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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1407/2002
of 23 July 2002
on State aid to the coal industry**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article 87(3)(e) and Article 89 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Consultative Committee set up in accordance with the Treaty establishing the European Coal and Steel Community ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas:

- (1) The ECSC Treaty and the rules adopted for its application, in particular Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽⁵⁾, expire on 23 July 2002.
- (2) The competitive imbalance between Community coal and imported coal has forced the coal industry to embark on substantial restructuring measures involving major cutbacks in activity over the past few decades.
- (3) The Community has become increasingly dependent on external supplies of primary energy sources. As stated in the Green Paper on a European strategy for the security of energy supply adopted by the Commission on 29 November 2000, the diversification of energy sources, both by geographical area and in products, will make it possible to create the conditions for greater security of supply. Such a strategy includes the development of indigenous sources of primary energy, more especially sources of energy used in the production of electricity.
- (4) In addition, the world political situation brings an entirely new dimension to the assessment of geopolitical risks and security risks in the energy sector and gives a

wider meaning to the concept of security of supplies. In this connection a regular assessment must be made of the risks linked to the Union's energy supply structure.

- (5) As indicated in the Green Paper on a European strategy for the security of energy supply, it is therefore necessary, on the basis of the current energy situation, to take measures which will make it possible to guarantee access to coal reserves and hence a potential availability of Community coal.
- (6) In this connection, the European Parliament adopted a Resolution on 16 October 2001 on the Commission Green Paper on a European strategy for the security of energy supply which acknowledges the importance of coal as an indigenous source of energy. The European Parliament said that provision should be made for financial support for coal production, whilst recognising the need for more efficiency in this sector and for cutting back subsidies.
- (7) Strengthening the Union's energy security, which underpins the general precautionary principle, therefore justifies the maintenance of coal-producing capability supported by State aid. However implementing this objective does not put into question the need to continue the restructuring process of the coal industry given that, in the future, the bulk of Community coal production is likely to remain uncompetitive vis-à-vis imported coal.
- (8) A minimum level of coal production, together with other measures, in particular to promote renewable energy sources, will help to maintain a proportion of indigenous primary energy sources, which will significantly boost the Union's energy security. Furthermore, a proportion of indigenous primary energy sources will also serve to promote environmental objectives within the framework of sustainable development.

⁽¹⁾ OJ C 304 E, 30.10.2001, p. 202.

⁽²⁾ Opinion delivered on 30 May 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 321, 16.11.2001, p. 2.

⁽⁴⁾ OJ C 48, 21.2.2002, p. 49.

⁽⁵⁾ OJ L 329, 30.12.1993, p. 12.

- (9) The strategic context of energy security is of an evolving nature which justifies at medium term an evaluation of this Regulation, taking into account the contributions of all indigenous primary energy sources.
- (10) This Regulation does not affect the Member States' freedom to choose what energy sources will make up their supply. Aid, and the amount of it, will be granted in accordance with the rules applying to each category of energy source and on the merits of each of the sources.
- (11) In accordance with the principle of proportionality, the production of subsidised coal must be limited to what is strictly necessary to make an effective contribution to the objective of energy security. The aid given by Member States will therefore be limited to covering investment costs or current production losses where mining is part of a plan for accessing coal reserves.
- (12) State aid to help maintain access to coal reserves to ensure energy security should be earmarked for production units which could contribute to this objective at satisfactory economic conditions. The application of these principles will help to contribute to the digression of aid to the coal industry.
- (13) Given risks related to geological uncertainties, aid to cover initial investment cost allow production units which are viable, or close to economic viability, to implement the technical investments necessary to maintain their competitive capacity.
- (14) The restructuring of the coal industry has major social and regional repercussions as a result of the reduction in activity. Production units which are not eligible for aid as part of the objective of maintaining access to coal reserves must therefore be able to benefit, temporarily, from aid to alleviate the social and regional consequences of their closure. This aid will in particular enable the Member States to implement adequate measures for the social and economic development of the areas affected by the restructuring.
- (15) Undertakings will also be eligible for aid to cover costs which, in accordance with normal accounting practice, do not affect the cost of production. This aid is intended to cover exceptional costs, inherited liabilities in particular.
- (16) The degression of aid to the coal industry will enable the Member States, in accordance with their budgetary constraints, to reallocate the aid granted to the energy sector on the basis of the principle of a gradual transfer of aid normally given to conventional forms of energy, in particular the coal sector, to renewable energy sources. Aid for renewable energy sources will be granted in accordance with the rules and criteria set out in the Community guidelines on State aid for environmental protection ⁽¹⁾.
- (17) In accomplishing its task, the Community must ensure that normal conditions of competition are established, maintained and complied with. With regard more especially to the electricity market, aid to the coal industry must not be such as to affect electricity producers' choice of sources of primary energy supply. Consequently, the prices and quantities of coal must be freely agreed between the contracting parties in the light of prevailing conditions on the world market.
- (18) A minimum level of production of subsidised coal will also help to maintain the prominent position of European mining and clean coal technology, enabling it in particular to be transferred to the major coal-producing areas outside the Union. Such a policy will contribute to a significant global reduction in pollutant and greenhouse gas emissions.
- (19) The Commission's authorising power must be exercised on the basis of precise and full knowledge of the measures which governments plan to take. Member States should therefore provide the Commission with a consolidated report showing the full details of the direct or indirect aid which they plan to grant to the coal industry, specifying the reasons for and scope of the proposed aid, its relationship with a plan for accessing coal reserves and, where appropriate, any closure plan submitted.
- (20) In order to take account of the deadline set in Directive 2001/80/EC ⁽²⁾ on large combustion plants, Member States should have the possibility to notify the Commission of the individual identity of production units forming part of the closure plans or the plans for accessing coal reserves by June 2004 at the latest.
- (21) Provided it is compatible with the present scheme, aid for research and development and aid for environmental protection and training may also be granted by Member States to the coal industry. The aid must be granted in compliance with the requirements and criteria laid down by the Commission for these categories of aid.
- (22) The implementation of the provisions of this Regulation on the expiry of the ECSC Treaty and Decision No 3632/93/ECSC may give rise to difficulties for undertakings owing to the fact that two aid schemes will apply during the same calendar year. It is therefore necessary to provide for a transitional period up to 31 December 2002.

⁽¹⁾ OJ C 37, 3.2.2001, p. 3.

⁽²⁾ OJ L 309, 27.11.2001, p. 1.

- (23) The proposed State aid scheme takes account of very diverse factors which characterise the present coal industry and the Community energy market as a whole. These factors, which may change to a lesser or greater extent, some of them unexpectedly, particularly the ability of Community coal to help strengthen the Union's energy security, need to be re-evaluated during the course of the scheme in the context of sustainable development by way of a report. On the basis of this report, taking into account the different categories of fossil fuels available on the territory of the Community, the Commission will present proposals to the Council which will take account of the development and long-term prospects of the scheme, in particular the social and regional aspects of the restructuring of the coal industry.
- (24) This Regulation should enter into force as soon as possible after the expiry of the ECSC Treaty and it should be applied retroactively in order to ensure the full benefit of its provisions,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

Article 1

Aim

This Regulation lays down rules for the granting of State aid to the coal industry with the aim of contributing to the restructuring of the coal industry. The rules laid down herein take account of:

- the social and regional aspects of the sector's restructuring,
- the need for maintaining, as a precautionary measure, a minimum quantity of indigenous coal production to guarantee access to reserves.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe ⁽¹⁾;
- (b) 'plan for accessing coal reserves': plan drawn up by a Member State, providing for the production of the minimum quantity of indigenous coal necessary to guarantee access to coal reserves;
- (c) 'closure plan': plan drawn up by a Member State providing for measures culminating in the definitive closure of coal production units;

⁽¹⁾ International system for the codification of medium-grade and high-grade coal (1998); International classification of coal in seam (1998) and International system of codification for low-grade coal (1999).

- (d) 'initial investment costs': fixed capital costs directly related to infrastructure work or to the equipment necessary for the mining of coal resources in existing mines;
- (e) 'production costs' means costs related to current production, calculated in accordance with Article 9(3). These cover, apart from mining operations, operations for the dressing of coal, in particular washing, sizing and sorting, and the transport to the delivery point;
- (f) 'current production losses' means the positive difference between the coal production cost and the delivered selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

Article 3

Aid

1. Aid to the coal industry may be considered compatible with the proper functioning of the common market only if it complies with the provisions of Chapter 2, without prejudice to State aid schemes concerning research and technological development, the environment and training.

2. Aid shall cover only costs in connection with coal for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast furnaces in the steel industry, where such use takes place in the Community.

CHAPTER 2

CATEGORIES OF AID

Article 4

Aid for the reduction of activity

Aid to an undertaking intended specifically to cover the current production losses of production units may be considered compatible with the common market only if it satisfies the following conditions:

- (a) operation of the production units concerned shall form part of a closure plan whose deadline does not extend beyond 31 December 2007;
- (b) the aid notified per tonne coal equivalent shall not exceed the difference between the foreseeable production costs and the foreseeable revenue for a coal year. The aid actually paid shall be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted;
- (c) the amount of aid per tonne coal equivalent may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries;

- (d) aid must not lead to any distortion of competition between coal buyers and users in the Community;
- (e) aid must not lead to any distortion of competition on the electricity market, the market of combined heat and electricity production, the coke production market and the steel market.

Article 5

Aid for accessing coal reserves

1. Members States may, in accordance with paragraphs 2 and 3, grant aid to an undertaking, intended specifically to production units or to a group of production units, only if the aid contributes to maintaining access to coal reserves. A production unit may receive aid only under one of the categories referred to in paragraphs 2 or 3. No cumulation of aid under paragraph 2 and paragraph 3 shall be possible.

Aid for initial investment

2. Aid intended to cover initial investment costs may be declared to be compatible with the common market only if it satisfies the conditions laid down in Article 4(c), (d) and (e) and the following conditions:

- (a) the aid shall be earmarked for existing production units which have not received aid under Article 3 of Decision No 3632/93/ECSC or which have received aid authorised by the Commission under the said Article 3 having demonstrated that they were able to achieve a competitive position vis-à-vis prices for coal of a similar quality from third countries;
- (b) production units shall draw up an operating plan and a financing plan showing that the aid granted to the investment project in question will ensure the economic viability of these production units;
- (c) the aid notified and actually paid shall not exceed 30 % of the total costs of the relevant investment project which will enable a production unit to become competitive in relation to the prices for coal of a similar quality from third countries.

The aid granted in accordance with this paragraph, whether in the form of a single payment or spread over several years, cannot be paid after 31 December 2010.

Current production aid

3. Aid intended to cover current production losses may be declared to be compatible with the common market only if it satisfies the conditions laid down in Article 4(b) to (e) and the following conditions:

- (a) operation of the production units concerned or of the group of production units in the same undertaking forms part of a plan for accessing coal reserves;

- (b) aid shall be granted to production units which, with particular reference to the level and pattern of production costs, and within the limits of the quantity of indigenous coal to be produced in accordance with the plan referred to in (a), afford the best economic prospects.

Article 6

Degression of aid

1. The overall amount of aid to the coal industry granted in accordance with Article 4 and Article 5(3) shall follow a downward trend so as to result in a significant reduction. No aid for the reduction of activity may be granted under Article 4 beyond 31 December 2007.

2. The overall amount of aid to the coal industry granted in accordance with Articles 4 and 5 shall not exceed, for any year after 2003, the amount of aid authorised by the Commission in accordance with Articles 3 and 4 of Decision No 3632/93/ECSC for the year 2001.

Article 7

Aid to cover exceptional costs

1. State aid granted to undertakings which carry out or have carried out an activity in connection with coal production to enable them to cover the costs arising from or having arisen from the rationalisation and restructuring of the coal industry that are not related to current production ('inherited liabilities') may be considered compatible with the common market provided that the amount paid does not exceed such costs. Such aid may be used to cover:

- (a) the costs incurred only by undertakings which are carrying out or have carried out restructuring, i.e. costs related to the environmental rehabilitation of former coal mining sites;
- (b) the costs incurred by several undertakings.

2. The categories of costs resulting from the rationalisation and restructuring of the coal industry are defined in the Annex.

Article 8

Common provisions

1. The authorised amount of aid granted in accordance with any provision of this Regulation shall be calculated taking account of the aid granted for the same purposes, in whatever form, by virtue of any other national resource.

2. All aid received by undertakings shall be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover. Where an undertaking receiving aid granted pursuant to this Regulation is engaged not only in mining but also in another economic activity, the funds granted shall be the subject of separate accounts so that financial flows under this Regulation can be clearly identified. The funds shall be managed in such a way that there is no possibility of their being transferred to the other activity concerned.

CHAPTER 3

NOTIFICATION, APPRAISAL AND AUTHORISATION PROCEDURES

Article 9

Notification

1. In addition to the provisions of Article 88 of the Treaty and Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, aid as referred to in this Regulation shall be subject to the special rules laid down in paragraphs 2 to 12.

2. Member States which grant aid to the coal industry shall provide the Commission with all the information needed, against the current energy background, to justify the estimated production capacity forming part of the plan for accessing coal reserves, the minimum production level needed to guarantee such access, as well as, regarding the categories of aid provided for in this Regulation, the appropriate types of aid, taking account of the specificities of the coal industry in each Member State.

3. Production costs are calculated in accordance with the three-monthly outline statements of costs sent to the Commission by the coal undertakings or associations thereof. The coal undertakings include normal depreciation and interest on borrowed capital in their calculation of production costs. Eligible interest costs on borrowed capital shall be based on market-based interest rates and limited to operations (processes) listed in Article 2(e).

4. Member States which intend to grant aid for the reduction of activity as referred to in Article 4 shall submit beforehand to the Commission a closure plan for the production units concerned by 31 October 2002 at the latest. This plan shall provide for the following minimum elements:

- (a) identification of the production units;
- (b) the real or estimated production costs for each production unit per coal year; these costs are calculated in accordance with paragraph 3;
- (c) estimated coal production, per coal year, of production units forming the subject of a closure plan;

- (d) the estimated amount of aid for the reduction of activity per coal year.

5. Member States which intend to grant the aid as referred to in Article 5(2) shall, by 31 December 2002 at the latest, submit to the Commission a provisional plan for accessing coal reserves. That plan shall provide, as a minimum, for objective selection criteria, such as economic viability, to be met by the production units in order to receive aid for investment projects.

6. Member States which intend to grant the aid as referred to in Article 5(3) shall, by 31 October 2002 at the latest, submit to the Commission a plan for accessing coal reserves. That plan shall provide for the following minimum elements:

- (a) objective selection criteria to be met by the production units in order to be included in the plan;
- (b) identification of production units or a group of production units in the same coal undertaking meeting such selection criteria;
- (c) the real or estimated production costs for each production unit per coal year; these costs are calculated in accordance with paragraph 3;
- (d) an operating plan and a financing plan for each production unit or group of production units in the same undertaking reflecting the budgetary principles of Member States;
- (e) estimated coal production, per coal year, of the production units or group of production units in the same undertaking forming part of the plan for accessing coal reserves;
- (f) the estimated amount of aid for accessing coal reserves for each coal year;
- (g) the respective shares of indigenous coal and renewable energy sources against the amount of indigenous primary energy sources that contribute to the objective of energy security within the framework of sustainable development and their expected upward or downward trend.

7. As part of the notification of the plans referred to in paragraphs 4, 5 and 6, Member States shall provide the Commission with all the information regarding reductions in greenhouse gas emissions. They shall refer in particular to reductions in emissions resulting from efforts made to use clean coal combustion technologies.

8. Member States may, on duly justified grounds, notify the Commission of the individual identity of production units forming part of the plans referred to in paragraphs 4 and 6 by June 2004 at the latest.

9. Member States shall inform the Commission of any amendments to the plan initially submitted to the Commission in accordance with paragraphs 4, 5, 6, 7 and 8.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

10. Member States shall send notification of all the financial support which they intend to grant to the coal industry during a coal year, specifying the nature of the support with reference to the forms of aid provided for in Articles 4, 5 and 7. They shall submit to the Commission all details relevant to the calculation of the foreseeable production costs and their relationship to the plans notified to the Commission in accordance with paragraphs 4, 5, 6, 7 and 8.

11. Member States shall send notification of the amount and full information about the calculation of the aid actually paid during a coal year no later than six months after the end of that year. Before the end of the following coal year, they shall also declare any corrections made to the amounts originally paid.

12. When notifying aid as referred to in Articles 4, 5 and 7 and making the statement of aid actually paid, Member States shall supply all the information necessary for verification of the conditions and criteria set out in these provisions.

Article 10

Appraisal and authorisation

1. The Commission shall appraise the plan(s) notified in accordance with Article 9. The Commission shall take a decision on their conformity with the conditions and criteria set out in Articles 4, 5, 6, 7 and 8 and on their compliance with the objectives of this Regulation, in accordance with the rules of procedure laid down in Regulation (EC) No 659/1999.

2. The Commission shall examine the measures notified in accordance with Article 9(10) in the light of the plans submitted in the framework of Article 9(4), (5), (6), (7) and (8). It shall take a decision in accordance with the requirements of Regulation (EC) No 659/1999.

CHAPTER 4

TRANSITIONAL AND FINAL PROVISIONS

Article 11

Commission reports

1. By 31 December 2006, the Commission shall report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, covering in particular its experience and any problems encountered in the application of this Regulation since its entry into force. It shall evaluate in the light of the measures taken by the Member States the results of the restructuring of the coal industry and the effects on the internal market.

2. It shall present a balance of the respective share of the different indigenous sources of primary energy in each Member State, including the different categories of fossil fuels available. It shall, taking into account the development of renewable sources of energy, evaluate the actual contribution of indigenous coal to long-term energy security in the European Union as part of a strategy of sustainable development, and present its assessment of how much coal is needed to that end.

Article 12

Implementing measures

The Commission shall take all necessary measures for the implementation of this Regulation. It shall establish a joint framework for communication of the information which will enable it to evaluate compliance with the conditions and criteria laid down for the granting of aid.

Article 13

Review measures

1. On the basis of the report produced in accordance with Article 11, the Commission shall, if necessary, submit to the Council proposals for the amendment of this Regulation concerning its application to aid for the period from 1 January 2008. In keeping with the principle of aid reduction, the proposals shall establish, *inter alia*, the principles on the basis of which Member States' plans are to be implemented as from 1 January 2008.

