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# Legislation

Contents



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(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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EN

[1] Text with EEA relevance

(Continued on inside back cover)

II *Acts whose publication is not obligatory*

**Commission**

2000/437/EC:

I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 1521/2000

## of 10 July 2000

## amending Regulation (EC) No 2334/97 imposing a definitive anti-dumping duty on certain imports of flat pallets of wood originating in the Republic of Poland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9(4) thereof,

Having regard to Regulation (EC) No 2334/97 [2], and in particular Article 4(1) and (2) thereof,

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

Whereas:

### A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EC) No 2334/97, imposed definitive anti-dumping duties on certain imports of flat pallets of wood falling within CN code ex 4415 20 20 originating in the Republic of Poland and accepted undertakings offered from certain producers in connection with these imports. Sampling was applied to Polish producers/exporters and individual duties ranging from 4,0 % to 10,6 % were imposed on the companies in the sample, while other cooperating companies not included in the sample received a weighted average duty of 6,3 %. A duty of 10,6 % was imposed on companies which either did not make themselves known or did not cooperate in the investigation. The producers from which undertakings were accepted were exempted from anti-dumping duties with regard to imports of one specific pallet type, the EUR-pallet, which is the only pallet type covered by the undertakings.

(2) Article 4(1) of Regulation (EC) No 2334/97 stipulates that any party which provides sufficient evidence to the Commission that:

— it did not export to the Community or produce wooden pallets described in Article 1(1) of that Regulation during the investigation period,

— it is not related to any of the producers or exporters in Poland which are subject to the anti-dumping duties imposed by that Regulation,

— it has actually exported to the Community the goods concerned after the investigation period, or it has entered into any irrevocable contractual obligation to export a significant quantity to the Community;

then that Regulation may be amended by granting that party the duty rate applicable to cooperating producers which were not in the sample, i.e. 6,3 %.

(3) Article 4(2) of Regulation (EC) No 2334/97 provides furthermore that any party which met the criteria set out in Article 4(1) thereof may also be exempted from the payment of the anti-dumping duty if an undertaking with regard to the so-called EUR-pallet is accepted from such party.

(4) The Council, by Regulations (EC) No 2079/98 [3] and (EC) No 2048/99 [4] amended Regulation (EC) No 2334/97 as regards its Annexes I and II.

### B. NEW EXPORTERS' REQUEST

(5) Eight new Polish exporting producers having requested the same treatment as the companies which cooperated in the original investigation but were not included in the sample, have provided, on request, evidence showing that they meet the requirements set out in Article 4(1) of Regulation (EC) No 2334/97. The evidence provided by these applicant companies is considered sufficient to allow Regulation (EC) No 2334/97 to be amended by adding these eight exporting producers to Annex I of the said Regulation. Annex I specifies the exporting producers which are subject to the weighted average duty of 6,3 %.

[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 324, 27.11.1997, p. 1. Regulation as last amended by Regulation (EC) No 2048/1999 (OJ L 255, 30.9.1999, p. 1).
[3] OJ L 266, 1.10.1998, p. 1.
[4] OJ L 255, 30.9.1999, p. 1.

(6) Six of the eight Polish exporting producers which will receive the weighted average duty of 6,3 %, have also offered undertakings with regard to the EUR-pallet which were accepted by Commission Decision 2000/437/EC [1]. Consequently, these six companies should be added to Annex II of Regulation (EC) No 2334/97 which contains a list of companies from which the Commission has accepted undertakings with regard to imports of the EUR-pallet and to which the duty does not, therefore, apply in this respect.

C. **WITHDRAWAL OF UNDERTAKING**

(7) Two Polish exporting producers, P.P.H. 'Pamadex' and P.H.U. 'Akropol', from which the Commission accepted an undertaking by Regulation (EC) No 1023/97, have stated that they do not produce the product concerned any longer. Therefore, the Commission informed them that it is intended to remove them from the list of companies from which an undertaking was accepted. The two companies did not object to this course of action. It should also be noted that those two companies could again offer an undertaking should they decide to resume production and exports of the EUR pallets.

D. **CHANGE OF ADDRESS**

(8) A Polish exporting producer, Z.P.H. 'Palettenwerk' — K. Kozik Bystra Podhalanska which is subject to an individual anti-dumping duty pursuant to Article 1 of Regulation (EC) No 2334/97 has informed the Commission services that its address has changed. Hence, Article 1 of Regulation (EC) No 2334/97 must be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

The reference in Article 1 of Regulation (EC) No 2334/97 to the manufacturer Z.P.H. 'Palettenwerk' — K. Kozik, PL-34-789 Bystra Podhalanska, should be deleted and replaced by the following:

— Z.P.H. 'Pallettenwerk' — K. Kozik, PL-34-785 Jordanow.

*Article 2*

Annex I to Regulation (EC) No 2334/97 shall be replaced by Annex I to this Regulation.

*Article 3*

Annex II to Regulation (EC) No 2334/97 shall be replaced by Annex II to this Regulation.

*Article 4*

This Regulation shall enter into force on the day following that of 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, 10 July 2000.

*For the Council*
*The President*
H. VÉDRINE

[1] See page 93 of this Official Journal.

*ANNEX I*

*'ANNEX I*

**Manufacturer**

| | |
|---|---|
| 1 | "Baumann Palety" Sp.zo.o., Barczewo |
| 2 | "DAST" GmbH, Poznan |
| 3 | Drew-Pol Export-Import, Wodarz Norbert, Murow |
| 4 | E. Dziurny — C. Nowak S.C., Snietnica |
| 5 | F.P.H. "Tina" S.C., Katowice |
| 6 | F.P.H. Tadeusz Fisher, Maly Gleboczek |
| 7 | F.P.U.H. "Rol-Mar", Adam Piatek, Klodzko |
| 8 | Z.P.H.U. Miroslaw Przybyiek, Klonowa |
| 9 | Internationale Paletten Company Sp., Lebork |
| 10 | "Kross-Pol" Sp.zo.o., Kolobrzeg |
| 11 | P.P.U.H. "Drewmax" Sp.zo.o. (formerly P.P.H. "Drewnex"), Krakow |
| 12 | P.P.H. "GKT" S.C., Majdan Nowy |
| 13 | P.P.H. "Pamadex", Ligota |
| 14 | P.P.H. "Unikat", Aleksandrow IV 697 |
| 15 | P.P.H.U. "Adapol" S.C., Wolomin |
| 16 | P.P.H.U. "Alwa" Sp.zo.o., Tychowo |
| 17 | P.P.H.U. "SMS" — St. Mrozowicz, Suleczyno |
| 18 | P.T.H. "Mirex", Kolobrzeg |
| 19 | P.W. "Peteco" Sp.zo.o., Warszawa |
| 20 | Parafia Rzymsko-Katolicka, B. Niepokalaneg Dzialalnose Gospodaroza, Nowy Sacz |
| 21 | Produkcja Palet "A. Adamus", Kuznia Grabowska |
| 22 | Produkcja Skup Palet Drewnanych, Stanislaw Lachowicz, Majdan Sieniawski 170 |
| 23 | Przedsiebiorstwo "Amesko", Andrzej Skora, Trzebnica |
| 24 | P.P.H. "Justyna", Gubin |
| 25 | P.P.H. "Akropol", Krakow |
| 26 | P.P.H. Produkcyjne "Lech", Lech Szwez, Zary |
| 27 | Przedsiebiorstwo Obrobki Drewna "Palet-Pol" Sp.zo.o., Dabrowka WLKP |
| 28 | P.P.H. Zygmunt Skibinski, Kowal |
| 29 | P.P.H.U. "AWA" Sp.zo.o., Nowy Sacz |

| | |
|---|---|
| 30 | Przedsiebiorstwo Wielobranzowe, Zdziolaw Milocki, Ostroda |
| 31 | "Scanproduct" S.A., Czarny Dujanec |
| 32 | S.C. "Bed", Dariusz Zuk, Krasienin |
| 33 | S.U.T.R. "Rol Trak", Prochowice |
| 34 | Stolarstwo Export-Import, Tadeusz Swirski, Dlugopole Zdroj |
| 35 | Torunskie Przedsiebiorstwo Przemyslu Drzewnego w Toruniu, Adam Wisniewski, Torun |
| 36 | "Transdrewneks" Sp.zo.o., Grudziadz-Owczarki |
| 37 | W.Z.P.U.M. "Euro-Tech", Rakszawa |
| 38 | Wytwazanie Skrzyn i Opakowan Drewnianych, Malgorzata i Ryszard Nowak, Piaszyna |
| 39 | Zaklad Produkcyjno Bohuszko, Ryszard Bohuszko, Osno |
| 40 | Z.P.H.U. "Maw" S.C., Andrzej Kulej, Lubomierz |
| 41 | Zaklad Uslugowo-Handlowy "Rolmex", E. Cackowski, Lipno |
| 42 | Zaklad Wielobranzowy Produkcyjno Uslugowy, Ryszard Potoniec, Muszyna |
| 43 | Zaklad Przerobu Drewna S.C., Drawsko Pomorskie |
| 44 | Z.P.H.U. "Drewex" SC., Agnieszka Pawlaczyk, Skwierzyna |
| 45 | Z.P.H.U. "Sek-Pol" Sp.zo.o., Tarnobrzeg |
| 46 | "Euro-Mega-Plus" Sp.zo.o., Kielce |
| 47 | "C.M.C." Sp.zo.o., Andrychow, Inwald |
| 48 | Wyrob, Sprzedaz, Skup Palet, Josef Kolodziejczyk, Aleksandrow IV 704 |
| 49 | Firma Produkcyjno Transportowa Marian Gerka, Brodnica |
| 50 | Z.P.H.U. "Drewnex" S.C., Zelazkow 45 b |
| 51 | Import-Export "Elko" Sp.zo.o., Kalisz |
| 52 | P.P.H.U. "Probox", Import-Export, Kalisz |
| 53 | Drewpal S.C., Stawiszyn |
| 54 | Zaman S.C., Radom |
| 55 | "Marimpex", Pulawy |
| 56 | "AVEN" Sp.zo.o., Kostrzyn |
| 57 | P.P.H.U. "Eurex" S.C., Godynice |
| 58 | P.H. "Drewex" S.C., Lebork |
| 59 | MACED Sklad Palet, J. Macionga, Miastko |
| 60 | ENKEL S.C., Pulawy |
| 61 | PAL-PACK Sp.zo.o., Wierzchowo |
| 62 | Produkcja Stolarska Posrednictwo Export-Import, W.i.T. HENSOLDT, Lebork |
| 63 | Biuro Uslugowo-Handlowe, Wieslaw Rzezniczek, Lebork |

| | |
|---|---|
| 64 | P.P.U.H. "DREWPOL", Braszewice |
| 65 | PTN Kruklanki Sp.zo.o., Krulanki |
| 66 | WEDAM S.C., Stezyca |
| 67 | Import-Export Jan Sibinski, Czajkow |
| 68 | Zaklad Produkcyjny "Tarta", Lubsko |
| 69 | Firma "Krausdrew", Cewice |
| 70 | "Lidal" S.C., Miastko |
| 71 | Zaklad Przerobu Drewna Import-Export, Stanislaw Kociolek, Ladek Zdroj |
| 72 | P.P.H.U. "Alk", Bierzwnik |
| 73 | "Empol" S.C., Jastrzebniki 37 |
| 74 | Zaklad Produkcji Drzewnej Nr. 1, Export-Import, Julian Bartkowski, Sanok |
| 75 | P.P.H. "Drewex", Czarnkow |
| 76 | "ZAP" Przedsiebiorstwo Handlowe-Uslugowe Sp.C., Wschowa |
| 77 | P.P.H.U. "Opal", Zygmunt Podgorski, Bukowsko 41 |
| 78 | "Algepa-Pol" Sp.zo.o., Lubsko |
| 79 | P.P.H. "A-Produkt" S.C., Resko |
| 80 | P.P.H. "Paletex" Sibinski Jaroslaw, Czajkow |
| 81 | Euro-Handels Sp.zo.o., Szczecin |
| 82 | Firma "KIKO" S.C., Poznan |
| 83 | "Enkel" Waldemar Wnuk, Pulawy |
| 84 | Sliwka Lucyna, Klodzko |
| 85 | Firma Borkowski S.C. Export-Import, Grabow n. Prosna |
| 86 | Produkcja-Skup Elementow i Palet, Stanislaw Gorecki, Czajkow |
| 87 | "Prodpalet" Handel, Boleslawiec |
| 88 | Z.P.H.U. "Drexport" S.C., Olecko, Osiedle Lesk |
| 89 | "Bilusa" Sp.zo.o., Klodawa |
| 90 | Pawel Bilko "Pablo", Klodawa |
| 91 | Z.P.W. "Gober" Sp.zo.o., Gorzow Wlkp. |
| 92 | Kisiel Malgorzata "Drew-Pal", Dobra Now |
| 93 | P.W. "Remag", Zlocieniec |
| 94 | P.P.U.H. PAL-POL S.C., Prabuty |
| 95 | Firma "A.C.S." S.C., Kamien |
| 96 | Zaklad Drzewny "MARINO", Kawcze |

| | |
|---|---|
| 97 | P.T.P.U.H. "ROB-POL", Milkow |
| 98 | Z.H.U.P. Agromal, Sieradz |
| 99 | "SMT" Sp.zo.o., Miastko |
| 100 | Firma Transdrewneks Gadzala Antoni, Torun |
| 101 | Artur Rochmankowski, Trzcinsko-Zdroj |
| 102 | "Depo" Sp.zo.o., Ilowa |
| 103 | B.P.R. Sp.zo.o., Warszawa |
| 104 | "DREWNO" Sp.zo.o., Krzeszyce |
| 105 | P.P.H. "Astra" Sp.zo.o., Nowy Sacz |
| 106 | "D & M & D" Sp.zo.o., Blizanow |
| 107 | P.P.H. "Vector", Kalisz |
| 108 | "Palko" Sp.zo.o., Sedziszow |
| 109 | P.P.H. Pol-Wood S.C., Rzekun |
| 110 | P.P.H. "YANSAM", Zlocieniec |
| 111 | P.P.H.U. "ELMA" S.C., Sobieseki |
| 112 | P.P.H. SWENDEX S.C., Lublin |
| 113 | P.P.H.U. ROMAX Import-Eksport, Wroclaw |
| 114 | Z.P.H.U. "BESTPOL" Sp.zo.o., Lututow |
| 115 | P.P.H.U. Zbigniew Marek, Andrichow |
| 116 | Pomorski Serwis Paletowy Sp.zo.o., Kobylnica |
| 117 | "EMI" S.C., Bilgoraj' |

*ANNEX II*

*'ANNEX II*

**Manufacturer**

| | | Taric additional code |
|---|---|---|
| 1 | "Baumann Palety" Sp.zo.o., Barczewo | 8570 |
| 2 | E. Dziurny — C. Nowak S.C., Snietnica | 8571 |
| 3 | F.P.H. "Tina" S.C., Katowice | 8572 |
| 4 | Firma "Sabelmar" S.C., Konczyce Male | 8573 |
| 5 | Z.P.H.U. Miroslaw Przybyiek, Klonowa | 8574 |
| 6 | Internationale Paletten Company Sp., Lebork | 8575 |
| 7 | "Kross-Pol" Sp.zo.o., Kolobrzeg | 8576 |
| 8 | P.P.U.H. "Drewmax" Sp.zo.o. (formerly P.P.H. "Drewnex"), Krakow | 8577 |
| 9 | P.P.H. "GKT" S.C., Majdan Nowy | 8584 |
| 10 | P.P.H. "Unikat", Aleksandrow IV 697 | 8586 |
| 11 | P.P.H.U. "Adapol" S.C., Wolomin | 8587 |
| 12 | P.P.H.U. "Alpa" Sp.zo.o., Dobrzyca | 8588 |
| 13 | P.P.U.H. "Alwa" Sp.zo.o., Tychowo | 8589 |
| 14 | P.P.H.U. "Palimex" Sp.zo.o., Wloszakowice | 8590 |
| 15 | P.P.U.H. "SMS" — St. Mrozowicz, Suleczyno | 8591 |
| 16 | P.T.H. "Mirex", Kolobrzeg | 8597 |
| 17 | P.W. "Intur-KFS" Sp.zo.o., Inowroclaw | 8662 |
| 18 | P.W. "Peteco" Sp.zo.o., Warszawa | 8690 |
| 19 | "Paletex" Produkcja Palet, Roman Panasiuk, Warszawa | 8691 |
| 20 | Produkcja Palet "A. Adamus", Kuznia Grabowska | 8692 |
| 21 | P.P.H. Zygmunt Skibinski, Kowal | 8693 |
| 22 | "Scanproduct" S.A., Czarny Dujanec | 8715 |
| 23 | S.U.T.R. "Rol Trak", Prochowice | 8714 |
| 24 | "Transdrewneks" Sp.zo.o., Grudziadz-Owczarki | 8716 |
| 25 | W.Z.P.U.M. "Euro-Tech", Rakszawa | 8725 |
| 26 | Z.P.H. "Palettenwerk" — K. Kozik, Jordanow | 8726 |
| 27 | Zaklad Przerobu Drewna S.C., Drawsko Pomorskie | 8745 |
| 28 | Z.P.H.U. "Sek-Pol" Sp.zo.o., Tarnobrzeg | 8526 |
| 29 | "Euro-Mega-Plus" Sp.zo.o., Kielce | 8527 |

| | | |
|---|---|---|
| 30 | "C.M.C." Sp.zo.o., Andrychow, Inwald | 8528 |
| 31 | Wyrob, Sprzedaz, Skup Palet, Josef Kolodziejczyk, Aleksandrow IV 704 | 8529 |
| 32 | Firma Produkcyjno Transportowa Marian Gerka, Brodnica | 8530 |
| 33 | Z.P.H.U. "Drewnex" S.C., Zelazkow 45 b | 8531 |
| 34 | Import-Export "Elko" Sp.zo.o., Kalisz | 8532 |
| 35 | P.P.H.U. "Probox", Import-Export, Kalisz | 8533 |
| 36 | Drewpal S.C., Stawiszyn | 8534 |
| 37 | Zaman S.C., Radom | 8535 |
| 38 | "Marimpex", Pulawy | 8537 |
| 39 | "AVEN" Sp.zo.o., Kostrzyn | 8558 |
| 40 | P.P.H.U. "Eurex" S.C., Godynice | 8538 |
| 41 | MACED Sklad Palet, J. Macionga, Miastko | 8539 |
| 42 | ENKEL S.C., Pulawy | 8540 |
| 43 | Produkcja Stolarska Posrednictwo Export-Import, W.i.T. HENSOLDT, Lebork | 8541 |
| 44 | P.P.U.H. "DREWPOL", Braszewice | 8834 |
| 45 | PTN Kruklanki Sp.zo.o., Krulanki | 8556 |
| 46 | WEDAM S.C., Stezyca | 8557 |
| 47 | Import-Export Jan Sibinski, Czajkow | 8559 |
| 48 | P.P.H.U. "Alk", Bierzwnik | 8561 |
| 49 | "Empol" S.C., Jastrzebniki 37 | 8560 |
| 50 | Euro-Handels Sp.zo.o., Szczecin | 8440 |
| 51 | P.P.H. "Paletex" Sibinski Jaroslaw, Czajkow | 8441 |
| 52 | Firma "KIKO" S.C., Poznan | 8443 |
| 53 | "Enkel" Waldemar Wnuk, Pulawy | 8444 |
| 54 | Sliwka Lucyna, Klodzko | 8445 |
| 55 | Firma Borkowski S.C. Export-Import, Grabow n. Prosna | 8446 |
| 56 | Produkcja-Skup Elementow i Palet, Stanislaw Gorecki, Czajkow | 8483 |
| 57 | "Bilusa" Sp.zo.o., Klodawa | 8484 |
| 58 | P.P.U.H. PAL-POL S.C., Prabuty | 8485 |
| 59 | Firma "A.C.S." S.C., Kamien | 8486 |
| 60 | "SMT" Sp.zo.o., Miastko | 8562 |
| 61 | Firma Transdrewneks Gadzala Antoni, Torun | 8563 |
| 62 | "Palko" Sp.zo.o., Sedziszow | 8565 |
| 63 | "D & M & D" Sp.zo.o., Blizanow | 8566 |

| | | |
|---|---|---|
| 64 | P.P.H. "Vector", Kalisz | 8567 |
| 65 | P.P.H.U. "ELMA" S.C., Sobieseki | A109 |
| 66 | P.P.H. SWENDEX S.C., Lublin | A110 |
| 67 | P.P.H.U. Zbigniew Marek, Andrichow | A113 |
| 68 | Pomorski Serwis Paletowy Sp.zo.o., Kobylnica | A114 |
| 69 | "EMI" S.C., Bilgoraj | A124 |
| 70 | P.P.H.U. ROMAX Import-Eksport, Wroclaw | A133' |

# COUNCIL REGULATION (EC) No 1522/2000

## of 10 July 2000

## imposing a definitive anti-dumping duty on imports of synthetic staple fibres of polyester originating in Australia, Indonesia and Thailand 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 Article 9 thereof,

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

Whereas:

### 1. PROCEDURE

#### 1.1. Provisional measures and definitive countervailing duties

(1) By Commission Regulation (EC) No 124/2000 [2] (the 'provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of polyester staple fibres ('PSF') falling within CN code 5503 20 00 and originating in Australia, Indonesia and Thailand.

(2) As a result of a parallel anti-subsidy investigation, provisional countervailing duties were imposed under Commission Regulation (EC) No 123/2000 [3] on imports into the Community of PSF originating in Australia, and Taiwan.

(3) Regarding the abovementioned anti-subsidy investigation, by Council Regulation (EC) No 978/2000 [4] definitive countervailing duties on imports originating in Australia, Taiwan and Indonesia were adopted.

#### 1.2. Subsequent procedure

(4) Following the imposition of provisional anti-dumping duties, several parties submitted comments in writing. In accordance with the provisions of Article 6(5) of Regulation (EC) No 384/96 (the 'basic Regulation'), the parties which so requested were granted an opportunity to be heard. Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection, at the level of this duty, of amounts secured by way of provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

(5) The oral and written comments submitted within the deadlines set for that purpose by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.

#### 1.3. Non-cooperation

(6) Following the imposition of provisional measures, one non-cooperating Indonesian exporting producer requested the Commission to reconsider its status as non-cooperator. The claim was that, despite the difficulties caused by the deadlines, this company replied to the Commission questionnaire and that this was an indication of its intention to cooperate.

(7) As explained in recital 18 of the provisional duty Regulation, this exporting producer failed to provide a completed response to the questionnaire within the deadline, which was extended several times in order to enable the company to submit a meaningful reply. The provisional determination of non-cooperation should therefore be confirmed.

### 2. PRODUCT CONCERNED AND LIKE PRODUCT

(8) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF.

(9) The Royal Thai Government ('RTG'), the Government of Indonesia ('GOI'), certain exporting producers and a users' association ('Eurofibrefill') claimed that the Notice of Initiation of the present proceeding did not cover PSF types for non-spinning applications, and consequently these PSF types should have been excluded from the proceeding.

(10) It was also argued that, in any event, a differentiation should be made between PSF types used for spinning applications (also called woven, or 'PSFS') and PSF used for non-spinning applications (also called non-woven, fibrefill or 'PSFNS') because of different physical, technical and chemical characteristics and different use. Furthermore, it was alleged that inter-changeability, if any, between PSFS and PSFNS was very limited and concerned only certain types of fibres originally intended for PSFS which may be used as PSFNS. Actually, some interested parties indicated that the differentiation

[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 16, 21.1.2000, p. 3.
[3] OJ L 16, 21.1.2000, p. 30.
[4] OJ L 113, 12.5.2000, p. 1.

between PSFS and PSFNS types would be reflected in the thickness expressed in 'denier'. In their opinion, PSF types below 3 denier are used by the spinning industry, whereas types above 3 denier are used in non-spinning applications.

(11) Moreover, they argued that the Community industry mainly produces PSFS and that consequently most PSFNS types have to be sourced outside the Community.

(12) Similarly, one exporting producer in Indonesia claimed that PSF produced from recycled raw materials ('recycled PSF') should not be included in the same category as PSF produced from regular raw materials ('regular PSF'), because both have a distinct production process, they are produced with different raw material and they have different end-uses. They therefore argued that recycled PSF should not be covered by the present proceeding.

(13) In this respect it should be noted that the Notice of Initiation, as well as the complaint, clearly reproduce the description of the relevant CN code which covers all types of PSF. Notwithstanding this, after the initiation of the present investigation, the wording of the description of the relevant CN code was wrongly interpreted by certain exporting producers. Subsequently, it was clarified that both the complaint and the Notice of Initiation covered all types of PSF exported by the countries concerned and produced by the Community industry irrespective of their use.

(14) In fact, the Community industry produces all types of PSF and in particular PSFNS. Indeed, contrary to allegations suggesting very limited activity of the Community industry in PSFNS production, the investigation showed that during the investigation period, 'IP' (1 April 1998 to 31 March 1999), the sales of PSFS types represented around 25 % of sales of the Community industry, whereas PSFNS types represented around 75 %.

(15) It was also found that about 50 % of the imports of PSF originating in Australia, Indonesia and Thailand were PSFS types, whereas the other 50 % were PSFNS types.

(16) As far as the alleged differences in physical, technical and chemical characteristics are concerned, it should be recalled that PSF comes in a wide range of different types, of generally the same chemical composition. They are also produced with the same production facilities and even on the same production lines. The investigation has shown that, depending on the operator, between 15 and 80 types of PSF are produced by both exporting producers and the Community industry. The main characteristics by which different types of PSF can be distinguished are thickness (denier), length, tenacity, grimp and shrinkage. It is clear that between the 'bottom end' and the 'top end' of the range, there are differences, in terms of the above technical characteristics. It must however be noted that differences in physical characteristics exist for types of even the same thickness, since production is normally made according to customers' specifications.

(17) The alleged almost complete differentiation of PSF types using the 3 denier threshold reflecting differences in the use of the product, was not confirmed by the present investigation, in particular by the analysis of the actual data received from the exporting producers and the Community industry. In fact, significant overlapping between different types of PSF was actually established. This examination showed that sales of PSF below 3 denier to non-spinning industries and above 3 denier to the spinning industry covers about 20 % of the imports from the three countries concerned and of the Community industry's sales. Moreover, 7 % of the fibres are exactly at the threshold point of 3 denier, which are sold either for spinning or non-spinning uses. The investigation has therefore shown that there is no clear dividing line between the various types, as there is overlapping and consequently competition between 'adjacent' types within this range of types.

(18) Apart from the overlap mentioned above, the fact that the same PSF is used for both spinning and non-spinning applications has also been confirmed by the existence of a clear one-way inter-changeability found for certain PSF types. Indeed, PSFS can be sold for non-spinning uses if the quality of the fibres is not suitable for spinning uses. Consequently, following the practice of the Community in such cases, the various types of PSF involved should be considered as forming one single product.

(19) As regards the alleged difference in cost of production of PSFS and PSFNS, it should be noted that such difference is negligible. This is also reflected in the fact that there are no big differences in the sales prices of the PSFS and PSFNS, e.g. the regular types of PSF for spinning and non-spinning purposes.

(20) As mentioned above, all PSF types are produced using the same production equipment. Furthermore, switching from one PSF type to another, apart from certain adjustment and calibration costs, does not involve any additional investments. Although as such this is not relevant for the determination of the product concerned and like product, it follows that the Community industry can produce any type of PSF. Consequently, even if, as alleged, certain PSF types were not readily available from the Community industry, this is not due to technical reasons but to the depressed price level caused by dumped imports which customers have used in their requests for price quotes. Therefore, the argument that certain types of PSF are not available from the Community industry has not been confirmed.

