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Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 639/2005 of 25 April 2005 imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96** 1
- Commission Regulation (EC) No 640/2005 of 27 April 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables 11
- Commission Regulation (EC) No 641/2005 of 27 April 2005 opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries 13
- ★ **Commission Regulation (EC) No 642/2005 of 27 April 2005 imposing testing and information requirements on the importers or manufacturers of certain priority substances in accordance with Council Regulation (EEC) No 793/93 on the evaluation and control of the risks of existing substances ⁽¹⁾** 14
- ★ **Commission Regulation (EC) No 643/2005 of 27 April 2005 repealing Commission Regulation (EC) No 2909/2000 on the accounting management of the European Communities' non-financial fixed assets** 17
- ★ **Commission Regulation (EC) No 644/2005 of 27 April 2005 authorising a special identification system for bovine animals kept for cultural and historical purposes on approved premises as provided for in Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽¹⁾** 18
- Commission Regulation (EC) No 645/2005 of 27 April 2005 on granting of import licences for cane sugar for the purposes of certain tariff quotas and preferential agreements 20
- Commission Regulation (EC) No 646/2005 of 27 April 2005 amending Regulation (EC) No 94/2005 on the issue of import licences for rice originating in the ACP States and the overseas countries and territories against applications submitted in the first five working days of January 2005 pursuant to Regulation (EC) No 638/2003 22

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

Council

2005/334/EC:

- ★ **Council Decision of 18 January 2005 establishing, in accordance with Article 104(8) of the Treaty establishing the European Community, whether effective action has been taken by the Hellenic Republic in response to recommendations of the Council in accordance with Article 104(7) of that Treaty** 24

Commission

2005/335/EC:

- ★ **Commission Decision of 25 April 2005 amending Decision 2001/657/EC extending the derogation to include fillets of salt cod and whole salt cod (notified under document number C(2005) 1256)** 26

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 305/04/COL of 1 December 2004 amending for the 48th time the procedural and substantive rules in the field of state aid by amending Chapter 16 'Aid for rescuing and restructuring firms in difficulty and proposal for appropriate measures'** 28

Corrigenda

- ★ **Corrigendum to Council Regulation (EC) No 2143/2004 of 13 December 2004 amending Regulation (EC) No 74/2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India (OJ L 370, 17.12.2004)** 44

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 639/2005**of 25 April 2005****imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96**

THE COUNCIL OF THE EUROPEAN UNION,

2003 a request for a review pursuant to Article 11(2) of the basic Regulation.

Having regard to the Treaty establishing the European Community,

(3) The request was lodged by Furfural Español SA ('the applicant') representing a major proportion, in this case more than 25 %, of the total Community production of furfuraldehyde. The other Community producer, Lenzing AG, supported the request. The two producers represent 100 % of the Community production of furfuraldehyde. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

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(2) thereof,

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission published a notice of initiation of this review in the *Official Journal of the European Union*⁽⁵⁾.

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

Whereas:

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

(1) In January 1995, the Council, by Regulation (EC) No 95/95⁽²⁾, imposed definitive anti dumping measures in the form of a specific duty on imports of furfuraldehyde originating in the People's Republic of China ('PRC'). The specific duty rate amounts to EUR 352 per tonne. Following an interim review initiated in May 1997 upon request of a Chinese exporter, the measures were maintained by Regulation (EC) No 2722/1999⁽³⁾ for a further period of four years.

2. Initiation of expiry review investigation

(2) Following the publication, in March 2003, of a notice of impending expiry of the anti dumping measures applicable to imports of furfuraldehyde originating in the PRC⁽⁴⁾, the Commission received on 19 September

3. Parties concerned by the investigation

(5) The Commission officially advised the authorities of the PRC, the exporting producers in the PRC, the producers in the suggested analogue country, Argentina, the producers, importers/traders and industrial users in the Community known to be concerned, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) Replies to the questionnaire were received from the two Community producers, one importer/trader, one industrial user and one producer in the analogue country, Argentina.

⁽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 15, 21.1.1995, p. 11.

⁽³⁾ OJ L 328, 22.12.1999, p. 1.

⁽⁴⁾ OJ C 72, 26.3.2003, p. 2.

⁽⁵⁾ OJ C 308, 18.12.2003, p. 2.

- (8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) **Producer in the analogue country**

— Indunor SA, Buenos Aires, Argentina

(b) **Community producer**

— Furfural Espanol SA, Alcantarilla, Spain

(c) **Unrelated importer**

— International Furan Chemicals B.V., Rotterdam, Netherlands.

- (9) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2002 to 30 September 2003 ('IP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2000 up to the end of the IP ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

- (10) The product concerned is the same as in the original investigation, i.e. furfuraldehyde originating in the PRC, falling within CN code 2932 12 00. Furfuraldehyde is also known as 2-furaldehyde or furfural.
- (11) Furfuraldehyde is a light yellow liquid with a characteristic pungent odour, which is obtained by processing different types of agricultural waste. Furfuraldehyde has two main applications: as a selective solvent in petroleum refining for the production of lubricating oils and as raw material for processing into furfuryl alcohol, which is used to make synthetic resin for foundry moulds.

2. Like product

- (12) As in the previous investigations, this investigation has shown that the furfuraldehyde produced in the PRC and exported to the Community, the furfuraldehyde produced and sold on the domestic market of the analogue country Argentina and the furfuraldehyde manufactured and sold in the Community by the Community producers have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

- (13) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

1. Preliminary remarks

- (14) Of the 24 Chinese exporting producers named in the complaint, none cooperated with the investigation and no information was submitted by any of these companies. In view of this non-cooperation by the Chinese exporting producers, the findings on dumping set out below had to be based on facts available, in particular Eurostat data and information submitted in the review request. In this respect, it is noted that Eurostat shows only imports for inward processing during the IP.

2. Analogue country

- (15) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third country in accordance with Article 2(7)(a) of the basic Regulation.
- (16) As in the original investigation, in the notice of initiation Argentina was proposed as analogue country for the purposes of establishing normal value. Following the publication of the notice of initiation, no comments concerning the proposed analogue country were received.
- (17) One producer of furfuraldehyde in Argentina cooperated with the investigation by replying to the questionnaire and accepting an on-spot verification of its reply. The investigation showed that Argentina has a competitive market for furfuraldehyde with around 72 % of the market supplied by local production and the rest by imports from third countries. The production volume in Argentina constitutes more than 60 % of the volume of Chinese exports of the product concerned to the Community for inward processing. The Argentinean market was therefore deemed sufficiently representative for the determination of normal value for the PRC.
- (18) It is therefore concluded, as in the original investigation, that Argentina constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3. Normal value

- (19) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the cooperating producer in the analogue country, i.e. on the basis of the price paid or payable on the domestic market of Argentina to unrelated customers, since these sales were found to be made in the ordinary course of trade.

- (20) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in Argentina.

4. Export price

- (21) As none of the Chinese exporters to the Community cooperated with the investigation, export prices were established on the basis of the facts available. The most appropriate basis was found to be Eurostat data in relation to Community imports of the product concerned. Though these imports were made under inward processing arrangements (Chinese furfuraldehyde was further processed into furfuryl alcohol for export), there was no reason to believe that they were not a reasonable basis for establishing export prices. Furthermore, the verification visit at the cooperating importer confirmed that the Eurostat data were in line with the verified data. The export price was thus established on the basis of the Eurostat data on Chinese imports for inward processing.

5. Comparison

- (22) For the purposes of ensuring a fair comparison between the normal value and the export price, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport and insurance, which affected prices and price comparability.

6. Dumping margin

- (23) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of significant dumping. In fact, the dumping margin found for the IP is higher than the dumping margin of 62,6 % established in the original investigation and in the previous review.

7. Development of exports should measures be repealed

(a) Exports

- (24) The investigation has shown that the quantities exported from the PRC to the Community for inward processing have increased significantly from 2000 to the IP (see recital (33) below). If the measures were repealed, it can be expected that exports from the PRC would increase significantly also outside inward processing arrangements, given the significant price difference between the Chinese and the EC producer's furfuraldehyde and the unused capacity explained in recital (26) below.

(b) Unused capacity in the PRC

- (25) Since little public information is available about the Chinese industry of furfuraldehyde, the following

conclusions rely mainly on the information contained in the review request.

- (26) According to the request for the expiry review, the total Chinese production of furfuraldehyde is around 180 000 tonnes per year, which is more than four times higher than the total Community consumption of furfuraldehyde. The Chinese capacity utilisation rate is said to be around 70 % which means that there is idle capacity of around 50-60 000 tonnes per year in the PRC, i.e. more than total consumption in the Community. According to the Community producers, the Chinese production is constantly changing in accordance with need. In this regard, some plants are closed for temporary periods and then reopened when needed. More than 80 production plants of furfuraldehyde are said to operate currently, mainly in the North-East part of the PRC.

- (27) Consequently, the large production capacity available in the PRC and the flexibility with regard to reopening plants demonstrate that producers are able to quickly increase production and direct it to any export market, including, if the measures were to be repealed, to the Community market.

(c) Exports for inward processing

- (28) It is noted that all the exports from the PRC of the product concerned to the Community during the IP were made for inward processing. The Chinese furfuraldehyde was further processed into furfuryl alcohol which was then exported. It is reasonable to assume that a repeal of the measures would result in a resumption of exports from the PRC to the Community outside the inward processing arrangements. Such additional exports would in all likelihood also be significantly dumped. Indeed, the current export prices made under inward processing arrangements are not affected by anti-dumping duties as such exports obviously do not bear any duty. The Community producers and the Chinese exporters competed for these sales on the basis as if there was no duty. Thus, it can be reasonably assumed that such prices are also indicative as to future price levels should measures be repealed. Moreover, it is also noted that Chinese export prices under inward processing were undercutting the Community producers' prices by 44 % in the IP and that even if they did not undercut Community prices, they would still be dumped.

8. Conclusion on the likelihood of a continuation of dumping

- (29) Since the PRC has significant unused production capacity and is currently only exporting to the Community for inward processing, it could reasonably be expected that, should the measures be repealed, additional volumes would be directed towards the Community market in significant quantities.

- (30) The investigation has shown that exports from the PRC are still made at dumped prices and that the dumping margin during the IP was found to be even higher than the dumping margin established in the previous review. Given the circumstances of the case, it is reasonable to expect that dumping is likely to continue in the future.

D. DEFINITION OF THE COMMUNITY INDUSTRY

- (31) There are two Community producers of the product concerned. In addition to the applicant, the other Community producer, Lenzing AG ('the other Community producer'), supported the request for a review. During the IP, the two producers represented 100 % of the Community production of furfuraldehyde. Both companies replied to the questionnaires and fully cooperated in the investigation. On this basis, the two Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. For reasons of confidentiality data concerning the performance of the Community industry are given only in indexed form.

E. SITUATION OF THE COMMUNITY MARKET

1. Community consumption

Table 1

Community consumption

	2000	2001	2002	IP
Tonnes	38 699	45 005	38 007	41 513
Index	100	116	98	107
Y/Y trend		16	-16	9

- (32) Community consumption was based on the combined volume of sales made by the Community industry in the Community and imports from the PRC made under inward processing and imports from other third countries. Community consumption of furfuraldehyde increased significantly between 2000 and 2001. In 2002, Community consumption of furfuraldehyde fell back to approximately the same level as in 2000. Between 2000 and the IP, Community consumption of furfuraldehyde increased by 9%. The development of consumption is linked to the fact that furfuraldehyde is also used to produce furfuryl alcohol. The production and sales of furfuryl alcohol increased in 2001, but decreased significantly in 2002 and, as a result, consumption of furfuraldehyde dropped accordingly. In the IP, sales and production of furfuryl alcohol recovered as well as consumption of furfuraldehyde.

