Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paragraph 200.

⁽²⁾ See Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paragraph 39; see also Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paragraphs 201 and 202, and Case T-221/95–*Endemol v Commission* [1999] ECR II-1299, paragraph 134.

(b) Change in market structure

- (73) On the basis of a market for rapier machines within western Europe the parties' combined share would be [65 to 75 %]* (Promatech [40 to 50 %]*, Sulzer [15 to 25 %]*). The next largest competitors in this market would be Dornier with [10 to 15 %]*, Picanol with [5 to 10 %]*, Van de Wiele with [1 to 5 %]* and Panter with [< 5 %]*. In addition the proposed concentration would significantly increase the gap in market share between the largest competitor which would then be the merged entity with [65 to 75 %]* and its closest competitor which would be Dornier. Prior to the concentration the gap between the largest competitor, Promatech, and the second largest, Sulzer, was of the order of two to one with Dornier as the third largest player having a market share which was approximately two-and-a-half times smaller than that of the market leader Promatech. Following the implementation of the concentration the gap between the first and second largest competitors would thus widen to a factor of approximately five and the gap between the largest entity and that of the third largest competitor Picanol would widen to a factor of approximately 10.
- (74) These concerns are aggravated by evidence which suggests that none of the other main competitors, Picanol, Dornier, Van de Wiele and Panter, have shown any trend towards an increase in their market share in the last three years. The share of these competitors has in fact remained fairly static during this period.

(c) Merging parties are each other's closest competitors

- (75) In addition to this substantial change in market structure the Commission's investigation supports a finding that, prior to the proposed concentration, Promatech and Sulzer have been each other's closest competitors in western Europe. The investigation has shown that customers of either party are most likely to use the other as an alternative source of supply. As a result of the proposed concentration, this competition would be lost and, as indicated, the advantage that the merged entity would hold over the remaining competitors would increase significantly.

(d) High barriers to entry

- (76) In addition, the results of the Commission's investigation demonstrate that new entry to the west European rapier market would be unlikely to occur to a sufficiently significant extent, or in a sufficiently timely manner, to deter the possible exercise by the new entity of market power in the market. In fact market entry in this market seems highly improbable.
- (77) Barriers to entering the rapier market are high. First the Commission's market investigation has confirmed that there are substantial research and development costs involved in entering this market. There would also be considerable risks in that the research and development effort may not necessarily result in a viable technology. The existence of patents held by competitors in both air-jet and rapier technology discourages other players from attempting to invent other methods when they are aware that patented solutions have already been tried and tested by the market. It seems also that in addition to the development of the basic technology there is a need to develop considerable know-how of the operation of the technology.
- (78) Secondly, a reputation for reliability and performance seems to be essential in order to establish a presence in this market. There is therefore a need for a new producer to establish a reputation and/or to have proven past experience in the industry.
- (79) Thirdly, linked to reputation is the concept of an installed base. The Commission's market investigation has revealed that weavers prefer consistency as regards the make of machines within a mill and that for most weavers it would be neither practicable nor cost effective to consider installing more than two brands of machine.
- (80) Fourthly, the Commission's investigation has underlined the need to establish an after-sales service capability in order to become truly competitive. In the course of the investigation a significant proportion of the buyers of rapier machines have expressed the view that a producer must have an established and reliable after-sales service in order to be considered as a viable competitor in this market.

- (81) Fifthly, the Commission's enquiries have confirmed that most producers conduct the majority of their sales in Europe through independent sales agents. Typically the contract with the agent provides that the agent may not sell competitors' weaving machines. However, the agent will generally sell a range of products other than weaving machines such as knitting machines and spinning machines. Although it is possible generally to terminate such agency agreements, on the whole both the manufacturer and the agent tend not to do so as it is in the interests of both parties to maintain the relationship in order to maximise the level of understanding of the technology of the product and the needs of the customer. Moreover, as a large proportion of a sales agent's commission is derived from sales of spare parts there would seem to be little incentive for established agents with established relationships with manufacturers to abandon these manufacturers in favour of a new entrant in the absence of some form of compensation for the loss of revenue and the increased risk involved.

