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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 989/2004**of 17 May 2004****amending Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets originating in Russia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

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

Whereas:

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

- (1) By Regulation (EC) No 990/2004⁽²⁾ the Council amended Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports into the Community of certain grain oriented electrical sheets ('the product concerned') originating in Russia⁽³⁾.
- (2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set for imports of the product concerned originating in Russia at 40,1 % manufactured by the Novolipetsky Iron & Steel Corporation (NLMK) and at 14,7 % manufactured by the VizStal Ltd.

2. Investigation

- (3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁽⁴⁾ the initiation of a partial interim review of measures in force ('measures') pursuant to Article 11(3) and 22(c) of the basic Regulation.
- (4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement') and bearing in mind the aspect of Community interest, there is a need to adapt the

measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

- (5) All interested parties known to Commission, including the Community industry, associations of producers or users in the Community, exporting producers in the country concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.
- (6) In this regard, the following interested parties made their views known:
 - (a) Community producers Association:
 - European Confederation of Iron and Steel Industries (Eurofer);
 - (b) Exporting producers:
 - Novolipetsky Iron & Steel Corporation (NLMK), Lipetsk,
 - VizStal Ltd., Ekaterinburg.

B. PRODUCT UNDER CONSIDERATION

- (7) The product under consideration is the same as in the original investigation, i.e. grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia, falling within CN codes 7225 11 00 and 7226 11 00. This product is used for electromagnetic appliances and in installations such as power and distribution transformers.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ See page 5 of this Official Journal.

⁽³⁾ OJ L 25, 30.1.2003, p. 7.

⁽⁴⁾ OJ C 70, 20.3.2004, p. 15.

- (8) In the rather complex manufacturing process of GOES, grain structures are orientated uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning the magnetic induction, the pile factor as well as the highest admissible level of re-magnetisation losses. In general, both sides of the product are covered with a thin isolating coating.

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

- (9) Two Russian exporting producers and the Russian authorities claimed that due to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.
- (10) In particular, they claimed that the sudden sharp price increases triggered by the high level of the anti-dumping duties rendered the product prohibitively expensive for electromagnetic appliances and in installations such as power and distribution transformers.

2. Comments from the Community Industry

- (11) The Community Industry stated that although average prices in the EU10 were significantly lower than those in the European Union as constituted prior to 1 May 2004 ('the EU15'), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments from Member States

- (12) The authorities of certain Member States of the EU10 considered that special transitional arrangements should apply to imports of the product concerned from Russia following the Enlargement.
- (13) In this regard, it was argued that the product concerned is of significant importance for industrial end-users in the EU10.

4. Assessment

- (14) On the basis of the available data and information, an analysis was made which confirmed that the import volumes of the product concerned coming from Russia into the EU10 were significant in 2002 and 2003.
- (15) Considering that the product concerned is of significant importance for traditional industrial end-users in the EU10 and the relatively high level of anti-dumping duty, it was therefore concluded that it is in the

Community interest to gradually adapt the measures currently in force in order to avoid a sudden and excessively negative effect on all interested parties.

5. Conclusion

- (16) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.
- (17) However, by contrast, as the interest of the Community Industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.
- (18) In such circumstances, it can reasonably be concluded that it is not in the Community interest to apply the existing measures without adaptation and than the temporary adaptation of the existing measures with regard to imports of the product concerned into the EU10 would not be such as to significantly undermine the desired level of trade defence.
- (19) To this end, different ways were examined on how to best protect the Community Industry from injurious dumping whilst, at the same time, taking into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the EU10 during the period of economic adjustment following the Enlargement.
- (20) It was considered that this could be best achieved by allowing the traditional export volumes from Russia to the EU10 to be imported free of anti-dumping duties for a transitional period. In this context, any exports to the EU10 above these traditional export volumes would be subject to the normal anti-dumping duties, as would exports to the EU15.

6. Undertakings

- (21) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating parties with element for quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings were suggested by the Commission to the exporting producers concerned and, as a result, undertakings were subsequently offered by 2 exporting producers of the product concerned in Russia.

(22) In this context, it should be noted that in accordance with Article 22(c) of the basic Regulation, the special circumstances of the Enlargement were taken into account when the terms of the undertakings were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the enlarged EU of 25 Member States.

duty imposed by Regulation (EC) No 151/2003, by amending that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

(23) Import volumes ('ceilings') were therefore established for the exporting producers in Russia, using as a basis their average traditional export volumes to EU10 in 2001, 2002 and 2003. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from their traditional volumes used for determining the ceilings.

Article 2 of Regulation (EC) No 151/2003, as last amended by Regulation (EC) No 990/2004, is hereby replaced by the following:

'Article 2

(24) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

(25) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulation (EC) No 151/2003 or it may adjust the level of the ceiling, or it may take other remedial action.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(26) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission, by Commission Regulation.

(a) the goods declared and presented to customs correspond precisely to the product described in Article 1;

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'

Article 2

The text set out in the Annex to this Regulation shall be added to Regulation (EC) No 151/2003.

D. AMENDMENT OF REGULATION (EC) No 990/2004

(27) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping

Article 3

This Regulation shall enter into force the day following 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, 17 May 2004.

For the Council
The President
B. COWEN

ANNEX

'ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of grain oriented electrical sheets to the Community which are subject to the Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2 etc),
 - plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: PCN 2: etc),
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation (EC) No [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct."

COUNCIL REGULATION (EC) No 990/2004

of 17 May 2004

amending Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Previous investigations and measures in force

- (1) The Commission, by Decision No 303/96/ECSC⁽²⁾, imposed a definitive anti-dumping duty on imports of certain grain-oriented electrical sheets originating in Russia (the original investigation). The rate of the anti-dumping duty imposed was 40,1 %. An undertaking offered in connection with such imports was accepted by the same Commission Decision.
- (2) Further to a request lodged by the European Confederation of Iron and Steel Industries (Eurofer) on behalf of the Community industry of grain oriented electrical sheets, the Commission initiated an expiry review in accordance with Article 11(2) of Commission Decision No 2277/96/ECSC⁽³⁾ (the 'basic Decision'). At the same time, the Commission also initiated on its own initiative an investigation in accordance with Article 11(3) of the basic Decision in order to examine the appropriateness of the form of the measures⁽⁴⁾.
- (3) In view of the expiry of the Treaty establishing the European Coal and Steel Community on 23 July 2002, the Council, by Regulation (EC) No 963/2002⁽⁵⁾, decided that anti-dumping proceedings initiated pursuant to the basic Decision and still in force were to be continued and be governed by the provisions of the basic Regulation with effect from 24 July 2002. Likewise, any anti-

dumping measures resulting from pending anti-dumping investigations were to be governed by the provisions of the basic Regulation from 24 July 2002.

- (4) As a result of the expiry review mentioned in recital (2), the Council, in January 2003, by Regulation (EC) No 151/2003⁽⁶⁾, confirmed the definitive anti-dumping duty imposed by Commission Decision No 303/96/ECSC. However, the interim review limited to the form of the measures remained open at the conclusion of the expiry review.

2. Grounds for the reviews

2.1. Interim reviews limited to dumping

- (5) The Commission received two requests for a partial interim review pursuant to Article 11(3) of the basic Decision which, pursuant to Article 1(3) of Council Regulation (EC) No 963/2002 were treated according to Article 11(3) of the basic Regulation.
- (6) The requests were lodged by OOO VIZ — STAL (VIZ STAL), and Novolipetsk Iron and Steel Corporation ('NLMK') (VIZ STAL and NLMK are hereinafter referred to as 'the applicants'), both exporting producers from Russia. Both requests were based on the grounds that the applicants fulfilled the requirements to be granted market economy status and that their dumping margins had decreased substantially. Accordingly, they alleged that the continued imposition of the measure at its current level was no longer necessary to offset dumping.
- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission, by notice, initiated, in August 2002, an investigation pursuant to Article 11(3) of the basic Regulation, with respect to VIZ STAL⁽⁷⁾ (and subsequently, in October 2002, an investigation pursuant to Article 11(3) of the basic Regulation with respect to NLMK⁽⁸⁾). Both reviews were limited to the examination of dumping.
- (8) The Commission officially advised the applicants as well as the representatives of the exporting country of the initiation of the interim reviews, and gave all interested parties the opportunity to make their views known in writing and to request hearings within the time limits set out in the notices of initiation.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 42, 20.2.1996, p. 7.

⁽³⁾ OJ L 308, 29.11.1996, p. 11. Decision as last amended by Decision No 1000/99/ECSC (OJ L 122, 12.5.1999, p. 35).

⁽⁴⁾ OJ C 53, 20.2.2001, p. 13.

⁽⁵⁾ OJ L 149, 7.6.2002, p. 3. Regulation as last amended by Regulation (EC) No 1310/2002 (OJ L 192, 20.7.2002, p. 9).

⁽⁶⁾ OJ L 25, 30.1.2003, p. 7.

⁽⁷⁾ OJ C 186, 6.8.2002, p. 15.

⁽⁸⁾ OJ C 242, 8.10.2002, p. 16.

- (9) The applicants made their views known in writing. All parties who so requested were granted the opportunity to be heard.
- (10) The Commission sent a questionnaire to the applicants and to one related importer in the Community, to which they replied within the time limits set in the notices of initiation.
- (11) Furthermore, the Commission sent a claim form for market economy status pursuant to Article 2(7) of the basic Regulation to both applicants.
- (12) The Commission sought and verified all the information it deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the following companies:

Exporting producers in Russia:

— VIZ STAL, Yekaterinburg

— NLMK, Lipetsk

Related importer (of VIZ STAL)

— Duferco Commerciale S.p.A., Genoa

The investigation of dumping covered the period of 1 July 2001 to 30 June 2002 ('investigation period' or 'IP').

2.2. Interim review limited to the form of the measures

- (13) As mentioned above in recital (2), the Commission decided on its own initiative to initiate an interim review in order to examine the appropriateness of the form of the measures in force (the 'ex-officio review'). In this respect, it was considered that enforcement problems have been encountered in the monitoring of the undertaking, with consequences on the remedial effect of the measures. The initiation of this proceeding and part of the investigation concerning this review was carried out simultaneously to the expiry review which concluded with the imposition of the existing measures by Council Regulation (EC) No 151/2003. The Commission officially advised the Community industry, the importers, the suppliers and the users known to be concerned, as well as the representatives of the exporting country, of the initiation of both investigations and gave interested parties the opportunity to make their views known in writing and to request a hearing within the time limits set out in the notice of initiation.

- (14) As mentioned in recital (6) of Regulation (EC) No 151/2003, during the course of the abovementioned investigations, the Commission received two requests from the exporting producers concerned, namely VIZ STAL and NLMK, for the initiation of the interim reviews limited to the aspects of dumping, as explained in recital (6) of this Regulation. Since in both reviews, the aspects of dumping had to be investigated, which could eventually affect the level of the measures subject to the ex-officio review, it was considered appropriate to conclude this review together with the interim reviews limited to dumping in order to be able to take into account the eventually changed economic circumstances of the exporting producers concerned.

2.3. Joint conclusions

- (15) Due to the fact that the three reviews concerned the same anti-dumping measure, it was considered appropriate, for reasons of sound administration, to conclude them simultaneously.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (16) The product concerned is the same as in the original investigation, i.e. grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia ('GOES' or 'the product concerned'), falling within CN codes 7225 11 00 and ex 7226 11 00 (new CN-code since 1.1.2004). This product is used for electromagnetic appliances and in installations such as power and distribution transformers.

- (17) In the rather complex manufacturing process of GOES, grain structures are oriented uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning the magnetic induction, the pile factor, as well as the highest admissible level of remagnetisation losses. In general, both sides of the product are covered with a thin isolating coating.

2. Like product

- (18) It was established that GOES produced and sold in Russia had the same basic physical and technical characteristics as GOES produced in Russia and exported to the Community. Therefore, they were considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. INTERIM REVIEWS LIMITED TO DUMPING

1. Preliminary remarks

- (19) The Council, by Regulation (EC) No 1972/2002⁽¹⁾, recognised that it is appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of the basic Regulation and amended the basic Regulation accordingly. However, in accordance with Article 2 of Regulation (EC) 1972/2002, this amendment should only apply to investigations initiated after its entry into force, i.e. from 8 November 2002. Consequently, since both interim reviews requested by the applicants were initiated prior to this date, the said amendment is not applicable to the present investigations. In this regard, all further references to the basic Regulation are to the version in force prior to the abovementioned amendment.
- (20) Pursuant to Article 2(7)(b) of the basic Regulation, normal value can be determined in accordance with paragraphs 1 to 6 of the said Article only if the applicants show that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. that market economy conditions prevail for them in respect of the manufacture and sale of the like product concerned.