2. Imports from the PRC

(a) Volume, market share and prices

- (33) Based on information from Eurostat, imports from the PRC were made since 2001 only under inward processing arrangements. This practice had already started in 2000, when around 75 % of Chinese imports were under inward processing. The volumes imported from the PRC increased from 3 198 tonnes to 5 167 tonnes during the period considered, which is an increase of 61,6% between 2000 and the IP. It is noted that in 2002 the sales of furfuryl alcohol dropped significantly. However, this was followed by an increase in the IP. The market share of these Chinese imports increased over the period considered from 8,2% to 12,4%. While the fluctuations in these Chinese imports of furfuraldehyde may to a certain extent be due to fluctuations in the production of furfuryl alcohol, this cannot explain, however, the huge increase of import volumes, in particular during the IP, and of market share. The average price of the Chinese imports declined from EUR 648,68 per ton in 2000 to EUR 508,65 per ton in the IP, which is a decline of 21,6% during the period considered. A trend of increased undercutting can also clearly be seen when comparing the Chinese and the Community producers' unit prices of furfuraldehyde. In the beginning of the period considered, in 2000, the Chinese prices were 4,4% lower than those of Community producers. In the IP, they were 44,1% lower.

Table 2

Imports from the PRC under inward processing

	2000	2001	2002	IP
Volume, tonnes	3 198	4 143	2 450	5 167
Indexed	100	130	77	162
Market share	8,3 %	9,2 %	6,4 %	12,4 %
Price, EUR/tonne	648,68	678,48	540,06	508,65
Indexed	100	104,6	83,3	78,4

3. Economic situation of the Community industry

(a) Production

Table 3

Community production

	2000	2001	2002	IP
Index	100	94	87	85
Y/Y trend		-5,8	-7,3	-2,2

- (34) The Community industry's production decreased every year during the period considered, being 15 % lower in the IP than in 2000. One of the Community producers ceased the production of furfuraldehyde in one of its production plants in 2000.

(b) *Production capacity and capacity utilisation*

Table 4

Community capacity

	2000	2001	2002	IP
Index	100	104	100	99
Y/Y trend		3,9	-3,4	-1,2

- (35) Production capacity decreased slightly during the period considered, after having increased by 3,9 % in 2001 compared to 2000. The cessation of furfuraldehyde production in one production plant in 2000 is not reflected in the above capacity figures, because the company still considers this plant as part of their production capacity, i.e. the production can be restarted within a short period if necessary.

Table 5

Capacity utilisation

	2000	2001	2002	IP
Index	100	91	87	86

- (36) The above table shows that capacity utilisation decreased every year during the period considered, being 14 % lower in the IP than in 2000.

(c) *Sales in the Community*

Table 6

Sales volume

	2000	2001	2002	IP
Index	100	96	87	87
Y/Y trend		-4,4	-9,4	0,3

- (37) The Community industry's sales to unrelated customers in the Community decreased by 13 % between 2000 and the IP. The fall was particularly significant between 2000 and 2002 as the industry increased the prices in order to compensate for drastically increased raw material costs.

During the IP this trend could be stopped as the Community industry reduced prices in order to avoid further losses of sales volumes.

(d) *Prices*

Table 7

Community industry sales prices

	2000	2001	2002	IP
Index	100	127	135	134
Y/Y trend		27,2	6,0	-0,6

- (38) The average sales prices of furfuraldehyde increased by 35 % from the year 2000 to 2002, when the Community industry tried to compensate for drastically increased raw material costs by increasing their sales prices.

(e) *Market share*

Table 8

Community industry's market share

	2000	2001	2002	IP
Index	100	82	88	81

- (39) The market share held by the Community industry decreased by 19 % between 2000 and the IP. The biggest decline in the Community producer's market share was between 2000 and 2001. The Community consumption of furfuraldehyde decreased significantly in 2002, mainly due to declining production of furfuryl alcohol. The Community industry's sales of furfuraldehyde decreased as well in 2002. However, the decline in the sales of the Community industry was relatively lower than the drop in the consumption of furfuraldehyde in 2002. Therefore, the market share of the Community industry increased in 2002. In the IP, consumption of furfuraldehyde as well as the Chinese imports increased again, while the sales of the Community industry remained roughly at the same level as the previous year. As a result, the Community industry's market share decreased.

(f) *Stocks*

Table 9

Stocks

	2000	2001	2002	IP
Index	100	103	128	122
Y/Y trend		3,5	23,3	-4,1

- (40) The above table shows that the stocks of the Community industry increased by 22 % during the period considered. The increase of stocks was particularly significant between 2001 and 2002, when stocks increased by 24 %. Stocks represented 9,4 % of the Community industry's EU sales volume in 2000, but increased to 13,3 % during the IP.

(g) *Profitability*

Table 10

Profitability

	2000	2001	2002	IP
Index	100	235	133	146
Y/Y trend		135,1	-43,5	9,3

- (41) The total profitability of the Community industry has remained at a relatively good level during the period considered. However, the main reason for this is the fact that the other Community producer supporting the complaint shows exceptionally high profitability in all years under consideration, whereas the applicant's profitability has declined drastically (8,2 percentage points) during the same period. The other Community producer obtains furfuraldehyde as a by-product when producing pulp viscose, while the applicant uses almond shells as a principal raw material in the furfuraldehyde production. The price of almond shells increased drastically between 2000 and 2002 (by 51 %), worsening significantly the profit margin of the applicant, while the raw material cost of the other Community producer increased only modestly. The increase in the applicant's selling, general and administrative expenses in absolute terms was modest, i.e. 5,5 % from year 2000 to the IP. Thus, the decline in profitability was mainly caused by the increased raw material costs. The attempt to compensate the higher raw material costs by increased sales prices of furfuraldehyde resulted in reduced sales.

(h) *Cash flow*

Table 11

Cash flow

	2000	2001	2002	IP
Index	100	141	104	107
Y/Y trend		41,1	-26,0	2,5

- (42) Cash flow followed a similar trend as profitability, increasing significantly between 2000 and 2001, but worsening in the following years. In line with the profit-

ability, the other Community producer supporting the complaint showed exceptionally good cash flow during the period considered, while the applicant showed a clear decline in its cash flow (-42,7 %) during the same period.

(i) *Investments, return on investments and ability to raise capital*

Table 12

Investments

	2000	2001	2002	IP
Index	100	93	63	98
Y/Y trend		-6,8	-32,8	55,9

- (43) The investments considerably declined between 2000 and 2002, increasing again during the IP, when the other Community producer made significant investments in the viscose pulp production line (furfuraldehyde is a by-product in the pulp production process). The investments of the applicant fell by 80 % during the period considered. The investigation showed that the operating return on investments deteriorated in line with the development of profitability during the period considered.

Table 13

Return on investments and ability to raise capital

	2000	2001	2002	IP
Index	100	207	38	34
Y/Y trend		107,4	-81,7	-11,0

- (44) The return on investment figures in the table above shows only the development of the applicant. This table shows a clear deterioration in its return on investment during the period considered. As for the other Community producer supporting the complaint, it belongs to a group of companies which focus on products other than furfuraldehyde. In fact, furfuraldehyde is a small by-product of one of its main production processes. Therefore, the company is not able to calculate any meaningful return on investment for furfuraldehyde. As a result of the deterioration in profitability and cash flow, the applicant's ability to raise capital has worsened significantly during the period under consideration. This worsening can also be clearly seen in the applicant's investments, which fell by 80 % during the period considered.

(j) *Employment, productivity and wages*

Table 14

Employment

	2000	2001	2002	IP
Index	100	75	84	82
Y/Y trend		-25,0	12,1	-2,7

(45) The above table shows that employment decreased by 18 % during the period considered. The decrease in employment in 2000/2001 reflects the cessation of production of furfuraldehyde in one production plant.

(46) The productivity increased by 4 % over the period considered, as shown in the table below:

Table 15

Productivity

	2000	2001	2002	IP
Index	100	126	104	104
Y/Y trend		25,6	-17,4	0,5

(47) During the period considered, the average wages of the employees of the Community industry increased by 6 %, i.e. less than the average inflation rate in the Community:

Table 16

Wages

	2000	2001	2002	IP
Index	100	99	97	106
Y/Y trend		-0,8	-1,9	8,7

(k) *Magnitude of the dumping margin and effects of past dumping or subsidization*

(48) Since dumping continued at levels similar to, if not higher than, that established in the previous investigations (see recital (1)), the impact on the situation of the Community industry of the magnitude of the actual margin of dumping could not be considered different from that established during these investigations.

(l) *Growth*

(49) While Community consumption grew by 7 % during the period considered, the Community industry's production, sales volume and market share decreased over the same period. At the same time, the volume and market share of imports from the PRC increased considerably. This meant that the Community industry did not fully benefit from the growth of the market over the period considered.

4. Effect of other factors(a) *Prices of raw materials*

(50) The considerable rise in the price of the raw material used by the applicant in 2001 and 2002 had naturally a negative impact on its profitability in these years. However, the situation changed in the IP when the raw material prices dropped. Therefore, although fluctuations of raw material prices may have contributed to the precarious situation of the Community industry during the period considered, they were not so significant as to have caused any injury suffered during the IP.

(b) *Export activity of the Community*

(51) According to Eurostat data, the total exports from the Community during the period considered were insignificant, i.e. one to two tonnes per year. Therefore, the export activity of the Community industry could not have contributed to any injury suffered during the period considered.

(c) *Import volumes and prices from other third countries*

(52) According to Eurostat, import volumes of furfuraldehyde into the Community from countries other than the PRC, together with their average prices, developed as follows:

Table 17

Imports into the Community from other third countries (volume)

	2000	2001	2002	IP
Thailand	167	551	1 481	888
Slovenia	1 227	1 290	1 204	1 410
South Africa	4 183	7 852	2 601	3 706
Dominican Republic	24 017	25 509	25 157	25 213
Total	29 594	35 202	30 443	31 217

(tonnes)

Table 18

**Imports into the Community from other third countries
(average price)**

	(EUR/t)			
	2000	2001	2002	IP
Thailand	2 150	1 849	5 271	635
Slovenia	694	618	647	635
South Africa	1 158	1 558	543	832
Dominican Republic	543	1 235	541	452
Average	645	1 294	775	510

- (53) The import volumes of furfuraldehyde from all third countries other than the PRC have remained relatively stable during the period considered, except in 2001, when imports from South Africa and Dominican Republic, in particular, increased due to increased consumption of furfuraldehyde in the production of furfuryl alcohol. It should be noted that, as in the original investigation, the imports from the Dominican Republic are entirely shipments from a mother company to its European subsidiary to produce furfuryl alcohol. Thus, the prices used in these transactions are transfer prices between related companies and may not reflect real market prices. It is noted that furfuraldehyde from the Dominican Republic is not available on the free Community market. Therefore, no indications had been found that these imports would have contributed to the precarious situation of the Community industry. Imports from South Africa, the second biggest exporting country, decreased during the period considered by 11 %. During the IP the average import prices from all third countries, with the exception of the Dominican Republic, were significantly higher than import prices under inward processing from the PRC. It is therefore concluded that although other imports could have contributed to the precarious situation of the Community industry, their volumes and prices are such that their effect cannot be considered to be substantial.

5. Conclusion on the situation of the Community industry

- (54) Following the imposition of the anti-dumping measures, the situation of the Community industry has stabilised, but remains fragile. Production, production capacity and sales have decreased, as well as sales prices and the market share of the Community industry. Investments, return on investment and employment have also decreased, whereas the stocks have increased, in particular between 2001 and 2002, in line with decreased sales and market share. Profitability and cash flow have improved on average during the period considered, but they have declined since 2001. The injury indicators therefore do not allow to conclude that there is a clear injury picture. Moreover, it needs

to be stressed that the situation of the two Community producers differs considerably, with the applicant in a much more precarious position than the other supporting Community producer. For the former producer, some injury may have been caused partially by prices of raw materials. Under these circumstances, and in particular also the fact that imports from the PRC were made only under inward processing, a situation of continuation of injury caused by dumped imports could not be established. Therefore it was examined whether there would be recurrence of injury if the measures lapsed.