2. The principles referred to in paragraph 1 shall be established in the light of the objectives referred to in Article 1, with particular reference to the social and regional consequences of the measures to be taken and the energy context.

Article 14

Entry into force

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

It shall apply from 24 July 2002.

2. Aid covering costs for the year 2002 may, however, on the basis of a reasoned request by a Member State, continue to be subject to the rules and principles laid down in Decision No 3632/93/ECSC, with the exception of rules regarding deadlines and procedures.

3. This Regulation shall apply until 31 December 2010.

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

Done at Brussels, 23 July 2002.

For the Council

The President

P. S. MØLLER

ANNEX

Definition of costs referred to in Article 7**1. *Costs incurred and cost provisions made only by undertakings which are carrying out or have carried out restructuring and rationalisation***

Exclusively:

- (a) the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;
- (b) other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation;
- (c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such payments before the restructuring;
- (d) the cost covered by the undertakings for the readaptation of workers in order to help them find new jobs outside the coal industry, especially training costs;
- (e) the supply of free coal to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring;
- (f) residual costs resulting from administrative, legal or tax provisions;
- (g) additional underground safety work resulting from the closure of production units;
- (h) mining damage provided that it has been caused by production units subject to closure due to restructuring;
- (i) costs related to the rehabilitation of former coal mining sites, notably:
 - residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water,
 - other residual costs resulting from water supplies and the removal of waste water;
- (j) residual costs to cover former miners' health insurance;
- (k) exceptional intrinsic depreciation provided that it results from the closure of production units (without taking account of any revaluation which has occurred since 1 January 1994 and which exceeds the rate of inflation);

2. *Costs incurred and cost provisions made by several undertakings*

- (a) increase in the contributions, outside the statutory system, to cover social security costs as a result of the drop, following restructuring, in the number of contributors;
 - (b) expenditure, resulting from restructuring, on the supply of water and the removal of waste water;
 - (c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following restructuring, in the coal production subject to levy.
-

COUNCIL REGULATION (EC) No 1408/2002**of 29 July 2002****establishing concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Hungary**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part ⁽¹⁾, provides for certain concessions for certain agricultural products originating in Hungary.
- (2) The first improvements to the preferential arrangements of the Europe Agreement with Hungary were provided for in the Protocol adapting trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the Uruguay Round negotiations on agriculture, including the improvements to the existing preferential regime, approved by Decision 1999/67/EC ⁽²⁾.
- (3) Improvements to the preferential arrangements of the Europe Agreement with Hungary were also provided for as a result of a first round of negotiations to liberalise the agricultural trade. The improvements entered into force as from 1 July 2000 in the form of Council Regulation (EC) No 1727/2000 of 31 July 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Hungary ⁽³⁾. The second adjustment of the relevant provisions in the Europe Agreement, which will take the form of another Additional Protocol to the Europe Agreement, has not yet entered into force.
- (4) A new Additional Protocol to the Europe Agreement on trade liberalisation for agricultural products has been negotiated.
- (5) A swift implementation of the adjustments forms an essential part of the results of the negotiations for the conclusion of a new Additional Protocol to the Europe Agreement with Hungary. It is therefore appropriate to

provide for the adjustment, as an autonomous and transitional measure, of the agricultural concessions provided for in the Europe Agreement with Hungary.

- (6) Regulation (EC) No 1727/2000 should therefore be repealed.
- (7) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁴⁾ has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Tariff quotas under this Regulation should therefore be administered in accordance with those rules.
- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The conditions for import into the Community applicable to certain agricultural products originating in Hungary as set out in Annex A(a) and Annex A(b) to this Regulation shall replace those set out in Annex VIII to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, hereinafter the 'Europe Agreement'.
2. On the entry into force of the Additional Protocol adjusting the Europe Agreement to take into account the outcome of the negotiations between the parties on new mutual agricultural concessions, the concessions provided for in that Protocol shall replace those referred to in Annex A(a) and Annex A(b) to this Regulation.
3. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure referred to in Article 3(2).

Article 2

1. Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

⁽¹⁾ OJ L 347, 31.12.1993, p. 2.

⁽²⁾ OJ L 28, 2.2.1999, p. 1.

⁽³⁾ OJ L 198, 4.8.2000, p. 6.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

2. Quantities of goods subject to tariff quotas and released for free circulation as from 1 July 2002 under the concessions provided for in Annex A(b) to Regulation (EC) No 1727/2000 shall be fully counted against the quantities provided for in Annex A(b) to this Regulation, except for quantities for which import licences have been issued before 1 July 2002.

Article 3

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 ⁽¹⁾ or, where appropriate, by the committee instituted by the relevant provisions of the other Regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

3. The committee shall adopt its rules of procedure.

Article 4

Regulation (EC) No 1727/2000 is repealed from the entry into force of this Regulation.

Article 5

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 2002 except for new concessions, which involve the opening of new tariff quotas. For these new concessions covered by order numbers 09.4774, 09.4776, 09.4777, 09.4778, 09.4780, 09.5862 and 09.5864 it is applicable from the date of entry into force of the detailed rules provided for in Article 1(3) of this Regulation.

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

Done at Brussels, 29 July 2002.

For the Council

The President

P. S. MØLLER

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

ANNEX A(a)

Custom duties on imports applicable in the Community to products originating in Hungary and listed below shall be abolished

CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾
0101 10 90	0707 00 90	0809 40 90	1209 99 99
0101 90 19	0708 10 00	0810 10 00	1210 10 00
0101 90 30	0708 90 00	0810 40 30	1210 20 10
0101 90 90	0709 20 00	0810 40 50	1210 20 90
0105 11 11	0709 30 00	0810 40 90	1211 90 30
0105 11 19	0709 40 00	0810 50 00	1212 10 10
0105 11 91	0709 51 00	0810 60 00	1212 10 99
0105 11 99	0709 52 00	0810 90 95	1214 90 10
0105 12 00	0709 59	0811 10 19	
0105 19 20	0709 60 10	0811 20 59	1302 12 00
0105 19 90	0709 70 00	0811 20 90	1302 13 00
0106 19 10	0709 90 10	0811 90 31	1302 19 05
0106 39 10	0709 90 20	0811 90 39	1501 00 90
0205 00	0709 90 31	0811 90 50	1502 00 90
0206 80 91	0709 90 40	0811 90 70	1503 00 19
0206 90 91	0709 90 50	0811 90 75	1503 00 90
0207 13 91	0709 90 90	0811 90 80	1504 10 10
0207 14 91	0710 10 00	0811 90 85	1504 10 99
0207 26 91	0710 22 00	0811 90 95	1504 20 10
0207 27 91	0710 29 00	0812 10 00	1504 30 10
0207 35 91	0710 30 00	0812 90 10	1508 10 90
0207 36 89	0710 80 51	0812 90 20	1508 90
0208 10 11	0710 80 59	0812 90 40	1511 10 90
0208 10 19	0710 80 61	0812 90 50	1511 90
0208 20 00	0710 80 69	0812 90 60	1512 11 99
0208 30 00	0710 80 70	0812 90 70	1512 19 99
0208 40	0710 80 80	0813 10 00	1512 21
0208 50 00	0710 80 85	0813 20 00	1512 29
0208 90 10	0711 30 00	0813 30 00	1513 11 10
0208 90 55	0711 40 00	0813 40 10	1513 11 91
0208 90 60	0711 90 10	0813 40 30	1513 11 99
0208 90 95	0711 90 50	0813 40 95	1513 19
0210 91 00	0711 90 80	0813 50	1513 21
0210 92 00	0712 20 00	0814 00 00	1513 29
0210 93 00	0712 31 00	0901 12 00	1515
0210 99 10	0712 32 00	0901 90 90	1516 10
0210 99 79	0712 33 00	0904 12 00	1516 20 91
0407 00 11	0712 39 00	0904 20 90	1516 20 95
0407 00 19	0712 90 05	0905 00 00	1516 20 96
0409 00 00	0712 90 30	0907 00 00	1516 20 98
0410 00 00	0712 90 50	0910 20 90	1518 00 31
0601	0712 90 90	0910 40 13	1518 00 95
0602	0713 50 00	0910 40 19	1522 00 91
0603	0713 90	0910 40 90	
0604 10 90	0714 20	1006 10 10	1601 00 10
0604 91 21	0714 90 90	1007 00 10	1602 20 11
0604 91 29			1602 20 19
0604 91 41	0802 11 90	1106 10 00	1602 31 11
0604 91 49	0802 12 90	1106 30	1602 31 19
0604 91 90	0802 21 00	1107 10	1602 31 30
0604 99 90	0802 22 00	1107 20 00	1602 31 90
	0802 31 00	1108 20 00	1602 32 19
0701 10 00	0802 32 00	1208 10 00	1602 41 90
0703 10 90	0802 40 00	1209 10 00	1602 42 90
0703 20 00	0802 50 00	1209 21 00	1602 49 90
0703 90 00	0802 90 50	1209 23 80	1602 90 10
0704 20 00	0802 90 60	1209 29 50	1602 90 31
0704 90 90	0802 90 85	1209 29 60	1602 90 41
0705 19 00	0805 10 80	1209 29 80	1602 90 69
0705 21 00	0805 50 90	1209 30 00	1602 90 72
0705 29 00	0806 20	1209 91	1602 90 74
0706 90	0808 20 90	1209 99 91	1602 90 76

CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾	CN code ⁽¹⁾
1602 90 78	2008 30 11	2008 92 38	2009 79 93
1602 90 98	2008 30 31	2008 92 51	2009 79 99
1603 00 10	2008 30 39	2008 92 59	2009 80 19
2001 10 00	2008 30 51	2008 92 72	2009 80 36
2001 90 50	2008 30 55	2008 92 74	2009 80 38
2001 90 60	2008 30 59	2008 92 76	2009 80 50
2001 90 65	2008 30 71	2008 92 78	2009 80 63
2001 90 70	2008 30 75	2008 92 92	2009 80 69
2001 90 75	2008 30 79	2008 92 93	2009 80 71
2001 90 85	2008 30 90	2008 92 94	2009 80 73
2001 90 91	2008 50 11	2008 92 96	2009 80 79
2001 90 93	2008 50 31	2008 92 97	2009 80 88
2001 90 96	2008 50 39	2008 92 98	2009 80 89
2003 20 00	2008 50 59	2008 99 11	2009 80 95
2003 90 00	2008 50 61	2008 99 19	2009 80 96
2004 90 30	2008 50 69	2008 99 23	2009 80 97
2004 90 50	2008 50 71	2008 99 25	2009 80 99
2004 90 91	2008 50 79	2008 99 26	2009 90 19
2005 51 00	2008 50 92	2008 99 28	2009 90 29
2005 59 00	2008 50 94	2008 99 36	2009 90 39
2005 60 00	2008 50 99	2008 99 37	2009 90 41
2005 70 10	2008 60 11	2008 99 38	2009 90 49
2005 90 50	2008 60 31	2008 99 40	2009 90 51
2005 90 60	2008 60 39	2008 99 43	2009 90 59
2005 90 70	2008 60 51	2008 99 45	2009 90 73
2005 90 80	2008 60 59	2008 99 46	2009 90 79
2006 00 91	2008 60 61	2008 99 47	2009 90 95
2006 00 99	2008 60 69	2008 99 49	2009 90 96
2007 99 10	2008 60 71	2008 99 53	2009 90 97
2007 99 91	2008 60 79	2008 99 55	2009 90 98
2007 99 93	2008 60 91	2008 99 61	
2008 11 92	2008 60 99	2008 99 62	2302 50 00
2008 11 94	2008 80 11	2008 99 68	2306 90 19
2008 11 96	2008 80 31	2008 99 72	2308 00 90
2008 11 98	2008 80 39	2008 99 78	2309 10 51
2008 19	2008 80 50	2008 99 99	2309 10 90
2008 20 19	2008 80 70	2009 31 11	2309 90 10
2008 20 39	2008 80 91	2009 39 31	2309 90 31
2008 20 51	2008 80 99	2009 41 10	2309 90 41
2008 20 59	2008 92 12	2009 49 30	2309 90 51
2008 20 71	2008 92 14	2009 50	2309 90 91
2008 20 79	2008 92 32	2009 71	2309 90 93
2008 20 91	2008 92 34	2009 79 19	2309 90 95
2008 20 99	2008 92 36	2009 79 30	2309 90 97

⁽¹⁾ As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

ANNEX A(b)

Imports into the Community of the following products originating in Hungary shall be subject to the concessions set out below (MFN = Most Favoured Nation duty)

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4598	0102 90 05	Live bovine animals of a live weight not exceeding 80 kg	10	178 000 heads	0	⁽³⁾
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg	10	153 000 heads	0	⁽³⁾
09.4563	ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau	6 % <i>ad valorem</i>	7 000 heads	0	⁽⁴⁾
	0104 10 30 0104 10 80 0104 20 10 0104 20 90 0204 0210 99 21 0210 99 29 0210 99 60	Live sheep or goats Meat of sheep or goats, fresh, chilled or frozen Edible meat of sheep and goats, with bone-in Edible meat of sheep and goats, boneless Edible meat offal of sheep and goats	free	unlimited		⁽⁵⁾
09.4707	0201 0202	Meat of bovine animals, fresh, chilled or frozen	free	13 655	1 365	⁽⁵⁾
09.4708	ex 0203	Meat of domestic swine, fresh, chilled or frozen	free	48 000	4 000	⁽⁵⁾ ⁽⁶⁾
09.4774	0206 10 95 0206 29 91 0210 20 10 0210 20 90 0210 99 51 0210 99 59 0210 99 90	Edible offal of bovine animals, fresh or chilled, thick skirt and thin skirt Edible offal of bovine animals, frozen, other, thick skirt and thin skirt Meat of bovine animals, salted, in brine, dried or smoked Thick skirt and thin skirt of bovine animals Other offal of bovine animals Edible flours and meals of meat or meat offal	free	1 000	100	⁽⁵⁾

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5861	0207 11 30 0207 11 90 0207 12	Chicken carcasses	free	118 900	9 900	⁽⁵⁾
	0207 13 50 0207 14 50	Breasts of chicken				
	0207 13 60 0207 14 60	Legs of chicken				
	0207 13 10 0207 14 10	Boneless cuts of chicken				
	0207 26 10 0207 27 10	Boneless cuts of turkey				
	0207 26 50 0207 27 50	Breasts of turkey				
	0207 32 11 0207 32 15 0207 32 19 0207 33 11 0207 33 19	Ducks				
	ex 0207 35 15 ex 0207 36 15	Cuts of ducks, boneless				
	ex 0207 35 53 ex 0207 36 53	Breasts and cuts thereof of ducks, with bone-in				
	ex 0207 35 63 ex 0207 36 63	Legs and cuts thereof of ducks, with bone-in				
	ex 0207 35 79 ex 0207 36 79	Breasts and cuts thereof of ducks, the ribs of which have been partially or completely removed				
	0207 32 51 0207 32 59 0207 33 51 0207 33 59 0207 35 11 0207 35 23 0207 35 51 0207 35 61 0207 36 11 0207 36 23 0207 36 51 0207 36 61	Geese				
	ex 0207 35 31 ex 0207 36 31	Whole wings of geese, with or without tips				
	ex 0207 35 41 ex 0207 36 41	Backs, necks, backs with necks attached, rumps and wing tips of geese				
	ex 0207 35 71 ex 0207 36 71	Paletots of geese				
	ex 0207 35 79 ex 0207 36 79	Breasts and cuts thereof of geese, the ribs of which have been partially or completely removed				
09.4704	0210 11 11 0210 12 11 0210 19 40 0210 19 51	Meat of domestic swine, salted or in brine	free	1 200	100	⁽⁵⁾

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5501	ex 0210 99 39 ex 0210 99 80	Poultry, dried or smoked	free	2 400	200	⁽⁵⁾
09.4775	0401 0402	Milk and cream, not concentrated, nor containing added sugar or other sweetening matter Milk and cream, concentrated or containing added sugar or other sweetening matter	free	1 300	130	⁽⁵⁾
09.4776	0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Yoghurt, not flavoured nor containing added fruit, nuts or cocoa Buttermilk, curled milk and cream, kephir and other fermented or acidified milk and cream, not flavoured nor containing added fruit, nuts or cocoa	free	50	10	⁽⁵⁾
09.4777	0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents; whether or not containing added sugar or other sweetening matter, nor elsewhere specified or included	free	50	10	⁽⁵⁾
09.4778	0405 10 0405 20 90 0405 90	Butter Dairy spreads of a fat content, by weight of > 75 % but < 80 % Other fats and oils derived from milk	free	300	30	⁽⁵⁾
09.4733	0406	Cheese and curd	free	4 200	350	⁽⁵⁾
09.5866	0407 00 30	Eggs of poultry in shell, not for hatching	free	3 155	315	
09.5867	0408 91 80	Eggs, dried, for human consumption	free	755	80	
09.5503	ex 0702 00 00	Tomatoes, from 1 to 31 October	free	300	30	⁽⁸⁾
09.5105	0703 10 11 0703 10 19	Onions	free	70 200	5 850	
09.5557	0704 90 10	White cabbages and red cabbages	free	2 555	255	