2. Market economy status ('MES')

- (21) Claim forms for market economy status were submitted within the deadline set out in the notices of initiation by both applicants.
- (22) It was found that for both applicants the decisions regarding prices, costs and inputs were made in response to market signals without significant state interference and the costs of major inputs reflected market values. The companies had one clear set of basic accounting records which were independently audited in line with international accounting standards and applied for all purposes. The production costs and the financial situation of the applicants were not subject to significant distortions carried over from the former non-market-economy system. Both companies were subject to bankruptcy and property laws which guaranteed legal certainty and stability for the operation of the firms. Finally, exchange-rate conversions were carried out at the market rate. On the basis of the foregoing, it was concluded that the criteria set forth in Article 2(7)(c) of the basic Regulation were met.

- (23) The Commission informed the applicants and the Community industry of the above determinations and granted them a possibility to comment. No comments were received from the interested parties. In view of the above, it was concluded that market economy status should be granted to both applicants.

3. NLMK

- (24) Although this applicant requested the initiation of the current interim review, it did not subsequently provide the Commission with the information essential for the calculation of the dumping margin. In particular, during the on-spot investigation, costs of production could not be verified. Moreover, the information provided in the questionnaire reply was not supported by sufficient evidence and access to essential information was denied. In some instances, misleading information was provided. For example, as admitted by NLMK, the costs of production had been understated by some 50 % in the questionnaire reply for the financial year 2001 which overlapped with the investigation period by six months. The company actually failed to substantiate and demonstrate the veracity of its cost of production, as reported in the questionnaire reply. Under these circumstances, a proper verification of the questionnaire reply could not be carried out and the figures reported were considered unreliable.
- (25) NLMK was informed that the information submitted was not verifiable and could therefore not be used. The applicant was granted the opportunity to provide further explanations. Furthermore, it was given the possibility to be heard in this matter. NLMK did, however, not come forward with any satisfactory explanation within the specified time limit.
- (26) NLMK thus admitted the problems regarding, in particular, the verification of costs, but claimed that in order to determine its cost of production, data collected during another investigation concerning a similar product should be used. NLMK referred to the anti-dumping investigation initiated in May 2002⁽²⁾ against imports of certain grain oriented electrical sheets and strips (flat-rolled products) of a width not exceeding 500 mm originating in, inter alia, Russia ('small GOES'). NLMK was subject to this investigation and had submitted a questionnaire reply. Therefore, it argued that the information on the cost of production submitted in the framework of that proceeding should be used to determine costs in the present review. NLMK claimed that due to the similarity of both products, i.e. small GOES and the product concerned, costs would be practically identical.

⁽¹⁾ OJ L 305, 7.11.2002, p. 1.

⁽²⁾ OJ C 111, 8.5.2002, p. 5.

- (27) However, the investigation concerning small GOES and the present interim review covered different products and were subject to different IPs. Nevertheless, even if the costs of production of these two products would be practically identical in both investigations — which has not been established — it should be underlined that costs and prices related to different periods are not necessarily comparable. Moreover, the investigation concerning small GOES was terminated in February 2003 due to the withdrawal of the complaint by the Community industry⁽¹⁾. Therefore, no final conclusions or findings have been made which could have been used in the present review. Therefore, it was concluded that the information collected during the investigation related to small GOES would not be an appropriate basis to determine normal value in the present proceeding. NLMK's claim had therefore to be rejected.
- (28) Subsequent to the disclosure, NLMK claimed that it had been discriminated against vis-à-vis VIZ STAL and that its costs should have been established on the basis of alternative sources rather than rejecting its request for a review as a whole. NLMK suggested that costs of VIZ STAL or the Community industry should have been used.
- (29) This argument was unfounded. Unlike NLMK's case, VIZ STAL's questionnaire reply could be fully verified and corrections were done on the basis of VIZ STAL's own verified figures (see recitals (40) and (56)). Where VIZ STAL's figures were replaced by other sources of information, this was not a consequence of unverified figures, but of the reasons set out in recitals (41) to (49) and (57) to (60).
- (30) It should also be noted that the purpose of the present interim review was to determine whether the individual circumstances of the exporting producer concerned had significantly changed. The interim review was initiated upon NLMK's request. In this context, it must be noted that it is contradictory to first claim that individual circumstances have changed and subsequently, when this cannot be shown, to claim that such determination should be made on the basis of data of other companies. The determination of costs and normal value is an essential element in determining a company's individual situation with regard to dumping and fully replacing these data would lead to meaningless results under these circumstances.
- (31) As a result of the above, the company could not provide evidence that circumstances with regard to the dumping margin established in the original investigation have changed in the way it was alleged. Therefore, the interim review with regard to NLMK had to be terminated and the anti-dumping margin found during the original investigation, i.e. 40,1 % should be maintained.
- (32) On this basis, the dumping margin, expressed as a percentage of the CIF import price at the Community border, is:
- NLMK, Lipetsk: 40,1 %
- 4. VIZ STAL**
- 4.1. Dumping**
- (a) Normal value*
- (33) With regard to VIZ STAL, it was first established whether its total domestic sales of the like product were representative in comparison with its total export sales of the product concerned to the Community. In accordance with Article 2(2) of the basic Regulation, and since the total domestic sales volume of VIZ STAL exceeded 5 % of its total export sales volume to the Community, the domestic sales of the like product were found to be representative.
- (34) Subsequently, those types of GOES sold domestically by the applicant that were identical or directly comparable with the types sold for export to the Community were identified.
- (35) For each type sold by the applicant on its domestic market and found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of GOES were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of GOES exported to the Community.

⁽¹⁾ OJ L 33, 8.2.2003, p. 41.

- (36) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, in accordance with Article 2(3) and 2(4) of the basic Regulation, by establishing a proportion of the profitable sales to independent customers of the type in question. Domestic sales were considered profitable when the net sales value was equal to or above the calculated cost of production of each type concerned ('profitable sales'). In cases where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type and in cases where the weighted average price of that type was equal to or above the unit cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made of that type during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of a product type represented 80 % or less, but 10 % or more of the total sales volume of that type, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.
- (37) In cases where the volume of profitable sales of a type represented less than 10 % of the total sales volume of that type in the domestic market, it was considered that this type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (38) On this basis, it was found that overall domestic sales of the product concerned were not made in the ordinary course of trade within the meaning of Article 2(1) of the basic Regulation.
- (39) Whenever domestic prices of a particular type could not be used in order to establish normal value, a normal value had to be constructed. It was therefore examined whether the cost of production in the country of origin, or the domestic prices of other producers in the country of origin could be used as a basis for the construction of a normal value in accordance with Articles 2(1) and 2(3) of the basic Regulation.
- (40) As far as the costs of production of the product concerned reported by VIZ STAL are concerned, they had to be corrected taking into account different costs of manufacturing for different types of the product concerned. It was found that certain product features had indeed an impact on costs and prices of a certain product type. Therefore, data submitted by VIZ STAL on cost of production could not be used as such and findings on the basis of facts available had to be made. In the absence of any other more reasonable method, it was considered that the difference in the cost of production of the various types of GOES should bear the same ratio as the difference in sales prices of these types. Therefore, costs for each type of GOES produced were assessed on the basis of the difference between average domestic sales prices of a specific type of GOES in comparison to the overall average domestic sales price of all types.
- (41) Furthermore, it is noted that VIZ STAL concluded a long term agreement with its raw material supplier, which was in force during the IP. The raw material purchased from this supplier was hot rolled band ('HRB'). In accordance with this agreement, the supplier had an exclusive right to supply raw material for this exporting producer during the IP. The supplier produced tailor-made HRB according to the exporting producer's specifications. The exporting producer was bound to purchase the entire production of HRB of its supplier, even if the required standards were not met. Purchase prices were fixed in advance at a certain level and guaranteed regardless the quality of the raw material delivered. It was furthermore found that technicians employed by the exporting producer concerned carried out regular quality checks at the premises of the supplier.
- (42) Although the investigation did not bring into light any direct shareholding or controlling rights between these two companies, it had to be concluded, on the basis of the information collected during the investigation that the relationship between the exporting producer concerned and its supplier was particularly strong. Thus, the link between VIZ STAL and its supplier was not limited to the sale as such, but extended beyond a simple sales transaction. In particular, VIZ STAL had control over the production of HRB at its supplier's production site, which showed that these companies were also linked at the stage of the production process of HRB. Therefore, the relationship between VIZ STAL and its supplier was both, a sales relationship and a manufacturing relationship, i.e. it went largely beyond a mere buyer/seller relationship.
- (43) On the basis of the abovementioned agreement, it was furthermore concluded that VIZ STAL was not free to source raw material from other suppliers during the IP, but was dependent on only one supplier. Thus, VIZ STAL also had to purchase HRB of a lower quality even if the raw material did not meet the required standards for the production of the product concerned. On the other hand, HRB prices could not be adapted in line with the quality of the product delivered, due to the fact that they were fixed in advance. Moreover, VIZ STAL's supplier was not free to provide other customers with HRB because it was bound to produce exclusively for VIZ STAL at a specific quality set by VIZ STAL.

- (44) It was subsequently examined whether the prices between these parties could be considered reliable. In this respect, it was considered that purchase prices between VIZ STAL and its supplier, as a consequence of the long term agreement concluded between them, were set at an artificial level during the IP. The investigation revealed moreover that HRB prices followed an unusual development and remained at the same level throughout the IP, regardless of the quality of the product purchased or other market conditions, such as fluctuations of energy prices, one of the most important components used for the production of HRB. It was also considered that as set out in recitals (42) and (43), VIZ STAL and its supplier had a relationship which went beyond a mere buyer/seller relationship. Therefore, the Commission considered that the costs associated with the purchase price of HRB were not reasonably reflected in VIZ STAL's accounts within the meaning of Article 2(5) of the basic Regulation and had therefore to be adjusted.
- (45) Subsequent to the disclosure, VIZ STAL claimed that it was completely independent from its HRB supplier and that both parties were in fact free to choose their business partners with regard to HRB. However, this statement contradicted the information provided during the investigation and had therefore to be rejected. VIZ STAL also argued that similar contractual arrangements were common in this type of industry. This argument was not supported by any evidence and could not be confirmed by the findings of the present investigation. In any case, the existence of such arrangements was considered irrelevant in this context. Furthermore, such arrangements and their impact on costs and prices related to the product concerned would have to be examined on a case by case basis.
- (46) VIZ STAL objected to the Commission's conclusion that HRB purchase prices did not follow market typical fluctuations, by claiming that the product purchased was of a specific quality and subject to particular market conditions as compared to other HRB types. It was also argued that the price development of HRB used for the production of GOES in the Community would show a similar pattern than in Russia. VIZ STAL claimed further that a comparison of HRB prices with energy prices, in particular natural gas, would be inappropriate because the main raw material used by the VIZ STAL's supplier would be coal. On a general basis, VIZ STAL contested any link between the evolution of energy prices and prices of steel products.
- (47) The information provided regarding the differences in quality and market conditions between various HRB types was neither submitted in the reply to the questionnaire, nor during the on-spot verification, although a detailed product description concerning the HRB type purchased during the IP was specifically requested prior to the on-spot verification. The information submitted by VIZ STAL after the on-spot verification, i.e. largely outside the deadline set in the notice of initiation, could not be verified anymore and had therefore to be rejected. In any case, it is noted that HRB prices in the Community were subject to significant fluctuations during the IP and that there were also significant price fluctuations of other HRB types on the world market. These developments indicated that the fixed price for HRB on the Russian domestic market did not follow market typical fluctuations, but was influenced by the relationship between VIZ STAL and its supplier.
- (48) With regard to energy prices, it should be noted that VIZ STAL's supplier did not submit a questionnaire reply and was as such not investigated during this investigation. Neither did VIZ STAL provide any evidence supporting its claim. Therefore, the current investigation could not confirm that VIZ STAL's supplier indeed used coal as a major input for the production of HRB. Likewise, VIZ STAL did not provide any evidence that fluctuations in energy and steel prices would not be linked to each other. Therefore, it can be reasonably expected that fluctuations in energy prices should, under normal conditions in a free market, have an impact on HRB prices.
- (49) Given the above, the reported HRB prices were not considered reliable. HRB costs had therefore to be adjusted. Consequently, the Commission had to establish HRB prices with regard to this applicant on the basis of the costs of other producers or exporters in the same country or, where such information was not available or could not be used, on any other reasonable basis. As mentioned in recitals (24) to (31), costs, including HRB costs of the other known producer of HRB in Russia could not be determined. Since no other producer of the product concerned or any producers of HRB in Russia were known to the Commission, HRB costs with regard to VIZ STAL had to be established on the basis of any other reasonable information. In the absence of any other more reliable information, the cost of manufacturing for the applicant could only be established on the basis of the prices of HRB in the Community.
- (50) Subsequent to the disclosure, VIZ STAL claimed further that the HRB prices in the Community should be adjusted for differences in physical characteristics, production process, transport cost and conditions of sale.
- (51) As far as differences in physical characteristics are concerned, they were taken into account by excluding high quality HRB types not produced in Russia when establishing the average HRB price in the Community. No further adjustment was therefore warranted.