F. LIKELIHOOD OF RECURRENCE OF INJURY

- (55) It is recalled that in recitals (29) and (30) it was concluded that the expiry of the measures would be likely to lead to a significant increase of dumped exports from the PRC to the Community.
- (56) Indeed, the volume of dumped imports under inward processing considerably increased during the period considered. As pointed out above, it is likely that without anti-dumping measures in place further increased volumes would be shipped to the Community market at very low prices significantly undercutting the Community industry prices. Currently, the difference of prices of the imported Chinese product and the one produced by the Community industry is more than 40 %.
- (57) As outlined in recital (26), it is estimated that the idle capacity in the PRC is sufficient to supply the whole Community demand for furfuraldehyde. If the current measures were allowed to lapse, there is a real threat that a significant proportion of unused production capacity in the PRC would be used to flood the Community market with furfuraldehyde. It appears that there are no other markets available to absorb the Chinese capacity.
- (58) When examining the impact of such additional low-priced imports on the situation of the Community industry it is noted that the sudden arrival of a large quantity of dumped imports would immediately cause a severe price depression on the Community market as the Community industry would be likely to first try to maintain its market share and its production. This would in turn erode the Community industry's profitability, and risk losses. It is clear that in this scenario the Community producers would suffer material injury caused by the dumped imports or even risk not to survive this situation.
- (59) On the basis of the above, it is concluded that a repeal of measures would in all probability lead to a recurrence of injury resulting from the dumped imports from the PRC.

G. COMMUNITY INTEREST

1. Preliminary remark

(60) In accordance with Article 21 of the basic Regulation it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product under consideration.

(61) It should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.

(62) On this basis it was examined whether, despite the conclusion that there exists a likelihood of continuation of dumping and recurrence of injury, there are compelling reasons which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interest of the Community industry

(63) The Community industry has proven to be a viable industry, able to adapt to changing conditions on the market. This was confirmed in particular by the positive development and stabilisation of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in the PRC. The Community industry should be able to continue recovering through its sales prices, any increase in the prices of raw materials. However, it can be concluded that, without the continuation of anti dumping measures, its situation will in all likelihood severely deteriorate, with a distinct possibility of further plant closures.

3. Interest of unrelated importers/traders

(64) The Commission sent out questionnaires to seven unrelated importers/traders. Only one importer/trader cooperated with the investigation. In its questionnaire reply the importer/trader explained that the removal of measures would increase its choice of suppliers, because then it could also sell Chinese furfuraldehyde in the Community market. Anti-dumping measures are not intended to prevent imports from the PRC but to ensure that they are not made at injuriously dumped prices. In addition, there are many other sources of supply available in the market. Furthermore, it is noted

that the continuation of measures would not have a serious impact on the business of this importer/trader in question and that the latter has been profitable every year during the period considered.

(65) Considering the low rate of cooperation by the Community importers and traders, and the comments received from the cooperating importer/trader, it is concluded that the measures in force do not unduly affect importers and/or traders and that therefore the continuation of measures would have the same result.

4. Interest of users

(66) The Commission sent out questionnaires to 16 industrial users of furfuraldehyde. Only one user cooperated with the investigation. In its questionnaire reply the company explained that most of the furfuraldehyde the company uses as a raw material for the production of furfuryl alcohol is supplied by its parent company situated in the Dominican Republic. Only a shortfall of this supply would oblige the company to look for other suppliers. According to the company, the existing Community producers would be its first choice to cover any shortage of supply.

(67) In light of the low response rate to the questionnaires sent and the comments of the sole cooperating user, it is concluded that the continuation of the measures would not have a significant effect on users.

5. Competition aspects

(68) It is noted that, in addition to the two Community producers, imports originating in Thailand, Slovenia (then not member of the European Community), South Africa and Dominican Republic, are competing in the Community market. Should the existing measures be lifted, this would be unlikely to improve the competitive situation on the Community market. To the contrary, it would risk eliminating the Community producers, at least in part, from the market because they would have great difficulty in operating at the price level currently existing for the Chinese furfuraldehyde. Other suppliers would be likely to find it equally difficult to compete with the Chinese product. Consequently, there is no indication that the continuation of the measures would have a negative effect on the competitive situation in the Community market.

6. Conclusion on Community interest

(69) Given the above, it is concluded that there are no compelling reasons, on the grounds of Community interest, against the prolongation of the anti-dumping measures.

H. FINAL PROVISION

- (70) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing anti-dumping duty in respect of imports of furfuraldehyde originating in the PRC. No comments were received within the period granted to make representations following this disclosure which could alter the conclusions.
- (71) It follows from the above that the anti-dumping measures currently in force with regard to imports of furfuraldehyde originating in the PRC, i.e. a specific duty of EUR 352 per tonne, should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 2-furaldehyde (also known as furfuraldehyde or

furfural) falling within CN code 2932 12 00 originating in the People's Republic of China.

2. The amount of duty applicable is EUR 352 per tonne.

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93⁽¹⁾, the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

This Regulation shall enter into force on the day following 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 Luxembourg, 25 April 2005.

For the Council

The President

J. ASSELBORN

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

COMMISSION REGULATION (EC) No 640/2005**of 27 April 2005****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 28 April 2005.

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

Done at Brussels, 27 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽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 Commission Regulation of 27 April 2005 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	141,5
	204	98,7
	212	129,8
	624	168,0
	999	134,5
0707 00 05	052	146,6
	204	58,8
	999	102,7
0709 90 70	052	94,6
	204	44,2
	999	69,4
0805 10 20	052	49,7
	204	51,3
	212	56,1
	220	48,3
	388	62,0
	400	51,2
	624	71,9
	999	55,8
0805 50 10	052	43,5
	220	65,0
	388	67,8
	400	59,9
	528	61,5
	624	65,4
	999	60,5
0808 10 80	388	88,0
	400	91,6
	404	94,3
	508	69,6
	512	69,9
	524	70,0
	528	68,3
	720	69,8
	804	106,8
0808 20 50	999	80,9
	388	91,0
	512	73,9
	528	62,2
	720	72,2
	999	74,8

⁽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 641/2005**of 27 April 2005****opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) Pursuant to the Community's international obligations in the context of the Uruguay Round of multilateral trade negotiations ⁽²⁾, it is necessary to create the conditions to import a certain quantity of maize into Spain.
- (2) Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal ⁽³⁾ lays down the special additional detailed rules necessary for implementing the invitation to tender.
- (3) In view of the current market demand in Spain, an invitation to tender for the reduction in the duty on maize is appropriate.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

Article 1

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10(2) of Regulation (EC) No 1784/2003 on maize to be imported into Spain.

2. Regulation (EC) No 1839/95 shall apply save as otherwise provided for in this Regulation.

Article 2

The invitation to tender shall be open until 23 June 2005. During that period, weekly invitations shall be issued with quantities and closing dates as shown in the notice of invitation to tender.

Article 3

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued within the meaning of Article 10(4) of Regulation (EC) No 1839/95.

Article 4

This Regulation shall enter into force on the day 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, 27 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 336, 23.12.1994, p. 22.

⁽³⁾ OJ L 177, 28.7.1995, p. 4. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

COMMISSION REGULATION (EC) No 642/2005**of 27 April 2005****imposing testing and information requirements on the importers or manufacturers of certain priority substances in accordance with Council Regulation (EEC) No 793/93 on the evaluation and control of the risks of existing substances****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of risks of existing substances⁽¹⁾, and in particular Article 10(2) thereof,

Whereas:

- (1) The rapporteurs designated by the Member States in accordance with Article 10(1) of Regulation (EEC) No 793/93 have evaluated the information submitted by the manufacturers and importers in respect of certain priority substances. After consultation of those manufacturers and importers, the rapporteurs have determined that it is necessary for the purposes of the risk evaluation to require those manufacturers and importers to submit further information and carry out further testing.
- (2) The information needed to evaluate the substances in question is not available from former manufacturers or importers. The manufacturers and importers have checked that tests on animals cannot be replaced or limited by using other methods.
- (3) It is therefore appropriate to request manufacturers and importers of priority substances to submit further information and carry out further testing of those substances.

The protocols submitted by the rapporteurs to the Commission should be used for performing those tests.

- (4) The provisions of this Regulation are in accordance with the opinion of the Committee established pursuant to Article 15 of Regulation (EEC) No 793/93,

HAS ADOPTED THIS REGULATION:

Article 1

The manufacturers and importers of the substances listed in the Annex, who have submitted information in accordance with the requirements of Articles 3, 4, 7 and 9 of Regulation (EEC) No 793/93, shall provide the information and perform the tests indicated in the Annex and shall deliver the results to the relevant rapporteurs.

The tests shall be performed according to the protocols specified by the rapporteurs.

The results shall be delivered within the time limits laid down in the Annex.

Article 2

This Regulation shall enter into force on the twentieth 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, 27 April 2005.

For the Commission

Stavros DIMAS

Member of the Commission

⁽¹⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX

No	Einecs No	CAS No	Substance name	Rapporteur	Testing/information requirements	Time limit from the date of entry into force of this Regulation
1	201-245-8	80-05-7	4,4'-Isopropylidenediphenol ⁽¹⁾	UK	Long-term fish endocrine effects study with investigation of effects on sperm development	18 months
					Long-term toxicity study with an appropriate freshwater snail species	18 months
					2 generation study with 4,4'-isopropylidenediphenol in mice according to OECD 416 (with some specific modifications)	39 months
2	203-545-4	108-05-4	Vinyl acetate ⁽²⁾	D	Further data on pattern of polymerisation facilities and information on exhaust air purification techniques for representative facilities	6 months
3	202-627-7	98-01-1	2-Furaldehyde ⁽²⁾	NL	Long-term toxicity test with fish	6 months
					Long-term toxicity test with daphnia	6 months
4	201-622-7	85-68-7	Benzyl butyl phthalate ⁽¹⁾	N	Data about releases into the Wupper from all sources	12 months
					Plant fumigation test	12 months
					Long-term fish study on reproductive and endocrine effects	12 months
					Monitoring study on local air concentrations near flooring production sites and sealant formulation plants	12 months
5	201-329-4	81-15-2	5-Tert-butyl-2,4,6-trinitro-m-xylene ⁽¹⁾	NL	Biodegradation simulation test for determination of half-life in marine environment	18 months
6	200-663-8	67-66-3	Chloroform ⁽³⁾	F	Environmental exposure information for production and uses	6 months
					Two long-term toxicity tests on sediment organisms	6 months
					Toxicity tests on micro-organisms: — tests on activated sludge for production sites — nitrification inhibition test — test on the inhibition of methanogenic bacteria	6 months
7	202-974-4	101-77-9	4,4'-Methylenedianiline ⁽²⁾	D	Long-term toxicity test on sediment organisms (<i>Chironomus spec.</i>)	6 months
					Long-term toxicity test on sediment organisms (<i>Hyalella azteca</i>)	6 months

No	Einecs No	CAS No	Substance name	Rapporteur	Testing/information requirements	Time limit from the date of entry into force of this Regulation
8	231-152-8 215-146-2	7440-43-9 1306-19-0	Cadmium ⁽¹⁾ Cadmium oxide ⁽¹⁾	B	Ecotoxicity tests under very low water hardness conditions	12 months
					Validation of applicability of SEM/AVS concept (bioavailability in sediment compartment)	12 months
9	231-668-3	7681-52-9	Sodium hypochlorite ⁽²⁾	IT	Whole effluent assessment	9 months
10	247-148-4	25637-99-4	Hexabromocyclododecane ⁽³⁾	S	Biodegradation simulation test providing valid half-lives as well as identification of metabolites	8 months
11	201-236-9	79-94-7	Tetrabromobisphenol-A ⁽⁴⁾	UK	Clarification of use pattern	9 months
					Long term toxicity test with <i>Chironomus riparius</i> in sediment	9 months
					Long term toxicity test with <i>Chironomus riparius</i> in water	9 months
					Toxicity study with molluscs	9 months
					Investigation of degradation to bisphenol-A in sediment	9 months
12	287-476-5	85535-84-8	Alkanes, C ₁₀₋₁₃ , chloro (SCCPs) ⁽²⁾	UK	Environmental exposure information on emissions	3 months
					Biodegradation simulation test to determine half-life in the marine environment	18 months

⁽¹⁾ Substance listed in the Annex to Commission Regulation (EC) No 143/97 (OJ L 25, 28.1.1997, p. 13; priority list No 3).

⁽²⁾ Substance listed in the Annex to Commission Regulation (EC) No 1179/94 (OJ L 131, 26.5.1994, p. 3; priority list No 1).

⁽³⁾ Substance listed in the Annex to Commission Regulation (EC) No 2268/95 (OJ L 231, 28.9.1995, p. 18; priority list No 2).