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5127	ex 0707 00 05	Cucumbers, from 1 November to 15 May	free	2 600	260	⁽⁸⁾
	ex 0707 00 05	Cucumbers, from 16 May to 31 October	free	unlimited		⁽⁸⁾
	0709 10 00	Globe artichokes, fresh or chilled	free	unlimited		⁽⁸⁾
	0709 90 70	Courgettes, fresh or chilled	free	unlimited		⁽⁸⁾
09.5141	0710 21 00	Peas, frozen	free	19 655	1 965	
09.5149	0710 80 95	Other vegetables, frozen	free	25 355	2 535	
09.5151	0710 90 00	Mixtures of vegetables, frozen	free	5 800	580	
	0805 10 10	Sanguines and semi-sanguines, fresh	free	unlimited		⁽⁸⁾
	0805 10 30	Navelines, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita, and Hamlins, fresh				
	0805 10 50	Other, fresh				
09.5511	ex 0806 10 10	Table grapes, from 15 July to 31 October	free	900	90	⁽⁸⁾
09.5571	0807 11 00	Melons, including watermelons	free	11 855	990	
	0807 19 00					
09.5157	0808 10 10	Cider apples, in bulk from 16 September to 15 December	free	37 800	3 780	
09.5159	0808 10 20	Apples, other than cider apples	free	9 155	915	⁽⁸⁾ ⁽⁹⁾
	0808 10 50					
	0808 10 90	Apples, other than cider apples	100 %	—	—	⁽⁹⁾
	0808 10 20		100 %	—	—	⁽⁹⁾
	0808 10 50		100 %	—	—	⁽⁹⁾
09.5513	0808 20 10	Pears	free	2 100	210	⁽⁸⁾
	0808 20 50					
	0809 10 00	Apricots, fresh	free	unlimited		⁽⁸⁾
	0809 20	Cherries	free	unlimited		⁽⁸⁾ ⁽¹⁰⁾
	0809 40 05	Plums:				
		— for processing in immediate containers of a net weight capacity exceeding 250 kg ⁽¹²⁾	free	unlimited		
		— other	free	unlimited		⁽⁸⁾ ⁽¹¹⁾

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	0810 20 10	Raspberries	41	unlimited		(7)
	0810 30 10	Blackcurrants	41			(7)
	0801 30 30	Redcurrants	41			(7)
	0810 30 90	Other berries	24			
	0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter	free	unlimited		(7)
	ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight				
	0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter				
	0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter				
	0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter				
	ex 0811 20 19	Frozen blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries.	free	unlimited		
09.5865	0812 90 30 0812 90 99	Papaws (papayas) and other fruit and nuts, provisionally preserved	free	1 200	100	
	0901 21 00 0901 22 00	Roasted coffee (excluding decaffeinated) Roasted decaffeinated coffee	50	unlimited		
09.5575	0904 20 10	Sweet peppers, neither crushed or ground	free	1 200	100	
09.4779	1001 1101 1103 11 10 1103 11 90 1103 20 60	Wheat and meslin Wheat or meslin flour Durum wheat groats and meal Common wheat and spelt groats and meal Wheat pellets	free	600 000	60 000	(5)
09.5862	1002 00 00 1102 10 00 1103 19 10 1103 20 10	Rye Rye flour Rye groats and meal Rye pellets	free	2 000	200	(5)
09.5863	1003 1102 90 10 1103 19 30 1103 20 20	Barley Barley flour Barley groats and meal Barley pellets	free	7 000	700	(5)

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5864	1004 00 00	Oats	free	1 000	100	⁽³⁾
	1102 90 30	Oat flour				
	1103 19 40	Groats and meal of oats				
	1103 20 30	Pellets of oats				
09.4780	1005 10 90	Other than hybrid maize seed	free	450 000	45 000	⁽³⁾
	1005 90 00	Maize other than seed				
	1102 20 10	Maize flour with fat content of = < 1,5 % by weight				
	1102 20 90	Maize flour with fat content of > 1,5 % by weight				
	1103 13 10	Groats and meal of maize				
	1103 13 90					
	1103 20 40	Maize pellets				
	1008	Buckwheat, millet, canary seed; other cereals	free	unlimited		⁽³⁾
	1102 90 90	Cereals flour, other				
	1103 19 90	Groats and meal of other cereals				
	1103 20 90	Cereal pellets, other				
09.5297	1109 00 00	Wheat gluten	free	455	45	
09.4727	1501 00 19	Pig fat (including lard), other	free	2 880	290	
09.5172	1512 11 10	Sunflower seed oil	free	9 000	750	
09.5173	1512 11 91			3 455	290	
09.5174	1512 19 10			1 500	125	
	1517 10 90	Margarine containing = < 10 % milk fats (excluding liquids)	50	unlimited		
	1517 90 99	Other edible mixtures or preparations				
09.4705	1601 00 91 1601 00 99	Sausages, dry or other	free	10 500	875	⁽³⁾
	1602 39 29 1602 39 40 1602 39 80	Other prepared or preserved meat of other poultry	free	unlimited		⁽³⁾
09.4706	1602 41 10 1602 42 10 1602 49 11 1602 49 13 1602 49 15 1602 49 19 1602 49 30 1602 49 50	Other preparations, preserved meat of domestic swine	free	1 080	90	⁽³⁾

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5705	1602 50 10 1602 50 31 1602 50 39 1602 50 80	Other prepared or preserved meat or meat offal of bovine animals	free	2 400	240	⁽⁵⁾
	ex 1605 90 30	Edible snails, of the genus <i>Helix pomatia</i>	free	unlimited		
09.5298	1702 30 1702 40	Glucose and glucose syrup	free	1 055	90	
	1703	Molasses resulting from the extraction or refining of sugar	free	unlimited		⁽⁵⁾
	2001 90 20 2005 90 10	Fruits of the genus <i>Capsicum</i> , other than sweet peppers and pimento, preserved	50	unlimited		
09.5177	2002 90 31 2002 90 39	Preserved tomatoes	free	9 000	900	
09.5179	2002 90 91 2002 90 99	Preserved tomatoes	free	2 520	250	
09.5521	2005 40 00	Peas ' <i>Pisum sativum</i> ' prepared or preserved otherwise than by vinegar or acetic acid (excluding frozen)	free	1 355	115	
09.5181	2005 90 75	Sauerkraut	free	4 355	435	
09.5189	ex 2007 99 31 2007 99 33 2007 99 35	Sour cherry jam Strawberry jam Raspberry jam	free	5 255	525	⁽⁸⁾
	ex 2007 99 39 ex 2007 99 98	Fruit preparations, with sugar content > 30 % by weight, fruit within headings 0801, 0803, 0804 (except figs and pineapples), 0807 20 00, 0810 20 90, 0810 30 90, 0810 40 10, 0810 40 50, 0810 40 90, 0810 90 Other, fruit within headings 0801, 0803, 0804 (except figs and pineapples), 0807 20 00, 0810 20 90, 0810 30 90, 0810 40 10, 0810 40 50, 0810 40 70, 0810 90	free	unlimited		⁽⁸⁾
09.5205	2009 80 11 2009 80 32 2009 80 33 2009 80 35 2009 80 61 2009 80 83 2009 80 84 2009 80 86	Fruit juice	free	2 555	255	⁽⁸⁾
09.5299	2303 10 11	Residues of starch from maize	free	1 355	135	

Order No	CN code	Description ⁽¹⁾	Applicable duty (% of MFN) ⁽²⁾	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5716	ex 2309 10	Dog or cat food, put up for retail sale excluding CN codes 2309 10 11, 2309 10 31, 2309 10 51, 2309 10 90	free	17 800	1 780	
09.5207	2401 10 2401 20	Tobacco	20	5 255	440	

⁽¹⁾ Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

⁽²⁾ In cases where a MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

⁽³⁾ The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic. In case imports into the Community of live bovine animals may exceed 500 000 heads for any given year, the Community may take the management measures to protect its market, not withstanding any other rights given under the Agreement.

⁽⁴⁾ The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic.

⁽⁵⁾ This concession is only applicable to products non-benefiting from any kind of export subsidies.

⁽⁶⁾ Excluding tenderloin presented alone.

⁽⁷⁾ Subject to minimum import price arrangements contained in the Appenndix to the present Annex.

⁽⁸⁾ The reduction applies only to the *ad valorem* part of the duty.

⁽⁹⁾ For these CN codes, the following concessions — applicable for apples imported within as well as outside the tariff quota — should be applied:

- five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced for the period 1 January to 14 February, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
- three additional stages (14 %, 16 % and 18 %) are herewith introduced for the period 15 February to 31 March, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
- two additional stages (16 % and 18 %) are herewith introduced for the period 1 April to 15 July, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
- five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced for the period 16 July to 31 December, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

⁽¹⁰⁾ In addition to the reduction of the *ad valorem* part of the duty, five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

⁽¹¹⁾ In addition to the reduction of the *ad valorem* part of the duty, three additional stages (10 %, 12 % and 14 %) are herewith introduced which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

⁽¹²⁾ Entry under this subheading is subject to conditions laid down in the relevant Community provisions (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 71) and subsequent amendments).

Appendix to Annex A(b)

Minimum import price arrangement for certain soft fruit for processing

The importation into the Community of the products listed in this Appendix originating in Hungary will be subject to the conditions described in this Appendix.

1. Minimum import prices are fixed for the following products:

CN code	Description	Minimum import price (EUR/t net)
ex 0810 20 10	Raspberries, fresh	631
ex 0810 30 10	Blackcurrants, fresh	385
ex 0810 30 30	Redcurrants, fresh	233
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	750
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	576
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	995
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	796
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	995
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	796
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	628
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	448
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	390
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	295

- The minimum import prices, as set out in point 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.
- If the import prices of a given product covered by this Appendix show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Hungarian authorities in order to enable them to correct the situation.
- At the request of either the Community or Hungary, the Association Committee shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Committee shall take the necessary decisions.
- To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting may be organised three months before the beginning of each marketing year in the European Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, on the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, on the other part.

During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

COMMISSION REGULATION (EC) No 1409/2002
of 1 August 2002
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 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 1 August 2002 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	65,0
	999	65,0
0709 90 70	052	77,0
	999	77,0
0805 50 10	388	56,6
	524	55,6
	528	52,3
	999	54,8
0806 10 10	052	143,2
	064	114,9
	220	117,4
	508	75,3
	600	141,2
	624	190,3
	999	130,4
0808 10 20, 0808 10 50, 0808 10 90	388	92,8
	400	119,9
	508	72,5
	512	93,7
	524	31,4
	528	77,7
	720	143,5
	804	107,0
	999	92,3
0808 20 50	052	131,2
	388	97,7
	512	79,7
	528	92,6
	804	66,9
0809 20 95	999	93,6
	052	399,3
	400	293,0
	404	301,6
0809 30 10, 0809 30 90	999	331,3
	052	110,2
	064	88,7
0809 40 05	999	99,5
	064	63,1
	999	63,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1410/2002**of 1 August 2002****concerning aid for the processing of sugar cane into sugar syrup or agricultural rum on Madeira**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) ⁽¹⁾, and in particular Article 19 thereof,

Whereas:

- (1) Article 18 of Regulation (EC) No 1453/2001 provides that Community aid is to be granted for the direct processing of sugar cane produced on Madeira into sugar syrup or agricultural rum as defined in Article 1(4)(a)(2) of Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks ⁽²⁾, as last amended by Regulation (EC) No 3378/94 of the European Parliament and of the Council ⁽³⁾.
- (2) This aid is paid on condition that the sugar-cane producer is paid a minimum price, up to a maximum annual quantity of 2 500 hectolitres of agricultural rum at 71,8° or, in the case of sugar syrup, a maximum annual quantity of 250 tonnes. The aid is calculated in such a way that the ratio between the two aid amounts takes account of the quantities of raw material used. In the interests of clarity the amounts for rum should be expressed as pure alcohol.
- (3) A minimum price should be fixed for sugar cane intended for the manufacture of sugar syrup or rum which takes account of the consultations held by the Government of the Autonomous Region of Madeira with sugar-cane producers and the businesses processing the cane into syrup and rum.
- (4) To facilitate application of the annual processing limits, this Regulation should apply from the beginning of the 2002 calendar year.
- (5) The measures provided for in this Regulation are in accordance with the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. Aid for the direct processing of sugar cane into sugar syrup or agricultural rum as provided for in Article 18 of Regulation (EC) No 1453/2001 shall be paid in accordance with this Regulation to any syrup manufacturer or distiller whose facil-

ities are located on the territory of Madeira and who directly processes cane harvested on Madeira.

2. Aid shall be paid out each year for the quantities of sugar cane processed directly into sugar syrup or agricultural rum for which the syrup manufacturer or distiller shows proof that the sugar-cane producers concerned have been paid the minimum price referred to in Article 2.

3. The aid shall be:

- (a) for sugar syrup: EUR 53 per 100 kilograms of sugar expressed as white sugar;
- (b) for agricultural rum: EUR 90 per hectolitre of pure alcohol produced.

Article 2

1. The minimum price referred to in the second subparagraph of Article 18(1) of Regulation (EC) No 1453/2001 shall be EUR 78,9 per tonne of cane of sound and fair marketable quality, of standard sugar content and delivered in bulk to the processor/distiller.

2. The standard sugar content and the scale of increases and reductions to be applied to the minimum price when the sugar content of the cane differs from the standard sugar content shall be adopted by the competent regional authority on the proposal of a joint committee of distillers, syrup manufacturers and sugar-cane producers.

Article 3

1. Proof that the minimum price has been paid to the sugar-cane producer shall be established by means of a certificate drawn up on unstamped paper by the syrup manufacturer or distiller. The certificate shall show:

- (a) the name of the syrup manufacturer or distiller;
- (b) the name of the sugar-cane producer;
- (c) the total quantities of sugar cane for which the minimum price fixed for the calendar year concerned has been paid and which have been delivered to the syrup factory or distillery by the producer concerned during that calendar year;
- (d) the quantity of product for which the minimum price has been paid.

2. The certificate shall be signed by the sugar-cane producer and the syrup manufacturer or distiller.

3. The syrup manufacturer or distiller shall keep the original. A copy shall be sent to the sugar-cane producer.

⁽¹⁾ OJ L 198, 21.7.2001, p. 26.

⁽²⁾ OJ L 160, 12.6.1989, p. 1.

⁽³⁾ OJ L 366, 31.12.1994, p. 1.

Article 4

1. When the sum of the quantities covered by aid applications in a given calendar year is greater than the maximum annual quantity of rum or sugar syrup referred to in Article 18(2) of Regulation (EC) No 1453/2001, as the case may be, a standard percentage reduction shall be applied to each application for the product concerned.

2. Aid applications shall be submitted to the competent authorities designated by Portugal.

Article 5

1. The national authorities shall take all the steps necessary to ensure that the conditions for granting the aid provided for in this Regulation are complied with.

2. Verification shall be by administrative and on-the-spot checks. The administrative check shall be thorough and include, if appropriate, cross-checks with the data in the integrated administration and control system in accordance with Council Regulation (EEC) No 3508/92 ⁽¹⁾, as last amended by Commission Regulation (EC) No 495/2001 ⁽²⁾. It shall also cover the quantities of cane delivered and compliance with the minimum price referred to in Article 2.

Based on a risk analysis, the national authorities shall perform on-the-spot checks on the premises of each syrup manufacturer and distiller by sampling at least 10 % of the quantities delivered by the sugar-cane producers.

Article 6

Portugal shall notify the Commission:

- (a) within three months of the entry into force of this Regulation, of the additional measures adopted under Article 5;
- (b) within 45 working days of the end of each calendar year:
 - of the total quantities of sugar syrup and agricultural rum covered by aid applications, expressed as white sugar or hectolitres of pure alcohol, as the case may be,
 - of the factories and distilleries in receipt of aid,
 - of the aid received and the quantity of sugar syrup or agricultural rum produced by each factory or distillery.

Article 7

Commission Regulation (EEC) No 2627/93 ⁽³⁾ is hereby repealed.

Article 8

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

It shall apply from 1 January 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 355, 5.12.1992, p. 1.

⁽²⁾ OJ L 72, 14.3.2001, p. 6.

⁽³⁾ OJ L 240, 25.9.1993, p. 19.

COMMISSION REGULATION (EC) No 1411/2002
of 29 July 2002
imposing a provisional countervailing duty on imports of polyester textured filament yarn origin-
ating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 9 November 2001, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Communities* ⁽²⁾, the initiation of an anti-subsidy proceeding concerning imports into the Community of polyester textured filament yarn (PTY) originating in India and Indonesia.
- (2) The proceeding was initiated as a result of a complaint lodged in September 2001 by the International Committee of Rayon and Synthetics Fibres (CIRFS), on behalf of producers, representing a major proportion of the Community production of PTY. The complaint contained evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in India was announced by a notice published in the *Official Journal of the European Communities* ⁽²⁾ on the same date.
- (4) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 ⁽³⁾, as amended by Regulation (EC) No 1992/2000 ⁽⁴⁾), Indonesia, Thailand (Council Regulation (EC) No 2160/96 ⁽⁵⁾, as last amended by Regulation (EC) No 1078/2001 ⁽⁶⁾) and Taiwan (Council Regulation (EC) No 3905/88 ⁽⁷⁾, as last amended by Regulation (EC) No 2010/2000 ⁽⁸⁾). The expiry of these measures regarding imports originating in Malaysia ⁽⁹⁾, Taiwan ⁽¹⁰⁾, Indonesia ⁽¹¹⁾ and Thailand ⁽¹²⁾ is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 ⁽¹³⁾, as last amended by Regulation (EC) No 2238/2000 ⁽¹⁴⁾.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ C 315, 9.11.2001, pp. 2 and 5.

⁽³⁾ OJ L 145, 5.6.1997, p. 1.

⁽⁴⁾ OJ L 238, 22.9.2000, p. 1.

⁽⁵⁾ OJ L 289, 12.11.1996, p. 14.

⁽⁶⁾ OJ L 149, 2.6.2001, p. 5.

⁽⁷⁾ OJ L 347, 16.12.1988, p. 10.

⁽⁸⁾ OJ L 241, 26.9.2000, p. 1.

⁽⁹⁾ OJ C 135, 6.6.2002, p. 10.

⁽¹⁰⁾ OJ C 170, 14.6.2001, p. 2.

⁽¹¹⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹²⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹³⁾ OJ L 56, 6.3.1996, p. 1.

⁽¹⁴⁾ OJ L 257, 11.10.2000, p. 2.