- (52) With regard to the different production processes used in Russia and in the Community, VIZ STAL argued that the technology used in the Community required a higher energy input, generated more waste and had a higher production yield. However, although the production process mainly used in the Community indeed required a higher energy input, it was found that it generated significantly lower waste rates. Therefore, the overall efficiency of the different processes was considered to be equal and invoked similar production costs. Consequently, no adjustment was warranted.
- (53) As for differences in sales conditions, VIZ STAL argued that prices in the Community would be at a 'monopolistic' level, while it did not explain to what extent this had an effect on price or price comparison. It was furthermore established that the conditions of sale were similar on both markets, i.e. there was only one HRB producer selling the product on both domestic markets. In Russia, however, the prices were moreover influenced by the relationship between the exporting producer concerned and its supplier. Consequently, no adjustment was warranted.
- (54) As to transport costs for HRB purchases, no adjustment was warranted because the Community industry prices were calculated on an ex-works basis, i.e. excluding transport costs.
- (55) Subsequent to the disclosure, the Community industry claimed that energy prices (in particular gas) on the Russian domestic market would not be the result of the interplay of free market forces, which should be taken into consideration when establishing costs of production of VIZ STAL. In this context, it is noted that the Commission provided the Community industry with the possibility to submit comments on granting MES to the two Russian exporting producers. The Community industry did not draw attention to the need to, in particular, examine the effects of Russian gas prices when subsequently determining normal value (see recital (23)). While gas prices in Russia may not be uniform across regions and customers, it was not possible at this late stage of the proceeding to investigate the matter of energy prices in more detail. In any case, the investigation revealed that VIZ STAL's direct energy input for the production of GOES was not significant and had therefore only a minor impact on its cost of production. As for its supplier of HRB, and as mentioned in recital (48), this company was not directly investigated in the present interim review and no conclusions were made with regard to the reliability of the supplier's main input cost. In any case, since prices between VIZ STAL and its supplier were found to be unreliable and replaced by prices charged on the Community market, any possible price distortion regarding energy input was already eliminated.
- (56) In order to establish the full cost of production of GOES, selling, general and administrative expenses ('SG&A') had to be determined. VIZ STAL claimed that certain expenses occurring prior to the IP, but booked during the IP should be considered as mere accounting costs and deducted from the SG&A. However, no evidence has been provided whether or not such costs occurred de facto prior to the IP. Indeed, the expenses under consideration were considerably higher as compared to the previous years, so that an actual incurrence of these costs during the IP cannot be excluded.
- (57) Furthermore, in accordance with Article 2(5) of the basic Regulation, financial expenses had to be added to the reported SG&A. In this context, it was found that a related party granted VIZ STAL non-interest bearing loans on US-Dollar basis. Since SG&A did therefore not fully reflect all costs associated with the production and sale of the product concerned, the amount of financial expenses under normal market conditions was added. In this regard, the interest rate for similar loans under market conditions during the IP was applied to the loans received. In the absence of any more appropriate method, the total amount for interest expenses was allocated to the product concerned on the basis of the turnover in accordance with Article 2(5) of the basic Regulation.
- (58) VIZ STAL objected to the adjustment made to the SG&A with regard to financing costs. VIZ STAL argued that the party providing the loan under question was a majority shareholder of VIZ STAL and could also have chosen to increase the share capital instead, where no financial cost would have been incurred. Alternatively, VIZ STAL claimed that reimbursements have occurred during the IP and that the interest rate applied should be the rate which could be obtained on the domestic market of the provider of the loan. Finally, VIZ STAL claimed that part of the interest expenses (the nominal interest rate) was already included in the SG&A and should not be double counted. The amount of the additional financial costs should therefore be reduced accordingly.
- (59) The first claim had to be rejected because costs should reflect all costs associated with the production and sale of the product concerned, which has not been the case as explained above in recital (57). Under normal market conditions VIZ STAL would have had to seek finance on the open market and would have been subject to additional finance expenses which should be reflected in its costs. It is also noted that loans and equity shares are not simple substitutes because they have completely different consequences. Thus, while a loan is paid back, this is not the case with share capital.

- (60) It was also considered that the most appropriate interest rate would be the one in the domestic market of the borrower, because such rate would most appropriately reflect the costs associated with the production and sale of the product concerned on the Russian domestic market, for which normal value is established. In any case, VIZ STAL did not submit any supporting evidence with regard to the alleged applicable interest rate on the domestic market of the provider of the loan. VIZ STAL submitted some additional information subsequent to the disclosure regarding the reimbursement of the working capital which could not be verified anymore due to the late stage of the proceeding and had therefore to be disregarded. Furthermore, no evidence was submitted that part of the interest expenses would already be included in the SG&A or that interests were in fact paid by VIZ STAL. This claim had therefore to be rejected.
- (61) The Community industry claimed that distortions with regard to the evaluation and depreciation of assets should be taken into consideration when calculating SG&A. It was also claimed that SG&A expenses would be significantly higher than in the Community due to, in particular, higher aftersales costs, higher R&D costs and higher costs for indispensable communication tools and IT systems.
- (62) The Community industry did not submit any supporting evidence with regard to the above claims. These claims were furthermore made at very late stage of the proceeding and could not, therefore, be investigated in full detail. The above claims had therefore to be rejected.
- (63) Furthermore, it was examined whether normal value could be established on the basis of domestic prices of other producers in accordance with Article 2(1) of the basic Regulation. Since for the other applicant, NLMK, no reliable information regarding domestic sales prices of the product concerned was available (as explained in recitals (24) and (31) above) and given that there were no other cooperating sellers or producers on the Russian domestic market than the applicants, no information was available to the Commission regarding the domestic sales prices of another producer.
- (64) Therefore, in all cases where constructed normal value was used, normal value was constructed by adding to the manufacturing costs of the exported models, adjusted where necessary, a reasonable amount for SG&A and a reasonable margin of profit in accordance with Article 2(3) of the basic Regulation.
- (65) To this end, it was examined whether the SG&A incurred and the profit realised by the applicant on the domestic market, corrected as described above, constituted reliable data. Actual domestic SG&A expenses were considered reliable since domestic sales volume of the like product could be regarded as representative. However with regard to the fact that the overall domestic sales of the product concerned were not made in the ordinary course of trade within the meaning of the basic Regulation (see recital (38)), the domestic profit margin could not be determined in accordance with the first sentence of Article 2(6) of the basic Regulation. Since no information on SG&A and profit margin of other exporters or producers subject to this investigation was available and since VIZ STAL did not produce and sell other products falling within the same general category of products than GOES, the domestic profit margin was established in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method. In the absence of any other more reliable information, the profit margin on the domestic market was estimated at 10 % of the cost of production. Given that investments in Russia, which is still considered an emerging market economy with more dynamic growth prospects and higher inflation rates than in more developed economies and subsequently higher yield expectations on any capital investment, the profit margin of 10 % as used for the purposes of the present investigation was considered to be a conservative estimate.
- (b) *Export price*
- (66) VIZ STAL was largely owned and controlled by a related holding/trading company in Switzerland. All export sales during the investigation period were made via the Swiss company to a related importer in the Community, which resold the product concerned to the final customers in the Community. Therefore, export prices were constructed on the basis of resale prices to the first independent customer in the Community in accordance with Article 2(9) of the basic Regulation.
- (67) Adjustments were made for all costs incurred between importation and resale by the related importer in the Community, including SG&A costs, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

- (68) In this context, it should be noted that as mentioned in recital (75), an adjustment was made to the export price for the credit cost (i.e. financial cost) for payment terms granted by the related importer to the first independent buyer in the Community under Article 2(10)(g) of the basic Regulation as claimed by VIZ STAL in its reply to the questionnaire. On the other hand, when constructing export prices in line with Article 2(9) of the basic Regulation, adjustments are also to be made for all costs incurred between importation and resale of the product concerned. The items for which adjustment is to be made include, amongst others, a reasonable margin for SG&A of the related importer. However, in some cases, these SG&A expenses might include financial expenses, deriving from the abovementioned payment terms. Therefore, in order to avoid a double deduction of financial costs, namely, (i) the financial costs deriving from the payment terms referred to above and deducted under Article 2(10)(g) of the basic Regulation, and (ii) the financial costs that are part of the SG&A of the related importer, the related importer was given an opportunity to submit confirming evidence that a part of its financial costs was incurred to finance the payment terms granted to its independent customers in the Community. The related importer did not, however, submit any substantiated evidence that this was the case and therefore the related importer's full SG&A costs are to be deducted from the constructed export price in line with Article 2(9) of the basic Regulation.
- (69) Subsequent to the disclosure, VIZ STAL claimed that part of the financial costs incurred and deducted from the export price under Article 2(10)(g) of the basic Regulation was included in the related importer's SG&A and that the calculation of the constructed export price should therefore be revised to avoid a double deduction of these costs. It is noted that this claim was made for the first time after disclosure and that even at this point no confirming evidence was provided which could support VIZ STAL's view. Moreover, the verification at the premises of the related importer could not confirm that credit costs granted by VIZ STAL to the independent customer in the Community were indeed borne by the related importer and thus included in its SG&A. Consequently, this claim had to be rejected.
- (70) As far as the related importer in the Community is concerned, the investigation revealed that amortisation and depreciation costs incurred by the related importer were not reported. These costs were therefore added to the total SG&A expenses accordingly. SG&A were then deducted from the resale price to the first independent customer in the Community in accordance with Article 2(9) of the basic Regulation. In this context, the Commission rejected the methodology applied by VIZ STAL in order to calculate allocation ratios used to allocate total SG&A expenses to the product concerned on the one hand, and to 'other products' on the other hand. VIZ STAL argued that its related importer acted as an agent with regard to transactions of certain other products, on commission basis. The related importer's revenue with regard to these transactions consisted only of the commissions received for 'other products'. Therefore, the exporting producer argued that, in order to calculate allocation ratios on the basis of the turnover, a hypothetical higher turnover should be used for sales of 'other products' instead of the lower actual revenue booked in the accounts of its related importer. It was argued that the hypothetical turnover should correspond to the sales price of these 'other products' in the Community. As a result, allocated SG&A expenses would increase for 'other products', while they would decrease for the product concerned. VIZ STAL claimed that this methodology would reflect more appropriately the administration costs linked to operations concerning the product concerned on the one hand and 'other products' on the other hand.
- (71) However, it was found that the related importer performed the functions of an agent with regard to 'other products'. The functions of an agent involve, by nature, a lower administrative burden as compared to the functions performed by an importer. Thus, an importer buys and resells the products under its own name, which involves not only a higher administrative burden, but also a higher risk. Moreover, an importer has typically to raise capital for purchasing goods. These factors should normally also be reflected in different SG&A expenses between an importer and an agent. This difference was, however, not reflected in the allocation method used by VIZ STAL, which led to unreasonable results.
- (72) Considering the above, it was therefore concluded that the allocation of SG&A expenses on the basis of actual turnover would be the most appropriate method in order to calculate SG&A for the different products involved.
- (73) In the absence of any other more reliable information, the reasonable profit margin was estimated at 5 %. This was considered appropriate for this type of business. The same profit margin was also used in the previous investigation, i.e. the expiry review mentioned in recital (2).
- (c) *Comparison*
- (74) In order to allow a fair comparison between normal value and export price as established above, account was taken of differences in factors, which were found to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation.

- (75) Adjustments to the export price were reported by VIZ STAL for inland transport and freight cost, export duty, insurance costs, miscellaneous charges, credit cost, bank charges, import and other charges, stamp fees and slitting charges and granted because they were found to be reasonable, accurate and supported by verified evidence.

(d) *Dumping margin*

- (76) As far as VIZ STAL is concerned, the weighted average normal value by product type was compared to the weighted average export price of that type in accordance with Article 2(11) of the basic Regulation.
- (77) The comparison showed the existence of dumping. The dumping margin expressed as a percentage of the CIF import price at the Community border is:

VIZ STAL, Yekaterinburg: 14,7 %

4.2. Lasting nature of the changed circumstances

- (78) With regard to VIZ STAL, it was also examined whether the changed circumstances with respect to the original investigation could reasonably be considered to be of a lasting nature. In this respect, the possible development of the normal value as well as the export price of the company was analysed. Specific consideration was given to its price levels of GOES on the domestic and the export market, its cost of production of GOES, production capacity and utilisation, as well as its export volume to the Community.
- (79) It was first considered that during the original investigation the applicant did not operate under market economy conditions. However, as illustrated in recital (22), during the investigation period of the current interim review the applicant was able to provide evidence that it fulfilled the criteria set out in Article 2(7)(c) of the basic Regulation, i.e. it was granted MES. As a consequence, normal value of this applicant was determined on the basis of the verified data submitted by this company, instead of the information submitted by producers from an analogue country.
- (80) Normal value for VIZ STAL was based on both domestic sales prices and constructed normal value. As to the domestic sales prices of GOES, it could be established that during the investigation period these were relatively stable. This was due to a stable domestic demand and consumption which is not expected to change significantly

cantly in the near future, as well as to the limited number of producers and users. Therefore, it is expected that domestic sales prices of GOES will not vary significantly in future.

