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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 968/2000
of 8 May 2000**

amending Regulation (EC) No 603/1999 imposing a definitive anti-dumping duty on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary, and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Articles 8(9) and 9 thereof,

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

Whereas:

A. Previous procedure

- (1) Following an investigation initiated by means of a notice published in the *Official Journal of the European Communities* ⁽²⁾, the Council, by Regulation (EC) No 603/1999 ⁽³⁾, imposed definitive anti-dumping duties on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary.
- (2) Also in the context of this investigation, the Commission, by Decision 1999/215/EC ⁽⁴⁾, accepted a price undertaking offered by, *inter alia*, the Polish company WKI Isoliertechnik Spolka z.o.o. (herein-after 'the company').

B. Withdrawal of undertaking

- (3) The company has, however, now withdrawn its undertaking following difficulties in observing certain conditions laid down therein.
- (4) Accordingly, in view of this withdrawal, the exemption from the anti-dumping duties granted to this company should be removed and definitive duties be imposed pursuant to Articles 8(9) and 9 of Regulation (EC) No 384/96.

C. Definitive duties

- (5) The investigation which led to the undertaking offered by the company was concluded by a final determination as to dumping and injury by Regulation (EC) No 603/1999.
- (6) In accordance with Article 8(9) of Regulation (EC) No 384/96, the rate of the anti-dumping duty now to be imposed on the company must, therefore, be based on the facts established within the context of the investigation which led to the undertaking. In this regard, in view of recitals 15, 71 and 75 of Regulation (EC) No 603/1999, it is considered appropriate that the definitive anti-dumping duty rate be set at a level of 15,7 % *ad valorem*.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

⁽²⁾ OJ C 1, 3.1.1998, p. 10.

⁽³⁾ OJ L 75, 20.3.1999, p. 1.

⁽⁴⁾ OJ L 75, 20.3.1999, p. 34.

D. Amendment of Regulation (EC) No 603/1999

- (7) In view of the above, Regulation (EC) No 603/1999 should be amended so as to remove the company from the list of companies benefiting from an exemption to the anti-dumping duties on polypropylene binder or baler twine originating, *inter alia*, in Poland, and a definitive anti-dumping duty of 15,7 % be imposed on it.
- (8) In parallel with this Regulation, the Commission, by Decision 2000/324/EC ⁽¹⁾ has amended Decision 1999/215/EC and removed the company from the list of parties from which undertakings have been accepted,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 603/1999 is amended as follows:

- (a) Article 1(2) shall be replaced by the following:

'2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier prices before duty of the products manufactured by the companies listed below shall be as follows:

Country	Company	Rate of duty (%)	TARIC additional code
Poland	BZLP Beزالin	17,2	8450
	PAT Defalin s.a.	16,3	8569
	Industrial Chemistry Research Institute	12,8	8578
	Terplast sp z.o.o.	6,1	8579
	WKI Isoliertechnik Spolka z.o.o.	15,7	A091
	All other companies	20,3	8900
Czech Republic	All companies	24,8	8900
Hungary	All companies	32,9	8900'

- (b) Article 2(2) shall be replaced by the following:

'2. Imports made within the context of the undertakings offered and accepted shall be declared under the following TARIC additional codes:

Country	Company	TARIC additional code
Czech Republic	Juta a.s.	8596
	Lanex a.s.	8580
Hungary	Partium '70 Rt	8581
	Tiszai Vegyi Kombinat Rt	8582
	Elso Magyar Kenderfono Rt	8583'

Article 2

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

⁽¹⁾ See page 65 of this Official Journal.

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

Done at Brussels, 8 May 2000.

For the Council

The President

J. PINA MOURA

COUNCIL REGULATION (EC) No 969/2000**of 8 May 2000****imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia and Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ and in particular Articles 9 and 11 thereof,

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

Whereas:

1. PREVIOUS INVESTIGATIONS

- (1) By Regulation (EEC) No 3068/92⁽²⁾, the Council imposed definitive anti-dumping duties on imports of potassium chloride (hereinafter referred to as 'potash' or the 'product concerned') originating in Belarus, Russia and Ukraine (hereinafter referred to as the 'countries concerned'). The duties were equal to the difference between a set minimum price and the net, free-at-Community-frontier prices before customs clearance.
- (2) By Regulation (EC) No 643/94⁽³⁾, the Council amended the abovementioned duties. Combined measures in the form of a fixed amount per tonne of potash or the difference between a set minimum price and the net, free-at-Community-frontier price per tonne before customs clearance, whichever was higher, were imposed. This type of measure was found to be warranted because circumvention of the original duties had been taking place. It should also be mentioned that the review carried out in 1994 covered both dumping and injury, as well as Community interest.
- (3) By Regulation (EC) No 449/98⁽⁴⁾, the Council again amended the abovementioned measures. This review was initiated following a request by the International Potash Company (IPC), an exporter of Russian and Belarusian potash, who claimed, among other issues, that the accession of Austria, Finland and Sweden had resulted in a change in the circumstances on the basis of which the measures in force had been established. The form of the combined measures was maintained but the level of the measures was adapted in accordance with the findings of that investigation. It should also be mentioned that the review concluded in 1998 was

limited to the examination of dumping and Community interest.

2. PRESENT INVESTIGATION

- (4) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of potash originating in the countries concerned⁽⁵⁾, the Commission received a request to review these measures pursuant to Article 11(2) of Regulation (EC) No 384/96, hereinafter referred to as the 'basic Regulation'.
- (5) The request was lodged on 23 December 1998 by the European Association of Potash Producers (hereinafter the 'applicant') on behalf of producers, whose collective output of potash constitutes about 99 % of the Community production of this product, i.e. a major proportion of the total Community production pursuant to Articles 4(1) and 5(4) of the basic Regulation.
- (6) The request was based on the grounds that the expiry of the measures would result in the continuation or recurrence of dumping and injury. Indeed, the applicant alleged that potash from the countries concerned was still being sold at dumped prices for inward processing, a relief regime not subject to anti-dumping measures in the Community. Likewise, the applicant claimed that, in view of the extent of the past dumping and the fact that the relevant exporters were still selling the product concerned at very low prices in countries neighbouring the Community, it was very likely that dumping would recur if the anti-dumping measures were removed. This argument was reinforced by the evidence presented that showed that domestic consumption had fallen drastically in the countries concerned whilst production had increased significantly, leaving the exporters with a surplus product that risked being sold on the Community market at dumped prices. Finally, the applicant submitted that the likely recurrence of dumping would lead to price erosion and inevitably cause injury to a Community industry whose profit situation was still somewhat precarious.
- (7) In view of the specific form of the anti-dumping duties imposed on imports of potassium chloride from the countries concerned, i.e. a combination of a minimum price and a fixed duty, the Commission also decided, on its own initiative, to initiate an interim review, pursuant to Article 11(3) of the basic Regulation, limited to the form of the measures.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

⁽²⁾ OJ L 308, 24.10.1992, p. 41.

⁽³⁾ OJ L 80, 24.3.1994, p. 1.

⁽⁴⁾ OJ L 58, 27.2.1998, p. 15.

⁽⁵⁾ OJ C 296, 24.9.1998, p. 3.

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed, the Commission initiated an expiry review and an interim review (limited to the form of the duty) through the publication of a notice (hereinafter referred to as the 'notice of initiation') ⁽¹⁾ pursuant to Articles 11(2) and 11(3) of the basic Regulation.

2.1. PERIOD OF INVESTIGATION

- (9) The investigation on continuation or recurrence of dumping covered the period from 1 January to 31 December 1998 (hereinafter referred to as the 'IP' or the 'investigation period'). The examination of continuation or recurrence of injury covered the period from 1 January 1994 up to the end of the IP (hereinafter referred to as the 'period considered'). For the purposes of the examination of recurrence of injury, forecasts for years 1999 and 2000 were also taken into consideration.

2.2. PARTIES CONCERNED BY THE INVESTIGATION

- (10) The applicant Community producers, the exporters and producers in the exporting countries and the importers/users as well as their representative associations known to be concerned and the representatives of the exporting countries were officially advised of the initiation of the review. Questionnaires were sent to all these parties and to those who made themselves known within the time limit set in the notice of initiation. In addition, the producers in Canada, which was chosen as the analogue country, were contacted and received questionnaires. The parties directly concerned were also given the opportunity to make their views known in writing and to request a hearing.
- (11) All applicant Community producers replied to the questionnaire. Producers in Belarus and Russia, namely, Production Amalgamation 'Belaruskali' (Soligorsk, Minsk region, Belarus), JSC 'Silvinit' (Solikamsk, Perm region, Russia) and JSC 'Uralkali' (Berezniki, Perm region, Russia) cooperated with the investigation via their common exporter IPC (Moscow, Russia). Ferchimex (Antwerp, Belgium) and Belarus (Vienna, Austria), related importers of IPC, replied as well. No cooperation was received from any Ukrainian exporting producer.
- (12) Seven unrelated importers replied to the questionnaire and made their views known in writing. The importers of potash are in most cases also users of the product. No replies were obtained from the non-importing users of the product.
- (13) All information deemed necessary to determine whether there was a likelihood of a continuation or recurrence of dumping and injury and whether the continued imposition of the measures was in the Community interest

was sought and verified. Investigations were carried out at the premises of the following companies:

(a) Applicant Community producers:

Cleveland Potash Limited, Saltburn, United Kingdom,
Comercial de Potasas, SA ⁽²⁾, Madrid, Spain,
Kali and Salz GmbH, Kassel, Germany,
Société commerciale des potasses et de l'azote SA ⁽³⁾,
Mulhouse, France, hereinafter referred to as 'SCPA';

(b) Producers in the analogue country:

Agrium Inc., Calgary,
IMC Global Inc., Regina,
Potash Corporation of Saskatchewan (PCS),
Saskatoon;

(c) Unrelated importers into the Community:

Fertiberia SA, Madrid, Spain (also a user of potash).

3. PRODUCT CONCERNED AND LIKE PRODUCT

3.1. DESCRIPTION OF THE PRODUCT CONCERNED

- (14) The product concerned is potassium chloride (potash, KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K₂O) on the dry anhydrous product.
- (15) Potash is generally commercialised in either a standard/powder form (standard potash) or in 'other than standard' form that includes but is not limited to a granular form (granular potash). The product is generally classified into three basic categories, based on the K₂O content, namely:
- potassium content not exceeding 40 % K₂O — falling under CN code 3104 20 10,
 - potassium content exceeding 40 % K₂O but less than or equal to 62 % — falling under CN code 3104 20 50,
 - potassium content over 62 % K₂O — falling under CN code 3104 20 90.
- (16) Since the anti-dumping measures in force also consist of a variable duty, the Regulation subject to review specified different levels of anti-dumping duties for standard potash, on the one hand, and the remaining forms of potash including granular potash, on the other.

⁽²⁾ Subsidiary and exclusive trader of the production of two Spanish mines: Suria K, SA (until April 1997) and Potasas de Llobregat, SA.

⁽³⁾ Subsidiary and exclusive trader of the production of 'Mines de potasse d'Alsace'.

⁽¹⁾ OJ C 80, 23.3.1999, p. 9.

(17) It should be recalled that in the last review investigation, it was found that imports of certain special mixtures or blends with an unusually high content of potash, which do not fall under the CN codes for potash indicated above, should be considered a product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. As the present investigation has not brought to light any consideration indicating that the approach taken should not be continued, and in order to ensure a consistent application of the anti-dumping measures, as well as to avoid erroneous classification, it has been considered necessary, in this Regulation, to clarify the minimum content of K_2O of such mixtures and blends as being 35 % or more, by weight, of the dry anhydrous product and falling under the 'other than standard' form of potash.

3.2. LIKE PRODUCT

(18) As in the previous investigations, it was established that, since there were no differences in the physical and chemical properties of the different types and qualities of potash, potash produced in Canada, which was chosen as analogue country (see Chapter 4.2) and sold on the North American market, is a like product to that exported to the Community from the countries concerned, in the sense of Article 1(4) of the basic Regulation. In addition, potash exported from the countries concerned and potash produced by the Community producers were also like products.

(19) IPC requested the exclusion of standard potash with a K_2O content higher than 62 %, which, it was claimed, was only used in pharmaceutical applications, had different prices and was delivered packed (as opposed to the bulk deliveries of potash used as a fertiliser). However, the product in question had the same basic physical characteristics and basic chemical composition as the product concerned. The fact that potassium chloride is generally used as a fertiliser does not exclude products destined for industrial or pharmaceutical use or products packed in a different way, from the scope of the like product definition. It was therefore decided that this type of potash is one single product with the other types of potash.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

4.1. PRELIMINARY REMARKS

(20) In accordance with Article 11(2) of the basic Regulation, the purpose of this type of review is to determine whether or not the expiry of the measures would lead to a continuation or recurrence of injurious dumping.

(21) In this respect, the volumes exported to the Community during the IP were examined. The volume of imports from Russia represented 4,2 % of consumption but was largely imported under the inward processing regime. In line with the consistent practice of the institutions these imports should be taken into account for the purposes of establishing whether dumping is taking place and thus the Russian import volume is considered sufficient to provide a representative picture of whether dumping is taking place at present and whether any such dumping will continue should measures be removed. The volume of imports from Belarus could also be considered representative as they reached 1,2 % of Community consumption. In these circumstances, it was not necessary to examine whether there was a likelihood of recurrence of dumping due to imports originating in these two countries should measures be removed. As regards Ukraine there were no exports during the IP and therefore the investigation centred on whether there was a likelihood of recurrence of dumping should measures be removed.

4.2. ANALOGUE COUNTRY

(22) In order to establish whether dumping would continue or recur, normal value had to be based on information obtained in an appropriate market-economy third country in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, Canada was suggested as an appropriate analogue country.

(23) No party objected to the use of Canada as an analogue country. Both IPC and the European Fertiliser Import Association (EFIA) agreed to the choice of Canada as analogue country provided that the mines located in the province of Saskatchewan rather than New Brunswick were used for the determination of normal value. IPC also wanted the Patience Lake mine in Saskatchewan excluded from the normal value determination.

(24) Both parties argued that the mines for which exclusion was requested differ in terms of size, geological deposit conditions and mining and production methods from those prevailing in Belarus, Russia and Ukraine, which are very similar to the Saskatchewan mines. Furthermore, it was argued that the New Brunswick mine is situated much closer to its customers than the ports of loading used for potash exports for Belarus and Russia, rendering transport costs, in particular, incomparable.

(25) The investigation confirmed that Canada should be used as an analogue country because:

(a) Canada was the main producer and exporter of potash world-wide, ahead of Belarus, Russia and Ukraine;

(b) the North American domestic market for the product concerned was subject to normal conditions of competition;

- (c) the manufacturing process and access to raw materials were, to a large extent, similar in Canada and in the countries concerned;
 - (d) Canada had been used in the previous investigations.
- (26) With regard to the arguments made by IPC and EFIA concerning the exclusion of certain mines the following points can be made:
- (a) As potash is effectively a commodity and as the normal value determination is based on prices from virtually all of the mines operating on the open and competitive North American market, any difference in mining conditions or any of the other factors cited, in one particular mine or region, does not have any material affect on the normal value;
 - (b) The point raised by IPC concerning the differences in the distances between the New Brunswick mine and its domestic markets in Canada and the Belarusian and Russian mines and their export ports is not relevant as normal value and export price are compared, in accordance with Article 2(10) of the basic Regulation, at the same level, i.e. ex-mine. Moreover, the New Brunswick mine in question represents only a small proportion of the sales taken into account for the determination of normal value so that an effect of distances, if any, would be diluted by the volume of the total sales taken into consideration (see recital 36).
- (27) Consequently, calculations were based on all complete questionnaire replies received from all three Canadian companies. These data, relating to mines located in New Brunswick and Saskatchewan, were fully verified at the companies' premises in Canada.

4.3. RUSSIA AND BELARUS

- (28) In examining whether there is a likelihood of continuation of dumping from Russia and Belarus if measures were removed it is necessary to verify whether dumping existed during the IP and whether any such dumping is likely to continue.

4.3.1. Normal value

- (29) Normal value was calculated on the basis of the data of all the cooperating Canadian companies. In this respect, the total sales of potash of the cooperating companies on the Canadian market were considered to be representative.
- (30) It was finally examined whether the relevant sales could be considered as having been made in the ordinary course of trade by looking at the proportion of profitable sales of the grade in question.
- (31) As the volume of standard potash sold at a net sales price equal to or above the cost of production (profitable sales) represented more than 80 % of the total sales volume of that grade and since the weighted average price was higher than the weighted average cost of

production, normal value was based on the actual price on the North American market for Russia, calculated as a weighted average of the prices of all sales of standard potash made by each company during the investigation period, whether profitable or not.

4.3.2. Export price

- (32) IPC was the only exporter that cooperated with the investigation. Export volumes reported by IPC do virtually correspond to the Eurostat figures, complemented as explained under point 6.2.1. Therefore, for both Belarus and Russia, export prices were assessed on the basis of the information provided by IPC.
- (33) IPC sold to the Community market partly via two related importers, Ferchimex, based in Belgium and Belarus, based in Austria, and partly directly to independent customers.
- (34) In all cases where exports of potash were made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable. In cases where export sales were made to a related party, the export price was constructed pursuant to Article 2(9) of the basic Regulation, i.e. on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price at the Community frontier level. The profit margin of 5 % applied in the previous investigation was, in the absence of any other information, considered reasonable given the functions performed by the related importers.
- (35) During the investigation period, virtually all of the potash exported to the Community by IPC entered the Community market in the framework of the inward processing relief (IPR) regime, where it competed with potash produced by the Community industry.

4.3.3. Comparison

- (36) As potash is a bulk product with transport costs representing a large proportion of the selling price, and in view of the significant distance between the Belarusian and Russian mines and the nearest port or frontier, it was decided that the comparison should be carried out on an ex-mine basis, as in the previous investigation.
- (37) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences affecting price comparability, in accordance with Article 2(10) of the basic Regulation.

(i) *Adjustments to normal value*

- (38) IPC made a number of comments regarding differences in quality and mining conditions between Belarus and Russia and the Community and Canada. However, no claims for adjustment were made and none of the alleged differences was quantified. Furthermore, most of the elements mentioned were already treated in the previous investigation, where it was concluded that any adjustment for natural comparative advantages would have been to the disadvantage of the Belarusian and Russian mines. As the essential circumstances have not materially changed since the previous investigation, and for the abovementioned reasons, there was no need for adjustments to normal value for physical differences or natural comparative advantages. An adjustment for differences in credit costs has been granted where warranted.

(ii) *Adjustments to the export price*

- (39) An adjustment to the export price was made for transport costs. The methodology used to determine the amount of the adjustment was the same as in the previous investigation, i.e. for transport within Belarus and Russia data relating to transport costs in Canada were taken, while transport costs from the border of the producing country to the Community border, where applicable, were determined on the basis of the costs reported by IPC.
- (40) IPC argued that the amounts for transport costs reported in its reply to the questionnaire were wrongly deducted. There was some contradiction between the delivery terms and the transport costs as reported by IPC. However, in the absence of any evidence provided by IPC, it was impossible to find out whether the delivery terms or the transport expenses were correctly reported. In any event, even if the most favourable approach for IPC was taken, this would not have altered the findings concerning the existence of dumping. Furthermore, it should be recalled that in an expiry review it is not necessary to calculate a precise dumping margin.
- (41) An adjustment was also made for credit costs on the basis of the information reported by IPC.

4.3.4. Dumping margin

- (42) A dumping margin was determined respectively for Belarus, Russia and Ukraine. The weighted average normal value was compared to the weighted average export price to the Community.

(i) *Belarus*

- (43) Expressed as a percentage of the price 'cif-Community-border', there was still significant dumping with regard to imports originating from Belarus, although at a somewhat lower level than found in the previous investigation.

(ii) *Russia*

- (44) Expressed as a percentage of the price 'cif-Community-border', the dumping margin found is significantly higher than the one found in the previous investigation.

4.3.5. Conclusion

- (45) With regard to imports from Belarus and Russia, it can therefore be concluded that there has been a continuation of significant dumping. No reasons have been found as to why dumping would stop should the anti-dumping measures be repealed.

4.4. UKRAINE

- (46) As in the previous investigation, no cooperation was received from Ukraine. Eurostat figures did not show any imports from this country during the investigation period, although there had been imports in preceding years. On this basis, it was necessary to examine whether dumping would recur should measures be repealed. No cooperation was received from any Ukrainian producer. Therefore, and in accordance with Article 18 of the basic Regulation, findings had to be based on facts available. In this context, it should be noted that evidence suggests that potash mines are operated in Ukraine. This evidence suggests that they have a significantly lower capacity than the ones in Russia and Belarus. However, when comparing the capacity of these Ukrainian mines with Community consumption the potential for exports is still important. As to the level of prices of possible Ukrainian imports, it should be noted that there is no shortage of supply of potash on the Community market. Thus, if a new player wishes to enter the Community market it can only do so at price levels undercutting those charged by the operators currently active on this market, which means that they would be dumped. It should also be noted that in the past imports from the Ukraine have been at prices similar to those then charged by Russia and Belarus.

4.4.1. Conclusion

- (47) In view of the foregoing, and in the absence of any other evidence to the contrary, for example information on capacity utilisation, volumes and prices of exports to other third countries, it was concluded that there is a likelihood of a recurrence of dumped imports originating in the Ukraine should measures be repealed.

5. DEFINITION OF THE COMMUNITY INDUSTRY

- (48) The investigation confirmed that the applicant Community producers represented 99 % of the Community production of potash and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

6. ANALYSIS OF THE SITUATION OF THE COMMUNITY INDUSTRY AND OF THE COMMUNITY POTASH MARKET

processed in the Community by fertiliser manufacturers who buy some of the raw materials used in the production of complex fertilisers, which are also destined for export, from the Community industry. These imports were therefore taken into account in establishing Community consumption, market shares of the countries concerned and in the analysis of prices of potash sold by the exporters concerned.

(49) Firstly, it should be noted that the data relating to profitability and investments during the period considered were calculated on the basis of the data of three Community producers: Cleveland Potash Limited, Comercial de Potasas, SA and Kali und Salz GmbH. The fourth Community producer, SCPA, was partly excluded due to the exceptional condition of its mining subsidiary 'Mines de potasse d'Alsace'. The mine will be closed in a few years due to exhaustion of potash reserves, and it is no longer investing. Also the accounting system of the mine has been simplified in such a way that it is no longer possible to calculate either the production cost or the profitability of potash in a manner allowing for the aggregation of the data with other Community producers. However, on the basis of the information available, had SCPA been taken into account the profitability of the Community industry would have been notably lower and the investments would have shown an even more drastic downward trend.

(50) Secondly, it should be noted that during the most recent years imports from the countries concerned were almost exclusively under the IPR regime. In line with the consistent practice of the Community institutions, it was considered that these imports compete with the product concerned of the Community industry as they are

6.1. CONSUMPTION ON THE COMMUNITY MARKET

(51) The total consumption of potash was calculated on the basis of the combined totals of:

- (a) the sales volume of own-produced potash of the Community industry on the Community market;
- (b) the sales volume of non-applicant Community producers on the Community market;
- (c) imports into the Community of potash from the countries concerned;
- (d) imports into the Community of potash from all other third countries.

(52) On this basis, consumption decreased from around 7 460 000 tonnes in 1994 to around 7 290 000 tonnes in the IP; i.e., a decrease of approximately 2,3 %. However, during the period considered the level of consumption fluctuated as shown in the table below:

(in thousand tonnes)

	1994	1995	1996	1997	IP
Community consumption	7 460	7 340	7 090	7 600	7 290

Source: Questionnaire replies of the Community industry, Eurostat, National Statistical Offices in Finland, Denmark and Belgium.

6.2. IMPORTS FROM THE COUNTRIES CONCERNED

6.2.1. Import volume

(53) The volume of imports of potash originating in Russia decreased from 397 000 tonnes in 1994 to 305 000 tonnes during the IP, equivalent to a decrease of about 23 %. The volume of imports originating in Belarus decreased from 137 000 tonnes in 1994 to 91 000 tonnes in the IP, equivalent to a decrease of about 34 %. Ukraine exported only during the years 1994, 1995 and 1997, with a sharply declining trend. The overall imports from the countries concerned decreased by around 32 % during the period considered. The decrease was, however, not constant: total imports from the countries concerned decreased until 1996, reaching a low of 132 000 tonnes, after which they started soaring again, increasing by threefold up to the IP.

- (54) The investigation has shown that the volume of imports as reported by IPC is higher than the data contained in Eurostat, as several Member States that have only one major importer did not report complete data for confidentiality reasons. Complementary information from those Member States was requested and received. On this basis it was found that the imports reported by IPC are not significantly different from the complete Eurostat data.