- (5) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (basic Regulation), the Commission notified the Governments of India (GOI) and Indonesia (GOID) that it had received a properly documented complaint alleging that subsidised imports of PTY originating in India and Indonesia are causing material injury to the Community industry. The GOI and GOID were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. The GOID did not respond to this invitation.
- (6) The Commission officially advised the exporting producers and their representative associations, and importers/traders known to be concerned, the representatives of the exporting countries concerned, users, suppliers, the complainant Community producers and all other known producers in the EC, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (7) The GOI, the GOID and a number of exporting producers in the countries concerned, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (8) In view of the apparent large number of exporting producers of the product concerned in India and Indonesia, known from the complaint, the application of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation.
- (9) Regarding exporting producers in India, the Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers (see recitals 17 to 22).
- (10) Regarding Indonesia, sampling techniques were not considered necessary since the number of exporting producers that made themselves known and provided the information requested in the notice of initiation was limited. The Commission sent questionnaires and received replies from five exporting producers in Indonesia.
- (11) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers, from one Community producer who did not originally form part of the complaint, and both the GOI and the GOID. The Commission also received replies from one user and two suppliers of raw material providing information which was sufficiently complete and representative to use in the assessment of Community interest. No importers in the Community which were not related to exporting producers replied to the questionnaire or made themselves known.
- (12) The Commission sought and verified all information it deemed necessary for the purpose of a determination of subsidisation, injury and Community interest. Verification visits were carried out at the premises of the GOI, the GOID and the following companies:
 - (a) *Community producers:*
 - Dupont SA, United Kingdom,
 - Sinterama SpA, Italy;
 - (b) *Exporting producers in India:*
 - Indo Rama Synthetics Ltd, Nagpur, Maharashtra,
 - Reliance Industries Ltd, Mumbai, Maharashtra,
 - Welspun Syntex Ltd, Mumbai, Maharashtra;
 - (c) *Exporting producers in Indonesia:*
 - PT. Indorama Synthetics Tbk, Jakarta,
 - PT. Mutu Gading Tekstil, Jakarta,
 - PT. Panasia Indosyntec, Bandung,
 - PT. Polyfin Canggih, Bandung,
 - PT Sulindafin (PT Susilia Idah Synthetic Fiber Industries), Jakarta.

- (13) The investigation of subsidisation and injury covered the period from 1 October 2000 to 30 September 2001 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 October 1997 to the end of the IP (analysis period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (14) The product under consideration is polyester textured filament yarn (PTY) originating in India and Indonesia which falls within CN codes 5402 33 00. It is directly derived from partially oriented polyester yarn then textured and is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabric. The product is sold in different product types which can be identified through different specifications such as the weight (denier), the number of filaments, the nature of the yarn as flame retardant, the colouring, the twisting. There are also different qualities, depending on the efficiency of the production process. However, no significant differences exist in the basic physical characteristics and uses of the different types and qualities of PTY. In these circumstances, all types of PTY should be considered as one product for the purposes of this proceeding.

2. Like product

- (15) The investigation showed that PTY produced and sold on the domestic markets of India and Indonesia has similar basic physical characteristics and uses compared with that exported from these countries to the Community. Similarly, the PTY manufactured by the complainant Community producers and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from the countries in question.
- (16) Consequently, PTY sold on the domestic markets of India and Indonesia and exported to the Community as well as PTY produced and sold in the Community are considered as a like product within the meaning of Article 1(5) of the basic Regulation.

C. SAMPLING

1. Sampling of Indian exporters

- (17) In view of the large number of exporting producers in India mentioned in the complaint, the Commission initially considered that it might be necessary to apply sampling techniques in accordance with Article 27 of the basic Regulation.
- (18) In order to enable the Commission to select a sample, pursuant to Article 27(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of PTY. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

2. Pre-selection of cooperating companies

- (19) Twelve companies in India came forward and provided the requested information within the three-week period set in Article 27(2) of the basic Regulation. However, two of these companies were traders which could not be taken into account in the selection of the sample. The remaining ten producers which expressed a wish to participate in the sample, were initially considered as cooperating and were taken into account in the selection of the sample. They represented up to 98 % of total exports of the product concerned from India to the Community.

- (20) Companies which did not make themselves known within the three-week period were considered as non-cooperating companies.

3. Selection of the sample

- (21) According to Article 27(1) of the basic Regulation, the selection was based on the largest representative volume of exports which could reasonably be investigated within the time available. On this basis three exporting producers were chosen to constitute the sample in agreement with the Indian association of exporting producers and the Indian authorities. The three companies which were selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.
- (22) The seven cooperating companies which were not finally retained in the sample, were informed that any countervailable duty on their exports would be calculated in accordance with the provisions of Article 15(3) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 27(3) of the basic Regulation in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.
- (23) Questionnaires were sent for completion to the sampled companies. The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own anti-subsidy margin and individual duty rate.

D. SUBSIDIES

I. INDIA

1. Introduction

- (24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following five schemes, which allegedly involved the granting of export subsidies, were investigated:
- (i) Export Processing Zones/Export Oriented Units (EPZ/EOU);
 - (ii) Duty Entitlement Passbook Scheme (DEPB);
 - (iii) Export Promotion Capital Goods Scheme (EPCG);
 - (iv) Income Tax Exemption Scheme;
 - (v) Advance License Scheme.
- (25) The schemes (i), (ii), (iii) and (v) specified in recital 24 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India (GOI) to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One export and import policy document, i.e. the five-year plan relating to the period 1 April 1997 to 31 March 2002, is relevant to the investigation period of this case. In addition, the GOI also sets out the procedures governing India's foreign trade policy in the 'Handbook of Procedures for Exports and Imports — 1.4.1997 — 31.3.2002' (Volume 1).

The Income Tax Exemption Scheme (iv) specified in recital 24, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

2. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

(a) *Legal basis*

- (26) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export-related incentives. During the IP the scheme was regulated by Customs Notification No 53/97, No 133/94 and No 126/94. Details of the schemes are contained in Chapter 9 and Appendix I of the 1997/2002 Export and Import Policy document, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

- (27) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the EPZ/EOU status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) *Findings*

- (28) It was established that none of the investigated companies availed themselves of this scheme, since they did not have plants in Export Processing Zones or Export Oriented Units. Therefore, this scheme was not considered further in the context of this investigation.

3. Duty Entitlement Passbook Scheme (DEPB)

Legal basis

- (29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.14 to 7.17 of the Export and Import Policy document and paragraphs 7.32 to 7.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme (PBS) which was terminated on 31 March 1997. There are two types of the DEPB:

- DEPB on pre-export basis,
- DEPB on post-export basis.

DEPB on pre-export basis

- (30) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not applicable during the IP. It was established that the investigated companies did not benefit under DEPB on pre-export basis. Therefore, it is not necessary to establish the countervailability of this scheme.

DEPB on post-export basis

(a) *Eligibility*

- (31) The DEPB on post-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(b) Practical implementation of DEPB post-export basis

- (32) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the Standard Input-Output Norms (SION). A licence stating the amount of credit granted is issued automatically.
- (33) DEPB on post-export basis allows for such credits to offset customs duties on any subsequent imports (e.g. raw materials or capital goods) except for those goods whose importation is restricted or prohibited. Goods which are imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.
- (34) DEPB licences are freely transferable and, as a consequence, are frequently sold. A DEPB licence is valid for a period of 12 months from the date on which it is granted. The company has to pay a fee equivalent to 0,5 % of the DEPB credit received to the relevant authority.

(c) Conclusions on DEPB on post-export basis

- (35) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods) or can just be sold.
- (36) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can apply for a licence on the basis of past exports, irrespective of whether it makes any imports or purchases imported goods from other sources.
- (37) DEPB on post-export basis is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. It appears therefore that an excess remission is involved, in accordance with the meaning in Article 2(1)(a)(ii) of the basic Regulation. In fact, the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product.
- (38) In this case, one of the visited companies sold more than 90 % of its DEPB licenses during the investigation period, another company sold 60 % of its licenses, while the third company used all its licenses itself and even purchased a significant number of them.
- (39) On the basis of the above, the scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the DEPB holder who can import goods duty free using credits based on past exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(d) Calculation of the subsidy amount for DEPB post-export basis

- (40) The benefit for the companies was calculated on the basis of the amount of credit granted in the licences which have been utilised or transferred. In cases where the licenses were transferred (sold), the benefit was calculated regardless of the sales prices of the licences, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit received from the scheme. The amount of subsidy has been allocated over total exports during the IP. The sampled companies obtained subsidies of 9,1 %, 2,9 % and 0,4 % respectively. In calculating the benefit, the necessary fees incurred to obtain the subsidy were deducted.

- (41) One company claimed that the benefit of DEPB should be limited to the licences used only for imports related to the PTY production. Since DEPB licences had also been sold by this company, it is impossible to link these licences to any specific product produced by the company. Therefore, the benefit could not be limited to PTY only, but the benefit of all licenses was allocated over total exports.

4. Export Promotion Capital Goods Scheme (EPCGS)

(a) *Legal basis*

- (42) The EPCGS was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notifications No 28/1997, 29/1997 and 49/2000. Details of the schemes are contained in Chapter 6 of the 1997/2002 Export and Import Policy documents, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

- (43) The EPCGS is available to manufacturers-exporters (i.e. every manufacturer in India who exports) or merchants-exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchants-exporters can also benefit from the scheme.

(c) *Practical implementation*

- (44) To benefit from the scheme, a company must provide to the relevant authorities, details of the type and value of capital goods, which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A license authorising the import at preferential rates is issued automatically. An application fee is payable to obtain the licence. In order to meet the export obligation, goods exported must have been produced using the imported capital goods.

(d) *Conclusions on EPCGS*

- (45) The payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, since revenue otherwise due is forgone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties. Hence, the EPCGS is a subsidy.
- (46) As the subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is countervailable. The licence cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. The amount of subsidy has then been allocated over total exports during the investigation period. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit of this scheme to the recipient. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 11,5 % was considered appropriate. The amount of subsidy has then been allocated over total exports during the investigation period.

- (47) Only two of the investigated exporting producers benefited from this scheme during the IP. For one exporting producer the subsidy obtained was 1,25 %, whereas for the other the subsidy established was negligible.

- (48) One of the exporting producers claimed that 'in circumstances where the EPCGS licenses have already redeemed there can be no actionable subsidy as the condition of contingent export performance completely exhausts and become free of any export obligation and hence clearly outside the scope of countervailable subsidies'.
- (49) The company's claim above to exclude the duty exemption benefit for those licenses which have already redeemed (i.e. the export obligation for these licences has already been fulfilled) can not be accepted since the capital goods under these licenses were still in use in the production process and they were not yet fully depreciated. As the EPCGS constitutes a non recurring subsidy, the benefit for the company should be treated as a one-time-grant which has to be allocated over the normal depreciation period, even if all export obligation have already been fulfilled.

5. Income Tax Exemption Scheme (ITES)

(a) *Legal basis*

- (50) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the annual Finance Act, sets out the basis for the collection of taxes as well as for the various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

- (51) Exemption under Section 10A can be claimed by firms located in Free Trade Zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(c) *Practical implementation*

- (52) To benefit from the abovementioned tax deductions/exemptions, a company must make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years following the submission of the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(d) *Conclusion on ITES*

- (53) Item (e) of the Illustrative List of export subsidies (Annex I to the basic Regulation) refers to the 'full or partial exemption ... related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.
- (54) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

- (55) Claims for benefit under sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it was considered appropriate to calculate the benefit under this scheme on the basis of the tax year 2000/2001 (i.e. 1 April 2000 to 31 March 2001) which covers six months of the IP. The benefit to the exporting producers has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. The rate of corporate tax applicable during this tax year was 39,55 %. The amount of subsidy has been allocated over total exports during the tax year 2000/2001.
- (56) Only one investigated exporting producer benefited under Section 80HHC of this scheme and obtained a subsidy of 0,6 %. The other two investigated exporting producers incurred fiscal losses during the tax year 2000/2001 and, thus did not obtain any benefits under this scheme during the IP.

6. Advance Licence Scheme

(a) *Legal basis*

- (57) The scheme is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The scheme is specified in paragraphs 7.2 to 7.13 of the Export and Import Policy and paragraphs 7.2 to 7.31 and 7.54 of the Handbook of Procedures.

(b) *Eligibility*

- (58) Advance licences are available to exporters (manufacturer-exporters or merchant-exporters) to enable them to import inputs used in the production of exports, duty-free.

(c) *Practical implementation*

- (59) The amount of imports allowed under this scheme, is determined as a percentage of the amount of finished products exported. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the SION. The input items specified in the advance licences are items used in the production of the relevant exported finished product.
- (60) The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against Advance licenses for intermediate supplies. In such cases the quantities purchased on the domestic market are written off from the advance licences, and an intermediate advance licence is issued to the benefit of the domestic supplier. The holder of such an intermediate advance licence is entitled to the benefit of importing duty free the goods needed to produce those inputs delivered to the final exporter.
- (61) According to the reply of the questionnaire from the GOI and according to the handbook of procedures, Appendix 21, the Indian law requests the Advance Licence holders to maintain, 'a true and proper account of licence-wise consumption and utilisation of imported goods' with respect to each licence.

(d) *Conclusions on the scheme*

- (62) The scheme is clearly contingent upon export performance. Only exporting companies are granted licences which can be used to offset amounts of customs duties due on imports or otherwise purchased inputs on the basis of their anticipated exportation.
- (63) For the three investigated companies, it was established that only Advance Licenses and Advance Licenses for intermediate supply were used during the IP.

- (64) The GOI claimed that the Advance License Scheme is a quantity based scheme, and that the inputs allowed under the licence are with reference to the quantity of exports. It was also argued that whatever inputs are imported under the Advance License Scheme, the same inputs have to be used in manufacturing of the exported products or for replenishment of the stock of inputs used in the products already exported.
- (65) However, it was noted that there was no system or procedure in place to confirm whether and which inputs are consumed in the production process of the exported products. The system only shows that the goods imported duty-free imported have been used in the production process, with no distinction between the destination of the goods (domestic or export market). On the basis of these findings, it cannot be concluded that the Advance Licence Scheme or Advance Licence for intermediate supply scheme fulfil the requirements of a duty drawback scheme or a substitution duty drawback scheme.
- (66) Therefore, both schemes can be considered countervailable. However, the investigated companies were able to demonstrate that the quantities of imported materials, which were exempted from import duties, did not exceed the quantities used for the exported goods. It was therefore concluded that, in the case in question, the exemption of import duties on inputs were granted in accordance with the provisions of Annex I to III of the basic Regulation.
- (67) Therefore, there is no benefit granted to the companies under this scheme in this proceeding.

7. Amount of countervailable subsidies

- (68) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers were 9,1 %, 4,1 % and 1,0 % (i.e. below the 3 % *de minimis* threshold in accordance with Article 14(5)(b) of the basic Regulation) respectively.
- (69) In accordance with Article 15(3) of the basic Regulation, the resulting weighted average subsidy margin for the cooperating companies not included in the sample is 5,0 %. Given that the level of the overall cooperation for India was high (above 98 %), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 9,1 %.

Type of subsidy	EOU/EPZ	DEPB	EPCGS	ITES	Advance licence	Total
		Post-export				
IndoRama Synthetics Ltd, Nagpur, Maharashtra		2,9 %	1,2 %			4,1 %
Reliance Industries Ltd, Mumbai, Maharashtra		0,4 %		0,6 %		1,0 % <i>de minimis</i>
Welspun Syntex Ltd, Mumbai, Maharashtra		9,1 %				9,1 %
Cooperating exporting producers not in the sample						5,0 %
All others						9,1 %

II. INDONESIA

1. Introduction

- (70) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following three schemes, which allegedly involve the granting of subsidies, were investigated:
- (i) Investment Coordinating Board Scheme (Badan Koordinasi Penanaman Modal — BKPM);
 - (ii) BAPEKSTA (Centre for Administration of Import Duty Exemption and Drawback of the Ministry of Finance) Scheme;
 - (iii) Company (specific) Income Tax Exemption Scheme.

2. Calculation of the subsidy amount

- (71) The Commission firstly calculated the benefits obtained by the investigated exporting producers for each of the abovementioned schemes. The benefit under the Bapeksta scheme was calculated on the basis of the amount of customs duty exemption granted during the IP, allocated over total export turnover during the IP. The benefit under the BKPM scheme was calculated on the basis of the amount of duties unpaid during the IP as far as raw materials and spare parts are concerned, and over the period from 1 January 1991 up to the end of the IP for capital goods, for which the normal depreciation in the industry concerned has been applied. As for the Company Income Tax Exemption Scheme it was found that non of the investigated companies benefited from this scheme.
- (72) The countrywide weighted average subsidy margin for imports from Indonesia was found to be 0,4 % which is well below the *de minimis* threshold for subsidisation for Indonesia, which pursuant to Article 14(5)(b) of the basic Regulation, is set at 3 %.
- (73) As for the amounts of subsidies found for the individual exporters, these vary from 0,1 % to 2,3 % and are in all cases below the *de minimis* threshold. It is noted that the country-wide weighted average subsidy margin was established by setting the subsidy rate for the volumes for which cooperation was not obtained (3 % of total imports into the Community during the IP) at the level of the highest subsidy margin established for cooperating exporting producers.
- (74) On the basis of the above, the Commission does not need to consider whether the subsidies in question are countervailable.

E. COMMUNITY INDUSTRY

1. Community production

- (75) PTY is manufactured in the Community by the following companies:
- three Community producers, which fully cooperated with the Commission during the investigation. Two of these community producers were party to the complaint,
 - four Community producers, out of the six who lodged the complaint, provided some general information on their activities in the complaint. They did not fully cooperate in the investigation, but supported the proceeding,
 - two other non-complainant producers who provided some general information on their activities and supported the complaint but did not supply detailed data,
 - 14 other non-complainant producers who neither cooperated in the investigation nor expressed an opinion.

- (76) Therefore, the PTY produced by all these companies constitutes the Community production within the meaning of Article 9(1) of the basic Regulation.

2. Definition of the Community industry

- (77) The cumulated production of the three cooperating producers was 85 238 tonnes in the IP out of an estimated total Community production of around 228 491 tonnes, i.e. 37 %. However, when the nine producers supporting the proceedings are considered together, they represent 74 % of Community production during the IP.
- (78) One interested party claimed that only three Community producers cooperated in the investigation and that their collective output did not constitute a major proportion of total Community production. Furthermore, this party alleged that four out of the six Community producers that lodged the complaint, eventually decided not to cooperate because they did not consider themselves as being injured, therefore the case was initiated on a wrong basis and the data used to assess the injury suffered by the Community industry was biased.
- (79) First of all it should be noted that all the producers explicitly supporting the complaint prior to initiation represented approximately two thirds of Community production and therefore the support was sufficient to initiate an investigation. Secondly, the three companies that fully cooperated in the investigation represented more than 25 % of Community production and, therefore, a major proportion within the meaning of Article 9(1) and Article 10(8) of the basic Regulation.
- (80) The Commission, therefore, provisionally considers that the three cooperating Community producers constitute the 'Community industry' within the meaning of Article 9(1) and Article 10(8) of the basic Regulation.