(e) No constraining effects deriving from potential competition

- (82) As regards producers with an established presence outside western Europe it is not considered that there is any real credible threat sufficient to counteract the market power of the combined entity in the short term. There are two possibilities of such new entry: the first possibility would be from Chinese producers. However these producers have as yet no presence in Europe. In order for them to establish a presence in western Europe, they would have to improve their technology which is estimated to be considerably less advanced than that of the European producers. Even were this technology to match that of the European producers, they would have to overcome obstacles in terms of reputation, based on proven past experience, and they would have to gain access to a sales' infrastructure and establish an after-service network. Given that their home market is growing and that the European market is relatively static and is not expected to grow in the foreseeable future, it does not seem likely that these producers could provide sufficient competitive pressure, or the threat of it, to compensate for the loss of competition deriving from the disappearance of the second largest competitor within western Europe.
- (83) The second possible source of new entry in the rapier market in western Europe might come from the two Japanese producers who are already present in the air-jet and water-jet market in Europe. However, significant new entry sufficient to exert competitive pressure on the combined entity from these two Japanese producers is also considered unlikely given that there would be little incentive for them to commit the necessary resources in a static European market when markets closer to them are booming. Furthermore, Toyota does not produce rapier machines and Tsudakoma produces a small quantity of negative rapier machines, designed and adapted exclusively for its home market.

(f) Switching difficulties

- (84) The Commission's market investigation shows also that customers are reluctant to switch brands (see recitals 78 and 79) as this can involve significant costs in terms of spare parts and training of personnel. This reluctance is likely to be more pronounced in the case of an unknown new entrant and is therefore a further obstacle which a new entrant would have to overcome in order to establish a presence in western Europe.
- (85) Should the merged entity attempt to raise prices, either through higher list prices or through lower discounts, customers would find it very difficult to defeat that price rise by sourcing their needs from other producers. Customers would face significant technical and economical difficulties if they wanted to switch to other suppliers. This is further confirmed by the fact that a vast majority of customers indicated that they do not like to change their suppliers as this can involve significant costs in terms of training and spare parts inventory. In that context, it seems highly unlikely that customers could switch suppliers should the merged entity attempt to raise prices or reduce discounts.

(g) New entry

- (86) Actual new entrants into this market are rare. Most of the existing large competitors, as well as the parties themselves, have been active in this market since the technologies became available over 20 years ago. One new entrant within the EU, Panter, set up as a new competitor in Italy in the early 1990s. In spite of the previous experience of its founder in the weaving machines business, Panter's share within western Europe remains negligible.

(h) Limited countervailing buying power

- (87) The customer base of both Promatech and Sulzer is highly dispersed with a customer list numbering more than [...] and [...] respectively. Of Promatech's customers [...] % buy fewer than 10 machines per year and only [...] % buy more than 50 machines. Of Sulzer's [...] customers some [...] % buy fewer than 10 units per year; a further [...] % buy between 10 and 50 units and some [...] % buy more than 50 units per year. The Commission considers therefore that there would not be sufficient countervailing buyer power in the market to counterbalance that of the combined entity.

B. Negative rapier machines

- (88) The following table indicates the shares of the parties and each of their main competitors in negative rapier machines:

TABLE 5

Market shares in negative rapier weaving machines (in volume)

	Promatech	Sulzer	Combined entity	Picanol	Van de Wiele	Panter
	(in %)					
2001	[50-60]*	[25-35]*	[80-90]*	[5-15]*	[0-5]*	[0-5]*
2000	[50-60]*	[25-35]*	[80-90]*	[5-15]*	[0-5]*	[0-5]*
1999	[50-60]*	[20-30]*	[80-90]*	[5-15]*	[0-5]*	[0-5]*

Source: information submitted by the parties and their competitors.

- (89) On the basis of those market shares for negative rapier, there are strong indications that the operation would give rise to competition concerns in relation to the negative rapier market within western Europe. Promatech's [50 % to 60 %]* market share would be added to Sulzer's [25 % to 35 %]* share to yield a market share of [80 % to 90 %]*. The merged entity's closest competitors would have considerably smaller shares of the west European negative rapier market: Picanol [5 % to 15 %]*; Panter [0 % to 5 %]*; Van de Wiele [0 % to 5 %]*. In addition to this high market share the proposed concentration would significantly widen the gap in market share between the largest competitor which would then be the merged entity with [80 to 90 %]* and its closest competitor which would be Picanol with [5 % to 15 %]*. Prior to the concentration the gap between the largest competitor, Promatech, and the second largest, Sulzer, was of the order of two to one with Picanol as the third largest player having a market share which was approximately six times smaller than that of the market leader Promatech. Following the implementation of the concentration the gap between the first and second largest competitors would thus widen to a factor of approximately 10.
- (90) In addition, the analysis outlined in relation to barriers to entry, potential competition, switching difficulties, new entry and buyer power would apply equally to a market for negative rapier machines.