(21) Finally, it should be recalled that the existence of different types of PSF, variation in quality of raw material used, production processes and uses does not entail any significant differences in the basic physical, chemical and technical characteristics of PSF. Therefore, recycled and regular PSF should be considered as being part of the product concerned for the purpose of this proceeding.

(22) Based on the foregoing, it is considered that the comments received regarding the definition of the product concerned and the like product, are not such as to invalidate the conclusions of recitals 10 to 12 of the provisional duty Regulation. Consequently, these conclusions, which are in line with the conclusions reached for the same product in previous investigations, are hereby confirmed.

## 3. **DUMPING**

### 3.1. **Australia**

#### 3.1.1. *Normal value*

(23) Following the adoption of provisional measures, the sole Australian exporting producer claimed that the Commission had wrongly considered one domestic user as a related company and should therefore not have excluded the transactions to this company in determining normal value. According to the exporting producer, this user was an independent customer.

(24) This claim was rejected because according to the information received on the spot, the user in question and the Australian exporting producer were each owned by a trust. Both trusts were controlled by the same family. Moreover, the company itself admitted that some directors and shareholders in both companies were common. The conclusion drawn was that both companies were associated parties within the meaning of Article 2(1) of the basic Regulation. In addition, the company did not show that the relationship had not affected the price levels between the two parties. Furthermore, the Commission established that these transactions were not made in the ordinary course of trade, as they were made at a loss.

(25) The Australian exporting producer also claimed that in determining the cost of the raw materials the amounts actually paid instead of the prices invoiced for raw materials should have been used.

(26) This claim was accepted and the cost of production used in the ordinary course of trade test and in constructing normal value was revised accordingly.

#### 3.1.2. *Export price*

(27) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

#### 3.1.3. *Comparison*

(28) Following the adoption of provisional measures, the Australian exporting producer reiterated its request for an allowance for technical services in the domestic market.

(29) As laid out in recital 40 of the provisional duty Regulation, the company did not give a satisfactory explanation with regard to the nature of its claims and also did not provide satisfactory explanations or documentary evidence to support the amounts of the adjustment claimed. Furthermore, the company was not able to demonstrate that the factor concerned led to different prices being charged to customers on the domestic and export markets.

(30) The claim was consequently rejected and the conclusions set out in the provisional duty Regulation are confirmed.

#### 3.1.4. *Dumping margin*

(31) The comparison of the revised weighted average normal value with the weighted average export price by product type on an ex factory basis showed the existence of dumping. The definitive dumping margin as a percentage of the cif import price duty unpaid is 18 %.

### 3.2. **Indonesia**

#### 3.2.1. *Sampling*

(32) As explained in the provisional duty Regulation, sampling has been used for Indonesia. Following the adoption of provisional measures, the Indonesian authorities argued that they had not agreed to the sample proposed by the Commission at the time of the selection of the sample. However, it should be recalled that the companies finally selected in the sample were those which had been suggested in writing for this purpose by the Indonesian authorities themselves. No further comments concerning sampling were received and, therefore, the conclusions of the provisional duty Regulation are hereby confirmed.

#### 3.2.2. *Normal value*

(33) Following the adoption of provisional measures, the Commission reviewed the extent of the cooperation it had received from one Indonesian exporting producer. In this respect, it was concluded that problems which were encountered both with the information provided in the response to the questionnaire and with the subsequent on-the-spot verification meant that certain information supplied by the company could not be adequately verified in particular in relation to the cost of production. The information as presented was misleading and as such impeded the investigation. Moreover, explanations submitted following the adoption of provisional measures raised further doubts about the original information submitted. The company was therefore informed that certain information submitted will not be taken into account and was granted an opportunity to provide further explanations. The explanations

provided were not considered satisfactory. In these circumstances, the findings were made on the basis of the facts available in accordance with Article 18 of the basic Regulation. However, information supplied by this company was still used to the extent possible for the purpose of this investigation.

(34) This Indonesian exporting producer claimed that the Commission should have calculated separate normal values and separate dumping margins for second and third quality grades of the product concerned. The company claimed that by reporting data for different sub-qualities separately, it had followed the instructions of the questionnaire, since it considered that the technical specifications of second and third qualities were different and that, furthermore, these qualities were differentiated in the company's records. The company also reported different costs of production for the different qualities, allegedly based on a costing system which allocated costs in order to allow cost recovery for the sub-qualities. In addition, the company claimed that the comparison of grouped sub-qualities was not appropriate.

(35) It was found that the company neither followed the reporting instructions set out in the questionnaire, nor its own records, as made available to the Commission, with regard to the classification of sub-standard qualities. Notwithstanding the above, the cost of production of the different qualities as reported by the company in the response to the questionnaire was further examined. In this respect, it was established that these costs of production of the second and third qualities did not reasonably reflect the costs associated with the production and sale of the product under consideration, as provided in Article 2(5) of the basic Regulation. In fact, the costs of production reported for the sub-qualities did not contain labour cost, depreciation, overheads and selling, general & administrative ('SG & A') expenses. Furthermore, it was found that the company's allegation that they priced just to cover cost conflicted with the information submitted, which showed high profits for the sub-qualities. Moreover, it was not contested that the aim of the company was to produce the first quality PSF. This implied that the actual cost of production of all PSF, irrespective of quality, was the same. Therefore, the cost of production was recalculated on the basis of the total actual cost incurred during the investigation period which was then divided by the total volume produced in order to establish an average cost of production.

(36) According to the methodology described in the provisional duty Regulation, the revised cost of production was then applied to verify whether domestic prices were made in the ordinary course of trade. Where this was found to be the case, domestic prices were used to establish normal value. Otherwise, normal value was constructed. On this basis, the grouping or otherwise of the allegedly different sub-qualities did not affect the outcome. However, it was accepted that the company had some sub-standard output of the product concerned and this was treated the matter as a comparison issue.

(37) The same Indonesian exporting producer claimed that the general and administrative expenses used in calculating normal value should have been allocated over the entire sales of the division producing the product concerned, including the internal sales.

(38) This claim was rejected, as expenses were incurred by sales to independent customers and not by internal transfers to other divisions that further process the product concerned.

(39) The same Indonesian exporting producer claimed that the Commission should have used the product specific SG & A expenses in calculating normal value and not the total SG & A expenses of the division producing the product concerned.

(40) This claim was rejected, as the company failed to provide the necessary supporting documentation which would have allowed a proper verification of the product specific SG & A expenses during the on-the-spot investigation. Therefore, the overall allocation of the SG & A expenses of the division was maintained.

(41) The same Indonesian exporting producer claimed that the Commission had included certain identifiable export expenses in the cost of the product sold on the domestic market in calculating normal value.

(42) The claim was accepted and the allocation of the SG & A expenses was revised on the basis of the chart of accounts submitted with the questionnaire response and used in the verification, provided that it clearly indicated the accounts concerned as related to exports.

(43) The same Indonesian exporting producer claimed that the Commission should not have allocated to the product concerned the SG & A of one organisational unit of the company allegedly involved in financial market activities as this unit was a separate profit centre and did not act as a central service provider to other divisions.

(44) This claim was rejected. The company provided no evidence that the organisational unit in question was a division independent from the operational divisions nor that it acted as a profit centre. In particular, the audited financial statements of the company made no reference to financial market activities carried out by an independent profit centre. In fact, the documents provided by the company showed that the organisational unit in question was centrally involved in the operations of the company as defined in the audited accounts. Its activities were those normally carried out by a head office. Therefore, the allocation of the SG & A expenses of this unit to the product concerned was maintained in the calculation of normal value.

(45) The same Indonesian exporting producer claimed that the Commission should not have allocated the interest expenses of the organisational unit mentioned above to the product concerned. The company argued that the loans declared for this unit funded activities on financial markets and investments in subsidiary companies. These loans were therefore, according to the company, unrelated to the production and sales of the product concerned and an attribution to the different operational divisions would be incorrect. It was further argued that the funding requirements of the division involved in the production and sales of the product concerned were met by the division itself.

(46) This claim was rejected because, as indicated in recital 44, above, the activities of this organisational unit were those normally carried out by a head office. In addition, the company did not provide any satisfactory evidence why the loans would not have been used to finance the activities of the different operational divisions. Moreover, the explanation provided with regard to the funding of the manufacturing and the financial market activities were not confirmed by the audited financial statements of the company.

(47) When examining the claim concerning these financial expenses, it was established that the company entered into hedging arrangements in order to limit exchange rate risks related to the abovementioned loans. These hedging transactions bore an annual cost in the form of a premium. Although the company claimed that this cost should not be allocated to the product concerned for the reasons mentioned in recital 45, it was considered that these costs had to be included in the SG & A expenses and allocated to all products on the basis of the total turnover of the company. In addition, a claim to consider foreign exchange gains on hedging transactions was rejected, since such exchange rate gains are not taken into account in anti-dumping investigations, whether realised or not.

(48) The same Indonesian exporting producer claimed that if interest expenses were allocated to the different operational divisions, these should be offset by corresponding income.

(49) This claim was accepted insofar as it concerned income from short-term deposits of funds. The SG & A expenses were therefore revised before being used in the ordinary course of trade test and in constructing normal value.

3.2.3. *Export price*

(50) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

3.2.4. *Comparison*

(51) As indicated in recital 36, one exporting producer claimed that quality differences of the production output should be taken into account. In these circumstances, it was considered appropriate to grant a special adjustment on the normal value for sub-standard quality.

(52) Following the adoption of provisional measures, one Indonesian exporting producer claimed that the Commission should have calculated the amount for credit costs on export sales on the basis of the actual expenses incurred by the company when discounting L/C Bills. The company further claimed that the interest rates charged in the framework of export sales were lower than the interest rates for domestic sales in the same currency.

(53) This claim was rejected because, in accordance with Article 2(10)(g) of the basic Regulation, an adjustment is to be made for differences in the cost of any credit granted for the sale under consideration only 'provided that it is a factor taken into account in the determination of the prices charged'. In its questionnaire response, the company did not supply any information with regard to the interest rates charged for credit in the framework of export sales, although this was explicitly requested in the questionnaire. The claim that the rate of interest for export sales credit was lower than that for domestic sales, which were both made in the same currency, could therefore not be verified because this factor was unknown at the time of the verification.

3.2.5. *Dumping margin*

(54) The comparison of the weighted average normal value, revised as appropriate, with the weighted average export price by product type on an ex factory basis, showed the existence of dumping for both investigated exporting producers included in the sample.

(55) The dumping margin of one investigated company was revised. Accordingly, the weighted average dumping margin calculated for the cooperating companies not included in the sample pursuant to Article 9(6) of the basic Regulation was also revised. However, the revised calculations have not affected the dumping margin established for the non-cooperating companies which is hereby confirmed. The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

— Sampled exporting producers investigated:

  — PT. Indorama Synthetics Tbk.: 8,4 %

  — PT. Panasia Indosyntec: 14,8 %

— Cooperating exporting producers not included in the sample:

  — PT. GT Petrochem Industries Tbk.: 14,0 %

  — PT. Susilia Indah Synthetic Fiber Industries: 14,0 %

  — PT. Teijin Indonesia Fiber Corporation Tbk.: 14,0 %

— Non-cooperating exporting producers: 20,8 %

3.3. **Thailand**

3.3.1. *Normal value*

(56) Following the adoption of provisional measures, one exporting producer, which did not keep separate cost of sales accounts by finished product, argued that the Commission should have accepted the detailed model-specific cost of production calculations which they had made expressly for the purpose of replying to the questionnaire.

(57) This exporting producer further argued, after provisional measures, that their investigation period-end closing stock value from their monthly internal management results had been calculated on an expected market value basis rather than on a cost basis and therefore it was not appropriate for that figure to be used for the cost of production.

(58) It also argued that it would have been more appropriate to establish the cost of production on the closing stock figure at the end of the financial year than on the closing stock figure at the end of the investigation period, as the year end closing stock figure was audited, covered nine months of the investigation period rather than three months and was similar to the cost of production specifically calculated by the company for the first nine months of the investigation period.

(59) In addition, it claimed that monthly costs of production should have been used due to fluctuations in raw material costs and exchange rates and the fact that there were no exports to the Community during certain months.

(60) However, it was found that the specifically calculated costs were inconsistent with certain closing stock values reported by this exporting producer in its questionnaire response, given the stock valuation method reported therein, i. e. the lower of average cost or net realisable value.

(61) The exporting producer had denied the existence of management accounts for the product concerned in its questionnaire response and no internal management results containing closing stock values were obtained or verified during the on-the-spot verification.

(62) With regard to allegedly audited stock figures, no financial year end closing stock valuation schedules were obtained during the verification visit, despite being requested, and therefore, it was not possible to determine the historically utilised stock valuation method or to verify the unit stock values on a product type or total basis at the year end.

(63) In these circumstances, it was considered that the specifically calculated monthly and annual costs of production were not reliable. Therefore, the investigation period-end closing stock value, which according to all information received by the Commission up to the end of the verification visit, was based on the lower of cost or net realisable value, should be maintained as the cost of production for the determination of normal value.

(64) Claims made by another exporting producer for adjustments to its SG & A expenses were rejected where the items had already been taken into account or with regard to financial expenses and income and certain fees and taxes, because the claims were inconsistent with the company's questionnaire response.

(65) The same exporting producer claimed that certain goods returns and sales discounts should have been deducted from the domestic sales transaction listing. The claim with regard to goods returns was rejected as the returns did not relate to sales in the investigation period and the related quantities had not been included in the listing. The claim relating to sales discounts was rejected as for certain discounts, no direct link to the sales under consideration was demonstrated before completion of the verification visit while for other discounts, no claim was made in the exporting producer's questionnaire response. However, the net sales figure used in determining the SG & A percentage for the investigation period was increased to be consistent.

(66) Two exporting producers argued that for the purposes of the ordinary course of trade test, the comparison of prices with the cost of production should be carried out on a quarterly basis. They indicated that both raw material prices and sales prices decreased significantly throughout the investigation period and therefore, it was necessary to perform the test on a quarterly basis to ensure a fair comparison. This aspect was examined and the calculation was adjusted to a quarterly basis.

(67) Two exporting producers claimed that technical assistance costs should be allocated on a turnover basis for the purpose of calculating the domestic SG & A expenses to be included in the cost of production. This argument was accepted.

(68) Three exporting producers argued that the exclusion of foreign exchange gains and losses from their SG & A expenses at the provisional stage was unjustified. In general, exchange rate gains and losses were not taken into account as the exchange rates used by the Commission were those applicable on the invoice date. However, insofar as they arose from purchases of raw materials, the Commission adjusted the normal value calculations in order to take the relevant exchange gains and losses

into account. One of these exporting producers then claimed that the calculation of the foreign exchange gain included within the SG & A expenses should have been based on audited figures. However, this was not accepted as no allegedly audited figures were received until late in the investigation when they were no longer verifiable.

3.3.2. *Export price*

(69) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

3.3.3. *Comparison*

(70) Two exporting producers requested a comparison of export price with normal value on a quarterly basis and one on a monthly basis. The request was granted for the exporting producers requesting on a quarterly basis and rejected for the third exporting producer for which no reliable normal value could be determined on a monthly/quarterly basis.

(71) One exporting producer argued that an allowance should be granted for freight paid on returned goods. However, this claim was rejected as it was not considered appropriate to include an inland freight cost allowance for return freight costs where the sales were partially or totally cancelled.

(72) The same exporting producer requested that an allowance should be granted for technical assistance, but the allowance was rejected as the technical assistance was not carried out on the basis of a contractual or legal obligation.

(73) Two exporting producers claimed that different levels of trade existed for export and domestic sales of the product concerned. This was accepted, but given that the existing difference in the levels of trade could not be quantified because of the absence of the relevant levels on the domestic market, a special adjustment was granted under Article 2(10)(d)(ii) of the basic Regulation.

(74) Two exporting producers claimed that they should be granted a currency conversion adjustment as they argued that the currency movement had been significant (over 10 %) and took place over a period of five months. This adjustment was not accepted as it was considered that the currency movement was fluctuating rather than reflecting a sustained movement.

3.3.4. *Dumping margin*

(75) The comparison of the revised, where appropriate, weighted average normal value with the weighted average export price by product type on an ex factory basis showed the existence of dumping for all investigated exporting producers.

(76) Following changes to the calculations in accordance with the findings noted above, the dumping margins of one company and one group of companies were revised. In consequence, the dumping margin for any non-cooperating companies, which is set at the level of the highest dumping margin established for a cooperating company, was also revised. The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

| | |
|---|---|
| — Indo Poly (Thailand) Ltd. | 15,5 % |
| — Teijin Polyester (Thailand) Ltd. | 26,9 % |
| — Teijin (Thailand) Ltd. | 26,9 % |
| — Tuntex (Thailand) Public Co. Ltd. | 27,7 % |
| — Non-cooperating exporting producers | 27,7 %. |

## 4. **INJURY**

### 4.1. **Procedural issues**

(77) The RTG and one exporting producer in Indonesia, claimed that the non-confidential summaries of submissions made by some Community producers included in the definition of the Community industry were not complete or sufficiently detailed, in order to allow them to effectively exercise their right of defence. They therefore argued that the Commission's failure to take this into account constituted a violation of the WTO Anti-Dumping Agreement (hereinafter WTO ADA) and Article 19 of the basic Regulation.

(78) Regarding this claim, it must be noted that these parties received full disclosure in accordance with Article 19(4) of the basic Regulation. The disclosure included the general information and the detailed evidence relied on by the Commission for its findings. In addition, the Commission requested the Community producers in question to submit additional non-confidential information. This non-confidential information was submitted by the Community producers concerned, following the Commission's definitive disclosure to the interested parties, which had full access to it, consequently allowing them to exercise their right of defence. In any event, even if one of the Community producers concerned were excluded from the definition of the Community industry, as argued by the abovementioned parties, such a development would have not affected the overall conclusions on the situation of the Community industry. Indeed, it was established that such an exclusion would have neither any impact on the trends of the economic indicators pertaining to the Community industry, nor on the standing of the Community industry, since the production of this Community producer was small in comparison to the total production of the other Community industry producers.

### 4.2. **Definition of the Community industry**

(79) The RTG and one Indonesian exporting producer argued that the production volume of the Community industry as indicated in recital 64 of the provisional duty Regulation had been overstated. More specifically, they underlined that it was determined that the seven cooperating

Community producers included in the definition of the Community industry represented about 85 % of the total Community production, whereas the complaint stated that the nine complaining producers represented the same share of the total Community production.

(80) Furthermore, it was argued that two complaining Community producers included in the definition of the Community industry were related to an exporting producer in a country concerned. According to the Commission's consistent practice these two producers should be excluded from the Community industry.

(81) As far as the representativity of the Community industry is concerned, it should be noted that, on the one hand, the data contained in the complaint covered 10 months of 1998. These data were thus extrapolated to cover a 12-month period. On this basis, the nine complaining companies represented in fact around 89 % of total Community production in 1998. On the other hand, based on the data received in the course of the present investigation and verified at the level of the seven cooperating Community producers constituting the Community industry, the investigation revealed that these represented around 85 % of total Community production in 1998. Consequently, the share of total Community production represented by the Community industry mentioned in recital 64 of the provisional duty Regulation is hereby confirmed.

(82) It should be underlined that the provisions of Article 4(1)(a) of the basic Regulation do not call for an automatic exclusion of Community producers from the Community industry when they are related to exporting producers concerned. This Article states that the term 'Community industry' may be interpreted as referring to the rest of the producers, when it is found that certain producers are related to the exporters. The situation should therefore be examined on a case-by-case basis in the light of Article 4(2) of the basic Regulation. In fact, Community producers related to exporters are to be excluded from the definition of the Community production, if this relationship leads the producer concerned to behave differently from other producers.

(83) In the light of the above considerations, the investigation showed that the two Community producers in question did not behave differently to other producers which were not related to the exporting producers concerned. They fully supported the complaint which led to the initiation of the present proceeding and actively participated in the investigation. Furthermore, during the on-the-spot verification and based on the evidence available, no statutory or organisational restrictions imposed by the shareholders in the country concerned were found to exist in relation to the operation and business decisions of the two companies in question. Finally, the RTG and the above exporting producer did not provide any proof of such restraining control. Consequently, it was confirmed that the two Community producers should not be excluded from the definition of the Community production and therefore from the Community industry. Since no other comments were received regarding the definition of the Community industry, the conclusions of recital 64 of the provisional duty Regulation are hereby confirmed.

### 4.3. **Injury analysis period**

(84) The GOI claimed that in order to obtain a meaningful assessment of the trends upon which the injury determinations are based, the information relating to the indicators examined should be established on the basis of 12-monthly periods from 1996 onwards in line with the IP.

(85) It must be noted that the IP covers the last nine months of 1998 and the first three of 1999. The examination of indicators for the calendar years 1996 to 1998 covers also three-quarters of the IP. The comparison of 1998 and IP figures therefore, simply shows the impact of the first quarter of 1999 to these indicators and cannot be considered as invalidating the examination of the trends established on the basis of these indicators. This claim was therefore rejected.

(86) The GOI furthermore argued that the period of injury assessment, which covered 1996 to the IP, was different from the period where dumping was assessed, i.e. the IP. As these two periods did not coincide, the conclusions on injury were considered by the GOI as legally flawed. It was moreover argued that if the basis for the injury assessment was set at 1998, the trends of all indicators would be significantly different.

(87) The purpose of the injury investigation is to evaluate the effect of the dumped imports on the economic situation of the Community industry during the IP. This entails a finding of injury during the IP. In order to make such analysis, trends are established for a number of indicators on the basis of information relating to a number of years preceding the IP. Therefore, a comparison of indicators between the IP and one specific previous year, as suggested by the GOI, does not affect the results of the analysis derived therefrom. Indeed, it is the trends of the indicators which are examined over a number of years up to the IP and not the absolute comparison of figures of the IP with any particular year that precedes it, which are relevant to reach a conclusion on injury.

4.4. **Consumption in the Community**

(88) Two exporting producers argued that the consumption in the Community set out in recital 65 of the provisional duty Regulation was significantly incorrect. In particular, they argued that the production, sales and stocks figures of the Community industry could not be reconciled. In addition, they claimed that the Commission did not reveal the basis upon which the determinations concerning the sales of the non-cooperating Community producers was estimated.

(89) As regards the reconciliation of the consumption figures, it should be noted that one Community producer related to a company belonging to the Community industry closed down before the IP. Therefore, no reliable information on its production and production capacity could be obtained from this company. As far as sales and stocks information is concerned, this company made its sales exclusively through the related company belonging to the Community industry. Therefore, reliable information relating to sales and stocks was obtained from the latter company covering the whole period considered and the data were reconciled appropriately.

(90) Finally, the Commission estimated the sales volume of the non-cooperating Community producers in the provisional duty Regulation on the basis of facts available. For one non-cooperating producer the figures included in its partial reply to the Commission's questionnaire had been used, whereas for the others the figures indicated in the complaint were used.

(91) In the light of the above explanations, the consumption figures indicated in recital 65 of the provisional duty Regulation are confirmed.

4.5. **Imports of PSF into the Community from the countries concerned**

4.5.1. *Cumulative assessment of imports*

(92) Some exporting producers argued that the imports of PSF from Thailand should not be assessed cumulatively with the imports from Australia and Indonesia because they represented less than 1 % of consumption in 1996 and 1997.

(93) In the context of cumulation, it is considered that the assessment of whether imports from a country concerned by an anti-dumping investigation are negligible should exclusively be made during the IP. Indeed, dumping margins, as well as the existence of injury are established during the IP. Since the imports from Thailand were above negligible levels during this period, the above claim was rejected.

4.5.2. *Price undercutting*

(94) Some exporting producers claimed that the Commission did not take into account differences in quality of types of PSF in determining price undercutting leading to incorrect results. In their opinion, the price comparison should be performed separately for the first and lower quality products, as well as for the recycled PSF types. They also claimed that an adjustment for level of trade should have been granted, given that their sales were mainly destined to wholesalers and distributors whereas the Community industry mainly sold PSF to end-users.

(95) Following these claims, prices were compared separately for lower quality and recycled PSF and it was considered that an adjustment for level of trade differences should be granted to all the exporting producers including those which were only selling to wholesalers and distributors. The results of this price comparison showed slightly higher undercutting margins than those established at the provisional stage for Australia and slightly lower for Indonesia and Thailand. The results of the revised undercutting calculations expressed on the Community industry's turnover, taking into account both of the above claims, ranged between 24,9 % and 46,8 % for the countries concerned and between 17,7 % and 61 % for individual companies.

4.6. **Economic situation of the Community industry**

4.6.1. *General*

(96) The RTG and one exporting producer claimed that, based on an interpretation of the WTO ADA, the examination of the economic situation of the Community industry requires an evaluation of all relevant economic factors and indices having a bearing on the state of that industry, including factors such as productivity, return on investments, the magnitude of the actual margin of dumping, negative effects on cash flow, wages and growth.

(97) Furthermore, they contested the accuracy of the data provided in the provisional duty Regulation for certain injury factors. In their opinion, although the seven Community producers constituting the Community industry in the present investigation were the same as in a previous proceeding, the data provided for some injury factors were different. They therefore requested disclosure of the names of the companies which participated in the previous proceeding.

(98) It should be recalled in this regard that Article 3(5) of the basic Regulation lists a number of factors and economic indicators and the Commission collected information which enabled it to consider all factors and indices which were decisive for a meaningful analysis of the state of the Community industry. It follows that the claim that the Commission's analysis was not complete is not valid.

(99) It is confirmed that the seven Community producers which constituted the Community industry in the previous proceeding were not the same as in the current proceeding. However, the request for disclosure could not be accepted given that the RTG and the exporting producer in question were not interested parties in that previous proceeding.

4.6.2. *Production, capacity and capacity utilisation*

(100) The Government of Australia (hereafter 'GOA') contested the method used by the Commission to assess the production capacity of the Community industry for the product concerned. In its opinion, the decrease in production capacity by 7 % was determined with regard to capacity used for the production of other products and was therefore incorrect. The GOA considered that production capacity for PSF should have been assessed exclusively on the actual production of the PSF covered by the investigation.

(101) In any event, the GOA considered that the reduction in the Community industry's production capacity was not compatible with a finding of material injury: firstly because this reduction did not allow the Community industry to participate in the considerable growth of the market (+ 27 %) during the period considered; and secondly, because the reduction in capacity was motivated by the fact that production was oriented to more profitable products than PSF.

(102) With respect to the assessment of production capacity, it should be underlined that the product concerned is produced on the same production lines as other products of the same family. It is therefore impossible and meaningless to directly identify the actual capacity exclusively installed for one product as compared to all the products produced on the same production lines. In actual fact, the assessment of production capacity for PSF was based on a ratio comparing the actual production of PSF to the total production of all products produced on the same production lines. Consequently, contrary to the claim made by the GOA, the assessment of production capacity for PSF takes into account the actual production of PSF.

(103) Furthermore, it should be noted that the switch from the production of PSF to the production of other products was motivated mainly by the long-term losses incurred by the Community industry on production and sales of PSF facing continued unfair competition from dumped and subsidised imports from third countries. The reduction in capacity is therefore particularly relevant for the determination of injury but more specifically for the analysis of the causal link between the dumped imports and the injury suffered by the Community industry discussed below.

(104) On this basis, it is considered that the claims of the GOA are unfounded. Accordingly, the data provided, the method described for assessing production capacity for PSF and the conclusions contained in recitals 72 to 74 of the provisional duty Regulation are hereby confirmed.

4.6.3. *Sales prices of the Community industry*

(105) Following a more detailed analysis of the Community industry's sales prices, the Commission found that the figures indicated in the table of recital 76 of the provisional duty Regulation should be slightly revised as follows:

| Average sales price | 1996 | 1997 | 1998 | IP |
|---|---|---|---|---|
| Community industry - Index (1996-100) | 100 | 92 | 92 | 88 |

(106) Some exporting producers argued that the above decrease in the Community industry's sales prices should be seen in the light of the significant decrease in raw material purchase price in particular during the IP. Accordingly, the decrease in sales price does not constitute a valid indicator of injury in the present case.