- (81) As far as the cost of production is concerned, it is recalled that costs had to be adjusted due to unreliable input prices (HRB) (see recitals (41) to (49)). VIZ STAL claimed that the nature of the relationship to its supplier has changed after the investigation period, i.e. VIZ STAL plans to source HRB increasingly from other suppliers, including suppliers in the Community. It was considered whether this fact could have an impact on VIZ STAL's input costs and consequently on the cost of manufacturing. However, it was found that any possible price increase of HRB is not very likely to have an effect on the normal value established in this investigation. This is due to the fact that normal value was determined on the basis of adjusted cost of manufacturing, not taking into consideration the unreliable input price. Any real increase in purchase prices of HRB up to a market value is therefore already included in the normal value used for the purpose of the determination of the dumping margin. Consequently, it is reasonable to assume that normal value of this applicant will not change significantly in the near future.
- (82) The Commission also examined the possible development of export sales by VIZ STAL as a consequence of the application of a lower duty rate. In this regard, it was considered that in the past, export sales of this company were limited in quantity due to the undertaking in force accepted during the original investigation. As mentioned in recital (96), it was found that this type of undertaking is not appropriate anymore. Consequently, it was examined whether a lower duty rate without quantitative import restrictions would result in a significant increase in exports of GOES by the applicant to the Community at lower export prices than those prevailing in the IP. In this regard, it was considered that the applicant's capacity utilisation rate was over 90 % during the investigation period. Furthermore, the investigation did not reveal any foreseen investments in order to increase the applicant's capacity. Therefore, it could be reasonably assumed that production volume would remain stable and not significantly increase in the near future. Moreover, no reason was found why the applicant should shift more of its current production to the Community market. It was therefore concluded that the export volume of GOES by this company to the Community would not change significantly.
- (83) As far as export prices are concerned, it is recalled that the undertaking in force was mainly of a quantitative character which allowed the applicant to set its export prices relatively freely within a determined export volume. Indeed, the co-signers of the undertaking in question were only deemed to follow 'price levels prevailing in the Community market'. The definitive

anti-dumping duty was only applicable once the quantitative ceiling was reached. Notwithstanding the Commission findings as outlined in recitals (94) and (95), the export volume of large GOES from Russia during the IP was considered to fall within the quantitative ceiling of the undertaking. Therefore, the export price during the current investigation period did not contain the anti-dumping duty established during the original investigation. Consequently, it can be concluded that for this company a lower dumping margin would not have an effect such as to lower significantly the current export prices.

5. Conclusions

- (84) According to Article 9(4) of the basic Regulation, the duties should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury of the Community industry. Given the fact that the present interim reviews are limited to the examination of the dumping aspects, the level of duties imposed should not be higher than the injury levels found in the original investigation as confirmed by the expiry review mentioned in recital (2).
- (85) As mentioned in recital (29) of Decision No 303/96/ECSC, the original definitive dumping margin was greater than the injury elimination level definitively determined and therefore the definitive anti-dumping duty was based on the lower injury margin, namely 40,1 %. Since the dumping margin found for VIZ STAL in this interim review is lower than that level, the amended anti-dumping duty should be based on this lower dumping margin, namely 14,7 %.
- (86) It follows from the above that with regard to VIZ STAL and as provided for by Article 11(3) of the basic Regulation, the anti-dumping duty imposed by Decision No 303/96/ECSC and confirmed by Regulation (EC) No 151/2003 on imports of GOES originating in Russia, should be amended.
- (87) As far as NLMK is concerned, the present interim review should be terminated and the definitive anti-dumping duty imposed by Decision No 303/96/ECSC and confirmed by Regulation (EC) No 151/2003 should be maintained.
- (88) All parties concerned were informed of the essential facts on the basis of which it was intended to recommend the

amendment of the existing measures with regard to VIZ STAL and to terminate the interim review with regard to NLMK and were given the opportunity to comment. Comments were received and taken into consideration where appropriate. All parties concerned were also granted a period to make representations subsequent to disclosure.

D. INTERIM REVIEW LIMITED TO THE FORM OF THE MEASURES

- (89) As stated in recital (2), the interim review regarding the form of the measure for imports of GOES originating in Russia was initiated by the Commission on its own initiative in order to examine the appropriateness and effectiveness of the undertaking accepted by Decision No 303/96/ECSC. The investigation was carried out in conjunction with the expiry review concluded by Regulation (EC) No 151/2003 and the interim reviews limited to dumping with regard to the applicants.
- (90) In this regard, it is noted that the undertaking originally accepted, was in essence, a quantitative undertaking according to which the companies undertook to ensure that their exports to the Community were made within an overall volume ceiling.
- (91) In accordance with Article 8(1) of the basic Regulation, the aim of undertakings is to eliminate the injurious effect of dumped imports. This is achieved through the exporter raising its prices or ceasing exports at dumped price levels. The investigations have shown that the type of undertakings originally accepted, which simply limited the quantity of imports into the Community failed to raise prices to non-injurious levels and thus restore fair trade on the Community market. Therefore, in this case, the undertakings in their present form were not considered as appropriate and effective means to eliminate the injurious effect of the dumping.
- (92) The original undertakings were not only signed by the applicants of the current interim reviews, but also by a Russian trader exporting the product concerned during the investigation period of the original investigation and by the Russian authorities in order to guarantee a proper monitoring of the undertaking in question. As was already established during the expiry review mentioned in recital (2), the co-signing trader, namely VO 'Promsyr-ioimport' (Moscow) ceased its export activities of GOES to the Community after the imposition of the definitive anti-dumping duties, prior to January 2000. This trader was therefore not considered as an interested party in the expiry review which led to the maintenance of the definitive anti-dumping duties in January 2003. Neither did the said trader come forward and affirm its interest to re-export GOES to the Community or requested to be treated as a potential interested party in the ongoing anti-dumping proceeding.

- (93) Furthermore, it was considered that given the changed circumstances in Russia, meanwhile fully recognised as a market economy country, any guarantees of the Russian authorities with regard to a proper monitoring of undertakings offered by Russian exporting producers in the framework of an anti-dumping investigation are neither necessary nor compatible anymore with this new status.
- (94) Finally, as mentioned in the notice initiating the interim review limited to the form of the measures, enforcement problems have been encountered with regard to the monitoring of the undertaking, with consequences on the remedial effect of the measures. This was confirmed by the current investigation. Thus, it was found that the sales structure of both exporting producers, as well as the sales channels used did not allow them to identify the final destination of the product concerned. As a consequence, it could not be established whether products were indeed re-exported or released for free circulation in the Community (see also recital (95)). Therefore, it was not possible to determine whether the reports provided by the exporting producers concerned, as required by the undertaking, were complete and correct.
- (95) In this context, it should be noted that since the acceptance of the undertaking, two different types of export licenses were introduced, namely type A licences (exports destined for free circulation into the Community) and type B licences (exports destined for import in the Community under other customs regimes). While for goods exported under a type A licence an annual quota ceiling had to be respected, goods exported under a type B licence were not subject to such quantitative limits. The related importers, being unable to identify the final destination of the imported products, could not provide sufficient conclusive evidence on the subsequent re-export of goods which have left Russia with an export licence B. Moreover, it was found in cooperation with the relevant custom's authorities that a number of these imports have been declared for free circulation, therefore jeopardising the effectiveness of the undertaking. The procedures used by the companies proved to be insufficient to correctly apply all conditions which are set out in the undertaking. Thus, the risk of a possible circumvention of the undertaking cannot be excluded.
- (96) In the light of the above considerations, it was concluded that the undertaking in its current form was not appropriate anymore, in particular as far as the effective monitoring of this undertaking was concerned. The applicants, as well as the remaining co-signers of the undertaking, namely VO 'Promsyrimport' (Moscow) and the Russian authorities were informed of the Commission's conclusions and given the opportunity to comment.
- (97) One applicant, NLMK, objected to the Commission's findings with regard to the appropriateness of the undertaking. This applicant claimed, in particular, that (i) the licence system in place would exclude any possible circumvention; (ii) the imports under the ceiling set out in the undertaking would be below the injury *de minimis* level and therefore ensure the elimination of the injurious effects of dumping, and (iii) the change in the number of co-signing parties would not be a sufficient reason to withdraw the acceptance of the undertaking.
- (98) The arguments advanced with regard to the enforcement of the current undertaking contradicted the Commission's findings (see recitals (94) and (95)) and were not supported by any evidence. The conclusion that there is a risk of a possible circumvention of the undertaking cannot be excluded either. It follows that the current undertaking does not sufficiently guarantee that the injurious effect of dumping would indeed be eliminated and is consequently considered inappropriate. The change in the number of the co-signing parties should not be singled out, but has to be seen in the context of the overall significantly changed circumstances in Russia since the acceptance of the undertaking. These claims had therefore to be rejected.
- (99) Finally, this applicant also claimed that the present interim review limited to the form of the measures should be concluded together with other interim reviews eventually to be initiated further to the enlargement of the European Union on 1 May 2004. It should be noted that the partial interim review of measures on imports of GOES from Russia which was initiated on 20 March 2004⁽¹⁾ will assess, in the light of the Community interest, whether there is a need to adapt the existing measures to avoid a sudden and excessively negative effect of the enlargement of the European Union on interested parties, including users, distributors and consumers. Accordingly, there is no direct link between the present interim review limited to the form of the current measures and the ongoing partial interim review in the framework of enlargement. This argument was therefore rejected.
- (100) It follows from the above that the undertaking in its current form is not appropriate anymore.
- E. NEW UNDERTAKING OFFERS**
- (101) Subsequent to the disclosure of the essential facts and considerations, on the basis of which it was concluded that the level of the existing anti-dumping margin should be amended, where appropriate, and that the quantitative undertaking in its current form is not appropriate anymore, NLMK offered an undertaking in accordance with Article 8(1) of the basic Regulation.

⁽¹⁾ OJ C 70, 20.3.2004, p. 15.

(102) However, the level of cooperation of this company throughout the investigation, and the accuracy and reliability of the data it had provided was unsatisfactory (see recital (24)). Therefore, it is highly unlikely that a price undertaking from this company could be effectively monitored. For this reason, the acceptance of the undertaking offered by NLMK was considered impractical within the meaning of Article 8(3) of the basic Regu-

lation. It was therefore concluded that the undertaking offered subsequent to disclosure should not be accepted.

(103) The interested parties were informed accordingly and the reasons why the undertaking offered could not be accepted disclosed in detail to the applicant concerned. The Advisory Committee was consulted,

HAS ADOPTED THIS REGULATION:

Article 1

The review of anti-dumping measures concerning imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia and falling within CN codes 7225 11 00 (sheets of a width of 600 mm or more) and 7226 11 00 (sheets of a width of more than 500 mm but less than 600 mm) with regard to Novolipetsk Iron & Steel Corporation ('NLMK') is hereby terminated.

Article 2

In Council Regulation No (EC) 151/2003, Article 1 shall be replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia and falling within CN codes 7225 11 00 (sheets of a width of 600 mm or more) and ex 7226 11 00 (TARIC code 7226 11 00 10) (sheets of a width of more than 500 mm but less than 600 mm).
2. The rate of the definitive anti-dumping duty, applicable to the net, free-at-Community frontier price, before duty, for the product manufactured by the following companies shall be:

Company	Duty rate	TARIC additional code
OOO Viz-Stal, 28, Kirov St., 620028 Yekaterinburg GSP-715	14,7 %	A516
All other companies	40,1 %	A999

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

Article 3

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, 17 May 2004.

For the Council
The President
B. COWEN

COUNCIL REGULATION (EC) No 991/2004**of 17 May 2004****amending Regulation (EC) No 1100/2000 imposing definitive anti-dumping duties on imports of silicon carbide originating in the People's Republic of China, the Russian Federation and the Ukraine and prolonging the undertaking accepted by Commission Decision 94/202/EC**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, ('the basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

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

Whereas:

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

- (1) By Regulation (EC) No 821/94⁽²⁾, following an expiry review, the Council imposed definitive anti-dumping duties on imports of silicon carbide, originating in the People's Republic of China, the Russian Federation and the Ukraine. At the same time, the Commission accepted by its Decision 94/202/EC⁽³⁾ an undertaking offered by the Government of Russia, in conjunction with V/O Stankoimport, Moscow, Russia. By Regulation (EC) No 1100/2000⁽⁴⁾, following the expiry review, the Council imposed definitive anti-dumping duties on imports into the Community of silicon carbide ('the product concerned') originating in the People's Republic of China (PRC), the Russian Federation (Russia) and the Ukraine (Ukraine) and the Commission prolonged the undertaking accepted by Decision 94/202/EC for a Russian company V/O Stankoimport'.
- (2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set at 23,3 % for imports of the product concerned originating in Russia.
- (3) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set at 24 % for imports of the product concerned originating in Ukraine.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 94, 13.4.1994, p. 21. Regulation as amended by Regulation (EC) No 1786/97 (OJ L 254, 17.8.1997, p. 6).