C. Conclusion

- (91) On the basis of the above analysis, it must be concluded that the proposed concentration will bring about the creation or strengthening of a dominant position in the west European market for the production of rapier weaving machines, or alternatively in the west European market for the production of negative rapier machines, as a result of which effective competition in the common market and the functioning of the EEA Agreement would be significantly impeded.

2. VERTICAL EFFECTS

- (92) The Itema Group, which controls Promatech, is active in the vertically related market(s) for the production of accessories for weaving machines ⁽¹⁾. In particular, the Itema Group produces:
- (i) shedding motions;
 - (ii) warp stop motions;
 - (iii) heald frames;
 - (iv) beams.
- (93) The Itema Group's share of the west European market(s) for the different types of accessories is below [20 to 30]* %, with the only exception of warp stop motions. Warp stop motion is the accessory used to receive the signal from the drop wires denoting that the warp end is broken, and to send it to the weaving machine to allow it to stop as quickly as possible in order to prevent fabric's faults. Warp stop motions can be either mechanical or electronic. Almost all weaving machines are equipped with a warp stop motion.
- (94) Itema's share of the west European merchant market for warp stop motions was approximately [30 to 40]* in 2001 ⁽²⁾. The main supplier in this area is the Swiss undertaking Grob, which accounts for the remaining [60 to 70]* %. Other producers of warp stop motions worldwide are Toyota and Tsudakoma (Japan) and CTMTC (China). Grob is not integrated downstream in the production of negative rapier weaving machines.
- (95) It can therefore be concluded that the proposed operation would not create a dominant position in the market for warp stop motions which would lead to a risk of vertical foreclosure with regard to the supply of warp stop motions.

V. UNDERTAKINGS

A. UNDERTAKINGS OFFERED BY PROMATECH

- (96) In order to solve the competition concerns identified by the Commission, Promatech has offered to enter into the following commitments:
- (i) to offer to divest itself of Sulzer's business unit of negative rapier weaving machines located in Zuchwil (Switzerland). The divestiture would entail the sale of all projects, client portfolios, technology and machinery related to that business;
 - (ii) to divest itself of Sulzer's production plant in Schio (Italy), currently dedicated almost exclusively to the production of negative rapier machines, either as a going concern or by means of the sale of the subsidiary which owns the Schio plant. The divestiture would entail the sale of all projects, client portfolios, technology and machinery related to the production and trading of negative rapier weaving machines, as well as the production plant itself. Prior to the sale, Promatech would remove from the plant the items which could be used for the manufacturing of air-jet weaving machines as well as for the production of gas turbine nozzles. The removal of this equipment would not, in any event, affect the production process of negative rapier machines.

⁽¹⁾ Promatech has identified the following as being the main accessories for weaving machines: shedding motions, that include dobbies, external cam motions, internal cam motions and jacquards; heddles; drop wires; warp stop motions; heald frames; weft stop motions; tuck-in devices; name selvedge Jacquard machines; weft pre-feeders; leno devices; beams; nozzle and sub-nozzle (only for air-jet machines); and reeds.

⁽²⁾ The Itema Group produces warp stop motions through its subsidiary OMV.

- (97) Promatech would divest itself of the rapier business in Zuchwil and the rapier plant in Schio, each to a different independent purchaser approved by the Commission. However, pursuant to point 39(iv) of Annex I and point 40(iv) of Annex II, the Commission could decide to waive the obligation to sell the divested business to different acquirers if, taking into account the identity of the proposed purchaser, the market structure resulting from the divestiture did not give rise to competition concerns.
- (98) The text of the undertakings submitted by Promatech are appended to this Decision as Annexes I and II.