F. INJURY

1. Preliminary remarks

1.1. Import data

- (81) Import trends in volume and prices were established using Eurostat information. All imported PTY falls under the CN code 5402 33 00 and no other product is classified under this code. Eurostat data for India was compared to data provided by exporting producers for the IP and was found to be very close.
- (82) The subsidy margins found for Indonesia are below *de minimis*, therefore Indonesia should be provisionally excluded from the injury assessment.

1.2. Community industry data

- (83) Community industry data were obtained from the verified questionnaire responses of the three cooperating Community producers.

2. Community consumption

- (84) Apparent consumption of PTY in the Community was established on the basis of the total imports of the product concerned into the Community, total verified sales of the Community industry on the Community market and estimated sales of other producers operating in the Community based on replies to the Commission's questionnaires, evidence contained in the complaint, and Eurostat export statistics.

- (85) Community consumption of PTY reached approximately 340 000 tonnes during the IP. As shown in the table below, it increased by 19 % over the analysis period. It should be noted that consumption reached a peak in 1998 but subsequently slightly fell back.

Community consumption	1996	1997	1998	1999	2000	IP
Tonnes	285 640	341 660	369 031	353 376	360 176	339 352
1996 = 100	100	120	129	124	125	119

3. Imports from India

3.1. Volume of imports

- (86) The volume of imports originating in India tripled during the analysis period from 7 583 tonnes in 1996 to 22 683 tonnes in the IP. After a sharp rise between 1996 and 1998, imports fell back in 1999 to recover in 2000. There was a further increase of 17 % during the IP compared to the year 2000.
- (87) The market share of the imports concerned reached 7 % during the IP compared to 3 % at the beginning of the analysis period.

Imports from India	1996	1997	1998	1999	2000	IP
Tonnes	7 583	16 992	18 064	11 824	18 752	22 683
1996 = 100	100	224	238	156	247	301
Market share	3 %	5 %	5 %	3 %	5 %	7 %

3.2. Prices of imports

- (88) The prices of the imports concerned decreased by 7 % over the analysis period. A steep drop in price occurred in 1999 when volumes of imports dropped dramatically.

Prices cif	1996	1997	1998	1999	2000	IP
EUR/kg	1,86	1,99	1,69	1,40	1,77	1,73
1996 = 100	100	107	91	75	95	93

3.3. Price undercutting

- (89) For the purposes of analysing price undercutting, the prices of the product concerned sold by the Community industry were compared to the prices of Indian imports on the Community market during the IP, on the basis of weighted average prices per type of PTY.
- (90) The elements taken into account when comparing the imported products with the PTY produced by the Community industry were the decitex (number of grams for 1 000 metres of yarn), the number of filaments, the chemical modification (e.g. flame retardant) and the colour of the yarn (non died, span died or traditionally died).
- (91) The prices of the Indian imports are those reported by the cooperating exporting producers in their responses to the questionnaires on a cif basis at the Community border, duly adjusted for customs duties and post-importation costs. The prices of the Community industry are those reported in the responses to the questionnaires for their sales in the Community to the first unrelated customer on an ex-works basis.

- (92) On this basis, the price-undercutting margin, expressed as a percentage of the Community industry's prices was found to be in the range of 21 % to 36 % for the investigated exporting producers during the IP.

4. Situation of the Community industry

4.1. Production, production capacity and capacity utilisation

- (93) The Community industry's production increased by 18 % over the analysis period but decreased by 3 % in the IP compared to 2000. The production capacity increased by 33 % over the same period. Capacities were continuously extended and modernised in order to increase the competitiveness of the Community industry. Capacity utilisation rates that were fairly high until 1998 but then decreased by 11 percentage points during the following periods.

	1996	1997	1998	1999	2000	IP
Production tonnes	72 330	80 130	83 860	79 607	88 189	85 239
1996 = 100	100	111	116	110	122	118
Capacity tonnes	76 104	84 685	88 240	91 506	98 713	101 400
1996 = 100	100	111	116	120	130	133
Capacity utilisation	95 %	95 %	95 %	87 %	89 %	84 %

4.2. Stocks

- (94) Year-end stock levels varied across the years with a tendency to decline in relation to production levels.

Stocks	1996	1997	1998	1999	2000	IP
Tonnes	5 958	4 791	3 627	1 824	1 794	5 184
1996 = 100	100	80	61	31	30	87

4.3. Sales volume, market share and growth

- (95) The sales made by the Community industry on the Community market during the analysis period increased by 8 % in volume terms. However, the Community industry's sales did not grow as much as consumption; which increased by 16 % over this period. Therefore, the Community industry lost two percentage points of market share over the analysis period.

	1996	1997	1998	1999	2000	IP
Sales volume tonnes	72 318	82 501	85 434	82 749	84 964	77 846
1996 = 100	100	114	118	114	117	108
Market share	25 %	24 %	23 %	24 %	24 %	23 %

4.4. Factors affecting prices

- (96) The selling prices of the Community industry decreased by 9 % over the analysis period. The increasingly high level of imports originating in India, their low prices and their declining price trend created a substantial price depression for the Community industry which was obliged to lower its prices in order to try and maintain its market share.

Average selling price delivered	1996	1997	1998	1999	2000	IP
EUR/kg	2,94	3,00	2,93	2,69	2,58	2,68
1996 = 100	100	102	100	91	88	91

4.5. Profitability

- (97) The Community industry's profitability expressed in terms of return on net sales in the Community market fell sharply over the analysis period from a figure of + 3 % in 1996 to – 12 % in the IP.

	1996	1997	1998	1999	2000	IP
Profitability	3 %	7 %	8 %	2 %	– 7 %	– 12 %

4.6. Investments and ability to raise capital

- (98) Investment was sustained over the analysis period but it reached a lower level in the IP. The majority of these expenditures was recorded under the category machinery, equipment and other items. In 1998, investments were particularly high which corresponds to the creation of a new PTY plant by one Community producer at a time when the Community industry financial prospects were still good.

Investment	1996	1997	1998	1999	2000	IP
1 000 EUR	35 997	30 138	57 567	39 158	33 884	23 051
1996 = 100	100	84	160	109	94	64

- (99) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not seriously affected at the beginning of the analysis period. However, having regard to the level of losses in the IP, the ability to raise capital was seriously jeopardised in the IP.

4.7. Return on investments (ROI)

- (100) In assessing the impact of the subsidised imports on the Community industry's return on investments, the Commission examined the pre-tax profit or loss compared to the total assets of the Community industry.
- (101) The sales of PTY constitutes the largest part of the turnover of the Community industry. ROI was thus apportioned to reflect this share.
- (102) The evolution of the ROI was consistent with the profitability figures and showed the clear deterioration of the financial situation of the Community industry.

	1996	1997	1998	1999	2000	IP
Return on total assets	20 %	25 %	19 %	4 %	– 3 %	– 10 %

4.8. Cash flow

- (103) The sales of PTY constitute the major part of the turnover of the Community industry. Cash flow was thus apportioned to reflect this share.
- (104) The figures in the table below concerning the cash flow of the Community industry clearly confirmed the deterioration of its financial situation.

	1996	1997	1998	1999	2000	IP
Net cash inflow (outflow) from all activities (EUR 1 000)	23 014	30 128	14 778	38 113	15 427	15 836
Index	100	131	64	166	67	69

4.9. *Employment, productivity and wages*

- (105) The following table shows the number of people employed by the Community industry in the area of the product concerned and their associated employment cost.

	1996	1997	1998	1999	2000	IP
Number of employees	1 180	1 260	1 419	1 482	1 487	1 403
1996 = 100	100	107	120	126	126	119
Employment costs (EUR 1 000)	27 362	32 522	35 035	38 864	39 861	40 832
1996 = 100	100	119	128	142	146	149
Productivity	61 297	63 595	59 098	53 716	59 307	60 755
1996 = 100	100	104	96	88	97	99

- (106) The number of people employed by the Community industry at the end of the IP was 1 403, an overall increase by 19 % over the analysis period, mainly following an important increase in 1998 and 1999 when the Community industry decided to substantially develop its production capacities. This extension was planned when prospects were still good (see recital 98). Employment costs in relation to the number of employees increased by 30 % over the same period.
- (107) Productivity in the IP was approximately the same as in 1996. In 1999 when production capacities increased as well as the number of employees, productivity had temporarily deteriorated.

4.10. *Recovery from past dumping*

- (108) In 1997 and 1998, the financial results of the Community industry were satisfactory showing that it had recovered from past dumping from imports originating in third countries for which anti-dumping measures were put in force. There are definitive anti-dumping measures in force on imports of PTY originating in Malaysia, Indonesia, Thailand and Taiwan (see recital 4).

4.11. *Actual margin of subsidisation*

- (109) The subsidy margins for India are specified in the subsidies part (see recital 69). These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the subsidised imports, the impact of the actual subsidy margin cannot be considered negligible.

5. **Conclusion on injury**

- (110) Between 1996 and the IP, the volume of imports of PTY originating in India was multiplied by three from under 7 500 tonnes to over 22 000 tonnes. This resulted in an overall increase in the market share of the imports concerned of four percentage points at a time when consumption grew by 19 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered with a price undercutting ranging between 30 % and 45 % during the IP.
- (111) Simultaneously, between 1996 and the IP the situation of the Community industry deteriorated in terms of market share, sale prices, profitability, return on investments, cash flow and ability to raise capital. The poor financial results of the Community industry resulted from the depression of its prices.
- (112) In view of the above it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation.

G. CAUSATION OF INJURY

1. Introduction

- (113) In accordance with Article 8(6) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the subsidised imports from the country concerned. In accordance with Article 8(7) of the basic Regulation, the Commission also examined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the subsidised imports.
- (114) Anti-dumping measures are currently in force against imports originating in Thailand, Indonesia, Taiwan and Malaysia which are intended to remove injurious dumping from these countries. The PTY imports originating in these four countries are presently subject to expiry anti-dumping review (see recital 4). This element was borne in mind in this examination.

2. Effect of the subsidised imports

2.1. Volume

- (115) The imports of PTY originating in India tripled over the analysis period to reach a level of 22 683 tonnes during the IP.
- (116) The substantial increase in the volume of imports originating in India and their gain in market share over the period considered, at prices which remained well below those of the Community industry coincided in time with a serious deterioration of the situation of the Community industry notably in terms of market share, sale prices, cash flow, ability to raise capital, return on investments and profitability.
- (117) This deterioration was most marked between 2000 and the IP when the volume of subsidised imports increased by a further 17 % to reach record levels.

2.2. Prices

- (118) From 1996 to the IP, prices of subsidised imports decreased by 7 % while their market share increased by four percentage points. At the same time, the Community industry decreased its selling prices by 9 % in an unsuccessful effort to maintain its market share.
- (119) Prices of subsidised imports were constantly below the Community industry's prices with an undercutting margin in the range of 30 % to 45 % for the investigated exporting producers during the IP.
- (120) It is therefore considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 1996 onwards and which were made at particularly low subsidised prices, resulted in price depression for the Community industry and a deterioration of its financial situation.

3. Effect of other factors

3.1. Imports originating in other third countries

- (121) Four countries exporting PTY to the Community are subject to anti dumping duties: Indonesia, Malaysia, Taiwan and Thailand. These four countries represented a market share of 18 % during the IP. Over the analysis period, the market share of imports originating in these countries increased by three percentage points from 15 % in 1996 to 18 % during the IP. Average cif prices of these imports are below the Community industry prices. The exporting producers in Indonesia and Taiwan benefiting from 0 % anti-dumping duty rates are those which effectively increased their sales on the Community market. It cannot be excluded that these imports have contributed to the injury suffered by the Community industry. This is currently being investigated within review investigations initiated on 31 May 2002 ⁽¹⁾ on the basis of Article 11(3) of Regulation (EC) No 384/96.
- (122) Imports originating in other third countries represented a market share of 19 % during the IP and increased, in volume, by 47 % over the analysis period. The most significant volumes originated in the United States of America, Turkey and South Korea. Average cif prices of these imports are slightly below ex works prices of the Community industry. However, if one takes into account customs duties and post importation costs, they are approximately at the same level as the Community industry prices. Accordingly, these imports cannot be considered as having injured the Community industry.

	1996	1997	1998	1999	2000	IP
Indonesia, Malaysia, Taiwan and Thailand						
Quantity — Tonnes	43 443	50 030	55 778	61 485	62 450	61 193
Market share	15 %	15 %	15 %	17 %	17 %	18 %
cif prices EUR/kg	1,88	2,02	1,66	1,38	1,81	1,85
Other third countries						
Quantity — Tonnes	41 574	61 630	73 575	75 912	68 209	61 377
Market share	15 %	20 %	20 %	22 %	19 %	19 %
cif prices EUR/kg	2,30	2,30	2,09	1,86	2,29	2,30

3.2. Prices of raw materials

- (123) The main raw material used in the production of PTY is polyester oriented yarn (POY).
- (124) The Community industry is buying POY both inside and outside the Community. Some POY is also purchased from related companies. A detailed comparison decitex by decitex between intra-group prices, prices paid on the market and prices published by specialised press (PCI) proved that the purchases from related companies are done on an arm's length basis price. Selling conditions are also similar to general market conditions.
- (125) The actual price paid by the Community industry for its POY, as shown in the table below, increased considerably in 1997-1998 and then decreased to levels which were lower than at the beginning of the analysis period. It cannot thus be considered that costs of raw materials caused injury to the Community industry.

	1996	1997	1998	1999	2000	IP
Average cost of POY EUR/kg	1,5	2,0	1,7	1,4	1,4	1,4

⁽¹⁾ OJ C 129, 31.5.2002, pp. 2 and 5.

3.3. *The export performance of the Community industry*

- (126) The volume of the Community industry's exports increased by nearly 400 % over the analysis period to reach a figure of 5 200 tonnes, as the Community industry has developed long term trade relations with partners outside the Community. It should be noted that the actual tonnage exported is small when compared to the volume of total sales of the Community industry.
- (127) In conclusion, as exports have increased over the period, it is considered that they cannot be responsible for the injury suffered by the Community industry.

3.4. *Changes in the pattern of consumption*

- (128) Consumption of the product concerned in the Community increased by 19 % over the analysis period. It is therefore considered that this factor did not contribute to the injury suffered by the Community industry.

4. **Conclusion on causation**

- (129) The substantial increase in the volume and market share of imports from India over the analysis period and most notably in the IP and their level of price undercutting during the IP had material negative consequences on the market share and selling prices of the Community industry. This in turn affected a number of the Community industry's economic indicators, in particular profitability and return on investments. Given the above analysis, it is considered that imports of PTY originating in India had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third Countries including Indonesia, Malaysia, Taiwan and Thailand, was not such as to alter the finding of a genuine and substantial relationship of cause and effect between the subsidised imports from India and the material injury suffered by the Community industry.

Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby concluded that these other factors as such do not reverse the fact that the material injury found may be attributed to the subsidised imports.

- (130) It is therefore provisionally concluded that the subsidised imports from the country concerned have caused material injury to the Community industry within the meaning of Article 8(6) of the basic Regulation.

H. **COMMUNITY INTEREST**

1. **General remarks**

- (131) The Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users and suppliers of the product under consideration.

2. **The investigation**

- (132) The Commission sent questionnaires to importers, suppliers of raw materials and industrial users of the product concerned. In total, 13 questionnaires were sent to suppliers, 21 to users, 14 to importers and 16 to other producers of PTY.

- (133) Questionnaire responses were received within the time limits from:
- one direct supplier of raw materials, supplying MEG and PTA to the Community industry:
 - BP Chemicals Ltd (United Kingdom),
 - one user of the product concerned, producing textiles to be used mainly in the automotive and upholstery sectors:
 - Mattes & Ammann KG (Germany),
 - two other producers of PTY:
 - FITEGAR SA (Portugal),
 - Manifattura di Stabbia SpA (Italy),
 - no importer of the product concerned has sent a questionnaire response.

3. Likely effect of the imposition of measures on the Community industry and other Community producers of PTY

- (134) The Community industry is viable and capable of supplying the market. Indeed, the Community industry has made a great effort to meet the requirements of the users, and particularly of the car industry, demanding high quality products to be delivered at their convenience. The Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of steps taken are:
- (a) develop specific products to supply niche markets;
 - (b) improve productivity, including a widespread use of modern production techniques (e.g. increased mechanisation and computerisation).
- (135) It is clear that the proposed measures would benefit the Community industry. There is no reason to doubt the viability and competitiveness of the Community industry in a situation where normal market conditions apply. This is supported by its profitability level between 1996 and 1999 and by its position on the Community market in the specialities sector, which are not yet targeted by the subsidised imports.
- (136) The Community industry has suffered from injurious subsidisation. The subsidised imports from India undercut and depressed the Community industry selling prices, caused a slight reduction of its market share and did not allow it to grow as fast as the market. The subsidised imports from India eroded severely the profitability and return on investment of the Community industry. Investments were also reduced particularly during the IP. If this situation remains unchanged, losses at the levels reached during the IP will persist and the long-term viability of the Community industry will be endangered.
- (137) The other producers that answered the Commission's questionnaire supported these views.
- (138) It is therefore provisionally concluded that it would be in the interest of the Community industry and of the other Community producers that measures are imposed.

4. Likely effects of the imposition of measures on importers

- (139) No answers were received from any importer or trader.
- (140) The non-cooperation of importers in this case leads to the conclusion that the imposition of measures on imports originating in India is not likely to have any significant impact on the situation of unrelated importers and traders of PTY in the Community.