(in thousand tonnes)

Imports	1994	1995	1996	1997	IP
Russia total	397	175	122	190	305
Belarus total	137	113	11	51	91
Ukraine	49	15	0	1	0
Total	583	303	132	243	396

Source: Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

The tonnage imported under the IPR regime and their percentage of total Community imports of potash for each country were:

(in thousand tonnes)

Imports	1994	1995	1996	1997	1998
Russia	61	159	115	178	284
% of imports	15	91	94	93	93
Belarus	34	52	11	51	91
% of imports	25	46	100	100	100
Ukraine	35	15	0	1	0
% of imports	72	100	N/A	100	N/A
Totals	131	226	126	230	375
% of imports	22	75	95	95	95

- (55) The above tables illustrate developments during the imposition of anti-dumping measures. While the share of imports under the IPR regime was only minor in 1994, during the IP practically all the imports occurred under the said regime. Imports under the IPR regime are controlled by the Member States' customs authorities as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾. The present investigation has not brought to light any facts that would suggest that the regime could have been used to circumvent the measures. It should also be noted that goods imported under this regime are not liable to the anti-dumping duties under review, a factor explaining the increase occurring towards the end of the period considered.

6.2.2. Market share

- (56) The market share of the imports from the countries concerned on the Community market decreased by 2,4 percentage points during the period considered. However, the decrease has not been constant. The market share decreased from its highest level of 7,8 % in 1994 to reach its lowest level in 1996, i.e. 1,9 %. After 1996 there was a constant increase, up to 5,4 % in the IP.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7.5.1999, p. 1).

Market share of the imports concerned in %	1994	1995	1996	1997	IP
Belarus	1,8	1,5	0,2	0,7	1,2
Russia	5,3	2,4	1,7	2,5	4,2
Ukraine	0,7	0,2	0	0	0
Total	7,8	4,1	1,9	3,2	5,4

Source: Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

6.2.3. Price evolution and price behaviour

6.2.3.1. Price evolution of the imports concerned

- (57) As to the evolution of prices of the imports subject to investigation over the period considered, trends were established using Eurostat figures as determined in recital 54.

The cif average sales prices from the countries concerned on the Community market developed in detail as follows:

(in ECU/tonne)

Average cif prices of potash with 40 % < K ₂ O ≤ 62 %	1994	1995	1996	1997	IP
Belarus	67,5	86,5	88,3	94,1	100,1
Russia	83,1	71,7	74,4	79,4	85,8
Ukraine	83,6	89,9	—	88,0	—
Average	79,2	76,8	75,7	83,3	90,8

Source: Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

(in ECU/tonne)

Average cif prices of potash with K ₂ O > 62 %	1994	1995	1996	1997	IP
Russia	—	89,9	93,8	96,7	101,5

Source: Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

- (58) The average increase in the price of potash with 40 % < K₂O ≤ 62 % from the countries concerned amounts to 14,6 % during the period considered. Whereas the Belarusian prices have increased significantly, overtaking the price of potash of Russian origin, the Russian prices have remained relatively low. No potash originating in Ukraine was imported in the IP.
- (59) Potash with K₂O > 62 % was only imported from Russia. The average price increased by 12,9 % from 89,9 ECU/tonne in 1995 to 101,5 ECU/tonne in the IP.

6.2.3.2. Price behaviour

- (60) Anti-dumping duties have been in force for three years. During this time very few imports originating in the countries concerned were made for release into free circulation. Imports have mostly been limited to the IPR regime. IPC representatives claimed that they had to offer their product at lower prices than those of the Community industry due to the very nature of the IPR regime. This argument was studied but no clear evidence was found to support it.
- (61) In the examination of price behaviour, prices declared by the exporters for each sale to independent customers and for each resale through their related importer were averaged during the IP for the two main grades of potash according to their origin: Belarus and Russia. These prices were net invoice prices, duty unpaid and equivalent to delivered prices because of the proximity of the clients to the ports of delivery. They were compared to the weighted averages of all Community producers' invoiced prices at Community level for the said two grades of potash.
- (62) It was thus established that IPC's prices were lower than those of the Community industry by more than 10 % on average. More specifically, potash prices of Russian origin were lower by about 20 % and of Belarusian origin by 5 %.

6.3. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

- (63) It should be noted that forecasts given by the Community industry for 1999 and 2000 were based on the assumption that the measures will be maintained.

6.3.1. Production

- (64) The production of potash in the Community declined throughout the period considered with the exception of 1996 when a minor increase occurred. Production decreased from around 7 779 000 tonnes to around 7 026 000 tonnes for the following reasons: (1) the gradual exhaustion of ore in the French mine; (2) the closing down of some unprofitable mines in Germany and Spain; and (3) geological anomalies in the mine of one Community producer in 1997 and during the IP. For 1999 and 2000, the Community industry forecast an increase in production reaching the level of 1997 in 2000.

Figures for Community production of potash were as follows:

(in thousand tonnes)					
	1994	1995	1996	1997	IP
Production	7 779	7 428	7 541	7 368	7 026

Source: Questionnaire replies of the Community industry.

6.3.2. Production capacity

- (65) The production capacity of the Community industry decreased from around 10 000 000 tonnes in 1994 to around 9 300 000 tonnes in the IP. Only in 1996 was there a minor increase in production capacity compared to the previous year. In 1999 and 2000 the Community industry is expected to reduce its capacity even further to a level of around 8 500 000 tonnes in 2000 due to progressive exhaustion of ore in the French mine.

Figures for total production capacity of potash were as follows:

(in thousand tonnes)					
	1994	1995	1996	1997	IP
Capacity	9 996	9 414	9 472	9 403	9 293

Source: Questionnaire replies of the Community industry.

6.3.3. Capacity utilisation

- (66) The Community industry's capacity utilisation increased from 1994 to 1996 but began to decrease in 1997, primarily because the French producer was no longer able to produce potash up to its maximum ore-processing machine capacity as a result of decreasing ore resources. However, for 1999 and 2000 the Community industry expects to improve its capacity utilisation rate up to a level of 86 % in year 2000 along with the write-off of capacity in France.

In particular, the Community industry's capacity utilisation for potash developed as follows:

(%)

	1994	1995	1996	1997	IP
Capacity utilisation	77,8	78,9	79,6	78,4	75,6

Source: Questionnaire replies of the Community industry.

6.3.4. Sales volume

The Community industry's sales volume of own-produced potash to unrelated customers decreased from around 5 530 000 tonnes in 1994 to around 5 260 000 tonnes during the IP. The sales volume increased considerably between 1996 and 1997, but decreased again during the IP. However, by the end of 2000 the Community is expected to increase its sales volume to the 1997 level. In particular, the Community industry's sales volume on the Community market developed as follows:

(in thousand tonnes)

	1994	1995	1996	1997	IP
Sales volume of the Community industry	5 530	5 452	5 415	5 750	5 261

Source: Questionnaire replies of the Community industry.

6.3.5. Market share

- (67) The Community industry's market share decreased from 74,1 % in 1994 to 72,2 % in the IP: a drop of about 2 percentage points. During this period its market share increased until 1996, after which it began to decrease to reach the level of the IP.

Specifically, the Community industry's market share developed as follows:

(%)

	1994	1995	1996	1997	IP
Community industry's market share	74,1	74,3	76,4	75,6	72,2

Source: Questionnaire replies of the Community industry, Eurostat and National Statistical Offices in Finland, Denmark and Belgium.

6.3.6. Price development

- (68) The investigation showed that the Community producers' average selling price of the most-sold grade of standard potash ($40\% < K_2O \leq 62\%$) rose from 90,1 ECU/tonne in 1994 to 104,2 ECU/tonne in the IP. This amounts to a rise of 15,6 %. However, the prices of potash with $K_2O > 62\%$ dropped from 137,7 ECU/tonne in 1994 to 122,0 ECU/tonne in the IP. This amounts to a decrease of 11,4 %. The decrease in price coincides with significant increase in sales volumes for the grade by the Community industry during the period considered. Larger orders brought economies of scale and therefore customers benefited from lower average prices.

- (69) While there was a general upward trend in selling prices of standard potash with $40\% < K_2O \leq 62\%$ between 1994 and the IP, prices temporarily dropped in 1997 and then increased by 7,9 % in the IP. As for 1999 and 2000 the Community industry believes the positive trend in sales prices for potash with $40\% < K_2O \leq 62\%$ will continue and that there will be a small decrease in price for potash with $K_2O > 62\%$.

The Community industry's average sales price for potash on the Community market developed as follows:

(in ECU/tonne)

Average sales price	1994	1995	1996	1997	IP
Standard potash with $40\% < K_2O \leq 62\%$	90,1	96,8	101,6	96,6	104,2
Standard potash with $K_2O > 62\%$	137,7	138,7	134,8	123,2	122,0

Source: Questionnaire replies of the Community industry.

6.3.7. Profitability

- (70) For the purpose of the profitability analysis of the Community industry and following an established practice, the revenues from sales of certain by-products of potash production were also taken into account. It should also be recalled that the French producer, SCPA, was excluded from the Community industry's profitability calculation for the reasons set out in recital 49.
- (71) The Community industry's profitability, expressed as a percentage of net sales, increased during the period considered from a weighted average loss of 1,0 % in 1994 to a profit of 3,3 % in the IP. It should be noted that profitability has improved steadily with the exception of 1997 when the profits declined to close to zero. During 1999 and 2000 the Community industry's profit level is expected to continue to fall short of a profit, which is considered normal for a risk-intensive mining business such as potash. The Community industry's profitability on the Community market for potash developed as follows:

(%)

	1994	1995	1996	1997	IP
Profit rate	- 1,0	- 0,5	1,5	0,1	3,3

Source: Questionnaire replies of the Community industry.

6.3.8. Employment

- (72) Employment in the Community industry declined from 8 460 employees in 1994 to 6 936 employees in the IP, a drop of 18,0 %. The number of employees is forecast to drop even more during 1999 and 2000 due to the approaching closure of the French mine. The Community industry's employment situation developed as follows:

Personnel employed in the production of potash	1994	1995	1996	1997	IP
Employees	8 460	7 919	7 296	7 213	6 936

Source: Questionnaire replies of the Community industry.

6.3.9. Stocks

- (73) The closing stocks of the Community producers for potash decreased from 560 000 tonnes in 1994 to 469 000 tonnes in the IP, a decrease of about 16 %. Closing stocks increased continuously from 1994 to 1996, but dropped significantly in 1997 to moderately increase again during the IP.

The closing stocks of the Community industry of potash developed as follows:

(in thousand tonnes)

	1994	1995	1996	1997	IP
Closing stocks	560	614	903	415	469

Source: Questionnaire replies of the Community industry.

6.3.10. Investments

- (74) The Community industry's total investments decreased from around ECU 87,7 million in 1994 to around ECU 52,9 million in the IP, a decrease of about 40 %. Between 1994 and 1995 the investments increased due to a modernisation process of the mines of one major Community producer. In 1999 and 2000 the Community industry plans to start investing more again and the forecast level of investments in 2000 would exceed the 1996 figure. It should also be recalled that the French producer, SCPA, was excluded from the Community industry's assessment of investments for the reasons set out in recital 49. The Community industry's investments developed as follows:

(in thousand ECU)

	1994	1995	1996	1997	IP
Investments	87 722	113 809	84 201	63 908	52 882

Source: Questionnaire replies of the Community industry.

6.4. IMPORT VOLUMES AND IMPORT PRICES FROM OTHER THIRD COUNTRIES

- (75) The import volume of potash from other third countries increased during the period considered from about 1 348 000 tonnes in 1994 to about 1 566 000 tonnes in the IP. This is equivalent to an increase of about 16,2 %. The major part of the increase is attributable to imports from Israel.

(in thousand tonnes)

	1994	1995	1996	1997	IP
Imports from other third countries	1 348	1 552	1 495	1 555	1 566

Source: Eurostat.

- (76) The market share of imports from other third countries grew from 17,9 % in 1994 to 21,0 % in 1995 and remained relatively stable thereafter ending up with 21,4 % at the end of the IP.
- (77) The average sales price for imports from other third countries has been included to show the price trend during the period considered. According to Eurostat, the average sales price for these imports increased steadily from 96,5 ECU/tonne in 1994 to 120,5 ECU/tonne in 1997. The price then dropped to 112,3 ECU/tonne in the IP. This corresponds to an increase of 16,4 % in the period considered.

In detail, the development was as follows:

	(in ECU/tonne)				
	1994	1995	1996	1997	IP
Average import prices from other third countries	96,5	101,8	104,3	120,5	112,3

Source: Eurostat.

6.5. EXPORT ACTIVITY OF THE COMMUNITY INDUSTRY

- (78) In view of the fact that the production set out in point 6.3.1 is destined for sales both inside and outside the Community, the Community industry's exports of potash to third countries was also analysed. This analysis showed that exports amounted to 2 314 000 tonnes in 1994 compared to 1 658 000 tonnes in the IP. These exports had a downward trend except for 1997 when exports increased compared to the previous year. The overall decrease in exports amounts to 28,3 % in the period considered. In 1999 and 2000 the Community industry expects to export somewhat less than in the IP. This downward trend is likely to be explained by the fact that, as explained later in point 7.3, the countries concerned have significantly increased their marketing efforts in other third markets than the Community after the anti-dumping measures concerning imports of potash originating in the countries concerned came into force in the Community. Faced with fierce price competition, the Community industry has not been able to deliver the same quantities of potash in the third-country markets as before.

In detail, the development during the period considered was as follows:

	(in thousand tonnes)				
	1994	1995	1996	1997	IP
Export sales volumes of the Community industry	2 314	1 815	1 671	1 947	1 658

Source: Questionnaire replies of the Community industry.

6.6. CONCLUSION

- (79) The evolution of various economic indicators of the Community industry during the period considered was mixed. After the imposition of combined measures (fixed duty and a minimum price) in 1994, the situation of the Community industry has improved. Economic factors such as average sales prices per tonne for the most-sold grade, volume of stocks and profitability showed a positive development.
- (80) Indeed, average sales prices for standard grade potash with $40\% < K_2O \leq 62\%$ rose by 15,6 % during the period considered. Secondly, the volume of stocks has decreased since 1996: an indication of improving demand on the market. Thirdly, after two years of losses, the Community industry's sales have been profitable again since 1996. It is clear that this is due to increased sales prices, which were made possible by the introduction of more effective anti-dumping measures in 1994.
- (81) Nevertheless, the analysis also shows that these positive developments do not cover all indicators and that, in particular from 1996 onwards, there has been a downward trend. Specifically, production volume, capacity, capacity utilisation, market share, sales volume, employment and investments did not develop favourably.

- (82) The Community industry's sales volume decreased by 4,9 % during the period considered. Its production volume and capacity declined by 9,7 % and 7,0 % respectively, leading to a decrease of 2,2 percentage points in its capacity utilisation. Furthermore, the Community industry's investments plummeted by 39,7 % at the same time as it had to reduce its workforce by 18,0 %.
- (83) As mentioned earlier, the Community consumption of potash decreased by about 2,3 %, reaching its lowest level in 1996. The Community industry lost 1,9 % of the Community market; the countries concerned lost 2,4 %, while other third countries, notably Israel, gained 3,4 %. Since 1996, however, the Community industry has lost more than 4 % of the Community market; the countries concerned gained 3,5 % while for the other third countries the share remained practically unchanged. It can be concluded, therefore, that imports from other third countries have had no significant impact on the economic situation of the Community industry between 1996 and the end of the IP.
- (84) The average prices of the Community industry and of the countries concerned increased in a similar manner (except for standard potash with $K_2O > 62\%$) as shown in recitals 57 and 69. The same applies for other third countries. However, prices from the countries concerned continued to be the lowest, especially for potash of Russian origin, negatively influencing sales volumes, market share and profitability of the Community industry, in spite of the restricted imports originating in the said three countries.
- (85) Finally, the impact of declining export sales was considered. Export sales, which represented 24 % of the total sales of the Community industry during the IP, had decreased by 28,3 % during the period considered because of fierce competition on the third-country markets. Although this development may explain part of the negative development of the production of the Community industry in particular, it is not sufficient to explain this negative trend overall.

In conclusion, the investigation established that, although the situation of the Community industry has somewhat improved, several economic factors did not develop so favourably and that the Community industry continues to be vulnerable to a possible recurrence of injurious dumping if the measures were allowed to lapse.

7. LIKELIHOOD OF RECURRENCE OF INJURY

7.1. DOMESTIC MARKETS IN THE COUNTRIES CONCERNED

- (86) The countries concerned possess huge raw material reserves of potash. Yet domestic consumption of potash in Belarus and Russia collapsed in the first half of the 1990s and remained at a low level during the period considered. Domestic sales in these two countries increased by about 6 % in the IP compared to 1994. They still represented less than a quarter of the corresponding potash production. There is no reason to believe that demand on the domestic market would have developed differently in Ukraine.

7.2. EXPORTS UNDER THE IPR REGIME

- (87) An analysis of the sales prices for imports under the IPR regime was made in order to assess at which prices imports could be made in case anti-dumping measures were allowed to lapse. As can be seen in recital 62, IPC's prices in the Community, quoted almost exclusively under the IPR regime, undercut the Community industry's sales prices by significantly more than 10 % on average.

7.3. EXPORTS TO THIRD COUNTRIES BY THE COUNTRIES CONCERNED

- (88) The development of exports of the countries concerned to the Community and of their Community market share is described in point 6.2.

- (89) The development of the export volumes of Belarus and Russia to major markets other than the Community was also analysed on the basis of the questionnaire reply and subsequent submission of IPC. Ukrainian production is not sold through IPC and no information on Ukrainian export sales to third countries was made available as the Ukrainian exporting producers did not cooperate in the investigation. During the IP the main export market of Belarus and Russia was China, where imports increased by around 87 % during the period considered. The second largest market was Brazil, which in the IP imported about 34 times more potash from Belarus and Russia than in 1994. The United States of America and Norway were the third and fourth biggest markets with impressive increases in import volumes, as can be seen from the table below. Japan and other smaller markets in total somewhat decreased their imports from the two countries during the period considered.
- (90) Norway, which has a significant user interest but no producers of potash, imported hardly any quantities from Belarus and Russia in 1994. Since the effective, combined anti-dumping measures against potash from the countries concerned were imposed by the Community, the exports of Belarus and Russia have been redirected into Norway to such an extent that the market share of the countries concerned in Norway reached 71,3 % ⁽¹⁾ in the IP and the sales volumes of Belarus and Russia into this country exceeded total sales into the Community as early as 1995 ⁽²⁾.
- (91) The table below, indexed for confidentiality reasons, shows in detail the development of the export sales of Belarus and Russia to markets other than the Community during the period considered.

(Index)

Exports of the countries concerned to markets other than the Community	1994	1995	1996	1997	IP
China	100	167	127	183	187
Brazil	100	414	2 535	4 062	3 438
USA	100	104	103	157	157
Norway	100	3 833	5 750	5 383	4 933
Japan	100	94	78	79	84
Others	100	74	74	90	96
Total	100	130	137	188	186

Source: IPC questionnaire reply.

- (92) In order to be able to assess the importance of these exports it should be noted that the exports of the countries concerned to the Community during the IP roughly correspond to their exports to Norway. Furthermore, the total exports of the countries concerned to third-country markets other than the Community roughly correspond to the Community industry's total sales on the Community market.

⁽¹⁾ Source: International Fertiliser Industry Association.

⁽²⁾ Source: IPC questionnaire response.

- (93) A price comparison for all types of potash on a delivered basis shows that sales prices to Norway, Brazil and Japan during the IP were at a higher level than prices to the Community. The price level in China was lower in previous years but reached the level of Community prices during the IP. Export prices to the United States of America have remained systematically lower than prices to the Community during the period considered.

7.4. PRODUCTION, CAPACITY, CAPACITY UTILISATION, STOCKS AND INVESTMENTS

- (94) Information was received concerning the above indicators from the two cooperating companies in Russia and from one in Belarus. As Ukrainian companies did not cooperate no information was available except for capacity (277 000 tonnes per annum) published in a recent report by the International Fertiliser Industry Association.
- (95) As can be seen from the table below, production capacity in Belarus and Russia remained steady during the period considered, totalling 19 844 000 tonnes of potash, which is about 33 % of world capacity and almost three times the volume of Community consumption.

(in thousand tonnes)

Production capacity	1994	1995	1996	1997	IP
Belarus	9 077	9 077	9 077	9 077	9 077
Russia	10 767	10 767	10 767	10 767	10 767
Total	19 844	19 844	19 844	19 844	19 844

Source: International Fertiliser Industry Association.

- (96) Belarus and Russia managed to increase their production by 39 % during the period considered. As the table below (indexed for confidentiality reasons) shows production volumes have increased relatively steadily, with only one small downward correction in 1996.

(Index)

Actual production	1994	1995	1996	1997	IP
Belarus	100	111	108	129	138
Russia	100	113	106	137	140
Total	100	112	107	133	139

Source: Questionnaire reply of IPC.

- (97) Along with the increasing production, the capacity utilisation of the producers in Belarus and Russia has improved but remains still at an exceptionally low level leaving a considerable amount of idle capacity. The table below (indexed for confidentiality reasons) demonstrates that the capacity utilisation rate of the producers improved by 38 % during the period considered.

					(Index)
Capacity utilisation	1994	1995	1996	1997	IP
Belarus	100	111	109	130	137
Russia	100	116	108	139	142
Total	100	112	107	133	138

Source: Questionnaire reply of IPC

- (98) No clear trend was established for stocks. In general the level of stocks varied significantly during the period considered. Stocks of the three producers were at a relatively low level at the end of the IP.
- (99) Investments by Belarus and Russia in their potash mines and factories increased by around 172 % during the period considered. The growth trend was only interrupted once in 1996 when the level of investments dropped, but the following year investments again reached a level 3,5 times higher than in 1996. Since capacity has not been increased, it is probable that the investment was used to modernise the existing production facilities.

7.5. CONCLUSION ON THE LIKELIHOOD OF THE RECURRENCE OF INJURIOUS DUMPING

- (100) The information available has shown that, although Belarus and Russia have managed to redirect part of their sales from the Community market to other markets such as China and Brazil and to obtain relatively favourable prices on some of these markets, the production capacity and capacity-utilisation rates of the producers in Belarus and Russia continue to be exceptionally low.
- (101) Domestic consumption is significantly reduced and a change in this situation is not expected in the foreseeable future. Moreover, possible earnings on the Community market are much more attractive than those which can be achieved on the domestic market. These elements indicate that Belarusian and Russian export prices could be much lower than they were in the IP and still be attractive to the exporters concerned.
- (102) The alternative markets in faraway countries are bound to be less profitable than the Community market, which, being close, is cost-efficient to reach by boat or by rail. In addition, customers in the Community traditionally pay for the goods in hard currency and with shorter payment terms. It should be noted that although the price level on some markets, like Brazil, is higher than in the Community, freight costs from the countries concerned to these destinations are much higher than to the Community. Sales to the Community market are even more attractive when compared to sales to the United States of America and China, which, on a delivered basis, yield lower prices than those to the Community. Norway serves as an example of a Western European country situated in the proximity of the countries concerned and having no duties on imported potash. Norway is now almost completely dominated by imports from the countries concerned. These imports occur at a somewhat higher price than imports under the IPR regime into the Community but still clearly below those of the Community producers.
- (103) Therefore, the huge raw material reserves, the low capacity utilisation, the disadvantageous domestic situation in terms of consumption, the higher freight cost to alternative markets, the need for hard currency and the current market situation in Norway demonstrate that the export potential of the countries concerned to the Community at low prices is very high and that, in the absence of measures, there is the likelihood of the recurrence of injurious dumping.

- (104) As far as Ukraine is concerned no information was made available due to that country's non-cooperation. In accordance with Article 18 of the basic Regulation, the facts available had to be used in these circumstances. In this respect it was found that the Ukrainian potash industry has close economic links to the Belarusian and Russian industry. It has already been demonstrated in point 4.4. that there is a likelihood of recurrence of dumping in significant volumes. It is beyond any reasonable doubt that such imports, which would be in direct competition with those from Belarus and Russia, would have an injurious impact on the Community industry. It was therefore concluded that, with respect to imports originating in Ukraine, there is a likelihood of recurrence of injurious dumping should the measures lapse.
- (105) It is therefore concluded that, in the absence of measures, there is a likelihood of a recurrence of injurious dumping and that anti-dumping measures should therefore be maintained.

8. COMMUNITY INTEREST

8.1. INTRODUCTION

- (106) 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 the Community interest was based on an appreciation of all the various interests, such as those of the Community industry, the importers and users of the product concerned. In order to assess the likely impact of a continuation of the measures, information was requested from all the interested parties mentioned above.
- (107) It should be recalled that, in the previous investigations, the adoption and maintenance of measures was considered not to be against the interest of the Community. Furthermore, it should be noted that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place. Consequently, the timing and nature of the present investigation allows the assessment of any negative, undue impact of the anti-dumping measures imposed on the parties concerned.
- (108) Questionnaires were sent to 17 importers/users, of which seven unrelated and two related importers/users replied. The importers and users received the same questionnaire as many of them act in the two roles. Furthermore, questionnaires were sent to three importer/user organisations: European Fertiliser Import Association (EFIA), European Fertiliser Manufacturers Association (EFMA) and COPA/Cosega. However, only EFIA replied to the questionnaire.
- (109) On this basis it was examined whether, despite the findings on dumping, injury and continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

8.2. INTERESTS OF THE COMMUNITY INDUSTRY

- (110) As set out above, it is considered that, if the anti-dumping measures were allowed to lapse, the dumped imports destined for free circulation on the Community market would be likely to recur and that the situation of the Community industry would start deteriorating again from its currently moderately profitable status.
- (111) This could entail a severe reduction in the numbers of employees in addition to the reductions that will occur as a result of the future closure of the French Community producer.
- (112) Furthermore, although potash production in France will cease, the ongoing restructuring efforts and plans show that the Community industry is not ready to abandon this segment of production. Maintaining antidumping measures is therefore of prime interest to the Community industry.