⁽³⁾ OJ L 94, 13.4.1994, p. 32.

⁽⁴⁾ OJ L 125, 26.5.2000, p. 3.

2. Investigation

- (4) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁽⁵⁾ the initiation of a partial interim review of measures in force ('measures') pursuant to Article 11(3) and 22(c) of the basic Regulation.
- (5) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement') and bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

- (6) All interested parties known to Commission, including the Community industry, associations of producers or users in the Community, exporting producers in the country concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.
- (7) In this regard, the following interested parties made their views known:
 - (a) *Community producers Association:*
 - European Chemical Industry Council (CEFIC)
 - (b) *Exporting producer:*
 - Zaporozhsky Abrasivny Combinat, Zaporozhye, Ukraine
 - (c) *Exporter:*
 - V/O Stankoimport, Russia
 - (d) *Producer:*
 - JSC Volzhsky Abrasive Works, Russia

⁽⁵⁾ OJ C 70, 20.3.2004, p. 15.

B. PRODUCT UNDER CONSIDERATION

- (8) The product under consideration is the same as in the original investigation, falling within CN code 2849 20 00.
- (9) The production process of silicon carbide is such that output automatically comprises a variety of qualities of silicon carbide which can be segregated into two main grades: crystalline and metallurgical. The crystalline grade, which is further classified under the types black and green, is normally used in the manufacturing of abrasive tools, grinding wheels, high-quality refractory products, ceramics, plastic materials etc., while the metallurgical grade is normally used in foundry and blast furnace operations as a silicon carrier. As in the previous investigations, both grades have to be considered as forming one product for the purpose of this investigation.

C. RESULTS OF THE INVESTIGATION

I. REGARDING SILICON CARBIDE ORIGINATING IN RUSSIA

1. Claims made by interested parties

- (10) The Russian exporter subject to the undertaking submitted that the volume of imports to which the undertaking applies was established on the basis of its sales to the market of the EU15 and that, therefore, the undertaking should be revised in order to take due account of the market of the EU25. It claimed that such revision was essential in order to avoid discrimination in favour of the other exporters of the product concerned to the EU.

2. Comments received from Member States

- (11) The Member States have made their views known and the majority of them support adapting the measures in order to take account of the enlargement.

3. Assessment

- (12) An analysis was made of the available data and information which confirmed that the volume of imports of the product concerned from Russia into the EU10 was significant. Considering that the volume of imports subject to the undertaking currently in force was established on the basis of the imports into the EU15, it does not take into account the increased volume of imports to the EU25.

4. Conclusion

- (13) Considering the above, it is concluded that to take account of the enlargement it is appropriate to adapt the measures in order to cater for the additional volume of imports into the EU10 market.

- (14) The original volume of imports subject to the undertaking for the EU15 was calculated and established for each subsequent year in the second half of the current year as a proportion of the Community consumption on the basis of the year previous to the current. The amount of the increase of the volume of imports subject to the undertaking has been calculated following the same method of calculation.

- (15) Accordingly, it is considered appropriate that the Commission may accept a proposal for a modified undertaking reflecting the situation after the enlargement and on the basis of the method described in recital (11).

II. REGARDING SILICON CARBIDE ORIGINATING IN UKRAINE

1. Submissions of interested parties in exporting countries

- (16) The Ukrainian authorities and Ukrainian exporting producer claimed that owing to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.

- (17) In particular, they claimed that the sudden sharp price increases triggered by the high level of the anti-dumping duties rendered the product prohibitively expensive for the production of metallurgical briquettes.

2. Comments received from the Community industry

- (18) The Community industry stated that it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments received from Member States

- (19) The authorities of the Czech Republic, Hungary and Slovak Republic considered that special transitional arrangements should apply to imports of the product concerned from Ukraine following Enlargement. It was argued that the product concerned is of significant importance for industrial end-users in the EU10 since it is not produced in these countries.

- (20) Accordingly, certain of these authorities took the view that the anti-dumping duties should be suspended with regard to imports of the product concerned originating in Ukraine.

4. Assessment

- (21) On the basis of the available data and information, an analysis was made which confirmed that the import volumes of the product concerned coming from Ukraine into the EU10 were significant in 2003.

- (22) Considering that the product concerned is of significant importance for traditional industrial end-users in the EU10 and the relatively high level of anti-dumping duty, it was therefore concluded that it is in the Community interest to adapt gradually the measures currently in force in order to avoid a sudden and excessively negative effect on all interested parties.

5. Conclusion

- (23) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.
- (24) However, by way of contrast, as the interest of the Community industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.
- (25) In such circumstances, it can reasonably be concluded that it is not in the Community interest to apply the existing measures without adaptation and that the temporary adaptation of the existing measures with regard to imports of the product concerned into the EU10 would not be such as to significantly undermine the desired level of trade defence.
- (26) To this end, different ways were examined on how to best protect the Community industry from injurious dumping whilst, at the same time, taking into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the EU10 during the period of economic adjustment following the enlargement.
- (27) It was considered that this could be best achieved by allowing the traditional export volumes from Ukraine to the EU10 to be imported free of anti-dumping duties for a transitional period. In this context, any exports to the EU10 above these traditional export volumes would be subject to the normal anti-dumping duties, as would exports to the EU15.

6. Undertaking

- (28) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating party with an element for quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings was suggested by the Commission to the exporting producer concerned and, as a result, an undertaking was subsequently offered by one exporting producer of the product concerned in Ukraine.
- (29) In this context, it should be noted that in accordance with Article 22(c) of the basic Regulation, the special circumstances of the enlargement were taken into account when the terms of the undertaking were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the EU25.
- (30) Import volumes ('ceilings') were therefore established for the exporting producer in Ukraine, using as a basis their traditional export volumes to EU10 in 2001, 2002 and 2003. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from its traditional volumes used for determining the ceilings.
- (31) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.
- (32) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulation (EC) No 1100/2000 or it may adjust the level of the ceiling, or it may take other remedial action.
- (33) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission by Commission Regulation.

D. AMENDMENT OF REGULATION (EC) No 1100/2000

- (34) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping duty imposed by Regulation (EC) No 1100/2000 by amending that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Commission may accept a proposal for a modified undertaking increasing the volume of imports subject to the undertaking accepted by its Decision 94/202/EC as regards imports of silicon carbide originating in Russia. Any such increase shall be calculated by using the same calculation method that was used when the original ceiling was calculated for the Community of 15 Member States. The original ceiling was calculated and established for each subsequent year in the second half of the current year as a proportion of the Community consumption on the basis of the year previous to the current year.

2. The Commission may modify the undertaking accordingly.

Article 2

Article 1 of Regulation (EC) No 1100/2000 is hereby amended by adding the following paragraph:

‘4. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation. These imports shall be exempt from the anti-dumping duty on condition that:

- (a) the goods declared and presented to customs correspond precisely to the product described in Article 1,
- (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States’ customs authorities upon presentation of the declaration for release into free circulation; and
- (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.’

Article 3

The text as set out in the Annex to this Regulation shall be added to Regulation (EC) No 1100/2000.

Article 4

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

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

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

ANNEX

'ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of silicon carbide to the Community which are subject to the Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN I, PCN 2, etc.),
 - plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: PCN 2:, etc.),
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct."

COUNCIL REGULATION (EC) No 992/2004**of 17 May 2004****amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, ('the basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

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

Whereas:

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

- (1) By Regulation (EC) No 969/2000⁽²⁾ the Council amended and extended the measures imposed by Regulation (EC) No 3068/92⁽³⁾, on imports into the Community of potassium chloride ('the product concerned') originating in the Republic of Belarus ('Belarus'), the Russian Federation ('Russia') and Ukraine.
- (2) The measures are fixed duty amounts, established by category and grade of product, ranging from EUR/tonne 19,51 to EUR/tonne 48,19 in the case of Belarus, EUR/tonne 19,61 to EUR/tonne 40,63 in the case of Russia and EUR/tonne 19,61 to EUR/tonne 48,19 in the case of Ukraine.

2. Investigation

- (3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁽⁴⁾ the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.
- (4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

- (5) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.
- (6) In this regard, the following interested parties made their views known:
- (a) *Community producers Association:*
- European Association of Potash Producers
- (b) *Exporting producers:*
- Production Amalgamation Belaruskali, Soligorsk, Belarus
- JSC Silvinit, Solikamsk, Russia
- JSC Uralkali, Berezniki, Russia
- (c) *Exporter:*
- IPC, Moscow, Russia (related to JSC Silvinit and Production Amalgamation Belaruskali).

B. PRODUCT UNDER CONSIDERATION

- (7) The product concerned is potassium chloride (potash, KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K₂O) on the dry anhydrous product. It is also used as a raw material in the manufacture of certain industrial and pharmaceutical products.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 112, 11.5.2000, p. 4.

⁽³⁾ OJ L 308, 24.10.1992, p. 41. Regulation as last amended by Regulation (EC) No 969/2000.

⁽⁴⁾ OJ C 70, 20.3.2004, p. 15.

- (8) Potash is generally commercialised in either a standard/powder form (standard potash) or in other than standard form that includes but is not limited to a granular form (granular potash). The product is generally classified into three basic categories, based on the K_2O content, namely:

- potassium content not exceeding 40 % K_2O — falling under CN code 3104 20 10,
- potassium content exceeding 40 % K_2O but less than or equal to 62 % — falling under CN code 3104 20 50,
- potassium content over 62 % K_2O — falling under CN code 3104 20 90.

- (9) The anti-dumping measures in force specify different levels of anti-dumping duties for standard potash, on the one hand, and the remaining forms of potash, including granular potash on the other. In this regard it should be recalled that in the last review investigation in 2000, it was found that imports of certain special mixtures or blends with an unusually high content of potash, which do not fall under of the CN codes indicated for potash indicated above, should be considered a product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. As the present investigation has also not brought to light any consideration that the approach taken previously should not be continued, and accordingly and in order to ensure a consistent application of the anti-dumping measures, as well as to avoid erroneous classification, it has been considered necessary, in this Regulation, to confirm the finding of the previous review investigation that the content of K_2O of such mixtures and blends as being equal to or exceeding 35 %, up to a content of 62 % by weight, of the dry anhydrous product.

C. RESULTS OF THE INVESTIGATION

1. Submissions of interested parties in exporting countries

- (10) Two Russian and one Belarusian exporting producers, one Russian exporter and the Russian authorities claimed that due to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.
- (11) In particular, they claimed that the sudden sharp price increases triggered by the fixed price anti-dumping duties rendered the product prohibitively expensive for agricultural, industrial and pharmaceutical end users in the EU10.
- (12) It should be noted that neither any exporting producer/exporter from Ukraine, nor the Ukrainian authorities came forward.

2. Comments received from the Community Industry

- (13) The Community industry stated that although average prices in the EU10 were over 30 % lower than those in the European Union as constituted immediately prior to 1 May 2004 ('the EU15'), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its present trade patterns in the EU15.

3. Comments received from Member States

- (14) The authorities of certain Member States of the EU10 including the Czech Republic, Hungary, Lithuania and the Slovak Republic considered that special transitional arrangements should apply to imports of the product concerned from Belarus and Russia following Enlargement.
- (15) In this regard, it was argued that the product concerned is of strategic importance for industrial and agricultural users in the EU10 since it is not produced in these countries, nor can it easily be substituted by another product. It was also submitted that producers of the product concerned in the EU15 would not have the capacity to satisfy the demands of users in the EU10.
- (16) It was further considered that a sharp and sudden increase in potash fertiliser prices for farmers in the EU10 should be prevented, as they would otherwise face additional hardship in adjusting to the new competition of agricultural producers in the EU15. The importance of this issue was further underlined by the significant value of the exports (around EUR 87 million per annum) from Belarus and Russia to the EU10 compared to exports to the EU15 of around EUR 45 million per annum from these countries.
- (17) It was therefore argued that import supply into the EU10 of the product concerned at prices which do not suddenly and sharply increase is therefore of utmost importance to these end users in the EU10.

- (18) Accordingly, these authorities took the view that imports of the product concerned originating in Belarus and Russia into the EU10 should receive special treatment with regard to the anti-dumping measures.

4. Assessment

- (19) On the basis of the available data and information, an analysis was made which confirmed that a marked difference of around 32 % did exist between the prevailing prices for the same grades of the product concerned in the EU10 and the EU15 (e.g. standard grade of potash in the EU10 in 2003 was around EUR 79 per tonne, whilst the same grade in the EU15 in 2003 was, on average, approximately EUR 117 per tonne).

- (20) The analysis also showed the import volumes coming into the EU10 from Belarus and Russia were significant in 2003 (around 1,1 million tonnes and therefore approximately 14% of total estimated consumption of the EU10 and the EU15 together).

- (21) It was also found that there is no production of the product concerned in the EU10 and that there is currently insufficient spare capacity amongst producers in the EU15 to be able to supply customers in the EU10. Moreover, given the nature of the product, it is considered that it would be difficult for buyers in the EU10 to suddenly change from their traditional sources of supply.