5. Likely effects of the imposition of measures on suppliers of raw materials

- (141) Community producers are mainly buying Mono Ethylene Glycol (MEG), Purified Terephthalic acid (PTA) or Dimethylterephthalate (DMT) to produce Polyester Oriented Yarn (POY), to subsequently texture it to make PTY. Some Community producers are also buying POY directly.
- (142) The supplier that cooperated in the investigation is employing more than 300 persons dedicated to the production of PTA and MEG.
- (143) The cooperating supplier worked closely with Community producers, deriving a substantial part of its turnover from sales to them. Therefore any reduction in the Community industry's purchases would have a dramatic effect on this company.
- (144) It is clear that the imposition of measures would help to maintain the level of activity of the Community industry and by extension of its suppliers. The Commission has therefore provisionally concluded that the imposition of anti-dumping measures is in the interest of the upstream industries.

6. Likely effects of the imposition of measures on users

- (145) As mentioned only one user cooperated. This user is mainly concerned by the possible further concentration of the PTY sector if measures are imposed as a certain movement of concentration took place within large multinational companies.
- (146) This argument is not persuasive because there were 23 producers in the Community industry during the IP. Furthermore, if measures were not imposed, the difficult financial situation of the Community industry is likely to lead to further world wide concentration. Moreover, the very existence of the Community industry might be at stake, making the users completely dependent on imports. On the contrary if measures are imposed the various Community producers are likely to continue competing among themselves and with non subsidised imports, assuring the best market conditions to users.
- (147) It is therefore provisionally considered that, in view of the low level of response to the Commission's questionnaires and despite the comments made by the company that did respond, the imposition of anti-subsidy measures would not be prejudicial to the viability and competitiveness of users.

7. Conclusion

- (148) The imposition of countervailing measures is in the interest of the Community industry, other Community producers of PTY and suppliers of raw materials. It will allow these sectors to improve profitability and to have the possibility of making the new investments which are crucial for their viability.
- (149) If measures are not imposed, the continued decline in the profitability of the Community industry observed over the analysis period will seriously jeopardise.
- (150) It has also be concluded that the imposition of countervailing measures on users would not be prejudicial to their viability and competitiveness.
- (151) In view of the above, the Commission provisionally concluded that no compelling reasons exist not to impose provisional countervailing measures in the present case.

I. NON-IMPOSITION OF DUTIES

- (152) In the light of the findings that the countrywide weighted average subsidy margin for imports originating in Indonesia is *de minimis*, it is provisionally decided not to impose countervailing duties as regards imports originating in this country.

J. PROVISIONAL ANTI-SUBSIDY MEASURES

1. Injury elimination margin

- (153) In order to prevent further injury being caused by the subsidised imports, it was considered appropriate to adopt countervailing measures in the form of provisional duties.
- (154) For the purpose of determining the level of these duties, the Commission took account of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (155) To this end, the Commission determined a non-injurious price based on production costs of the Community industry, together with a reasonable profit margin of 8 %, this being considered necessary to ensure the viability of the industry and being a profit which this industry experienced in 1998 when the subsidised imports from India had not such a depressing effect on the Community industry's prices and where the imports from the countries subject to measures were already at a level similar to that prevailing in the IP. The non-injurious price was compared with the prices of the subsidised and dumped imports used to establish undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury elimination margin.
- (156) In order to calculate the injury elimination margin applicable to exporting producers that cooperated but were not part of the sample, the weighted average injury elimination margin of the companies included in the sample was used.
- (157) For those exporting producers in India which neither replied to the Commission's questionnaire nor otherwise made themselves known, the countrywide injury elimination margin was established on the basis of the facts available, in accordance with Article 28(1) of the basic Regulation. In view of the high level of cooperation it was considered appropriate to set the injury elimination margin for the non-cooperating companies at the level of the highest injury margin established for a cooperating company in the country in question.

2. Provisional measures

- (158) Since subsidy margins have been found to be lower than injury elimination margins, the provisional duties to be imposed should correspond to the subsidy margins established, in accordance with Article 12(1) of the basic Regulation.

Reliance Industries Ltd	0 %
Indo Rama Synthetics Ltd	4,1 %
Welspun Syntex Ltd	9,1 %
Cooperating exporting producers not in the sample	5,0 %
Non-cooperating exporting producers	9,1 %

- (159) The individual company anti-subsidy 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 countrywide 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'.

- (160) Any claim requesting the application of these individual company anti-subsidy 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.

3. Final provision

- (161) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of PTY falling within CN code 5402 33 00 and originating in India.
2. The rate of the provisional countervailing duty applicable to the net-free-at-Community-frontier-price, before duty, for products produced by the following companies shall be as follows:

Company	Rate of duty (%)	TARIC additional code
Chhabria Polyester Corporation Mehta House, 1 st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	5,0	A388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	4,1	A389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	5,0	A390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt. Baroda 391 210, India	5,0	A391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	5,0	A392
Parasrampur Industries Limited 208, Nariman Point, Bombay, 400 021, India	5,0	A393

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Company	Rate of duty (%)	TARIC additional code
Reliance Industries Limited Maker Chambers IV, Nariman Point, Bombay, Mumbai, 400 021, India	0,0	A 394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Bombay, Mumbai, 400 021, India	5,0	A 395
Supertex Industries Limited Balkrishna Krupa, 2 nd Floor, 45/49, Babu Genu Road, Princess Stree, Bombay, 400 002, India	5,0	A 396
Welspun Syntex Limited Kamani Wadi, 1 st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Stree, Bombay, 400 002, India	9,1	A 397
All others	9,1	A 999

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of provisional duty.

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 shall apply for a period of four months.

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

Done at Brussels, 29 July 2002.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION REGULATION (EC) No 1412/2002**of 29 July 2002****imposing a provisional anti-dumping duty on imports of polyester textured filament yarn (PTY) originating in India**

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 2238/2000 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 9 November 2001, the Commission announced, by a notice published in the *Official Journal of the European Communities* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of polyester textured filament yarn (hereinafter 'PTY') originating in India.
- (2) The proceeding was initiated as a result of a complaint lodged in September 2001 by the International Committee of Rayon and Synthetic Fibres (CIRFS), acting on behalf of producers representing a major proportion of the total Community production of PTY. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.
- (3) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 ⁽⁴⁾), as amended by Council Regulation (EC) No 1992/2000 ⁽⁵⁾), Indonesia, Thailand (Council Regulation (EC) No 2160/96 ⁽⁶⁾), as last amended by Council Regulation (EC) No 1078/2001 ⁽⁷⁾) and Taiwan (Council Regulation (EC) No 3905/88 ⁽⁸⁾), as last amended by Council Regulation (EC) No 2010/2000 ⁽⁹⁾). The expiry of these measures regarding imports originating in Malaysia ⁽¹⁰⁾, Taiwan ⁽¹¹⁾, Indonesia ⁽¹²⁾, Thailand ⁽¹³⁾ is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation').
- (4) A parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India and Indonesia was announced by a notice published in the *Official Journal of the European Communities* ⁽¹⁴⁾ on the same date.
- (5) The Commission officially advised the complainant and other known Community producers, exporting producers, their representative association, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ C 315, 9.11.2001, p. 2.

⁽⁴⁾ OJ L 145, 5.6.1997, p. 1.

⁽⁵⁾ OJ L 238, 22.9.2000, p. 1.

⁽⁶⁾ OJ L 289, 12.11.1996, p. 14.

⁽⁷⁾ OJ L 149, 2.6.2001, p. 5.

⁽⁸⁾ OJ L 347, 16.12.1988, p. 10.

⁽⁹⁾ OJ L 241, 26.9.2000, p. 1.

⁽¹⁰⁾ OJ C 135, 6.6.2002, p. 10.

⁽¹¹⁾ OJ C 170, 14.6.2001, p. 2.

⁽¹²⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹³⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹⁴⁾ OJ C 315, 9.11.2001, p. 5.

- (6) A number of exporting producers in India and their association, as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.
- (7) In view of the apparent large number of exporting producers in India, as set out in the complaint, the application of sampling techniques for the investigation of dumping was applied in accordance with Article 17 of the basic Regulation and as described more in detail in recital 14 et seq. of this Regulation. The Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers in India.
- (8) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers and from one Community producer who did not originally form part of the complaint. The Commission also received replies from one user and two suppliers of raw material providing information, which was sufficiently complete and representative to use in the assessment of Community interest. No importers in the Community which were not related to exporting producers replied to the questionnaire or made themselves known.
- (9) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
 - (a) *Community producers*
 - Dupont SA, United Kingdom,
 - Sinterama SpA, Italy;
 - (b) *Exporting producers in India*
 - Indo Rama Synthetics Ltd, Nagpur,
 - Reliance Industries Ltd and its related companies, Mumbai and Nagpur,
 - Welspun Syntex Ltd, Mumbai.
- (10) The investigation of dumping and injury covered the period from 1 October 2000 to 30 September 2001 (hereinafter referred to as the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 October 1997 to the end of the IP (analysis period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (11) The product under consideration is polyester textured filament yarn (PTY) originating in India which falls within CN code 5402 33 00. It is directly derived from partially oriented polyester yarn and then textured. It is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabric. The product is sold in different product types which can be identified through different specifications such as the weight (denier), the number of filaments, the nature of the yarn as flame retardant, the colouring, the twisting. There are also different qualities, depending on the efficiency of the production process. However, no significant differences exist in the basic physical characteristics and uses of the different types and qualities of PTY. In these circumstances, all types of PTY should be considered as one product for the purposes of this proceeding.

2. Like product

- (12) The investigation showed that PTY produced and sold on the domestic market of India has similar basic physical characteristics and uses compared with that exported from this country to the Community. Similarly, the PTY manufactured by the complainant Community producers and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from the country in question.
- (13) Consequently, PTY sold on the domestic market of India and exported to the Community as well as PTY produced and sold in the Community are considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. SAMPLING

1. Sampling of Indian exporters

- (14) In view of the large number of exporting producers in India mentioned in the complaint, the Commission initially considered that it might be necessary to apply sampling techniques in accordance with Article 17 of the basic Regulation.
- (15) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of PTY. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

2. Pre-selection of cooperating companies

- (16) Twelve companies in India came forward and provided the requested information within the three-week period set in Article 17(2) of the basic Regulation. However, only nine were producers reporting exports to the Community during the investigation period. Those producers that exported the product concerned to the Community during the investigation period and expressed a wish to participate in the sample were initially considered as cooperating and were taken into account in the selection of the sample. They represented up to 98 % of total exports of the product concerned from India to the Community. As to the remaining three companies, two were traders that could not be taken into account in the selection of the sample and one was an exporting producer with no exports to the Community during the IP.
- (17) Companies, which did not make themselves known within the three-week period, were considered as non-cooperating companies.

3. Selection of the sample

- (18) According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports, which could reasonably be investigated within the time available.
- (19) On this basis three exporting producers were chosen to constitute the sample in agreement with the Indian association of exporting producers and the Indian authorities. The three companies selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.
- (20) The six cooperating exporting producers, who were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 17(3) of the basic Regulation in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.
- (21) The exporting producer that was not related to any of the exporting producers subject to the investigation and did not export the product concerned to the Community during the IP though it had some exports after the IP, was also informed that any anti-dumping duty on its exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.
- (22) Questionnaires were sent for completion to all three initially sampled companies and a shorter questionnaire was sent to the company that only exported subsequently to the IP.
- (23) The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin and individual duty rate.

D. DUMPING**1. Normal value**

- (24) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of PTY to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.
- (25) This assessment revealed that all investigated exporting producers had representative sales of PTY on the domestic market during the investigation period.
- (26) The Commission subsequently considered whether domestically sold and exported product types had similar quality, denier, filament, flame retardant characteristics, colouring and twisting and concluded that they were identical or directly comparable.
- (27) Additionally and for each product type sold by the exporting producer on the domestic market, which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.
- (28) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the investigation period:

- (a) for those product types where more than 80 % by volume of sales on the domestic market were not below unit costs, and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question;
 - (b) for those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question;
 - (c) for those product types where less than 10 %, by volume of sales, on the domestic market, were not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.
- (29) For certain types sold for export to the Community by all three investigated companies, domestic sales were found to have been made in the ordinary course of trade. Normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of India, during the investigation period, as set out in Article 2(1) of the basic Regulation.
 - (30) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All three investigated companies sold certain such product types for export to the Community.

- (31) To construct normal value pursuant to Article 2(6) of the basic Regulation, the selling, general and administrative (hereinafter referred to as SGA) expenses incurred and the weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of manufacturing during the investigation period. Where necessary, the manufacturing costs and SGA expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal values.

2. Export price

- (32) As all exports of the product under consideration by all three exporting producers were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

3. Comparison

- (33) The comparison between normal value and export price was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers allowances for differences in physical characteristics, transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates have been granted where applicable and justified.
- (34) All three investigated companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community. All companies made use of the Duty Entitlement Passbook Scheme (DEPB) on post-export basis and/or Advance License Scheme (ALS) for that reason. This claim was rejected because there was no evidence that any import charge was borne by the like product when destined for domestic consumption. Alternatively, the companies claimed the same adjustment pursuant to Article 2(10)(k). However, because the companies failed to demonstrate that the DEPB on post-export basis and/or ALS schemes affect price comparability, and in particular that customers consistently pay different prices on the domestic market because of the benefits of the abovementioned schemes, the adjustment could not be accepted.
- (35) One investigated company claimed an adjustment pursuant to Article 2(10)(b) for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and refunded in respect of the product exported to the Community. It was found that the company was indeed refunded upon export of the product concerned. However, since the company failed to demonstrate that the full amount of this indirect tax was refunded, the claim was adjusted downwards. Another investigated company claimed an adjustment pursuant to the same Article of the basic Regulation for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and not collected in respect of the product exported to the Community. In this respect, it was found that the company failed to duly report the relevant quantities of the raw material used in the production of the like product. Consequently, there was no evidence as to the precise amount of indirect tax borne by the like product and this claim was rejected.

- (36) One investigated company claimed an adjustment pursuant to Article 2(10)(b) of the basic Regulation for a sales tax (indirect tax) imposed by the Indian regional authorities and allegedly paid on domestic sales. The company in question was exempted from depositing with the government treasury the sales tax. This exemption is given to companies, which invest in the region concerned. In this respect, it was not demonstrated that the company collected on domestic sales and deposited with the government treasury the said tax and, therefore no such sales tax was 'borne by the like product' sold in the domestic market. Thus, the claim was considered to be unfounded.
- (37) Two investigated companies claimed an adjustment pursuant to Article 2(10)(d) of the basic Regulation for differences in the level of trade. The adjustment could not be granted since the companies could not demonstrate that the export price was set at a different level of trade from the normal value and that price comparability was affected. In fact, two different levels of trade were argued to exist, both on export and domestic market, but no consistent and distinct differences in functions and prices of the companies concerned for the different levels of trade in the domestic market of India could be found. Alternatively, both companies claimed the same adjustment pursuant to Article 2(10)(c) or Article 2(10)(k). The claim could not be granted under the provisions of Article 2(10)(c) of the basic Regulation, since quantity discounts can only be considered for an adjustment when they are actually given for differences in quantities directly linked to the sales under consideration, and no such discounts were given by the companies concerned. Nor could the claim be granted pursuant to Article 2(10)(k) since it was found that the pattern claimed by the companies was not consistently applied to their sales in the domestic market and since it was found that these were essentially the same claims under level of trade and quantity discounts, which had already been rejected.
- (38) One investigated company claimed an adjustment pursuant to Article 2(10)(f) of the basic Regulation for differences in the directly related packing costs between the exported and the domestically sold products. In this respect, the company failed to demonstrate that a cost difference, affecting price comparability, could be directly related to the packing cost for the product concerned. Thus, this claim was rejected.

4. Dumping margins

(a) *Dumping margin for companies investigated*

- (39) Dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type.

(b) *Dumping margin for cooperating companies not in the sample*

- (40) The dumping margin for exporting producers, which made themselves known in accordance with Article 17 of the basic Regulation but were not examined individually, has been established on the basis of the weighted average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.

(c) *Dumping margin for non-cooperating companies*

- (41) For those exporting producers which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.
- (42) For the country subject to investigation, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics in order to establish the overall level of cooperation.
- (43) It was found that the overall level of cooperation was high and it was considered appropriate to set a residual dumping margin for the non-cooperating companies at the level of the highest dumping margin established for a cooperating company in the country in question.

- (44) The above approach with regard to non-cooperating companies was also considered necessary in order to prevent any non-cooperating companies benefiting from their non-cooperation.
- (45) The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

Indo Rama Synthetics Ltd	15,7 %
Reliance Industries Ltd	19,1 %
Welspun Syntex Ltd	17,2 %
Cooperating exporting producers not in the sample	17,7 %
Non-cooperating exporting producers	19,1 %

E. COMMUNITY INDUSTRY

1. Community production

- (46) PTY is manufactured in the community by the following companies:
- three community producers, which fully cooperated with the Commission during the investigation. Two of these community producers were party to the complaint,
 - four community producers, out of the six who lodged the complaint, provided some general information on their activities in the complaint. They did not fully cooperate in the investigation, but supported the proceeding,
 - two other non-complainant producers who provided some general information on their activities and supported the complaint but did not supply detailed data,
 - fourteen other non-complainant producers who neither cooperated in the investigation nor expressed an opinion.
- (47) Therefore, the PTY produced by all these companies constitutes the Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

- (48) The cumulated production of the three cooperating producers was 85 238 tonnes in the IP out of an estimated total Community production of around 228 491 tonnes, i.e. 37 %. However, when the nine producers supporting the proceedings are considered together, they represent 74 % of Community production during the IP.
- (49) One interested party claimed that only three Community producers cooperated in the investigation and that their collective output did not constitute a major proportion of total Community production. Furthermore, this party alleged that there were four out of the six Community producers that lodged the complaint that eventually decided not to cooperate because they did not consider themselves as being injured, therefore the case was initiated on a wrong basis and the data used to assess the injury suffered by the Community industry was biased.
- (50) First of all it should be noted that all the companies explicitly supporting the complaint prior to initiation represented approximately two-thirds of Community production and therefore support was sufficient to initiate an investigation. Secondly, the three companies that fully cooperated in the investigation represented more than 25 % of Community production and, therefore, a major proportion within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (51) The Commission, therefore, provisionally considers that the three cooperating Community producers constitute the 'Community industry' within the meaning of Article 4(1) and Article 5(4).

F. INJURY

1. Preliminary remarks

Import data

- (52) Import trends in volume and prices were established using Eurostat information. All imported PTY falls under the CN code 5402 33 00 and no other products is classified under this code. Eurostat data for India was compared to data provided by exporting producers for the IP and was found to be very close.