8.3. INTERESTS OF IMPORTERS/TRADERS

- (113) Two of the seven companies that replied to the importers/users questionnaire are purely traders of the product. The remaining five are also users of it. Main arguments from the traders' position were provided in EFIA's questionnaire reply.

- (114) The importers of potash are against the prolongation of the anti-dumping measures. They argue that the combination of a fixed duty and a minimum price has completely excluded the producers of the countries concerned from the Community market, thus reducing competition within the Community to a minimum. As a result, they claim, the price of potash on the Community market has become artificially high and access to imported potash difficult especially to small traders.
- (115) While it is true that, apart from imports under the IPR regime, potash from the countries concerned has practically been excluded from the Community market, imports from Canada, Israel, Jordan and from some smaller exporting countries, together with the existence of a number of Community producers, have guaranteed competition on the Community market. No representative evidence was found on the alleged difficult access for traders to imported potash. In any event the proposed measures will take a different form to those presently reviewed and are aimed at an increased access to the Community market for the imports from the countries concerned.
- (116) It is thus concluded that the profitability of those importers who are purely traders of potash has not been negatively influenced by the imposition of the anti-dumping measures. It is also likely that a continuation of the measures in a different form will not lead to a future deterioration in their profitability.

8.4. INTERESTS OF USERS

- (117) The direct users of potash as a fertiliser (farmers) did not express their position, although their representative organisation received the questionnaire. Therefore, it is to be concluded that the continuation of anti-dumping duties will not make a major difference for farmers.
- (118) The five users who did reply to the questionnaire are all fertiliser manufacturers who buy potash from the Community industry and also import it from third countries. For them potash is a raw material for producing compound fertilisers that typically consist of three different nutrients: nitrogen, phosphorus and potassium (NPK-fertilisers).
- (119) Most of the users, being also importers, argued in the same manner against the continuation of the measures as explained above in point 8.3 'Interests of importers/traders'. However, one importing user stated that the anti-dumping measures had created a certain price stability on the Community market for potash, which was beneficial for its activity.
- (120) Users have little flexibility concerning their product mix whenever an anti-dumping duty for one of the fertiliser components is applied. As the competing fertiliser producers in third countries do not pay duty on their potash, the Community fertiliser manufacturers claim that they are unable to compete with the prices of the final product offered by their foreign competitors. On the export market the situation is completely different: there the Community fertiliser manufacturers can be competitive due to the possibility of importing under the IPR regime.
- (121) In reply to these allegations the investigation showed that potash represents around 15 % to 30 % of the total cost of the compound fertiliser. The production costs of fertilisers increased during the period considered not only because of potash but for several reasons. It was established that the price levels of other fertiliser components, especially that of nitrogen, varied significantly during the period considered. In a particular example, the share of potash in the total price increase of the final product was calculated to be around 20 % during the period considered.
- (122) Although it must be recognised that the cost situation of Community users of potash on the Community market has deteriorated since the measures were imposed, the effect of the potash prices on their total production costs is not likely to be such as to jeopardise their existence. Since the measures have been in place for seven years now, it can be concluded that their continuation will not imply a further deterioration in the situation of the users.

8.5. CONSEQUENCES FOR COMPETITION ON THE COMMUNITY MARKET

- (123) As mentioned earlier, the measures in their current form have practically excluded potash from the countries concerned, apart from imports under the IPR regime. Even in this time period, it should be recalled that the importers and users have always enjoyed the presence of a number of competitors — Community and third country-based — on the market. However, it has been argued that, despite such a presence, the current form of measures, in particular the minimum price element, has affected the market in a way that has impeded competition. While no indications in this respect have been made available in the course of the investigation, it was found that, through the imposition of measures in the present form, major sources of supply have been practically excluded from the Community market. It is recalled that such de facto exclusion was not the purpose of the combined measures (a minimum price and a specific duty), whose purpose was simply to prevent circumvention and absorption of the original duties.

8.6. CONCLUSION ON COMMUNITY INTEREST

- (124) Having analysed all the various interests involved, it is considered that, on the one hand, a continuation of the anti-dumping measures is likely to result in a stable price for potash on the Community market, entailing some negative effects on the economic situation of users of potash. On the other hand, leaving the Community industry without adequate protection against the dumped imports would most probably wipe out its already small profitability and lead to more serious problems than the user industry could possibly suffer. Therefore, the price disadvantage that will result for the users from the continuation of the anti-dumping measures is overridden by the benefits to the Community resulting from the prevention of the recurrence of the injurious dumping.
- (125) However, since the current form of anti-dumping measures has had the effect of practically excluding imports of the product concerned, other than those destined for inward processing, and consequently of eliminating a significant source of supply on this market, it is concluded that there are no compelling reasons against the prolongation of the existing anti-dumping measures, but that it is in the interest of the Community to change the form of measures as explained below.

9. DEFINITIVE ANTI-DUMPING MEASURES

- (126) It follows from the above that, as provided for by Article 11(2) of the basic Regulation (governing the request for a review lodged by the Community industry) and Article 11(3) (applicable to the interim review initiated by the Commission on its own initiative but limited to the form of the measures), the measures on imports of potassium chloride originating in Belarus, Russia and Ukraine imposed by Regulation (EEC) No 3068/92 should be maintained.
- (127) It will be recalled that the current form of measures, i.e. a combination of a minimum price and a specific duty, was introduced by Regulation (EC) No 643/94. This form of measure was chosen in view of the particular situation which prevailed at that time. Indeed there were strong indications of circumvention of the type of anti-dumping duty initially imposed, i.e. a variable duty based on a minimum price. The current investigation has shown that this particular form of measures is no longer warranted as it is considered unlikely that the countries concerned would lower their export prices and thus absorb the fixed duty. The investigation has further shown, as explained in point 8.6, that, in order to allow potential sources of supply to operate on the Community market, it is not in the interest of the Community to maintain the measures in their current form. It is therefore considered appropriate to amend the form of the measures by eliminating the minimum-price component while retaining the fixed duty element.
- (128) Finally, it should be noted that the Commission also received proposals for an undertaking from IPC, in accordance with Article 8 of the basic Regulation. These proposals were carefully examined and it was concluded that, in the absence of sufficient guarantees by the exporter and the Russian government, they could not be effectively monitored or enforced and that furthermore the risk of compensatory pricing of the product concerned imported into the Community under the IPR regime could not be excluded. The Commission was, therefore, not satisfied that the offers of price undertakings would guarantee the prevention of the injurious effects of dumping. The offers were therefore rejected,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 3068/92 is hereby replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90 and on special mixtures falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91, ex 3105 90 99 originating in Belarus, Russia and Ukraine.

2. For the purpose of paragraph 1 of this Article potassium chloride will be either potassium chloride not containing any additional fertilising elements or potassium chloride containing additional fertilising elements in special mixtures. For the purpose of the application of the anti-dumping duty, special mixture is defined as a blend of two or more fertilising elements. Such a mixture is subject to an anti-dumping duty if the K_2O content of the mixture or blend is 35 % or more, by weight, of the dry anhydrous product. Such product will fall under 'other than standard' grade.

3. The amount of duty shall be equal to the fixed amount in euro per tonne of KCl shown below per category and grade (standard potash is to be understood as potash in powder form):

Belarus

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O , by weight, not exceeding 40 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 62 % on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,51	30,84	29,51	46,65	48,19

Potassium chloride containing additional fertilising elements in special mixtures:

	With a potassium content evaluated as K_2O , by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O , by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	
Fixed amount (EUR/tonne)	30,84	46,65

Russia

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O , by weight, not exceeding 40 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 62 % on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,61	26,01	29,65	39,33	40,63

Potassium chloride containing additional fertilising elements in special mixtures:

	With a potassium content evaluated as K_2O , by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K_2O , by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	
Fixed amount (EUR/tonne)	26,01	39,33

Ukraine

Potassium chloride not containing any additional fertilising elements:

Category:	With a potassium content evaluated as K_2O , by weight, not exceeding 40 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 40 % but not exceeding 62 % on the dry anhydrous product		With a potassium content evaluated as K_2O , by weight, exceeding 62 % on the dry anhydrous product
Grade	Standard	Other than standard (including granular)	Standard	Other than standard (including granular)	
TARIC code	3104 20 10 10	3104 20 10 90	3104 20 50 10	3104 20 50 90	3104 20 90 00
Fixed amount (EUR/tonne)	19,61	30,84	29,65	46,65	48,19

Potassium chloride containing additional fertilising elements in special mixtures:

	With a potassium content evaluated as K ₂ O, by weight, equal or exceeding 35 % but not exceeding 40 % on the dry anhydrous product	With a potassium content evaluated as K ₂ O, by weight, exceeding 40 % but equal to or not exceeding 62 % on the dry anhydrous product
TARIC code	3105 20 10 10, 3105 20 90 10, 3105 60 90 10, 3105 90 91 10, 3105 90 99 10	
Fixed amount (EUR/tonne)	30,84	46,65

4. 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, the amount of anti-dumping duty, calculated on the basis of the fixed amounts set out above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. The provisions in force with regard to 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 Communities*.

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

Done at Brussels, 8 May 2000.

For the Council

The President

J. PINA MOURA

COMMISSION REGULATION (EC) No 970/2000**of 8 May 2000****amending Regulation (EC) No 1374/98 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Articles 26(3) and 29(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1374/98 ⁽²⁾, as last amended by Regulation (EC) No 249/2000 ⁽³⁾, provides for a number of different import systems. Where the detailed description of goods complicates the import procedure, that procedure is considerably simplified by the exporting country giving an assurance that the product exported meets the description of the goods in question. A product may only qualify for the specific duty when it is accompanied by a certificate known as the inward monitoring arrangements (IMA 1) certificate, issued in a prescribed form on the responsibility of the exporting country and providing the said assurance. This system of certificates is also used by non-member countries to monitor compliance with tariff quotas.
- (2) While additional verification and monitoring by the Community was initially considered unnecessary experiences has shown the need for a verification of declarations at Community level based on random sampling of lots and the use of internationally recognised testing and statistical methods.
- (3) In application of Articles 26 and 29 of Regulation (EC) No 1255/1999, the Commission shall ensure that import licences are issued to any applicant irrespective of his place of establishment in the Community and shall, taking into account all the relevant provisions, avoid any discrimination between importers.
- (4) Additional precision is necessary for the implementation of the IMA 1 certificate system notably with regard to the completion, issue, cancellation, amendment and replacement of certificates by the IMA 1 issuing agency, their validity period and the conditions for their use with

a corresponding import licence. The monitoring of all such imports and an end of year audit to ensure respect of the quota should be provided for.

- (5) In the light of experience additional conditions are appropriate for the import of New Zealand butter under the current access quota notably linking the quantity covered by a single IMA 1 certificate to that covered by a corresponding single import licence and requiring that they both be used only once together with one declaration for release for free circulation by way of derogation from Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽⁴⁾, as last amended by Regulation (EC) No 1127/1999 ⁽⁵⁾.
- (6) New Zealand butter entered under the current access quota must be identified to avoid the grant of full export refund and the payment of certain aid amounts.
- (7) Certain features of the IMA 1 certificate system must be modified to take account of new rules for completing certificates, for monitoring the issue of certificates and for monitoring authorised amendments to those certificates and to introduce precision with regard to control and verification of imports under Regulation (EC) No 1374/98.
- (8) Regulation (EC) No 1374/98 provides that operators who intend to import certain cheeses originating in Switzerland must undertake to respect a minimum free-at-frontier value in order to benefit from preferential treatment for those cheeses. In the past this undertaking was given in box 17 of the obligatory IMA 1 certificate which is no longer the case. It is appropriate, for reasons of clarity, to specify the notion of the free-at-frontier value and the conditions to ensure its respect.
- (9) Modifications to Annexes I and VII to Regulation (EC) No 1374/98 are appropriate in light of the special provisions for completing the IMA 1 certificate for imports of

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 185, 30.6.1998, p. 21.

⁽³⁾ OJ L 26, 2.2.2000, p. 4.

⁽⁴⁾ OJ L 331, 2.12.1988, p. 1.

⁽⁵⁾ OJ L 135, 29.5.1999, p. 48.

New Zealand butter under the current access quota and of the types of butter eligible under that quota. A new specimen IMA 1 should be used for the import of New Zealand butter under the current access quota.

- (10) Commission Regulation (EC) No 2204/1999 ⁽¹⁾ amended Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on tariff and statistical nomenclature and on the Common Customs Tariff ⁽²⁾, as last amended by Regulation (EC) No 254/2000 ⁽³⁾. The WTO tariff quotas to be opened by the competent Community authority from 1 July 2000 are indicated in Annex 7 to Part Three, Section III, of the abovementioned Annex I together with new quota order numbers as far as milk product quotas are concerned. The quota order numbers in Annexes I and II to Regulation (EC) No 1374/98 should be aligned to those in Annex 7 of Regulation (EEC) No 2658/87 and the WTO quotas to be opened from 1 July 2000 must also be fixed in Annex II to Regulation (EC) No 1374/98 in conformity with that same Annex 7.
- (11) Canadian cheddar is now the only product covered by the IMA 1 certificate system for which a minimum free at frontier value must be respected and for this purpose the buyer and the Member State of destination must be indicated on the IMA 1 certificate. The rules for completing IMA 1 certificates in Annex VI should therefore be modified.
- (12) Annex XI is added to provide certain definitions and specify how the IMA 1 certificate for the import of New Zealand butter under the current access quota should be completed, how the weight and fat content controls are to be carried out and the procedure to follow in any case where a dispute arises on the composition of the butter.
- (13) Annex XII is added to assist Member States in reporting the results of physical checks carried out. Annex XIII sets out the conditions for cancelling, replacing and amending IMA 1 certificates as well as certain end of year provisions, linked to normal shipping times, for releasing into free circulation product covered by an IMA 1 certificate and intended for import in the following year.
- (14) Commission Regulation (EC) No 2508/97 ⁽⁴⁾, as last amended by Regulation (EC) No 2631/1999 ⁽⁵⁾, lays down detailed rules for the application to milk and milk products of the schemes provided for in the Europe

Agreements between the Community and the Republic of Hungary, the Republic of Poland, the Czech Republic, the Slovak Republic, Bulgaria and Romania and Slovenia and the Agreements on free trade between the Community and the Baltic States. In the light of experience further precision with regard to import controls is necessary to improve the protection of own resources. It is therefore appropriate to apply the import controls provided for in Regulation (EC) No 1374/98 to these import regimes also.

- (15) For the purposes of Chapter IVa of this Regulation, Articles 239 to 250 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs code ⁽⁶⁾, as last amended by Regulation (EC) No 1662/1999 ⁽⁷⁾, will apply. However, the procedure to be followed in certain cases where the lot covered by a declaration for release for free circulation does not conform to that declaration, should be specified in order to ensure adequate surveillance of quantities actually released into free circulation against quotas.
- (16) In order to ensure a secure and transparent transition from the IMA 1 certificate system in Regulation (EC) No 1374/98 and applicable until 30 June 2000 with regard to the issue of certificates and until 31 August 2000 with regard to the use of these certificates for release for free circulation in the Community (hereinafter referred to as 'the old IMA 1 certificate/system') to the IMA 1 certificate system in Regulation (EC) No 1374/98 as amended herein and applicable from 1 July 2000 with regard to the issue of certificates and from 1 September 2000 with regard to the use of these certificates for release into free circulation in the Community (hereinafter referred to as 'the new IMA 1 certificate/system'), a separate deadline must be fixed for the issue of IMA 1s under the old IMA 1 certificate system, for their use and for the use of any import licence issued on their presentation. In addition import licences applied for on presentation of new IMA 1 certificates issued in accordance with the rules laid down in this regulation may only be issued on the working day following the deadline of 31 August 2000 for releasing product into free circulation using an IMA 1 certificate issued before the deadline of 30 June 2000 for issuing an old IMA 1 certificate.

⁽¹⁾ OJ L 278, 28.10.1999, p. 1.

⁽²⁾ OJ L 256, 7.9.1987, p. 1.

⁽³⁾ OJ L 28, 3.2.2000, p. 16.

⁽⁴⁾ OJ L 345, 16.12.1997, p. 31.

⁽⁵⁾ OJ L 321, 14.12.1999, p. 13.

⁽⁶⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁷⁾ OJ L 197, 29.7.1999, p. 25.

- (17) Member State import licence issuing authorities must request from the IMA 1 issuing agency an inventory of old IMA 1 certificates issued for the 1 January until 31 December 2000 quota period before 1 July 2000 and of their use for release into free circulation in the Community up to 31 August 2000 which must be approved by the New Zealand Ministry of Agriculture and Forestry's Food Assurance Authority in order to establish the quantities in respect of which the latter may issue new IMA 1 certificates for the period from 1 July 2000 for that same quota period but which may only be used for release into free circulation in the Community from 1 September 2000.
- (18) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1374/98 is amended as follows:

1. Article 7 shall be replaced by the following:

'Article 7

1. An import licence for the products listed in Annex I at the rate of duty indicated shall only be issued on presentation of a corresponding IMA 1 certificate, for the total net quantity indicated therein fulfilling the conditions laid down in Article 9(9) or in Chapter IV as appropriate; it shall bear the number and date of issue of that corresponding certificate.

Except in the case of butter referred to in Article 5 and reduced duty imports referred to in Annex IV, the import licence may only be issued following verification by the competent authority that the provisions in Article 28(1)(f) have been respected. The licence issuing authority shall send to the Commission by fax a copy of the IMA 1 certificate lodged with each import licence application on the day it is lodged and by 18.00 at the latest. The licence issuing authority shall issue the import licence on the fourth working day following provided the Commission has not taken any special measures before that date.

The competent import licence issuing authority shall retain a copy of each IMA 1 presented.

2. The period of validity of the IMA 1 certificate shall be from its date of issue up to the end of the eighth month following, but in no case may it extend beyond the validity of its corresponding import licence nor the 31 December of the year of import for which it is issued.

3. From 1 November of each year IMA 1 certificates valid from the following 1 January may be issued for quantities covered by the quota for the year of import. However import licence applications shall only be lodged from the first working day of the year of import.

4. The circumstances under which an IMA 1 certificate may be cancelled, amended, replaced or corrected are indicated in Annex XIII.

5. By way of derogation from Article 8(4) of Regulation (EEC) No 3719/88, the quantity imported may not exceed that shown in boxes 17 and 18 of the import licence. To that end, the figure "0" shall be entered in box 19 of the licence.'

2. In Article 8(1) subparagraph (d) shall be replaced by the following subparagraphs (d) and (e):

'(d) in box 19 the figure "0" shall be indicated;

(e) in box 20 the serial number of the IMA 1 certificate and its date of issue in one of the following ways:

- Válido si va acompañado del certificado IMA 1 nº ... expedido el ...
- Kun gyldig ledsaget af IMA 1-certifikat nr. ..., udstedt den ...
- Nur gültig in Verbindung mit der Bescheinigung IMA 1 Nr. ..., ausgestellt am ...
- Έγκυρο μόνο εφόσον συνοδεύεται από το πιστοποιητικό IMA 1 αριθ. ... που εξεδόθη στις ...
- Valid if accompanied by the IMA 1 certificate No ... issued on ...
- Valable si accompagné du certificat IMA 1 nº ..., délivré le ...
- Valido se accompagnato da un certificato IMA 1
- Geldig indien vergezeld van een certificaat IMA 1 nr. ... dat is afgegeven op ...
- Válido quando acompanhado do certificado IMA 1 com o número ... emitido ...
- Voimassa vain ... myönnetyt IMA 1 -todistuksen N:o ... kanssa
- Gäller endast tillsammans med IMA 1-intyg nr ... utfärdat den ...'

3. Article 9 shall be replaced by the following

'Article 9

1. The special rules set out in this Article shall apply to New Zealand butter subject to the tariff quota referred to in Article 5.

For the purpose of implementing the tariff quota referred to in the first subparagraph, "at least six weeks old" shall be interpreted as meaning at least six weeks old on the date a declaration for release for free circulation is presented to customs.

2. By way of derogation from Article 2(2), the security shall be EUR 5 per 100 kilograms net of product.

3. Import licence applications may be submitted only in the United Kingdom.

The United Kingdom shall monitor all IMA 1 certificates issued, cancelled, amended, corrected, or in respect of which copies were issued. It shall ensure that the total quantity in respect of which import licences are issued does not exceed the quota for any year of import.

4. An import licence, for endorsement in accordance with Article 22 of Regulation (EEC) No 3719/88, shall be used for a single customs declaration for release for free circulation and shall cover a single lot. If the quantity released into free circulation is lower than the quantity indicated in boxes 17 and 18 of the import licence, the security relating to the unreleased part shall be forfeited, and the licence in question may not be used to import any further quantity.

5. Where the compositional requirements are not met for the butter subject to the tariff quota referred to in Article 5 no preferential treatment shall be given for the whole lot. Where a declaration for release into free circulation has been accepted, customs shall, on determining non-conformity, collect the import duty set in Annex I to Council Regulation (EEC) No 2658/87 (*), attribute the quantity in box 29 of the import licence and send it to the import licence issuing authority which shall amend it with a view to converting it into a full duty import licence.

By way of derogation from Article 24 of Regulation (EEC) No 3719/88, the competent licence issuing authority shall endorse the licence in box 20 with one of the following:

- Certificado de importación con tipo reducido para el producto con el número de orden ... que se ha convertido en un certificado de importación con tipo pleno para el que se adeudaba, y se ha abonado, el tipo de derecho de .../100 kg; certificado ya anotado
- Ændret fra en importlicens med nedsat toldsats for et produkt under nr. ... til en importlicens med fuld toldsats, hvor den skyldige importtold på .../100 kg er betalt; licensen er allerede afskrevet
- Umwandlung einer Einfuhrlizenz zum ermäßigten Zollsatz für das Erzeugnis mit der lfd. Nr. ... in eine Einfuhrlizenz zum vollen Zollsatz von .../100 kg, der entrichtet wurde; Lizenz abgeschrieben
- Μετατροπή από πιστοποιητικό εισαγωγής με μειωμένο δασμό για προϊόν βάσει του αύξοντος αριθμού ... σε πιστοποιητικό εισαγωγής με πλήρη δασμό για το οποίο το ποσοστό δασμού ποσού .../100 kg οφείλετο και πληρώθηκε το πιστοποιητικό ήδη χορηγηθήκε
- Converted from a reduced duty import licence for product under order No ... to a full duty import licence on which the rate of duty of .../100 kg was due and has been paid; licence already attributed

— Certificat d'importation à droit réduit pour le produit correspondant au n° d'ordre ..., converti en un certificat d'importation à taux plein, pour lequel le taux du droit applicable de .../100 kg a été acquitté; certificat déjà imputé

— Conversione da un titolo d'importazione a dazio ridotto per il prodotto del n. d'ordine ... ad un titolo d'importazione a dazio pieno, per il quale è stata pagata l'aliquota di .../100 kg; titolo già attribuito

— Invoercertificaat met verlaagd recht voor onder volgnummer ... vallend product omgezet in een invoercertificaat met volledig recht waarvoor het recht van .../100 kg verschuldigd was en is betaald; hoeveelheid reeds op het certificaat afgeschreven

— Obtido por conversão de um certificado de importação com direito reduzido para o produto com o número de ordem ... num certificado de importação com direito pleno, relativamente ao qual a taxa de direito aplicável de .../100 kg foi paga; certificado já imputado

— Muutettu etuuskohteluun oikeuttavasta kiintiötuontitodistuksesta vakiotuontitodistukseksi tavaralle, joka kuuluu järjestysnumeroon ... ja josta on kannettu tariffin mukainen tulli .../100 kg; vähennysmerkinnät tehty

— Omvandlad från importlicens med sänkt tull för produkt med löpnummer ... till importlicens med hel tullavgift för vilken gällande tullsats .../100 kg har betalats. Redan avskriven licens.

The licence authority shall modify all counting data to take this amendment into account. The customs authority shall ensure the appropriate modifications are carried out to the trade and the own resources accounting.

6. For the purposes of monitoring the quantities of the tariff quota referred to in paragraph 1, account shall be taken of all quantities for which declarations for release for free circulation have been accepted during the quota period concerned.

7. Member States shall notify the Commission, by 31 January following the end of a given quota year, of the definitive monthly quantities and the total quantity for that quota year of butter for which declarations for release for free circulation have been accepted under the tariff quota referred to in paragraph 1 during the previous quota year. The monthly notification shall be made by the 10th of the month following that during which the declarations for release for free circulation have been accepted.

By 28 February of each year, the United Kingdom shall communicate to the Commission, in respect of the tariff quota referred to in paragraph 1 for the previous quota year, the quantity of butter for which a security has been lodged and the quantity of butter released into free circulation in respect of which the security has been released. In the case where the complete data is not available on 28 February it shall be completed without undue delay.

8. The United Kingdom shall communicate to the Commission by 31 January following the end of each quota year on the basis of the data referred to in Article 28(1)(g) a detailed inventory for the quota year of each IMA 1 issued, its identification number and the quantity covered by it together with the total number of certificates and the total quantity covered by them for the year. It shall include all the relevant details of any cancellation, correction or amendment to any IMA 1 and of any copy of an IMA 1 issued.