5. Conclusion

- (22) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.

- (23) However, by contrast, as the Community industry itself confirmed, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as under its present trade patterns in the EU15 it cannot currently fully satisfy the demands of customers in the EU10.

- (24) In such circumstances, it can reasonably be concluded in view of the specific situation of enlargement, that it is not in the Community interest to apply the existing measures without temporary adaptation. However, such adaptation with regard to imports of the product concerned into the EU10 should not be such as to significantly undermine the desired level of trade defence.

- (25) To this end, different ways were examined on how to best protect the Community industry from injurious dumping whilst, at the same time, take into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the new Member States during the period of economic adjustment following the enlargement.

- (26) It was considered that this could be best achieved by allowing the traditional export volumes from Belarus and Russia to the EU10 to be imported free of anti-dumping duties for a transitional period, provided that,

in lieu of levying anti-dumping duties, export prices to these Member States would be increased, by way of minimum import prices ('MIP'), to levels which significantly contribute to the removal of injury. In this context, any exports to the EU10 above these traditional export volumes would be subject to the normal anti-dumping duties, as would exports to the EU15.

6. Undertakings

- (27) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, and ensure the significant contribution to the removal of injury, it was considered that the most appropriate means would be through the acceptance of voluntary undertakings from the cooperating parties with elements for minimum import prices and quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings may be suggested by the Commission to the exporting producers concerned.

- (28) In this context, it should be noted that, in accordance with Article 22(c) of the basic Regulation, the special circumstances of the enlargement may be taken into account when the terms of the undertakings are established. They will constitute a special measure in that they provide a temporary way of adapting existing measures for the EU25.

- (29) It should also be noted that the undertakings will not be directly equivalent to an anti-dumping duty since the minimum import prices established may be at lower levels than would usually be the case. To do otherwise would, as mentioned above, render the price of the product concerned prohibitively expensive to end users in the EU10 and, therefore, not be in the Community interest. Nevertheless, the exporting producers should undertake to raise their prices to levels which significantly contribute to the elimination of injury.

- (30) Import volumes ('ceilings') should therefore be established for the exporting producers Belarus and Russia, using as a basis their traditional export volumes to the EU10 in 2001, 2002 and 2003. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 should be deducted from the traditional volumes used for determining the ceilings.

- (31) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree broadly to respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.
- (32) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulation (EC) No 3068/92 or it may adjust the level of the ceiling, or it may take other remedial action.
- (33) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission by Commission Regulation.

D. AMENDMENT OF REGULATION (EC) No 3068/92

- (34) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping duty imposed by Regulation (EC) No 3068/92 by amending that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EEC) No 3068/92, the following Article shall be inserted:

'Article 1 a

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

- (a) the goods declared and presented to customs correspond precisely to the product described in Article 1;
- (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and
- (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice;'

Article 2

The text as set out in the Annex to this Regulation shall be added to Regulation (EC) No 3068/92.

Article 3

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, 17 May 2004.

For the Council
The President
B. COWEN

ANNEX

'ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of potassium chloride to the Community which are subject to any Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc.),
 - plain language description of the goods corresponding to the PCN concerned,
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER] I declare that the information provided in this invoice is complete and correct."

COUNCIL REGULATION (EC) No 993/2004**of 17 May 2004****amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania**

THE COUNCIL OF THE EUROPEAN UNION,

pursuant to Articles 11(3) and 22(c) of the basic Regulation.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, ('the basic Regulation'), and in particular Articles 8, 11(3), 21 and 22 (c) thereof,

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

Whereas:

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

- (1) Following an expiry and an interim review, by Regulation (EC) No 658/2002⁽²⁾ the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate ('the product concerned') originating in the Russian Federation ('Russia'). By Regulation (EC) No 132/2001⁽³⁾, the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine.
- (2) The measures are a specific duty of 47,07 EUR/tonne in the case of Russia and 33,25 EUR/tonne in the case of Ukraine.

2. Investigation

- (3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁽⁴⁾ the initiation of a partial interim review of the measures in force ('the measures')

- (4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

3. Parties concerned by the investigation

- (5) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

- (6) In this regard, the following interested parties made their views known:

(a) Community producers Association:

European Fertilizers Manufacturers Association (EFMA).

(b) Exporting producers:

Nak Azot, Moscow, Russia

OAO Kirovo — Chepetsky Chimkombinat, Kirovo — Chepetsk, Russia

Cherkasy Azot, Cherkasy, Ukraine

JSC Acron, Vellky Novgorod, Russia.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 102, 18.4.2002, p. 1.

⁽³⁾ OJ L 23, 25.1.2001, p. 1.

⁽⁴⁾ OJ C 70, 20.3.2004, p. 15.

B. PRODUCT UNDER CONSIDERATION

- (7) The product under consideration is the same as in the original investigation, i.e. ammonium nitrate, a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight in prilled or granular form.
- (8) The product concerned currently falls within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic nonfertilising substances, with a nitrogen content exceeding 28 % by weight).

C. RESULTS OF THE INVESTIGATION**1. Submissions of interested parties in exporting countries**

- (9) Three Russian and one Ukrainian exporting producers, Russian and Ukrainian authorities claimed that, due to the high level of the anti-dumping duties and as a consequence of the extension of the measures to the EU10, their traditional trade flows to the EU10 would be significantly disrupted.
- (10) In particular, they claimed that the sudden sharp price increases triggered by the specific price anti-dumping duties rendered the product prohibitively expensive for the end users in the EU10.

2. Comments received from the Community Industry

- (11) The Community Industry stated that although average prices in the EU10 were significantly lower than those in the European Union as constituted prior to 1 May 2004 ('the EU15'), it would not oppose any proposals for intermediate measures to be taken over a transitional period which do not adversely affect its situation.

3. Comments received from Member States

- (12) The Spanish authorities expressed concerns, however, as the remaining Member States, they did not oppose the transitional measures proposed by the Commission.

- (13) It was claimed that several EU10 Member States had imposed measures on the product concerned and that these measures ensured a level of protection in EU10 which lapsed by the Enlargement. The measures in place were:

(a) Safeguard quotas imposed in Poland in June 2002 on the imports of ammonium nitrate originating in Russia and in December 2002 safeguard measures on imports of ammonium nitrate originating in Ukraine;

(b) Safeguard measures imposed in Hungary in July 2003 with additional duty of 11 600 HUF/t on imports of ammonium nitrate originating in Russia and Ukraine;

(c) Safeguard measures imposed in Czech Republic in February 2003 with additional duty of 16 % on the imports of ammonium nitrate originating in Ukraine and safeguard measures with additional duty of 35 % on the product concerned originating in Russia.

- (14) Despite that, the authorities of EU10 considered that special transitional arrangements should apply to imports of the product concerned from Ukraine and Russia following the Enlargement. In this regard, it was argued that the product concerned is of significant importance for agricultural users in the EU10 since it cannot be easily substituted by another product.

- (15) It was further considered that a sharp and sudden increase in ammonium nitrate prices for farmers in the EU10 should be prevented; as they would, otherwise, face additional hardship in adjusting to the new competition of agricultural producers in the EU15. The importance of this issue was further underlined by the significant value of the exports (around EUR 59 million per annum) from Ukraine and Russia to the EU10 compared to exports to the EU15 of around 39 million Euros per annum from these countries.

- (16) It was therefore argued that import supply into the EU10 of the product concerned at prices which do not suddenly and sharply increase is of significant importance to these end users in the EU10.

- (17) Accordingly, these authorities took the view that imports of the product concerned originating in Ukraine and Russia into the EU10 should receive special treatment with regard to the anti-dumping measures.

4. Assessment

- (18) On the basis of the available data and information, an analysis was made which confirmed that a marked difference did exist between the prevailing prices for the product concerned in the EU10 and the EU15 (e.g. in EU10 in 2000-2003 average price was EUR 70 per tonne from Russia and EUR 84 per tonne from Ukraine, whilst in EU15 in 2000-2003 was EUR 100 per tonne from Russia and EUR 108 per tonne from Ukraine).
- (19) The analysis also showed the import volumes coming into the EU10 from Ukraine and Russia were significant (in 2000-2003 on average around 817 thousand tonnes).

5. Conclusion

- (20) All these various aspects and interests have been taken into account and considered as a whole. It emerges from this that the EU10 importers' and users' interests would be substantially negatively affected by the sudden application of the existing measures if they were not to be temporarily adapted.
- (21) However, by contrast, as the interest of the Community Industry itself confirmed it, its interests would not be unduly negatively affected if the measures were to be temporarily adapted as they cannot currently fully satisfy the demands of customers in the EU10.

- (22) In such circumstances, it can reasonably be concluded in view of the specific situation of Enlargement, that it is not in the Community interest to apply the existing measures without temporary adaptation. However, such adaptation with regard to imports of the product concerned into the EU10 should not be such as to significantly undermine the desired level of trade defense.

- (23) To this end, different ways were examined on how to best protect the Community Industry from injurious dumping whilst, at the same time, take into account the Community interest aspects by lessening the economic shock of the anti-dumping duties to traditional buyers in the EU10 during the period of economic adjustment following Enlargement.

- (24) Due to the existence of the protective measures in some EU10 Member States prior to Enlargement, it was considered that this could be best achieved by allowing the 50 % of traditional export volumes, i.e. export volumes not affected by the protective pre-Enlargement measures in EU10, from Ukraine and Russia to the EU10 be imported free of anti-dumping duties for a transitional period, provided that, in lieu of levying anti-dumping duties, export prices to these Member States would be increased to levels which significantly contribute to the removal of injury. In this context, any exports to the EU10 above these traditional export volumes would be subject to the anti-dumping duties, as would exports to the EU15.

6. Undertakings

- (25) Having assessed the different options on how best to allow these traditional export flows to the EU10 to continue, and ensure the significant contribution to the removal of injury, it was considered that the most appropriate means was through the acceptance of voluntary undertakings from the cooperating parties with elements for minimum import prices and quantitative ceilings. Therefore, in accordance with Article 8(2) of the basic Regulation, undertakings were suggested by the Commission to the exporting producers concerned.
- (26) In this context, it should be noted that, in accordance with Article 22(c) of the basic Regulation, the special circumstances of Enlargement were taken into account when the terms of the undertakings were established. They constitute a special measure in that they provide a temporary way of adapting existing measures for the enlarged Community of twenty five Member States.

(27) It should also be noted that the undertakings are not directly equivalent to an anti-dumping duty since the minimum import prices established are at lower levels than would usually be the case. To do otherwise would, as mentioned above, render the price of the product concerned prohibitively expensive to end users in the EU10 and, therefore, not be in the Community interest. Nevertheless, the exporting producers undertook to raise their prices to levels which significantly contribute to the elimination of injury.

(28) Import volumes ('ceilings') were therefore established for the exporting producers Ukraine and Russia, using as a basis 50 % of their traditional export volumes to the EU10 in 2001 and 2002. It should be noted, however, that abnormal increases in export volumes to the EU10 observed in the last few months of 2003 and the first months of 2004 were deducted from the traditional volumes used for determining the ceilings.

(29) When selling to the EU10 under the terms of their undertakings, the exporting producers concerned should agree to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers should therefore be aware that any undertaking offer can only be considered as practicable, and therefore acceptable if, for sales covered by the undertakings, they would broadly maintain such traditional patterns of trade with their customers in the EU10.

(30) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place at the level specified in Regulations (EC) No 658/2002 and (EC) No 132/2001 or it may adjust the level of the ceiling, or it may take other remedial action.

(31) Accordingly, any undertaking offers respecting the above conditions may be accepted by the Commission, by Commission Regulation.

D. AMENDMENT OF REGULATIONS (EC) No 658/2002 AND (EC) No 132/2001

(32) In view of the above, it is necessary to provide, in the event of undertakings being accepted by the Commission in a subsequent Commission Regulation, for the possibility to exempt imports to the Community made under the terms of such undertakings from the anti-dumping duty imposed by Regulations (EC) No 658/2002 and (EC) No 132/2001 by amending these Regulations,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 132/2001 the following Article shall be inserted:

'Article 1A

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) the goods declared and presented to customs correspond precisely to the product described in Article 1,

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'

Article 2

In Regulation (EC) No 658/2002 the following Article shall be inserted:

'Article 1A

1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Regulation.

2. The imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

- (a) the goods declared and presented to customs correspond precisely to the product described in Article 1,
- (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

- (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.'

Article 3

The text set out in the Annex to this Regulation shall be added to Regulations (EC) No 132/2001 and (EC) No 658/2002.

Article 4

This Regulation shall enter into force on the day following 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, 17 May 2004.