(107) In this respect, it should be clarified that in recital 79 of the provisional duty Regulation the 31 % decrease in cost of manufacturing should in fact read 31 % decrease on cost of raw materials. The Commission made an analysis on the impact of the decrease of raw material costs on sale prices. The analysis showed that for the overall Community industry the above decrease in raw material costs represented around 23 % of total cost of production, or 21 % of sales price between 1996 and the IP. On this basis, the statement made in recital 79 of the provisional duty Regulation that the cost of production was reduced faster than sales prices is hereby confirmed. This situation in fact allowed profitability to be increased by 10,7 percentage points in absolute terms during the period considered (from – 4 % in 1996 to 6,7 % in the IP).

(108) However, it is considered that the evolution of the Community industry's sales price should be seen in the light of the price evolution of the countries concerned. Indeed, as stated in recital 69 of the provisional duty Regulation it is recalled that PSF imported from the countries concerned followed a continuous decreasing tendency throughout the period considered. The decrease was as high as 22 % during that period. If the Community industry would have followed this trend it would still have incurred losses at the same level as in 1996.

(109) Finally, when analysing the Community industry's prices on the Community market, one should bear in mind that the Community industry did not reach the minimum level of profit of 10 % during the IP. Under these circumstances, it is considered that the Community industry's sales prices constitute a relevant injury indicator given it had a bearing on the state of the industry.

4.6.4. *Profitability of the Community industry*

(110) The GOA claimed that in the absence of data relating to the profitability of the Community industry prior to the appearance of dumped imports, no proper assessment could be made as to whether the injury suffered by the Community industry was material.

(111) Some exporting producers claimed that the improvement in the Community industry's profitability did not indicate injury. Indeed, profitability significantly improved over the period considered, namely from a loss of around 4 % to a profit of over 6 %. They further argued that the overall profit achieved by the Community industry within the IP could not be further increased with the current product mix of commodities and specialities, unless more speciality PSF types would be produced and sold by the Community industry.

(112) The present investigation showed that its improvement in profitability was mainly the result of both the restructuring process undertaken by the Community industry and the resulting reduction in sales, general and administrative costs and the decrease of the raw materials purchase prices. Production costs were reduced faster than sales prices decreased, allowing thus the Community industry to return to profit in 1998. Nevertheless, it was emphasised that this improvement in profitability may only be temporary and any adverse factors, particularly possible unfavourable developments in raw material prices, could have negative implications on the current profitability. This statement was reinforced by the fact that the main raw materials used in the PSF industry are largely influenced by the price of crude oil.

(113) It should also be noted that an improvement in profitability during the period considered does not automatically lead to the conclusion that the Community industry did not suffer material injury. The assessment as to whether the injury suffered by the Community industry was material cannot only be based on the profitability nor can it be based on a comparison of profitability between 1996 and the IP. Indeed, the provisions of the basic Regulation enumerate a number of factors among which the volume of dumped imports and the effect of dumped imports on prices on the Community market for like products and specifies no one or more of these factors can necessarily give decisive guidance for a negative finding on injury.

(114) As indicated in recitals 82 to 85 of the provisional duty Regulation regarding the conclusions on the economic situation of the Community industry, profitability achieved by the industry was not considered to be a major indicator of the injury suffered by the Community industry. Indeed, negative developments were observed for most of the economic indicators pertaining to that industry: market share, production capacity, sales volume, sales prices, stocks, investments, employment and significant price undercutting by dumped imports from the countries concerned.

(115) Based on the foregoing, since no further comments were received regarding the profitability of the Community industry, the conclusion that profitability during the IP is inadequate is hereby confirmed.

4.6.5. *Market share*

(116) It has to be recalled that as mentioned in recital 77 of the provisional duty Regulation, the market share held by the Community industry decreased significantly from 68 % to 50,3 % of the total Community market from 1996 to the IP.

(117) Some exporting producers argued that the Community industry's loss in market share has to be seen in the light of the cost disadvantage it suffers as compared to the countries concerned. In their opinion, it cannot be expected that the industry could maintain its market share given that its production costs are significantly higher than those of the exporting producers concerned.

(118) This argument was considered not relevant in the context of an anti-dumping investigation. In such an investigation, it has to be established whether imports are dumped and cause injury to the Community industry, as this was established in the present case. This being said, exporting producers can fully reflect cost advantages they may have in their sales prices, as long as this is done both on the domestic and export markets.

4.6.6. *Conclusion*

(119) Based on the foregoing, it is considered that the above arguments and claims are not such as to change the findings made in the provisional duty Regulation. Consequently, the contents of recitals 82 to 85 of the provisional duty Regulation and the conclusion that the Community industry suffered material injury during the IP is hereby confirmed.

## 5. CAUSATION

### 5.1. Effect of dumped imports

(120) The GOA claimed that there is no evidence that the injury suffered by the Community industry was caused by the limited volumes imported from Australia. The GOA claimed that the market share of Australian imports was too limited (2 % of consumption) to have any influence on prices on the Community market. Rather, they had to follow the price trends imposed by the large operators on the Community market. Accordingly, the GOA suggested that injury, if any, was caused by large imports from other third countries.

(121) Similarly, the RTG claimed that since the imports from Thailand were negligible in 1996 and 1997, they could not cause injury to the Community industry and therefore the analysis of the impact of these imports should begin from 1998.

(122) The RTG and one Indonesian exporting producer argued that in view of the data published in the provisional duty Regulation the conclusion reached by the Commission that the Community industry has been weakened was wrong. Their statement was based particularly on the improvement in the Community industry's profitability during the IP. It was furthermore based on an analysis of market share and sales indicators pertaining to both the current investigation and the corresponding 1996 indicators from the expiry review concerning PSF from Taiwan and Korea, as evidenced by Regulation (EC) No 1728/1999 [1].

(123) The same parties further claimed that some producers included in the definition of the Community industry concentrated on the production of high-profit speciality products. Accordingly, it could not be concluded that the Community industry was vulnerable particularly to Indonesian imports which are largely made of regular PSF. In their opinion, the very high profits obtained on speciality fibres indicated that the Community industry is largely shielded from the effects of imports.

(124) Regarding the arguments raised by the GOA on its market share, it is recalled that imports from Australia were found to be clearly above the *de minimis* level during the IP. In addition, it was found that all conditions required for a cumulated analysis were met. In these circumstances, comments concerning individual market shares held by individual countries during the IP and in previous to the IP years were not considered relevant. The same remark applied to the similar argument raised by the RTG.

(125) In addition, it should be recalled that prices of dumped imported PSF from all the countries concerned were undercutting the Community industry's prices on the Community market having a significant negative impact on the economic situation of the Community industry. This finding is reinforced by the fact that the PSF market is transparent and that, therefore, price differentials or low priced offers can have a price depressing effect.

(126) It is furthermore considered that the GOA did not provide any evidence which would contradict the provisional finding that the Community industry suffered material injury as a result of low-priced dumped imports. Accordingly, the conclusion that dumped imports, taken in isolation, had caused material injury to the Community industry is hereby confirmed.

(127) The development of the Community industry's profitability was extensively analysed in recital 79 of the provisional duty Regulation and further information has been given in section 4.6.4. above. In this respect, it should be noted that the statement that the Community industry is concentrating in high-value PSF types is not correct. Indeed, during the IP, the Community industry's sales of the so-called commodity PSF types, which are mainly imported from the countries concerned, represented over 72 % of its total sales. This finding therefore leads to confirm the conclusion that the Community industry as a whole is affected by low-priced dumped imports.

(128) Regarding the validity of the data for 1996 extracted from the expiry review concerning PSF from Taiwan and Korea, as explained in recital 99, the Community producers which constituted the Community industry in this expiry review were not the same as those constituting the Community industry in the present proceeding. Consequently, it is impossible to establish a coherent and reliable trend on the basis of the economic indicators reported for 1996 in this expiry review and on figures for subsequent years reported in the present proceeding. Such an approach would lead to erroneous and meaningless results.

### 5.2. Other factors

#### 5.2.1. *Currency fluctuations*

(129) The GOA argued that the Commission failed to look at the effect that exchange rate fluctuations have had on import prices from Australia, specifying that during the investigation period PSF imported from Australia had benefited from a favourable exchange rate appreciation.

[1] OJ L 204, 4.8.1999, p. 3.

(130) In this respect it should be noted that imports from this country were invoiced in USD, in DEM and in GBP and not in AUD on the Community market. The parity of the Australian currency was therefore not relevant in the determinations made.

(131) In any event, it should be pointed out that the Australian currency depreciated during the first seven months of the IP and subsequently appreciated during the next five months of the IP, as compared to its parity to the ECU/EUR of the first month of the IP. Consequently, there was no constant decreasing trend of the Australian currency during the IP.

5.2.2. *Raw material prices in the exporting countries*

(132) The RTG further argued that for the determination of the impact of the prices of the Thai imports on the Community industry the Commission should have considered the sharp decrease of the raw material prices in Thailand.

(133) It is considered that the above argument is irrelevant for the analysis of the cause of injury to the Community industry. Indeed, the cost of production factors in any exporting country is relevant only to the dumping determinations. The important parameter for injury and causation considerations is the price that the imported product concerned is sold in the Community market.

5.3. **Conclusion**

(134) Given that no other new arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that dumped imports, taken in isolation, had caused injury to the Community industry, as stated in recital 99 of the provisional duty Regulation, is hereby confirmed.

6. **COMMUNITY INTEREST**

6.1. **Interest of the Community industry**

(135) Since no comments were received regarding the above issues, the findings on the interest of the Community industry cited in recital 101 of the provisional duty Regulation are hereby confirmed.

6.2. **Impact on users**

(136) Following the publication of the provisional duty Regulation, a number of Community users claimed that the imposition of anti-dumping duties would have negative effects on their competitiveness on the downstream products and would ultimately threaten their survival. In their opinion, the imposition of anti-dumping duties would trigger price increases which users would need to reflect in downstream products. This development would in turn trigger an increase in imports of lower-priced downstream products from other third countries and from the countries concerned by this investigation.

(137) In addition, Eurofibrefill reacted to the provisional duty Regulation and argued that specific PSFNS were either not produced at all by the Community industry, or not in sufficient quantities to cover the Community demand. In their opinion, this situation was due to the fact that the Community industry mainly focused on the production of PSFS. Therefore it would have to continue to source PSFNS from abroad, despite the proposed imposition of anti-dumping duties.

(138) Eurofibrefill further argued that the impact of the proposed measures on users should be also assessed taking into account the existing anti-dumping and anti-subsidy measures on imports from other countries (e.g. from Taiwan). In their opinion, the Community industry continuously asked for protection and that in the near future all sources of supply would be subject to anti-dumping or countervailing measures.

(139) In support of the claim of Eurofibrefill, two of its members provided the Commission with letters addressed to producers included in the Community industry showing that these producers were not able to provide the requested types of PSF in the short term.

(140) It should be noted that certain of the above users who came forward after the imposition of provisional duties either did not make themselves known within the time limit set out in the Notice of Initiation of the proceeding, or did not reply to the questionnaire sent by the Commission at that stage. Consequently, most of them could not be considered as interested parties under Article 21(2) of the basic Regulation and their views could not, normally, be taken into account at the definitive stage of the proceeding.

(141) In addition, as stated in recital 102 of the provisional duty Regulation, the overall level of cooperation in the Community interest investigation was very low. The user companies who participated in the investigation only represented around 4 % of total consumption in the Community market. It was therefore considered that at a broader level no real concern about the impact of the imposition of anti-dumping measures on PSF on their activities existed. In any event, it was considered that no meaningful conclusions could be drawn from such limited information.

(142) Regarding the claim by Eurofibrefill, that the Community industry mainly focused on PSFS, it should be noted that, as already explained above, the Community industry production and sales of PSFNS types represented about 75 % of its total production during the IP. The claim therefore that the Community industry focused on PSFS has not been confirmed by the investigation.

(143) As regards the availability of specific PSF types, it is recalled that there are no or only minor technical difficulties in producing any type of fibre. As far as the Community industry is concerned and as already stated in recital 20, it was found that it could produce all types of PSF without any significant additional investment. The important parameter influencing the decision to produce certain types was whether the price the user was ready to pay covered the costs of production and allow a profit to be earned. As long as exporting producers practising dumping were taking advantage of unfair trade practices and offered PSF at low prices on the Community market, the Community industry was not able and willing to compete and therefore did not produce these types in the prevailing market circumstances. However, for the future it could be expected that once a situation were reestablished in which the exporting producers carried out their exports at fair market conditions, the Community industry would resume production of such product types.

(144) In any event, the information available on the cost structure of the user industry, the level of the proposed measures and the share between dumped imports and the other sources of supply indicate that:

— PSF represents between 25 % and 45 % of the users total cost of production of downstream products;

— the average anti-dumping duty is about 22 % for the countries concerned;

— the share of dumped imports is 9 % of total consumption of PSF.

The proposed measures may thus have the impact of increasing the cost of production of users by between 0,5 % to a maximum of 0,9 %. This likely maximum increase is considered to be relatively low when compared to the positive impact of the proposed measures in restoring effective competition on the Community market.

(145) This analysis on the impact of the proposed measures on users therefore indicated that the imposition of anti-dumping measures was not likely to trigger an increase in the import of cheap downstream products into the Community. This conclusion was also reached in the absence of any evidence from the users concerned substantiating their claim, e.g. that past measures on this product had led to such effects.

(146) Furthermore, regarding the impact of the existing measures on the cost of production of the user industries, it should be noted that the anti-dumping measures in force on PSF against third countries are already reflected in the cost information, used by the Commission in the current Community interest investigation.

(147) As far as the countervailing measures imposed in the framework of the parallel anti-subsidy proceeding are concerned, it has been established that their impact may cause an increase of between 0,1 and 0,16 % on the cost of production of the user companies. Consequently the total impact of the proposed anti-dumping and countervailing measures would lead to a possible increase between 0,6 and 1,06 % of the cost of production of the overall users industries.

(148) In this context, it should be recalled that the share of the imports from countries concerned by all anti-dumping proceedings, including the present proceeding and the parallel anti-subsidy proceeding, represented about 37 % of the total imports to the Community market during the IP. It therefore follows that there are other significant sources of supply, to which no anti-dumping or countervailing duties apply.

(149) As the examination of the above arguments submitted by the user companies does not lead to new conclusions, the considerations of recital 105 of the provisional duty Regulation on the impact of the proposed measures to the users is hereby confirmed.

### 6.3. **Conclusion**

(150) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of anti-dumping measures. The provisional findings are therefore confirmed.

## 7. **DEFINITIVE DUTY**

(151) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by dumped imports from Australia, Indonesia and Thailand.

### 7.1. **Injury elimination level**

(152) As explained in recital 108 of the provisional duty Regulation, a non-injurious level of prices was determined which would cover the Community industry's cost of production and a reasonable profit which would be obtained in the absence of dumped imports from the countries concerned.

(153) The RTG and some exporting producers argued that while it was mentioned in the provisional duty Regulation that the 6,7 % profitability achieved by the Community industry during the IP was still inadequate in the present proceeding, it was considered reasonable in previous proceedings [1] involving PSF and PTY (polyester textured filament yarn). On this basis they questioned the level of the required profit margin of 10 % in the present proceeding which in their opinion the Commission did not justify.

[1] PSF from Belarus, PTY (Polyester textured filament yarn) from Indonesia and Thailand.

(154) Other exporting producers argued that the Commission's justification in the provisional duty Regulation that the required profit should ensure the Community industry's long-term viability was not valid according to the latest jurisprudence from the Court of First Instance on this issue.

(155) As far as the required profit is concerned, it should be noted that the Commission indicated in recital 79 of the provisional duty Regulation that a margin of 10 % should be considered as a minimum that would ensure the viability of the industry. This statement should be seen in the light of the contents of recital 101 of the provisional duty Regulation which indicates that the Community industry suffered from low-priced dumped imports from various countries and incurred losses for a decade. In this context, the profit achieved by the Community industry before the appearance of dumped imports from Australia, Indonesia and Thailand is not a reliable basis on which to determine such profit.

(156) In addition, it must be noted that, as acknowledged by the exporting producers themselves, the PTY industry is completely different from the PSF industry. Therefore, it was considered that the profit for PTY is not relevant for establishing the profit for PSF.

(157) Furthermore, it is considered that the level of profit deemed reasonable for the Community industry in 1994 should not necessarily determine the margin to be used more than four years later. Firstly, because the Community industry continued to incur financial losses after 1994. Secondly because the reasonable profit in 1994 was determined having regard to the long term needs in investments at that time whereas in the present case, due account was taken of the long term losses incurred by the Community industry and, as pointed out by some exporting producers, the level of profit that could be achieved in the absence of dumped imports. In any event, however, even by employing the suggested profit margin of 6 %, the level of the proposed measures would not change as these measures would still be based on the dumping margins.

(158) Finally, it should be underlined that the above exporting producers did not provide any evidence showing that the approach of the Commission on the reasonable level of profit was not correct and they did not make any relevant analysis demonstrating what such margin should be.

(159) Consequently, based on the foregoing, the contents of recital 108 of the provisional duty Regulation are hereby confirmed.

### 7.2. **Form and level of the duty**

(160) In accordance with Article 9(4) of the basic Regulation the anti-dumping duty rates correspond to the dumping margins, as the injury margins are found to be higher for all exporters in the countries concerned.

(161) However, with regard to the parallel anti-subsidy proceeding, in accordance with Article 24(1) of Regulation (EC) No 2026/97 [1] (hereinafter 'the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping and from export subsidization. In the present investigation, it was found that a definitive anti-dumping duty should be imposed on imports of the product concerned originating in Australia, Indonesia and Thailand and therefore, it is necessary to determine whether, and to what extent, the subsidy and the dumping margins arise from the same situation.

(162) In the parallel anti-subsidy proceeding it was found that in, *inter alia*, Thailand (all companies) and Indonesia (only cooperating companies), the level of subsidisation was below the *de minimis* level and therefore, no countervailing duty was imposed.

[1] OJ L 288, 21.10.1997, p. 1.

(163) With regard to Australia, a definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. All of the subsidy schemes investigated in Australia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, the subsidies could only affect the export price of the Australian exporting producer, thus leading to an increased margin of dumping. In other words, the definitive dumping margin established for the sole cooperating Australian producer is partly due to the existence of export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant subsidy and dumping margins definitively established. Therefore, the definitive anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies.

(164) For the non-cooperating Indonesian exporting producers, a definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. It was determined that half of the subsidy schemes in Indonesia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, the subsidies could only affect the export price of the Indonesian non-cooperating exporting producers, thus leading to an increased margin of dumping. In other words, the definitive dumping margin established for these non-cooperating Indonesian exporting producers is partly due to the existence of export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant subsidy and dumping margins definitively established. Therefore, the definitive anti-dumping duty for the non-cooperating Indonesian exporting producers should be adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies.

(165) On the basis of the above, the definitive duty rates, expressed as a percentage of the cif Community border price, customs duty unpaid, taking into account the results of the anti-subsidy proceeding, are as follows:

| Country | Company | Rate of anti-dumping duty |
|---|---|---|
| Australia | All companies | 12,0 % |
| Indonesia | P.T. Indorama Synthetics Tbk | 8,4 % |
| | P.T. Panasia Indosyntec | 14,8 % |
| | P.T. GT Petrochem Industries Tbk | 14,0 % |
| | P.T. Susilia Indah Synthetic Fiber Industries | 14,0 % |
| | P.T. Teijin Indonesia Fiber Corporation Tbk | 14,0 % |
| | All other companies | 15,8 % |
| Thailand | Indo Poly (Thailand) Ltd. | 15,5 % |
| | Teijin Polyester (Thailand) Ltd. | 26,9 % |
| | Teijin (Thailand) Ltd. | 26,9 % |
| | All other companies | 27,7 % |

(166) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(167) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(168) Since sampling has been used in the investigation of dumping in Indonesia, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding as far as it concerns Indonesia. However, in order to ensure equal treatment for any genuine new Indonesian exporting producer and the cooperating companies not included in the sample for this country, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Indonesian exporting producer who would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation.

## 8. **COLLECTION OF THE PROVISIONAL DUTY**

(169) In view of the magnitude of the dumping margins found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under the provisional duty regulation be definitively collected to the extent of the amount of definitive duties imposed if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia, Indonesia and Thailand.

2. The rate of the definitive duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies indicated shall be as follows:

| Country | Company | Rate of duty | TARIC additional code |
|---|---|---|---|
| Australia | All companies | 12,0 % | — |
| Indonesia | P.T. Indorama Synthetics Tbk,<br>Graha Idma, 17th floor,<br>Jl. HR Rasuna Said Blok X-1,<br>Kav. 1-2, P.O. Box 3375<br>Jakarta 12950, Indonesia | 8,4 % | A051 |
| | P.T. Panasia Indosyntec<br>Jl. Garuda 153/74,<br>Bandung 40184, Indonesia | 14,8 % | A052 |
| | P.T. GT Petrochem Industries Tbk,<br>Exim Melati Building - 9th floor,<br>Jl. M.H. Thamrin Kav. 8-9,<br>Jakarta 10230, Indonesia | 14,0 % | A053 |

[1] European Commission, Directorate-General Trade, Directorade C, DM 24-8/38, Rue de la Loi/Wetstraat 200, B-1049 Brussels/Belgium

| Country | Company | Rate of duty | TARIC additional code |
|---|---|---|---|
| | P.T. Susilia Indah Synthetic Fiber Industries,<br>Jl. Kh. Zainul Arifin Kompleks<br>Ketapang Indah<br>Blok B 1 No.: 23,<br>Jakarta 11140, Indonesia | 14,0 % | A054 |
| | P.T. Teijin Indonesia Fiber Corporation Tbk,<br>5th floor Mid Plaza 1,<br>Jl Jend. Sudirman Kav. 10-11,<br>Jakarta 10220, Indonesia | 14,0 % | A055 |
| | All other companies | 15,8 % | A999 |
| Thailand | Indo Poly (Thailand) Ltd.<br>35/8 MOO 4, Tambol Khunkaew<br>Amphur Nakhornchaisri, Nakhornprathom 73120<br>Thailand | 15,5 % | A056 |
| | Teijin Polyester (Thailand) Ltd.<br>19th floor, Ploenchit Tower<br>898 Ploenchit road, Lumpinee, Patumwan<br>Bangkok 10330, Thailand | 26,9 % | A155 |
| | Teijin (Thailand) Ltd.,<br>19th floor, Ploenchit Tower<br>898 Ploenchit road, Lumpinee, Patumwan<br>Bangkok 10330, Thailand | 26,9 % | A155 |
| | All other companies | 27,7 % | A999 |

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

*Article 2*

Where any new exporting producer in Indonesia provides sufficient evidence to the Commission that

— it did not export to the Community the products described in Article 1(1) during the IP,

— it is not related to any of the exporters or producers in Indonesia which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the products concerned after the IP on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the companies subject to the weighted average duty rate listed in that Article.

*Article 3*

The amounts secured by way of the provisional anti-dumping duty on imports originating in Australia, Indonesia and Thailand under the provisional duty Regulation shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive anti-dumping duty shall be released. In cases where the rate of the definitive duty imposed is higher than the rate of the provisional duty, only the amounts secured at the level of the provisional duty should be definitively collected.

*Article 4*

This Regulation shall enter into force on the day following that of 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, 10 July 2000.

*For the Council*
*The President*
H. VÉDRINE

# COUNCIL REGULATION (EC) No 1523/2000

## of 10 July 2000

## imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of stainless steel fasteners originating in Malaysia and the Philippines and terminating the proceeding concerning imports of stainless steel fasteners originating in Singapore and Thailand

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Articles 14 and 15 thereof,

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

Whereas:

### A. PROVISIONAL MEASURES

(1) By Regulation (EC) No 618/2000 [2] (the 'Provisional Regulation'), the Commission imposed a provisional countervailing duty on imports into the Community of stainless steel fasteners ('SSF') originating in Malaysia and the Philippines and falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.

### B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures on imports of SSF originating in Malaysia and the Philippines, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:

(i) the imposition of a definitive countervailing duty on imports of SSF originating in Malaysia and the Philippines and the definitive collection, at the level of this duty, of the amounts secured by way of the provisional countervailing duty imposed on these imports, and

(ii) the termination of the proceeding concerning imports of SSF originating in Singapore and Thailand without the imposition of measures.

(5) They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been modified accordingly.

(7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

### C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

#### 1. Product under consideration

(8) The provisional Regulation described the product under consideration as stainless steel fasteners, i.e. bolts, nuts and screws of stainless steel which are used to join mechanically two or more elements. The product under consideration falls within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.

(9) In the absence of any comment raised by interested parties to the definition of the product under consideration provided in recitals 10 to 13 of the provisional Regulation, this definition is hereby confirmed.

#### 2. Like product

(10) In the provisional Regulation, the Commission found that SSF produced and sold on the respective domestic markets of Malaysia and the Philippines, and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry in the Community market have the same physical characteristics and uses.

(11) In the absence of any new information on the like product, the provisional findings as described in recital 16 of the provisional Regulation are hereby confirmed.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 75, 24.3.2000, p. 18.

D. **SUBSIDIES**

I. MALAYSIA

1. **Double deduction of business expenses for the promotion of exports**

(12) The Government of Malaysia (the 'GOM') alleges that this programme is not contingent upon export performance, as the company is not required to export. The GOM also states that expenses incurred in an international trade fair in Malaysia are eligible for this benefit. However, it was found that this programme cannot reasonably confer any advantage to sales on the domestic market, and, more specifically, that an international trade fair is focused on export activity. Consequently, since the programme is targeted at fostering export sales to be made in the future, the programme is in fact tied to anticipated exports. Therefore, this claim cannot be accepted and it is concluded that this programme constitutes a *de facto* export subsidy in the sense of Article 3(4)(a) of Council Regulation (EC) No 2026/97 (the 'Basic Regulation').

(13) One company claimed that in the calculation of the benefit to the exporting producer under this scheme, the Commission had used the wrong amount of tax savings. However, after verification, it is hereby confirmed that the subsidy amount for this programme is 0,01 %.

2. **Pioneer status**

(14) The GOM claims that this programme does not constitute a countervailable subsidy since the definition of a promoted product is based on objective criteria. It further alleges that the list of promoted products covers a broad range and is available to all companies producing promoted products.

(15) It was found during the verification that the criteria to determine whether a product qualifies as a promoted product are vague and not objective. A number of criteria used by the GOM (i.e. suitability to meet the economic requirements or development of Malaysia and the national or strategic requirements of Malaysia) can cover any basic product. The verification revealed that there were no objective criteria applied in the decision which products should be promoted and that only producers of certain products benefited from the scheme. The fact that a broad range of products is covered does not alter the situation that there are no objective criteria. Therefore, this claim cannot be accepted and it is concluded that this programme constitutes a specific subsidy in the sense of Article 3(2)(a) of the Basic Regulation.

(16) One company stated that its pioneer status expired in July 1999 and the company has ceased to benefit from this programme. It was found that the company was still claiming tax reductions under this programme during the investigation period (1 April 1998 to 31 March 1999, the 'IP'). In addition, pursuant to Section 14A of the Promotion of Investment Act, the benefit under this programme can be extended for another five-year period. Neither the GOM nor the company submitted evidence that the benefit has effectively expired. Since the company effectively benefited from a countervailable subsidy during the IP, and since there is no evidence that it has ceased to benefit from the scheme, this claim cannot be accepted.

3. **Sales tax and import duty exemptions**

(17) The GOM and one company claimed that the sales tax and import duty exemption does not constitute a subsidy since the programme is also available to companies located outside the export processing zones. During the verification, it was established that an exemption from duties or taxes under the conditions for this programme is not available outside the Free Zones, therefore this claim is rejected.