⁽⁴⁾ Substance listed in the Annex to Commission Regulation (EC) No 2364/2000 (OJ L 273, 26.10.2000, p. 5; priority list No 4).

COMMISSION REGULATION (EC) No 643/2005**of 27 April 2005****repealing Commission Regulation (EC) No 2909/2000 on the accounting management of the European Communities' non-financial fixed assets**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and in particular Article 133(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2909/2000 of 29 December 2000 on the accounting management of the European Communities' non-financial fixed assets ⁽²⁾ lays down accounting rules and methods regarding non-financial fixed assets in accordance with the Financial Regulation of 21 December 1977.
- (2) The Financial Regulation of 21 December 1977 has been replaced by Regulation (EC, Euratom) No 1605/2002.
- (3) Article 133 of Title VII of the new Financial Regulation provides that the accounting rules and methods shall be adopted by the Commission's accounting officer.

(4) The third subparagraph of Article 181(2) provides that the provisions of Title VII of the Regulation shall be fully effective for the budgetary year 2005.

(5) Regulation (EC) No 2909/2000 should therefore be repealed with effect from 1 January 2005, with the stipulation that it shall continue to apply to accounting operations relating to budgetary years preceding 2005.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2909/2000 is hereby repealed.

It shall, however, continue to apply to accounting operations relating to budgetary years preceding 2005.

Article 2

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

It shall apply from 1 January 2005.

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

Done at Brussels, 27 April 2005.

For the Commission

Dalia GRYBAUSKAITĖ

Member of the Commission

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 336, 30.12.2000, p. 75.

COMMISSION REGULATION (EC) No 644/2005**of 27 April 2005****authorising a special identification system for bovine animals kept for cultural and historical purposes on approved premises as provided for in Regulation (EC) No 1760/2000 of the European Parliament and of the Council****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97⁽¹⁾, and in particular third subparagraph of Article 4(1) and the introductory phrase and point (a) of Article 10 thereof,

Whereas:

- (1) Regulation (EC) No 1760/2000 provides that each Member State is to establish an identification system for bovine animals which comprises several identification and registration elements. In particular, it provides that all animals on a holding born after 31 December 1997 or intended for intra-Community trade after 1 January 1998 and, for animals on a holding in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia or Slovakia, born by the date of accession or intended for intra-Community trade after that date, that such animals shall be identified by an ear tag approved by the competent authority, applied to each ear ('approved ear tags'). It also provides for that both ear tags shall bear the same unique identification code ('unique identification code'), which makes it possible to identify each animal individually together with the holding on which it was born.
- (2) Regulation (EC) No 1760/2000 also provides that bovine animals intended for cultural and sporting events (with the exception of fairs and exhibitions) may, instead of by an ear tag, be identified by an identification system offering equivalent guarantees and authorised by the Commission.
- (3) Commission Regulation (EC) No 2680/1999 of 17 December 1999 approving a system of identification for bulls intended for cultural and sporting events⁽²⁾, lays down provisions for such bulls registered to the herd books of specified organisations. However, that Regulation only applies to certain breeds of bulls and to organisations in certain Member States.

- (4) It is therefore appropriate to adopt a separate Regulation to establish a special identification system for animals recognised by the competent authority as being kept for cultural and historical purposes ('the animals') on premises approved for that purpose by that authority ('the premises').
- (5) The special identification system should, in accordance with Regulation (EC) No 1760/2000, provide for derogations only from the application and removal of the approved ear tags. This regulation is without prejudice to the application of the other provisions of Regulation (EC) No 1760/2000.
- (6) By way of derogation from Regulation (EC) No 1760/2000, it is appropriate to provide that the approved ear tags may be removed without the permission of the competent authority, but under its control, after animals are moved to the premises and that such ear tags not need to be applied to animals born on such premises. In both cases the animals must be marked by specific means of identification. The approved ear tags should be applied to animals when they are moved from the premises or should accompany the animals if they are moved directly to other premises.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the European Agricultural Guidance and Guarantee Fund Committee,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter**

This Regulation lays down rules for a special identification system for bovine animals recognised by the competent authority as being kept for cultural and historical purposes ('the animals') on premises approved for that purpose by the competent authority ('the premises').

*Article 2***Removal and application of the ear tags provided for in the first subparagraph of Article 4(1) of Regulation (EC) No 1760/2000**

1. The keeper of the animals shall, at all times, be in possession of the two ear tags approved by the competent authority in accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1760/2000 ('the approved ear tags').

⁽¹⁾ OJ L 204, 11.8.2000, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ OJ L 326, 18.12.1999, p. 16.

2. By way of derogation from Article 4(5) of Regulation (EC) No 1760/2000, where the animals are moved to the premises, the approved ear tags may be removed from the animals without permission of the competent authority but under its control, provided that, at the latest when the approved ear tags are removed, the animals are marked by the means of identification chosen by the competent authority as provided for in Article 3(1) of this Regulation.

3. By way of derogation from the first subparagraph of Article 4(2) of Regulation (EC) No 1760/2000, where the animals are born on the premises, it shall not be compulsory to apply the approved ear tags to them, provided that, at the latest when the animals are 20 days old, they are marked by the means of identification chosen by the competent authority as provided for in Article 3(1) of this Regulation.

4. Before the animals leave the premises the approved ear tags shall be applied to the animals.

However, if the animals are moved directly to other premises referred to in Article 1 in the same Member State, it is sufficient for the approved ear tags to accompany the animals during the movement.

Article 3

Means of identification

1. The animals shall be identified by the unique identification code provided for in the first subparagraph of Article 4(1) of Regulation (EC) No 1760/2000. That code shall be contained in

one of the following means to be decided by the competent authority:

- (a) two plastic or metallic ear tags;
- (b) one plastic or metallic ear tag together with brand marking;
- (c) a tattoo; or
- (d) an electronic identifier contained in a ruminal bolus.

2. By way of derogation from paragraph 1, the competent authority may decide that the animals may be identified by means of an electronic identifier in the form of an injectable transponder provided the animals identified in this manner do not enter the food chain.

Article 4

Specific registration code

The competent authority shall allocate a specific registration code to each of the premises.

That code shall be registered in the national computerised database for bovine animals provided for in Article 5 of Regulation (EC) No 1760/2000.

Article 5

This Regulation shall enter into force on the third 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, 27 April 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

COMMISSION REGULATION (EC) No 645/2005**of 27 April 2005****on granting of import licences for cane sugar for the purposes of certain tariff quotas and preferential agreements**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽¹⁾,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations⁽²⁾,

Having regard to Commission Regulation (EC) No 1159/2003 of 30 June 2003 laying down detailed rules of application for the 2003/2004, 2004/2005 and 2005/2006 marketing years for the import of cane sugar under certain tariff quotas and preferential agreements and amending Regulations (EC) No 1464/95 and (EC) No 779/96⁽³⁾, and in particular Article 5(3) thereof,

Whereas:

- (1) Article 9 of Regulation (EC) No 1159/2003 stipulates how the delivery obligations at zero duty of products of CN code 1701, expressed in white sugar equivalent, are to be determined for imports originating in signatory countries to the ACP Protocol and the Agreement with India.
- (2) Article 16 of Regulation (EC) No 1159/2003 stipulates how the zero duty tariff quotas for products of CN code 1701 11 10, expressed in white sugar equivalent, are to

be determined for imports originating in signatory countries to the ACP Protocol and the Agreement with India.

- (3) Article 22 of Regulation (EC) No 1159/2003 opens tariff quotas at a duty of EUR 98 per tonne for products of CN code 1701 11 10 for imports originating in Brazil, Cuba and other third countries.
- (4) In the week 18 to 22 April 2005 applications were presented to the competent authorities in line with Article 5(1) of Regulation (EC) No 1159/2003 for import licences for a total quantity exceeding the contingent stipulated in Article 16 of Regulation (EC) No 1159/2003 for special preferential sugar.
- (5) In these circumstances the Commission must set reduction coefficients to be used so that licences are issued for quantities scaled down in proportion to the total available and must indicate that the limit in question has been reached,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of import licence applications presented from 18 to 22 April 2005 in line with Article 5(1) of Regulation (EC) No 1159/2003 licences shall be issued for the quantities indicated in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 28 April 2005.

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

Done at Brussels, 27 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 146, 20.6.1996, p. 1.

⁽³⁾ OJ L 162, 1.7.2003, p. 25. Regulation as last amended by Commission Regulation (EC) No 1409/2004 (OJ L 256, 3.8.2004, p. 11).

ANNEX

ACP-INDIA preferential sugar**Title II of Regulation (EC) No 1159/2003****2004/05 marketing year**

Country	Week of 18.-22.4.2005: percentage of requested quantity to be granted	Limit
Barbados	100	reached
Belize	0	
Congo	100	
Fiji	100	
Guyana	100	
India	100	
Côte d'Ivoire	100	
Jamaica	100	
Kenya	100	
Madagascar	100	
Malawi	100	
Mauritius	100	
Mozambique	0	reached
Saint Kitts and Nevis	100	
Swaziland	100	
Tanzania	100	
Trinidad and Tobago	100	
Zambia	100	reached
Zimbabwe	0	

Special preferential sugar**Title III of Regulation (EC) No 1159/2003****2004/05 marketing year**

Country	Week of 18.-22.4.2005: percentage of requested quantity to be granted	Limit
India	100	
ACP	100	

CXL concessions sugar**Title IV of Regulation (EC) No 1159/2003****2004/05 marketing year**

Country	Week of 18.-22.4.2005: percentage of requested quantity to be granted	Limit
Brazil	0	reached
Cuba	0	reached
Other third countries	0	reached

COMMISSION REGULATION (EC) No 646/2005**of 27 April 2005****amending Regulation (EC) No 94/2005 on the issue of import licences for rice originating in the ACP States and the overseas countries and territories against applications submitted in the first five working days of January 2005 pursuant to Regulation (EC) No 638/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 638/2003 of 9 April 2003 laying down detailed rules for applying Council Regulation (EC) No 2286/2002 and to Council Decision 2001/822/EC as regards the arrangements applicable to imports of rice originating in the African, Caribbean and Pacific States (ACP States) and the overseas countries and territories (OCT) ⁽¹⁾, and in particular Article 17(2) thereof,

Whereas:

Having checked the quantities booked by product category for the January 2005 tranche, a Member State was found to have made a booking error. As a result of this error, the quantities available for the May 2005 tranche in the Annex to

Commission Regulation (EC) No 94/2005 ⁽²⁾ were less than they should have been. The Regulation in question should therefore be amended to take account of the applications actually lodged for the January tranche and to make them available for the May tranche,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 94/2005 is replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on the day 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, 27 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 93, 10.4.2003, p. 3.

⁽²⁾ OJ L 19, 21.1.2005, p. 40.

ANNEX

Reduction percentages to be applied to quantities applied for under the tranche for January 2005 and quantities carried over to the subsequent tranche

Origin/product	Reduction percentage		Quantity carried over to the tranche for May 2005 (t)	
	Netherlands Antilles and Aruba	Least-developed OCTs	Netherlands Antilles and Aruba	Least-developed OCTs
OCT (Article 10(1)(a) and (b) of Regulation (EC) No 638/2003) — CN code 1006	0	0	3 327,727	3 334

Origin/product	Reduction percentage	Quantity carried over to the tranche for May 2005 (t)
ACP (Article 3(1) of Regulation (EC) No 638/2003) — CN codes 1006 10 21 to 1006 10 98, 1006 20 and 1006 30	71,4487	—
ACP (Article 5(1) of Regulation (EC) No 638/2003) — CN codes 1006 40 00	0	9 810

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 January 2005

establishing, in accordance with Article 104(8) of the Treaty establishing the European Community, whether effective action has been taken by the Hellenic Republic in response to recommendations of the Council in accordance with Article 104(7) of that Treaty

(2005/334/EC)

THE COUNCIL OF THE EUROPEAN UNION,

the Council and the Commission, to implement the Treaty and the Stability and Growth Pact in a strict and timely manner.

Having regard to the Treaty establishing the European Community, and in particular Article 104(8) thereof,

Having regard to the recommendation from the Commission,

- (4) By Decision 2004/917/EC⁽³⁾ of 5 July 2004, the Council decided, in accordance with Article 104(6) of the Treaty, that an excessive deficit exists in Greece.