For the Council
B. COWEN
The President

ANNEX

'ANNEX

The following elements shall be indicated on the commercial invoice accompanying the company's sales of ammonium nitrate to the Community which are subject to the Undertaking:

1. The heading "COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING".
 2. The name of the company mentioned in Article 1 of Commission Regulation [INSERT NUMBER] issuing the commercial invoice.
 3. The commercial invoice number.
 4. The date of issue of the commercial invoice.
 5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
 6. The exact description of the goods, including:
 - Product Code Number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2 etc),
 - plain language description of the goods corresponding to the PCN concerned (e.g. PCN 1: ammonium nitrate not containing any additional elements – Standard product; PCN 2: ammonium nitrate containing additional elements in special mixtures, etc),
 - company product code number (CPC) (if applicable),
 - CN code,
 - quantity (in tonnes).
 7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
 8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
 9. The name of the official of the company that has issued the invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation [INSERT NUMBER]. I declare that the information provided in this invoice is complete and correct."
-

COMMISSION REGULATION (EC) No 994/2004**of 18 May 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 19 May 2004.

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

Done at Brussels, 18 May 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 18 May 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	111,0
	204	64,3
	212	89,5
	999	88,3
0707 00 05	052	104,9
	999	104,9
0709 90 70	052	93,8
	204	54,4
	999	74,1
0805 10 10, 0805 10 30, 0805 10 50	052	55,0
	204	45,2
	220	49,5
	388	49,5
	400	35,9
	624	57,8
	999	48,8
0805 50 10	388	73,7
	528	61,1
	999	67,4
0808 10 20, 0808 10 50, 0808 10 90	388	82,0
	400	132,1
	404	107,3
	508	69,0
	512	69,8
	524	55,1
	528	65,2
	720	82,6
	804	109,8
	999	85,9

⁽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 995/2004**of 18 May 2004****on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽⁴⁾,

Having regard to the Treaty establishing the European Community,

HAS ADOPTED THIS REGULATION:

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

The following Member States shall issue on 21 May 2004 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽²⁾, and in particular Article 5 thereof,

United Kingdom:

Having regard to Commission Regulation (EC) No 2247/2003 of 19 December 2003 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 2286/2002 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) ⁽³⁾, and in particular Article 4 thereof,

— 250 tonnes originating in Botswana,

— 800 tonnes originating in Namibia;

Whereas:

Germany:

— 150 tonnes originating in Botswana,

(1) Article 1 of Regulation (EC) No 2247/2003 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.

— 60 tonnes originating in Namibia.

(2) The applications for import licences submitted between 1 and 10 May 2004, expressed in terms of boned meat, in accordance with Regulation (EC) No 2247/2003, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 2247/2003, during the first 10 days of June 2004 for the following quantities of boned beef and veal:

(3) The quantities in respect of which licences may be applied for from 1 June 2004 should be fixed within the scope of the total quantity of 52 100 tonnes.

Botswana:	16 856 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	3 249 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	10 185 tonnes.

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

Article 3

This Regulation shall enter into force on 21 May 2004.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

⁽²⁾ OJ L 348, 21.12.2002, p. 5.

⁽³⁾ OJ L 333, 20.12.2003, p. 37.

⁽⁴⁾ OJ L 302, 31.12.1972, p. 28. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

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

Done at Brussels, 18 May 2004.

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

COMMISSION REGULATION (EC) No 996/2004
of 18 May 2004
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 985/2004 ⁽³⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 985/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 985/2004 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 19 May 2004.

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

Done at Brussels, 18 May 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

⁽²⁾ OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

⁽³⁾ OJ L 180, 15.5.2004, p. 26.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	16,25
1005 10 90	Maize seed other than hybrid	32,98
1005 90 00	Maize other than seed ⁽²⁾	32,98
1007 00 90	Grain sorghum other than hybrids for sowing	16,25

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

period from 14 May 2004 to 17 May 2004

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	144,36 (***)	97,09	162,21 (****)	152,21 (****)	132,21 (****)	106,58 (****)
Gulf premium (EUR/t)	—	9,34	—			—
Great Lakes premium (EUR/t)	11,31	—	—			—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(***) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

(****) Fob Duluth.

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight/cost: Gulf of Mexico–Rotterdam: 27,71 EUR/t; Great Lakes–Rotterdam: 44,30 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL JOINT ACTION 2004/494/CFSP

of 17 May 2004

on European Union support to the establishment of the Integrated Police Unit in the Democratic Republic of the Congo (DRC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

- (1) On 26 January 2004, the Council adopted Common Position 2004/85/CFSP concerning conflict prevention, management and resolution in Africa⁽¹⁾.
- (2) The European Union, through Operation Artemis conducted in the DRC during 2003 under Joint Action 2003/423/CFSP of 5 June 2003 on the EU Military Operation in the Democratic Republic of the Congo⁽²⁾, has already taken concrete steps to contribute to the re-establishment of security within the DRC.
- (3) On 14 December 2000, the Council adopted Joint Action 2000/792/CFSP⁽³⁾ appointing Mr Aldo Ajello as the Special Representative of the European Union for the African Great Lakes Region, and repealing Joint Action 96/250/CFSP. The Joint Action was last amended and extended by Joint Action 2003/869/CFSP of 8 December 2003⁽⁴⁾.
- (4) The Council on 29 September 2003 adopted Common Position 2003/680/CFSP⁽⁵⁾ amending Common Position 2002/829/CFSP on the supply of certain equipment to the Democratic Republic of the Congo.
- (5) The global and all-inclusive Agreement on the transition in the Democratic Republic of the Congo, signed in Pretoria on 17 December 2002 and the Memorandum on Security and the Army of 29 June 2003 provided for the establishment of an Integrated Police Unit (IPU).
- (6) On 28 July 2003 the United Nations Security Council adopted Resolution 1493 (2003) in which it expresses satisfaction at the promulgation, on 4 April 2003, of the Transitional Constitution in the Democratic Republic of the Congo and at the formation, announced on 30 June 2003, of the Government of National Unity and Transition. It also encourages donors to support the establishment of an integrated Congolese police unit and approves the provision by the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) of the additional assistance that might be needed for its training.
- (7) The current security situation in the DRC may deteriorate with potentially serious repercussions on the process of strengthening of democracy, the rule of law and international and regional security. A commitment of EU political effort and resources will help to embed stability in the region.
- (8) On 20 October 2003, the government of the DRC addressed an official request to the High Representative for the CFSP for European Union assistance in setting up the IPU, which should contribute to ensuring the protection of the State institutions and reinforce the internal security apparatus.
- (9) The Commission has adopted a financing decision on the European Development Fund (EDF) for a project which includes technical assistance, rehabilitation of the training centre and the provision of equipment for the IPU (with the exception of arms and anti-riot equipment), as well as adequate training.
- (10) As a prerequisite to the training of the IPU and to its functioning later on, EU Member States have agreed to provide contributions, either financially or in kind. In addition to the Member State contributions, the European Union will offer financial assistance for the setting up of the IPU from the EU Budget.
- (11) All these contributions and assistance should be subject to conditions on use regarding notably auditing, accountability and traceability to be laid down in a Memorandum of Understanding between the contributors and the DRC.
- (12) The Council may decide that the EDF project and the provision of law enforcement equipment, arms and ammunition to the IPU as appropriate be followed by an European Security and Defence Policy (ESDP) component for monitoring, mentoring and advising,

⁽¹⁾ OJ L 21, 28.1.2004, p. 25.

⁽²⁾ OJ L 143, 11.6.2003, p. 50.

⁽³⁾ OJ L 318, 16.12.2000, p. 1.

⁽⁴⁾ OJ L 326, 13.12.2003, p. 37.

⁽⁵⁾ OJ L 249, 1.10.2003, p. 64.

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The European Union shall support the process of the consolidation of internal security in the DRC, which is an essential factor for the peace process and the development of the country, through assistance to the setting up of an Integrated Police Unit (IPU) in Kinshasa.

2. To that end, and in addition to the EDF funded activities, the European Union and its Member States will contribute with funds and/or contributions in kind to provide the government of the DRC with the law enforcement equipment, arms and ammunition as set out in Annex I, including transport costs to Kinshasa where relevant, identified as necessary for the establishment of the IPU.

Article 2

1. For the purpose mentioned in Article 1, and subject to certain conditions, notably that solid guarantees are put in place for auditing, accountability and traceability of the law enforcement equipment, arms and ammunition:

- (a) Member States have agreed to provide contributions;
- (b) the European Union shall provide financial assistance to the DRC government in addition to the contributions provided by the Member States, which will take the form of a grant.

2. The maximum degree of consistency possible shall be sought with regard to the conditions applied to the contributions and assistance provided for in paragraph 1.

Article 3

1. A Memorandum of Understanding shall be prepared by the Commission's technical assistance team in Kinshasa, in close consultation with contributing Member States, regarding the conditions for the use of the contributions referred to in Article 2(1)(a). It will be signed by the government of the DRC, on the one hand, and by the Presidency, on the other hand.

2. The Memorandum of Understanding will in particular stipulate:

- conditions for auditing, accountability and traceability, including safe storage, of Member State contributions as set out in Annex II, which will be no less stringent than those applicable to the financing agreement referred to in Article 5(2);
- that conditions for operating and managing these funds, including procurement, shall as far as possible be the same as for the grant referred in Article 5(2);
- that all financial contributions shall be made directly to the DRC Ministry of the Interior, to the same bank account into

which the financial assistance by the EU is transmitted to the DRC government. A triple signatory arrangement would apply (government of the DRC, Technical Assistant/police head of project and the acting EU Presidency). Purchases made with these funds would formally be purchases made by the government of the DRC;

- that all in kind contributions by the Member States shall be provided to, and become the property of, the DRC government and shall be used solely for the purposes stated in Article 1;
- that the Technical Assistant/police head of project will assist Member States that have agreed to make contributions in kind by providing all practical information necessary to smoothly channel those contributions to the DRC Ministry of the Interior;
- that a local Steering Committee, comprised of the Technical Assistant/police head of project, representatives of the Presidency, contributing Member States, the Commission, DRC Ministry of the Interior and MONUC, shall be set up to ensure overall follow-up. It shall in particular supervise compliance with the provisions of the Memorandum of Understanding. The DRC Ministry of Interior shall remain responsible for project implementation.

Article 4

The Technical Assistant/police head of project, appointed by the Commission on the basis of a proposal made by the Member States, shall closely monitor the use made by the DRC government of the contributions to which Article 2(1)(a) refers. He/she shall in particular, in close coordination with the DRC authorities, ensure compliance with the conditions set out in the Memorandum of Understanding, including those on auditing, accountability and traceability. The Technical Assistant/police head of project shall make regular reports to the acting Presidency and the Steering Committee referred to in Article 3(2).

Article 5

1. The financial reference amount for the financial assistance referred to in Article 2(1)(b) shall be EUR 585 000.

2. The Commission shall be entrusted with the implementation of the grant referred to in Article 2(1)(b). To that end, it shall conclude a financing agreement with the government of the DRC.

3. The management of the expenditure financed by the amount specified in paragraph 1 shall be subject to the Community procedures and rules applicable to the general budget of the European Union, with the exception that any pre-financing shall not remain the property of the Community. Nationals of third States shall be allowed to tender contracts.

Article 6

The Presidency and the Commission will report regularly to the Council through the latter's relevant bodies, in particular the Political and Security Committee, on the implementation of this Joint Action, and especially on the activities of the steering committee.

In the political implementation of this Joint Action, the acting Presidency in Kinshasa will be closely supported by the Commission.

The EU Special Representative will be informed regarding developments of this project.

Article 7

This Joint Action shall enter into force on the date of its adoption.

It shall be reviewed at the end of the EDF project or at any other moment as appropriate.

Article 8

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

Done at Brussels, 17 May 2004.

For the Council

The President

B. COWEN

ANNEX I

INDICATIVE LIST OF LAW ENFORCEMENT EQUIPMENT, ARMS AND AMMUNITION REFERRED TO IN
ARTICLE 1

The following list is indicative: some additions or substitutions may be necessary.

Law enforcement equipment

Riot helmets	1 008
Deflective shields	240
Riot boots	1 008
Shinguards	950
Shoulder pads (pairs)	950
Deflective arm protectors	950
Batons	1 008
Baton holders	1 008
Belts	1 008
Handcuffs	1 000
Masks	950
Riot clothing (set)	1 008
Grenade pouches	193
Plastic handcuffs	1 000
Extinguishers	100

Arms

Automatic pistols	1 008
Sub machine guns	300
Riot Guns	100
Grenade launcher (rifle)	100

Ammunition (per unit)

Tear smoke cartridges	2 000
Rifle grenades	5 000
Hand grenades	5 000
9mm ammunition	500

Other

Briefcases	200
Binoculars	116
Conspicuity vests (traffic)	200
Whistles	1 008
Compasses	1 000
Protective jackets	400

ANNEX II

CONTRIBUTIONS BY THE MEMBER STATES REFERRED TO IN ARTICLE 3(2)

1. The following Member States have agreed to make contributions in kind: Belgium, Germany and Hungary.
 2. The following Member States have agreed to make financial contributions: The Netherlands, the UK, Sweden ⁽¹⁾, Luxembourg, Ireland and Denmark.
 3. Member States have agreed to make contributions, whether financial or in kind, subject to the condition that solid guarantees are put in place to ensure:
 - (a) full compliance with Member State and EU procedures and obligations relevant to the export of law enforcement equipment, arms and ammunition;
 - (b) full traceability of all law enforcement equipment, arms and ammunition provided to the IPU. All law enforcement equipment, arms and ammunition, donated or purchased with financial contributions, shall be listed in a continually updated inventory, including serial numbers. All law enforcement equipment, arms and ammunition shall be traceable for the entire duration of the project. All law enforcement equipment, arms and ammunition provided shall be for the use of the IPU alone, and must not be diverted to any other unit or non-police group or user or re-exported;
 - (c) the strictest accountability for all funds and law enforcement equipment, arms and ammunition. The government of the DRC shall account fully for the use of Member States' contributions, both financial or in kind, for the sole purpose described in Article 1;
 - (d) the proper and effective auditing of expenditure. An independent auditor shall certify that funds are used for the purpose described in Article 1.
 4. The Danish financial contribution shall be subject to the additional condition that it shall be used in accordance with OECD DAC Guidelines for Development Assistance and will be reported to the DAC Committee as official Danish Development Assistance.
-

⁽¹⁾ Subject to necessary national procedures.