B. ASSESSMENT OF THE UNDERTAKINGS

- (99) By virtue of the proposed undertakings, the overlap between Promatech and Sulzer in the segment of rapier weaving machines (and a fortiori in the market of negative rapier machines) would be completely eliminated. The concentration would, therefore, bring about: (a) no increase of Promatech's market share in the market for (negative) rapier weaving machines and, from a more general point of view, (b) no significant horizontal or vertical overlaps in any of the different markets for weaving machines where the parties to the operation are active.
- (100) The proposed divestitures would either strengthen the market position of Promatech's current competitors in the market for negative rapier weaving machines and/or allow for new entry in this market (up to two new entrants). Moreover, given the current situation of availability of spare capacity of the two businesses to divest, and the fact that a significant part of their production is sold outside western Europe, the acquirers of these businesses would dispose of enough available capacity to aggressively compete in western Europe, in particular if Promatech were to decide to increase prices after the concentration.
- (101) Since the territories of the seven referring Member States form an integral part of the relevant market in this case, a merger that creates or strengthens a dominant position in that market would certainly have the effect of significantly impeding competition in the territory of those countries also ⁽¹⁾. Accordingly, given that the conditions of competition are sufficiently homogeneous within the relevant area, if the proposed undertakings eliminated the competition concerns raised by the operation in the relevant market, they would by the same token solve the competition concerns in the different territories that form part thereof.
- (102) In sum, the remedies proposed constitute appropriate measures necessary to maintain or restore effective competition within the territory of the referring Member States for the purposes of the application of Article 22(5) of the Merger Regulation.
- (103) These considerations have been borne out by the market test of the proposed remedies undertaken by the Commission.

VI. CONCLUSION

- (104) It must accordingly be concluded that the notified concentration, as modified by the undertakings entered into by Promatech, would not create or strengthen a dominant position on any of the markets assessed above,

HAS ADOPTED THIS DECISION:

Article 1

The operation whereby Promatech would acquire sole control of Sulzer Textile within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 is, as modified in accordance with the Annexes to this Decision, declared compatible with the common market and with the EEA Agreement.

⁽¹⁾ See Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paragraph 100.

Article 2

Article 1 is subject to full compliance with the conditions set out in points 1, 2, 4, 8, 9, 10, 11, 12, 15, 19, 20, 21 and 29(ii) of Annex I and in points 1, 2, 4, 8, 9, 10, 11, 12, 16, 20, 21, 22 and 30(ii) of Annex II. These conditions are necessary in order to maintain or restore effective competition within the territory of the referring Member States in accordance with Article 22(5) of Regulation (EEC) No 4064/89.

Article 3

Article 1 is subject to full compliance with the obligations set out in the remaining points of Annexes I and II.

Article 4

This Decision is addressed to:

Promatech SpA
Via Case Sparse, No 4
I-24020 Colzate (BG)

Done at Brussels, 24 July 2002.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

The full original text of the conditions and obligations referred to in Articles 1, 2 and 3 may be consulted on the following Commission website:

http://europa.eu.int/comm/competition/index_en.html

ANNEX II

The full original text of the conditions and obligations referred to in Articles 1, 2 and 3 may be consulted on the following Commission website:

http://europa.eu.int/comm/competition/index_en.html

COMMISSION DECISION
of 10 March 2004
amending Decision 2001/106/EC as regards bovine semen storage centres

(notified under document number C(2004) 709)

(Text with EEA relevance)

(2004/252/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species ⁽¹⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Under Directive 88/407/EEC, as amended by Council Directive 2003/43/EC ⁽²⁾, intra-Community trade of semen of domestic animals of the bovine species is permitted from semen collection centres or semen storage centres approved by the competent authorities of the Member States where they are located and each Member State is to send a list of semen collection or storage centre(s) to the other Member States and to the Commission.
- (2) Commission Decision 2001/106/EC of 24 January 2001 establishing a model for the lists of entities approved by Member States in accordance with various provisions of Community veterinary legislation, and the rules applying to the transmission of these lists to the Commission ⁽³⁾ lays down rules on how lists of semen collection centres that each Member State has approved on its territory are to be transmitted to the Commission. That Decision also provides for models to be used for those lists.

- (3) To take account of the amendments made to Directive 88/407/EEC by Directive 2003/43/EC concerning semen storage centres the scope of Decision 2001/106/EC should be broadened in order to include bovine semen storage centres.
- (4) Decision 2001/106/EC should therefore be amended accordingly.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and II to Decision 2001/106/EC are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 March 2004.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 194, 22.7.1988, p. 10. Directive as last amended by Commission Decision 2004/101/EC (OJ L 30, 4.2.2004, p 15.).