9. The rules to be followed concerning the completion of the IMA 1 certificate, the monitoring of the weight and fat content of the butter, and the consequences of such monitoring are set out in Annex XI.

The typical process standard deviation of the fat content referred to in point 1(e) of Annex XI notified in accordance with Article 28(1)(e) shall be approved by the Commission and the list shall be communicated to the Member States together with their date of entry into force for the purpose of issuing IMA 1 certificates. The typical process standard deviation shall be valid for at least one year unless exceptional circumstances, brought to the attention of the Commission by the New Zealand issuing agency, justify a modification, which must be approved by the Commission. Each modified or additional typical process standard deviation approved by the Commission shall be communicated to the Member States together with the entry into force date for the purpose of issuing IMA 1 certificates.

10. Member States shall communicate the results of the monitoring carried out under Annex XI to the Commission using the standard form set out in Annex XII for each quarter by the 10th of the following month.

(*) OJ L 256, 7.9.1987, p. 1.'

4. Article 10 is replaced by the following:

'Article 10

At all stages of marketing New Zealand butter imported into the Community pursuant to this section shall state its New Zealand origin on its packaging and on the corresponding invoice or invoices.

By way of derogation from the first subparagraph, where New Zealand butter is blended with Community butter and where the blended butter is intended for direct consumption and is put up in packages of 500 grams or less, the blended butter need only state its New Zealand origin on the corresponding invoice.

In either case, the invoice shall also state: "Butter imported under Article 5 of Commission Regulation (EC) No 1374/98: not eligible for the grant of aid for butter referred to in Article 1(1) of Commission Regula-

tion (EEC) No 429/90 nor for aid for butter referred to in Article 1(2)(a) of Commission Regulation (EC) No 2571/97 nor for the grant of export refund in conformity with Article 31(10) and (11) of Council Regulation (EC) No 1255/1999 except where provided for in paragraph 12 thereof and in Article 7(a) of Commission Regulation (EC) No 1222/94."

5. In Article 18 paragraph 3 shall be replaced by the following:

'3. Articles 7 and 8 shall apply *mutatis mutandis*.'

6. In Article 21 the following paragraph is added:

'Article 7 shall apply *mutatis mutandis*.'

7. Article 22 is deleted.

8. Article 23 is amended as follows:

(a) The introductory phrase of Article 23(1) is modified as follows:

'By way of derogation from Article 7.'

(b) Article 23(3) is replaced by the following:

'3. For products falling within CN codes 0406 90 02 to 0406 90 06 and for those listed in Annex IV under order numbers 3, 4 and 5, import licences shall be issued only where the applications are accompanied by a written declaration by the applicant that the minimum free at frontier value referred to in the Combined Nomenclature or in Annex IV have been complied with.

The applicant shall supply, at the request of the competent authorities, any information and additional supporting documentation which they may judge necessary with regard to compliance with the minimum free-at-frontier value and to allow any auditing of accounts required by those authorities. He shall not accept any discount, refund, or any other rebate which may lead to the product in question having a value less than the minimum import value fixed for such a product.

In cases of non-compliance with the minimum free-at-frontier value, in addition to the import duty set in Annex I to Regulation (EEC) No 2658/87, a penalty shall be paid equal to 25 % of the amount of the duty.'

9. Article 24 is replaced by the following:

'Article 24

1. The IMA 1 certificate shall be drawn up according to the specimen in Annex V, except for butter subject to the tariff quota referred to in Article 5, in accordance with the conditions laid down in this chapter.

2. The IMA 1 certificate for butter subject to the tariff quota referred to in Article 5 shall be drawn up according to the specimen in Annex Va in accordance with the conditions laid down in this chapter and in Article 9(9) of this Regulation.

3. By way of derogation from the conditions laid down in this chapter for drawing up IMA 1 certificates referred to in paragraph 1 and 2, box 3 of the IMA 1 relating to the buyer and box 6 relating to the country of destination shall not be completed except in the case of Cheddar cheese provided for under order No 43 of Annex I.'

10. Article 26(2) is replaced by the following:

'2. The certificate must contain, for each type and each form of presentation, except for butter subject to the tariff quota referred to in Article 5, the particulars set out in Annex VI.'

11. Article 27(1) is replaced by the following:

'1. The original of the certificate shall be presented, along with the corresponding import licence and the products to which they relate, to the custom authorities of the importing Member State at the time of lodging the declaration for release for free circulation. Without prejudice to Article 7(2) it shall be presented during the period of validity of the certificate, except in the case of *force majeure*.

However, a copy duly authenticated and appropriately identified by the issuing agency may be presented to the licensing authority and to the competent customs authority in the case where the original is lost or rendered unsuitable for use.'

12. In Article 28(1) the following subparagraphs (d), (e), (f), (g) and (h) are added:

'(d) it undertakes for the products listed in Annex I, Annex IIIA and Annex IV to issue the IMA 1 certificate for the total quantity covered by it before the product covered by it leaves the territory of the country issuing it;

(e) it undertakes to notify the Commission by 1 June 2000 at the latest of the typical process standard deviation of the fat content, referred to in Annex XI(1)(e), of the butter subject to the tariff quota referred to in Article 5, manufactured by each producer referred to in Annex XI(1)(a) according to each product purchasing specification;

(f) it undertakes to send to the Commission, and in the case of butter referred to in Article 5 to the United Kingdom competent licence issuing authority also, by fax a copy of each authenticated IMA 1 certificate for the total quantity covered by it on the date of issue but within seven days of that date

at the latest and, where appropriate, notification of any cancellation, correction or amendment;

(g) as far as New Zealand butter referred to in Article 5 is concerned it undertakes to communicate to the United Kingdom licence issuing authority the following information before the 10th of the following month for each month in the period January to October, and before Friday of the following week for each week or part thereof in the months of November and December, separately for IMA 1 certificates issued for the current and following quota year:

(i) the number of IMA 1 certificates issued in the month or week concerned, as the case may be, with their identification numbers and the quantities covered by those certificates, together with the total number of certificates issued and the quantities covered by them for the quota year in question, and

(ii) notification of the cancellation, correction or amendment of those IMA 1 certificates or the issuing of copies of IMA 1 certificates, as provided for in Annex XIII, paragraphs 1, 2, 4 and 5, and in Article 27(1), and all relevant details thereof.

(h) As far as products falling under CN code 0406 are concerned it undertakes to communicate to the Commission by 15 January for each order number separately:

(i) the number of IMA 1 certificates issued for the previous quota year with the identification number of each and the quantity covered by it together with the total number of certificates issued and the total quantity covered by them for the quota year in question, and

(ii) notification of the cancellation, correction or amendment of those IMA 1 certificates or the issuing of copies of IMA 1 certificates, as provided for in Annex XIII, paragraphs 1 to 5, and in Article 27(1), and all the relevant details thereof.'

13. The following Chapter IVa is added:

'CHAPTER IVa

Control provisions applicable to imports under Chapter II and Chapter III of this Regulation and to imports pursuant to Commission Regulation (EC) No 2508/97 (*).

Article 29a

1. The Community customs offices where the products are declared for release for free circulation into the Community shall carry out:

- (a) scrutiny of the documents submitted in support of a declaration for release for free circulation claiming reduced tariff treatment, and
- (b) physical checks on the products, on the basis of documents referred to under point (a).

2. Member States shall take the necessary measures to establish a system to carry out the physical checks under paragraph 1(b) without prior warning, according to a risk analysis assessment.

However, up to the end of the third calendar year following entry into force of this Regulation the system shall ensure that at least 3 % of the declarations for release for free circulation by Member State per calendar year are physically checked. However, for the period 1 July to 31 December 2000 this percentage shall be replaced by 1,5 %.

When calculating the minimum rate of physical controls to be carried out Member States may opt to disregard import declarations involving quantities not exceeding 500 kg.

3. Commission Regulation (EC) No 1854/96 (**) shall apply as regards reference methods to be applied for the analysis of the products provided for in this regulation to determine their conformity as regards composition with the declaration for release for free circulation.

4. Each customs office shall produce a detailed examination account on each physical check carried out. The examination account shall bear the examination date and shall be retained for at least three calendar years.

5. Where a physical check has been carried out box 32 of the import licence or the message box in the case of an electronic licence shall be endorsed with one of the following entries:

- Se ha realizado el control material (Reglamento (CE) n° 1374/98)
- Fysisk kontrol (förordning (EF) nr. 1374/98)
- Warenkontrolle durchgeführt [Verordnung (EG) Nr. 1374/98]
- Πραγματοποιήθηκε φυσικός έλεγχος [Κανονισμός (ΕΚ) αριθ. 1374/98]
- Physical check carried out (Regulation (EC) No 1374/98)
- Contrôle physique effectué [règlement (CE) n° 1374/98]
- Controllo fisico effettuato [regolamento (CE) n. 1374/98]

- Fysieke controle uitgevoerd (Verordening (EG) nr. 1374/98)
- Controlo físico em conformidade com [Regulamento (CE) n.º 1374/98]
- Fyysinen tarkastus suoritettu (asetus (EY) N:o 1374/98)
- Fysisk kontroll utförd (förordning (EG) Nr 1374/98)

Within 20 working days from the date of carrying out the physical check, the results of the first analysis shall be determined by customs. Within 10 working days from the date of establishing the definitive non-conforming results, these results, and where appropriate, the licence shall be sent to the competent licence issuing authority.

Without prejudice to Article 248 of Commission Regulation (EEC) No 2454/93 (***) in the case where a physical check for composition has been carried out prior to the presentation of the endorsed import licence pursuant to Article 31(1)(a) of Regulation (EEC) No 3719/88 the security shall be released.

6. Each case of non-conformity with the declaration for release for free circulation shall be notified to the Commission within 10 working days of such non-conformity being determined by customs.

Article 29b

1. For the purpose of monitoring the quantities of the tariff quotas to which this chapter applies, account shall be taken of all quantities for which declarations for release for free circulation have been accepted during the quota period concerned.

2. Member States shall notify the Commission by 15 March following each quota year ending on 31 December and by 15 September following each quota year ending on 30 June, separately for each quota, and country of origin, except for butter referred to in Article 5, of the definitive total quantity for the quota year for which declarations for release for free circulation have been accepted in that Member State.

(*) OJ L 345, 16.12.1997, p. 31.

(**) OJ L 246, 27.9.1996, p. 5.

(***) OJ L 253, 11.10.1993, p. 1.

14. The following Article 30a is added to Chapter V:

Article 30a

1. The provisions of this Article shall apply to provide for the transition to the system established by this Regulation following its amendment by Regulation (EC) No 970/2000.

2. From 1 July 2000 until 31 August 2000, IMA 1 certificates issued before 1 July 2000 may be used for the purpose of presenting New Zealand butter and cheese for release into free circulation in the Community.

3. The validity of IMA 1 certificates issued before 1 July 2000 and the validity of import licences issued on presentation of such IMA 1 certificates for the products under order Nos 35, 40 and 42 of Annex I originating in New Zealand shall not extend beyond 31 August 2000.

4. The issue of an import licence on presentation of an IMA 1 certificate issued by the New Zealand Ministry of Agriculture and Forestry's Food Assurance Authority from 1 July 2000 onwards for the products under order Nos 35, 40 and 42 of Annex I originating in New Zealand, may only take place from 1 September 2000 on the basis of licence applications lodged from that date.

5. The import licence issuing authority of each Member State which has issued import licences for the products under order Nos 35, 40 and 42 in Annex I originating in New Zealand for the quota period 1 January to 31 December 2000 shall request the New Zealand Dairy Board to provide a detailed inventory of IMA 1 certificates issued before 1 July 2000, of their use for obtaining an import licence and of their use for releasing products into free circulation in the Community before 1 September 2000. The IMA 1 issuing agency and the import licence issuing authority shall use this information to determine the quantity in respect of which IMA 1 certificates may be issued for the period from 1 July to 31 December 2000 which may be used to obtain import licences which may be used for release into free circulation in the Community from 1 September to 31 December 2000.

6. Each Member State's import licence issuing authority shall, before issuing import licences from 1 September 2000, confirm with the New Zealand Ministry of Agriculture and Forestry's Food Assurance Authority separately for each of the products under order Nos 35, 40 and 42, in respect of the quota period 1 January to 31 December 2000:

— the quantity in respect of which IMA 1 certificates have been issued before 1 July 2000,

— the quantity covered by those IMA 1 certificates which has been released into free circulation in the Community before 1 September 2000,

— the quantity for which it may issue IMA 1 certificates for the period from 1 July to 31 December 2000.

7. Member States shall communicate to the Commission for the quota period from 1 January to 31 December 2000:

— by 5 July 2000 the quantity in respect of which IMA 1 certificates have been issued before 1 July 2000 for products under order Nos 35, 40 and 42 separately,

— by 5 September 2000 the quantity in respect of which import licences have been issued up to 31 August 2000 on presentation of the IMA 1s referred to in the first indent, separately for each order number,

— by 15 September 2000 the quantity in respect of which a declaration for release for free circulation in the Community has been accepted before 1 September 2000 using IMA 1s and import licences referred to in the first and second indents respectively, separately for each order number,

— by 15 September 2000 the details of the confirmation referred to in paragraph 6.'

15. Annexes I and II shall be replaced by Annexes I and II to this Regulation.

16. Annex VI shall be replaced by Annex III to this Regulation.

17. In Annex VII, the information relating to New Zealand shall be replaced by the information in Annex IV to this Regulation.

18. Annex V to this Regulation shall be added as Annexes Va, XI, XII and XIII.

Article 2

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

It shall apply from 1 July 2000.

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

Done at Brussels, 8 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

'ANNEX I

TARIFF QUOTAS PURSUANT TO THE GATT/WTO AGREEMENTS SPECIFIED BY COUNTRY OF ORIGIN

(Calendar year)

Order number in Annex 7 to the Combined Nomenclature (TARIC order number)	CN code	Description	Country of origin	Quota quantity (annual) (tonnes)	Import duty (EUR/100 kg net weight)	Rules for completing IMA 1 certificates
35 (09.4589)	ex 0405 10 11 ex 0405 10 19 ex 0405 10 30	Butter, at least six weeks old, of a fat content by weight of not less than 80 % but less than 82 %, manufactured directly from milk or cream without the use of stored materials, in a single, self-contained and uninterrupted process Butter, at least six weeks old, of a fat content by weight of not less than 80 % but less than 82 %, manufactured directly from milk or cream without the use of stored materials, in a single, self-contained and uninterrupted process which may involve the cream passing through a stage of concentrated milkfat and/or the fractionation of such milkfat (the processes referred to as "Ammix" and "Spreadable")	New Zealand	76 667	86,88	see Annex XI
40 (09.4515)	0406 90 01	Cheese for processing ⁽¹⁾	New Zealand Australia	4 000 500	17,06 17,06	see Annex VI(C) and (D)
42 (09.4514)	ex 0406 90 21	Whole Cheddar cheeses (of the conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg and cheeses in cubic blocks or in parallelepiped shape, of a net weight of 10 kg or more) of a fat content of 50 % or more by weight in the dry matter, matured for at least three months	New Zealand Australia	7 000 3 250	17,06 17,06	see Annex VI(B)
43 (09.4513)	ex 0406 90 21	Cheddar made from unpasteurised milk, of a fat content of 50 % or more, by weight, in the dry matter, matured for at least nine months, with a free-at-frontier ⁽²⁾ value per 100 kg net, of not less than: — EUR 334,20 in whole cheeses — EUR 354,83 for cheeses of a net weight of not less than 500 g — EUR 368,58 for cheeses of a net weight less than 500 g The expression "whole cheeses" means cheeses of the: — Conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg — Cubic blocks or parallelepipeds, of a net weight of 10 kg or more	Canada	4 000	13,75	see Annex VI(A)

⁽¹⁾ Utilisation for this particular purpose will be monitored by applying the Community provisions laid down on the subject.

⁽²⁾ "Free-at-frontier value" means the free-at-frontier price or fob price in the country of export, plus an amount, where appropriate, for delivery and insurance costs to the customs territory of the Community.'

ANNEX II

‘ANNEX II

TARIFF QUOTAS PURSUANT TO THE GATT/WTO AGREEMENTS, NOT SPECIFIED BY COUNTRY OF ORIGIN

(GATT/WTO year)

Order number in Annex 7 to the Combined Nomenclature (TARIC order number)	CN code	Description	Country of origin	Quota quantity (tonnes)		Import duty (EUR/100 kg net weight)
				Annual	Quarterly	
33 (09.4590)	0402 10 19	Skimmed milk powder	all third countries	68 000	17 000	47,50
34 (09.4599)	0405 10 11 0405 10 19 0405 10 30 0405 10 50 0405 10 90 0405 90 10 (*) 0405 90 90 (*)	Butter and other fats and oils derived from milk	all third countries	10 000	2 500 in butter equivalent	94,80
36 (09.4591)	ex 0406 10 20 ex 0406 10 80	Pizza cheese, frozen, cut into pieces each weighing not more than 1 gram, in containers of a net content of 5 kg or more, of a water content, by weight, of 52 % or more, and of a fat content by weight in the dry matter of 38 % or more	all third countries	5 300	1 325	13,00
37 (09.4592)	ex 0406 30 10 0406 90 13	Processed Emmental Emmental	all third countries	18 400	4 600	71,90 85,80
38 (09.4593)	ex 0406 30 10 0406 90 15	Processed Gruyère Gruyère, Sbrinz	all third countries	5 200	1 300	71,90 85,80
39 (09.4594)	0406 90 01	Cheese for processing ⁽¹⁾	all third countries	20 000	5 000	83,50
41 (09.4595)	0406 90 21	Cheddar	all third countries	15 000	3 750	21,00
44 (09.4596)	ex 0406 10 20 ex 0406 10 80 0406 20 90 0406 30 31 0406 30 39 0406 30 90 0406 40 10 0406 40 50 0406 40 90	Fresh (unripened or uncured) cheese, including whey cheese, and curd, other than pizza cheese of order No 40 Other grated or powdered cheese Other processed cheese Blue-veined cheese	all third countries	19 500	4 875	92,60 106,40 94,10 69,00 71,90 102,90 70,40

Order number in Annex 7 to the Combined Nomenclature (TARIC order number)	CN code	Description	Country of origin	Quota quantity (tonnes)		Import duty (EUR/100 kg net weight)
				Annual	Quarterly	
	0406 90 17	Bergkäse and Appenzell				85,80
	0406 90 18	Fromage fribourgeois, Vacherin Mont d'Or and Tête de Moine				75,50
	0406 90 23	Edam				
	0406 90 25	Tilsit				
	0406 90 27	Butterkäse				
	0406 90 29	Kashkaval				
	0406 90 31	Feta, of sheep's milk or buffalo milk				
	0406 90 33	Feta, other				
	0406 90 35	Kefalo-Tyri				
	0406 90 37	Finlandia				
	0406 90 39	Jarlsberg				
	0406 90 50	Cheese of sheep's milk or buffalo milk				
ex	0406 90 63	Pecorino				94,10
	0406 90 69	Other				
	0406 90 73	Provolone				75,50
ex	0406 90 75	Caciocavallo				
ex	0406 90 76	Danbo, Fontal, Fynbo, Havarti, Maribo, Samsø				
	0406 90 78	Gouda				
ex	0406 90 79	Esrom, Italico, Kernhem, Saint-Paulin				
ex	0406 90 81	Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey				
	0406 90 82	Camembert				
	0406 90 84	Brie				
	0406 90 86	Exceeding 47 % but not exceeding 52 %				
	0406 90 87	Exceeding 52 % but not exceeding 62 %				
	0406 90 88	Exceeding 62 % but not exceeding 72 %				
	0406 90 93	Exceeding 72 %				92,60
	0406 90 99	Other				106,40

(*) 1 kg product = 1,22 kg butter.

(¹) Utilisation for this particular purpose will be monitored by applying the Community provisions laid down on the subject.'

ANNEX III

'ANNEX VI

RULES FOR COMPLETING CERTIFICATES

The following must be completed, in addition to boxes 1, 2, 4, 5, 9, 17 and 18 of the IMA 1 certificate:

A. As regards Cheddar listed under order No 43 in Annex I and covered by CN code ex 0406 90 21:

1. box 3 by specifying the buyer;
2. box 6 by specifying the country of destination;
3. box 7 by specifying, as appropriate:
 - "whole Cheddar cheeses",
 - "Cheddar cheese other than whole cheeses, of a net weight of not less than 500 g",
 - "Cheddar cheese other than whole cheeses, of a net weight of less than 500 g";
4. box 10 by specifying "exclusively unpasteurised home-produced cows' milk";
5. box 11 by specifying "at least 50 %";
6. box 14 by specifying "at least nine months";
7. boxes 15 and 16 by specifying the period for which the quota is valid.

B. As regards Cheddar cheese listed under No 42 in Annex I and covered by CN code ex 0406 90 21:

1. box 7 by specifying "whole Cheddar cheeses";
2. box 10 by specifying "exclusively home-produced cows' milk";
3. box 11 by specifying "at least 50 %";
4. box 14 by specifying "at least three months";
5. box 16 by specifying the period for which the quota is valid.

C. As regards Cheddar cheese intended for processing listed under No 40 in Annex I and covered by CN code ex 0406 90 01:

1. box 7 by specifying "whole Cheddar cheeses";
2. box 10 by specifying "exclusively home-produced cows' milk";
3. box 16 by specifying the period for which the quota is valid.

D. As regards cheese other than Cheddar, intended for processing listed under No 40 in Annex I and covered by CN code ex 0406 90 01:

1. box 7 by specifying "exclusively home-produced cows' milk";
2. box 16 by specifying the period for which the quota is valid.

E. As regards Tilsit listed under Nos 6 and 7 in Annex IV and covered by CN code ex 0406 90 25:

1. box 7 by specifying "Tilsit cheese";
2. box 10 by specifying "exclusively home-produced cows' milk";
3. box 11 and 12.

F. As regards Kashkaval cheeses listed under No 8 in Annex IV and covered by CN code ex 0406 90 29:

1. box 7 by specifying "Kashkaval cheese, made from sheep's milk, matured for at least two months, of a minimum dry matter content of 58 %, in whole cheeses not exceeding 10 kg net, whether wrapped in plastic or not";
2. box 10 by specifying "exclusively home-produced sheep's milk";
3. box 11.

- G. As regards cheeses of sheep's milk or buffalo milk in containers containing brine, or in sheep or goatskin bottles, and "Halloumi" cheese listed under Nos 9, 10 and 11 in Annex IV and covered by CN codes ex 0406 90 31, ex 0406 90 50, ex 0406 90 86, ex 0406 90 87 and ex 0406 90 88:
1. box 7 by specifying, as appropriate, "cheese of sheep's milk" or "cheese of buffalo milk" and "in containers containing brine" or "in sheep or goatskin bottles" or "Halloumi" cheese is to be presented in individual plastic packings of a net content not exceeding 1 kg or in metal or plastic containers of a net content not exceeding 12 kg;
 2. box 10 by specifying, as appropriate "exclusively home-produced sheep's milk" or "exclusive home-produced buffalo milk" or, in the case of "Halloumi" cheese, "home-produced milk";
 3. box 11 and 12.
- H. As regards Jarlsberg and Ridder cheeses listed under No 12 in Annex IIIA and covered by CN codes ex 0406 90 39, ex 0406 90 86, ex 0406 90 87 and ex 0406 90 88:
1. box 7 by specifying either "Jarlsberg cheese" and as appropriate:
 - "Whole cheeses, with rind, of a net weight of 8 to 12 kg inclusive",
 - "Rectangular blocks of a net weight of not more than 7 kg",
 - or
 - "Pieces packed in vacuum or inert gas, of a net weight of at least 150 g and not more than 1 kg",
 - or "Ridder cheese", and as appropriate:
 - "Whole cheeses, with rind, of 1 kg to 2 kg",
 - or
 - "Pieces packed in vacuum or inert gas, with rind on at least one side, of a net weight of at least 150 g";
 2. box 11 by specifying, as appropriate "at least 45 %" or "at least 60 %";
 3. box 14 by specifying as appropriate "at least three months" or "at least four months".
- I. As regards whey cheese listed under No 12 in Annex IIIA and covered by CN codes ex 0406 10 20 and ex 0406 10 80:
1. box 7 by specifying "whey cheese".