(18) The GOM and one company also assert that the sales tax and import duty exemption falls within the criteria of footnote 1 to the WTO Agreement on Subsidies and Countervailing Measures (the 'SCM Agreement') because it constitutes an exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption. The Commission is of the view that a distinction should be made between the sales tax/import duty exemption for raw materials and machinery. It is clear that footnote 1 to Article 1.1(a)(1)(ii) of the SCM Agreement does not apply to exemptions from duties or taxes for machinery which cannot be considered as inputs consumed in the production process as required by Annex II to the basic Regulation and the SCM Agreement. Since no specific arguments were raised pertaining to the countervailability of the sales tax and import duty exemption for machinery, the findings in recital 54 of the provisional Regulation on this programme are hereby confirmed.

(19) As regards the sales tax and import duty exemption for raw materials, it is considered that this programme does not fall within the criteria of footnote 1 to Article 1.1(a)(1)(ii) of the SCM Agreement. This provision provides that, 'the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes not in excess of those which have accrued, shall not be deemed a subsidy'. Footnote 1 applies to the exemption of duties or taxes where no excess remission occurs. It was established that the Malaysian authorities do not have a verification system in place to determine what inputs are used in the production process and especially in what amounts. The verification revealed that the company that is admitted to start production in a free trade zone has to submit a simple listing of possible inputs to produce the finished product. The customs authorities do not verify what input/output ratio is applicable for the specified

imported inputs. Therefore, there is no framework in place to establish whether an excess remission occurred and consequently, the conditions of footnote 1 and Annex I to III are not met. It should also be noted that the GOM did not carry out a further examination based on the actual inputs involved in the context of determining whether an excess payment occurred in accordance with Annex II(II)(5) to the basic Regulation. Therefore, these programmes constitute subsidies pursuant to Article 1.1 (a)(1)(ii) of the SCM Agreement and the exemption in footnote 1 to the abovementioned provision does not apply. Since footnote 1 does not apply, these schemes constitute export subsidies in the sense of Article 3(4)(a) (and item (h) and (I) of Annex I) of the basic Regulation.

(20) As regards the calculation of the benefit, there is no system in place to verify the consumption of inputs in the production of the exported product and the GOM did not carry out a further examination based on actual inputs in order to establish the excess remission of sales tax and import duties. In accordance with Annex II to the basic Regulation, the full amount of the import duties not paid constitutes the benefit to the exporting producer.

(21) The GOM further claimed that the raw material used in the production of the product concerned (steel wire rod) is, even without the benefit of this programme, not subject to sales taxes.

(22) The Commission examined the evidence provided by the GOM and concluded that the raw materials used in the production of SSF are listed in Schedule B of the Sales Tax Order. This schedule is a listing of goods that are not subject to sales taxes. Therefore, this claim is accepted and the countervailing duty rates for the sales tax exemption for raw materials have been amended accordingly since no sales taxes would have been payable without the benefit of this programme.

(23) However, as regards import duties on raw materials, it was established that these imports are subject to import duties. On the basis of the above arguments, the provisional findings for the import duty exemption on raw materials are hereby confirmed.

(24) One exporting producer asserts that the Commission did not substantiate with positive evidence its determination of specificity for this programme.

(25) In recitals 50, 65, 66 and 67 of the provisional Regulation, the Commission listed the reasons why these programmes constitute specific and, therefore, countervailable subsidies. These findings are not based on assertions but on positive evidence. This claim has therefore been rejected.

4. **Interest rate**

(26) The GOM and one exporting producer claim that the Commission should have used an average interest rate of 11,42 % instead of 11,5 %.

(27) On the basis of the information provided during the verification, it was found that an average interest rate of 11,5 % during the IP was appropriate. The average commercial interest rate was calculated on the basis of the average monthly lending rate of commercial banks in Malaysia during the IP which results in an average of 11,4975 % (attachment C2 of the GOM questionnaire response). No additional evidence was provided which may justify a downward adjustment of the interest rate. Therefore, this claim cannot be accepted.

5. **Amount of countervailable subsidy**

(28) As regards the calculation of the amount of countervailable subsidies, an adjustment was made concerning the amount of interest added to the subsidy amount calculated provisionally. This adjustment is reflected in the following table showing the amount of countervailable subsidy.

(29) In view of the above, the following subsidy rates have been found at the definitive stage. The countrywide weighted average subsidy margin is above the applicable de minimis level.

| Company | Double Deductions | Pioneer Status | Sales Tax Exemptions | Import duty exemptions | Total |
|---|---|---|---|---|---|
| Tong Heer Fasteners Co. Sdn. Bhd. | 0,01 % | 1,87 % | 0,40 % | 2,43 % | 4,71 % |
| Tigges Stainless Steel Fasteners (M) Sdn. Bhd. | 0,34 % | 0,00 % | 0,03 % | 1,94 % | 2,31 % |

II. PHILIPPINES

1. **Introduction**

(30) Comments on the disclosure document were submitted jointly by the Government of the Philippines (the 'GOP') and by the exporting producer Lu Chu Shin Yee Works (Philippines) Co. Ltd. ('Lu Chu'). The comments relate to two subsidy schemes: the gross income tax scheme (Section 24 of the Special Economic Zones Act (SEZA) and the import duty exemption on machinery, raw materials, supplies and spare parts (Sections 4(c) and 23 (SEZA)). Comments were focused on the exemption on imports of spare parts and supplies.

2. **Gross Income Tax (GIT)**

(31) The GOP and Lu Chu submitted that in certain circumstances, depending on the respective levels of gross income and net income, the application of the GIT (i.e. 5 % of the gross income) may result in a greater amount of taxes to be paid compared to the application of the ordinary income tax (34 % of the net income). In particular, a company could have a net loss but still pay the GIT because it has taxable gross income.

(32) It is firstly noted that the argument submitted by the GOP and Lu Chu does not affect the Commission's findings on specificity and countervailability of the GIT. In this respect, it is considered that the argument relates to a hypothetical situation that is wholly different from the one actually examined in this case. Would the GIT application in certain circumstances result in the company paying more taxes as compared with the ordinary income tax regime, the company could simply resign this option. However, this was not the case for the exporting producer in question. As calculated by the Commission within its provisional findings, the application of the GIT to the exporting producer allowed it a certain tax saving in the IP vis-a-vis the application of the ordinary income tax regime. Since the GOP and Lu Chu did not contest this calculation, it is hereby confirmed that in this case the GIT involved a financial contribution by the GOP and conferred a benefit to the recipient. Hence, the claim of the GOP and Lu Chu should be rejected.

3. **Import duty exemption on imports of spare parts and supplies**

(33) The GOP and Lu Chu consider that the Commission properly excluded imports of non-subject carbon steel nuts from its subsidy calculation for the import duty exemption on spare parts and supplies. However, they argued that the Commission did not exclude all carbon steel nuts, but only some, and urged the Commission to make a full exclusion of imports of carbon steel nuts. They argued that if, as acknowledged by the Commission, the producer in question exported the totality of its finished products and in addition it can be expected to continue doing so in the future, then it should be recognised that all non-subject carbon steel nuts have been or will be re-exported in the future.

(34) This claim cannot be accepted, since it has not been supported by any verifiable evidence either during the investigation or after disclosure of the provisional findings. In particular, the Commission's view, in the context of its provisional findings, that all finished products were actually exported, refers only to the products manufactured by the exporting producer in its facilities in the Philippines, i.e. essentially stainless steel fasteners. Only data concerning these products have been submitted in complete form and verified by the Commission. No data or other evidence have been submitted by the GOP and/or by the exporting producer showing that all imported carbon steel nuts were or would be actually re-exported. The data in possession of the Commission in this respect only allow the exclusion of imports of carbon steel nuts from the subsidy calculations in the way and to the extent done by the Commission in its provisional findings. Since no new evidence has been submitted in this regard, the provisional findings are hereby confirmed.

(35) The GOP and Lu Chu also claim that imports of oil and tools should be excluded from the calculation of the subsidy amount since they are consumed in the production of stainless steel fasteners. Again, this claim cannot be accepted, as the GOP and Lu Chu failed to provide any evidence thereof. Data in possession of the Commission does not allow consideration in isolation of the respective import values of oil, other consumables, tools and spare parts. These imports are only reported in cumulative amounts, and some of these tools, components and spare parts, based on the available evidence, are not consumed in the course of their use to produce the exported products. Therefore, lacking any further evidence, no assessment can be made as to whether certain imports should be excluded from its calculation of the subsidy amount. The provisional findings are thus hereby confirmed.

4. **Amount of countervailable subsidies**

(36) As regards the calculation of the amount of countervailable subsidies, an adjustment was made concerning the amount of interest added to the subsidy amount calculated provisionally. This adjustment is reflected in the following table showing the amount of countervailable subsidy.

(37) The following subsidy rates have been found at the definitive stage. The countrywide weighted average level of subsidisation is above the applicable *de minimis* level.

| Company | Gross Income Tax | Import Duty Exemption | Total |
|---|---|---|---|
| Lu Chu Shin Yee Works Co. Ltd/Philshin Works Corporation | 0,50 % | 3,09 % | 3,59 % |

III. SINGAPORE

(38) In the Provisional Regulation it was concluded that none of the alleged subsidies had been used by exporting producers in Singapore. In the absence of any new information, the findings in recitals 81 to 83 of the Provisional Regulation are hereby confirmed. The proceeding should therefore be terminated as regards imports of SSF originating in Singapore.

IV. THAILAND

(39) In the provisional Regulation it was concluded that the countrywide weighted average subsidy margin for Thailand was below the de minimis level of subsidisation applicable to this country. In the absence of any new information, the findings in recitals 84 to 91 of the provisional Regulation are hereby confirmed. The proceeding should therefore be terminated as regards imports of SSF originating in Thailand.

## E. **COMMUNITY INDUSTRY**

(40) In the absence of any new information on the Community industry, the provisional findings as described in recitals 129 to 132 of the Provisional Regulation are hereby confirmed.

## F. **INJURY**

### 1. **Cumulation**

(41) One exporting producer in Malaysia argued that the Commission should not cumulatively assess imports originating in Malaysia with those originating in the Philippines in view of the different behaviour of the former. It was claimed that the volume of imports originating in Malaysia increased at a lower rate than those originating in the Philippines and that the decrease of average import prices of SSF originating in Malaysia had been due to the decrease of prices of raw materials.

(42) One exporting producer in the Philippines argued that the Commission should not cumulatively assess imports originating in the Philippines with those originating in Malaysia, as the price level of imports from the Philippines has consistently been as high or higher than the price level of the Community industry.

(43) In these respects, it was found that the amount of countervailable subsidies from each of these countries was more than *de minimis* and the volume of imports from each of these countries increased during the period considered, reaching levels that were not negligible. Furthermore, the investigation did not show a different price pattern between imports from Malaysia and the Philippines. The prices of the imports from these two countries have substantially undercut the Community industry's prices in the IP and followed a similar downward trend during the period considered. Finally, the SSF imported from both countries are marketed in the Community through the same sales channels and under similar commercial conditions, thus competing with each other and with the SSF sold by the Community industry.

(44) In view of the above, the provisional findings in recitals 139 to 142 of the provisional Regulation regarding the appropriateness of the cumulative assessment of imports from Malaysia and the Philippines are hereby confirmed.

### 2. **Prices of the subsidised imports**

(45) In the absence of any new information on the prices of the subsidised imports, the provisional findings as described in recitals 145 to 148 of the Provisional Regulation are hereby confirmed.

### 3. **Situation of the Community industry**

(46) Interested parties argued that the Community industry had not suffered material injury in view of the positive development, during the period considered, of certain indicators such as production, capacity, sales, market share, investment, employment and productivity.

(47) In the Provisional Regulation the Commission concluded that, as a result of the imposition of anti-dumping measures on imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand in 1997 [1], the situation of the Community industry had improved notably in terms of production and sales. Indeed, the imposition of anti-dumping measures in 1997, as expected and intended, allowed the Community industry to increase production and to recover lost market share by increasing its sales in the Community market. This had a positive effect on employment and productivity.

[1] Commission Regulation (EC) No 1732/97, OJ L 243, 5.9.1997, p. 17.

(48) However, despite an increase in the sales of the Community industry, those sales were made at decreasing prices which, in the IP, did not cover the costs of the Community industry and resulted in losses. Indeed, it was found that the prices of the Community industry decreased over the period considered by 17 %, from EUR 3,65/kg in 1996 to EUR 3,02/kg in the IP. Although the raw material also decreased over the period considered, the decrease in SSF prices was well above the decrease in the cost of raw material. This price depression had a severe impact on profitability which, despite an improvement between 1996 and 1997, decreased in 1998 and turned into losses in the IP (–0,8 % of turnover). Therefore, the Community industry could not fully benefit from the imposition of anti-dumping measures.

(49) In view of the above, it is concluded that the Community industry has suffered injury in the form of price depression and financial losses.

(50) Secondly, one exporting producer argued that the decrease in the prices of the Community industry was due to a decrease in the costs of the raw material used to produce SSF. This situation could therefore not be characterised as one of price depression. In this respect it was alleged that the raw material represented a higher percentage than the 56,7 % of full cost in the IP quoted in the provisional Regulation, reaching 80 to 85 % and even 90 % of its total cost.

(51) According to the information provided by the cooperating raw-material suppliers, the price of the raw material concerned decreased by 20,9 % over the period considered, while the Community industry's prices of the product concerned fell by 17 % over the same period. As the cost of raw materials during this period ranged, on a weighted average basis, between around 57 % and 68 % of the Community industry's full cost, it has been found that the Community industry's prices of SSF have decreased well above the decline in the costs of raw material. In this respect it should be noted that the allegation that the raw materials represent 80 to 85 % of the costs appears to relate solely to manufacturing costs and not to the full cost. In view of the above, it is concluded that the Community industry suffered a depression of its prices.

(52) Finally, one exporting producer in Malaysia argued that if production and employment of the Community industry as mentioned in the disclosure document are compared, the productivity per employee appears to be much lower than the figures in recital 161 of the provisional Regulation suggest.

(53) It should be noted that the above productivity was calculated as production divided by the number of employees involved in the production of the product concerned, which amounted to 287 in 1996, 320 in 1997, 321 in 1998 and 315 in the IP. This number is lower than the number of employees mentioned in recital 160 of the provisional Regulation or in the disclosure document, which refer to the total employees of the company.

### 4. **Conclusion on injury**

(54) During the period considered, the Community industry suffered significant price pressure from the subsidised imports originating in the countries concerned, which were found to considerably undercut the Community industry's prices in the IP and which increased in terms of import volume during the period considered. As a consequence, the Community industry was unable to reflect its costs on the level of its selling prices. This resulted in the deterioration of the Community industry's financial situation, reaching a weighted average loss of 0,8 % of turnover in the IP.

(55) The fact that certain indicators of the Community industry such as production, sales, employment and productivity improved should be seen in the light of the imposition of anti-dumping measures in 1997, which afforded a certain relief to the Community industry. The pressure exerted by the increasing imports at low prices from the countries concerned frustrated a full recovery by the Community industry which was found to have suffered injury in the present investigation in the form of depressed prices and financial losses in the IP.

(56) In view of the above, it is hereby confirmed that the Community industry has suffered material injury within the meaning of Article 8(2) of the Basic Regulation.

## G. **CAUSATION OF INJURY**

### 1. **Effects of the subsidised imports**

(57) In the provisional Regulation the Commission found a clear coincidence between the significant price undercutting by the subsidised imports and the deterioration of the prices of the Community industry and its profitability in the IP. The significant price pressure from the subsidised imports, especially between 1998 and the IP coincided with a severe decrease in the prices of the Community industry, leading to losses of 0,8 % of turnover during the IP.

(58) The increase in the imports concerned (+16 %), which reached a significant level of the Community market during the IP (12,4 % of market share), the depressed prices (–17 %) and the deterioration of the financial situation of the Community industry was attributed to the continuously low prices of the imports originating in the countries concerned.

2. **Effects of other factors**

a) *Increased capacity and investments by the Community industry*

(59) It has been alleged that the poor financial performance of the Community industry has been caused by its increase in production capacity at a time when consumption contracted sharply. It was also argued that the high level of investments and the financial costs related to them, coupled with lower sales volume as consumption contracted abruptly, were the cause of the deterioration of the financial situation of the Community industry.

(60) It has been found that the biggest increase in production capacity took place between 1996 and 1997 (+15 %), when the Community industry expected to increase its production and sales given the imposition of anti-dumping measures. It should be noted that the increase in capacity was accompanied by an increase in production of 20 % and in sales (33 %) between 1996 and 1997. Therefore, the increase in capacity by the Community industry allowed it to benefit from expectations of restored, effective competition between the Community industry and countries subject to anti-dumping measures. On the contrary, consumption only contracted as from 1998, while capacity remained stable between 1998 and the IP.

(61) As regards the investments made by the Community industry, they remained relatively stable over the period considered with the exception of 1997 when substantial investments were made mainly by one company in the purchase of buildings. It should be noted, however, that this company showed one of the best profit margins of the Community industry during the year 1997 and even over the period considered. Furthermore, it should be noted that, despite a contraction in consumption over the period considered, the Community industry increased its sales and thus its share of the Community market.

(62) In view of the above, it is concluded that the poor financial performance of the Community industry is thus not linked to an increase in capacity or to its level of investments, but mainly to a price depression caused by the subsidised imports.

b) *Export performance by the Community industry*

(63) The export performance of the Community industry in the period considered was also examined in order to assess whether any decrease in the export volume could have negatively influenced the production of the Community industry.

(64) It should firstly be noted that exports of SSF have represented a small share of the total sales made by the Community industry throughout the period considered. Furthermore, the injury suffered by the Community industry was mainly in the form of a deterioration of its profitability due to a severe price depression caused by the subsidised imports as explained in recitals 166 to 168 of the provisional Regulation. In turn, production volumes increased in the period considered.

(65) In view of the above, it cannot be considered that the injury suffered by the Community industry is due to its export performance.

3. **Conclusion on causation**

(66) In view of the above, it is hereby confirmed that the imports originating in the two countries concerned, taken in isolation, have caused material injury to the Community industry. Indeed, imports from Malaysia and the Philippines have impeded the full recovery of the injurious situation of the Community industry found in the context of the previous anti-dumping proceeding concerning SSF and their low-priced increasing imports have negatively affected the profitability of the Community industry.

H. **COMMUNITY INTEREST**

(67) In the Provisional Regulation the Commission found that no compelling reasons existed for not imposing measures in the present case. In the absence of further comments regarding the impact of countervailing duties on the situation of the Community industry, it is hereby confirmed that the imposition of countervailing measures is likely to enable the Community industry to regain a satisfactory profitability margin, allowing the companies to continue trading and make the necessary investments.

(68) One importer reiterated its claim that the imposition of countervailing measures would significantly deteriorate the situation of Community importers/traders. This was based on the deterioration of the financial situation of this particular trader between 1997 and 1998 after the imposition of definitive anti-dumping measures in February 1998. Furthermore, it was claimed that if countervailing measures were to be imposed importers/traders would not be able to import from South-East Asian suppliers thus causing shortages in supply.

(69) It should firstly be noted that the provisional Regulation already stated that the imposition of measures could result in a certain reduction of the margins of importers/traders. The information provided by this importer/trader and relating to the total company profitability, including products not covered by the current investigation, showed a certain reduction of its margins subsequent to the imposition of definitive anti-dumping

measures in February 1998, albeit still reaching a reasonable level. In this respect it should be noted that the level of the countervailing measures adopted in the present proceeding and the fact that it only affects two exporting countries is unlikely to significantly affect importers/traders.

(70) As regards the impossibility for importers/traders to import from South-East Asia in case of the imposition of countervailing measures, it should be noted that the level of the countervailing measures proposed are not expected to prevent imports from the countries concerned but rather to ensure that these imports are made at fair market conditions. Furthermore, a number of other sources of supply exist, including South-East Asian suppliers not subject to measures. It is therefore concluded that it is unlikely that the imposition of definitive countervailing measures will result in shortages of supply.

(71) In view of the above, the provisional findings in recitals 183 to 213 of the provisional Regulation regarding the Community interest aspects of this case are hereby confirmed.

## I. DEFINITIVE COURSE OF ACTION

### 1. **Singapore and Thailand**

(72) On the basis of the above findings, this proceeding should be terminated as regards imports of SSF originating in Singapore and Thailand in accordance with Article 14 of the Basic Regulation.

### 2. **Malaysia and the Philippines**

(73) The conclusions reached as to the subsidisation, injury, causation and Community interest call for definitive measures. In view of the diversity of product types, the measures should be in the form of *ad valorem* duties. In the absence of any new information on the injury elimination level, the provisional findings as described in recitals 215 to 219 of the provisional Regulation are hereby confirmed. In accordance with Article 15(1) of the basic Regulation, the duty rate corresponds to the subsidy margin, as the injury margin is higher.

(74) As regards Malaysia, for both exporting producers anti-dumping duties are currently in force, ranging from 5,7 % to 7,0 %. The level of the duty imposed within the present proceeding shall therefore take into account the totality of the domestic subsidy plus the export subsidy amount in excess of the existing anti-dumping duty in accordance with Article 24(1) of the basic Regulation, and for as long as the existing anti-dumping duty remains in force. As shown in the table below, one Malaysian exporting producer should be subject to a definitive countervailing duty (in addition to the existing anti-dumping duty) of 1,8 %. As for the second exporting producer, the countervailing duty should be nil, since the existing anti-dumping duty exceeds the export subsidy amount.

(75) Given that the companies cooperating in the proceeding covered virtually all imports from this country, the residual duty should be set equal to the highest subsidy margin level found for cooperating companies. Thus, the residual countervailing duty should be set at 1,8 %, in addition to the existing residual anti-dumping duty of 7,0 %.

| Company | Total Subsidy | Export Subsidy | Existing AD duty | Proposed CVD |
|---|---|---|---|---|
| Tong Heer Fasteners Co. Sdn. Bhd. | 4,71 % | 2,84 % | 7,0 % | 1,8 % |
| Tigges Stainless Steel Fasteners (M) Sdn. Bhd. | 2,31 % | 2,31 % | 5,7 % | 0,0 % |
| Others | | | 7,0 % | 1,8 % |

(76) The following rates of duty should apply for the Malaysian cooperating producers:

Tong Heer Fasteners Co. Sdn. Bhd.: 1,8 %;

Tigges Stainless Steel Fasteners (M) Sdn. Bhd.: 0 %.

(77) As regards the Philippines, for which no anti-dumping measures are in force, the following rate of duty should apply for the cooperating producer:

Lu Chu Shin Yee Works Co. Ltd/Philshin Works Corporation: 3,5 %

(78) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the highest rate established for any cooperating exporting producer, i.e. 1,8 % for Malaysia and 3,5 % for the Philippines.

(79) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect a situation found during

that investigation with respect to the above companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of SSF originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(80) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities), should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(81) Imports from Malaysia are already subject to anti-dumping duties which were taken into account in the determination of the countervailing duty imposed in the present proceeding. Indeed, as explained above, the export subsidy amount of the countervailing duty has been reduced up to the amount of the existing anti-dumping duty. In view of the above, it is considered appropriate to align the period of operation of the definitive countervailing duty concerning imports of SSF originating in Malaysia and the Philippines, so that its expiry coincides with that of the anti-dumping duties imposed on imports of SSF originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand, i.e. 17 February 2003, without prejudice to the applicable provisions on reviews.

### 3. **Collection of provisional duties**

(82) In view of the magnitude of the subsidy margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty, imposed by Commission Regulation (EC) No 618/2000 on imports of SSF originating in Malaysia and the Philippines, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is hereby imposed on imports of stainless steel fasteners and parts thereof falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 and originating in Malaysia and the Philippines.

2. The rate of the duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

| Malaysian companies | Rate of the duty | Taric additional code |
|---|---|---|
| Tong Heer Fasteners Co. Sdn. Bhd. (referred to as Tong Heer Fasteners in Commission Regulation No 618/2000), No 2515, Tingkat Perusahaan 4A, Perai Free Trade Zone, 13600 Perai Pulau Penang, Malaysia | 1,8 % | A104 |
| Tigges Stainless Steel Fasteners (M) Sdn. Bhd. (referred to as Tigges Stainless Steel Fasteners in Commission Regulation No 618/2000), Plot 23 & 24, Kinta Free Trade Zone, Jalan Kuala Kangsar, 31200 Chemor, GPO Box 24, 30700 Ipoh Perak Darul Ridzuan, Malaysia | 0 % | A105 |
| All other companies | 1,8 % | A999 |

[1] European Commission, Directorate-
(General for Trade, Directorate E, DM 24-8/38 Rue de la Loi/Wetstraat 200 B-1049 Bruxelles/Brussel.

| Philippine companies | Rate of the duty | Taric additional code |
|---|---|---|
| Lu Chu Shin Yee Works Co. Ltd (referred to as Lu Chu Shin Yee Works, Ltd in Commission Regulation No 618/2000), Cavite Export Zone, Rosario, Philippines/Philshin Works Corporation (referred to as Philshin Works Corporation in Commission Regulation No 618/2000), Amaya 1, Tanza, Cavite, Philippines | 3,5 % | A106 |
| All other companies | 3,5 % | A999 |

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

*Article 2*

The amounts secured by way of provisional countervailing duties pursuant to Commission Regulation (EC) No 618/2000 on imports of the product described in Article 1(1) originating in Malaysia and the Philippines shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

*Article 3*

The countervailing duty shall expire on 17 February 2003.

*Article 4*

The anti-subsidy proceeding concerning imports of stainless steel fasteners and parts thereof originating in Singapore and Thailand is hereby terminated.

*Article 5*

This Regulation shall enter into force on the day following that of 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, 10 July 2000.

*For the Council*
*The President*
H. VÉDRINE

# COUNCIL REGULATION (EC) No 1524/2000

## of 10 July 2000

## imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China

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(2) thereof,

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

Whereas:

### A. PROCEDURE

#### 1. Measures subject to review involving the People's Republic of China

(1) In October 1991, the Commission announced the initiation [2] of an anti-dumping investigation (the original investigation) concerning imports of bicycles originating in the People's Republic of China (China).

(2) In September 1993, the Council imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in China (Regulation (EEC) No 2474/93 [3]).

(3) In April 1996, the Commission initiated an investigation into the circumvention of this duty (Regulation (EC) No 703/96 [4]), as a result of which the duty was extended in January 1997 to imports of certain bicycle parts originating in China (Council Regulation (EC) No 71/97 [5]).

#### 2. Measures in force involving other countries

(4) In March 1998, the Council imposed definitive anti-dumping duties on imports of bicycles originating in Indonesia, Malaysia and Thailand (Regulation (EC) No 648/96 [6]).

(5) In February 1999, the Council imposed definitive anti-dumping duties on bicycles originating in Taiwan (Regulation (EC) No 397/99 [7]).

#### 3. Request for review

(6) Following the publication of a notice of impending expiry of the anti-dumping measures on imports of bicycles originating in China [8], the Commission received a request for a review pursuant to Article 11(2) of Regulation (EC) No 384/96 (the Basic Regulation) in respect of the measures.

(7) The request was lodged in June 1998 by the European Bicycle Manufacturers Association (EBMA), acting on behalf of Community bicycle producers whose collective output constitutes a major proportion of total Community production (the applicant Community producers).

(8) The EBMA argued that expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that the evidence was sufficient, the Commission initiated an investigation [9] pursuant to Article 11(2) of the basic Regulation.