Whereas:

- (1) In accordance with Article 104 of the Treaty, Member States are to avoid excessive government deficits.
- (2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation. The Stability and Growth Pact includes Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾, set out in Article 104 of the Treaty, in order to further the prompt correction of excessive general government deficits.
- (3) The Amsterdam Resolution of the European Council on the Stability and Growth Pact of 17 June 1997⁽²⁾ solemnly invites all parties, namely the Member States,

- (5) The Council, in accordance with Article 104(7) of the Treaty and Article 3(4) of Regulation (EC) No 1467/97, adopted a recommendation establishing the deadline of 5 November 2004 for the Greek Government to take measures to bring the existence of an excessive deficit to an end in 2005 at the latest. In that recommendation the Council recommended the Hellenic Republic to put an end to the present excessive deficit situation as rapidly as possible and by 2005 at the latest and to take corrective measures mainly of a structural nature amounting to at least 1 % of GDP, cumulated over 2004 and 2005, and preferably equally distributed between the two years. In addition, the Council recommended the Hellenic Republic to ensure that the government gross debt ratio diminishes sufficiently and approaches the reference value at a satisfactory pace, while paying particular attention to factors other than net borrowing which contribute to the change in debt levels. Finally, as a matter of urgency, the Council also recommended the Hellenic Republic to correct the serious deficiencies revealed on budgetary statistics, through the improvement of the collection and processing of general government data.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ C 236, 2.8.1997, p. 1.

⁽³⁾ OJ L 389, 30.12.2004, p. 25.

- (6) In accordance with Article 4(2) of Regulation (EC) No 1467/97, the Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article 104(7) of the Treaty, is to base its decision on publicly announced decisions by the Government of the Member State concerned.
- (7) An assessment of the publicly announced decisions taken by the Hellenic Republic since the Recommendation in accordance with Article 104(7) of the Treaty was issued by the Council and up to the deadline set in that Recommendation leads to the following conclusions:
- in spite of restraining measures announced for 2004, fiscal policy has been clearly expansionary, in contrast to what was requested by the Council. This is partly due to the statistical revisions, carried out in cooperation with Eurostat to apply correctly the ESA 95 statistical system, and to expenditure overruns associated with the organisation of the Olympic Games, as well as to overruns in some other spending items and shortfalls in certain revenue items, which had not been correctly estimated in the 2004 budget,
 - the budgetary measures announced for 2005, while more than offsetting the slippage in 2004, may not ensure that the general government deficit is brought below 3 % of GDP in 2005,
 - not only is the general gross debt-to-GDP ratio not falling at a satisfactory pace, but the large stock-flow adjustment projected in 2004 also indicates that the Greek Government has taken no effective action on below-the-line operations contributing to further rises in the debt;
- the Hellenic Republic has improved the collection and processing of budgetary data, notably in relation to expenditure on military equipment, interest payments, and social security accounts. Further steps, undertaken in close cooperation with Eurostat, will ensure the prompt and correct supply of the general government data required by the existing legal framework.
- (8) Article 104(8) of the Treaty states that when the Council establishes that there has been no effective action in response to its recommendation in accordance with Article 104(7) of that Treaty, it may decide to make this recommendation public. However, in line with the Stability and Growth Pact Resolution of the European Council, the Hellenic Republic made this recommendation public in July 2004,
- HAS DECIDED AS FOLLOWS:
- Article 1*
- The Hellenic Republic has not taken effective action in response to the Council recommendation of 5 July 2004 within the period laid down in that recommendation.
- Article 2*
- This Decision is addressed to the Hellenic Republic.
- Done at Brussels, 18 January 2005.
- For the Council*
The President
J.-C. JUNCKER
-

COMMISSION

COMMISSION DECISION

of 25 April 2005

amending Decision 2001/657/EC extending the derogation to include fillets of salt cod and whole salt cod

(notified under document number C(2005) 1256)

(2005/335/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽¹⁾, and in particular Article 37(9)(c) of Annex III thereto,

Whereas:

- (1) By way of Decision 2001/657/EC ⁽²⁾, a derogation was granted to Saint Pierre and Miquelon from the definition of the concept of originating products to take account of its special situation with regard to frozen fillets of cod, redfish, plaice and halibut of CN code 0304 20.
- (2) On 20 January 2005, the French Government has requested an amendment to Decision 2001/657/EC in order to obtain an extension of the scope of the derogation granted in respect of frozen fillets of cod of CN code ex 0304 20, to fillets of salt cod of CN code ex 0305 30 and whole salt cod of CN code 0305 62.
- (3) The French Government has based its request on a readjustment in the sales strategy of a local industry towards European markets.
- (4) The requested derogation is justified under the terms of the provisions concerned in paragraph 1 of Article 37 of Annex III to the Council Decision 2001/822/EC as it is vital to preserving a seafood-processing industry and the associated jobs.

(5) The requested amendment would not alter the global annual quantity granted for cod, nor would it alter the duration of the derogation and would consequently not cause serious injury to an established Community industry.

(6) Therefore, the Decision 2001/657/EC should be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2001/657/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision shall apply from 1 May 2005.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 25 April 2005.

For the Commission

László KOVÁCS

Member of the Commission

⁽¹⁾ OJ L 314, 30.11.2001, p. 1.

⁽²⁾ OJ L 231, 29.8.2001, p. 13.

ANNEX

The Annex to Decision 2001/657/EC is replaced by the following:

‘ANNEX

SAINT PIERRE AND MIQUELON

Order No	CN code	Description of goods	Period	Quantities (tonnes)
09.1651	ex 0304 20 ex 0305 30 0305 62	Fillets of cod, frozen Fillets of cod, salted Whole cod, salted	1.9.2001 to 31.8.2002	1 100
			1.9.2002 to 31.8.2003	1 100
			1.9.2003 to 31.8.2004	1 100
			1.9.2004 to 31.8.2005	1 100
			1.9.2005 to 31.8.2006	1 100
09.1652	ex 0304 20	Fillets of redfish, frozen	1.9.2001 to 31.8.2002	60
			1.9.2002 to 31.8.2003	60
			1.9.2003 to 31.8.2004	60
			1.9.2004 to 31.8.2005	60
			1.9.2005 to 31.8.2006	60
09.1656	ex 0304 20	Fillets of plaice, frozen	1.9.2001 to 31.8.2002	11
			1.9.2002 to 31.8.2003	11
			1.9.2003 to 31.8.2004	11
			1.9.2004 to 31.8.2005	11
			1.9.2005 to 31.8.2006	11
09.1659	ex 0304 20	Fillets of halibut, frozen	1.9.2001 to 31.8.2002	119
			1.9.2002 to 31.8.2003	119
			1.9.2003 to 31.8.2004	119
			1.9.2004 to 31.8.2005	119
			1.9.2005 to 31.8.2006	119'

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 305/04/COL

of 1 December 2004

amending for the 48th time the procedural and substantive rules in the field of state aid by amending Chapter 16 'Aid for rescuing and restructuring firms in difficulty and proposal for appropriate measures'

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, and in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, and in particular to Article 24, Article 5(2)(b) and Article 1 in Part I of Protocol 3 and Articles 18 and 19 in Part II of Protocol 3 thereof ⁽³⁾,

Whereas under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

Whereas under Article 5(2)(b) of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary,

Recalling the Procedural and Substantive Rules in the Field of State Aid ⁽⁴⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority,

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Protocol 3 to the Surveillance and Court Agreement, as amended by the EFTA States on 10 December 2001. These amendments incorporated Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of [ex] Article 93 of the EC Treaty into Protocol 3 and entered into force on 28 August 2003.

⁽⁴⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1 and in the EEA Supplement No 32, last amended by the Authority's Decision No 195/04/COL of 14 July 2004, not yet published. Hereinafter referred to as the State Aid Guidelines.

Whereas, on 1 October 2004, the European Commission published a new Communication on Community Guidelines on State aid for rescuing and restructuring firms in difficulty and a proposal for appropriate measures pursuant to Article 88(1) of the EC Treaty⁽¹⁾,

Whereas this Communication is also of relevance for the European Economic Area,

Whereas a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

Whereas, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the European Commission,

Having consulted the European Commission,

Recalling that the EFTA Surveillance Authority has consulted the EFTA States in a multilateral meeting on 3 February 2004 on the subject,

HAS ADOPTED THIS DECISION:

1. Chapter 16 of the State Aid Guidelines is amended by replacing the present Chapter 16 with the text contained in the Annex to this Decision. Appropriate measures, contained in the Annex to this Decision, are proposed.
2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex. The EFTA States shall be required to signify their agreement to the appropriate measures within one month of receipt of this letter. The EFTA States shall comply with the new guidelines by 1 June 2005 at the latest.
3. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including the Annex.
4. The Decision, including the Annex, shall be published in the EEA Section of the *Official Journal of the European Union* and in the EEA Supplement thereto.
5. In case the EFTA States accept the proposal for appropriate measures, a summary notice shall be published in the EEA Section of the *Official Journal of the European Union* and in the EEA Supplement thereto.
6. The Decision is authentic in the English language.
7. The Decision is addressed to Norway, Iceland and Liechtenstein.

Done at Brussels, 1 December 2004.

For the EFTA Surveillance Authority

Hannes HAFSTEIN
President

Einar M. BULL
College Member

⁽¹⁾ Commission communication on Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

ANNEX

'16. AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY⁽¹⁾**16.1. Introduction**

- (1) The EFTA Surveillance Authority (hereinafter: the Authority) adopted its original Guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾ in 1994. A new version of the guidelines was adopted in 1999⁽³⁾.
- (2) The Authority wishes through this version of the Guidelines, the text of which builds on previous versions, to make certain changes and clarifications prompted by a number of factors⁽⁴⁾.
- (3) The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that a company which gets into difficulties is rescued by the State. Aid for rescue and restructuring operations has given rise to some of the most controversial State aid cases in the past and is among the most distortive types of State aid. Hence, the general principle of the prohibition of State aid as laid down in the EEA Agreement should remain the rule and derogation from that rule should be limited.
- (4) The "one time, last time" principle is further reinforced, to avoid the use of repeated rescue or restructuring aids to keep firms artificially alive.
- (5) The 1999 guidelines made a distinction between rescue aid and restructuring aid, whereby rescue aid was defined as temporary assistance to keep an ailing firm afloat for the time needed to work out a restructuring and/or a liquidation plan. In principle, restructuring measures financed through State aid could not be undertaken during this phase. However, such strict distinction between rescue and restructuring has given rise to difficulties. Firms in difficulty may already need to take certain urgent structural measures to halt or reduce a worsening of the financial situation in the rescue phase. These guidelines therefore widen the concept of "rescue aid" in order to allow the beneficiary to undertake urgent measures, even of a structural nature, such as an immediate closure of a branch or other form of abandonment of loss-making activities. Given the urgent character of such aids, the EFTA States should be given the opportunity to opt for a simplified procedure to obtain their approval.
- (6) As regards restructuring aids, building on the 1994 guidelines, the 1999 guidelines continued to require a substantial contribution from the beneficiary to the restructuring. Within this revision, it is appropriate to reaffirm with greater clarity the principle that this contribution must be real and free of aid. The beneficiary's contribution has a twofold purpose: on the one hand, it will demonstrate that the markets (owners, creditors) believe in the feasibility of the return to viability within a reasonable time period. On the other hand, it will ensure that restructuring aid is limited to the minimum required to restore viability while limiting distortion of competition. In this respect the Authority will also request compensatory measures to minimise the effect on competitors.
- (7) The provision of rescue or restructuring aid to firms in difficulty may only be regarded as legitimate subject to certain conditions. It may be justified, for instance, by social or regional policy considerations, by the need to take into account the beneficial role played by small and medium-sized enterprises (SMEs) in the economy or, exceptionally, by the desirability of maintaining a competitive market structure when the demise of firms could lead to a monopoly or to a tight oligopolistic situation. On the other hand, it would not be justified to keep a firm artificially alive in a sector with long-term structural overcapacity or when it can only survive as a result of repeated State interventions.