ANNEX IV

Third country	CN code and description		Issuing agency	
			Name	Location
New Zealand	ex 0405 10 11	Butter	MAF Food Assurance Authority Ministry of Agriculture and Forestry	ASB Bank House 101-103 The Terrace PO Box 2526 Wellington New Zealand Tel. (64-4) 474 41 00 Fax (64-4) 474 42 40
	ex 0405 10 19	Butter		
	ex 0405 10 30	Butter		
	ex 0406 90 01	Cheese for processing		
	ex 0406 90 21	Cheddar		

ANNEX V

ANNEX Va

IMA 1 CERTIFICATE

1. Seller	2. Serial No of issue	ORIGINAL	
		CERTIFICATE for the entry of certain New Zealand butter subject to the tariff quota referred to under order No 35 in Annex 7 of the Combined Nomenclature	
4. Number and date of invoice	5. Country of origin		
IMPORTANT A. A separate certificate must be made out for each form of presentation of each product. B. The certificate must be in an official language of the European Community. It may also contain a translation into the official language or one official language of the exporting country. C. The certificate must be made out in accordance with the Community provisions in force. D. The original, and where appropriate, a copy of the certificate together with its corresponding import licence and a declaration for release for free circulation must be presented to the customs office in the Community at the time when the product is being released into free circulation.			
7. Marks, numbers, number and kind of packages, detailed CN description and eight-digit CN code of the product preceded by "ex" and particulars of its form of presentation. — See product identification list attached reference: — CN code: ex 0405 10 — Butter, at least six weeks old, of a fat content by weight not less than 80 %, but less than 82 %, manufactured directly from milk or cream — Product purchasing specification — Factory registration No — Date of manufacture — Arithmetic mean of the tare weight of plastic wrapping		8. Gross weight (kg)	9. Net weight (kg)
10. Raw material used			
13. Fat content by weight (%) Typical process standard deviation of the fat content of the butter made in the factory according to the product purchasing specifications which are indicated in box 7 and its date of entry into force for the purpose of issuing IMA 1 certificates			
16. Observations: (a) tariff quota (¹) (b) intended for processing (¹)			
17. IT IS HEREBY CERTIFIED: <div style="text-align: right;"> <div style="border: 1px solid black; width: 150px; height: 20px; margin: 0 auto;"></div> <div style="display: flex; justify-content: space-around; width: 150px;"> Year Month Day </div> </div> — that the most recently manufactured butter covered by this certificate is/will be (¹) at least six weeks old since/on (¹): — that the particulars set out above are accurate and comply with the Community provisions in force. — that the total quota for the year 200_ kg. <div style="text-align: right; margin-top: 20px;"> <div style="border: 1px solid black; width: 150px; height: 20px; margin: 0 auto;"></div> <div style="display: flex; justify-content: space-around; width: 150px;"> Year Month Day </div> </div> <div style="text-align: right; margin-top: 10px;"> Valid up to: <div style="border: 1px solid black; width: 150px; height: 20px; margin: 0 auto;"></div> <div style="display: flex; justify-content: space-around; width: 150px;"> Year Month Day </div> </div> <div style="text-align: right; margin-top: 10px;"> Place </div>			
18. Issuing agency			
		(Signature and stamp of issuing agency)	

(¹) Delete where not applicable.

‘ANNEX XI

**CONTROL OF WEIGHT AND FAT CONTENT OF BUTTER ORIGINATING IN NEW ZEALAND IMPORTED
PURSUANT TO ARTICLE 5 OF REGULATION (EC) No 1374/98****1. Definitions**

For the purpose of this Annex the definitions set out below shall be applicable:

- (a) “producer”: a single production plant or factory in which butter is produced for export to the Community under the tariff quota referred to in Article 5;
- (b) “cypher”: the quantity of butter produced according to one product purchasing specification in one production plant during a single manufacturing run;
- (c) “lot”: a quantity of butter covered by a single IMA 1 and by a single corresponding import licence, which has been issued for the identical product and quantity as the IMA 1 presented to the competent customs authority for release into free circulation under the tariff quota referred to in Article 5;
- (d) “competent authorities”: the authorities in the Member States responsible for the control of imported products;
- (e) “typical process standard deviation of the fat content”: the standard deviation of the fat content of butter recorded by the IMA 1 issuing agency;
- (f) “product identification list”: a list which identifies in respect of each lot the serial number of its corresponding IMA 1 certificate, the single production plant or factory, the cypher or cyphers and which also provides a description of the butter. It may also identify the specification to which the butter was manufactured, the production season, the number of boxes corresponding to each cypher, the total number of boxes, the nominal weight of the boxes, the exporter's order number, the means of transport from New Zealand to the European Community and the voyage number.

2. Completion and verification of the IMA 1 certificate

- 2.1. An IMA 1 certificate shall cover butter manufactured according to one product purchasing specification in one plant. It may cover more than one cypher of the same product purchasing specification from the same plant.
- 2.2. The IMA 1 certificate shall be considered to be duly completed within the meaning of Article 27(2) only if it contains all of the following information:
 - (a) in box 1 the name and address of the seller;
 - (b) in box 2 the serial number of issue identifying the country of origin, the import regime, the product, the quota year and individual certificate number starting with one each year;
 - (c) in box 4 the number and date of the invoice;
 - (d) in box 5 “New Zealand”;
 - (e) in box 7:
 - reference to the product identification list (product ID list) which must be attached,
 - the CN code preceded by “ex” and the detailed description in Annex 7 to the Combined Nomenclature,
 - identification of the product purchasing specification and the date of the last modification,
 - the factory registration number,
 - the date of manufacture of the butter, and
 - the arithmetic mean of the tare weight of the wrapper;
 - (f) in box 8 the gross weight in kilograms;
 - (g) in box 9:
 - the net nominal weight per box,
 - the total net weight in kilograms,
 - the number of boxes,
 - the arithmetic mean of the net weight of the boxes designated by the symbol “ μ ”,
 - the standard deviation of the net weight of the boxes designated by the symbol “ σ ”;

- (h) in box 10: from milk or cream;
- (i) in box 13:
 - not less than 80 but less than 82 % fat,
 - the typical process standard deviation of the fat content of the butter, made to the product purchasing specification and in the factory indicated in box 7, and its entry into force date for the purpose of issuing IMA 1 certificates;
- (j) in box 16: "New Zealand butter quota for ... (year) in accordance with Regulation (EC) No 1374/98";
- (k) in box 17:
 - the date on which the most recently manufactured butter covered by the IMA 1 was or will be six weeks old,
 - the total quota for the year in question,
 - the date of issue and, where appropriate, the last day of validity,
 - signature and stamp of the issuing agency;
- (l) in box 18, details of the coordinates of the issuing agency.

- 2.3. Verification of the percentage fat content in box 13, undertaken by the IMA 1 issuing agency pursuant to Article 28(1)(b), shall be taken to entail the checking of the arithmetic mean of the percentage fat content found by the producer by the analysis of between 10 and 25 samples per cypher.

Verification shall require that the arithmetic mean shall not exceed \bar{M} (the maximum mean milk fat content of the sample) where:

$$\bar{M} = 81,99 - 1,645 \sigma$$

where σ is the typical process standard deviation.

3. Monitoring of weight

3.1. Community monitoring

Monitoring by the competent authorities shall be carried out on a lot.

The competent authorities shall take a random sample from the lot. The sample size shall be determined according to the following formula:

$$n = \sqrt[3]{N}$$

where:

n is the sample size; and

N is the number of boxes in the lot.

However, the minimum sample size, n , shall be fixed at 10.

The competent authority shall calculate the arithmetic mean and standard deviation of the net weights obtained from the sample.

The competent authority shall make appropriate checks to verify the information on tare weight given on the IMA 1 certificate, which may include a comparison with weight of plastic wrappers used in the Community or examination of a certificate from the manufacturer of the plastic wrappers used on the lot.

3.2. Interpretation of monitoring results — standard deviation

The standard deviation of the net weight of the boxes specified in the IMA 1 certificate shall be checked according to the following procedure.

The ratio s/σ shall be compared with the minimum ratio specified for a given sample size in the following table, where s is the sample standard deviation and σ is the standard deviation of the net weight of the boxes specified in the IMA 1 certificate.

Where the ratio s/σ is lower than the appropriate minimum ratio in the reference data table then s shall be used when the control results are interpreted under point 3.3 rather than σ .

Minimum ratio (*) s/σ for a given sample size (n)

n	s/σ
10 (**)	0,608
11	0,628
12	0,645
13	0,660
14	0,673
15	0,685
16	0,696
17	0,705
18	0,714
19	0,722
20	0,730
21	0,737
22	0,743
23	0,749
24	0,754
25	0,760
26	0,764
27	0,769
28	0,773
29	0,778
30	0,781
31	0,785
32	0,789
33	0,792
34	0,795
35	0,798
36	0,801
37	0,804
38	0,807
39	0,809
40	0,812
41	0,814
42	0,816
43	0,819

(*) The minimum ratios have been calculated using tabulated χ^2 values (5 % quantile; $n - 1$ degrees of freedom).

(**) The minimum sample size, n, shall be fixed at 10.

3.3. Interpretation of monitoring results — arithmetic mean

The competent authority shall compare the results of sampling with the information on the IMA 1 certificate using the following formula:

$$w \leq W + \frac{2,326 \sigma}{\sqrt{n}}$$

where:

w is the arithmetic mean of the net weight of the sample boxes,

W is the mean net weight per box specified on the IMA 1 certificate,

σ is the standard deviation of the net weight per box specified on the IMA 1 certificate, however the sample standard deviation of the net weight per box (s) shall be used instead of σ where required according to point 3(2), and

n is the sample size.

Where w satisfies the above formula, the mean net weight specified on the IMA 1 certificate (W) shall be used to determine the net weight of the lot imported into the Community.

Where w does not satisfy the above formula, w shall be used to determine the net weight of the lot imported into the Community. The declared weight shall be attributed in part 2 of box 29 of the import licence and the excess over the declared weight shall be imported in accordance with Article 26 of Council Regulation (EC) No 1255/1999 (OJ L 160, 26.6.1999, p. 48).

4. Control of the fat content

4.1. Community monitoring

The competent authorities shall carry out monitoring of the percentage fat content on half of the boxes which are sampled under point 3. However, the minimum sample size, n , shall be fixed at 5.

The sampling method to be used shall be International Dairy Federation (IDF) Standard 50C/1995.

The method for determining the fat content to be used shall be that laid down in Commission Regulation (EC) No 880/98, Annexes I, II and III (OJ L 124, 25.4.1998, p. 16).

4.2. Interpretation of monitoring results — standard deviation

The standard deviation of the fat content of the butter specified in the IMA 1 certificate shall be checked according to the following procedure.

The ratio s/σ shall be compared with the maximum ratio specified for a given sample size in the following table where s is the sample standard deviation and σ is the standard deviation of the fat content of the butter specified in the IMA 1 certificate.

Where the ratio s/σ is higher than the appropriate reference value in the reference data table then s shall be used when the control results are interpreted under point 4.3 rather than σ .

Maximum ratio (*) s/σ for a given sample size (n)

n	s/σ
5 (**)	1,540
6	1,488
7	1,448
8	1,417
9	1,392
10	1,371
11	1,353
12	1,337
13	1,324
14	1,311
15	1,301
16	1,291
17	1,282
18	1,274
19	1,266
20	1,259
21	1,253
22	1,247

(*) The maximum ratios have been calculated using tabulated χ^2 values (95 % quantile; $n - 1$ degrees of freedom).

(**) The maximum sample size, n , shall be fixed at 5.

4.3. Interpretation of monitoring results — arithmetic mean

Compliance with the fat content requirements shall be assumed, if the arithmetic mean of the sample results (\bar{x}) does not exceed \bar{M} where:

$$\bar{M} = 81,99 - 1,645 \sigma$$

where σ is the typical process standard deviation for the fat content specified on the IMA 1 certificate, however the sample standard deviation of the fat content (s) shall be used instead of σ where required according to point 4.2.

4.4. Further monitoring

Where the arithmetic mean of the sample results does exceed \bar{M} in point 4.3, then a further calculation shall be carried out to establish the conditions of the import of the lot concerned.

In this calculation, the arithmetic mean of the test results (\bar{x}) shall be compared with \bar{M} using the following formula:

$$\bar{x} \leq \bar{M} + 1,645 \sigma_{\bar{x}}$$

where $\sigma_{\bar{x}}$ is obtained using the following formula:

$$\sigma_{\bar{x}} = \sqrt{\frac{\sigma^2}{n} + \sigma_L^2 + \frac{\sigma_r^2}{n}}$$

where:

σ is the typical process standard deviation for the fat content specified on the IMA 1 certificate,

σ_L is the between-laboratory standard deviation calculated as:

$$\sigma_L = \sqrt{\sigma_R^2 - \sigma_r^2} = 0,102 \%$$

σ_r is the repeatability standard deviation = 0,079 %,

σ_R is the reproducibility standard deviation = 0,129 %, and

n is the sample size.

If \bar{x} satisfies the above formula, then the lot may be imported under the quota referred to in Article 5.

If \bar{x} does not satisfy the above equation then non-compliance with the fat content requirements shall be established. In this case the lot shall be imported in accordance with Article 9(5).

The competent authority shall notify the Commission without delay of each case dealt with under this point.

4.5. Disputed results

The importer concerned may challenge the results of the analysis obtained by a competent authority's laboratory within seven working days of receiving these results, undertaking to pay for the costs of testing the duplicate samples. In this case the competent authority shall send sealed duplicates of the samples analysed by its laboratory to a second laboratory. This second laboratory shall be authorised by a Member State to carry out official analyses and be recognised by that Member State as having competence in applying the method referred to in point 4.1, as demonstrated by meeting the repeatability criterion when analysing blind duplicates and by successful participation in proficiency tests.

This second laboratory shall communicate the results of its analysis to the competent authority promptly.

The procedure laid down in point 4.6 shall apply for the evaluation of the results obtained by the two laboratories.

The result of this evaluation shall be communicated by the competent authority to the operator promptly.

4.6. Procedure applicable when the results of an analysis are disputed:

- (a) where the reproducibility requirement is respected for each sample unit:

for each sample unit the arithmetic mean of the test results obtained by both laboratories is reported as the final result. The final results obtained in this way are used to test compliance as described in sections 4.2, 4.3 and 4.4. One non-compliance with the reproducibility limit per 10 sample units is accepted.

\bar{y} : arithmetic mean of all results obtained by both laboratories

R: reproducibility limit (R = 0,36 %).

- (b) where the reproducibility requirement is not respected in more than one case (more than one sample unit per 10 sample units analysed):

the consignment is finally rejected, if the results of both laboratories lead to this conclusion. Otherwise, the consignment is accepted.'

'ANNEX XII

Application of Article 9(10) of Commission Regulation (EC) No 1374/98

COMMISSION OF EUROPEAN COMMUNITIES
DG AGRI/D/1 — 'Milk unit'

		Description of the field (Column 1)	Box No (Column 2)	Value (Column 3)	Unit or format
General information		Name of the butter manufacturer:	1		—
		Lot identification code:	2		—
		Size of the lot:	3		kg
		Date of control:	4		day/month/year
Weight control		Size of the random sample:	5		No of boxes
	Mean	Arithmetic mean of the net weight per box: (as specified on the IMA 1 certificate — box 9)	6		kg
		Arithmetic mean of the net weight of the sample boxes:	7		kg
		The arithmetic mean of the net weight determined in the EU shows a significant difference to the declared value:	8		N = No Y = Yes
	Standard deviation	Standard deviation of the net weight per box: (as specified on the IMA 1 certificate — box 9)	9		kg
		Standard deviation of the net weight of the sample boxes:	10		kg
		The standard deviation of the net weight determined in the EU shows a significant difference to the declared value:	11		N = No Y = Yes
Control of the fat content		Size of the random sample:	12		No of boxes
	Mean	Maximum mean fat content resulting from the reported typical standard deviation:	13		% fat
		Arithmetic mean of the fat content of the sample boxes:	14		% fat
		The arithmetic mean of the fat content determined in the EU shows a significant difference to the maximum mean fat content:	15		N = No Y = Yes
	Standard deviation	Typical standard deviation of the fat content: (as specified on the IMA 1 certificate — box 13)	16		% fat
		Standard deviation of the fat content of the sample boxes:	17		% fat
		The standard deviation of the fat content determined in the EU shows a significant difference to the declared value:	18		N = No Y = Yes

To be sent to the European Commission by e-mail (DGAGRI-D1-Milk@cec.eu.int) or by fax ((32-2) 295 55 03)

*'ANNEX XIII***CIRCUMSTANCES UNDER WHICH AN IMA 1 CERTIFICATE OR PART THEREOF MAY BE CANCELLED, AMENDED, REPLACED OR CORRECTED****1. Cancellation of IMA 1 when full duty is due and paid for non-respect of compositional requirements**

Where full duty is paid on a lot because the maximum fat content requirement is not respected the corresponding IMA 1 certificate may be cancelled and the IMA 1 issuing agency may add these quantities to those in respect of which IMA 1 certificates may be issued for the same quota year. The customs authority shall retain the corresponding import licence, send it to the import licence issuing authority, which shall amend it to convert it into a full duty import licence for the quantity in question in accordance with Article 9(5).

2. Produce destroyed or rendered unfit for sale

The IMA 1 issuing agency may cancel an IMA 1 or part thereof for a quantity covered by it which is destroyed or rendered unfit for sale in circumstances beyond the control of the exporter. Where part of the quantity covered by an IMA 1 is destroyed or rendered unfit for sale, a replacement IMA 1 may be issued for the remaining quantity. In the case of New Zealand butter referred to in Article 5, the original product identification list shall be used for this purpose. The replacement certificate shall be valid only up to the same date as the original. In this case, box 17 of the replacement IMA 1 shall contain the terms "valid up to 00.00.0000".

In the case where the total quantity covered by an IMA 1 or part thereof is destroyed or rendered unfit for sale due to circumstances beyond the exporters' control, the IMA 1 issuing agency may add these quantities to those in respect of which IMA 1 certificates may be issued for the same quota year.

3. Change of Member State of destination

When the exporter is obliged to change the Member State of destination indicated on an IMA 1, before a corresponding import licence is issued, the original IMA 1 may be amended by the IMA 1 issuing agency. Such an amended original IMA 1 certificate, duly authenticated and appropriately identified by the issuing agency may be presented to the licensing authority and to the customs authorities.

4. When a clerical or technical error is discovered on an IMA 1 certificate before a corresponding import licence is issued the original IMA 1 may be corrected by the issuing agency. Such a corrected original IMA 1 may be presented to the licensing authority and to the customs authorities.
5. When, for exceptional reasons and in circumstances beyond the control of the exporter, product destined for import in a given year becomes unavailable and the only means, in the light of normal shipping time from the country of origin, of filling the quota is to replace it with product originally intended for import for the following year, the issuing agency may, on the sixth working day after giving due notification to the Commission of the details of the IMA 1 certificate or part thereof to be cancelled for the year in question and of the first IMA 1 certificate or part thereof issued for the following year to be cancelled, issue a new IMA 1 certificate for the replacement quantity.

If the Commission considers that the circumstances of the case concerned do not fall within this provision it may object, within five working days, stating the reason for this objection. Where the quantity to be replaced is greater than that covered by the first IMA 1 certificate issued for the following year the required quantity may be obtained by cancelling an additional IMA 1 certificate, in sequence, or part thereof as necessary.

All quantities in respect of which IMA 1 certificates or part thereof have been cancelled for the year in question shall be added to the quantities for which an IMA 1 certificate may be issued for that quota year. All quantities brought forward from the following quota year, in respect of which an IMA 1 certificate or certificates have been cancelled, shall be added back to the quantities for which IMA 1 certificates may be issued for that quota year.'

COMMISSION REGULATION (EC) No 971/2000
of 10 May 2000
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 May 2000.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 10 May 2000 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	103,2
	068	64,6
	204	85,8
	999	84,5
0707 00 05	052	104,6
	628	128,8
	999	116,7
0709 90 70	052	70,7
	999	70,7
0805 10 10, 0805 10 30, 0805 10 50	052	65,4
	204	32,0
	212	46,0
	220	19,1
	388	46,3
	448	24,0
	600	74,3
	624	51,8
	999	44,9
	388	65,2
0805 30 10	999	65,2
	388	85,7
0808 10 20, 0808 10 50, 0808 10 90	400	87,1
	404	86,2
	508	83,2
	512	88,2
	528	84,3
	804	76,8
	999	84,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 972/2000
of 10 May 2000**

**fixing the maximum export refund for white sugar for the 38th partial invitation to tender issued
within the framework of the standing invitation to tender provided for in Regulation (EC) No
1489/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Commission Regulation (EC) No 1489/1999 of 7 July 1999 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽²⁾, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1489/1999 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

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

- (3) Following an examination of the tenders submitted in response to the 38th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 38th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1489/1999 the maximum amount of the export refund is fixed at EUR 48,718/100 kg.

Article 2

This Regulation shall enter into force on 11 May 2000.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 172, 8.7.1999, p. 27.

COMMISSION REGULATION (EC) No 973/2000**of 10 May 2000****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organization of the market in sugar ⁽¹⁾,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 May 2000.

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 12.

⁽³⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,57	—	0,00
1703 90 00 ⁽¹⁾	8,80	—	0,00

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

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

COMMISSION REGULATION (EC) No 974/2000**of 10 May 2000****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

export refunds in the sugar sector ⁽⁴⁾; the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 May 2000.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 89, 10.4.1968, p. 3.

⁽³⁾ OJ L 349, 31.12.1994, p. 105.

⁽⁴⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 10 May 2000 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— EUR/100 kg —
1701 11 90 9100	40,15 ⁽¹⁾
1701 11 90 9910	39,87 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	40,15 ⁽¹⁾
1701 12 90 9910	39,87 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— EUR/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4365
	— EUR/100 kg —
1701 99 10 9100	43,65
1701 99 10 9910	45,40
1701 99 10 9950	43,34
	— EUR/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4365

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

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

COMMISSION REGULATION (EC) No 975/2000**of 10 May 2000****on the issue of import licences for high-quality fresh, chilled or frozen beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat ⁽¹⁾, as last amended by Regulation (EC) No 134/1999 ⁽²⁾,

Whereas:

- (1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).
- (2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 1999 to 30 June 2000 at 11 500 t.

- (3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 May 2000 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.
2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of June 2000 for 10 486,490 t.

Article 2

This Regulation shall enter into force on 11 May 2000.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28.5.1997, p. 10.

⁽²⁾ OJ L 17, 22.1.1999, p. 22.

COMMISSION REGULATION (EC) No 976/2000**of 9 May 2000****establishing unit values for the determination of the customs value of certain perishable goods**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 1662/1999 ⁽⁴⁾, and in particular Article 173 (1) thereof,

Whereas:

- (1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish

unit values for the products referred to in the classification in Annex 26 to that Regulation.

- (2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 May 2000.