#### 4. Investigation

(9) The Commission officially advised the applicant Community producers, exporting producers, importers and consumers, as well as the representatives of the exporting country, of the initiation of the review and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(10) The Commission sent questionnaires to the parties known to be concerned and received replies from ten applicant Community producers who had participated in the original investigation (the sample) and 14 exporting producers in China. Of the latter, the following 11 companies had exported bicycles to the Community during the investigation period:

— Catic Bicycle Co., Ltd
— Giant (China)
— Huiyang Kenton Bicycle Group Ltd
— Liyang Machinery (SZ)
— Merida Bicycles (China)
— Ming Cycle
— Phoenix Co.
— Shenzhen Overlord
— Shenzhen Bao An Bike
— Shun Lu Bicycle Co.
— Universal Cycle Corporation (China).

[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 266, 12.10.1991, p. 6.
[3] OJ L 228, 9.9.1993, p. 1.
[4] OJ L 98, 19.4.1996, p. 3.
[5] OJ L 16, 18.1.1997, p. 55.
[6] OJ L 91, 12.4.1996, p. 1.
[7] OJ L 49, 25.2.1999, p. 1.
[8] OJ C 74, 10.3.1998, p. 4.
[9] OJ C 281, 10.9.1998, p. 8.

(11) Investigations were carried out at the premises of the following companies:

(a) Producers in the analogue country (Mexico):

— Biciclo SA de CV, San Luis Potosi

— Bicileyca SA de CV, Apizaco

— Mercurio SA de CV, San Luis Potosi;

(b) Applicant Community producers (the sample):

— Batavus BV, Heerenveen, The Netherlands

— BH SA, Vitoria, Spain

— Cycleurope international SA, Romilly/Seine, France

— Dawes Cycles Ltd, Birmingham, United Kingdom

— Derby Cycles Werke GmbH, Cloppenburg, Germany

— Hercules Fahrrad GmbH & Co. KG, Nürnberg, Germany

— Koninklijke Gazelle BV, Dieren, The Netherlands

— Kynast AG, Quakenbrück, Germany

— Micmo Gitane SA, Machecoul, France

— Raleigh Industries Ltd, Nottingham, United Kingdom.

(12) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 September 1997 to 31 August 1998 (the investigation period). Trends between 1995 and 31 August 1998 (the period considered) were examined to determine the likelihood of continuation or recurrence of injury.

(13) The review could not be completed within the normal period of 12 months provided for in Article 11(5) of the basic Regulation, owing to the complexity of the investigation.

(14) The Commission sought and verified all information deemed necessary for determining the likelihood of the continuation or recurrence of dumping and injury, and the Community interest.

(15) All the parties concerned were informed of the essential facts and considerations on which the conclusions of this review were based and were granted a period within which to make representations. The representations received were considered carefully and where appropriate the findings have been changed accordingly.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

(16) The product concerned here is the same as that covered by the original investigation, namely bicycles and other cycles (including delivery tricycles), not motorised, falling within CN codes 8712 00 10, 8712 00 30 and 8712 00 80.

(17) In the original investigation, bicycles were classified in the following categories:

(A) mountain bicycles or MTBs

(B) touring, trekking and city bicycles

(C) junior action bicycles

(D) other sport and racing bicycles.

(18) The present investigation has used the same categorisation. However, it should be noted that there are no clear dividing lines between categories, and the different product segments overlap. A number of models can be classified in more than one category.

(19) The investigation confirmed that all bicycles are sold through similar distribution channels on the Community market. The basic application and use of bicycles being identical, they are largely interchangeable and models from different categories therefore compete with each other. On this basis, it was concluded that all the categories form one single product.

(20) The investigation also showed that bicycles produced and sold by the Community industry on the Community market, those produced and sold by Mexican producers on the Mexican market and those imported onto the Community market originating in China are alike and are therefore like products within the meaning of Article 1(4) of the basic Regulation.

## C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

### 1. Preliminary remarks

(21) In accordance with Article 11(2) of the basic Regulation, the purpose of this type of review is, with regard to dumping aspects, to determine whether dumping took place during the investigation period and whether the expiry of the measures would lead to a continuation or recurrence of dumping (see Article 11(2) of the basic Regulation). The findings on dumping set out should be viewed in the light of the fact that Community imports of the product concerned fell from a peak of 2,5 million units in 1991 to less than 14 000 units during the investigation period. Furthermore, the Chinese exporting producers who cooperated in the present investigation accounted for only 30 % of these imports during the investigation period.

### 2. Continuation of dumping and likelihood thereof

#### (a) Analogue country

(22) The existing measures provide for a single rate of duty on all bicycle imports originating in China. In accordance with Article 11(9) of the basic Regulation, the Commission used the same methodology as in the original investigation, so normal value was determined on the basis of information obtained in a market economy third country (the analogue country).

(23) Taiwan had been taken as an analogue country in the original investigation. However, its use in the present investigation was not considered appropriate in view of the concurrent anti-dumping concerning its bicycle exports and the fact that no interested party proposed it.

(24) The applicant Community producers proposed Mexico as a suitable analogue country. The notice of initiation invited interested parties to comment on the appropriateness of this choice. Several Chinese exporting producers claimed that the applicant Community producers had not provided sufficient data to show that Mexico was more appropriate than any other potential analogue country, but they themselves did not provide sufficient evidence in support of any alternative.

(25) Some Chinese exporting producers suggested India as an analogue country. However, India was found to be inappropriate, for two main reasons:

— the bicycles sold in India (rustic bicycles sold to retailers in kit form) are not comparable with those exported by Chinese manufacturers to the Community, and

— the Indian market is highly protected (high duty rates, import licensing system, producer subsidies).

(26) In view of the above, the following facts and considerations influenced the assessment of whether Mexico was an appropriate analogue country:

— bicycles produced in Mexico have the same technical characteristics as those produced in China and exported to the Community,

— Mexico can be considered an open and representative market. Imports of bicycles account for 13 % of annual sales. Its legal and commercial environment is favourable to free trade and competition. Its customs duty rate (20 %) is comparable with the European Union's ( 15,4 %). There are no quantitative restrictions or licensing. Mexican producers are free to source components and materials either on the domestic market (where there is a large number of suppliers of tubes, metal sheet, plastic, tyres, saddles, etc.), or abroad (for parts such as rims, hubs, brakes and derailleurs). The fact that Mexico imposed an anti-dumping duty on Chinese bicycles in 1997 is not considered relevant in this context,

— Mexican producers' domestic sales volumes are comparable with China's export volumes,

— three major bicycle producers cooperated in the investigation (Mercurio SA de CV, Biciclo SA de CV and Bicileyca SA de CV) which in 1998 accounted for 50 % of sales on the domestic market, where they competed with at least six other main producers. These companies are competitive, with modern manufacturing facilities including automated or partially automated steel tube cutting, tungsten inert gas welding for frames and forks, powder- and petroleum-based painting, and conveyor assembly lines. In the light of this and in accordance with Article 2(7) of the basic Regulation, Mexico was considered an appropriate analogue country for establishing normal value for the product concerned.

(27) Some exporting producers claimed that establishing normal value in an analogue country was no longer appropriate and would distort any forecast of future dumping. They argued that they were now operating under market economy conditions, as defined in Article 2(7)(c) of the basic Regulation, and that this constituted a change of circumstances justifying the use of a different methodology from that used in the original investigation (see Article 11(9)).

It should be stressed here that any producer may indeed claim that market economy conditions prevail (see Article 2(7)(b) and (c)), if he can demonstrate such a change of circumstances. Given the nature of such a change, it is considered appropriate to examine this in the context of an interim review under Article 11(3). However, no Chinese exporting producer had provided sufficient evidence for the Commission to open a parallel review under Article 11(3) by the time the present expiry review was initiated.

(28) In accordance with Article 11(9), therefore, the present review had to address the dumping aspects using the same methodology as the original investigation, i.e., *inter alia*, by determining normal value in an analogue country.

(b) Normal value

(29) First, it was established, overall and model by model, that the Mexican producers' domestic sales were equivalent to at least 5 % of the imports originating in China in terms of volume, i.e. they were representative within the meaning of Article 2(2) of the basic Regulation.

(30) It was also found that all relevant domestic sales of cooperating Mexican producers to independent customers could be considered to have been made in the ordinary course of trade. (The weighted average selling price of all sales during the investigation period was above the weighted average unit cost of production, and the volume of individual sales transactions below unit cost of production was less than 20 % of the sales being used to determine normal value).

(31) Normal value was therefore determined on the basis of the price paid or payable, in the ordinary course of trade, by independent domestic customers of the cooperating Mexican producers during the investigation period.

(c) Export price

(i) *Cooperating exporting producers*

(32) Comprehensive data were received on export prices from ten Chinese exporting producers. According to Eurostat figures, however, this data accounted for only 30 % of Chinese exports of bicycles to the Community during the investigation period (i.e. around 4 200 units).

(33) Export prices for these companies were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(ii) *Non-cooperating producers*

(34) For the remaining 70 % of imports originating in China, for which there was no cooperation, findings had to be based on the facts available in accordance with Article 18(1) of the basic Regulation. An average export price for all transactions was thus determined on the basis of Eurostat figures after deduction of exports by cooperating producers. Eurostat figures are not normally considered a suitable source of information where cooperation covers only 30 % of imports of the products concerned. They were used here, however, because in view of the small quantities imported during the investigation period, the main focus of the analysis is the question of whether dumping in significant quantities is likely to recur rather than ensuring that exporters are not rewarded for not cooperating. Moreover, since an expiry review can lead only to measures being maintained or repealed, but not modified, it is not necessary here to calculate a dumping margin with absolute precision.

(d) Comparison

(35) It should be noted that in some cases differences were found between the bicycles imported originating in China and those produced and sold in Mexico — generally because the Chinese models were more sophisticated. In an investigation initiated pursuant to Article 5 of the Basic Regulation, this would have required an upward adjustment of normal value (in this case, based on Mexican domestic sales prices) to reflect the difference, which in turn would have increased the level of dumping found. However, such an adjustment was not considered necessary here in view of the small overall impact on the level of dumping and the fact that measures cannot be modified following an expiry review.

(36) For the purpose of a fair comparison, and in accordance with Article 2(10) of the basic Regulation, adjustments were made to allow for differences claimed in respect of transport, insurance, credit, handling and ancillary costs which were found to affect prices and price comparability.

(e) Dumping margin

(37) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value on a fob Mexican border basis was compared to the weighted average export price (of both cooperating and non-cooperating producers) on a fob Chinese border basis, at the same level of trade.

(38) The above comparison showed the existence of very significant dumping, the dumping margin being equal to the amount by which the normal value exceeded the export price. The dumping margin found was higher than the one found in the original investigation.

(39) The investigation did not reveal any reason why this dumping would stop if the measures were to be repealed. It is therefore concluded that there is a likelihood of continuation of dumping.

(40) Some Chinese exporting producers claimed that it was impossible to reach valid conclusions about current or future dumping on the basis of such a small quantity of imports. Whilst it is accepted here that concluding that dumping exists cannot in itself justify maintaining the measures, it is nonetheless one factor affecting the decision as to whether they should be repealed or maintained.

## 3. **Likelihood of recurrence of dumping**

(41) The following factors have been found to be pertinent in examining whether dumping is likely to recur: the existence of dumping, the background of circumvention, production and capacity utilisation trends in China, and trends in the number of Chinese bicycles being exported world-wide at dumped prices.

(a) Existence of dumping and background of circumvention

(42) While the dumping margin established in the original investigation was high (30,6 %), the present investigation indicates that far from being eliminated, dumping has even increased.

(43) Furthermore, numerous attempts have been made to circumvent the anti-dumping measures imposed. Since 1993, a large number of bicycle assemblers have started to operate in the Community and imports of bicycle parts have increased dramatically. This development, a reaction to the original measures, was highlighted in the findings of the 1996 anti-circumvention investigation.

(44) That investigation also showed that, as soon as the anti-dumping measures were imposed in 1993, Chinese exporting producers collaborated with importers in the Community to evade the duty by shipping bicycles in disassembled form. Parts destined for the same assembler were spread across different containers, shipped on different dates and sometimes unloaded at different Community ports.

(45) Another form of circumvention was the shipping to the Community of Chinese bicycles with certificates of origin, which were later withdrawn, indicating that they were made in Vietnam (523 000 bicycles from 1992 to 1995).

(46) The investigation which led to the extension of the measures also showed, with regard to the essential bicycle parts concerned, that there was evidence of dumping in relation to the normal values previously established.

(47) Some companies denied that the circumvention of the original measures by means of assembly operations in the Community constituted a factor to be considered in the assessment of the likelihood of recurrence of dumping. However, this argument cannot be accepted. The anti-circumvention investigation opened in 1996 showed that the circumvention of the measures was accompanied by dumping and that the remedial effects of the measures were being undermined.

(48) Moreover, the results of the anti-circumvention investigation as well as the current low level of imports originating in China showed that Chinese exporting producers have made little attempt to compete on the Community market at non-dumped price levels.

(b) Production and capacity utilisation trends in China

(i) *Industry in general*

(49) According to the information available (complaint), production capacity in China is very high (estimated at around 70 million units). In the last few years, there has been considerable investment in joint ventures, in particular from Taiwanese companies, and high tax and duty rebates are granted to export-oriented producers.

(50) From 1995 up to the investigation period, total bicycle production decreased, domestic consumption varied between 25 and 30 million units, and exports fluctuated between 8 and 16 million bicycles. The rate of capacity utilisation is thus rather low, at just above 50 %.

(51) Because of the enormous surplus capacity, Chinese exporting producers have a very high degree of slack in both the manufacturing process and the range of products. These producers would therefore be able to increase production at short notice and direct it to any export market including, were the measures to be repealed, the Community's.

(52) The situation is aggravated by the fact that, despite being covered by the measures since 1997, imports of essential bicycle parts have continued to rise, as assemblers are able to obtain duty exemption if they can show that the value of parts originating in or coming from China is less than 60 % of the total value of the parts of the assembled product, or that the value added to the imported parts during the assembly or completion operation is greater than 25 % of the manufacturing cost (see Article 13(2)(b) of the basic Regulation).

The increase in imports of bicycle parts can be seen from the table below.

| Community imports of main bicycle parts originating in China (in units) | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | IP |
|---|---|---|---|---|---|---|---|---|---|
| Frames | 122 579 | 359 396 | 1 049 657 | 1 169 226 | 1 456 691 | 1 893 237 | 1 926 896 | 2 445 528 | 2 272 651 |
| *Index* | *100* | *293* | *856* | *954* | *1 188* | *1 545* | *1 572* | *1 995* | *1 854* |
| Forks | 37 321 | 644 926 | 1 352 814 | 1 672 070 | 3 283 292 | 3 507 635 | 3 600 818 | 3 494 433 | 3 529 895 |
| *Index* | *100* | *1 728* | *3 625* | *4 480* | *8 797* | *9 399* | *9 648* | *9 363* | *9 458* |

*Source:* Eurostat.

(53) These parts are produced by companies which also have the capacity to produce complete bicycles. If the measures were be to be repealed, it is likely that imports of complete bicycles originating in China would resume very rapidly, replacing the current imports of bicycle parts.

(ii) *Cooperating producers*

(54) Whereas the production figures for 1995 until the end of the investigation period are relatively stable, the forecasts for 1999 from the cooperating Chinese companies reflect an intention to increase production by 16 % to 10,6 million units.

(55) Furthermore, the capacity utilisation data show significant surplus capacity between 1995 and the end of the investigation period. In addition, the increase in production foreseen for 1999 would still leave sufficient capacity for another 5,8 million units.

(56) Some companies claimed that the Commission's conclusions on production capacity and its utilisation in China were not supported by reliable evidence. In this context, they referred to findings of the US International Trade Commission. This could not be accepted. First of all, these findings relate to a period different from the IP. It should also be noted that the conclusions of the Commission and the Council are based on data submitted by the cooperating Chinese exporting producers themselves. Moreover, the existence of large production capacities implied by the low utilisation rate of around 50 % found for the cooperating companies is confirmed by information on the Chinese bicycle production sector as set out in the complaint. In this context, the simple assertion made by the cooperating companies that a distinction should be drawn between production capacity for export sales and production capacity for sales on the Chinese domestic market was not found to be convincing. No evidence was submitted in support of this. Finally, it should be borne in mind that, should the Commission's conclusion be considered as drawn on too narrow a basis, this is entirely due to the considerable reluctance of Chinese exporting producers to cooperate.

(c) Trends in Chinese exports to third countries

(i) *General increase*

(57) Comext figures, which had to be relied on due to the low level of cooperation by Chinese exporting producers, showed that Chinese exports world-wide increased from 12,8 million units in 1995 to 14,6 million units in 1997 (+14 %). In the first half of 1998, exports amounted to 8,0 million units — an increase of 22 % over the same period in 1997.

(58) This trend is illustrated by the situation in the USA, where bicycles originating in China were not subject to anti-dumping measures. These imports increased from 4 million units in 1995 to 8,4 million units in 1998. Details are given in the table below.

| Exports from China to | 1995 | | 1996 | | 1997 | | 1998 | | IP | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Quantity | Average unit price (USD) | Quantity | Average unit price (USD) | Quantity | Average unit price (USD) | Quantity | Average unit price (USD) | Quantity | Average unit price (USD) |
| World | 12 822 722 | 42 | 12 239 224 | 38 | 14 617 906 | 35 | — | — | — | — |
| USA | 4 074 554 | 52 | 3 902 483 | 39 | 5 734 027 | 38 | 8 400 000 | — | 7 511 342 | — |

*Source:* Comext

(59) Furthermore, a significant fall in prices was observed. Between 1995 and 1997, Chinese export prices world-wide fell on average by 17 % per unit and, for exports to the USA, by 27 %.

(ii) *Possible deflection of Chinese exports due to the introduction of anti-dumping measures and quantitative restrictions in third countries*

(60) According to the available information, several countries have recently adopted commercial defence measures on Chinese bicycles because of the injury caused to their domestic industry. In 1997, Canada and Mexico imposed anti-dumping duties, whilst South Korea and Vietnam decided to impose emergency import restrictions. Chinese exporting producers are therefore under pressure to find alternative export markets. Should the Community repeal the current anti-dumping measures, its market would be very attractive for these producers.

(iii) *Chinese exports to other third countries*

(61) It is important to note that, after the Council imposed anti-dumping duties in 1993, exporting producers in China easily penetrated other export markets such as Australia and South Korea.

(d) Dumping by cooperating exporting producers in third countries

(62) Exports by the Chinese cooperating exporting producers to third countries (USA, Australia and Japan in particular) are generally very representative of total Chinese

bicycle exports, accounting for 70 % of total Chinese exports to the USA in 1996 and 1997, and 20 % and 50 % respectively of total exports to Japan and Australia during the same period.

(63) For the purpose of this investigation and on the basis of the cooperating exporting producers' replies to the questionnaire, the analysis focused on those categories for which there were also exports to the Community: categories A and C. For each category, a weighted average export price was determined per country of destination for all Chinese cooperating exporting producers.

(64) For the purpose of this dumping calculation, a weighted average normal value for these models was then determined for each category and compared to the relevant export price.

(65) For the USA, Canada, Australia, Japan, and for all other large importers, this produced clear evidence of significant dumping (29 % to 96 %) for both categories. It is not unreasonable to assume that, should the Community's measures be lifted, the Chinese exporting producers would sell similar volumes at similar prices in the Community.

### 4. **Conclusion**

(66) The investigation has shown clearly that the (albeit small) quantity imported into the Community originating in China during the investigation period was dumped. The level of dumping found was well above that found in the original investigation.

(67) The investigation has also shown that the volume of Chinese bicycle exports to the Community would in all probability be considerable if the current measures were to be repealed. This conclusion was arrived at in view of the substantial spare capacity available in China and the history of circumvention. All this illustrates the continuing strong interest of Chinese exporting producers in selling to the Community. The likelihood of import volumes rising to significant levels is increased by the risk of deflection of trade to the Community due to the adoption of commercial defence measures by South Korea, Mexico, Canada and Vietnam.

(68) It is also concluded that substantially increased volumes would most likely be exported to the Community at dumped prices. This is supported by the high dumping margins found for Chinese exports to other main third country markets. It is unlikely that Chinese exporting producers would resume significant exports to the Community without similar low, dumped export prices.

(69) In summary, it is highly likely that, should the measures be repealed, Community imports originating in China would resume in significant quantities and at significantly dumped prices.

## D. **COMMUNITY INDUSTRY**

(70) Community producers included in the definition of the 'Community industry' for the original investigation constituted around 54 % of the total Community production of bicycles.

(71) The applicant Community producers here were found to constitute around 58 % of total Community production during the investigation period. They therefore are 'the Community industry' within the meaning of Article 4(1) of the basic Regulation and are hereafter referred to as such.

(72) The remaining producers in the Community (constituting around 42 % of total Community production) are hereinafter referred to as the 'non-applicant producers'.

## E. **ANALYSIS OF THE COMMUNITY MARKET**

### 1. **Preliminary remarks**

(73) The Community industry's situation was assessed on the basis of two categories of data:

(i) global injury indicators for the Community industry as defined in section D above (production, production capacity, capacity utilisation, stocks, sales, investment and employment), collected from national bicycle associations in the Community.

The data from the Community industry was cross-checked, as far as possible, with other available information (statistical data, data from previous anti-dumping investigations, etc.);

(ii) certain performance-related injury indicators (profitability, prices, price evolution and price undercutting) collected and verified at the level of the sample. These companies replied to the Commission questionnaire and fully cooperated in the review investigation. They represent around 40 % of the production volume of the Community industry.

### 2. **Consumption in the Community**

(74) Community consumption was calculated by combining the total volume of sales on the Community market by all Community producers (Community industry and non-applicant producers) and total imports (Eurostat figures).

(75) Consumption declined by 11 % during the period considered, from 17 401 000 units in 1995 to 15 452 000 units in the investigation period. At the same time, the value of consumption was stable at around EUR 2,3 million, indicating that average sales prices on the Community market increased.

(76) The negative trend in consumption (in units) can partly be explained by the continued decline of two major products in the bicycle sector since the early 1990s: sales of BMX bicycles (children's 'moto-cross' — category C) have decreased significantly since 1991 and category A bicycles (MTBs, mountain bicycles) have become much less popular since 1992. Falling sales of these two types have not been compensated for by sales of other types or categories.

(77) Some exporting producers claimed that BMX and MTBs were China's principal export products. Accordingly, there cannot be a recurrence of injury if, as recognised by the Commission itself, there is no longer significant demand for these products in the Community.

(78) Although demand on the Community market for BMXs and MTBs declined during the period considered, it is still considerable. On the information available, several million MTBs were still sold on the Community market during the investigation period. Moreover, Community producers and exporting producers have launched several new kinds of BMX, which is still one of the main types of bicycle for children.

(79) The argument raised by Chinese exporting producers is therefore considered unfounded.

3. **Imports of dumped bicycles originating in China**

(a) Volume and price of bicycle imports originating in China

(80) The number of bicycles originating in, and imported from, China fell between 1995 (when a total of 65 408 was imported) and the investigation period. After a 29 % increase in 1996, the figure dropped from 1997 and only 13 651 bicycles were imported during the investigation period.

(81) One interested party claimed that, since under Article 11(5) of the basic Regulation review investigations must be covered by the same rules as other investigations, Article 5(7) of the basic Regulation applies to expiry reviews also. It was argued that the present review investigation should therefore never have been initiated, as imports originating in China were below 1 % of total consumption in both volume and value terms during the investigation period, i.e. below the *de minimis* threshold.

(82) Article 11(2) of the basic Regulation states that:

'A definitive anti-dumping measure shall expire after five years from its imposition (…), unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. (…)'

It follows from the above that the purpose of an expiry review, regardless of the level of imports from a given country concerned, is to determine whether the expiry of anti-dumping measures is likely to lead to a continuation or recurrence of dumping and injury. It is not a determination of material injury as referred to in Article 3(2) of the basic Regulation.

(83) Consequently, the claim that the current investigation was unduly initiated cannot be accepted.

(84) From the import figures in recital 80, it could be concluded that the anti-dumping duties on Chinese bicycles since 1993 have had an immediate and radical effect on import volumes, which had reached 2,5 million bicycles in 1991. However, these figures do not reflect the following two further developments, which alter the picture somewhat.

(85) Following the imposition of definitive anti-dumping duties in 1993, Chinese exporting producers exported bicycles to the Community using false declarations of origin (see recitals 44 and 45). They were also found to be circumventing the duties in force. Until the beginning of 1997 [1], the volume pressure from bicycles originating in China was therefore much higher than suggested by the figures.

(86) The average price of bicycles originating in China increased considerably during the period considered (+ 80 %), especially between 1997 and the investigation period (+ 51 %). However, given the limited import quantities, which fell significantly (– 79 %) during the period considered, no reliable conclusion on prices and price evolution could be drawn from this, especially as no information is available on possible changes in the product mix.

(b) Price behaviour of exporting producers

(87) Despite the very limited quantities imported during the investigation period, the exporting producers' price behaviour was analysed on the basis of the price information submitted. This analysis took into account actual export prices of exporting producers (cif Community frontier), both with and without anti-dumping duty, as well as the ex-factory prices charged by the Community industry to independent customers at the same level of trade.

[1] Publication of Regulation (EC) No 71/97 extending the anti-dumping duty to certain bicycle parts originating in China.

(88) The analysis showed that export prices were significantly lower than those of the Community industry both with and without the applicable anti-dumping duty.

4. **Economic situation of the Community industry**

(a) Preliminary remark

(89) In assessing the situation of the Community industry it should be noted that, since the imposition of anti-dumping measures on imports of bicycles originating in China, imports from other third countries have also been subject to anti-dumping investigations. In 1996, anti-dumping measures were imposed on bicycles originating in Indonesia, Malaysia and Thailand and, in 1999, on those originating in Taiwan.

(b) Production

(90) From 1995 up to the investigation period, the Community industry's production fell by 25 % or more than 2 million units (from 8 842 500 to 6 400 000).

(91) The investigation revealed that this decrease was the result of several companies going out of business and reduced production by major Community producers. It should also be mentioned that, in order to survive, some Community producers included in the definition of the Community industry in the original investigation switched from the complete cycle of production (i.e. including manufacture of the frames) to simple assembly or sub-assembly operations using imported parts (frame, forks, complete wheels, crank gears, freewheels, brakes, etc.).

(c) Production capacity and capacity utilisation

(92) As bicycles are produced on a seasonal basis in the Community, demand for production capacity is very high in certain months. In most Member States, the season starts in March and finishes in September. Bicycle collections for the next season are presented to the trade (dealers, agents, retailers, mass merchandisers, etc.) each September.

(93) From 1995 up to the investigation period, the Community industry's production capacity was reduced by 27 %, from 15 to 11 million units, as a result of the factors that led to the drop in production, and certain Community producers restructuring (see recital 91).

(94) Despite the significant cut in capacity, the capacity utilisation rate increased by only 2 percentage points between 1995 and the investigation period. The actual rate of utilisation during the investigation period (58 %) should be viewed alongside the rate needed in this type of industry for economic viability (70 %).

(d) Sales by the Community industry

(95) During the period considered, volumes sold fell by 24 %, or 1,9 million units. The decrease was most marked in categories A (– 35 %) and C (– 13 %) — precisely those categories in which Chinese exporting producers were found to be very strong during the original investigation. The decrease can be explained at least partially by imports circumventing the anti-dumping measures on Chinese bicycles and by imports of parts, exempted following the introduction of anti-circumvention measures.

(96) Sales value fell by 8 %. This was much less than the decrease in volume terms, indicating that the Community industry's average sales prices went up in the period considered.

(e) Market share

(97) As a result of overall losses in sales volume and sales value, the Community industry lost 15 % of its market share (in volume terms) between 1995 and the investigation period, mainly in categories A and C (see remarks in recital 95).

(f) Average sales price and price evolution

(98) The weighted average price of bicycles sold by the Community industry on the Community market increased by 10 % during the period considered. The investigation has shown that the main producers included in the definition of the Community industry have changed their product mix and moved to higher-end products. This also required them to concentrate their sales activities on dealers/retailers whose resale prices are more stable and more attractive as compared to the other major sales channels such as mass-merchandisers and supermarkets.