⁽¹⁾ This Chapter corresponds to the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 1).

⁽²⁾ Adopted 19 January 1994, published in OJ L 231 3.9.1994, p. 1 and in the EEA Supplement thereto No 32 on the same date.

⁽³⁾ Adopted 16 December 1999, published in OJ L 274, 26.10.2000 and in the EEA Supplement thereto No 48 on the same date.

⁽⁴⁾ In the corresponding Commission Communication, the Commission has stated that closer scrutiny of the distortion created by allowing aid for rescue and restructuring operations seems warranted in the light of conclusions of the meetings of the European Councils of Stockholm on 23 and 24 March 2001 and of Barcelona on 15 and 16 March 2002, which called on Member States to continue to reduce State aid as a percentage of Gross Domestic Product while redirecting it towards more horizontal objectives of common interest including cohesion objectives. This is also consistent with the conclusions of the European Council held in Lisbon on 23 and 24 March 2000 aimed at increasing the competitiveness of the European economy.

16.2. Definitions and scope of the Guidelines and links with other texts on State Aid

16.2.1. Meaning of "a firm in difficulty"

- (8) There is no EEA definition of what constitutes "a firm in difficulty". However, for the purposes of these Guidelines, the Authority regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.
- (9) In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines in the following circumstances:
- (a) in the case of a limited liability company⁽⁵⁾, where more than half of its registered capital has disappeared⁽⁶⁾ and more than one quarter of that capital has been lost over the preceding 12 months;
 - (b) in the case of a company where at least some members have unlimited liability for the debt of the company⁽⁷⁾, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;
 - (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.
- (10) Even when none of the circumstances set out in point 9 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm's continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources.
- (11) For the purposes of these Guidelines, a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets. A firm will in principle be considered as newly created for the first 3 years following the start of operations in the relevant field of activity. Only after that period will it become eligible for rescue or restructuring aid, provided that:
- (a) it qualifies as a firm in difficulty within the meaning of these Guidelines, and
 - (b) it does not form part of a larger business group⁽⁸⁾ except under the conditions laid down in point 12.
- (12) A firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Where a firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.

⁽⁵⁾ This refers in particular to the types of company mentioned in the first subparagraph of Article 1(1) of Council Directive 78/660/EEC (OJ L 222, 14.8.1978, p. 11) as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16) as incorporated into point 4 of Annex XXII to the EEA Agreement by the Decision of the EEA Joint Committee No 176/2003 (OJ L 88, 25.3.2004, p. 53 and EEA Supplement No 15, 25.3.2004, p. 14).

⁽⁶⁾ By analogy with the provisions of Second Council Directive 77/91/EEC (OJ L 26, 31.1.1977, p. 1) as last amended by the 2003 Act of Accession to the EU. Incorporated into point 2 of Annex XXII to the EEA Agreement by the EEA Enlargement Agreement.

⁽⁷⁾ This refers in particular to the types of company mentioned in the second subparagraph of Article 1(1) of Directive 78/660/EEC (OJ L 222, 14.8.1978, p. 11) as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16) as incorporated into point 4 of Annex XXII to the EEA Agreement by the Decision of the EEA Joint Committee No 176/2003 (OJ L 88, 25.3.2004, p. 53 and EEA Supplement No 15, 25.3.2004, p. 14).

⁽⁸⁾ To determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Commission Regulation (EC) No 68/2001 (OJ L 10, 13.1.2001, p. 20), as amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20) as incorporated into point 1(d) of Annex XV to the EEA Agreement by the Decision of the EEA Joint Committee No. 131/2004 (OJ L 64, 10.3.2005, p. 67) will be taken into account.

16.2.2. Definition of "rescue and restructuring aid"

- (13) Rescue aid and restructuring aid are covered by the same set of guidelines, because in both cases the public authorities are faced with a firm in difficulty and the rescue and restructuring are often two parts of a single operation, even if they involve different processes.
- (14) Rescue aid is by nature temporary and reversible assistance. Its primary objective is to make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan. The general principle is that rescue aid makes it possible temporarily to support a company confronted with an important deterioration of its financial situation reflected by an acute liquidity crisis or technical insolvency. Such temporary support should allow time to analyse the circumstances which gave rise to the difficulties and to develop an appropriate plan to remedy those difficulties. Moreover, the rescue aid must be limited to the minimum necessary. In other words, rescue aid offers a short respite, not exceeding six months, to a firm in difficulty. The aid must consist of reversible liquidity support in the form of loan guarantees or loans, with an interest rate at least comparable to those observed for loans to healthy firms and in particular the reference rates adopted by the Authority. Structural measures which do not require immediate action, such as, the irremediable and automatic participation of the State in the own funds of the firm, cannot be financed through rescue aid.
- (15) Once a restructuring or liquidation plan for which aid has been requested has been established and is being implemented, all further aid will be considered as restructuring aid. Measures which need to be implemented immediately to stem losses, including structural measures (for example, immediate withdrawal from a loss-making field of activity), can be undertaken with the rescue aid, subject to the conditions mentioned in Section 16.3.1 for individual aids and Section 16.4.3 for aid schemes. Except where use is made of the simplified procedure set out in Section 16.3.1.2, an EFTA State will need to demonstrate that such structural measures must be undertaken immediately. Rescue aid cannot normally be granted for financial restructuring.
- (16) Restructuring, on the other hand, will be based on a feasible, coherent and far-reaching plan to restore a firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of these Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

16.2.3. Scope

- (17) These Guidelines apply to firms in all sectors covered by the EEA Agreement and subject to the Authority's review in accordance with Article 62 of the EEA Agreement, without prejudice to any rules relating to firms in difficulty in the sector concerned⁽⁹⁾.

16.2.4. Compatibility with the common market

- (18) Article 61(2) and (3) of the EEA Agreement provide for the possibility that aid falling within the scope of Article 61(1) will be regarded as compatible with the common market. Apart from cases of aid envisaged by Article 61(2), in particular aid to make good the damage caused by natural disasters or exceptional occurrences, which are not covered here, the only basis on which aid for firms in difficulty can be deemed compatible is Article 61(3)(c). Under that provision the Authority has the power to authorise "aid to facilitate the development of certain economic activities (...) where such aid does not adversely affect trading conditions to an extent contrary to the common interest." In particular, this could be the case where the aid is necessary to correct disparities caused by market failures or to ensure economic and social cohesion.
- (19) Given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Authority considers that aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the EEA interest only if the conditions set out in these Guidelines are met. Where the firms which are to receive rescue or restructuring aid are located in assisted areas, the Authority will take the regional considerations referred to in Article 61(3)(a) and (c) of the EEA Agreement into account as described in points 54 to 55.
- (20) The Authority will pay particular attention to the need to prevent the use of these Guidelines to circumvent the principles laid down in existing frameworks and Guidelines.
- (21) The assessment of rescue or restructuring aid should not be affected by changes in the ownership of the business aided.

⁽⁹⁾ Specific rules of this nature exist for the aviation sector. See Chapter 30 of these Guidelines.

16.2.5. *Recipients of previous unlawful aid*

- (22) Where unlawful aid has previously been granted to the firm in difficulty, in respect of which the Authority has adopted a negative decision with a recovery order, and where no such recovery has taken place in compliance with Article 14 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter the Surveillance and Court Agreement)⁽¹⁰⁾, the assessment of any rescue and restructuring aid to be granted to the same undertaking shall take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid⁽¹¹⁾.

16.3. **General conditions for the authorisation of rescue and/or restructuring aid notified individually to the Authority**

- (23) This Chapter deals exclusively with aid measures that are notified individually to the Authority. Under certain conditions, the Authority may authorise rescue or restructuring aid schemes: those conditions are set out in Section 16.4.

16.3.1. *Rescue aid*

16.3.1.1. *Conditions*

- (24) In order to be approved by the Authority, rescue aid as defined in point 14 must:
- (a) consist of liquidity support in the form of loan guarantees or loans⁽¹²⁾; in both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Authority; any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm;
 - (b) be warranted on the grounds of serious social difficulties and have no undue adverse spillover effects on other Contracting Parties to the EEA Agreement;
 - (c) be accompanied, on notification, by an undertaking given by the EFTA State concerned to communicate to the Authority, not later than six months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; in the case of non-notified aid the EFTA State must communicate, no later than six months after the first implementation of a rescue aid measure, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated;
 - (d) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised; such an amount may include aid for urgent structural measures in accordance with point 15; the amount necessary should be based on the liquidity needs of the company stemming from losses; in determining that amount regard will be had to the outcome of the application of the formula set out in the Annex; any rescue aid exceeding the result of that calculation will need to be duly explained;
 - (e) respect the condition set out in Section 16.3.3 ("one time, last time").

⁽¹⁰⁾ The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (The Surveillance and Court Agreement) (OJ L 344, 31.12.1994, p. 1).

⁽¹¹⁾ Case C-355/95 P, *Textilwerke Deggendorf v Commission and others* [1997] ECR I-2549.

⁽¹²⁾ An exception may be made in the case of rescue aid in the banking sector, in order to enable the credit institution in question to continue temporarily carrying on its banking business in accordance with the prudential legislation in force (Directive 2000/12/EC of the European Parliament and of the Council (OJ L 126, 26.5.2000, p. 1) as incorporated into the point 14 of Annex IX to the EEA Agreement by the Decision of the EEA Joint Committee No 15/2001 (OJ L 117, 26.4.2001, p. 13 and EEA Supplement No 22, 26.4.2001, p. 8)). At any rate, aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point (a), should fulfil the general principles of rescue aid and cannot consist in structural financial measures related to the bank's own funds. Any aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point (a), will be taken into account when any compensatory measures under a restructuring plan are examined in accordance with points 37 to 41.

- (25) Where the EFTA State has submitted a restructuring plan within six months of the date of authorisation or, in the case of non-notified aid, of implementation of the measure, the deadline for reimbursing the loan or for putting an end to the guarantee is extended until the Authority reaches its decision on the plan, unless the Authority decides that such an extension is not justified.
- (26) Without prejudice to Article 23 in Part II of Protocol 3 to the Surveillance and Court Agreement and to the possibility of an action before the EFTA Court, in accordance with the second subparagraph of Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, the Authority will initiate proceedings under Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement if the EFTA State fails to communicate:
- (a) a credible and substantiated restructuring plan or a liquidation plan, or
 - (b) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated before the six-month deadline has expired.
- (27) In any event, the Authority may decide to initiate such proceedings, without prejudice to Article 23 in Part II of Protocol 3 to the Surveillance and Court Agreement and to the possibility of an action before the EFTA Court in accordance with the second subparagraph of Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement if it considers that the loan or the guarantee has been misused, or that, after the six-month deadline has expired, the failure to reimburse the aid is no longer justified.
- (28) The approval of rescue aid does not necessarily mean that aid under a restructuring plan will subsequently be approved; such aid will have to be assessed on its own merits.

16.3.1.2. Simplified procedure

- (29) The Authority will as far as possible endeavour to take a decision within a period of one month in respect of rescue aids fulfilling all conditions set out in Section 16.3.1.1 and the following cumulative requirements:
- (a) the firm concerned satisfies at least one of the three criteria set out in point 9;
 - (b) the rescue aid is limited to the amount resulting from the application of the formula set out in the Annex and does not exceed EUR 10 million.

16.3.2. Restructuring aid

16.3.2.1. Basic principle

- (30) Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and economic problems onto other producers who are managing without aid, and to other Contracting Parties to the EEA Agreement. The general principle should therefore be to allow the grant of restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the EEA interest. This will only be possible if strict criteria are met, and if it is certain that any distortions of competition will be offset by the benefits flowing from the firm's survival (for instance, where it is clear that the net effect of redundancies resulting from the firm's going out of business, combined with the effects on its suppliers, would exacerbate employment problems or, exceptionally, where the firm's disappearance would result in a monopoly or tight oligopolistic situation) and that, in principle, there are adequate compensatory measures in favour of competitors.

16.3.2.2. Conditions for the authorisation of aid

- (31) Subject to the special provisions for assisted areas and SMEs (see points 54, 55, 56 and 58), the Authority will approve aid only under the following conditions:

Eligibility of the firm

- (32) The firm must qualify as a firm in difficulty within the meaning of these Guidelines (see points 8 to 12).