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

Done at Brussels, 9 May 2000.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 119, 7.5.1999, p. 1.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 197, 29.7.1999, p. 25.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 50	a) b) c)	48,50 288,40 395,14	667,44 318,17 1 956,68	94,87 38,20 28,32	361,48 93 918,39	16 307,31 106,89	8 070,52 9 724,34
1.30	Onions (other than seed) 0703 10 19	a) b) c)	33,72 200,49 274,70	464,00 221,19 1 360,28	65,95 26,56 19,69	251,30 65 291,80	11 336,80 74,31	5 610,60 6 760,33
1.40	Garlic 0703 20 00	a) b) c)	128,32 762,98 1 045,40	1 765,79 841,75 5 176,61	250,98 101,06 74,92	956,34 248 471,27	43 142,76 282,79	21 351,43 25 726,79
1.50	Leeks ex 0703 90 00	a) b) c)	45,99 273,44 374,66	632,84 301,67 1 855,23	89,95 36,22 26,85	342,74 89 049,06	15 461,84 101,35	7 652,09 9 220,17
1.60	Cauliflowers 0704 10 00	a) b) c)	55,28 328,68 450,34	760,67 362,61 2 229,99	108,12 43,54 32,27	411,97 107 037,01	18 585,14 121,82	9 197,82 11 082,64
1.70	Brussels sprouts 0704 20 00	a) b) c)	59,69 354,90 486,26	821,35 391,54 2 407,89	116,74 47,01 34,85	444,84 115 575,96	20 067,78 131,54	9 931,58 11 966,77
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	57,03 339,09 464,61	784,77 374,10 2 300,64	111,54 44,92 33,29	425,03 110 428,00	19 173,92 125,68	9 489,21 11 433,75
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> <i>L. convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 629,95 863,12	1 457,90 694,99 4 274,01	207,22 83,44 61,85	789,59 205 147,81	35 620,39 233,48	17 628,60 21 241,07
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	60,77 361,30 495,03	836,16 398,60 2 451,29	118,85 47,86 35,48	452,86 117 659,38	20 429,53 133,91	10 110,61 12 182,49
1.110	Cabbage lettuce (head lettuce) 0705 11 10	a) b) c)	152,67 907,73 1 243,73	2 100,79 1 001,45 6 158,69	298,60 120,24 89,13	1 137,77 295 610,34	51 327,65 336,44	25 402,15 30 607,59
1.120	Endives ex 0705 29 00	a) b) c)	21,82 129,74 177,76	300,25 143,13 880,22	42,68 17,18 12,74	162,61 42 249,41	7 335,88 48,08	3 630,54 4 374,52
1.130	Carrots ex 0706 10 00	a) b) c)	37,38 222,25 304,52	514,37 245,20 1 507,93	73,11 29,44 21,82	278,58 72 378,74	12 567,32 82,38	6 219,59 7 494,12
1.140	Radishes ex 0706 90 90	a) b) c)	129,01 767,06 1 050,98	1 775,22 846,25 5 204,25	252,32 101,60 75,32	961,45 249 798,19	43 373,16 284,30	21 465,46 25 864,18
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	a) b) c)	453,94 2 699,00 3 698,02	6 246,35 2 977,65 18 311,88	887,83 357,51 265,01	3 382,99 878 949,82	152 614,53 1 000,35	75 529,21 91 006,74

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	a) b) c)	130,09 773,48 1 059,78	1 790,08 853,33 5 247,82	254,43 102,45 75,95	969,50 251 889,36	43 736,26 286,68	21 645,15 26 080,70
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	a) b) c)	139,06 826,81 1 132,85	1 913,51 912,17 5 609,67	271,98 109,52 81,18	1 036,34 269 257,71	46 751,97 306,45	23 137,64 27 879,03
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 937,88 1 285,03	2 170,55 1 034,71 6 363,22	308,51 124,23 92,09	1 175,56 305 427,23	53 032,19 347,61	26 245,73 31 624,03
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	422,90 2 514,46 3 445,18	5 819,27 2 774,06 17 059,84	827,13 333,06 246,89	3 151,68 818 853,42	142 179,82 931,95	70 365,06 84 784,34
1.200.2	— other ex 0709 20 00	a) b) c)	369,09 2 194,48 3 006,76	5 078,73 2 421,04 14 888,88	721,87 290,68 215,47	2 750,61 714 649,37	124 086,58 813,36	61 410,68 73 995,02
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	154,04 915,89 1 254,90	2 119,66 1 010,45 6 214,03	301,28 121,32 89,93	1 148,00 298 266,71	51 788,89 339,46	25 630,42 30 882,63
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	86,31 513,19 703,15	1 187,69 566,17 3 481,85	168,81 67,98 50,39	643,25 167 124,69	29 018,33 190,21	14 361,22 17 304,14
1.230	Chantarelles 0709 51 30	a) b) c)	1 699,80 10 106,55 13 847,42	23 389,76 11 149,96 68 569,76	3 324,52 1 338,70 992,34	12 667,76 3 291 271,75	571 472,76 3 745,87	282 822,92 340 779,30
1.240	Sweet peppers 0709 60 10	a) b) c)	223,45 1 328,55 1 820,30	3 074,69 1 465,71 9 013,79	437,02 175,98 130,45	1 665,23 432 651,98	75 122,58 492,41	37 178,30 44 796,92
1.250	Fennel 0709 90 50	a) b) c)	73,55 437,31 599,18	1 012,07 482,46 2 967,00	143,85 57,93 42,94	548,13 142 412,66	24 727,51 162,08	12 237,69 14 745,45
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	60,08 357,21 489,43	826,70 394,09 2 423,56	117,50 47,32 35,07	447,74 116 328,39	20 198,43 132,40	9 996,24 12 044,68
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	176,48 1 049,30 1 437,69	2 428,42 1 157,63 7 119,19	345,16 138,99 103,03	1 315,22 341 712,93	59 332,58 388,91	29 363,80 35 381,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	89,97 534,96 732,98	1 238,07 590,19 3 629,55	175,97 70,86 52,53	670,53 174 214,54	30 249,36 198,28	14 970,46 18 038,23

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 00	a) b) c)	134,30 798,49 1 094,05	1 847,97 880,93 5 417,53	262,66 105,77 78,40	1 000,85 260 035,45	45 150,69 295,95	22 345,16 26 924,15
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	142,18 845,34 1 158,24	1 956,40 932,62 5 735,40	278,07 111,97 83,00	1 059,57 275 292,67	47 799,84 313,32	23 656,23 28 503,89
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 10	a) b) c)	42,76 254,24 348,34	588,39 280,49 1 724,93	83,63 33,68 24,96	318,67 82 794,91	14 375,91 94,23	7 114,67 8 572,61
2.70.2	— Monreales and satsumas 0805 20 30	a) b) c)	68,97 410,07 561,85	949,03 452,40 2 782,19	134,89 54,32 40,26	513,99 133 541,83	23 187,24 151,99	11 475,41 13 826,96
2.70.3	— Mandarines and wilkings 0805 20 50	a) b) c)	51,83 308,18 422,25	713,22 339,99 2 090,89	101,37 40,82 30,26	386,28 100 360,17	17 425,82 114,22	8 624,07 10 391,32
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	38,12 226,67 310,58	524,59 250,08 1 537,91	74,56 30,02 22,26	284,12 73 817,97	12 817,22 84,01	6 343,27 7 643,14
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	147,67 878,01 1 203,00	2 032,00 968,66 5 957,04	288,82 116,30 86,21	1 100,52 285 931,31	49 647,06 325,42	24 570,42 29 605,42
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 00	a) b) c)	69,54 413,45 566,48	956,85 456,13 2 805,12	136,00 54,76 40,60	518,23 134 642,79	23 378,41 153,24	11 570,02 13 940,96
2.90.2	— pink ex 0805 40 00	a) b) c)	61,96 368,40 504,76	852,59 406,43 2 499,46	121,18 48,80 36,17	461,76 119 971,10	20 830,92 136,54	10 309,26 12 421,84
2.100	Table grapes ex 0806 10 10	a) b) c)	143,24 851,66 1 166,90	1 971,01 939,59 5 778,25	280,15 112,81 83,62	1 067,49 277 349,38	48 156,95 315,66	23 832,96 28 716,84

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	66,76 396,91 543,82	918,58 437,89 2 692,91	130,56 52,57 38,97	497,50 129 256,87	22 443,23 147,11	11 107,20 13 383,30
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	87,93 522,83 716,35	1 209,99 576,80 3 547,22	171,98 69,25 51,34	655,32 170 262,61	29 563,18 193,78	14 630,87 17 629,04
2.120.2	— other ex 0807 19 00	a) b) c)	140,54 835,61 1 144,90	1 933,86 921,87 5 669,33	274,87 110,68 82,05	1 047,37 272 121,26	47 249,18 309,71	23 383,71 28 175,52
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>) ex 0808 20 50	a) b) c)	149,30 887,68 1 216,25	2 054,38 979,33 6 022,66	292,00 117,58 87,16	1 112,64 289 080,85	50 193,92 329,01	24 841,06 29 931,52
2.140.2	Other ex 0808 20 50	a) b) c)	66,16 393,38 538,99	910,41 433,99 2 668,97	129,40 52,11 38,63	493,07 128 107,69	22 243,70 145,80	11 008,45 13 264,31
2.150	Apricots 0809 10 00	a) b) c)	495,26 2 944,68 4 034,64	6 814,93 3 248,69 19 978,74	968,64 390,05 289,13	3 690,93 958 957,08	166 506,41 1 091,41	82 404,33 99 290,72
2.160	Cherries 0809 20 95 0809 20 05	a) b) c)	377,09 2 242,08 3 071,96	5 188,87 2 473,55 15 211,77	737,52 296,98 220,15	2 810,26 730 148,05	126 777,66 831,00	62 742,50 75 599,76
2.170	Peaches 0809 30 90	a) b) c)	151,07 898,23 1 230,71	2 078,79 990,97 6 094,22	295,47 118,98 88,20	1 125,86 292 515,79	50 790,34 332,92	25 136,23 30 287,18
2.180	Nectarines ex 0809 30 10	a) b) c)	174,19 1 035,70 1 419,05	2 396,93 1 142,62 7 026,87	340,69 137,19 101,69	1 298,16 337 281,78	58 563,18 383,87	28 983,03 34 922,26
2.190	Plums 0809 40 05	a) b) c)	207,67 1 234,75 1 691,78	2 857,60 1 362,22 8 377,37	406,17 163,55 121,24	1 547,66 402 104,61	69 818,55 457,64	34 553,33 41 634,04
2.200	Strawberries 0810 10 00	a) b) c)	335,93 1 997,35 2 736,65	4 622,50 2 203,56 13 551,38	657,02 264,57 196,12	2 503,52 650 451,18	112 939,67 740,29	55 894,05 67 347,92
2.205	Raspberries 0810 20 10	a) b) c)	750,86 4 464,41 6 116,88	10 332,06 4 925,32 30 289,62	1 468,55 591,35 438,35	5 595,78 1 453 867,69	252 439,13 1 654,68	124 932,59 150 533,91
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	1 822,37 10 835,32 14 845,94	25 076,36 11 953,96 73 514,22	3 564,25 1 435,23 1 063,90	13 581,21 3 528 600,36	612 680,79 4 015,97	303 216,85 365 352,38
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	a) b) c)	134,58 800,20 1 096,38	1 851,91 882,81 5 429,08	263,22 105,99 78,57	1 002,98 260 589,80	45 246,94 296,58	22 392,79 26 981,55

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a) b) c)	347,17 2 064,18 2 828,22	4 777,16 2 277,29 14 004,80	679,01 273,42 202,68	2 587,28 672 214,86	116 718,55 765,06	57 764,23 69 601,34
2.240	Khakis (including sharon fruit) ex 0810 90 85	a) b) c)	473,79 2 817,00 3 859,70	6 519,44 3 107,83 19 112,48	926,64 373,14 276,60	3 530,89 917 377,62	159 286,85 1 044,09	78 831,36 94 985,56
2.250	Lychees ex 0810 90 30	a) b) c)	577,16 3 431,63 4 701,82	7 941,87 3 785,91 23 282,49	1 128,82 454,55 336,94	4 301,27 1 117 533,53	194 040,49 1 271,89	96 030,99 115 709,77

**COMMISSION REGULATION (EC) No 977/2000
of 10 May 2000
fixing the import duties in the rice sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 2831/98 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

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

- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 May 2000.

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

Done at Brussels, 10 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	76,44	111,06		173,10
1006 10 23	(7)	76,44	111,06		173,10
1006 10 25	(7)	76,44	111,06		173,10
1006 10 27	(7)	76,44	111,06		173,10
1006 10 92	(7)	76,44	111,06		173,10
1006 10 94	(7)	76,44	111,06		173,10
1006 10 96	(7)	76,44	111,06		173,10
1006 10 98	(7)	76,44	111,06		173,10
1006 20 11	117,32	36,72	54,32		87,99
1006 20 13	117,32	36,72	54,32		87,99
1006 20 15	117,32	36,72	54,32		87,99
1006 20 17	197,57	64,81	94,44	0,00	148,17
1006 20 92	117,32	36,72	54,32		87,99
1006 20 94	117,32	36,72	54,32		87,99
1006 20 96	117,32	36,72	54,32		87,99
1006 20 98	197,57	64,81	94,44	0,00	148,17
1006 30 21	(7)	146,86	212,59		341,25
1006 30 23	(7)	146,86	212,59		341,25
1006 30 25	(7)	146,86	212,59		341,25
1006 30 27	(7)	146,86	212,59		341,25
1006 30 42	(7)	146,86	212,59		341,25
1006 30 44	(7)	146,86	212,59		341,25
1006 30 46	(7)	146,86	212,59		341,25
1006 30 48	(7)	146,86	212,59		341,25
1006 30 61	(7)	146,86	212,59		341,25
1006 30 63	(7)	146,86	212,59		341,25
1006 30 65	(7)	146,86	212,59		341,25
1006 30 67	(7)	146,86	212,59		341,25
1006 30 92	(7)	146,86	212,59		341,25
1006 30 94	(7)	146,86	212,59		341,25
1006 30 96	(7)	146,86	212,59		341,25
1006 30 98	(7)	146,86	212,59		341,25
1006 40 00	(7)	45,38	(7)		105,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

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

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

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

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

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

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

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

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	197,57	455,00	117,32	455,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	346,66	297,38	451,10	340,37	—
(b) fob price (EUR/tonne)	—	—	—	417,68	306,95	—
(c) Sea freight (EUR/tonne)	—	—	—	33,42	33,42	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 April 2000

amending Decision 1999/215/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary and terminating the proceeding in respect of such imports originating in Saudi Arabia

(notified under document number C(2000) 1058)

(2000/324/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 905/98 ⁽²⁾, and in particular Article 8(9) thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) Following an investigation initiated by means of a notice published in the *Official Journal of the European Communities* ⁽³⁾, the Council, by Regulation (EC) No 603/1999 ⁽⁴⁾, imposed definitive anti-dumping duties on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary.
- (2) Also within the framework of this investigation, the Commission, by Decision 1999/215/EC of 16 March 1999 ⁽⁵⁾, accepted a price undertaking offered by, *inter alia*, the Polish company WKI Isoliertechnik Spolka z.o.o. (hereinafter the 'company').

B. WITHDRAWAL OF UNDERTAKING

- (3) The company has, however, now withdrawn its undertaking following difficulties in observing certain conditions laid down therein.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ C 1, 3.1.1998, p. 10.

⁽⁴⁾ OJ L 75, 20.3.1999, p. 1.

⁽⁵⁾ OJ L 75, 20.3.1999, p. 34.

- (4) Accordingly, in view of this withdrawal, Decision 1999/215/EC should be amended so as remove the name of the company from the list of companies from which undertakings are accepted in this proceeding.
- (5) In parallel to this Decision, the Council, by Regulation (EC) No 968/2000 ⁽¹⁾ has withdrawn the exemption from the anti-dumping duties granted to this company and has imposed a definitive anti-dumping duty against it,

HAS ADOPTED THIS DECISION:

Article 1

Article 1(1) of Decision 1999/215/EC is hereby replaced by the following.

'1. The undertakings offered by the producers mentioned below, in the framework of the anti-dumping proceedings concerning imports into the Community of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary, are hereby accepted.

Country	Company	TARIC additional code
Czech Republik	Juta a.s.	8596
	Lanex a.s.	8580
Hungary	Partium '70 Rt	8581
	Tiszai Vegyi Kombinat Rt	8582
	Elso Magyar Kenderfono Rt	8583'

Article 2

This Decision shall take effect on the day following its publication in the *Official Journal of the European Communities*.

Done at Brussels, 25 April 2000.

For the Commission

Pascal LAMY

Member of the Commission

⁽¹⁾ See page 1 of this Official Journal.

EUROPEAN ECONOMIC AREA

THE EEA JOINT COMMITTEE

DECISION OF THE EEA JOINT COMMITTEE
No 13/1999
of 29 January 1999
amending Annex XXI (Statistics) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Where Annex XXI to the Agreement was amended by Decision of the EEA Joint Committee No 38/98 of 30 April 1998 ⁽¹⁾,

Whereas it has become necessary, in order to maintain the homogeneity of the Agreement in the area of statistics and in order to ensure the production and dissemination of coherent and comparable statistical information for describing and monitoring all relevant economic, social and environmental aspects of the European Economic Area, to incorporate into Annex XXI to the Agreement a number of legal acts adopted by the European Community during the time which has passed since the last amendments were made to Annex XXI;

Whereas, taking into account the specific situation of Liechtenstein as a small country, a limitation of the statistical requirements is appropriate,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XXI to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The texts of Council Regulation (EC, Euratom) No 58/97 ⁽²⁾, Council Regulation (EC) No 476/97 ⁽³⁾, Commission Regulation (EC) No 895/97 ⁽⁴⁾, Council Regulation (EC) No 322/97 ⁽⁵⁾, Council Regulation (EC) No 23/97 ⁽⁶⁾, Commission Decision 97/157/EC, Euratom ⁽⁷⁾, Commission Regulation (EC) No 1749/96 ⁽⁸⁾, Commission Regulation (EC) No 2214/96 ⁽⁹⁾, Council Regulation (EC) No 2223/96 ⁽¹⁰⁾, Commission Decision 97/178/EC, Euratom ⁽¹¹⁾, Council Directive 96/16/EC ⁽¹²⁾, Commission Decision 97/80/EC ⁽¹³⁾ and Council Regulation (EC) No 2467/96 ⁽¹⁴⁾ in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

⁽¹⁾ OJ L 310, 19.11.1998, p. 27.

⁽²⁾ OJ L 14, 17.1.1997, p. 1.

⁽³⁾ OJ L 75, 15.3.1997, p. 1.

⁽⁴⁾ OJ L 128, 21.5.1997, p. 1.

⁽⁵⁾ OJ L 52, 22.2.1997, p. 1.

⁽⁶⁾ OJ L 6, 10.1.1997, p. 1.

⁽⁷⁾ OJ L 60, 1.3.1997, p. 63.

⁽⁸⁾ OJ L 229, 10.9.1996, p. 3.

⁽⁹⁾ OJ L 296, 21.11.1996, p. 8.

⁽¹⁰⁾ OJ L 310, 30.11.1996, p. 1.

⁽¹¹⁾ OJ L 75, 15.3.1997, p. 44.

⁽¹²⁾ OJ L 78, 28.3.1996, p. 27.

⁽¹³⁾ OJ L 24, 25.1.1997, p. 26.

⁽¹⁴⁾ OJ L 335, 24.12.1996, p. 3.

Article 3

This Decision shall enter into force on 30 January 1999 provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee.

Article 4

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

Done at Brussels, 29 January 1999.

For the EEA Joint Committee

The President

F. BARBASO

ANNEX

to Decision of the EEA Joint Committee No 13/1999

Annex XXI (Statistics) to the EEA Agreement shall be amended as specified below.

A. BUSINESS STATISTICS

1. Point 1 (Council Directive 64/475/EEC) shall be replaced by the following:

'1. **397 R 0058**: Council Regulation (EC, Euratom) No 58/97 of 20 December 1996 concerning structural business statistics (OJ L 14, 17.1.1997, p. 1).

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) Iceland is exempted from transmitting the preliminary national results or estimates as required in the Annexes to this Regulation;
- (b) Iceland is exempted from utilising NACE REV.1 for the years 1995 and 1996; it shall supply data converted from ISIC 1968 instead;
- (c) Iceland is exempted from providing data regarding the following individual items:

- (i) Annex 2, Section 4(3), yearly enterprise statistics:

codes 12 13 0, 13 12 0, 13 13 1, 13 41 1, 15 12 0, 15 13 0, 15 31 0, 16 13 2, 18 12 0, 18 15 0, 18 16 0, 20 11 0

- (ii) Annex 2, Section 4(4), multi-yearly enterprise statistics: all items

- (iii) Annex 2, Section 7(2):

breakdown by size classes as regards results before 1997;

- (d) the EFTA States shall not be bound by the regional breakdown of the data as required by this Regulation;
- (e) Liechtenstein is exempted from collecting the data required by this Regulation, except for the following variables regarding sections C to K and M to O of the statistical classification of economic activities in the European Community (NACE REV.1):

- number of enterprises (total),
- number of local units (total),
- number of persons employed (NACE REV.1, 3-digit level).

It shall provide such variables annually, for the first time in 2000 for the year 1999.'

2. The text of point 3 (Council Directive 72/221/EEC) shall be deleted.

3. In point 4b (Council Regulation (EEC) No 2186/93), the text of adaptation (b) shall be replaced by the following: 'Liechtenstein shall put into effect the measures necessary to comply with this Regulation by 1 January 2000.'

B. FOREIGN TRADE STATISTICS

1. The following shall be added in point 8 (Council Regulation (EC) No 1172/95):

‘, as amended by:

— **397 R 0476**: Council Regulation (EC) No 476/97 of 13 March 1997 (OJ L 75, 15.3.1997, p. 1).'

2. Point 9 (Commission Regulation (EC) No 68/96) shall be replaced by the following:

‘9. **397 R 0895**: Commission Regulation (EC) No 895/97 of 20 May 1997 on the country nomenclature for the external trade statistics of the Community and statistics of trade between Member States (OJ L 128, 21.5.1997, p. 1).'

C. STATISTICAL CONFIDENTIALITY

1. The heading ‘STATISTICAL CONFIDENTIALITY’ after point 16 shall be replaced by ‘STATISTICAL PRINCIPLES AND CONFIDENTIALITY’.

2. The following point shall be inserted after point 17 (Council Regulation (EEC) No 1588/90):

‘17a. **397 R 0322**: Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics (OJ L 52, 22.2.1997, p. 1).'

D. DEMOGRAPHICAL AND SOCIAL STATISTICS

The following point shall be inserted after point 18b (Council Regulation (EC) No 2744/95):

- 18c. **397 R 0023:** Council Regulation (EC) No 23/97 of 20 December 1996 on statistics on the level and structure of labour costs (OJ L 6, 10.1.1997, p. 1).

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) the EFTA States shall not be bound by the regional breakdown of the data as required by this Regulation;
- (b) Liechtenstein is exempted from collecting the data required by this Regulation;
- (c) the following shall be added in point I of the Annex after "For Sweden: ... year.":
"For Iceland: the 1997 financial year on the condition of providing estimates for the 1996 reference year";
- (d) the following shall be added in point II of the Annex after "6. For Austria: ... section I":
"7. For Iceland: sections H, J, K".

E. ECONOMIC STATISTICS

1. The following indent shall be added in point 19 (Council Directive 89/130/EEC):

— **397 D 0157:** Commission Decision 97/157/EC, Euratom of 12 February 1997 (OJ L 60, 1.3.1997, p. 63).'

2. The following shall be inserted after point 19a (Council Regulation (EC) No 2494/95):

- 19b. **396 R 1749:** Commission Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices (OJ L 229, 10.9.1996, p. 3).
- 19c. **396 R 2214:** Commission Regulation (EC) No 2214/96 of 20 November 1996 concerning harmonised indices of consumer prices: transmission and dissemination of sub-indices of the HICP (OJ L 296, 21.11.1996, p. 8).
- 19d. **396 R 2223:** Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p. 1).

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) the EFTA States shall not be bound by the regional breakdown of the data as required by this Regulation;
- (b) this Regulation shall not apply to Liechtenstein;
- (c) Iceland is exempted from utilising NACE REV.1 for the years 1995 and 1996; it shall supply data converted from ISIC 1968 instead;
- (d) In Annex B, Derogations concerning the tables to be supplied in the framework of the questionnaire ESA-95 by country, the following shall be added after point 14 (United Kingdom):

"15. ICELAND

15.1. Derogations for tables

No	Table	Derogation	Until
1	Main aggregates quarterly	Backward calculations	2005
3	Tables by industry	Delay: t + 18 months Backward calculation: 1970-72 not to be recalculated NACE REV.1 from 1997 onwards. Earlier years based on conversion from ISIC 1968	2005

No	Table	Derogation	Until
8	Non-financial accounts by sector	Backward calculations: year 1995 not to be supplied	2005
12	Tables by industry and by region	No regional accounts or breakdown	2005
13	Household accounts by regions	No regional accounts or breakdown	2005
15	Supply table at basic prices including transformations into purchasers' prices, $A60 \times P60$		
16	Use tables of purchasers' prices, $A60 \times P60$		
17	Symmetric input-output table at basic prices, $P60 \times P60$, five yearly		
18	Symmetric input-output table for domestic output at basic prices, $P60 \times P60$, five yearly		
19	Symmetric input-output table for imports at basic prices, $P60 \times P60$, five yearly		
20	Cross classification of fixed assets by industry and by product, $P31 \times P13$, five yearly	No breakdown by industry	2005
22	Cross classifications of gross fixed capital formation by industry and by product, $P31 \times P60$, five yearly	No breakdown by product Breakdown industry by NACE REV.1, 2-digit	2005"

- 19e. **397 D 0178:** Commission Decision 97/178/EC, Euratom of 10 February 1997 on the definition of a methodology for the transition between the European system of national and regional accounts in the Community (ESA 95) and the European system of integrated economic accounts (ESA second edition) (OJ L 75, 15.3.1997, p. 44).'

F. AGRICULTURAL STATISTICS

1. Point 21 (Council Directive 72/280/EEC) shall be replaced by the following:

- '21. **396 L 0016:** Council Directive 96/16/EC of 19 March 1996 on statistical surveys of milk and milk products (OJ L 78, 28.3.1996, p. 27).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) Liechtenstein is exempted from collecting the data required by this Directive;
- (b) Iceland and Norway are exempted from supplying data on home consumption of milk provided for in Article 1(2).'

2. Point 22 (Commission Decision 72/356/EEC) shall be replaced by the following:

- '22. **397 D 0080:** Commission Decision 97/80/EC of 18 December 1996 laying down provisions for the implementation of Council Directive 96/16/EC on statistical surveys of milk and milk products (OJ L 24, 25.1.1997, p. 26).

The provisions of the Decision shall, for the purposes of the present Agreement, be read with the following adaptation:

Liechtenstein is exempted from collecting the data required by this Decision.'

3. In point 23 (Council Regulation (EEC) No 571/88), the following indent shall be added:
- ‘— **396 R 2467**: Council Regulation (EC) No 2467/96 of 17 December 1996 (OJ L 335, 24.12.1996, p. 3).’
4. In point 23 (Council Regulation (EEC) No 571/88), the adaptations shall be amended as follows:
- (i) the text of adaptation (a) shall be replaced by the following:
‘in Article 4, the text beginning with “and in so far as they are important locally ...” until “ ... the particular technical economic guidelines within the meaning of the same Decision” is not applicable’;
 - (ii) the text of adaptation (c) shall be deleted;
 - (iii) the text of adaptation (f) shall be replaced by the following:
‘Liechtenstein shall, before the end of 1998, deliver basic data covered by this Regulation pursuant to an agreement to be reached with Eurostat. A more detailed implementation shall be considered in connection with the collection of data in 1999/2000.’
-

DECISION OF THE EEA JOINT COMMITTEE
No 14/1999
of 29 January 1999
amending Annex XXI (Statistics) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas Annex XXI to the Agreement was amended by Decision of the EEA Joint Committee No 38/98 of 30 April 1998 ⁽¹⁾;

Whereas it has become necessary, in order to maintain the homogeneity of the Agreement in the area of statistics and in order to ensure the production and dissemination of coherent and comparable statistical information for describing and monitoring all relevant economic, social and environmental aspects of the European Economic Area, to incorporate into Annex XXI to the Agreement a number of legal acts adopted by the European Community during the time which has passed since the last amendments were made to Annex XXI,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XXI to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The texts of Council Regulation (EC) No 374/98 ⁽²⁾, Commission Regulation (EC) No 2317/97 ⁽³⁾ and Commission Regulation (EC) No 2454/97 ⁽⁴⁾ in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision are authentic.