Community industry data

- (53) Community industry data were obtained from the verified questionnaire responses of the three cooperating Community producers.

2. Community consumption

- (54) Apparent consumption of PTY in the Community was established on the basis of the total imports of the product concerned into the Community, total verified sales of the Community industry on the Community market and estimated sales of other producers operating in the Community based on replies to the Commission's questionnaires, evidence contained in the complaint and Eurostat export statistics.
- (55) Community consumption of PTY reached approximately 340 000 tonnes during the IP. As shown in the table below, it increased by 19 % over the analysis period. It should be noted that consumption reached a peak in 1998 but subsequently fell back afterwards.

Community consumption	1996	1997	1998	1999	2000	IP
Tonnes	285 640	341 660	369 031	353 376	360 176	339 352
1996 = 100	100	120	129	124	125	119

3. Imports from India

Volume of imports

- (56) The volume of imports originating in India tripled during the analysis period from 7 583 tonnes in 1996 to 22 683 tonnes in the IP. After a sharp rise between 1996 and 1998, imports fell back in 1999 to recover in 2000. There was a further increase of 17 % during the IP compared to the year 2000.
- (57) The market share of the imports concerned reached 7 % during the IP compared to 3 % at the beginning of the analysis period.

Imports from India	1996	1997	1998	1999	2000	IP
Tonnes	7 583	16 992	18 064	11 824	18 752	22 683
1996 = 100	100	224	238	156	247	301
Market share	3 %	5 %	5 %	3 %	5 %	7 %

Prices of imports

- (58) The prices of the imports concerned decreased by 7 % over the analysis period. A steep drop in price occurred in 1999 when volumes of imports dropped dramatically.

Prices cif	1996	1997	1998	1999	2000	IP
EUR/kg	1,86	1,99	1,69	1,40	1,77	1,73
1996 = 100	100	107	91	75	95	93

Price undercutting

- (59) For the purposes of analysing price undercutting, the prices of the product concerned sold by the Community industry were compared to the prices of Indian imports on the Community market during the IP, on the basis of weighted average prices per type of PTY.
- (60) The elements taken into account when comparing the imported products with the PTY produced by the Community industry were the decitex (number of grams for 1 000 metres of yarn), the number of filaments, the chemical modification (e.g. flame retardant) and the colour of the yarn (non-died, span-died or traditionally-died).
- (61) The prices of the Indian imports are those reported by the cooperating exporting producers in their responses to the questionnaires on a cif basis at the Community border, duly adjusted, for customs duties and post-importation costs. The prices of the Community industry are those reported in the responses to the questionnaires for their sales in the Community to the first unrelated customer on an ex-works basis.
- (62) On this basis, the price-undercutting margin, expressed as a percentage of the Community industry's prices was found to be in the range of 21 % to 36 % for the exporting producers who cooperated in the investigation.

4. Situation of the Community industry*Production, production capacity and capacity utilisation*

- (63) The Community industry's production increased by 18 % over the analysis period but decreased by 3 % in the IP compared to 2000. The production capacity increased by 33 % over the same period. Capacities were continuously extended and modernised in order to increase the competitiveness of the Community industry. Capacity utilisation rates that were fairly high until 1998 but then decreased by 11 percentage points during the following periods.

	1996	1997	1998	1999	2000	IP
Production tonnes	72 330	80 130	83 860	79 607	88 189	85 239
1996 = 100	100	111	116	110	122	118
Capacity tonnes	76 104	84 685	88 240	91 506	98 713	101 400
1996 = 100	100	111	116	120	130	133
Capacity utilisation	95 %	95 %	95 %	87 %	89 %	84 %

Stocks

- (64) Year-end stock levels varied across the years with a tendency to decrease in relation to production levels.

Stocks	1996	1997	1998	1999	2000	IP
Tonnes	5 958	4 791	3 627	1 824	1 794	5 184
1996 = 100	100	80	61	31	30	87

Sales volume, market share and growth

- (65) The sales made by the Community industry on the Community market during the analysis period increased by 8 % in volume terms. However, the Community industry's sales did not grow as much as consumption which increased by 16 % over this period. Therefore, the Community industry lost two percentage points of market share over the analysis period.

	1996	1997	1998	1999	2000	IP
Sales volume in tonnes	72 318	82 501	85 434	82 749	84 964	77 846
1996 = 100	100	114	118	114	117	108
Market share	25 %	24 %	23 %	24 %	24 %	23 %

Factors affecting prices

- (66) The selling prices of the Community industry decreased by 9 % over the analysis period. The increasingly high level of imports originating in India, their low prices and their declining price trend created a substantial price depression for the Community industry which was obliged to lower its prices in order to try and maintain its market share.

Average selling price delivered	1996	1997	1998	1999	2000	IP
EUR/kg	2,94	3,00	2,93	2,69	2,58	2,68
1996 = 100	100	102	100	91	88	91

Profitability

- (67) The Community industry's profitability expressed in terms of return on net sales in the Community market fell sharply over the analysis period from a figure of + 3 % in 1996 to – 12 % in the IP.

	1996	1997	1998	1999	2000	IP
Profitability	3 %	7 %	8 %	2 %	– 7 %	– 12 %

Investments and ability to raise capital

- (68) Investment was sustained over the analysis period but it reached a lower level in the IP. The majority of these expenditures were recorded under the category machinery, equipment and other items. In 1998, investments were particularly high which corresponds to the creation of a new PTY plant by one Community producer at a time when the Community industry financial prospects were still good.

Investment	1996	1997	1998	1999	2000	IP
EUR 1 000	35 997	30 138	57 567	39 158	33 884	23 051
1996 = 100	100	84	160	109	94	64

- (69) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not seriously affected at the beginning of the analysis period. However, having regard to the level of losses in the IP, the ability to raise capital was seriously jeopardised in the IP.

Return on investments (ROI)

- (70) In assessing the impact of the dumped imports on the Community industry's return on investments, the Commission examined the pre-tax profit or loss compared to the total assets of the Community industry.

- (71) The sales of PTY constitutes the largest part of the turnover of the Community industry ROI was thus apportioned to reflect this share.
- (72) The evolution of the ROI was consistent with the profitability figures and showed the clear deterioration of the financial situation of the Community industry.

	1996	1997	1998	1999	2000	IP
Return on total assets	20 %	25 %	19 %	4 %	- 3 %	- 10 %

Cash flow

- (73) The sales of PTY constitute the major part of the turnover of the Community industry. Cash flow was thus apportioned to reflect this share.
- (74) The figures in the table below concerning the cash flow of the Community industry clearly confirmed the deterioration of its financial situation.

	1996	1997	1998	1999	2000	IP
Net cash inflow (outflow) from all activities EUR/1 000	23 014	30 128	14 778	38 113	15 427	15 836
Index	100	131	64	166	67	69

Employment, productivity and wages

- (75) The following table shows the number of people employed by the Community industry in the area of the product concerned and their associated employment cost.

	1996	1997	1998	1999	2000	IP
Number of employees	1 180	1 260	1 419	1 482	1 487	1 403
1996 = 100	100	107	120	126	126	119
Employment costs EUR/1 000	27 362	32 522	35 035	38 864	39 861	40 832
1996 = 100	100	119	128	142	146	149
Productivity	61 297	63 595	59 098	53 716	59 307	60 755
1996 = 100	100	104	96	88	97	99

- (76) The number of people employed by the Community industry at the end of the IP was 1 403, an overall increase by 19 % over the analysis period but following an important increase in 1999 when the Community industry decided to substantially develop its production capacities. This extension was planned when prospects were still good (see recital 68). Employment costs in relation to the number of employees increased by 30 % over the same period.
- (77) Productivity in the IP was approximately the same as in 1996. In 1999 when production capacities increased as well as the number of employees, productivity had temporarily deteriorated.

Recovery from past dumping

- (78) In 1997 and 1998, the financial results of the Community industry were satisfactory showing that it had recovered from past dumping from imports originating in third countries for which anti-dumping measures were put in force (see recital 3).

Actual margin of dumping

- (79) The dumping margins are specified in the dumping part (see recital 45). These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be negligible.

5. Conclusion on injury

- (80) Between 1996 and the IP, the volume of imports of PTY originating in India was multiplied by three from under 7 500 tonnes to over 22 000 tonnes. This resulted in an overall increase in the market share of the imports concerned of 4 percentage points at a time when consumption grew by 19 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered with a price undercutting ranging between 30 % and 45 %.
- (81) Simultaneously, between 1996 and the IP the situation of the Community industry deteriorated most notably in terms of market share, sale prices, profitability, return on investments, cash flow and ability to raise capital. The poor financial results of the Community industry resulted from the depression of its prices.
- (82) In view of the above it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

G. CAUSATION OF INJURY**1. Introduction**

- (83) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the country concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.
- (84) Measures are currently in force against imports originating in Thailand, Indonesia, Taiwan and Malaysia, which are intended to remove injurious dumping from these countries. Furthermore, the PTY imports originating in these four countries are presently subject to anti-dumping investigation (see recital 3). This element was borne in mind in this examination.

2. Effect of the dumped imports*Volume*

- (85) The imports of PTY originating in India tripled over the analysis period to reach a level of 22 683 tonnes during the IP.
- (86) The substantial increase in the volume of imports originating in India and their gain in market share over the analysis period, at prices which remained well below those of the Community industry coincided in time with a serious deterioration of the situation of the Community industry notably in terms of market share, sale prices, cash flow, ability to raise capital, return on investments and profitability.
- (87) This deterioration was most marked between 2000 and the IP as the volume of dumped imports increased by a further 17 % to reach record levels.

Prices

- (88) From 1996 to the IP, prices of dumped imports decreased by 7 % while their market share increased by 4 percentage points. At the same time, the Community industry decreased its selling prices by 9 % in an unsuccessful effort to maintain its market share.

- (89) Prices of dumped imports were constantly below the Community industry's prices with an undercutting margin in the range of 30 % to 45 % for the investigated exporters during the IP.
- (90) It is therefore considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 1996 onwards and which were made at particularly low dumped prices, resulted in price depression for the Community industry and a deterioration of its financial situation.

3. Effect of other factors

Imports originating in other third countries

- (91) Four countries exporting PTY to the Community are subject to anti-dumping duties: Indonesia, Malaysia, Taiwan and Thailand. These four countries represented a market share of 18 % during the IP. Over the analysis period, the volume of imports originating in these countries increased by 41 % from a level of approximately 43 000 tonnes in 1996 to 61 000 tonnes in the IP. Average cif prices of these imports are clearly below the Community industry prices. The exporting producers in Indonesia and Taiwan benefiting from 0 % anti-dumping duty rates are those which effectively increased their sales on the Community market. It cannot be excluded that these imports have contributed to the injury suffered by the Community industry. This is currently being investigated within review investigations initiated both on 31 May 2002 ⁽¹⁾ on the basis of Article 11(3) of the basic Regulation.
- (92) Imports originating in other third countries represented a market share of 19 % during the IP and increased, in volume, by 47 % over the analysis period. The most significant volumes originated in the United States of America, Turkey and South Korea. Average cif prices of these imports are slightly below ex-works prices of the Community industry. However, if one takes into account customs duties and post importation costs, they are approximately at the same level as the Community industry prices. These imports cannot be considered as having injured the Community industry.

	1996	1997	1998	1999	2000	IP
Indonesia, Malaysia, Taiwan and Thailand						
Quantity (in tonnes)	43 443	50 030	55 778	61 485	62 450	61 193
Market share	15 %	15 %	15 %	17 %	17 %	18 %
cif prices EUR/kg	1,88	2,02	1,66	1,38	1,81	1,85
Other third countries						
Quantity (in tonnes)	41 574	61 630	73 575	75 912	68 209	61 377
Market share	15 %	20 %	20 %	22 %	19 %	19 %
cif prices EUR/kg	2,30	2,30	2,09	1,86	2,29	2,30

Prices of raw materials

- (93) The main raw material used in the production of PTY is polyester oriented yarn (POY).
- (94) The Community industry is buying POY both inside and outside the Community. Some POY is also purchased from related companies. A detailed comparison Decitex by Decitex between intra-group prices paid on the market and prices published by specialised press (PCI) proved that the purchases from related companies are done on an arm's length price. Selling conditions are also similar to general market conditions.

⁽¹⁾ OJ C 129, 31.5.2002, pp. 2 and 5.

- (95) The actual price paid by the Community industry for its POY, as shown in the table below, increased considerably in 1997 to 1998 and then decreased to levels which were lower than at the beginning of the analysis period. It cannot thus be considered that costs of raw materials caused injury to the Community industry.

	1996	1997	1998	1999	2000	IP
Average cost of POY EUR/kg	1,5	2,0	1,7	1,4	1,4	1,4

The export performance of the Community industry

- (96) The volume of the Community industry's exports increased by nearly 400 % over the analysis period to reach a figure of 5 200 tonnes, as the Community industry has developed long term trade relations with partners outside the Community. It should be noted that the actual tonnage concerned remains marginal when compared to the volume of total sales of the Community industry.
- (97) In conclusion, it is considered that as exports have increased over the period, they cannot be responsible for the injury suffered by the Community industry.

Changes in the pattern of consumption

- (98) Consumption of the product concerned in the Community increased by 19 % over the analysis period. It is therefore considered that this factor did not contribute to the injury suffered by the Community industry.

Conclusion on causation

- (99) The substantial increase in the volume and market share of imports from the country concerned, over the analysis period and most notably in the IP and their level of price undercutting during the IP, had material negative consequences on the market share and selling prices of the Community industry's. This in turn affected a number of the Community industry's economic indicators, in particular profitability and return on investments. Given the above analysis, it is considered that imports of PTY originating in India had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third countries including Indonesia, Malaysia, Taiwan and Thailand, was not such as to alter the finding of a genuine and substantial relationship of cause and effect between the dumped imports from India and the material injury suffered by the Community industry.

In view of the analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby concluded that these other factors as such do not reverse the fact that the material injury found may be attributed to the dumped imports.

- (100) It is therefore provisionally concluded that the dumped imports from the country concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

H. COMMUNITY INTEREST

1. General remarks

- (101) The Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users and suppliers of the product under consideration.

2. The investigation

- (102) The Commission sent questionnaires to importers, suppliers of raw materials and industrial users of the product concerned. In total, 13 questionnaires were sent to suppliers, 21 to users, 14 to importers and 16 to other producers of PTY.
- (103) Questionnaire responses were received within the time limits from:
- one direct supplier of raw materials, supplying MEG and PTA to the Community industry:
 - BP Chemicals Ltd (United Kingdom),
 - one user of the product concerned, producing textiles to be used mainly in the automotive and upholstery sectors:
 - Mattes & Ammann KG (Germany),
 - two other producers of PTY:
 - FITEXAR SA (Portugal), and
 - Manifattura di Stabbia SpA (Italy),

no importers of the product concerned has sent a questionnaire response.

3. Likely effect of the imposition of measures on the Community industry and other Community producers of PTY

- (104) The Community industry is viable and capable of supplying the market. Indeed, the Community industry has made a great effort to meet the requirements of the users, and particularly of the car industry, demanding high quality products to be delivered at their convenience. The Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of steps taken are:
- (a) develop specific products to supply niche markets;
 - (b) improve productivity, including a widespread use of modern production techniques (e.g. increased mechanisation and computerisation).
- (105) It is clear that the proposed measures would benefit the Community industry. There is no reason to doubt the viability and competitiveness of the Community industry in a situation where normal market conditions apply. This is supported by its profitability level between 1996 and 1999 and by its position on the Community market in the specialities sector, which are not yet targeted by the dumped imports.
- (106) The Community industry has suffered from injurious dumping. The dumped imports from India undercut and depressed the Community industry selling prices, caused a slight reduction of its market share and did not allow it to grow as fast as the market. The dumped imports from India eroded severely the profitability and return on investment of the Community industry. Investments were also reduced particularly during the IP. If this situation remains unchanged, losses at the levels reached during the IP will persist and the long-term viability of the Community industry will be endangered. The other producers that answered the Commission's questionnaire supported these views.
- (107) It is therefore provisionally concluded that it would be in the interest of the Community industry and of the other Community producers that measures are imposed.

4. Likely effects of the imposition of measures on importers

- (108) No answers were received from any importer or trader.
- (109) The non-cooperation of importer in this case leads to the conclusion that the imposition of measures on imports originating in India is not likely to have any significant impact on the situation of unrelated importers and traders of PTY in the Community.

5. Likely effects of the imposition of measures on suppliers of raw materials

- (110) Community producers are mainly buying mono ethylene glycol (MEG), purified terephthalic acid (PTA) or dimethylterephthalate (DMT) to produce polyester oriented yarn (POY), to subsequently texture it to make PTY. Some Community producers are also buying POY directly.
- (111) The supplier that cooperated in the investigation is employing more than 300 persons dedicated to the production of PTA and MEG.
- (112) The cooperating supplier worked closely with Community producers, deriving a substantial part of its turnover from sales to them. Therefore any reduction in the Community industry's purchases would have a dramatic effect on this company.
- (113) It is clear that the imposition of measures would help to maintain the level of activity of the Community industry and by extension of its suppliers. The Commission has therefore provisionally concluded that the imposition of anti-dumping measures is in the interest of the upstream industries.

6. Likely effects of the imposition of measures on users

- (114) As mentioned only one user cooperated. This user is mainly concerned by the possible further concentration of the PTY sector if measures are imposed as a certain movement of concentration took place within large multinational companies.
- (115) This argument is not persuasive because there were 23 producers in the Community Industry during the IP. Furthermore, if measures were not imposed, the difficult financial situation of the Community industry is likely to lead to further worldwide concentration. Moreover, the very existence of the Community industry might be at stake, making the users completely dependent on imports. On the contrary if measures are imposed the various Community producers are likely to continue competing among themselves and with non-dumped imports, assuring the best market conditions to users.
- (116) It is therefore provisionally considered that, in view of the low level of response to the Commission's questionnaires and the comments made by the company that did respond, the imposition of anti-dumping measures would not be prejudicial to the viability and competitiveness of users.