Restoration of long-term viability

- (33) The grant of the aid must be conditional on implementation of the restructuring plan which must be endorsed by the Authority in all cases of individual aid, except in the case of SMEs, as laid down in Section 16.3.2.5.
- (34) The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the EFTA State concerned commits itself. The plan must be submitted in all relevant detail to the Authority and include, in particular, a market survey. The improvement in viability must derive mainly from internal measures contained in the restructuring plan; it may be based on external factors such as variations in prices and demand over which the company has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.
- (35) The restructuring plan must describe the circumstances that led to the company's difficulties, thereby providing a basis for assessing whether the proposed measures are appropriate. It must take account, *inter alia*, of the present state of and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses. It must enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.
- (36) The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits. Where the firm's difficulties stem from flaws in its corporate governance system, appropriate adaptations will have to be introduced.

Avoidance of undue distortions of competition

- (37) In order to ensure that the adverse effects on trading conditions are minimised as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken. Otherwise, the aid will be regarded as "contrary to the common interest" and therefore incompatible with the EEA Agreement. The Authority will have regard to the objective of restoring the long-term viability in determining the adequacy of the compensatory measures.
- (38) These measures may comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned. When assessing whether the compensatory measures are appropriate the Authority will take account of the market structure and the conditions of competition to ensure that any such measure does not lead to a deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation. If an EFTA State is able to prove that such a situation would arise, the compensatory measures should be construed in such a way to avoid this situation.
- (39) The measures must be in proportion to the distortive effects of the aid and, in particular, to the size⁽¹³⁾ and the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position after restructuring. The degree of reduction must be established on a case-by-case basis. The Authority will determine the extent of the measures necessary on the basis of the market survey attached to the restructuring plan and, where appropriate, on the basis of any other information at the disposal of the Authority including that supplied by interested parties. The reduction must be an integral part of the restructuring as laid down in the restructuring plan. This principle applies irrespective of whether the divestitures take place before or after the granting of the State aid, as long as they are part of the same restructuring. Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence for the purpose of the assessment of the compensatory measures. Such an assessment will take account of any rescue aid granted beforehand.
- (40) However, this condition will not normally apply to small enterprises, since it can be assumed that ad hoc aid to small enterprises does not normally distort competition to an extent contrary to the common interest, except where otherwise provided by rules on State aid in a particular sector or when the beneficiary is active in a market suffering from long-term overcapacity.

⁽¹³⁾ In this respect the Authority may also take into account whether the company in question is a medium-sized enterprise or a large one.

- (41) When the beneficiary is active in a market suffering from long-term structural overcapacity, as defined in the context of the Multisectoral framework on regional aid for large investments⁽¹⁴⁾, the reduction in the company's capacity or market presence may have to be as high as 100 %⁽¹⁵⁾.

Aid limited to the minimum: real contribution, free of aid

- (42) The amount and intensity of the aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Such assessment will take account of any rescue aid granted beforehand. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. Such a contribution is a sign that the markets believe in the feasibility of the return to viability. Such contribution must be real, i.e., actual, excluding all future expected profits such as cash flow, and must be as high as possible.
- (43) The Authority will normally consider the following contributions⁽¹⁶⁾ to the restructuring to be appropriate: at least 25 % in the case of small enterprises, at least 40 %, for medium-sized enterprises and at least 50 % for large firms. In exceptional circumstances and in cases of particular hardship, which must be demonstrated by the EFTA State, the Authority may accept a lower contribution.
- (44) To limit the distortive effect, the amount of the aid or the form in which it is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. The Authority will accordingly examine the level of the firm's liabilities after restructuring, including the situation after any postponement or reduction of its debts, particularly in the context of its continuation in business following collective insolvency proceedings brought against it under national law⁽¹⁷⁾. None of the aid should go to finance new investment that is not essential for restoring the firm's viability.

Specific conditions attached to the authorisation of aid

- (45) In addition to the compensatory measures described in points 37 to 41, the Authority may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the EFTA State concerned has not given a commitment that it will adopt such provisions. For example, it may require the EFTA State:
- (a) to take certain measures itself (for example, to open up certain markets directly or indirectly linked to the company's activities to other EEA operators with due respect to EEA law);
 - (b) to impose certain obligations on the recipient firm;
 - (c) to refrain from granting other types of aid to the recipient firm during the restructuring period.

Full implementation of restructuring plan and observance of conditions

- (46) The company must fully implement the restructuring plan and must discharge any other obligations laid down in the Authority decision authorising the aid. The Authority will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid, without prejudice to Article 23 in Part II of Protocol 3 to the Surveillance and Court Agreement and to the possibility of an action before the EFTA Court in accordance with the second subparagraph of Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement.
- (47) Where restructuring operations cover several years and involve substantial amounts of aid, the Authority may require payment of the restructuring aid to be split into instalments and may make payment of each instalment subject to:
- (a) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
 - (b) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

⁽¹⁴⁾ Chapter 26A on Multisectoral framework on regional aid for large investment project, adopted on 18 December 2002 (not yet published), last amended on 17 March 2004 (not yet published).

⁽¹⁵⁾ In such cases, the Authority will only allow aid to alleviate the social costs of the restructuring, in line with Section 16.3.2.6, and environmental aid to clean up polluted sites which might otherwise be abandoned.

⁽¹⁶⁾ See point 6. This minimum contribution must not contain any aid. This is not the case, for instance, where a loan carries an interest-rate subsidy or is backed by government guarantees containing elements of aid.

⁽¹⁷⁾ See point 9(c).

Monitoring and annual report

- (48) The Authority must be put in a position to make certain that the restructuring plan is being implemented properly, through regular detailed reports communicated by the EFTA State concerned.
- (49) In the case of aid to large firms, the first of these reports will normally have to be submitted to the Authority not later than six months after approval of the aid. Reports will subsequently have to be sent to the Authority at least once a year, at a fixed date, until the objectives of the restructuring plan can be deemed to have been achieved. They must contain all the information the Authority needs in order to be able to monitor the implementation of the restructuring programme, the timetable for payments to the company and its financial position and the observance of any conditions or obligations laid down in the decision approving the aid. They must in particular include all relevant information on any aid for any purpose which the company has received, either on an individual basis or under a general scheme, during the restructuring period (see points 67 to 70). Where the Authority needs prompt confirmation of certain key items of information, for example, on closures or capacity reductions, it may require more frequent reports.
- (50) In the case of aid to SMEs, transmission each year of a copy of the recipient firm's balance sheet and profit-and-loss account will normally be sufficient, except where stricter conditions have been laid down in the decision approving the aid.

16.3.2.3. Amendment of the restructuring plan

- (51) Where restructuring aid has been approved, the EFTA State concerned may, during the restructuring period, ask the Authority to agree to changes to the restructuring plan and the amount of the aid. The Authority may allow such changes where they meet the following conditions:
- (a) the revised plan must still show a return to viability within a reasonable time scale;
 - (b) if the amount of the aid is increased, any requisite compensatory measures must be more extensive than those initially imposed;
 - (c) if the proposed compensatory measures are smaller than those initially planned, the amount of the aid must be correspondingly reduced;
 - (d) the new timetable for implementation of the compensatory measures may be delayed with respect to the timetable initially adopted only for reasons outside the company's or the EFTA State's control: if that is not the case, the amount of the aid must be correspondingly reduced.
- (52) If the conditions imposed by the Authority or the commitments given by the EFTA State are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.
- (53) Should the EFTA State introduce changes to an approved restructuring plan without duly informing the Authority, the Authority will initiate proceedings as provided for by Article 16 of Part II of Protocol 3 to the Surveillance and Court Agreement (misuse of aid), without prejudice to Article 23 of Part II of Protocol 3 to the Surveillance and Court Agreement and to the possibility of an action before the EFTA Court in accordance with the second subparagraph of Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement.

16.3.2.4. Restructuring aid in assisted areas

- (54) The Authority will take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an ailing firm is located in an assisted area does not, however, justify a permissive approach to aid for restructuring: in the medium to long term it does not help a region to prop up companies artificially. Furthermore, in order to promote regional development it is in the regions own best interest to apply its resources to develop as soon as possible activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to firms in assisted areas. In this context, regard must also be had to possible harmful spillover effects which could take place in the area concerned and other assisted areas.

- (55) Thus, the criteria listed in points 31 to 53 are equally applicable to assisted areas, even when the needs of regional development are considered. In assisted areas, however, and unless otherwise stipulated in rules on State aid in a particular sector, the conditions for authorising aid may be less stringent as regards the implementation of compensatory measures and the size of the beneficiary's contribution. If needs of regional development justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas. In those cases, which need to be demonstrated by the EFTA State concerned, a distinction will be drawn between areas eligible for regional aid under Article 61(3)(a) of the EEA Agreement and those eligible under Article 61(3)(c) so as to take account of the greater severity of the regional problems in the former areas.

16.3.2.5. Aid for restructuring SMEs

- (56) Aid to small enterprises⁽¹⁸⁾ tends to affect trading conditions less than that granted to medium-sized and large firms. This also applies to aid to help restructuring, so that the conditions laid down in points 31 to 53 are applied less strictly in the following respects:
- (a) the grant of restructuring aid to small enterprises will not usually be linked to compensatory measures (see point 40), unless this is otherwise stipulated in rules on State aid in a particular sector.
 - (b) the requirements regarding the content of reports will be less stringent for SMEs (see points 48, 49 and 50).
- (57) However, the "one time, last time" principle (Section 16.3.3) applies in full to SMEs.
- (58) For SMEs the restructuring plan does not need to be endorsed by the Authority. However, the plan must meet the requirements laid down in points 34 to 36 and be approved by the EFTA State concerned and communicated to the Authority. The grant of aid must be conditional on full implementation of the restructuring plan. The obligation to verify that these conditions are fulfilled lies with the EFTA State.

16.3.2.6. Aid to cover the social costs of restructuring

- (59) Restructuring plans normally entail reductions in or abandonment of the affected activities. Such retrenchments are often necessary in the interests of rationalisation and efficiency, quite apart from any capacity reductions that may be required as a condition for granting aid. Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.
- (60) The EFTA States' labour legislation may comprise general social security schemes under which redundancy benefits and early retirement pensions are paid direct to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 61(1) of the EEA Agreement.
- (61) Besides direct redundancy benefit and early retirement provision for employees, general social support schemes frequently provide for the government to cover the cost of benefits which the company grants to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 61(1) for firms undertaking restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used⁽¹⁹⁾.
- (62) The obligations a company itself bears, under employment legislation or collective agreements with trade unions, to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. That being so, any contribution by the State to these costs must be counted as aid. This is true regardless of whether the payments are made direct to the firm or are administered through a government agency to the employees.
- (63) The Authority has no a priori objection to such aid when it is granted to firms in difficulty, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship.

⁽¹⁸⁾ As defined in the Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36), incorporated into the EEA Agreement by the Decision of the EEA Joint Committee No 131/2004 (not yet published). Until 31 December 2004, the relevant definition is to be found in the Commission Recommendation 96/280/EC (OJ L 107, 30.4.1996, p. 4). The definition could also be found in Annex 1 to Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), incorporated in the EEA Agreement through Annex XV point 1(f) by Decision of the EEA Joint Committee No 88/2002 of 25 June 2002 amending Annex XV (State aid) to the EEA Agreement (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3.10.2002, p. 42).

⁽¹⁹⁾ In its judgment in Case C-241/94, *France v Commission* [1996] ECR I-4551, (*Kimberly Clark Sopalin*), the European Court of Justice confirmed that the system of financing on a discretionary basis by the French authorities, through the National Employment Fund, was liable to place certain firms in a more favourable situation than others and thus to qualify as aid within the meaning of Article 87(1) of the EC Treaty. (The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the common market).

- (64) Besides meeting the cost of redundancy payments and early retirement, aid is commonly provided in connection with a particular restructuring scheme for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. The Authority consistently takes a favourable view of such aid when it is granted to firms in difficulty.
- (65) The type of aid described in points 61 to 64 must be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees is disregarded for the purposes of determining the extent of the compensatory measures referred to in points 37 to 41.
- (66) In the common interest, the Authority will ensure in the context of the restructuring plan that social effects of the restructuring in other Contracting Parties to the EEA Agreement other than the one granting aid are kept to the minimum.