Article 3

This Decision shall enter into force on 30 January 1999, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee.

Article 4

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

Done at Brussels, 29 January 1999.

For the EEA Joint Committee

The President

F. BARBASO

⁽¹⁾ OJ L 310, 19.11.1998, p. 27.

⁽²⁾ OJ L 48, 19.2.1998, p. 6.

⁽³⁾ OJ L 321, 22.11.1997, p. 19.

⁽⁴⁾ OJ L 340, 11.12.1997, p. 24.

ANNEX

to Decision of the EEA Joint Committee No 14/1999

Annex XXI (Statistics) to the EEA Agreement shall be amended as specified below.

A. FOREIGN TRADE STATISTICS

1. The following shall be added in point 8 (Council Regulation (EC) No 1172/95):

‘, as amended by:

— **398 R 0374:** Council Regulation (EC) No 374/98 of 12 February 1998 (OJ L 48, 19.2.1998, p. 6).’

2. Point 9 (Commission Regulation (EC) No 895/97) shall be replaced by the following:

‘9. **397 R 2317:** Commission Regulation (EC) No 2317/97 of 21 November 1997 on the country nomenclature for the external trade statistics of the Community and statistics of trade between Member States (OJ L 321, 22.11.1997, p. 19).’

B. ECONOMIC STATISTICS

The following point shall be inserted after point 19e (Commission Decision 97/178/EC, Euratom)

- ‘19f. **397 R 2454:** Commission Regulation (EC) No 2454/97 of 10 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the quality of HICP weightings (OJ L 340, 11.12.1997, p. 24).’
-

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 112/99/COL

of 4 June 1999

introducing new guidelines on State aid to the motor vehicle industry and amending for the seventeenth time the Procedural and Substantive Rules in the Field of State Aid

THE EFTA SURVEILLANCE AUTHORITY,

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

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular Article 1 of Protocol 3 thereof,

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

Whereas under Article 5(2)b of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices and 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 ⁽³⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁴⁾;

Whereas on 15 July 1997, the European Commission decided to propose to the Member States, as an appropriate measure under Article 93(1) of the EC Treaty, the introduction of a new Community framework for State aid to the motor vehicle industry (OJ C 279, 15.9.1997);

Whereas a strict discipline shall be maintained on aid to the motor vehicle industry, and 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 Commission, in order to maintain equal conditions of competition;

Having consulted the European Commission;

Whereas the EFTA Surveillance Authority has, in multilateral meetings on State aid held on 6 June and 19 November 1997, consulted the EFTA States on the introduction of the new guidelines on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement;

Whereas renewal of specific notification obligations for the industry constitutes an appropriate measure under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement and requires the agreement of the EFTA States concerned,

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

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

⁽³⁾ Hereinafter referred to as the State Aid Guidelines.

⁽⁴⁾ Initially published in OJ L 240, 15.9.1994 and in the EEA Supplement thereto No 34 on the same date, last amendment (16th) adopted by Decision No 372/98/COL of 16 December 1998 (published in OJ C 111, 22.4.1999 and in the EEA Supplement thereto on the same date).

HAS ADOPTED THIS DECISION:

1. Chapter 23 of the State Aid Guidelines shall be replaced by the text in Annex I to this Decision.
2. Annex VI of the State Aid Guidelines shall be replaced by the text in Annex II to this Decision.
3. The EFTA States shall be informed of this Decision by means of a letter, together with a copy of the Decision, including Annex I and II, requesting them to signify their agreement to the new guidelines within one month, insofar as they involve appropriate measures according to Article 1(1) of Protocol 3 to the Surveillance and Court Agreement.
4. The Decision, including Annex I and II, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Communities*.
5. This Decision shall be authentic in the English language.

Done at Brussels, 4 June 1999.

For the EFTA Surveillance Authority

KNUT ALMESTAD

President

ANNEX I

‘23. AID TO THE MOTOR VEHICLE INDUSTRY ⁽¹⁾23.1. *Utility and scope of the guidelines*(a) **Historical background**

1. Because of its considerable importance in the fields of employment, trade and technological development, the motor vehicle industry is generally regarded as a strategic industry. In the period 1970 to 1980, the Governments of several European States injected massive amounts of aid into the modernisation and development, or indeed the survival, of their domestic car industry ⁽²⁾. This action caused a subsidy race among the States concerned and led to a number of distortions of competition. As a result, the Commission introduced a Community framework for State aid to the motor vehicle industry in 1989 ⁽³⁾ (hereinafter “the framework”) with the twofold aim of increasing the transparency of aid flows and imposing strict discipline in the granting of such aid in order to reduce distortion of competition in the Community industry to a minimum. At that time, the industry in Europe had not experienced surplus production capacity; however, intra-Community trade in vehicles and engines was extensive and alone ensured that the industry was a sensitive one. Following the entry into force of the EEA Agreement, corresponding rules were adopted by the EFTA Surveillance Authority ⁽⁴⁾.
2. The Commission's framework was adopted as an appropriate measure on the basis of Article 93(1) of the EC Treaty, now, after amendment, Article 88(1), to be applied for three years ⁽⁵⁾, after which the Commission would review its scope and utility. In December 1990, the Commission decided to extend the framework subject to review within two years. In December 1992, the Commission again decided not to modify the framework and to extend it until a further review. Following an action brought by Spain, the Court of Justice of the European Communities ruled in its judgment in Case C-135/93 ⁽⁶⁾ that the decision should be regarded as a limited extension, until a future review of the framework which, was to take place no later than 31 December 1994. In the light of that judgment, the Commission proposed to the Member States on 5 July 1995 that the framework be reintroduced by 1 January 1996 at the latest in the form of an appropriate measure, and that it include certain changes such as raising the notification threshold to ECU 17 million. The Commission also informed the Member States that it might re-examine, possibly revise or abolish the framework after two years, depending on the status of a possible horizontal framework (see the rules in chapter 26 of the present Guidelines) ⁽⁷⁾.
3. In 1996, the European Commission carried out an in-depth study of the framework with the help of independent consultants which concluded that the framework was generally effective and recommended certain adjustments concerning, in particular, the notification thresholds, the definition of the sector and the methods of carrying out the cost-benefit analysis. On the basis of the report, the Commission decided in 1997 to introduce a new framework, again as an appropriate measure under Article 93(1) of the EC Treaty.

(b) **Conditions in the sector**

4. The motor vehicle industry is of great economic importance in the EEA. Experts reckon that as many as 10 jobs depend on each job in that industry; it employs, directly and indirectly, nearly 10 % of the active population within the EEA. Furthermore, the industry is experiencing faster globalisation of its markets. European manufacturers and their component suppliers are faced with a steady increase in competitors on their traditional markets; their response is to maintain or strengthen their commercial plant locations on the prime export markets, often setting up local production plants in central Europe, Asia or South America.
5. However, production capacity utilisation rate in the European motor vehicle industry has been below 80 % since 1993 among most of the major European manufacturers ⁽⁸⁾. It is unlikely that the rate will improve significantly in the medium term ⁽⁹⁾, as the motor vehicle industry will form part of a general context of weak growth on a mature and cyclical market.

⁽¹⁾ This chapter corresponds to the Community framework for State aid to the motor vehicle industry (OJ C 279, 15.9.1997).

⁽²⁾ In the period 1977 to 1987, State aid to the motor vehicle industry in the EC, essentially in the form of capital injections or extensive debt write-offs, is estimated at ECU 26 billion. Between 1989, when the framework entered into force, and July 1996, the EC Commission approved ECU 5,4 billion of aid to the industry.

⁽³⁾ OJ C 123, 18.5.1989, p. 3.

⁽⁴⁾ Chapter 23 of the State aid Guidelines adopted on 19 January 1994 (OJ L 231 and EEA Supplement to OJ 32, 3.9.94).

⁽⁵⁾ The application of the framework was delayed for the first six months of 1989 pending its approval by 10 Member States, until January 1990 for Spain and May 1990 for Germany; Spain and Germany had originally been opposed to its application.

⁽⁶⁾ Judgment of 29 June 1995 in Case C-135/93, Spain v. Commission, [1995] ECR I-1651.

⁽⁷⁾ On 25 April 1997, in Case C-292/95, Spain v. Commission, the Court of Justice annulled the Commission decision of July 1995 to extend, with retroactive effect to 1 January 1995, the framework to 31 December 1995 pending the reintroduction of the framework for a period of two years from 1 January 1996 to 31 December 1997.

⁽⁸⁾ Commission communication of 10 July 1996 on the European motor vehicle industry (COM(96) 327 final).

⁽⁹⁾ A survey conducted in the first half of 1996 among all vehicle manufacturers in the EEA revealed that the production capacity utilisation rate in 1995 was 71 %, that is an installed capacity of 18,1 million vehicles as against an annual output of 12,9 million vehicles.

6. Much progress has been made in recent years by European industries, for instance in the area of gains in productivity and quality of manufacture; they are thus approaching the best world standards. However, efforts to catch up with the United States or Japan entail a stronger emphasis on intangible investments, especially in R & D and training, the development of industrial cooperation, modernisation of the role of public authorities, creation of a stable and favourable economic climate and a guarantee of effective competition⁽¹⁰⁾. Adjusting the framework to bring it into line with the new economic situation is fully consistent with those targets.
7. On the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the Authority has therefore decided to propose to the EFTA States that they give prior notification, pursuant to Article 1(3) of the same Protocol, of the most significant aid cases in the motor vehicle industry as from 1 September 1999, in accordance with the rules defined below.

23.2. Rules on notification

23.2.1. Definition of the industry

1. The "motor vehicle industry" means the development, manufacture and assembly of "motor vehicles", "engines" for motor vehicles and "modules or sub-systems" for such vehicles or engines, either direct by a manufacturer or by a "first-tier component supplier" and, in the latter case, only in the context of an "overall project".

(a) Motor vehicles

2. The term "motor vehicles" means passenger cars, vans, trucks, road tractors, buses, coaches and other commercial vehicles. It does not include racing cars, vehicles intended for off-road use (for example, vehicles designed for use on snow or for carrying persons on golf courses), motorcycles, trailers, agricultural and forestry tractors, caravans, special purpose vehicles (for example, firefighting vehicles, mobile workshops), dump trucks, works' trucks (for example, fork lift trucks, straddle carrier trucks and platform trucks) and military vehicles intended for armies.

(b) Engines for motor vehicles

3. The term "motor vehicle engines" means compression and spark ignition engines as well as electric motors and turbine, gas, hybrid or other engines for motor vehicles.

(c) Modules and sub-systems

4. A "module" or a "sub-system" means a set of primary components intended for a vehicle or engine which is produced, assembled or fitted by a first-tier component supplier and supplied through a computerised ordering system or on a just-in-time basis.
5. Logistical supply and storage systems and subcontracted complete operations which form part of the production chain, such as the painting of sub-assemblies, should likewise be classified among these modules and sub-systems.

(d) First-tier component suppliers

6. A "first-tier component supplier" means a supplier, whether independent or not, supplying a manufacturer, sharing responsibility for design and development⁽¹¹⁾, and manufacturing, assembling or supplying a vehicle manufacturer during the manufacturing or assembly stage with subassemblies or modules. As industrial partners, such suppliers are often linked to a manufacturer by a contract of approximately the same duration as the life of the model (for example, until the model is restyled). A first-tier component supplier may also supply services, especially logistical services, such as the management of a supply centre.

(e) Overall project

7. A manufacturer may, on the actual site of the investment or in one or several industrial parks in fairly close geographical proximity⁽¹²⁾, integrate one or more projects of first-tier component suppliers for the supply of modules or sub-systems for the vehicles or engines being produced. An "overall project" means one which groups together such projects.
8. An overall project lasts for the life of the vehicle manufacturer's investment project.
9. An investment of one first-tier component supplier is integrated within the definition of a global project if at least half the output resulting from that investment is delivered to the manufacturer concerned at the plant in question.

23.2.2. Aid to be notified

1. The purpose of prior notification of EFTA States' plans to grant aid is to allow the Authority to check as thoroughly as possible that aid envisaged for the motor vehicle industry is compatible with the competition rules of the EEA Agreement.

⁽¹⁰⁾ See footnote 8.

⁽¹¹⁾ Design and development often take place on the project site of the manufacturer.

⁽¹²⁾ This proximity could, *inter alia*, take the form of a fixed link (automated conveyor belt for example) allowing the delivery of modules directly into the car factory.

(a) *Aid under an approved scheme*

2. All aid which the public authorities plan to grant to an individual project or an overall project under authorised aid schemes for a firm or firms operating in the motor vehicle industry must, in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, be notified before being granted if either of the following thresholds is reached:

— nominal amount of the investment project ⁽¹³⁾ (total cost of the project ⁽¹⁴⁾): EUR 50 million,

or

— total gross aid for the project ⁽¹⁵⁾, irrespective of the source, form and objectives of the measure: EUR 5 million.

3. The Authority then analyses the projects of the manufacturer and each first-tier component supplier in order to determine the compatibility of each of the aid measures envisaged.

(b) *Ad-hoc aid*

4. Any aid which the public authorities intend to grant outside an approved scheme to one (or several) undertaking(s) operating in the motor vehicle sector defined above must be notified in advance under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, unless it complies with the *de minimis* rule for State aid in Chapter 12 of the present Guidelines.

(c) *Rescue and restructuring aid for firms in difficulty*

5. Any rescue and restructuring aid which public authorities plan to grant to one (or several) undertakings operating in the motor vehicle industry must be notified in advance under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, unless it complies with the *de minimis* rule in Chapter 12 of the present Guidelines.

(d) *Notification*

6. State aid covered by the notification obligation of the present rules must be notified on a special form. Given that the working language of the EFTA Surveillance Authority is English, the form to be used is the English language version of the form in the Community framework, printed in the *Official Journal of the European Communities* C 279, 15.9.1997, 17-44 ⁽¹⁶⁾, supplemented by an appropriate form to be obtained from the Competition and State Aid Directorate of the EFTA Surveillance Authority.
7. EFTA States should attach any relevant supporting documents to the notification forms. As regards regional aid in particular, studies on the final plant location site should be provided wherever available.

23.2.3. Ex post control and assessment

1. In its decision, the Authority may require *ex post* monitoring and assessment of aid already granted, the amount of detail varying according to the case and the potential distortion of competition.
2. In any event, a copy of the final aid contract concluded by the EFTA State and the undertaking receiving the aid must be sent to the Authority immediately after signing by the parties.
3. In order to enable the Authority to check that its decision has been complied with, the EFTA States, with the assistance of the aid recipients, must submit an interim report on the aid payments or a copy of the interim report on performance of the aid contract, followed by a final report on the objectives, in terms of timetable, investments and compliance with the specific conditions imposed by the EFTA State, and the actual achievements at the end.

23.2.4. Annual report

1. EFTA States are requested to provide the Authority with an annual report giving data on all aid, whatever its form, granted in the past year to undertakings in the motor vehicle industry. Aid which does not have to be notified must also be mentioned in the annual report.

⁽¹³⁾ An investment project is usually defined as an investment by an undertaking in new assets that are necessary to set up, expand, modernise or rationalise production facilities on a specific industrial site. An investment project should not be artificially broken down into several sub-projects and/or over several financial years in order to avoid the obligation to notify.

⁽¹⁴⁾ The total cost of a project is defined as follows: total expenditure by an undertaking on the acquisition of new tangible and intangible fixed assets which are part of an investment project and will be depreciated (or leased) during their lifetime. Consequently, the cost is equal to the amount of capital invested in a project. The cost of the project may be different from the cost that is eligible for State aid (see paragraph 23.3.2.10).

⁽¹⁵⁾ The gross aid is obtained by adding the grants and grant equivalents of the aid envisaged; if aid is granted net of tax, it should be changed into gross equivalent aid by taking account of the tax effect wherever possible.

⁽¹⁶⁾ For this purpose the word "Commission" shall mean "EFTA Surveillance Authority" and the words "Member State" shall mean "EFTA State".

2. Annual reports, in the form indicated in Annex VII to these Guidelines, must be sent by 1 April of the year following the reference year.

23.2.5. Entry into force and duration

1. These guidelines will enter into force on 1 September 1999; the preceding guidelines will serve as a basis for the assessment of aid proposals notified until that date.
2. These guidelines will apply for two years. Before the end of that period, the Authority will decide whether to extend them, in particular in the light of the status of the multisectoral framework set out in Chapter 26 of the present guidelines.

23.3. Guidelines for assessment of aid

1. The assessment of aid must take account of general economic and industrial factors, sectoral considerations and regional, environmental and social factors. The Authority does not intend, however, to impose an industrial strategy on the sector, it is preferable for a strategy to be defined within the sector and the market. The Authority's aim continues to be to make sure that motor vehicle manufacturers in the EEA operate in a climate of fair competition. To that end, the Authority endeavours to limit distortions of competition caused by certain aid measures and to maintain a competitive environment which boosts competitiveness and productivity in the sector.
2. Thus the criteria which the Authority uses to assess aid vary according to the objectives of the aid in question. It checks, however, that in every instance the aid granted is both proportional to the gravity of the problems to be resolved and is necessary for the realisation of the project. Both tests, proportionality and necessity, must be satisfied if the Authority is to authorise State aid in the motor vehicle industry. All forms of aid described above are assessed directly on that basis.
3. A notification of a project may contain various types of aid; each one will be analysed on the basis of its own rules of assessment.

23.3.1. Rescue and restructuring aid for firms in difficulty

1. Rescue and restructuring aid is assessed under the guidelines on such aid set out in Chapter 16, without prejudice to paragraph 23.3.1.2. The Authority ensures in particular that restructuring aid, like rescue aid, is in principle a one-off operation.
2. As structural overcapacity in the motor vehicle industry is set to continue in the medium term, the Authority will prohibit State aid which is aimed at a net increase in production capacity. In addition, the Authority will usually require a reduction in installed capacity. The Authority also considers it necessary for the reduction in production capacity to be proportional to the intensity of the aid, being the amount of the intensity of the aid divided by the cost of restructuring.

23.3.2. Regional aid

1. The motor vehicle industry may benefit from regional aid to assist new plants and the extension of existing ones in the assisted areas within the EEA, thus making a valuable contribution to regional development by creating or safeguarding often highly skilled jobs and through significant indirect effects.
2. Prior notification allows the Authority to compare the advantages from the standpoint of regional development with any unfavourable consequences for the sector as a whole. The purpose of the comparison, in the form of a cost-benefit analysis, is not to deny the essential contribution made by regional aid to regional development within the EEA, but to ensure that other factors affecting the common interests of the EEA Contracting Parties, such as development and the general competitiveness of the industry in Europe, as well as respect for fair competition, are also taken into consideration.

(a) Necessity

3. In order to demonstrate the necessity for regional aid, the aid recipient⁽¹⁷⁾ must clearly prove that it has an economically viable alternative location for its project or sub-part(s) of a project. If there were no other industrial site, whether new or in existence, capable of receiving the investment in question within the group, the undertaking would be compelled to carry out its project in the sole plant available, even in the absence of aid.

⁽¹⁷⁾ A project put forward by first-tier module or sub-system suppliers that is directly linked to a mobile investment by a motor vehicle manufacturer will by definition be considered mobile itself. A supplier's project may be mobile even if the manufacturer's project is not; the supplier would have to be able to satisfy the Authority on this point.

4. The existence of a viable alternative defines the "mobility" of a project; mobility may if necessary be demonstrated by investors ⁽¹⁸⁾ on the basis of studies they have carried out in order to identify the final location. That alternative site is not always located within the EEA. However, the Authority verifies the likelihood of the alternative, particularly when the relevant markets are considered.
5. Thus, to authorise regional aid, the Authority studies the geographical mobility of the notified project, after checking that the region in question is eligible for aid under EEA law. No regional aid may be authorised for a project or parts of a project that are not geographically mobile.
6. In demonstrating the mobility of a project, where the alternative location is not in the EEA or in one of the countries on central and eastern Europe (CEEC), an investor must prove, notably by means of a location study, that at least one commercially viable alternative to the location chosen has been considered in the EEA or in one of the central and east European countries (CEEC). Otherwise, the location chosen will be considered to be the best one. Consequently, only regional aid may be authorised whose intensity does not exceed the threshold (defined in section 23.3.2.c) below which it is not necessary to carry out a cost-benefit analysis.
7. Regional aid intended for modernisation and rationalisation, which is generally not mobile, is not authorised in the motor vehicle industry (see section 23.3.7).
8. In view of the characteristics of industrial activity in the motor vehicle industry, entire production lines that are obsolete are sometimes dismantled. Such occurrences, although rare, may involve an element of mobility inasmuch as a firm is often faced with the choice of adapting the existing plant or closing it and setting up a new plant elsewhere, either in the form of an extension or on a greenfield site. A radical change in production structures of this nature on the existing site is called a "transformation" ⁽¹⁹⁾, it may be eligible for regional aid.
9. Finally, transformation is not the same as "restructuring", the latter being applicable to firms in financial difficulties.

(b) *Eligibility of costs*

10. The Authority determines whether or not costs relating to the mobile aspects of a project are eligible; eligibility is defined by the regional scheme applicable in the assisted region concerned.

(c) *Proportionality of aid*

11. When considering the mobile aspects of a project, the Authority satisfies itself that the planned aid is in proportion to the regional problems it is intended to help resolve. To that end, the cost-benefit analysis method is used. For the sake of transparency, a copy of the standard notification forms for a cost-benefit analysis is attached to the notification forms to be used for aid to the motor vehicle industry (see paragraph 23.2.2.6). The cost-benefit analysis method is described in Annex VI.
12. Until the Authority has approved the regional maps in accordance with the new regional aid guidelines, which it should do by 1 January 2000, if the intensity of the planned regional aid is 10 % ⁽²⁰⁾ or less of the regional ceiling, a cost-benefit analysis will not be required by the Authority. This is because a mobile project located in an assisted region always suffers from minimum disadvantages. After that date, and in so far as the new regional maps have lower ceilings, the minimum intensity triggering a cost-benefit analysis will be 20 % of the new regional ceiling.
13. A cost-benefit analysis compares, with regard to the mobile elements, the costs which an investor would bear in order to carry out its project in the region in question with those it would bear for an identical project in a different location, which makes it possible to determine the specific handicaps of the assisted region concerned. The Authority authorizes regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.
14. In the cost-benefit analysis, the comparator plant must be located in the EEA or in the countries of Central and Eastern Europe (CEEC) if the purpose of the investment is the manufacture of vehicles and parts of vehicles intended largely for the European markets ⁽²¹⁾.

⁽¹⁸⁾ Mobility alone is not always sufficient to establish the necessity for aid; for example, the site chosen may have net competitive advantages in comparison with the alternative proposed by the investor.

⁽¹⁹⁾ "Transformation" means the complete dismantling of bodywork lines (motor vehicles) or power plant lines (engines) and, simultaneously, of the final assembly lines of the plant in question and the setting-up of a new bodywork lines, power plant lines and final assembly lines in an overall production structure that is clearly different from the previous one.

⁽²⁰⁾ See State aid Case N 781/96, Ford Bridgend, OJ C 139, 6.5.1997, p. 4.

⁽²¹⁾ The study of the mobility of the investment and the cost-benefit analysis may be carried out using different alternative locations.

15. If the cost-benefit analysis takes as comparator a location in another assisted area within the meaning of Article 61(3) of the EEA Agreement or Article 92(3) of the EC Treaty, any difference in the regional aid rate is neither an advantage nor a handicap for the cost-benefit analysis; it is regarded as neutral by definition.
16. As stated in section 23.2.2.d ("Notification") of these guidelines, studies on the choice of plant location must be submitted to the Authority whenever available in order to facilitate processing of the case and speed up the final decision.
17. Operational handicaps are assessed over three years in the case of expansion projects and five years in the case of new plants on greenfield sites. The Authority believes that these periods are generally consistent with the time needed to overcome start-up difficulties and reach target operational levels in each case.
18. New plant means new plant on a new site which has not yet been developed. In such cases, compared with plant expansion, undertakings are faced with the following specific problems: lack of adequate infrastructure, lack of organised logistics, lack of a workforce specifically trained for the needs of the undertaking and lack of a subcontracting structure. If, however, such services can be provided by a unit of the same group located in close proximity, the project is regarded, in accordance with Commission Decision 96/666/EC, as an expansion, even if it is actually built on a greenfield site ⁽²²⁾.
19. In the case of an overall project, the first-tier component suppliers concerned may each benefit from the same regional handicap percentage as the vehicle manufacturer, as calculated by the cost-benefit analysis, no individual cost-benefit analysis being applied to them. However, if a first-tier component supplier taking part in an overall project considers it has the specific regional handicaps that would give it a higher aid intensity, it may request a separate cost-benefit analysis the results of which will be applied irrespective of the outcome.