COUNCIL JOINT ACTION 2004/495/CFSP**of 17 May 2004****on support for IAEA activities under its Nuclear Security Programme and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction**

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

- (1) On 12 December 2003, the European Council adopted the EU Strategy against the Proliferation of Weapons of Mass Destruction, which contains, in its Chapter III, a list of measures to combat such proliferation and which need to be taken both within the EU and in third countries.
- (2) The EU is actively implementing this Strategy and is giving effect to the measures listed in its Chapter III, in particular through releasing financial resources to support specific projects conducted by multilateral institutions, such as the International Atomic Energy Agency (IAEA).
- (3) Since, as far as the EU is concerned, the Council adopted on 22 December 2003 Directive 2003/122/EURATOM ⁽¹⁾ on the control of high activity sealed radioactive sources and orphan sources, within the EU, the strengthening of the control of high activity radioactive sources in all third countries, in accordance with the G-8 statement and Action Plan on securing radioactive sources, remains an important objective to be pursued.
- (4) The improvement of the physical protection of nuclear material and facilities, and the detection of and response to illicit trafficking contribute to preventing the Proliferation of Weapons of Mass Destruction.
- (5) The IAEA pursues the same objectives as set out in (3) and (4). This is done in the context of the revised Code of Conduct on the Safety and Security of Radioactive Sources which was approved by the IAEA Board of Governors in September 2003 and the implementation of its Nuclear Security Plan which is financed through voluntary contributions to its Nuclear Security Fund. The IAEA is also engaged into efforts to strengthen the Convention on the Physical Protection of Nuclear Material.
- (6) The Commission has accepted to be entrusted with the supervision of the proper implementation of the EU contribution.

Article 1

1. For the purposes of giving immediate and practical implementation to some elements of the EU Strategy against the Proliferation of Weapons of Mass Destruction, the EU shall support the IAEA activities under the Nuclear Security Plan, the objectives of which are:

- to enhance the protection of proliferation-sensitive materials and equipment and the relevant expertise,
- to strengthen the detection of and response to illicit trafficking of nuclear materials and radioactive substances.

2. The projects of the IAEA, corresponding to measures of the EU Strategy, are the projects which aim at strengthening:

- the Physical Protection of Nuclear Materials and other Radioactive Materials in Use, Storage and Transport, and of Nuclear Facilities,
- the Security of Radioactive Materials in non-Nuclear Applications,
- the States' capabilities for Detection and Response to Illicit Trafficking.

These projects will be carried out in countries needing assistance in the area of nuclear security.

A detailed description of the projects above is set out in the Annex.

Article 2

1. The financial reference amount for the implementation of the three projects listed in Article 1, paragraph 2, is 3 329 000 EUR.

2. The management of the expenditure financed by the general budget of the European Union specified in paragraph 1 shall be subject to the procedures and rules of the Community applying to budget matters with the exception that any pre-financing shall not remain the property of the Community.

⁽¹⁾ OJ L 346, 31.12.2003, p. 57.

3. For the purpose of implementing the projects referred to in Article 1, the Commission shall conclude a financing agreement with the IAEA on the conditions for the use of the EU contribution, which will take the form of a grant. The financing agreement to be concluded will stipulate that the IAEA shall ensure visibility of the EU contribution, appropriate to its size.

4. The Commission shall report on the implementation of the EU contribution to the Council, in association with the Presidency.

Article 3

The Presidency shall be responsible for the implementation of this Joint Action in full association with the Commission. The Commission shall supervise the proper implementation of the EU contribution referred to in Article 2.

Article 4

This Joint Action shall enter into force on the day of its adoption.

It shall expire 15 months after its adoption.

Article 5

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

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

ANNEX

EU support for the IAEA activities under its Nuclear Security Programme and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

1. Description

The Board of Governors of the International Atomic Energy Agency (IAEA) approved, in March 2002, a plan of activities to protect against nuclear terrorism. The plan provides a comprehensive approach to nuclear security, recognising the need to protect nuclear and other radioactive materials 'from cradle to grave'. Protecting and securing the material in use, storage and transport is key to enhancing the security level and also to sustain the improved security in the long-term. However, if protection should fail, or in the case of material that is not yet subject to protection at its location, measures must be established to detect theft or attempts to smuggle the material.

Support for these efforts is in high demand in all IAEA Member Countries as well as in countries who are not yet members of the IAEA. However, these projects are primarily focused upon countries in South-Eastern Europe: Bulgaria, Turkey, Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, the Former Yugoslav Republic of Macedonia, Moldova and Romania, and in the Central Asia region: Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan. Activities are also foreseen in Armenia, Azerbaijan and Georgia.

Initially, an evaluation mission — International Nuclear Security Mission — will be undertaken in order to identify priorities. For that purpose, a team of recognised experts will evaluate the present status of nuclear security measures already in place in the abovementioned countries and give recommendations on improvements. The recommendations will constitute a platform for the definition of subsequent assistance, covering present status and need for improvement as regards prevention of, detection and response to malicious acts involving nuclear and other radioactive materials, including those in non-nuclear use, and of nuclear facilities.

As a result of this evaluation mission, priorities will be set in identifying a maximum of six countries for each project to be covered by the budget made available through EU support.

Subsequently, projects will be implemented in the selected countries in three fields:

1. Strengthening the Physical Protection of Nuclear Materials and other Radioactive Materials in Use, Storage and Transport and of Nuclear Facilities

The materials used or stored at nuclear facilities and locations must be adequately accounted for and protected in order to prevent theft or sabotage. An effective regulatory system should identify those elements requiring implementation at the level of the State and the operator.

2. Strengthening of Security of Radioactive Materials in Non-Nuclear Applications

Radioactive materials, and in some cases source nuclear material, are often used in 'non-nuclear' applications, e. g. in medical or industrial use. Some of these sources are highly radioactive, and belong to categories 1-3, as defined in the IAEA TECDOC Categorisation of Radioactive Sources. These sources, if not adequately controlled and protected, may come into the wrong hands and be used in malicious activities. The regulatory systems covering the use, storage and transport of radioactive material must be effective and must function properly. Powerful, vulnerable radioactive sources should be protected against malicious acts when used or stored, and when no longer required, they should be dismantled and disposed of as radioactive waste in a safe and secure storage.

3. Strengthening of States' Capabilities for Detection and Response to Illicit Trafficking

Illicit trafficking is a situation which relates to the unauthorised receipt, provision, use, transfer or disposal of nuclear material and other radioactive materials, whether intentional or unintentional and with or without crossing international borders.

A terrorist-made, crude nuclear explosive device or a radiological dispersal device cannot be constructed without the material having been acquired as a result of illicit trafficking. In addition, sensitive equipment and technology to produce sensitive material for or to construct a crude nuclear explosive device may also have been acquired via illicit trafficking. It may be assumed that cross-border movement of material or technology is necessary for the material to reach its end destination. To combat illicit trafficking, States thus require the necessary regulatory systems to be in place, as well as technical systems (including user-friendly instruments) and available procedures and information at the border stations for detecting attempts at smuggling radioactive materials (including fissile, radioactive materials), or unauthorised trade with sensitive equipment and technology.

Effective measures must also be in place to respond to such acts and also to seizures of any radioactive materials. Law enforcement staff (customs, police, etc.) are frequently not trained in the use of detection equipment, and thus the sensitive equipment and technology may be unfamiliar. Training of these officers is therefore critical to the success of any measures put in place for detection of illicit trafficking. Different training should be offered to staff of different categories, both in using detection instruments and in understanding the reading of the instrument, to be able to decide on follow-up activities.

2. Objectives

Overall objective: To strengthen nuclear security in selected countries.

2.1. Evaluation mission: Financing International Nuclear Security Missions

INSServ missions will be made by the IAEA to identify needs to strengthen the nuclear security in each of the 17 countries mentioned in point 1. The missions will cover physical protection and security of nuclear and non-nuclear applications, including the necessary regulatory systems, as well as established measures to combat illicit trafficking.

The projects, as part of the broad-based nuclear security mission referred to above, will:

- begin by evaluating the status of physical protection of nuclear and other radioactive materials, and the protection of any nuclear or research installation or location in which these materials are used or stored. In the 17 countries, a total of 26 nuclear facilities or locations exist. A subset of facilities and locations containing these materials will be selected for subsequent upgrading and support,
- identify urgent needs with respect to the upgrading of the regulatory infrastructure in the 17 countries and will also identify the need to provide additional protection of powerful, vulnerable sources. The specific equipment needed to provide protection would also be determined as a result of the mission,
- include the assessment of the current status of the capabilities as well as an evaluation of the requirements for strengthening the States' measures to combat illicit trafficking.

2.2. Implementation of specific actions defined as priorities as a result of the evaluation mission

Project 1

Strengthening Physical Protection of Nuclear Materials and other Radioactive Materials in Use, Storage and Transport and in Nuclear Facilities

Project purpose: to strengthen physical protection of nuclear and other radioactive materials in the selected countries.

Project results:

- physical protection of selected facilities and priority locations upgraded,
- national regulatory infrastructure for physical protection improved through expert assistance,
- staff training provided in the selected countries.

Project 2

Strengthening of Security of Radioactive Materials in Non-Nuclear Applications

Project purpose: to strengthen the security of radioactive materials in non-nuclear applications in the selected countries.

Project results:

- national regulatory infrastructure for the safety and security of radioactive materials improved through expert assistance,
- up to 30 vulnerable sources protected or, as appropriate, dismantled or disposed of,
- staff training provided in the selected countries.

Project 3**Strengthening of States' Capabilities for Detection and Response to Illicit Trafficking**

Project purpose: to strengthen the States' capacities for detection and response to illicit trafficking in the selected countries.

Project results:

- enhanced information collected and evaluated on illicit nuclear trafficking, from open sources and from States' Points of Contact, to improve the knowledge about and circumstances of illicit nuclear trafficking. This information will also facilitate the prioritisation of the various activities undertaken to combat illicit trafficking,
- national frameworks established through expert assistance, to combat illicit trafficking and to improve the national coordination of control cross-border movements of radioactive materials, sensitive nuclear equipment and technology in the selected countries,
- border monitoring equipment upgraded at selected border crossings,
- training provided for law enforcement staff.

3. Duration

The evaluation mission will be performed within a period of three months after the signature of the Financing Agreement between the Commission and the IAEA. The three projects will be performed in parallel during the 12 subsequent months.

The total estimated duration for the implementation of this Joint Action is 15 months.

4. Beneficiaries

The Beneficiaries are the countries where the assessment and the subsequent projects will be implemented. Their authorities will be helped to understand where there are weak points and receive support to bring solution and increase security.

5. Implementing Entity

The IAEA will be entrusted with the implementation of the projects. The international nuclear security missions will be performed following the standard mode of operation for missions of the IAEA, which will be carried out by IAEA Member Countries' experts. The implementation of the three projects will be done directly by the IAEA staff, IAEA Member Countries – selected experts or contractors. In case of contractors, the procurement of any goods, works or services by the IAEA in the context of this Joint Action shall be carried out in accordance with the applicable rules and procedures of the IAEA, as detailed in the European Community Contribution Agreement with an International Organisation.

6. Third Party Participants

The projects will be financed 100 % by this Joint Action. Experts of IAEA Member Countries may be considered as third party participants. They will work under the standard rules of operation for IAEA experts.

7. Estimated required means

The EU contribution will cover the evaluation mission and the implementation of the three projects as described in point 2.2. The estimated costs are as follows:

Nuclear security missions (17 countries):	EUR 303 000
Project 1 (6 countries):	EUR 854 200
Project 2 (6 countries):	EUR 1 136 700
Project 3 (6 countries):	EUR 946 600

In addition, a contingency reserve of about 3 % of eligible costs (for a total amount of EUR 88 500) is included for unforeseen costs.

8. Financial reference amount to cover the cost of the project

The total cost of the project is EUR 3 329 000.