⁽²⁾ OJ L 143, 11.6.2003, p. 23.

⁽³⁾ OJ L 39, 9.2.2001, p. 39. Decision as amended by Decision 2002/279/EC (OJ L 99, 16.4.2002, p. 17.).

ANNEX

Annexes I and II to Decision 2001/106/EC are amended as follows:

1. in Annex I, paragraph 2 is replaced by the following:

‘2. Semen collection and storage centres approved in accordance with Article 5(1) of Directive 88/407/EEC and semen collection centres approved in accordance with Article 5(1) of Directive 90/429/EEC.’;

2. in Annex II, Section II is replaced by the following:

‘II. Semen collection and storage centres

(a)

- List of approved semen collection centres for intra-Community trade in semen of domestic animals of the bovine species (Directive 88/407/EEC)
- .. (ISO code of the Member State)
- .././.... (date of the version)

ISO code	Registration number	Name of the semen collection centre	Address of the semen collection centre	Telephone number, fax number, e-mail address
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(b)

- List of approved semen storage centres for intra-Community trade in semen of domestic animals of the bovine species (Directive 88/407/EEC)
- .. (ISO code of the Member State)
- .././.... (date of the version)

ISO code	Registration number	Name of the semen collection centre	Address of the semen storage centre	Telephone number, fax number, e-mail address
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(c)

- List of approved semen collection centres for intra-Community trade in semen of domestic animals of the porcine species (Directive 90/429/EEC)
- .. (ISO code of the Member State)
- .././.... (date of the version)

ISO code	Registration number	Name of the semen collection centre	Address of the semen collection centre	Telephone number, fax number, e-mail address’
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COMMISSION DECISION**of 10 March 2004****laying down the transitional measures to be applied by Hungary with regard to veterinary checks on live animals entering Hungary from Romania***(notified under document number C(2004) 724)***(Text with EEA relevance)****(2004/253/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 2(3) thereof,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽¹⁾, and in particular Article 17b thereof,

Having regard to the 2003 Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union, and to the adjustments to the treaties on which the European Union is founded, and in particular Article 42 thereof,

Whereas:

- (1) Hungary has been granted a transitional period of three years with regard to the regime to be applied at the border with Romania for the veterinary checks on live animals.
- (2) The measures to ensure that all checks provided for in Directive 91/496/EC are carried out by the Hungarian authorities during this period should be defined.
- (3) In view of the continuing negotiations with Romania concerning Romania's accession to the European Union, it is inappropriate to require facilities to be developed at crossing points on the Hungarian-Romanian border to carry out checks on live animals.
- (4) Therefore, during the transitional period, provision should be made for inspections to be carried out at inspection sites near the Hungarian-Romanian border that are linked to crossing points. The implementation of the relevant provisions of Directive 91/496/EEC should be adjusted accordingly.
- (5) Article 53 of the Act of Accession provides that the new Member States are to be considered as having received notification of this Decision upon accession.
- (6) 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 268, 24.9.1991, p. 56. Directive as amended by the 2003 Act of Accession (OJ L 236, 23.9.2003).

Article 1**Scope**

At the border with Romania, Hungary shall implement the dispositions of chapter I of Directive 91/496/EEC from 1 May 2004 until 30 April 2007 in accordance with the provisions of this Decision.

Article 2**Definitions**

For the purpose of this Decision, the following definitions shall apply:

1. 'crossing point' means a location situated at the border between Hungary and Romania, where live animals shall be presented to enter the Community and shall be checked in accordance with Directive 91/496/EEC as adapted by this Decision.
2. 'inspection site' means a location situated near the border between Hungary and Romania where the checks on live animals shall be completed in accordance with Directive 91/496/EEC as adapted by this Decision.

Article 3**Adaptation of veterinary checks**

The provisions of Chapter I of Directive 91/496/EEC and implementing acts thereof shall be applied to veterinary checks on live animals entering Hungary from Romania in accordance with the following adaptations:

- (a) in Article 3(1)(a), Article 4(1), Article 8(A)(1) (a) and Article 12(1)(c) of Directive 91/496/EEC the notion of 'crossing point' shall be substituted for 'border inspection post';
- (b) in Article 3(1)(b) and (c), Article 4(2), Article 7, Article 8(A)(2), Article 9 and Article 10 of Directive 91/496/EEC the notion of 'inspection site' shall be substituted for 'border inspection post';
- (c) Article 6 of Directive 91/496/EEC shall not apply.