(99) It emerged from the category-by-category analysis that prices in categories A and C (which accounted for most Chinese bicycle imports in the original investigation) increased overall by 13 % during the period considered, although the pattern of the increase was not the same for both types; for instance, prices for category C increased by up to 20 % between 1995 and 1997.

(100) By contrast, in category B, the strongest segment of the Community industry, sales prices remained very stable during the period considered.

(g) Profitability

(101) Although the average profitability of the Community industry improved slightly from – 2,3 % to – 0,6 % during the period considered, it remained negative throughout. In 1995 and 1996, losses incurred by the Community industry were stable (2,2 % in 1996). They were reduced by 1,9 percentage points in 1997 (– 0,3 % of net sales) but increased again during the investigation period (– 0,6 % of net sales).

(102) The investigation showed that the worst results were achieved in the period 1995 to 1996, when Chinese exporting producers were circumventing the anti-dumping measures (see recitals 44 to 45). In order to stop this practice measures were extended to bicycle parts in the beginning of 1997. In 1997, as a result of a 7 % price increase over 1995, the profitability of the Community industry improved slightly. It then dropped a little during the investigation period, despite a further 3 % price increase.

(103) The above trend clearly indicates that the Community industry's financial situation has not recovered sufficiently during the period considered. The investigation has shown that profitability has remained negative despite the fact that the Community industry undertook significant restructuring, reduced the amount of certain fixed costs of production and increased sales prices.

(104) The profitability achieved during the period considered should be compared with the level considered to be the minimum for the industry in the absence of dumped imports originating in China, i.e. 8 %.

(105) This deterioration can be explained mainly by a reduction in production volume (which led to a higher unit cost of production) and by the restructuring in the bicycle industry.

(h) Investments

(106) The Community industry's investment in buildings, plant and machinery was rather low during the period considered. It represented only 1,7 % to 2,5 % of the value of Community sales on the Community market. Investment was made mainly in machinery to improve production efficiency (welding robots) and the quality of bicycle frames.

(i) Employment

(107) Employment in the Community industry fell steadily from 1995 to the investigation period. In total 1 800 people (12 % of the workforce in 1995) were laid off during the period considered.

(j) General comments received on the economic situation of the Community industry

(108) On the basis of press releases and extracts from non-confidential replies to the Commission's questionnaire, some exporting producers claimed that the economic situation of certain Community producers had improved over the period considered, in particular in terms of sales volume, production volume and profitability. This, it was claimed, contradicted the conclusion that the Community industry had been in a weak and vulnerable economic position since the imposition in 1993 of the anti-dumping duties against bicycles originating in China.

(109) In this respect, it should be underlined that these exporting producers provided information relating mainly to some individual producers included in the definition of the Community industry whose situation is not representative for the Community industry as a whole. It is considered that this does not invalidate the overall findings, which reflect the situation for the product concerned and for all individual companies included in the definition of the Community industry.

(110) On this basis, the conclusion that the economic situation of the Community industry had improved is considered to be unfounded.

### 5. **Conclusion**

(111) The analysis of the Community industry's economic situation has revealed that most economic indicators continued to show negative trends during the period considered: production fell by 25 %, production capacity by 27 %, sales volume and sales value by 24 % and 8 % respectively and the value and volume of market share by 8 % and 15 % respectively. Although prices increased by 10 % during the investigation period as compared to 1995, the Community industry continued to make losses and employment was reduced by 12 %.

(112) On this basis, it was concluded that the Community industry has remained in a weak and vulnerable economic position since the imposition in 1993 of the anti-dumping duties against imports of bicycles originating in China.

## F. **LIKELIHOOD OF RECURRENCE OF INJURY**

### 1. **Preliminary comments**

(113) In addition to the economic situation of the Community industry, the Commission examined the likelihood of recurrence of injury should the anti-dumping measures applicable to imports originating in China be removed.

(114) This analysis covered the situation of the Community market in the light of past circumvention by Chinese exporting producers, the situation of the bicycle industry in China and the likely consequences for the Community market of repealing the anti-dumping measures.

### 2. **Situation of the bicycle industry in China and future export volume**

(115) As mentioned in recital 50, the Chinese bicycle industry is using only about 50 % of its huge production capacity and Chinese bicycles are present on the main markets worldwide, particularly in the USA and Japan.

(116) The investigation also showed that, after a two-year absence from the US market following the imposition of anti-dumping duties, Chinese exporting producers financed massive sales campaigns when the duties were repealed and were able to re-establish their presence almost immediately. Large numbers of Chinese bicycles were sold, in particular via supermarkets and department stores, one of the major distribution channels in the USA (as well as in the Community). As a result, around 8 million bicycles originating in China were exported to the USA during the investigation period.

(117) Finally, it is also recalled that several countries have recently applied commercial defence instruments to imports of Chinese bicycles (see recital 60).

(118) Some exporting producers claimed that, due to the large domestic market in China and exports to third countries with large and stable markets (e.g. Japan and USA), injury is not likely to recur.

(119) They also claimed that the Chinese bicycle industry does not have such a huge excess production capacity at its disposal as to allow a significant increased or rapid penetration of the Community market in such a manner as to threaten the Community industry. In their opinion, no reliable evidence was provided to support the conclusions on production capacity and capacity utilisation in China. The capacity utilisation rate in China, it was claimed, was much higher (around 87 %).

(120) It is true, as indicated in recital 116, that Chinese exporting producers are present in third countries with large and stable markets. However, they have shown that they are able quickly to redirect exports and penetrate new markets.

(121) It should also be noted that the findings on production capacity and capacity utilisation in China are based on the complaint and the information provided by the Chinese exporting producers themselves (see recitals 54 and 55).

(122) On this basis, with no new supporting evidence, the claims of the exporting producers could not be accepted.

### 3. **Likely situation on the Community market without anti-dumping measures on imports originating in China**

(123) As mentioned, Chinese exporting producers have the potential to penetrate the Community market quickly. Without anti-dumping duties and given the spare production capacity, volumes of low-priced dumped imports originating in China could be expected in the near future to reach a level comparable to that in 1991 (around 2,5 million bicycles). This would give Chinese exporting producers a share of around 15 % of the Community market.

(124) This scenario also appeared highly likely on the basis of price quotations given by Chinese exporting producers to Community-based operators, and offers during major bicycle exhibitions in the Community. These prices, which were not conditional on the removal or maintenance of the anti-dumping measures, were comparable to those charged by Chinese exporting producers in their main export markets.

(125) The present analysis showed that average prices of Chinese imports were likely to increase slightly as compared to the original investigation since bicycles at the lower end of the market were found to be better equipped during the investigation period. Nevertheless, these prices or price quotations, using the price comparison methodology described in recitals 87 and 88, were significantly below those for comparable models sold by the Community industry. Indeed, without anti-dumping duties, selling prices for Chinese bicycles would be between 40 % and 55 % below the Community industry's average.

(126) This finding indicates that injurious pricing by exporting producers in China would resume at serious levels should measures be allowed to lapse. It is to be expected that, without anti-dumping duties, Community producers would lose sales volume and market share. More precisely, the Community industry's sales and production volumes could both be expected to fall by around 1 million units, to 5 million and around 5,4 million bicycles respectively. It is also highly likely that Community producers would concentrate on producing more expensive bicycles.

(127) It has been established through detailed analysis of the distribution network that:

— the Community industry is prominent in the dealer/retailer sales channel (60 % to 65 % of total sales) selling mainly in the medium and high end of the market,

— some Community producers, however, (mainly in France, Germany and the United Kingdom) mostly produce for the lower end of the market and specialise in sales to supermarkets, mass-merchandisers and OEM customers (up to 80 % of their sales or 2 million overall).

(128) As Chinese exporting producers would mainly compete in the high volume sales channels, pressure on the Community industry would be strong there and less acute in the dealer/retailer sales channels.

(129) The removal of the anti-dumping duties against Chinese bicycles would thus lead to:

— further restructuring of the Community industry and company closures,

— reduced employment in the Community industry,

— losses in sales volume entailing a reduction in production volume and thus inevitably increases in fixed costs per unit and factory break-even levels,

— losses of economies of scale leading to higher variable unit costs.

### 4. **Conclusion on recurrence of injurious dumping**

(130) Analysis of the likelihood of the recurrence of injurious dumping indicates that injurious dumping would recur in the absence of anti-dumping measures against bicycles originating in China.

(131) As is clear from their behaviour in the period considered and their performance on export markets, Chinese exporting producers have a high capacity and enormous potential for producing both finished bicycles and bicycle parts. These producers have the technical and financial means to return to the Community market quickly and gain significant market share, as they did recently in the USA. Given notably the existence of dumping and the weak economic situation of the Community industry, it is concluded that the removal of the anti-dumping duty would inevitably lead to a recurrence of material injury to the Community industry.

## G. **COMMUNITY INTEREST**

### 1. **Introduction**

(132) It should be recalled that in original investigations the adoption of measures was considered not to be against the Community interest.

(133) In the framework of this review, it was examined whether there were compelling reasons to conclude that it is not in the Community interest to maintain measures in this particular case, despite the conclusions on dumping, injury and likely recurrence of injurious dumping. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the impact of existing measures for all parties involved in the proceeding, and also the consequences of not maintaining measures against China.

### 2. **Interest of the Community industry**

(134) The economic situation of the Community industry clearly indicates that, in the interest of that industry, effective competitive conditions need to be maintained and that prices reflecting these conditions should prevail on the Community market.

(135) Some parties claimed that anti-dumping measures should not shield the Community industry from international competition and that the industry should have fully recovered after five years of anti-dumping measures.

(136) It should be noted here that Community producers, mostly small and medium-sized enterprises, faced significant competition from low-priced dumped imports originating in China from 1988 to the end of 1996. Between 1993 and 1996, the injury was particularly severe given the circumvention by Chinese exporting producers and injurious dumping from other sources.

(137) The industry has made considerable efforts to improve its efficiency and productivity in recent years in an attempt to lower its production costs and improve quality and competitiveness in this price-sensitive market. As shown by the decreasing production capacities, several Community producers have shut down or reduced the size of their production facilities. This has favoured the emergence of a few groups which have purchased small, well-known brands and production facilities or merged with other companies in order to restructure and reorganise their activities. This indicates the industry's adaptability, competitiveness, viability and determination to survive.

(138) With anti-dumping measures on all identified sources of dumping, the Community industry could now benefit from effective trade conditions on the market and finally recover financially.

(139) However, without measures on Chinese imports, the precarious financial situation of the Community industry would deteriorate further, leading inevitably to further company closures and therefore jeopardising thousands of other jobs in the Community. The negative consequences for the industry will be amplified by repercussions in the Community parts industry and other activities, both upstream and downstream.

### 3. **Interests of the other producers in the Community**

(140) During the period considered both sales and production volume of the non-applicant producers in the Community decreased by 10 % (sales from 4,6 to 4,1 million units, production from 5,1 to 4,6 million units). The information available would indicate that the bicycles sold by the non-applicant producers compete mainly with bicycles originating in China (same range and similar customers). Consequently, the loss in market share would also be at the expense of these producers. The removal of the anti-dumping duties on bicycles originating in China would thus not serve their best interests.

### 4. **Impact on consumers**

(141) The Commission did not receive comments concerning this review from Community consumers' associations, indicating that there is no real concern about the impact of the continued imposition of anti-dumping measures.

(142) Nevertheless, an analysis was carried out to establish the likely consequences of both removing and maintaining the measures.

(143) Some parties claimed that consumers have a sufficient choice from a wide variety of bicycles in all segments thanks to competition from non-Community producers and that this competition should be increased by repealing the measures.

(144) The investigation showed that the remaining Community producers reacted to lower sales and production volumes and higher unit production costs by increasing prices in the medium and high end of the market. This would again be the case if anti-dumping measures were to be repealed. It should be noted that these market segments represent around 60 % of the Community market in volume terms.

(145) Consumers have a wide range to choose from in all segments, even without bicycles originating in China. The Community industry contributes significantly to the exhaustive product range on offer and the investigation has not brought to light any supply problems.

(146) Without anti-dumping measures prices would therefore increase in the medium and high end of the market and decrease at the lower end. Consumer choice would not be affected significantly. On this basis, the continued imposition of anti-dumping measures against China is not contrary to the interests of consumers.

### 5. **Conclusion**

(147) On the basis of the above facts and considerations, and having examined all the arguments submitted by interested parties, it is concluded that there are no compelling reasons for not maintaining the measures in force on imports originating in China. As the anti-dumping duty in force in respect of complete bicycles has been extended by Regulation (EC) No 71/97 to cover in addition imports of certain bicycle parts originating in China, the duty shall be maintained as extended by that Regulation.

## H. **DEFINITIVE MEASURES**

(148) It follows that, as provided for by Article 11(2) and 11(6) of the basic Regulation, the anti-dumping duty on imports of bicycles originating in China imposed by Regulation (EEC) No 2474/93, as extended by Regulation (EC) No 71/97, should be maintained,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of bicycles and other cycles (including delivery tricycles), not motorised, currently classifiable within CN codes 8712 00 10, 8712 00 30 and 8712 00 80, originating in the People's Republic of China.

2. The rate of the definitive duty applicable to the net, free-at-Community-frontier price, before duty, shall be 30,6 %.

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

*Article 2*

This Regulation shall enter into force on the day following that of 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, 10 July 2000.

*For the Council*
*The President*
H. VÉDRINE

# COMMISSION REGULATION (EC) No 1525/2000

## of 13 July 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 14 July 2000.

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

Done at Brussels, 13 July 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 13 July 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 |
|---|---|---|
| 0707 00 05 | 052 | 96,5 |
| | 628 | 130,8 |
| | 999 | 113,7 |
| 0709 90 70 | 052 | 65,1 |
| | 999 | 65,1 |
| 0805 30 10 | 388 | 57,6 |
| | 508 | 29,9 |
| | 528 | 70,3 |
| | 999 | 52,6 |
| 0808 10 20, 0808 10 50, 0808 10 90 | 388 | 86,4 |
| | 400 | 91,4 |
| | 508 | 85,7 |
| | 512 | 84,8 |
| | 528 | 88,1 |
| | 720 | 79,3 |
| | 804 | 103,4 |
| | 999 | 88,4 |
| 0808 20 50 | 388 | 96,8 |
| | 512 | 76,1 |
| | 528 | 80,7 |
| | 720 | 134,3 |
| | 800 | 70,7 |
| | 804 | 129,8 |
| | 999 | 98,1 |
| 0809 10 00 | 052 | 190,8 |
| | 064 | 113,4 |
| | 999 | 152,1 |
| 0809 20 95 | 052 | 280,0 |
| | 061 | 285,0 |
| | 400 | 250,9 |
| | 616 | 230,1 |
| | 999 | 261,5 |
| 0809 40 05 | 064 | 60,3 |
| | 624 | 175,2 |
| | 999 | 117,8 |

(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 1526/2000

## of 13 July 2000

## amending Annex II to Council Regulation (EC) No 1255/1999 on the common organisation of the market in 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], as amended by Regulation (EC) No 1040/2000 [2], and in particular Article 31(14) thereof,

Whereas:

(1) Article 8 of Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [3], as last amended by Commission Regulation (EC) No 2491/98 [4], provides that on exportation of the goods, the agricultural products which have been used may qualify for refunds established pursuant to the regulations on the common organisation of the market in the sectors concerned.

(2) Article 31 of Regulation (EC) No 1255/1999 provides for refunds on certain products covered by the Regulation if they are exported in the form of goods listed in Annex II thereto.

(3) In view of the Community's commitments under the World Trade Organisation (WTO) Agreement on Agriculture [5] and budget availabilities, and in view of anticipated developments in agricultural prices in the Community and on the world market and in exports of agricultural products in the form of goods not listed in Annex I to the Treaty, the possibility of granting export refunds on agricultural products in the form of goods in which they may be incorporated should be restricted.

(4) As a result, the list of goods in Annex II to Regulation (EC) No 1255/1999 should be amended.

(5) 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*

Annex II to Regulation (EC) No 1255/1999 is replaced by the Annex to this Regulation.

*Article 2*

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

It shall not apply to refund certifates issued before the date of entry into force of this Regulation.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 118, 19.5.2000, p. 1.
[3] OJ L 318, 20.12.1993, p. 18.
[4] OJ L 309, 19.11.1998, p. 28.
[5] OJ L 336, 23.12.1994, p. 22.

*ANNEX*

*'ANNEX II*

| CN code | Description of goods |
|---|---|
| ex 0405 | Butter and other fats and oils derived from milk; dairy spreads: |
| 0405 20 | – Dairy spreads |
| 0405 20 10 | – – of a fat content, by weight, of 39 % or more but less than 60 % |
| 0405 20 30 | – – – of a fat content, by weight, of 60 % or more but not exceeding 75 % |
| ex 1517 | Margarine; edible mixtures or preparations of animal or vegetable fats or oils or fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of CN code 1516: |
| 1517 10 | – Margarine, excluding liquid margarine: |
| 1517 10 10 | – – containing more than 10 % but not more than 15 % by weight of milk fats |
| 1517 90 | – Other: |
| 1517 90 10 | – – containing more than 10 % but not more than 15 % by weight of milk fats |
| ex 1704 | Sugar confectionery (including white chocolate), not containing cocoa: |
| ex 1704 90 | – Other, excluding liquorice extract containing more than 10 % by weight of sucrose but not containing other added substances |
| ex 1806 | Chocolate and other food preparations containing cocoa, excluding cocoa powder sweetened solely by the addition of sucrose of CN code 1806 10 |
| ex 1901 | Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of CN codes 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: |
| 1901 10 00 | – Preparations for infant use, put up for retail sale |
| 1901 20 00 | – Mixes and doughs for the preparation of bakers' wares of CN code 1905 |
| 1901 90 | – other: |
| | – – other: |
| 1901 90 99 | – – – other |
| ex 1902 | Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: |
| | – Uncooked pasta not stuffed or otherwise prepared: |
| 1902 19 | – – other |
| 1902 20 | – Stuffed pasta, whether or not cooked or otherwise prepared: |
| | – – other: |
| 1902 20 91 | – – – Cooked |
| 1902 20 99 | – – – other |

| CN code | Description of goods |
|---|---|
| 1902 30 | – other pasta |
| 1902 40 | – Couscous: |
| 1902 40 90 | – – Other |
| 1904 | Prepared food obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included |
| 1905 | Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: |
| 1905 10 00 | Crispbread |
| 1905 20 | – Gingerbread and the like |
| 1905 30 | – Sweet biscuits; waffles and wafers |
| 1905 40 | – Rusks, toasted bread and similar toasted products |
| 1905 90 | – other: |
| | – – other: |
| 1905 90 40 | – – – Waffles and wafers with a water content exceeding 10 % by weight |
| 1905 90 45 | – – – Biscuits |
| 1905 90 55 | – – – Extruded or expanded products, savoury or salted |
| 1905 90 60 | – – – – with added sweetening matter |
| 1905 90 90 | – – – – other |
| ex 2004 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006: |
| 2004 10 | – Potatoes: |
| | – – other: |
| 2004 10 91 | – – – in the form of flour, meal or flakes |
| ex 2005 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006: |
| 2005 20 | – Potatoes: |
| 2005 20 10 | – – in the form of flour, meal or flakes |
| 2105 00 | Ice cream and other edible ice, whether or not containing cocoa |
| ex 2106 | Food preparations not elsewhere specified or included: |
| 2106 90 | – Other: |
| 2106 90 10 | – – Cheese fondues |
| | – – Other: |
| 2106 90 92 | – – – Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch |
| 2106 90 98 | – – – Other |
| ex 2202 | Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit and vegetable juices of CN code 2009: |
| 2202 90 | – other: |
| | – – other, containing by weight of fat obtained from the products of CN codes 0401 to 0404: |

| CN code | Description of goods |
|---|---|
| 2202 90 91 | – – – less than 0,2 % |
| 2202 90 95 | – – – 0,2 % or more but less than 2 % |
| 2202 90 99 | – – – 2 % or more |
| ex 2208 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages: |
| 2208 70 | – Liqueurs and cordials |
| 2208 90 | – other: |
| | – – other spirits and spirituous beverages, in containers holding: |
| | – – – two litres or less: |
| | – – – – other: |
| 2208 90 69 | – – – – – other spirituous beverages |
| | – – – more than two litres: |
| 2208 90 78 | – – – – other spirituous beverages |
| ex 3302 | Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: |
| 3302 10 | – of a kind used in the food or drink industries: |
| | – – of a kind used in the drink industries: |
| 3302 10 29 | – – – – – other |
| 3501 | Casein, caseinates and other casein derivatives; casein glues |
| ex 3502 | Albumins, albuminates and other albumin derivatives: |
| 3502 20 | – Milk albumin, including concentrates of two or more whey proteins: |
| | – – other: |
| 3502 20 91 | – – – dried (for example in sheets, scales, flakes, powder) |
| 3502 20 99 | – – – other' |

# COMMISSION REGULATION (EC) No 1527/2000

## of 13 July 2000

## amending Annex I to Council Regulation (EC) No 2038/1999 on the common organisation of the markets 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 organisation of the markets in the sugar sector [1], and in particular Article 18(15) thereof,

Whereas:

(1) Article 8 of Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [2], as last amended by Commission Regulation (EC) No 2491/98 [3], provides that on exportation of the goods, the agricultural products which have been used may qualify for refunds established pursuant to the regulations on the common organisation of the market in the sectors concerned.

(2) Article 18 of Regulation (EC) No 2038/1999 provides for refunds on certain products covered by the Regulation if they are exported in the form of goods listed in Annex I thereto.

(3) In view of the Community's commitments under the World Trade Organisation (WTO) Agreement on Agriculture [4] and budget availabilities, and in view of anticipated developments in agricultural prices in the Community and on the world market and in exports of agricultural products in the form of goods not listed in Annex I to the Treaty, the possibility of granting export refunds on agricultural products in the form of goods in which they may be incorporated should be restricted.

(4) As a result, the list of goods in Annex I to Regulation (EC) No 2038/1999 should be amended.

(5) 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*

Annex I to Regulation (EC) No 2038/1999 is replaced by the Annex to this Regulation.

*Article 2*

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

It shall not apply to refund certificates issued before the date of entry into force of this Regulation.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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[1] OJ L 252, 25.9.1999, p. 1.
[2] OJ L 318, 20.12.1993, p. 18.
[3] OJ L 309, 19.11.1998, p. 28.
[4] OJ L 336, 23.12.1994, p. 22.

*ANNEX*

*'ANNEX I*

| CN code | Description |
|---|---|
| ex 0403 | Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, flavoured or containing added fruit, nuts or cocoa, whether or not concentrated or containing added sugar or other sweetening matter: |
| 0403 10 | – Yoghurt: |
| 0403 10 51 to 0403 10 99 | – – Flavoured or containing added fruit, nuts or cocoa |
| 0403 90 | – Other: |
| 0403 90 71 to 0403 90 99 | – – Flavoured or containing added fruit, nuts or cocoa |
| ex 0710 | Vegetables (uncooked or cooked by steaming or boiling in water), frozen: |
| 0710 40 00 | – Sweetcorn |
| ex 0711 | Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption: |
| 0711 90 | – Other vegetables; mixtures of vegetables: |
| | – – Vegetables |
| 0711 90 30 | – Sweetcorn |
| ex 1302 | Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products |
| 1702 50 00 | Chemically pure fructose |
| ex 1704 | Sugar confectionery (including white chocolate), not containing cocoa, except liquorice extract of subheading 1704 90 10 |
| 1806 | Chocolate and other food preparations containing cocoa |
| ex 1901 | Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings No 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: |
| 1901 10 00 | – Preparations for infant use, put up for retail sale |
| 1901 20 00 | – Mixes and doughs for the preparation of bakers' wares of heading No 1905 |
| 1901 90 | – Other: |
| | – – Other: |
| 1901 90 99 | – – – Other |
| ex 1902 | Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: |
| 1902 20 | – Stuffed pasta (whether or not cooked or otherwise prepared): |
| | – – Other: |

| CN code | Description |
|---|---|
| 1902 20 91 | – – – Cooked |
| 1902 20 99 | – – – Other |
| 1902 30 | – Other pasta |
| 1902 40 | – Couscous: |
| 1902 40 90 | – – Other |
| 1904 | Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included |
| ex 1905 | Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: |
| 1905 10 00 | – Crispbread |
| 1905 20 | – Gingerbread and the like |
| 1905 30 | – Sweet biscuits; waffles and wafers |
| 1905 40 | – Rusks, toasted bread and similar toasted products |
| 1905 90 | – Other: |
| | – – Other: |
| 1905 90 40 | – – – Waffles and wafers with a water content exceeding 10 % by weight |
| 1905 90 45 | – – – Biscuits |
| 1905 90 55 | – – – Extruded or expanded products, savoury or salted |
| 1905 90 60 | – – – – With added sweetening matter |
| 1905 90 90 | – – – – Other |
| ex 2001 | Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: |
| 2001 90 | – Other: |
| 2001 90 30 | – – Sweet corn (*Zea mays* var. *saccharata*) |
| 2001 90 40 | – – Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch |
| ex 2004 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006: |
| 2004 10 | – Potatoes: |
| | – – Other: |
| 2004 10 91 | – – – In the form of flour, meal or flakes |
| 2004 90 | – Other vegetables and mixtures of vegetables: |
| 2004 90 10 | – – Sweetcorn (*Zea mays* var. *saccharata*) |
| ex 2005 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006: |

| CN code | Description |
|---|---|
| 2005 20 | – Potatoes: |
| 2005 20 10 | – – In the form of flour, meal or flakes |
| 2005 80 00 | – Sweetcorn (*Zea mays* var. *saccharata*) |
| 2008 | Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: |
| | – Nuts, groundnuts and other seeds, whether or not mixed together: |
| 2008 11 | – – Groundnuts |
| ex 2101 | Extracts, essences and concentrates of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: |
| | – Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee: |
| | – – Preparations with a basis of these extracts, essences or concentrates or with a basis of coffee: |
| 2101 12 98 | – – – Other |
| | – Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates, or with a basis of tea or maté: |
| | – – Preparations: |
| 2101 20 98 | – – – Other |
| | – Roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: |
| | – – Roasted chicory and other roasted coffee substitutes: |
| 2101 30 19 | – – – Other |
| | – – Extracts, essences and concentrates of roasted chicory and other roasted coffee substitutes: |
| 2101 30 99 | – – – Other |
| ex 2102 | Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of heading No 3002); prepared baking powders: |
| 2102 10 | – Active yeasts: |
| | – – Bakers' yeast: |
| 2102 10 31 | – – – Dried |
| 2102 10 39 | – – – Other |
| 2105 00 | Ice cream and other edible ice, whether or not containing cocoa |
| ex 2106 | Food preparations not elsewhere specified or included: |
| 2106 90 | – Other: |
| 2106 90 10 | – – Cheese fondues |
| | – – Other: |
| 2106 90 92 | – – – Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch |
| 2106 90 98 | – – – Other |
| 2202 | Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No 2009 |
| 2205 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances |
| ex 2208 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages: |
| 2208 20 | – Spirits obtained by distilling grape wine or grape marc |

| CN code | Description |
|---|---|
| 2208 50 91 to 2208 50 99 | Geneva |
| 2208 70 | Liqueurs and cordials |
| 2208 90 41 to 2208 90 78 | Other spirits and spirituous beverages |
| 2905 43 00 | Mannitol |
| 2905 44 | D-glucitol (sorbitol) |
| ex 3302 | Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: |
| 3302 10 | – Of a kind used in the food or drink industries: |
| | – – Of a kind used in the drink industries: |
| | – – – Preparations containing all flavouring agents characterising a beverage: |
| | – – – – Other (of an actual alcoholic strength by volume not exceeding 0,5 %): |
| 3302 10 29 | – – – – – Other |
| ex Chapter 38 | Miscellaneous chemical products: |
| 3824 60 | Sorbitol other than that of subheading No 2905 44’ |

# COMMISSION REGULATION (EC) No 1528/2000

## of 13 July 2000

## amending Annex B to Council Regulation (EC) No 3072/95 on the common organisation of the market in rice

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]), and in particular Article 13(15) thereof,

Whereas:

(1) Article 8 of Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ([3]), as last amended by Commission Regulation (EC) No 2491/98 ([4]), provides that on exportation of the goods, the agricultural products which have been used may qualify for refunds established pursuant to the regulations on the common organisation of the market in the sectors concerned.