(d) Analysis of the effects on the industry and on competition

20. In view of the sensitive character of the motor vehicle industry, the Authority proposes to study the effects on competition of every investment project, looking in particular at variations in production capacity ⁽²³⁾ on the relevant market in the group concerned ⁽²⁴⁾.
21. For these reasons, an adjustment (top-up) will be calculated, as follows:

Impact on competitors	Top-up	
	Article 61(3)(a) regions	Article 61(3)(c) regions
Negligible	+ 4	+ 2
Moderate	+ 2	+ 1
High	- 1	- 2

22. The top-up is expressed in terms of percentage points to be added to or subtracted from the intensity allowable according to the cost-benefit analysis.
23. The impact on the industry is "high" where the ratio between the capacity of the group after the investment (C(f)) and the capacity of the group before the investment (C(i)) is 1,01 or over.
24. The impact is "moderate" where $0,99 < C(f)/C(i) < 1,01$ or where a new segment is created on the relevant market.
25. The impact is "negligible" where $C(f)/C(i)$ is 0,99 or under.
26. The distinction between Article 61(3)(a) regions and Article 61(3)(c) regions is needed in order to take better account of the difficulties encountered in each region and to increase the incentive effect of regional aid on investors.

⁽²²⁾ OJ L 308, 29.11.1996, p. 46.

⁽²³⁾ Because of the structural overcapacity in the industry.

⁽²⁴⁾ The relevant product market covers the products (and possibly the services) referred to in the investment project and their possible substitutes from the consumer's standpoint (on the basis of product characteristics, prices and intended use) and that of the producer (plant flexibility). The relevant geographic market in principle covers the EEA and the countries of central and eastern Europe (CEEC).

(e) *Determination of aid intensity*

27. The authorized aid, expressed as a gross grant equivalent, may not exceed the total of the amounts calculated in stages (a) to (d) (mobility, eligible investments, identification of regional handicaps, possible top-up) and usually discounted and expressed as a percentage of eligible investment so that they can be compared with the gross grant equivalent of the assisted region. The aid may not exceed the regional ceiling applicable to the type of undertaking concerned.

23.3.3. Research and development aid

1. Aid for R & D will be assessed under the relevant rules on such aid in Chapter 14.
2. The Authority carries out a thorough analysis of the breakdown of costs between the different categories of R & D; investors must clearly distinguish industrial research and genuine precompetitive development from the introduction of new technology in the form of productive investment or competitive development.

23.3.4. Investment aid for innovation

1. Innovation means the development and industrialisation in the EEA and the countries of central and eastern Europe (CEEC) of genuinely or substantially new products or processes, that is products or processes which have not yet been used or marketed by other parties operating in the industry. A genuine innovation carries a risk of failure; the Authority will take account of the scale of this risk when it assesses the intensity of the aid envisaged.
2. In general, the European motor vehicle industry needs to improve its competitiveness as compared with its United States, Japanese and Korean competitors. To that end, it should for example improve its ability to innovate in order further to reduce the technological and industrial gap ⁽²⁵⁾.
3. Investment aid for innovation will therefore be authorized only in duly justified cases, as an incentive to industrial or technological risk-taking.
4. The maximum intensity of such aid is set at 10 % of all eligible costs, corresponding to engineering activities and investments of direct and exclusive relevance to the innovative part of the project.
5. An innovative project must concern only one plant location ⁽²⁶⁾ within the same group in the motor vehicle industry; no aid will be granted for parts of the project carried out in other branches of a group.

23.3.5. Aid for environmental protection and energy saving

1. Aid to combat pollution in general, that is aid granted under the guidelines on State aid for environmental protection (Chapter 15), may be regarded as compatible.
2. It should be noted that those guidelines involve complex technical evaluations of such things as the "ecological" costs incurred by the investor. Moreover, when it assesses the compatibility of aid, the Authority makes a thorough study of the cost savings on energy, raw materials and so on which the investor has secured as a result of the environmental protection component in the project.

23.3.6. Aid to vocational training

1. The Authority has a generally positive attitude towards training, retraining and reconversion programmes. State aid for such purposes will be scrutinised to ensure that it is not used solely to reduce the costs a firm would normally bear.
2. The Authority will soon adopt guidelines on training aid which will also apply to the motor vehicle industry.

23.3.7. Aid for modernisation and rationalisation

1. Modernisation and rationalisation are essential if an undertaking is to remain competitive on a world market. However, aid for such activities presents a very high risk of distortion of competition and should normally be financed from a company's own funds.

⁽²⁵⁾ The gap can be illustrated by the average time required to build a vehicle: 25 hours in Europe, 22 hours in the United States and 16 hours in Japan (see COM(96) 327 final).

⁽²⁶⁾ Or a small number of sites if different complementary sub-projects take place on a small number of sites.

2. If an undertaking competing on an international market is unable to finance its own modernisation and restructuring, its ability to compete and its viability will eventually disappear. No aid for modernisation or rationalisation may therefore be granted to undertakings in the motor vehicle industry.

23.3.8. Operating aid

1. Operating aid creates lasting distortions of competition in sectors such as the motor vehicle industry. No new operating aid will therefore be authorised by the Authority, even in assisted areas. Furthermore, should an EFTA State currently be granting this type of aid under existing schemes, the Authority will suggest, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that such operating aid benefiting one or several undertakings in the motor vehicle industry be gradually abolished.'
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ANNEX II

ANNEX VI

COST-BENEFIT ANALYSIS OF AID PROJECTS IN THE MOTOR VEHICLE INDUSTRY**1. REGIONAL AID VERSUS DISTORTION OF COMPETITION****1.1. Effects on the sector**

When dealing with EFTA States' proposals to grant regional aid in the automotive sector, the motor vehicle framework establishes that the Authority has to assess the benefits for regional development against possible adverse effects on the sector, such as the creation of important overcapacity.

Moreover, in view of the sensitive nature of the motor vehicle sector and the high risk of unwarranted distortions of competition, it is necessary to ensure that the regional aid is in proportion to the regional problems it seeks to redress.

The Authority has established an aid ceiling for each of the regional areas covered under Article 61(3)(a) or (c) of the EEA Agreement. However, even when the ceiling for regional aid in the area where the project is to be developed is higher than the aid intensity proposed in favour of an automotive company, the level of regional aid exceeding the actual cost disadvantages, arising for that company in that assisted area, provides a competitive advantage to the aided company vis-à-vis the unaided competitors.

The risk of undue distortion of competition is particularly high in the automotive sector because the level of globalisation and the structural overcapacity affecting most manufacturers leads to fierce price competition. This intense competition reduces the profit margins which in turn forces the industry to make permanent cost reductions. Consequently, any overcompensation of regional handicaps may have adverse effects on unaided competitors. The risk of undue distortion of competition is also high because the States and regions concerned are put into competition by multinational automotive companies for the location of large-scale investment projects. Hence, there is a tendency for disproportionate aid allocation to such projects. Such competitive bidding may involve not only regional aid but also other horizontal aid, ad hoc aid and general measures.

Consequently, by submitting all cases of regional aid to a strict analysis the Authority aims to limit regional aid to what is strictly necessary to influence the locational choice of economically viable projects in the automotive industry and thereby to avoid unjustifiable distortion of competition.

1.2. Balance: how to assess it

In order to assess an EFTA State's proposal for granting regional aid to a car manufacturer for a large and mobile investment project, the Authority wishes to calculate to what extent regional aid relates to the structural handicaps faced by an investor in the assisted area. For this calculation it will base itself on a method called "cost-benefit analysis". This method is based on the study "The effect of different State aid measures on intra-Community competition" by the Motor Industry Research Unit published in 1990 ⁽¹⁾.

The Authority places itself deliberately in the position of the private investor when calculating costs or benefits associated with a particular location. By comparing the investment and operating costs of the chosen location in the assisted area with the best alternative location, the Authority can identify those costs and benefits. The present value of the calculated net incremental cost of the regional site can then be compared with the present value of the proposed regional aid. The balance between those values expressed as percentages of the eligible investment is the subject of a sectoral impact study of the project concerned.

2. COST-BENEFIT ANALYSIS AND THE AUTHORITY'S APPROACH**2.1. What is cost-benefit analysis?**

Cost-benefit analysis is, in general, a procedure for evaluating the desirability of a project by weighing its benefits against its cost. Results may be expressed in different ways, including the internal rate of return, the net present value and the benefit-cost ratio. Behind a number of practical approaches based upon the principle of the rationale of a private investor acting under market conditions, cost-benefit analysis has found a wide acceptance amongst private companies and government bodies in the appraisal of major investment projects.

⁽¹⁾ Published by the Office for Official Publications of the European Communities under the number ISBN 92-826-0381-4.

2.2. The Authority's approach

The Authority's approach is to use a variant of the cost-benefit analysis model for estimating the net incremental cost resulting for an automotive company from its decision to locate a mobile investment project in a particular regional assisted area instead of the company's best alternative location ⁽¹⁾.

In the first place, the mobility is ascertained. The automotive group in favour of which the aid is proposed must prove in a clear and convincing way that there is an economically viable alternative location site for its project. This is obviously the case for greenfield projects and expansion projects which do not involve a replacement of existing installations.

It is to be noted that if the company has no viable alternative, because of industrial constraints, to carrying out the project in another site, new or already existing, then the regional aid in support of the location choice is not justified because there is no necessity at all for that aid: the automotive group would carry out its project anyway in the only possible existing location. Non-mobile investment projects focus on one of the following objectives: modernisation, rationalisation or replacement.

However, on the occasion of a complete model renewal (with or without effects on the plant's capacity) that involves the dismantlement of complete older production lines and their replacement by new ones, the company can make a case for mobility. On that occasion, the company may be tempted to close the site and relocate production. Such radical refurbishment of an existing site will be called a transformation ⁽²⁾ and may justify regional aid. A transformation may increase or decrease the overall capacity of the plant. The alternative to transformation is normally expansion at another existing site or a greenfield project.

The existence of the "viable alternative" defines the "mobile" character of the project. The "mobility" requirement is to be demonstrated by the company on the basis of the location studies carried out in order to examine different alternative locations and propose the most advantageous site from those locations. It is important to note that the most attractive location can be placed outside the EEA. In any case, the Authority verifies the rationality of the alternative location, having a special regard to the markets targeted by the company with its investment.

In conclusion, in order to assess a regional aid proposal the Authority examines the actual geographical mobility of the notified project. No regional aid can be approved which would not be necessary because the project would not be mobile, in the sense that the company has no real choice of locating the project in any other place.

The location study performed by or for the investor will in principle provide all the necessary input for completing the cost-benefit forms. A copy of the original study should also be transmitted to the Authority. All headings for which differences in costs ⁽³⁾ exist between the two sites under consideration can in principle be retained for the Authority's analysis. The sole exceptions to be eliminated are those handicaps for which a specific aid will be granted under a different objective (e.g. training). Another difference may be the number of years taken for the cost-benefit analysis for which the Authority has chosen a uniform period of three and five years (See section 3.3).

The cost-benefit analysis provides for a calculation of the net incremental cost associated with the selection of the plant in an assisted area versus the best alternative location. The proportion between the present value of this net incremental cost and the present value of the eligible investment is called the "regional handicap ratio".

2.3. Market-impact analysis

In order to establish the effect of regional aid on competitors, the Authority will first define the relevant product market affected by the project concerned at European level, taking into account the prevailing substitutability of demand and supply in the sector. If substitutability is strong between different market segments or niches, the Authority will add those segment or niches to arrive at the relevant market. As such, the Authority does not, for example, make a distinction between most segments of the passenger car market unless the vehicle is sufficiently distinct in its use and production mode (for example, off-road vehicles).

As most vehicle producers manufacture their own engines, the Authority has considered that the relevant market for engine production by a vehicle manufacturer is the vehicle market for which the engines are built. However, as concerns component systems or modules which are now also covered by the framework, the Authority is of the view that there is a separate market for each of those component modules. In fact, a car manufacturer will only decide to (continue to) produce a module itself after verification of its cost efficiency against outsourcing that module.

⁽¹⁾ Prior to the review of the Community framework, the alternative location always had to be the best possible location for the same project in a non-assisted area. If that option was not examined by the company, it was invited by the Commission to select that location.

⁽²⁾ This notion of transformation is different from restructuring, which is reserved for companies in difficulty or sites that would be closed if the investment project did not go ahead.

⁽³⁾ Differences in corporate taxes are not considered as a cost element.

In the event of a notification of a global project involving vehicle or engine manufacture as well as the manufacture of the corresponding component modules, the Authority will define the relevant market as the combination of the vehicle market and the markets for the different modules.

The effect of regional aid will be assessed in detail and classified according to three categories, namely low, medium or high impact for competitors in the relevant market. Such analysis will be closely related to the changes in capacity and market share generated by the project.

The structural overcapacity currently affecting the motor vehicle industry at EEA level has led the Authority to adopt a stricter approach concerning State aid to projects that contribute to an aggravation of this problem, independently of its location in assisted or non-assisted areas. For that reason, the "regional handicap ratio" can be modified by adding or subtracting some percentile points (the so-called "regional top-up").

The concept of overcapacity, its verification at group level, and the range of values established for the "regional top-up" are explained in detail in section 3.4.

2.4. Technical expert report and confidentiality

Both the availability of a viable alternative location and the calculation of the extra costs and benefits are subject to an independent technical expert report.

Because of the sensitiveness of the results of the cost-benefit analysis to the data submitted by the beneficiary company itself, the Authority makes use of an external technical expert report to verify the data submitted by that company. The Authority contracts a consultancy company with expertise in the automotive sector, which is chosen through a call for tenders procedure, subject to the Authority's public procurement procedures.

Most of the information and technical data submitted by the beneficiary in the context of the cost-benefit analysis is communicated to the Authority under a strict requirement for confidentiality. The cost-benefit analysis makes use of detailed information on the operating and investment cost of the project and of other confidential information on the company's plans for sales, production and capacity, all of which may be subject to business secrets protected by law. The consultancy company employed by the Authority is subject to contractual provisions against any possible disclosure, facing heavy fines and responsibilities for such an eventuality. The Authority can guarantee also to the beneficiary company that documents marked confidential will not be circulated.

3. HOW TO DO IT (AN EXPLANATION OF THE METHOD)

3.1. The regional objective versus other objectives of the aided project

Before starting the analysis, it is important to determine whether the project is only serving a regional objective or also any other objective eligible for aid under the guidelines of the motor vehicle framework. If the project is also aided under other objectives (for example, environmental, R & D, training), it will be important to ascertain that eligible expenditure and cost-benefit analysis do not involve any of these items since they will be separately aided. The position is somewhat different for innovation when linked to investment. That expenditure can be aided from a regional and an innovation point of view.

3.2. Comparison: alternative location of the project

The identification of the comparator plant for the project, which is a key element of the analysis, is carefully examined by the Authority and can be — as any other information or technical data submitted by the company — challenged by the technical experts:

- in principle, the company is requested to supply a full copy of the location study of the project which will provide evidence of the alternative site(s) considered before opting for the selected plant,
- if a complete study was not made, the company⁽¹⁾ would have to provide sufficient circumstantial evidence to demonstrate that it has actively pursued an alternative location which would in the short run have been more cost efficient but was not pursued for specific reasons and the Authority's experts would then have to verify this evidence.

In the Authority's cost-benefit analysis, the comparator site or benchmark is in principle situated within the EEA or one of the Central and Eastern European countries (CEEC), if the purpose of the investment is the production of vehicles or car components destined, to a large extent, for the European markets⁽²⁾. In those rare cases where a company is only comparing one European site with a site outside Europe from which it would import the vehicles, the cost-benefit analysis may have to be performed with a hypothetical alternative site. In cases where the company can demonstrate that more than half of the production is to be sold outside Europe, the comparator plant for the cost-benefit analysis can be situated outside Europe.

⁽¹⁾ Producers of component systems to be located in the vicinity of a vehicle plant would normally not have made such a study. The alternative site is thus the same as for the vehicle producer. A car assembler who has been in competition with other sites will on the other hand not have access to the location study performed by the car company.

⁽²⁾ The study on the mobility of the investment and the cost-benefit analysis could be carried out on the basis of different comparison sites.

If the comparator site identified by the company is located in another assisted area within the EEA covered by the exemptions provided for in Article 92(3) of the EC Treaty or Article 61(3) of the EEA Agreement, the possible difference between the respective aid ceilings does not constitute an advantage or a disadvantage for the cost-benefit analysis; that difference is regarded as neutral for the final result of the analysis.

3.3. Factors taken into account ⁽¹⁾

As explained above, all information and technical data submitted by the company are checked and validated by the Authority and its technical experts. General reference data (inflation rates, average wages in the sector in the different countries, etc.) are compared with available statistics at EEA level.

The cost-benefit analysis examines differences in investment cost as well as possible operating costs over a period of three years for existing plants, or five years for greenfield projects, from the first year when production of the new vehicles/engines starts, both in the plant located in the assisted area and in the comparator plant.

It must be pointed out that the concept of "greenfield" project refers to a completely "new" site in an area which is also new to the manufacturer. It requires the development of basic infrastructures, the installation of logistics, the recruitment and intensive training of a new workforce and the development of a network of local suppliers, amongst other factors. In the event that those factors could be assured by another unit of the business group already located near the site, the project is regarded as an expansion of existing facilities, even when it is actually in a "greenfield" location ⁽²⁾.

The period of three or five years has been set following the recommendation of the experts as the most appropriate period to recover from start-up costs, depending on the nature of the project: the expansion of transformation of an existing facility requires, as a rule, a shorter period before full production can be reached than greenfield plants where the learning process is slower.

The Authority expects the companies to demonstrate that the net operating disadvantages decline over time in order to demonstrate the rationality of the locational choice which is normally based on the long-term comparative advantages of the site chosen by the investor as opposed to possible alternative sites.

The cost-benefit analysis takes into account the following factors:

— *Investment cost differences*

Differences in additional investment cost ⁽³⁾ arising for the automotive group between the two locations must be identified in detail. The analysis considers at least five categories of cost: land, building and infrastructure, machinery and equipment, tools and dies and vendor tooling. Other categories may be identified when they correspond to assets that will be depreciated over their lifetime. These cost differences must be explained by the automotive company to the Authority and all available supporting documentation (including technical lay-outs of the plant before and after investment) must be submitted.

Usually, the differences in investment between the two plants of comparison requires an on-site visit by the Authority's experts. The examination of these elements is also a crucial element to detect the capacity bottlenecks of the aided plant in cases where production capacity increases are at stake.

The analysis of investment handicaps shows whether or not the location in the assisted area results in an advantage or disadvantage for the company due to the fact that the investment that would have been required in the comparator plant is more or less expensive than the one actually installed in the assisted area.

— *Operating cost differences*

Differences in operating costs corresponding to the first full three or five years of production also have to be examined in detail. In the supportive material a distinction should be made between normal or permanent cost differences and start-up cost differences for each category. Data are to be given in the currency of the EFTA State providing the aid (exchange rate assumptions to be provided) and in current prices for historic years or constant prices for future years. The factors usually taken into account are:

Labour costs: differences in the wage bill of production at optimal productivity which can be broken down in differences in wage rates, in working hours and manpower;

Components/materials: differences in the cost of components and supplies, taking into account local-suppliers policies, central-purchases policies, etc;

⁽¹⁾ This section would be better understood if read in parallel with the cost-benefit analysis sheets found in the notification form referred to in section 5 below.

⁽²⁾ Commission Decision 96/666/EC (OJ L 308, 29.11.1996, p. 46).

⁽³⁾ The investment cost may be larger than the eligible investment, which is defined by the regional aid scheme actually applied.

Inventories: differences in the financing cost of stocks for incoming material and finished products that appear as a consequence of the location choice (i.e. differences in number of days in stock on the plant and on the road);

Transport: differences in cost arising for the automotive company because of the peripheral location of the regional plant (both as regards incoming materials and finished products), resulting from differences in distances and unit transport costs;

Other operating handicaps: differences in cost of, for example, various utilities and guarantees.

3.4. End result of the cost-benefit analysis: "regional handicap ratio" versus "aid intensity"

The cost-benefit analysis model obtains the net incremental cost between the two locations. The nominal value is to be discounted using the reference rate of the EFTA State concerned valid at the start of the project. When operating handicaps are expressed in constant prices, the nominal value of those handicaps will be discounted by the real interest rate, which is equal to the reference rate minus the inflation rate for the country in question.

The Authority also examines the correct application of the regional aid scheme in arriving at the eligible expenditure. The relevant "aid intensity" for the Authority's decision on the aid project is the ratio between the discounted aid flow and the discounted flow of eligible investment using the reference rate. This aid intensity is then expressed in gross grant equivalent.

Division of the net incremental cost in present values by the present value of the eligible investment produces the "regional handicap ratio".

This "regional handicap ratio" is compared with the "aid intensity" expressed in gross grant equivalent resulting from the EFTA State's proposal. Comparing both ratios; the following initial propositions can be drawn up:

- if the aid intensity is well below the regional handicap ratio, it is assumed that the automotive company will not receive an unjustified amount of aid; the aid will serve to compensate to a certain extent the financial disadvantages of the geographical choice,
- if the aid intensity is substantially higher than the regional handicap ratio, it may be assumed, at this point of the analysis, that the automotive company may receive an unjustified amount of aid; the aid may serve to overcompensate the financial disadvantages of the geographical choice,
- if the aid intensity is close to the regional handicap ratio, the market-impact analysis will define whether the proposal is acceptable.

3.5. Market-impact analysis: the "regional top-up"

Taking into account the present surplus capacity in the European automotive industry, the Authority's assessment of regional aid cases in the motor vehicle industry puts a special emphasis on the production capacity of the vehicle maker ⁽¹⁾ receiving the aid "before" and "after" investment and the situation of the vehicle's market segment that will be affected as a consequence of the aided project.

Aid proposals in support of investments that potentially aggravate the overcapacity problem of the industry can be modulated by reducing the "regional handicap ratio" by up to two points; this could imply that the Authority has to start proceedings under Article 1(2) of Protocol 3 to the Surveillance and Court Agreement even when the proposed aid does not overcompensate the regional handicap.

On the contrary, a project contributing to an overall improvement to the overcapacity situation affecting the industry can benefit from increases of up to four points (in assisted areas) to the regional handicap estimated by the cost-benefit analysis.

The "regional top-up" range of values is the following:

Impact on competitors	Adjustment factor	
	Article 61 (3) (a) regions	Article 61 (3) (c) regions
Low	+ 4	+ 2
Medium	+ 2	+ 1
High	- 1	- 2

⁽¹⁾ In the case of component modules, the Authority will not take account of overcapacity considerations given that first-tier component suppliers are not considered to invest in new capacities unless they have firm purchase orders.

Note: the "regional top-up" is expressed in percentile points that are added to (or subtracted from) the "regional handicap ratio" estimated by the cost-benefit analysis.

A distinction between Article 61(3)(a) and Article 61(3)(c) areas is necessary in order to take into account the different situation of the regions and increase the incentive effect of regional aid for potential investors.

4. PROCEDURE

4.1. Pre-notification

EFTA States may wish to contact the Authority in advance of a notification to obtain advice to ensure that the subsequent notification is as complete as possible. This is particularly relevant when the aid nature of certain measures is uncertain, when an aid measure serves more than one objective, when it is doubtful whether a cost-benefit analysis is required or when a company has not carried out a location study.

4.2. Notification

The EFTA State should, with the help of the aided company, complete the standard notification form (paragraph 23.2.2.6 of the Guidelines) and cost-benefit analysis forms adding the necessary supporting material.

4.3. Appraisal

Upon registration of the notification, the Authority will inform the EFTA State as soon as possible and usually within 15 working days about any information ⁽¹⁾ which may be lacking in order to make the notification complete for an assessment of all aspects of the case. At the same time, it will propose to the EFTA State a meeting in its offices or on the site of the investment to discuss the information already received and to be received.

On that occasion, the EFTA State and the Authority can be assisted by appropriate experts so that all technical and financial information can be discussed in detail. During the meeting, missing information for a full assessment of the case will be identified by the Authority and agreement reached by all parties on supportive material to be provided and on the prospective timetable for decision-making. Following that meeting ⁽²⁾, the Authority will confirm its final request for further information in writing.

Once the additional information which corresponds to the requests of the Authority is received, the decision will normally be adopted within 30 working days for notified aid under an approved aid scheme(s) or two months for notified ad hoc aid.

However, within this deadline the Authority will invite the EFTA State, which can if appropriate be assisted by experts, to review the cost-benefit analysis in a meeting in Brussels. Any errors and misinterpretations can then still be corrected before a final version is arrived at.

5. COST-BENEFIT ANALYSIS FORMS AND GLOSSARY OF TERMS

The forms to be used are the English language version of the forms in Annex II of the Community framework for State aid to the motor vehicle industry, printed in the *Official Journal of the European Communities* C 279, 15.9.1997, p. 17 to 44 ⁽³⁾.

⁽¹⁾ Given the fact that every case has its own peculiarities, it is normal to expect that the notification does not provide comprehensive information on all technical and financial aspects of a project. In cases where the EFTA State has consulted the Authority before notification, the need for additional information will of course be limited.

⁽²⁾ If the company argues for considerable investment cost differences between two existing sites, it may also be necessary for the Authority's experts to visit the alternative site.

⁽³⁾ For this purpose the word "Commission" will mean "EFTA Surveillance Authority" and the words "Member State" shall mean "EFTA State".