16.3.2.7. Need to inform the Authority of any aid granted to the recipient firm during the restructuring period

- (67) Where restructuring aid received by a large or medium-sized enterprise is examined under these Guidelines, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Authority's assessment of the extent of the compensatory measures required.
- (68) Notifications of aid for restructuring a large or medium-sized enterprise must indicate all other aid of any kind which is planned to be granted to the recipient firm during the restructuring period, unless it is covered by the *de minimis* rule or by exemption regulations.
- (69) The Authority shall take such aid into account when assessing the restructuring aid. Any aid actually granted to a large or medium-sized enterprise during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Authority to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.
- (70) The Authority shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of these Guidelines.

16.3.3. "One time, last time"

- (71) Rescue aid is a one-off operation primarily designed to keep a company in business for a limited period, during which its future can be assessed. It should not be possible to allow repeated granting of rescue aids that would merely maintain the status quo, postpone the inevitable and in the meantime shift economic and social problems on to other, more efficient producers or other Contracting Parties to the EEA Agreement. Hence, rescue aid should be granted only once ("one time, last time" condition). In accordance with the same principle, in order to prevent firms from being unfairly assisted when they can only survive thanks to repeated State support, restructuring aid should be granted once only. Finally, if rescue aid is granted to a firm that has already received restructuring aid, it can be considered that the beneficiary's difficulties are of a recurrent nature and that repeated State interventions give rise to distortions of competition that are contrary to the common interest. Such repeated State interventions should not be permitted.
- (72) When planned rescue or restructuring aid is notified to the Authority, the EFTA State must specify whether the firm concerned has already received rescue or restructuring aid in the past, including any such aid granted before the date of application of these Guidelines and any unnotified aid⁽²⁰⁾. If so, and where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted (whichever is the latest), the Authority will not allow further rescue or restructuring aid. Exceptions to that rule are permitted in the following cases:

- (a) where restructuring aid follows the granting of rescue aid as part of a single restructuring operation;

⁽²⁰⁾ With regard to unnotified aid, the Authority will take account in its appraisal of the possibility that the aid could have been declared compatible with the EEA Agreement other than as rescue or restructuring aid.

- (b) where rescue aid has been granted in accordance with the conditions in Section 16.3.1.1, and this aid was not followed by a State supported restructuring, if:
 - (i) the firm could reasonably be believed to be viable in the long-term following the granting of rescue aid, and
 - (ii) new rescue or restructuring aid becomes necessary after at least five years due to unforeseeable circumstances⁽²¹⁾ for which the company is not responsible;
- (c) in exceptional and unforeseeable circumstances for which the company is not responsible.

In the cases set out in points (b) and (c), the simplified procedure mentioned in Section 16.3.1.2 cannot be used.

- (73) The application of this rule will in no way be affected by any changes in ownership of the recipient firm following the grant of aid or by any judicial or administrative procedure which has the effect of putting its balance sheet on a sounder footing, reducing its liabilities or wiping out its previous debts where it is the same firm that is continuing in business.
- (74) Where a business group has received rescue or restructuring aid, the Authority will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted, whichever is the latest. Where an entity belonging to a business group has received rescue or restructuring aid, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these Guidelines), with the exception of the earlier beneficiary of the aid. EFTA States must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.
- (75) Where a firm takes over assets of another firm, and in particular one that has been the subject of one of the procedures referred to in point 73 or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid, the purchaser is not subject to the "one time, last time" requirement, provided that the following cumulative conditions are met:
 - (a) the purchaser is clearly separate from the old firm;
 - (b) the purchaser has acquired the old firm's assets at market prices;
 - (c) the winding-up or court-supervised administration and purchase of the old company are not merely devices aimed at evading application of the "one time, last time" principle: the Authority may determine that this was the case if, for example, the difficulties encountered by the purchaser were clearly foreseeable when it took over the assets of the old company.
- (76) It should, however, be stressed here that, since it constitutes aid for initial investment, aid for the purchase of the assets cannot be authorised under these Guidelines.

16.4. Aid schemes for SMEs

16.4.1. General principles

- (77) The Authority will authorise schemes for providing rescue and/or restructuring aid to small or medium-sized enterprises in difficulty only where the firms concerned correspond to the definition of SMEs. Subject to the following specific provisions, the compatibility of such schemes will be assessed in the light of the conditions set out in Chapters 16.2 and 16.3, with the exception of Section 16.3.1.2 which does not apply to aid schemes. Any aid which is granted under a scheme but does not meet any of those conditions must be notified individually and approved in advance by the Authority.

⁽²¹⁾ An unforeseeable circumstance is one which could in no way be anticipated by the company's management when the restructuring plan was drawn up and which is not due to negligence or errors of the company's management or decisions of the group to which it belongs.

16.4.2. Eligibility

- (78) Unless otherwise stipulated in rules on State aid in a particular sector, awards of aid under schemes authorised from the date of application of these Guidelines, to small or medium-sized enterprises will be exempted from individual notification only where the enterprise concerned meets at least one of the three criteria set out in point 9. Aid to enterprises that do not meet any of those three criteria must be notified individually to the Authority so that it can assess whether they qualify as firms in difficulty. Aid to enterprises active in a market suffering from long-term structural overcapacity, irrespective of the size of the beneficiary, must also be notified individually to the Authority so that it can assess the application of point 41.

16.4.3. Conditions for the authorisation of rescue aid schemes

- (79) In order to be approved by the Authority, rescue aid schemes must satisfy the conditions set out in points (a), (b), (d) and (e) of point 24. Furthermore, rescue aid may not be granted for more than six months, during which time an analysis must be made of the firm's position. Before the end of that period the EFTA State must either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary.
- (80) Any rescue aid granted for longer than six months or not reimbursed after six months must be individually notified to the Authority.

16.4.4. Conditions for the authorisation of restructuring aid schemes

- (81) The Authority will authorise restructuring aid schemes only if the grant of aid is conditional on full implementation by the recipient of a restructuring plan that has been approved by the EFTA State concerned and meets the following conditions:
- (a) restoration of viability: the criteria set out in points 33 to 36 apply;
 - (b) avoidance of undue distortions of competition: since aid to small enterprises tends to distort competition less, the principle set out in points 37 to 41 does not apply unless it is otherwise stipulated in rules on State aid in a particular sector; schemes should nevertheless provide that recipient firms must not increase their capacity during the restructuring; for medium-sized enterprises points 37 to 41 apply;
 - (c) aid limited to the minimum necessary: the principles set out in points 42, 43 and 44 apply;
 - (d) amendment of the restructuring plan: any changes to the plan must comply with the rules set out in points 51, 52 and 53.

16.4.5. Common conditions for the authorisation of rescue and/or restructuring aid schemes

- (82) Schemes must specify the maximum amount of aid that can be awarded to any one firm as part of an operation to provide rescue and/or restructuring aid, including where the plan is modified. Any aid exceeding that amount must be notified individually to the Authority. The maximum amount of aid granted for the combined rescue and restructuring aid of any one firm may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.
- (83) In addition, the "one time, last time" principle must be respected. The rule laid down in Section 16.3.3 applies.
- (84) EFTA States must also notify measures individually to the Authority where one firm takes over assets of another firm which has itself already received rescue or restructuring aid.

16.4.6. Monitoring and annual reports

- (85) Points 48, 49 and 50 do not apply to aid schemes. However, it will be a condition of approval that reports are presented on the scheme's operation, normally on an annual basis, containing the information specified in the Authority's instructions on standardised reports⁽²²⁾. The reports must also include a list of all beneficiary companies, indicating for each of them:
- (a) company name;
 - (b) the company's sectoral code, using the NACE⁽²³⁾ three-digit sectoral classification codes;
 - (c) number of employees;
 - (d) annual turnover and balance sheet value;
 - (e) amount of aid granted;
 - (f) amount and form of the beneficiary's contribution;
 - (g) where appropriate, the form and the degree of the compensatory measures;
 - (h) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
 - (i) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

16.5. Appropriate measures as referred to in Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement

- (86) The Authority will propose, by separate letter, pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement, that the EFTA States adopt appropriate measures as set out in points 87 to 88 with regard to their existing aid schemes. The Authority will make authorisation of any future scheme conditional on compliance with those provisions.
- (87) EFTA States which have accepted the Authority's proposal must adapt their existing aid schemes which are to remain in operation after the adoption within six months in order to bring them into line with these Guidelines.
- (88) EFTA States must indicate their acceptance of these appropriate measures within one month following receipt of said letter proposing appropriate measures.

16.6. Date of application and duration

- (89) The present Guidelines shall enter into force on the date of adoption. They shall remain in force, unless otherwise stipulated in any new decision, for five years.
- (90) Notifications registered by the Authority prior to the date of adoption will be examined in the light of the criteria in force at the time of notification.
- (91) The Authority will examine the compatibility with the EEA Agreement of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement on the basis of these Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union* and the EEA Supplement thereto. In all other cases it will conduct the examination on the basis of the Guidelines which apply at the time the aid is granted.

⁽²²⁾ See Annex III. A and B (standardised reporting format for existing State aid) to the EFTA Surveillance Authority Decision 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Surveillance and Court Agreement (not yet published).

⁽²³⁾ Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

ANNEX

Formula ⁽¹⁾ to calculate maximum amount of rescue aid to qualify for the simplified procedure:

$$\frac{\text{EBIT}_t + \text{depreciation}_t + (\text{working capital}_t - \text{working capital}_{t-1})}{2}$$

The formula is based on the operating results of the company (EBIT, earnings before interest and taxes) recorded in the year before granting/notifying the aid (indicated as t). To this amount depreciation has been added. Then changes in working capital must be added to the total. The change in working capital is calculated as the difference between the current assets and current liabilities ⁽²⁾ for the latest closed accounting periods. Similarly, if there would be provisions at the level of the operating result, this will need to be clearly indicated and the result should not include such provisions.

The formula aims at estimating the negative operating cash flow of the company in the year preceding the application for the aid (or before the award of the aid in case of non-notified aids). Half of this amount should keep the company in business for a six-month period. Thus the result of the formula has to be divided by 2.

This formula can only be applied where the result is a negative amount.

In case the formula leads to a positive result, a detailed explanation will need to be submitted demonstrating that the firm is in difficulty as defined in points 9 to 10.

Example:

Earnings before interest and taxes (million EUR)	(12)
Depreciation (million EUR)	2

Balance Sheet (million euro)	December 31, t-1	December 31, t
<i>Current assets</i>		
Cash or equivalents	10	5
Accounts receivable	30	20
Inventories	50	45
Prepaid expenses	20	10
Other current assets	20	20
Total current assets	130	100
<i>Current liabilities</i>		
Accounts payable	20	25
Accrued expenses	15	10
Deferred income	5	5
Total current liabilities	40	40
Working capital	90	60
Change in working capital	(30)	

Maximum amount of rescue aid = $[-12 + 2 + (-30)]/2 = -20$ million EUR

As the outcome of the formula is higher than EUR 10 million, the simplified procedure described in point 29 cannot be used. If this limit is exceeded, the EFTA State should provide an explanation of how the future cash-flow needs of the company and the amount of rescue aid have been determined.'

⁽¹⁾ EBIT (earnings before interest and taxes as set out in the annual accounts of the year before the application, indicated as t) must be increased with depreciation in the same period plus the changes in working capital over a two-year period (year before the application and preceding year), divided by two to determine an amount over six months, i.e. normal period for permitting rescue aid.

⁽²⁾ Current assets: liquid funds, receivables (client and debtor accounts), other current assets and prepaid expenses, inventories. Current liabilities: financial debt, trade accounts payable (supplier and creditor accounts) and other current liabilities, deferred income, other accrued liabilities, tax liabilities.

CORRIGENDA**Corrigendum to Council Regulation (EC) No 2143/2004 of 13 December 2004 amending Regulation (EC) No 74/2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India***(Official Journal of the European Union L 370 of 17 December 2004)*

On page 2, in Article 1, list of exporters/producers, left column:

for: 'Synergy'

read: 'Synergy Lifestyles Pvt. Ltd'.