(2) Article 13 of Regulation (EC) No 3072/95 provides for refunds on certain products covered by the Regulation if they are exported in the form of goods listed in Annex B thereto.

(3) In view of the Community's commitments under the World Trade Organisation (WTO) Agreement on Agriculture ([5]) and budget availabilities, and in view of anticipated developments in agricultural prices in the Community and on the world market and in exports of agricultural products in the form of goods not listed in Annex I to the Treaty, the possibility of granting export refunds on agricultural products in the form of goods in which they may be incorporated should be restricted.

(4) As a result, the list of goods in Annex B to Regulation (EC) No 3072/95 should be amended.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex B to Regulation (EC) No 3072/95 is replaced by the Annex to this Regulation.

*Article 2*

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

It shall not apply to refund certificates issued before the date of entry into force of this Regulation.

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

Done at Brussels, 13 July 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 318, 20.12.1993, p. 18.
([4]) OJ L 309, 19.11.1998, p. 28.
([5]) OJ L 336, 23.12.1994, p. 22.

*ANNEX*

*'ANNEX B*

| CN code | Description |
|---|---|
| ex 0403 | Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, flavoured or containing added fruit, nuts or cocoa, whether or not concentrated or containing sugar or other sweetening matter: |
| 0403 10 | – Yoghurt: |
| 0403 10 51 to 0403 10 99 | – – Flavoured or containing added fruit, nuts or cocoa |
| 0403 90 | – Other: |
| 0403 90 71 to 0403 90 99 | – – Flavoured or containing added fruit, nuts or cocoa |
| ex 1704 | Sugar confectionery (including white chocolate), not containing cocoa: |
| 1704 90 51 to 1704 90 99 | – – Other |
| ex 1806 | Chocolate and other food preparations containing cocoa, except goods of subheadings 1806 10, 1806 20 70, 1806 90 60, 1806 90 70 and 1806 90 90 |
| ex 1901 | Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings No 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: |
| 1901 10 00 | – Preparations for infant use, put up for retail sale |
| 1901 20 00 | – Mixes and doughs for the preparation of bakers' wares of heading No 1905 |
| 1901 90 | – Other: |
| 1901 90 11 to 1901 90 19 | – – Malt extract |
| | – – Other: |
| 1901 90 99 | – – – Other |
| ex 1902 | Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: |
| 1902 20 91 | – – – Cooked |
| 1902 20 99 | – – – Other |
| 1902 30 | – Other pasta: |
| 1902 40 90 | – – Other |
| 1904 | Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included |
| ex 1905 | Bread, pastry, cake, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: |
| 1905 90 20 | Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products. |

| CN code | Description |
|---|---|
| ex 2004 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006: |
| | – Potatoes: |
| | – – Other: |
| 2004 10 91 | – – – In the form of flour, meal or flakes |
| ex 2005 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006: |
| | – Potatoes: |
| 2005 20 10 | – – In the form of flour, meal or flakes |
| ex 2101 | Extracts, essences and concentrates of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: |
| 2101 12 | – – Preparations with a basis of these extracts, essences or concentrates or with a basis of coffee: |
| 2101 12 98 | – – – Other |
| 2101 20 | – Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates, or with a basis of tea or maté: |
| 2101 20 98 | – – – Other |
| 2105 00 | Ice cream and other edible ice, whether or not containing cocoa |
| 2106 | Food preparations not elsewhere specified or included: |
| | – Other: |
| 2106 90 10 | – – Cheese fondues |
| | – – Other: |
| 2106 90 92 | – – – Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch |
| 2106 90 98 | – – – Other |
| ex 3505 | Dextrins and other modified starches (for example pregelatinised starches); glues based on starches, or on dextrins or other modified starches, except starches of No 3505 10 50 |
| ex 3809 | Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dessings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: |
| 3809 10 | – With a basis of amylaceous substances' |

# COMMISSION REGULATION (EC) No 1529/2000

## of 13 July 2000

## establishing the list of varieties of *Cannabis sativa* L. eligible for aid under Council Regulation (EEC) No 2358/71

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2358/71 of 26 October 1971 on the common organisation of the market in seeds [1], as last amended by Regulation (EC) No 1405/1999 [2], and in particular Article 3(6) thereof,

Whereas:

(1) Annex I to Regulation (EEC) No 2358/71 lists *Cannabis sativa* L. among the products on which production aid is payable for basic and certified seed.

(2) Article 3(1) of Council Regulation (EEC) No 619/71 of 22 March 1971 laying down general rules for granting aid for flax and hemp [3], as last amended by Regulation (EC) No 1420/98 [4], stipulates that production aid is to be granted solely on hemp harvested after seed formation and grown from certified seed of varieties on a list to be drawn up in accordance with the procedure laid down in Article 12 of Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organisation of the market in flax and hemp [5], as last amended by Regulation (EC) No 2702/1999 [6]. For the purposes of granting aid for the production of hemp for the 1998/1999, 1999/2000 and 2000/2001 marketing years, the Council has specified that only varieties found to have a THC content not exceeding 0,3 % and, for subsequent marketing years, not exceeding 0,2 % are to appear on that list.

(3) Annex I to Regulation (EEC) No 2358/71 refers to varieties of *Cannabis sativa* L. with a THC content not exceeding 0,3 % for the 2000/2001 marketing year and not exceeding 0,2 % for subsequent marketing years.

(4) In order to ensure uniform application throughout the Community of the rules for granting the aid, a list should be established of the different varieties of Cannabis sativa L. eligible for aid under Article 3(6) of Regulation (EEC) No 2358/71 and the list laid down in Annex B to Commission Regulation (EEC) No 1164/89 of 28 April 1989 laying down detailed rules concerning the aid for fibre flax and hemp [7], as last amended by Regulation (EC) No 1313/2000 [8] should be used for that purpose.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Seed,

HAS ADOPTED THIS REGULATION:

*Article 1*

The varieties of *Cannabis sativa* L. eligible for aid under Article 3(6) of Regulation (EEC) No 2358/71 shall be those listed in Annex B to Regulation (EEC) No 1164/89.

*Article 2*

This Regulation shall enter into force on the third 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, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 246, 5.11.1971, p. 1.
[2] OJ L 164, 30.6.1999, p. 17.
[3] OJ L 72, 26.3.1971, p. 2.
[4] OJ L 190, 4.7.1998, p. 7.
[5] OJ L 146, 4.7.1970, p. 1.
[6] OJ L 327, 14.12.1999, p. 7.
[7] OJ L 121, 29.4.1989, p. 4.
[8] OJ L 148, 22.6.2000, p. 34.

# COMMISSION REGULATION (EC) No 1530/2000

## of 13 July 2000

## altering, for the 2000/01 marketing year, the adjustment aid and additional aid to the sugar refining industry

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 Article 43(6) thereof,

Whereas:

(1) Article 43 of Regulation (EC) No 2038/1999 provides that during the 1995/96 to 2000/01 marketing years adjustment aid of EUR 0,10 per 100 kilograms of sugar expressed as white sugar is to be granted as an intervention measure to the Community industry refining imported preferential raw cane sugar. Under those provisions, additional aid equal to that amount is to be granted during the same period for the refining of raw cane sugar produced in the French overseas departments.

(2) Article 43(4) of Regulation (EC) No 2038/1999 provides that the adjustment aid and the additional aid referred to above shall be altered in respect of a given marketing year in the light of the storage levy fixed for that year and previous adjustments. The storage levy for the 2000/01 marketing year was fixed by Commission Regulation (EC) No 1434/2000 [2] at EUR 2 per 100 kilograms of white sugar. That amount is equal to that applicable for the 1999/2000 marketing year. After taking into account previous adjustments, the amount of these aids should consequently be fixed for the 2000/01 marketing year at EUR 2,92 per 100 kilograms of sugar expressed as white sugar.

(3) 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 amounts of the adjustment aid and the additional aid referred to respectively in Article 43(1) and (3) of Regulation (EC) No 2038/1999 shall be fixed at EUR 2,92 per 100 kilograms of sugar expressed as white sugar for the 2000/01 marketing year.

*Article 2*

This Regulation shall enter into force on the day of 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, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 252, 25.9.1999, p. 1.
[2] OJ L 161, 1.7.2000, p. 59.

# COMMISSION REGULATION (EC) No 1531/2000

## of 13 July 2000

## relating to a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2000/01 marketing year

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 Article 13(2), Article 18(5) and (15), Article 24(3) and the second paragraph of Article 46 thereof,

Whereas:

(1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 2000/01 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds.

(2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar were established by Article 19 of Regulation (EC) No 2038/1999.

(3) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector [2], as last amended by Regulation (EC) No 1148/98 [3]. However, 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], and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products [6], as last amended by Regulation (EC) No 2194/96 [7], should continue to apply.

(4) The standing invitation to tender for the 1999/2000 marketing year established by Commission Regulation (EC) No 1489/1999 [8], is to remain open until a date to be determined. The closing date should therefore be fixed.

(5) 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*

1. A standing invitation to tender shall be issued in order to determine export levies and/or export refunds on white sugar covered by CN code 1701 99 10 and, during the period of validity of this standing invitation, partial invitations to tender shall be issued.

2. The standing invitation to tender shall remain open until a date to be determined.

*Article 2*

The standing invitation to tender and the partial invitations shall be conducted in accordance with Article 19 of Regulation (EC) No 2038/1999 and with the following provisions.

*Article 3*

1. The Member States shall establish a notice of invitation to tender. The notice of invitation to tender shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate, in particular, the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

*Article 4*

1. The period during which tenders may be submitted in response to the first partial invitation to tender:

(a) shall begin on 27 July 2000;

(b) shall end on 2 August 2000 at 10.30 a.m.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations:

(a) shall begin on the first working day following the end of the preceding period;

(b) shall end at 10.30 a.m. on the Wednesday of the following week.

[1] OJ L 252, 25.9.1999, p. 1.
[2] OJ L 144, 28.6.1995, p. 14.
[3] OJ L 159, 3.6.1998, p. 38.
[4] OJ L 331, 2.12.1988, p. 1.
[5] OJ L 135, 29.5.1999, p. 48.
[6] OJ L 16, 20.1.1989, p. 19.
[7] OJ L 293, 16.11.1996, p. 3.
[8] OJ L 172, 8.7.1999, p. 27.

3. Notwithstanding paragraph 2(b), the period for the submission of tenders which was to end on:

— Wednesday 1 November 2000, shall end on Tuesday 31 October 2000 at 10.30 a.m.,

— Wednesday 9 May 2001, shall end on Tuesday 8 May 2001 at 10.30 a.m.

4. Notwithstanding paragraph 2, no partial invitations to tender will be issued on Wednesday 27 December 2000, Wednesday 3 January 2001 or Wednesday 11 April 2001.

5. The times specified in this Regulation are Belgian local times.

*Article 5*

1. Offers in connection with this tender must be in writing, and must be either delivered by hand, against a receipt, to the competent authority in a Member State, or addressed to that authority either by registered letter or telegram, or, where the authority accepts such forms of communication, by telex, fax or electronic mail.

2. An offer must indicate:

(a) the reference of the invitation to tender;

(b) the name and address of the tenderer;

(c) the quantity of white sugar to be exported;

(d) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(e) the minimum amount of the security to be lodged covering the quantity of sugar indicated in (c), expressed in the currency of the Member State in which the tender is submitted.

3. Tenders shall be valid only if:

(a) the quantity to be exported is not less than 250 tonnes of white sugar;

(b) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

(c) it includes a declaration by the tenderer that if this tender is successful he will, within the period laid down in Article 12(b), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

(d) it includes a declaration by the tenderer that if his tender is successful he will:

— where the obligation to export resulting from the export licence referred to in Article 12(b) is not fulfilled, supplement the security by payment of the amount referred to in Article 13(4), and

— within 30 days following the expiry of the export licence in question, notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used;

(e) it contains all the information required under paragraph 2.

4. A tender may stipulate that it is to be regarded as having been submitted only if:

(a) the minimum export levy or, where applicable, the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;

(b) the tender, if successful, related to all or a specified part of the tendered quantity.

5. A tender which is not submitted in accordance with this Regulation, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

6. Once submitted, a tender may not be withdrawn.

*Article 6*

1. A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer. Without prejudice to Article 13(4), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 12(b).

2. The security may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure*, the security referred to in paragraph 1 shall be released:

(a) to unsuccessful tenderers in respect of the quantity for which no award has been made;

(b) to successful tenderers who have not applied for the relevant export licence within the period referred to in Article 12(b), to the extent of EUR 10 per 100 kilograms of white sugar.

However, this part of the releasable security shall be reduced by the amount representing the difference, as applicable:

— between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former, or

— between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation, when the latter amount is lower than the former;

(c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 29(b) and 30(1)(b)(i) of Regulation (EEC) No 3719/88, the export obligation resulting from the licence referred to under Article 12(b) in accordance with the terms of Article 33 of that Regulation.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In case of *force majeure*, the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

*Article 7*

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. The Commission shall be notified forthwith of the tenders without the tenderers being mentioned by name.

*Article 8*

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

*Article 9*

1. In the light of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either:

— a minimum export levy, or

— a maximum export refund.

2. Subject to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

3. Subject to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

*Article 10*

1. Where a maximum quantity has been fixed for a partial invitation to tender:

— if a minimum export levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest export levy; if the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of export levies quoted until the entire maximum quantity has been accounted for,

— if a maximum export refund is fixed, contracts shall be awarded in accordance with the first indent; if after such awards a quantity is still outstanding, or if there are no tenders quoting an export levy, awards shall be made to tenderers quoting an export refund in ascending order or export refunds quoted until the entire maximum quantity has been accounted for.

2. However, where an award to a particular tenderer in accordance with paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows:

— by division among the tenderers concerned in proportion to the total quantities in each of their tenders, or

— by apportionment among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or

— by the drawing of lots.

*Article 11*

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. In addition, that authority shall send successful tenderers a statement of award.

2. The statement of award shall indicate at least:

(a) the reference of the invitation to tender;

(b) the quantity of white sugar to be exported;

(c) the amount, expressed in euro, of the export levy to be charged, or where applicable, of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

*Article 12*

Every successful tenderer shall have:

(a) the right to receive, in the circumstances referred to under (b), an export licence covering the quantity awarded, indicating the export levy or refund quoted in the tender, as the case may be;

(b) the obligation to lodge, in accordance with the relevant provisions of Regulation (EEC) No 3719/88, an application for an export licence in respect of that quantity, the application not being revocable and Article 12 of Regulation (EEC) No 120/89 not applying in such a case. The application shall be lodged not later than:

— the last working day preceding the date of the partial invitation to tender to be held the following week, or

— if no partial invitation to tender is due to be held that week, the last working day of the following week;

(c) the obligation to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13(4).

Such rights and obligations shall not be transferable.

*Article 13*

1. The first paragraph of Article 9 of Regulation (EC) No 1464/95 shall not apply to the white sugar to be exported under this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held from 1 May 2001 shall be valid only until, 30 September 2001.

Should technical difficulties arise which prevent export being carried out by the expiry date laid down in paragraph 2, the competent authorities in the Member State which issued the export licence may, at the written request of the holder of that licence, extend its validity to 15 October 2001 at the latest, provided that export is not subject to the rules laid down in Article 4 or 5 of Council Regulation (EEC) No 565/80 [1].

3. Export licences issued in respect of the partial invitations held between 2 August 2000 and 30 September 2000 shall be valid only from 1 October 2000.

4. Except in cases of *force majeure*, if the obligation to export resulting from the export licence referred to in Article 12(b) has not been fulfilled and if the security referred to in Article 6 is less than:

(a) the export levy indicated on the licence, less the levy referred to in the second subparagraph of Article 24(1) of Regulation (EC) No 2038/1999 in force on the last day of validity of the said licence; or

(b) the sum of the export levy indicated on the licence and the refund referred to in Article 19(2) of Regulation (EC) No 2038/1999 in force on the last day of validity of the said licence; or

(c) the export refund referred to in Article 19(2) of Regulation (EC) No 2038/1999 in force on the last day of validity of the licence, less the refund indicated on the said licence,

then, for the quantity in respect of which the said obligation was not fulfilled, the licence holder shall be charged an amount equal to the difference between the result of the valuation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6(1).

*Article 14*

1. Notwithstanding Article 7 of Commission Regulation (EC) No 2135/95 [2], if the intervention prices fixed in euro under Regulation (EC) No 2038/1999 or the storage levies fixed in euro pursuant to that Regulation are amended during the interval between the day of expiry of the period for submission of tenders and the day of export, the amounts of the export refunds and the export levies fixed under the terms of this invitation to tender before 1 July 2001, for sugar exported from that date, shall be adjusted.

2. For the adjustment referred to in paragraph 1:

(a) if an intervention price for white sugar applicable with effect from 1 July 2001 is fixed which is greater than that in force on 30 June 2001, the export refund and the export levy shall be adjusted by an amount equal to the difference, expressed in euro per 100 kilograms, between the intervention price for white sugar applicable with effect from 1 July 2001 and that in force on 30 June 2001;

(b) if an intervention price for white sugar applicable with effect from 1 July 2001 is fixed which is lower than that in force on 30 June 2001, the export refund and the export levy shall be adjusted by an amount equal to the difference, expressed in euro per 100 kilograms, between the intervention price for white sugar in force on 30 June 2001 and that applicable with effect from 1 July 2001.

3. For the calculation of the differences referred to in paragraph 2, the intervention prices in question shall be increased by the corresponding storage levy referred to in the second subparagraph of Article 8(2) of Regulation (EC) No 2038/1999.

4. Where only the amount of the storage levy varies from one marketing year to the next, the refund shall be adjusted by applying paragraph 2(a) or 2(b), as appropriate.

5. For the purposes of this Article, the Member State issuing the relevant export licence shall, at the time of issue, complete the 'special particulars' section by adding the following:

'to be adjusted in accordance with tender Regulation (EC) No 1531/2000 for exports which take place after 30 June 2001.'.

6. The adjustment shall be made when the export refund in question is paid.

7. Member States shall inform the Commission as soon as possible of the quantities of sugar for which an adjustment under this Article has been made.

*Article 15*

The standing invitation to tender issued in Regulation (EC) No 1489/1999 shall be closed on 27 July 2000.

*Article 16*

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

[1] OJ L 62, 7.3.1980, p. 5.
[2] OJ L 214, 8.9.1995, p. 16.

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

Done at Brussels, 13 July 2000.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

# COMMISSION REGULATION (EC) No 1532/2000

## of 13 July 2000

## amending Regulation (EC) No 805/1999 laying down certain measures for implementing Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport [1], and in particular Article 9(3) thereof,

Whereas:

(1) Article 7 of Regulation (EC) No 718/1999 requires the Commission to lay down detailed rules for implementing the Community-fleet capacity policy as defined by that Regulation.

(2) Article 4 of Commission Regulation (EC) No 805/1999 [2], adopted pursuant to Regulation (EC) No 718/1999, set ratios for the 'old-for-new' rule to apply from 29 April 1999.

(3) Article 4(2) of Regulation (EC) No 718/1999 requires the 'old-for-new' ratio to be constantly reduced to bring it as quickly as possible and in regular stages to zero no later than 29 April 2003. A new 'old-for-new' ratio should therefore be set for the year 2000.

(4) Economic developments in the various sectors of the inland waterways transport market make it expedient to reduce the various 'old-for-new' ratios mentioned in Article 4 of Regulation (EC) No 718/1999 and set by Article 4 of Regulation (EC) No 805/1999, though without undoing the achievements of the structural improvement carried out since 1990. The ratio for dry cargo carriers should be reduced to 0,80:1, as the sector is continuing to grow. The ratio for tanker vessels requires a smaller adjustment, to 1,15:1, as the situation in this sector remains worrying and the market is not growing. A larger adjustment is required for the pusher craft ratio, to 0,50:1, as overcapacity is not great in this sector.

(5) The measures laid down in this Regulation have been the subject of an opinion from the Group of Experts on Community Fleets Capacity and Promotion Policy set up by Article 6 of Regulation (EC) No 805/1999,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 805/1999 is hereby amended as follows:

1. In Article 4(1), the ratio '1:1' is replaced by '0,80:1'.
2. In Article 4(2), the ratio '1,30:1' is replaced by '1,15:1'.
3. In Article 4(3), the ratio '0,75:1' is replaced by '0,50:1'.

*Article 2*

This Regulation shall enter into force on the twentieth day following that of 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, 13 July 2000.

*For the Commission*
Loyola DE PALACIO
*Vice-President*

[1] OJ L 90, 2.4.1999, p. 1.
[2] OJ L 102, 17.4.1999, p. 64.

# COMMISSION REGULATION (EC) No 1533/2000

## of 13 July 2000

## amending Regulation (EC) No 1485/96 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances [1], as amended by Commission Directive 93/46/EEC [2], and in particular Article 10 thereof,

Whereas:

(1) Commission Regulation (EC) No 1485/96 of 26 July 1996 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances [3] provides for model declarations of use for individual and multiple transactions.

(2) In view of the difficulties caused by the use, by operators, of non-harmonised models and the use of all the official languages of the Community, it is necessary to draw up a uniform model for all operators to facilitate monitoring of the declarations by the Member State authorities.

(3) Although most competent authorities issue approvals of limited duration, this limit is not indicated in the model set out in the Annex to the Regulation, with the result that an undertaking, acting in good faith, could supply category 1 or category 2 substances to an undertaking for which authorisation has expired. It is therefore necessary to indicate any expiry date on the model declarations.

(4) The provisions of this Regulation are in accordance with the opinion of the Committee set up under Article 10 of Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [4], as last amended by Commission Regulation (EEC) No 3769/92 of 21 December 1992 [5] and as referred to in Directive 92/109/EEC,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1485/96 is hereby amended as follows:

1. The second paragraph of Article 1 is replaced by the following text:

   '2. The declaration shall conform to the model set out in point 1 of the Annex to this Regulation. In the case of legal persons, the declaration shall be made on headed notepaper.'

2. The second paragraph of Article 2 is replaced by the following text:

   '2. The declaration shall conform to the model set out in point 2 of the Annex to this Regulation. In the case of legal persons, the declaration shall be made on headed notepaper.'

3. The Annex is replaced by the Annex hereto.

*Article 2*

This Regulation shall enter into force on the twentieth day following that of 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, 13 July 2000.

*For the Commission*

Erkki LIIKANEN

*Member of the Commission*

[1] OJ L 370, 19.12.1992, p. 76.
[2] OJ L 159, 1.7.1993, p. 134.
[3] OJ L 188, 27.7.1996, p. 28.
[4] OJ L 357, 20.12.1990, p. 1.
[5] OJ L 383, 29.12.1992, p. 17.

*ANNEX*

1. Model declaration relating to individual transactions (category 1 or 2)

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 1 OR 2 SUBSTANCE

(INDIVIDUAL TRANSACTIONS)

**I/We,**

Name .....

Address .....

Authorisation/Licence/Registration No or reference (1) .....

issued on ..... by .....
(name and address of the authority)

and valid until/without time limit (complete as appropriate) .....

**have ordered from:**

Name .....

Address .....

**the following substance:** (name and CN code) (2) .....

(quantity) .....

**the substance will be used solely for** .....

We confirm that the substance referred to above will only be re-sold or otherwise supplied to a customer on the condition that the customer will furnish a declaration of use in accordance with this model or, for category 2 substances, a declaration relating to multiple transactions.

Signature ..... Name .....
(in block capitals)

Position ..... Date .....

(1) Complete as appropriate.
(2) Combined Nomenclature code.

2. Model declaration relating to multiple transactions (category 2)

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 2 SUBSTANCE
(MULTIPLE TRANSACTIONS)

**I/We,**

Name .....

Address .....

Registration No or reference .....

Registered on ..... by .....
(name and address of the authority)

and valid until/without time limit (complete as appropriate) .....

**intend to order from:**

Name .....

Address .....

**the following substance:** (name and CN code) [1] .....

(quantity) .....

**the substance will be used solely for** .....

and represents a supply which on best estimate will be sufficient for ..... months (maximum of 12 months).

We confirm that the substance referred to above will only be re-sold or otherwise supplied to a customer on the condition that the customer will furnish a declaration of use in accordance with this model or a declaration relating to individual transactions.

Signature ..... Name .....
(in block capitals)

Position ..... Date .....

[1] Combined Nomenclature code.

# COMMISSION REGULATION (EC) No 1534/2000

## of 13 July 2000

## determining the sensitive production areas and/or the groups of high-quality varieties exempt from application of the quota buyback programme in raw tobacco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco [1], as last amended by Regulation (EC) No 1336/2000 [2], and in particular Article 14a thereof,

Whereas:

(1) Under Article 34(2) of Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector [3], as last amended by Regulation (EC) No 1249/2000 [4], the Commission must determine, on the basis of proposals from the Member States, which sensitive production areas and/or groups of high-quality varieties, up to a maximum of 25 % of each Member State's guarantee threshold, are to be exempt from application of the quota buyback programme.

(2) At the request of certain Member States, these groups of high-quality varieties should be determined.

(3) Article 35(2) of Regulation (EC) No 2848/98 stipulates that the Member State must make public its intention to sell from 1 September so that other producers may buy the quota before it is actually bought back. Therefore this Regulation must apply from 31 August 2000.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The quantities of groups of high-quality varieties exempt from quota buyback for the 2000 harvest are as follows:

| | |
|---|---|
| in Portugal: | |
| Group I | 1 321 tonnes, |
| Group II | 291 tonnes. |
| in France: | |
| Group I | 1 438 tonnes, |
| Group II | 2 237,219 tonnes, |
| Group III | 1 302,793 tonnes. |

*Article 2*

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

It shall apply from 31 August 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 215, 30.7.1992, p. 70.
[2] OJ L 154, 27.6.2000, p. 2.
[3] OJ L 358, 31.12.1998, p. 17.
[4] OJ L 142, 16.6.2000, p. 3.

# COMMISSION REGULATION (EC) No 1535/2000

## of 13 July 2000

## amending Regulation (EC) No 1498/1999 laying down rules for the implementation of Council Regulation (EEC) No 804/68 as regards communications between the Member States and the Commission in the milk and milk products sector

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], as last amended by Regulation (EC) No 1040/2000 [2], and in particular Article 40 thereof,

Whereas:

(1) Article 9(1)(b) of Commission Regulation (EC) No 1498/1999 of 8 July 1999 laying down rules for the implementation of Council Regulation (EEC) No 804/68 as regards communications between the Member States and the Commission in the milk and milk products sector [3], provides, *inter alia*, for the forwarding of data on export licence applications lodged under invitations to tender opened in third countries. It also provides for communication of the quantity of products covered by the invitation to tender. That quantity may be revised by the body issuing the invitation to tender. As a result, in order to have complete data and ensure proper administration of licences, the Member States should be required to inform the Commission of that revised quantity as soon as it comes to their attention. Certain provisions on the information to be provided on invitations to tender should also be made more specific.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 9(1) of Regulation (EC) No 1498/1999 is amended as follows:

1. Points (b) and (c) are replaced by the following text:

'(b) the quantities, broken down by application and code of the export refund nomenclature for milk products and by destination code, covered by applications for provisional licences as referred to in Article 8 of Regulation (EC) No 174/1999 submitted on that day, indicating the closing date for submitting tenders and the quantity of products covered by the invitation to tender or, in the case of an invitation to tender opened by the armed forces within the meaning of Article 36(1)(c) of Commission Regulation (EC) No 800/1999 [1] not specifying the quantity, the approximate quantity broken down as specified above (IDES computer code 2);

(c) the quantities, broken down by application and code of the export refund nomenclature for milk products and by destination code, for which provisional licences as referred to in Article 8 of Regulation (EC) No 174/1999 were definitively issued or cancelled that day, indicating the body issuing the invitation to tender, the date of the provisional licence and the quantity it covers;'.