*Article 4***Requirements for inspection sites**

Inspection sites shall satisfy the requirements set out in Annex I.

*Article 5***Specific requirements for the operation of crossing points and inspections sites**

1. All live animals presented for entry into the Community at the border between Romania and Hungary shall be presented by road to the crossing point listed in Annex II.
2. The crossing point shall be linked to the inspection sites listed in Annex III. The crossing point and its corresponding inspection sites shall be placed under the responsibility of veterinary services responsible for border checks.
3. Live animals shall be moved immediately from the crossing point to the corresponding inspection sites under customs supervision and accompanied by personnel from the competent authority. In addition, the authority locally responsible for the crossing point shall inform the official veterinarian responsible for the designated inspection site, by fax, of the departure of each consignment.

*Article 6***Implementation**

The Hungarian authorities shall lay down the implementing provisions for this Decision, in particular on penalties applicable to infringements to Article 5.1 and 5.3 committed by

natural or legal persons, and shall take all measures necessary to ensure that they are implemented. These penalties must be effective, proportionate and dissuasive. In serious cases, they may include destruction of the animals in accordance with the provisions of Article 12 of Directive 91/496/EEC. The Hungarian authorities shall notify those provisions to the Commission by 1 May 2004 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 7

This Decision shall take effect subject to and on the date of entry into force of the Act of Accession.

Article 8

This Decision is applicable until 30 April 2007.

Article 9

This Decision is addressed to Member States.

Done at Brussels, 10 March 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

Inspection sites must be equipped and staffed with:

1. facilities (preferably easy to clean and disinfect) for unloading and loading the different means of road transport, and for inspection, feeding, watering and treatment of the animals, with adequate space, lighting and ventilation for the number of animals to be inspected; the facilities must provide adequate protection from the weather for animals at all seasons of the year;
2. sufficiently large premises at the disposal of the staff responsible for carrying out veterinary checks, including changing rooms, toilets and adequate means for cleansing and disinfection of personnel;
3. appropriate premises and facilities for taking the samples for the routine checks laid down in Community rules;
4. an efficient communication system between the crossing point and the inspection centres;
5. equipment and facilities for cleansing and disinfection operations;
6. sufficient numbers, in relation to the numbers of animals dealt with, of veterinary and auxiliary staff specially trained to carry out checks foreseen by Directive 91/496/EEC.

ANNEX II

Nagylak

ANNEX III

Inspection sites:

Site No 1: Horse Farm, Magyarcsanád, Kültérület, 0180/115.

Site No 2: Nagylak, Határátkelo, HRSZ 031/8.

CORRIGENDA**Corrigendum to Council Regulation (EC) No 1295/2003 of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens**

(Official Journal of the European Union L 183 of 22 July 2003)

On page 1, recital 3:

for: '(3) The Organising Committee of the Olympic Games issues accreditation cards to members of the Olympic family in view of the fact that the Games may be the target of terrorist attacks. The accreditation card is a highly secure document, which gives access to the specific sites where competitions are held and to other events planned during the Olympic and Paralympic Games.'

read: '(3) The Organising Committee of the Olympic Games issues accreditation cards to members of the Olympic family. The accreditation card is a highly secure document, which gives access to the specific sites where competitions are held and to other events planned during the Olympic and Paralympic Games, in view of the fact that the Games may be the target of terrorist attacks.'

Corrigendum to Commission Regulation (EC) No 366/2004 of 27 February 2004 amending Regulation (EC) No 2259/2003 as regards the available quantity for which import licence applications for certain pigmeat products may be lodged for the period 1 to 30 April 2004

(Official Journal of the European Union L 63 of 28 February 2004)

On page 31, in Article 1(b):

for: '(b) Annex II is replaced by the text contained in the Annex to this Regulation.'

read: '(b) Annex II concerning Groups B1, 15, 16 and 17 is replaced by the Annex to this Regulation.'

Corrigendum to Council Decision 2004/206/EC of 17 December 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C.37.671 — Flood flavour enhancers)

(Official Journal of the European Union L 75 of 12 March 2004)

In the contents on the cover and in the title on page 1:

for: '(Case COMP/C.37.671 — Flood flavour enhancers)',

read: '(Case COMP/C.37.671 — Food flavour enhancers)'.