2. The following point (d) is inserted:

'(d) where applicable, the revised quantity of products covered by the invitation to tender referred to in point (b) above.'

*Article 2*

This Regulation shall enter into force on the seventh 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, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 118, 19.5.2000, p. 1.
[3] OJ L 174, 9.7.1999, p. 3.

# COMMISSION REGULATION (EC) No 1536/2000

## of 13 July 2000

## concerning applications for import licences for oat grains otherwise worked qualifiying for the conditions referred to in Commission Regulation (EC) No 2369/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV:6 negotiations [1], and in particular Article 1 thereof,

Whereas:

(1) Commission Regulation (EC) No 2369/96 of 12 December 1996 opening and providing for the administration of a Community tariff quota for 10 000 tonnes of oat grains otherwise worked falling within CN code 1104 22 98 [2], as amended by Regulation (EC) No 630/97 [3], establishes special rules governing the organisation of imports under the quota.

(2) Aricle 3(3) of Regulation (EC) No 2369/96 lays down that the Commission must set a percentage for the reduction of quantities if the applications for import licences exceed the quantities that may be allocated.

Applications for licences submitted on 10 July 2000 relate to 1 619,054 t of oat grains otherwise worked and the maximum quantity to be allocated is 1 000,00 t. The appropriate percentage of reduction for import licence applications submitted on 10 July 2000 and qualifiying for the conditions provided for in Regulation (EC) No 2369/96 must therefore be set,

HAS ADOPTED THIS REGULATION:

*Article 1*

Applications for import licences for oat grains otherwise worked qualifying for the conditions provided for in Regulation (EC) No 2369/96 submitted on 10 July 2000 and notified to the Commission shall be accepted for the tonnage indicated therein mutliplied by a coefficient of 0,617. Applications not notified to the Commission shall be refused.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 146, 20.6.1996, p. 1.
[2] OJ L 323, 13.12.1996, p. 8.
[3] OJ L 96, 11.4.1997, p. 5.

# COMMISSION REGULATION (EC) No 1537/2000

## of 13 July 2000

## amending representative prices and additional duties for the import of certain products 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 organisation of the markets in the sugar sector [1],

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses [2], as last amended by Regulation (EC) No 624/98 [3], and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

(1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1441/1999 [4], as last amended by Regulation (EC) No 1361/2000 [5].

(2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 252, 25.9.1999, p. 1.
[2] OJ L 141, 24.6.1995, p. 16.
[3] OJ L 85, 20.3.1998, p. 5.
[4] OJ L 166, 1.7.1999, p. 77.
[5] OJ L 155, 28.6.2000, p. 45.

*ANNEX*

**to the Commission Regulation of 13 July 2000 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99**

*(EUR)*

| CN code | Amount of representative prices per 100 kg net of product concerned | Amount of additional duty per 100 kg net of product concerned |
|---|---|---|
| 1701 11 10 (1) | 24,09 | 4,25 |
| 1701 11 90 (1) | 24,09 | 9,49 |
| 1701 12 10 (1) | 24,09 | 4,06 |
| 1701 12 90 (1) | 24,09 | 9,06 |
| 1701 91 00 (2) | 24,68 | 13,13 |
| 1701 99 10 (2) | 24,68 | 8,37 |
| 1701 99 90 (2) | 24,68 | 8,37 |
| 1702 90 99 (3) | 0,25 | 0,40 |

(1) For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

(2) For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

(3) By 1 % sucrose content.

# COMMISSION REGULATION (EC) No 1538/2000
## of 13 July 2000
## fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1253/1999 [2], and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.

(2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4].

(3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

(4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(5) The refund must be fixed once a month. It may be altered in the intervening period.

(6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 160, 26.6.1999, p. 18.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 313, 21.11.1998, p. 16.

*ANNEX*

**to the Commission Regulation of 13 July 2000 fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

*(EUR/t)*

| Product code | Destination (1) | Amount of refund |
|---|---|---|
| 1001 10 00 9200 | — | — |
| 1001 10 00 9400 | 01 | 0 |
| 1001 90 91 9000 | — | — |
| 1001 90 99 9000 | 01 | 0 |
| 1002 00 00 9000 | 01 | 0 |
| 1003 00 10 9000 | — | — |
| 1003 00 90 9000 | 01 | 0 |
| 1004 00 00 9200 | — | — |
| 1004 00 00 9400 | — | — |
| 1005 10 90 9000 | — | — |
| 1005 90 00 9000 | 04 | 30,00 |
| | 02 | 0 |
| 1007 00 90 9000 | — | — |
| 1008 20 00 9000 | — | — |
| 1101 00 11 9000 | — | — |
| 1101 00 15 9100 | 01 | 22,00 |
| 1101 00 15 9130 | 01 | 20,50 |
| 1101 00 15 9150 | 01 | 19,00 |
| 1101 00 15 9170 | 01 | 17,50 |
| 1101 00 15 9180 | 01 | 16,25 |
| 1101 00 15 9190 | — | — |
| 1101 00 90 9000 | — | — |
| 1102 10 00 9500 | 01 | 42,75 |
| 1102 10 00 9700 | 01 | 33,75 |
| 1102 10 00 9900 | — | — |
| 1103 11 10 9200 | 01 | 0 (2) |
| 1103 11 10 9400 | 01 | 0 (2) |
| 1103 11 10 9900 | — | — |
| 1103 11 90 9200 | 01 | 0 (2) |
| 1103 11 90 9800 | — | — |

(1) The destinations are identified as follows:
01 all third countries,
02 other third countries,
03 Switzerland, Liechtenstein,
04 Slovenia.

(2) No refund is granted when this product contains compressed meal.

*NB:* The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30.7.1992, p. 20).

# COMMISSION REGULATION (EC) No 1539/2000

## of 13 July 2000

## fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Commission Regulation (EC) No 1253/1999 ([2]), and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([3]), as amended by Regulation (EC) No 2072/98 ([4]), and in particular Article 13(3) thereof,

Whereas:

(1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.

(2) Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ([5]), as last amended by Regulation (EC) No 701/2000 ([6]), specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.

(3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.

(4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. Whereas it is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. Whereas the fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

(5) Now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC ([7]), it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.

(6) Article 4(5)(b) of Regulation (EC) No 1222/94 provides that, in the absence of the proof referred to in Article 4(5)(a) of that Regulation, a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Commission Regulation (EEC) No 1722/93 ([8]), as last amended by Regulation (EC) No 87/1999 ([9]), for the basic product in question, used during the assumed period of manufacture of the goods.

(7) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

(8) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 160, 26.6.1999, p. 18.
([3]) OJ L 329, 30.12.1995, p. 18.
([4]) OJ L 265, 30.9.1998, p. 4.
([5]) OJ L 136, 31.5.1994, p. 5.
([6]) OJ L 83, 4.4.2000, p. 6.
([7]) OJ L 275, 29.9.1987, p. 36.
([8]) OJ L 159, 1.7.1993, p. 112.
([9]) OJ L 9, 15.1.1999, p. 8.

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

Done at Brussels, 13 July 2000.

*For the Commission*
Erkki LIIKANEN
*Member of the Commission*

*ANNEX*

**to the Commission Regulation of 13 July 2000 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty**

*(EUR/100 kg)*

| CN code | Description of products (1) | Rate of refund per 100 kg of basic product | |
|---|---|---|---|
| | | In case of advance fixing of refunds | Other |
| 1001 10 00 | Durum wheat: | | |
| | – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America | — | — |
| | – in other cases | — | — |
| 1001 90 99 | Common wheat and meslin: | | |
| | – on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America | — | — |
| | – in other cases: | | |
| | – – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2) | — | — |
| | – – in other cases | — | — |
| 1002 00 00 | Rye | 3,394 | 3,394 |
| 1003 00 90 | Barley | — | — |
| 1004 00 00 | Oats | 2,511 | 2,511 |
| 1005 90 00 | Maize (corn) used in the form of: | | |
| | – starch: | | |
| | – – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2) | 3,761 | 3,761 |
| | – – in other cases | 5,951 | 5,951 |
| | – glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 (3): | | |
| | – – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2) | 2,273 | 2,273 |
| | – – in other cases | 4,463 | 4,463 |
| | – other (including unprocessed) | 5,951 | 5,951 |
| | Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize: | | |
| | – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2) | 3,761 | 3,761 |
| | – in other cases | 5,951 | 5,951 |
| ex 1006 30 | Wholly-milled rice: | | |
| | – round grain | 11,938 | 11,938 |
| | – medium grain | 11,938 | 11,938 |
| | – long grain | 11,938 | 11,938 |
| 1006 40 00 | Broken rice | 2,770 | 2,770 |
| 1007 00 90 | Sorghum | — | — |

(1) As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1222/94 shall be applied (OJ L 136, 31.5.1994, p. 5).

(2) The goods concerned are listed in Annex I of amended Regulation (EEC) No 1722/93 (OJ L 159, 1.7.1993, p. 112).

(3) For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

# COMMISSION REGULATION (EC) No 1540/2000
## of 13 July 2000
## fixing the export refunds on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 1253/1999 [2], and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [3], as last amended by Regulation (EC) No 2072/98 [4], and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund.

(2) Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other. The same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market.

(3) Article 4 of Commission Regulation (EC) No 1518/95 [5], as amended by Regulation (EC) No 2993/95 [6], on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated.

(4) The refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tegument, protein, fat and starch content of the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product.

(5) There is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products. For certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time.

(6) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(7) The refund must be fixed once a month; whereas it may be altered in the intervening period.

(8) Certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1(1)(d) of Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 160, 26.6.1999, p. 18.
[3] OJ L 329, 30.12.1995, p. 18.
[4] OJ L 265, 30.9.1998, p. 4.
[5] OJ L 147, 30.6.1995, p. 55.
[6] OJ L 312, 23.12.1995, p. 25.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

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*ANNEX*

**to the Commission Regulation of 13 July 2000 fixing the export refunds on products processed from cereals and rice**

*(EUR/tonne)*

| Product code | Refund |
|---|---|
| 1102 20 10 9200 (1) | 87,23 |
| 1102 20 10 9400 (1) | 74,77 |
| 1102 20 90 9200 (1) | 74,77 |
| 1102 90 10 9100 | 0,00 |
| 1102 90 10 9900 | 0,00 |
| 1102 90 30 9100 | 47,32 |
| 1103 12 00 9100 | 47,32 |
| 1103 13 10 9100 (1) | 112,16 |
| 1103 13 10 9300 (1) | 87,23 |
| 1103 13 10 9500 (1) | 74,77 |
| 1103 13 90 9100 (1) | 74,77 |
| 1103 19 10 9000 | 35,54 |
| 1103 19 30 9100 | 0,00 |
| 1103 21 00 9000 | 0,00 |
| 1103 29 20 9000 | 0,00 |
| 1104 11 90 9100 | 0,00 |
| 1104 12 90 9100 | 52,58 |
| 1104 12 90 9300 | 42,06 |
| 1104 19 10 9000 | 0,00 |
| 1104 19 50 9110 | 99,70 |
| 1104 19 50 9130 | 81,00 |
| 1104 21 10 9100 | 0,00 |
| 1104 21 30 9100 | 0,00 |
| 1104 21 50 9100 | 0,00 |
| 1104 21 50 9300 | 0,00 |
| 1104 22 20 9100 | 42,06 |
| 1104 22 30 9100 | 44,69 |
| 1104 23 10 9100 | 93,47 |
| 1104 23 10 9300 | 71,66 |
| 1104 29 11 9000 | 0,00 |
| 1104 29 51 9000 | 0,00 |
| 1104 29 55 9000 | 0,00 |
| 1104 30 10 9000 | 0,00 |
| 1104 30 90 9000 | 15,58 |
| 1107 10 11 9000 | 0,00 |
| 1107 10 91 9000 | 0,00 |
| 1108 11 00 9200 | 0,00 |
| 1108 11 00 9300 | 0,00 |
| 1108 12 00 9200 | 99,70 |
| 1108 12 00 9300 | 99,70 |
| 1108 13 00 9200 | 99,70 |
| 1108 13 00 9300 | 99,70 |
| 1108 19 10 9200 | 44,08 |
| 1108 19 10 9300 | 44,08 |
| 1109 00 00 9100 | 0,00 |
| 1702 30 51 9000 (2) | 97,67 |
| 1702 30 59 9000 (2) | 74,77 |
| 1702 30 91 9000 | 97,67 |
| 1702 30 99 9000 | 74,77 |
| 1702 40 90 9000 | 74,77 |
| 1702 90 50 9100 | 97,67 |
| 1702 90 50 9900 | 74,77 |
| 1702 90 75 9000 | 102,34 |
| 1702 90 79 9000 | 71,03 |
| 2106 90 55 9000 | 74,77 |

(1) No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

(2) Refunds are granted in accordance with Council Regulation (EEC) No 2730/75 (OJ L 281, 1.11.1975, p. 20), amended.

*NB:* The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

# COMMISSION REGULATION (EC) No 1541/2000
## of 13 July 2000
## fixing the export refunds on cereal-based compound feedingstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Regulation (EC) No 1253/1999 [2], and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) Regulation (EC) No 1517/95 of 29 June 1995 laying down detailed rules for the application of Regulation (EEC) No 1766/92 as regards the arrangements for the export and import of compound feedingstuffs based on cereals and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice [3] in Article 2 lays down general rules for fixing the amount of such refunds.

(3) That calculation must also take account of the cereal products content. In the interest of simplification, the refund should be paid in respect of two categories of 'cereal products', namely for maize, the most commonly used cereal in exported compound feeds and maize products, and for 'other cereals', these being eligible cereal products excluding maize and maize products. A refund should be granted in respect of the quantity of cereal products present in the compound feedingstuff.

(4) Furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export.

(5) However, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported.

(6) The refund must be fixed once a month; whereas it may be altered in the intervening period.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the compound feedingstuffs covered by Regulation (EEC) No 1766/92 and subject to Regulation (EC) No 1517/95 are hereby fixed as shown in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 160, 26.6.1999, p. 18.
[3] OJ L 147, 30.6.1995, p. 51.

*ANNEX*

**to the Commission Regulation of 13 July 2000 fixing the export refunds on cereal-based compound feedingstuffs**

Product code benefiting from export refund (1):

2309 10 11 9000, 2309 10 13 9000, 2309 10 31 9000, 2309 10 33 9000, 2309 10 51 9000, 2309 10 53 9000, 2309 90 31 9000, 2309 90 33 9000, 2309 90 41 9000, 2309 90 43 9000, 2309 90 51 9000, 2309 90 53 9000.

*(EUR/t)*

| Cereal products (2) | Amount of refund (2) |
|---|---|
| Maize and maize products:<br>CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10 | 62,31 |
| Cereal products (2) excluding maize and maize products | 0,00 |

(1) The product codes are defined in Sector 5 of the Annex to Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

(2) For the purposes of the refund only the starch coming from cereal products is taken into account.

Cereal products means the products falling within subheadings 0709 90 60 and 0712 90 19, Chapter 10, and headings Nos 1101, 1102, 1103 and 1104 (unprocessed and not reconstituted excluding subheading 1104 30) and the cereals content of the products falling within subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature. The cereals content in products under subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature is considered to be equal to the weight of this final product.

No refund is paid for cereals where the origin of the starch cannot be clearly established by analysis.

# COMMISSION REGULATION (EC) No 1542/2000
## of 13 July 2000
## fixing production refunds on cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992, on the common organisation of the market in cereals ([1]), as last amended by Commission Regulation (EC) No 1253/1999 ([2]), and in particular Article 7 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([3]), as last amended by Regulation (EC) No 2072/98 ([4]), and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the arrangements concerning production refunds in the cereals and rice sectors ([5]), as last amended by Regulation (EC) No 87/1999 ([6]), and in particular Article 3 thereof,

Whereas:

(1) Regulation (EEC) No 1722/93 establishes the conditions for granting the production refund; whereas the basis for the calculation is established in Article 3 of the said Regulation; whereas the refund thus calculated must be fixed once a month and may be altered if the price of maize and/or wheat changes significantly.

(2) The production refunds to be fixed in this Regulation should be adjusted by the coefficients listed in the Annex II to Regulation (EEC) No 1722/93 to establish the exact amount payable.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The refund referred to in Article 3(2) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from maize, wheat, barley, oats, potatoes, rice or broken rice, shall be EUR 38,02/t.

*Article 2*

This Regulation shall enter into force on 14 July 2000.

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

Done at Brussels, 13 July 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 160, 26.6.1999, p. 18.
([3]) OJ L 329, 30.12.1995, p. 18.
([4]) OJ L 265, 30.9.1998, p. 4.
([5]) OJ L 159, 1.7.1993, p. 112.
([6]) OJ L 9, 15.1.1999, p. 8.

II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 27 June 2000**

**accepting undertakings in connection with the anti-dumping proceeding concerning imports of flat pallets of wood originating in the Republic of Poland**

*(notified under document number C(2000) 1668)*

(2000/437/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(1) thereof,

Having regard to Commission Regulation (EC) No 1023/97 of 6 June 1997 imposing a provisional anti-dumping duty on certain imports of flat pallets of wood originating in Poland and accepting undertakings offered from certain exporters in connection with those imports [3], as amended by Regulations (EC) No 1632/97 [4] and (EC) No 1633/97 [5], and in particular Article 2 thereof,

After consulting the Advisory Committee,

Whereas:

### A. PREVIOUS PROCEDURE

(1) The Commission, by Regulation (EC) No 1023/97 (hereinafter referred to as 'the provisional Regulation'), imposed provisional anti-dumping duties on certain imports of flat pallets of wood falling within CN code ex 4415 20 20 originating in the Republic of Poland and accepted undertakings offered from certain exporting producers. These undertakings concerned only one pallet type, i. e. the EUR pallet.

(2) Since sampling was used in the investigation, requests for reviews under Article 11(4) of Regulation (EC) No 384/96 could not be accepted. However, in order to ensure equal treatment between new exporters and the cooperating companies not included in the sample during the original investigation, the provisional Regulation was amended. Article 2 of Regulation (EC) No 1632/97 stipulated that new Polish exporting producers could have undertakings accepted with regard to exports of EUR pallets, provided they satisfied the criteria set out therein.

(3) By Regulation (EC) No 2334/97 [6], as last amended by Regulation (EC) No 2048/1999 [7], the Council imposed a definitive anti-dumping duty on certain imports of flat pallets of wood originating in the Republic of Poland.

### B. NEW EXPORTERS' REQUEST

(4) Following the adoption of Regulation (EC) No 2334/97, six further new Polish exporting producers have requested that Article 2 of Regulation (EC) No 1023/97 be applied to them and they offered undertakings with regard to the EUR pallets. They have also provided sufficient evidence pursuant to Article 2 of Regulation (EC) No 1023/97 showing that they are genuine new exporting producers. In application of Article 2 of Regulation (EC) No 1023/97, the undertakings offered by these six Polish exporting producers with regard to the EUR pallet should therefore be accepted.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ L 150, 7.6.1997, p. 4.
[4] OJ L 225, 15.8.1997, p. 11.
[5] OJ L 225, 15.8.1997, p. 13.
[6] OJ L 324, 27.11.1997, p. 1.
[7] OJ L 255, 30.9.1999, p. 1.

C. **WITHDRAWAL OF UNDERTAKING**

(5) Two Polish exporting producers, P.P.H. 'Pamadex' and P.H.U. 'Akropol', from which the Commission accepted an undertaking under Regulation (EC) No 1023/97, have stated that they do not produce the product concerned any longer. Therefore, the Commission informed them that it is intended to remove them from the list of companies from which an undertaking was accepted. The two companies did not object to this course of action. It should also be noted that those two companies could again offer an undertaking should they decide to resume production and exports of the EUR pallets.

D. **COMPANIES SUBJECT TO THE UNDERTAKING**

(6) For the sake of clarity all the companies subject to the undertaking are listed in the Annex to this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The undertakings offered with regard to the EUR pallet by:

— P.P.H.U. 'ELMA' S.C., Sobieseki,

— P.P.H SWENDEX S.C., Lublin,

— P.P.H.U. Zbigniew Marek, Andrichow,

— Pomorski Serwis Paletowy Sp. z o.o., Kobylnica,

— 'EMI' S.C., Bilgoraj,

— P.P.H.U ROMAX Import-Eksport, Wroclaw,

in connection with the anti-dumping proceeding concerning imports of flat pallets of wood originating in Poland and falling within CN code ex 4415 20 20 are hereby accepted.

*Article 2*

The undertakings accepted with regard to the EUR pallet by:

— P.P.H. 'Pamadex', Ligota,

— P.H.U. 'Akropol', Krakow,

in connection with the anti-dumping proceeding concerning imports of flat pallets of wood originating in Poland and falling within CN code ex 4415 20 20 lapse.

*Article 3*

Articles 1 and 2 shall take effect on the day following publication of this Decision in the *Official Journal of the European Communities*.

Done at Brussels, 27 June 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*

*ANNEX*

**Manufacturer**

| | | Taric additional code |
|---|---|---|
| 1 | 'Baumann Palety' Sp.zo.o., Barczewo | 8570 |
| 2 | E. Dziurny — C. Nowak S.C., Snietnica | 8571 |
| 3 | F.P.H. 'Tina' S.C., Katowice | 8572 |
| 4 | Firma 'Sabelmar' S.C., Konczyce Male | 8573 |
| 5 | Z.P.H.U. Miroslaw Przybyiek, Klonowa | 8574 |
| 6 | Internationale Paletten Company Sp., Lebork | 8575 |
| 7 | 'Kross-Pol' Sp.zo.o., Kolobrzeg | 8576 |
| 8 | P.P.U.H. 'Drewmax' Sp.zo.o. (formerly P.P.H. 'Drewnex'), Krakow | 8577 |
| 9 | P.P.H. 'GKT' S.C., Majdan Nowy | 8584 |
| 10 | P.P.H. 'Unikat', Aleksandrow IV 697 | 8586 |
| 11 | P.P.H.U. 'Adapol' S.C., Wolomin | 8587 |
| 12 | P.P.H.U. 'Alpa' Sp.zo.o., Dobrzyca | 8588 |
| 13 | P.P.U.H. 'Alwa' Sp.zo.o., Tychowo | 8589 |
| 14 | P.P.H.U. 'Palimex' Sp.zo.o., Wloszakowice | 8590 |
| 15 | P.P.U.H. 'SMS' — St. Mrozowicz, Suleczyno | 8591 |
| 16 | P.T.H. 'Mirex', Kolobrzeg | 8597 |
| 17 | P.W. 'Intur-KFS' Sp.zo.o., Inowroclaw | 8662 |
| 18 | P.W. 'Peteco' Sp.zo.o., Warszawa | 8690 |
| 19 | 'Paletex' Produkcja Palet, Roman Panasiuk, Warszawa | 8691 |
| 20 | Produkcja Palet 'A. Adamus', Kuznia Grabowska | 8692 |
| 21 | P.P.H. Zygmunt Skibinski, Kowal | 8693 |
| 22 | 'Scanproduct' S.A., Czarny Dujanec | 8715 |
| 23 | S.U.T.R. 'Rol Trak', Prochowice | 8714 |
| 24 | 'Transdrewneks' Sp.zo.o., Grudziadz-Owczarki | 8716 |
| 25 | W.Z.P.U.M. 'Euro-Tech', Rakszawa | 8725 |
| 26 | Z.P.H. 'Palettenwerk' — K. Kozik, Jordanow | 8726 |
| 27 | Zaklad Przerobu Drewna S.C., Drawsko Pomorskie | 8745 |
| 28 | Z.P.H.U. 'Sek-Pol' Sp.zo.o., Tarnobrzeg | 8526 |
| 29 | 'Euro-Mega-Plus' Sp.zo.o., Kielce | 8527 |

| | | |
|---|---|---|
| 30 | 'C.M.C.' Sp.zo.o., Andrychow, Inwald | 8528 |
| 31 | Wyrob, Sprzedaz, Skup Palet, Josef Kolodziejczyk, Aleksandrow IV 704 | 8529 |
| 32 | Firma Produkcyjno Transportowa Marian Gerka, Brodnica | 8530 |
| 33 | Z.P.H.U. 'Drewnex' S.C., Zelazkow 45 b | 8531 |
| 34 | Import-Export 'Elko' Sp.zo.o., Kalisz | 8532 |
| 35 | P.P.H.U. 'Probox', Import-Export, Kalisz | 8533 |
| 36 | Drewpal S.C., Stawiszyn | 8534 |
| 37 | Zaman S.C., Radom | 8535 |
| 38 | 'Marimpex', Pulawy | 8537 |
| 39 | 'AVEN' Sp.zo.o., Kostrzyn | 8558 |
| 40 | P.P.H.U. 'Eurex' S.C., Godynice | 8538 |
| 41 | MACED Sklad Palet, J. Macionga, Miastko | 8539 |
| 42 | ENKEL S.C., Pulawy | 8540 |
| 43 | Produkcja Stolarska Posrednictwo Export-Import, W.i.T. HENSOLDT, Lebork | 8541 |
| 44 | P.P.U.H. 'DREWPOL', Braszewice | 8834 |
| 45 | PTN Kruklanki Sp.zo.o., Krulanki | 8556 |
| 46 | WEDAM S.C., Stezyca | 8557 |
| 47 | Import-Export Jan Sibinski, Czajkow | 8559 |
| 48 | P.P.H.U. 'Alk', Bierzwnik | 8561 |
| 49 | 'Empol' S.C., Jastrzebniki 37 | 8560 |
| 50 | Euro-Handels Sp.zo.o., Szczecin | 8440 |
| 51 | P.P.H. 'Paletex' Sibinski Jaroslaw, Czajkow | 8441 |
| 52 | Firma 'KIKO' S.C., Poznan | 8443 |
| 53 | 'Enkel' Waldemar Wnuk, Pulawy | 8444 |
| 54 | Sliwka Lucyna, Klodzko | 8445 |
| 55 | Firma Borkowski S.C. Export-Import, Grabow n. Prosna | 8446 |
| 56 | Produkcja-Skup Elementow i Palet, Stanislaw Gorecki, Czajkow | 8483 |
| 57 | 'Bilusa' Sp.zo.o., Klodawa | 8484 |
| 58 | P.P.U.H. PAL-POL S.C., Prabuty | 8485 |
| 59 | Firma 'A.C.S.' S.C., Kamien | 8486 |
| 60 | 'SMT' Sp.zo.o., Miastko | 8562 |
| 61 | Firma Transdrewneks Gadzala Antoni, Torun | 8563 |
| 62 | 'Palko' Sp.zo.o., Sedziszow | 8565 |
| 63 | 'D & M & D' Sp.zo.o., Blizanow | 8566 |

| | | |
|---|---|---|
| 64 | P.P.H. 'Vector', Kalisz | 8567 |
| 65 | P.P.H.U. 'ELMA' S.C., Sobieseki | A109 |
| 66 | P.P.H. SWENDEX S.C., Lublin | A110 |
| 67 | P.P.H.U. Zbigniew Marek, Andrichow | A113 |
| 68 | Pomorski Serwis Paletowy Sp.zo.o., Kobylnica | A114 |
| 69 | 'EMI' S.C., Bilgoraj | A124 |
| 70 | P.P.H.U. ROMAX Import-Eksport, Wroclaw | A133 |