7. Conclusion

- (117) The imposition of anti-dumping measures is in the interest of the Community industry, other Community producers of PTY and suppliers of raw materials. It will allow these sectors to improve profitability and to have the possibility of making the new investments, which are crucial for their viability.
- (118) If measures are not imposed, the continued decline in the profitability of the Community industry observed over the analysis period will be seriously jeopardised.
- (119) It has also be concluded that the imposition of anti-dumping measures on users would not be prejudicial to their viability and competitiveness.
- (120) In view of the above, the Commission provisionally concluded that no compelling reasons exist not to impose provisional anti-dumping measures in the present case.

I. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination margin

- (121) In order to prevent further injury being caused by the dumped imports, it was considered appropriate to adopt anti-dumping measures in the form of provisional duties.

- (122) For the purpose of determining the level of these duties, the Commission took account of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (123) To this end, the Commission determined a non-injurious price based on production costs of the Community industry, together with a reasonable profit margin of 8 %, this being considered necessary to ensure the viability of the industry and being a profit which this industry experienced in 1998 when the dumped imports from India had not such a depressing effect on the Community industry's prices and where the imports from the countries subject to measures were already at a level similar to that prevailing in the IP. The non-injurious price was compared with the prices of the dumped imports used to establish undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury elimination margin.
- (124) In order to calculate the injury elimination margin applicable to exporting producers that cooperated but were not part of the sample, the weighted average injury elimination margin of the companies included in the sample was used.
- (125) For those exporting producers in India which neither replied to the Commission's questionnaire nor otherwise made themselves known, the countrywide injury elimination margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. In view of the high level of cooperation it was considered appropriate to set the injury elimination margin for the non-cooperating companies at the level of the highest injury margin established for a cooperating company in the country in question.

2. Provisional measures

- (126) Since dumping margins have been found to be lower than injury elimination margins, the provisional duties to be imposed should correspond to the dumping margins established, in accordance with Article 7(2) of the basic Regulation.
- (127) However, with regard to the parallel anti-subsidy proceeding in respect of India, in accordance with Article 24(1) of Council 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 purpose of dealing with one and the same situation arising from dumping or export subsidisation. It is therefore necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.
- (128) A provisional countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 12(1) of the basic anti-subsidy Regulation. All subsidy schemes investigated which were found to be countervailable constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies could only affect the export price of the Indian exporting producers, thus leading to an increased margin of dumping. In other words, the provisional dumping margins established for the cooperating exporting producers in India are 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 export subsidy amounts and dumping margins provisionally established. Therefore, the provisional anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the provisional countervailing duty offsetting the effect of the export subsidies. Consequently, the anti-dumping duty rate has been set at the level of the dumping margin minus the rate of countervailing duty of the export subsidies as indicated in the following table:

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

Company name	Dumping margin	Rate of provisional countervailing duty of export subsidies	Provisional anti-dumping duty
Indo Rama Synthetics Limited	15,7 %	4,1 %	11,6 %
Reliance Industries Limited	19,1 %	0 %	19,1 %
Welspun Syntex Limited	17,2 %	9,1 %	8,1 %
Cooperating companies not included in the sample	17,7 %	5,0 %	12,7 %
All other companies	19,1 %	9,1 %	10,0 %

- (129) 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 countrywide 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'.
- (130) 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, 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.

3. Final provisions

- (131) In the interest of sound administration, a period should be fixed within which the interested parties, which made themselves known within the time limit specified in the notice of initiation, may make their views known in writing a request for a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of polyester textured filament yarn falling within CN code 5402 33 00 originating in India.
2. The rate of the provisional anti-dumping duty applicable to the net-free-at-Community-frontier-price, before duty, for products manufactured by the companies listed below shall be as follows:

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Company	Rate of duty (%)	TARIC additional code
Chhabria Polyester Corporation Mehta House, 1 st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	12,7	A388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	11,6	A389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	12,7	A390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India	12,7	A391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	12,7	A392
Parasrampur Industries Limited 208, Nariman Point, Bombay 400 021, India	12,7	A393
Reliance Industries Limited Maker Chambers IV, Nariman Point, Mumbai, 400 021, India	19,1	A394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Mumbai, 400 021, India	12,7	A395
Supertex Industries Limited Balkrishna Krupa, 2 nd Floor, 45/49, Babu Genu Road, Prin- cess Stree, Mumbai, 400 002, India	12,7	A396
Welspun Syntex Limited Kamani Wadi, 1 st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai, 400 002, India	8,1	A397
All others	10,0	A999

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of provisional duty.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 29 July 2002.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1413/2002**of 1 August 2002****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 2 August 2002.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 1 August 2002.

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

ANNEX

to the Commission Regulation of 1 August 2002 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,40	—	0
1703 90 00 ⁽¹⁾	12,06	—	0

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

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

COMMISSION REGULATION (EC) No 1414/2002**of 1 August 2002****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of Regulation (EC) No 1260/2001. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽³⁾. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.
- (5) In special cases, the amount of the refund may be fixed by other legal instruments.
- (6) The refund must be fixed every two weeks. It may be altered in the intervening period.
- (7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.
- (8) Regulation (EC) No 1260/2001 does not make provision to continue the compensation system for storage costs from 1 July 2001. This should accordingly be taken into account when fixing the refunds granted when the export occurs after 30 September 2001.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 1 August 2002 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4676
1701 99 10 9100	A00	EUR/100 kg	46,76
1701 99 10 9910	A00	EUR/100 kg	46,76
1701 99 10 9950	A00	EUR/100 kg	46,76
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4676

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 28(4) of Council Regulation (EC) No 1260/2001.

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

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

COMMISSION REGULATION (EC) No 1415/2002**of 1 August 2002****fixing the maximum export refund for white sugar for the first partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1331/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 27(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1331/2002 of 23 July 2002 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, for the 2002/2003 marketing year, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1331/2002 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the first partial invitation to tender, the provisions set out in Article 1 should be adopted.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the first partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1331/2002 the maximum amount of the export refund is fixed at 49,940 EUR/100 kg.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 195, 24.7.2002, p. 6.

COMMISSION REGULATION (EC) No 1416/2002
of 1 August 2002
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 597/2002 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1393/2002 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1393/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1393/2002 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 91, 6.4.2002, p. 9.

⁽⁵⁾ OJ L 203, 1.8.2002, p. 11.

ANNEX I

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

CN code	Description	Import duty ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality ⁽¹⁾	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00
	medium quality	0,00
	low quality	8,01
1002 00 00	Rye	29,61
1003 00 10	Barley, seed	29,61
1003 00 90	Barley, other ⁽⁴⁾	29,61
1005 10 90	Maize seed other than hybrid	42,99
1005 90 00	Maize other than seed ⁽⁵⁾	42,99
1007 00 90	Grain sorghum other than hybrids for sowing	39,70

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

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

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

⁽⁴⁾ The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

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

ANNEX II

Factors for calculating duties

(for 31 July 2002)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	138,10	133,93	125,44	99,50	179,63 (**)	169,63 (**)	104,64 (**)
Gulf premium (EUR/t)	—	22,28	11,83	12,88	—	—	—
Great Lakes premium (EUR/t)	20,88	—	—	—	—	—	—

(*) A discount of EUR 10/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: 11,76 EUR/t; Great Lakes — Rotterdam: 22,79 EUR/t.

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

COMMISSION REGULATION (EC) No 1417/2002**of 1 August 2002****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 1666/2000 ⁽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 1163/2002 ⁽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 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

ANNEX

**to the Commission Regulation of 1 August 2002 fixing the export refunds on cereals and on wheat or rye flour,
groats and meal**

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 11 9000	—	EUR/t	—
1001 10 00 9400	—	EUR/t	—	1101 00 15 9100	C01	EUR/t	0,70
1001 90 91 9000	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	0,65
1001 90 99 9000	C01	EUR/t	0	1101 00 15 9150	C01	EUR/t	0,60
1002 00 00 9000	C06	EUR/t	0	1101 00 15 9170	C01	EUR/t	0,55
1003 00 10 9000	—	EUR/t	—	1101 00 15 9180	C01	EUR/t	0,51
1003 00 90 9000	C07	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1004 00 00 9200	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1004 00 00 9400	C06	EUR/t	0	1102 10 00 9500	C01	EUR/t	50,00
1005 10 90 9000	—	EUR/t	—	1102 10 00 9700	C01	EUR/t	39,50
1005 90 00 9000	C07	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1007 00 90 9000	—	EUR/t	—	1103 11 10 9200	C06	EUR/t	0 ⁽¹⁾
1008 20 00 9000	—	EUR/t	—	1103 11 10 9400	C06	EUR/t	0 ⁽¹⁾
				1103 11 10 9900	—	EUR/t	—
				1103 11 90 9200	C06	EUR/t	0 ⁽¹⁾
				1103 11 90 9800	—	EUR/t	—

⁽¹⁾ No refund is granted when this product contains compressed meal.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The other destinations are as follows:

C01 All destinations except for Poland, Lithuania, Estonia, Latvia and Hungary.

C06 All destinations except for Lithuania, Estonia, Latvia and Hungary.

C07 All destinations except for Estonia, Latvia and Hungary.

COMMISSION REGULATION (EC) No 1418/2002**of 1 August 2002****concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 901/2002**

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 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of 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 1163/2002 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of barley to all third countries except the United States of America, Canada, Estonia and Latvia was opened pursuant to Commission Regulation (EC) No 901/2002 ⁽⁵⁾, as amended by Regulation (EC) No 1230/2002 ⁽⁶⁾.

- (2) Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.

- (4) 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

No action shall be taken on the tenders notified from 26 July to 1 August 2002 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 901/2002.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 127, 9.5.2002, p. 11.

⁽⁶⁾ OJ L 180, 10.7.2002, p. 3.

COMMISSION REGULATION (EC) No 1419/2002**of 1 August 2002****concerning tenders notified in response to the invitation to tender for the export of rye issued in Regulation (EC) No 900/2002**

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 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of 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 602/2001 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of rye to all third countries excluding Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 900/2002 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure

laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.
- (4) 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

No action shall be taken on the tenders notified from 26 July to 1 August 2002 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 900/2002.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 142, 31.5.2002, p. 14.

COMMISSION REGULATION (EC) No 1420/2002**of 1 August 2002****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 899/2002**

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 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of 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 602/2001 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund on exportation of common wheat to all third countries with the exclusion of Poland, Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 899/2002 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) 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

For tenders notified from 26 July to 1 August 2002, pursuant to the invitation to tender issued in Regulation (EC) No 899/2002, the maximum refund on exportation of common wheat shall be EUR 0,50/t.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 89, 29.3.2001, p. 16.

⁽⁵⁾ OJ L 142, 31.5.2002, p. 11.

COMMISSION REGULATION (EC) No 1421/2002
of 1 August 2002
amending the export refunds on syrups and certain other sugar sector products exported in the
natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular the third indent of Article 27(5) thereof,

Whereas:

- (1) The refunds on syrups and certain other sugar products were fixed by Commission Regulation (EC) No 1389/2002 ⁽³⁾.
- (2) It follows from applying the rules, criteria and other provisions contained in Regulation (EC) No 1389/2002 to the information at present available to the Commis-

sion that the export refunds at present in force should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The refunds to be granted on the products listed in Article 1(1)(d), (f) and (g) of Regulation (EC) No 1260/2001, exported in the natural state, as fixed in the Annex to Regulation (EC) No 1389/2002 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 201, 31.7.2002, p. 32.

ANNEX

to the Commission Regulation of 1 August 2002 altering the export refunds on syrups and certain other sugar products exported in the natural state

Product code	Destination	Unit of measurement	Amount of refund
1702 40 10 9100	A00	EUR/100 kg dry matter	46,76 ⁽²⁾
1702 60 10 9000	A00	EUR/100 kg dry matter	46,76 ⁽²⁾
1702 60 80 9100	A00	EUR/100 kg dry matter	88,84 ⁽⁴⁾
1702 60 95 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,4676 ⁽¹⁾
1702 90 30 9000	A00	EUR/100 kg dry matter	46,76 ⁽²⁾
1702 90 60 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,4676 ⁽¹⁾
1702 90 71 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,4676 ⁽¹⁾
1702 90 99 9900	A00	EUR/1 % sucrose × net 100 kg of product	0,4676 ⁽¹⁾ ⁽³⁾
2106 90 30 9000	A00	EUR/100 kg dry matter	46,76 ⁽²⁾
2106 90 59 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,4676 ⁽¹⁾

⁽¹⁾ The basic amount is not applicable to syrups which are less than 85 % pure (Regulation (EC) No 2135/95). Sucrose content is determined in accordance with Article 3 of Regulation (EC) No 2135/95.

⁽²⁾ Applicable only to products referred to in Article 5 of Regulation (EC) No 2135/95.

⁽³⁾ The basic amount is not applicable to the product defined under point 2 of the Annex to Regulation (EEC) No 3513/92 (OJ L 355, 5.12.1992, p. 12).

⁽⁴⁾ Applicable only to products defined under Article 6 of Regulation (EC) No 2135/95.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

COMMISSION REGULATION (EC) No 1422/2002
of 1 August 2002
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1513/2001 ⁽²⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries.
- (2) The detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72 ⁽³⁾, as last amended by Regulation (EEC) No 2962/77 ⁽⁴⁾.
- (3) Article 3(3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community.
- (4) In accordance with Article 3(4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market. However, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period. The amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market.
- (5) In accordance with Article 3(3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender. The tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations.
- (6) The second indent of Article 3(3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The refund must be fixed at least once every month. It may, if necessary, be altered in the intervening period.
- (8) It follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto.
- (9) The Management Committee for Oils and Fats has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(2)(c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 72, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 201, 26.7.2001, p. 4.

⁽³⁾ OJ L 78, 31.3.1972, p. 1.

⁽⁴⁾ OJ L 348, 30.12.1977, p. 53.

ANNEX

to the Commission Regulation of 1 August 2002 fixing the export refunds on olive oil

Product code	Destination	Unit of measurement	Amount of refund
1509 10 90 9100	A00	EUR/100 kg	0,00
1509 10 90 9900	A00	EUR/100 kg	0,00
1509 90 00 9100	A00	EUR/100 kg	0,00
1509 90 00 9900	A00	EUR/100 kg	0,00
1510 00 90 9100	A00	EUR/100 kg	0,00
1510 00 90 9900	A00	EUR/100 kg	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

COMMISSION REGULATION (EC) No 1423/2002
of 1 August 2002
amending the rates of refunds applicable to certain products from the sugar sector 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 (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as last amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 27(5)(a) and (15) thereof,

Whereas:

- (1) The rates of the refunds applicable from 1 August 2002 to the products listed in the Annex, exported in the form of goods not covered by Annex I to the Treaty, were fixed by Commission Regulation (EC) No 1397/2002 ⁽³⁾.

- (2) It follows from applying the rules and criteria contained in Regulation (EC) No 1397/2002 to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of refund fixed by Regulation (EC) No 1397/2002 are hereby altered as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 1 August 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 203, 1.8.2002, p. 22.

ANNEX

to the Commission Regulation of 1 August 2002 altering the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty

Product	Rate of refund in EUR/100 kg	
	In case of advance fixing of refunds	Other
White sugar:	46,76	46,76

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 February 2002

concerning measures adopted by Italy for the recovery and completion of serviced small business areas developed for Sirap SpA and the allocation of plots and industrial buildings

(notified under document number C(2002) 611)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/633/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾,

Whereas:

Commission received the information on 23 February and 16 April 1998. The Commission sent further questions on 4 June 1998, to which the Italian authorities replied on 16 October 1998.

- (4) During its examination of the aid, the Commission also learnt of the existence of a scheme for the allocation of plots and industrial buildings to small and medium-sized enterprises (SMEs) by municipal authorities. These provisions were communicated to the Commission in an annex to the letter of 16 April 1998 referred to in recital 3.

I. PROCEDURE

- (1) By letter of 6 October 1997 the Italian authorities notified the Commission, under Article 88(3) of the EC Treaty, of a draft Law of the Sicilian Region on rules for the recovery and completion of serviced small business areas developed by Sirap SpA.
- (2) By letter of 21 October 1997 the Commission requested further information.
- (3) On 10 December 1997 the Italian authorities informed the Commission that the notified draft law had been approved as Law No 46 of the Sicilian Region of 24 December 1997 ⁽²⁾ (hereinafter Law No 46/1997) and transmitted the text of the law. The request for further information was answered on 15 January 1998; the

- (5) On 9 December 1998 the Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid in question. Italy was informed by letter of 30 December 1998. The publication of that letter in the *Official Journal of the European Communities* ⁽³⁾ did not give rise to any reactions by other interested parties. Comments from Italy were received by the Commission on 10 March 1999. On 24 November 1999 a meeting was held in Brussels with representatives from Italy and the Sicilian Region. The Commission received a further letter from the Italian authorities dated 7 June 2001 in which the latter undertook to apply the measures in question within the limits established by the Commission notice on *de minimis* aid ⁽⁴⁾.

⁽¹⁾ OJ C 162, 10.6.2000, p. 4.

⁽²⁾ Sicilian Regional Official Gazette, 30.12.1997.

⁽³⁾ OJ C 162, 10.6.2000, p. 4.

⁽⁴⁾ OJ C 68, 6.3.1996, p. 9.

II. DESCRIPTION OF THE AID

II.1. Sirap's background: the Decision of 3 March 1999

- (6) Sirap SpA (hereinafter Sirap), which was wound up on 1 February 1993, was a publicly owned company whose object was to promote economic development in the Sicilian Region (which is eligible for regional aid under Article 87(3)(a)). Following the winding-up, the firms that had carried out work for Sirap were not paid the amounts owed to them and most of them had to be wound up. To remedy this situation, the Italian authorities granted an initial amount of aid in the form of guarantees and interest subsidies to the firms in question in order to prevent a series of bankruptcies.
- (7) The Commission concluded its examination of the aid in question by adopting Decision 1999/678/EC of 3 March 1999 ⁽⁵⁾, which found that the funding granted by the Italian authorities to the firms affected by the winding-up of Sirap constituted aid under Article 87(1) of the EC Treaty. This finding was based chiefly on the fact that the aid enabled the recipients to avoid some of the consequences of the bankruptcy of the promoter. The firms were thus placed artificially in a more favourable position than other similar firms operating in Italy. The Commission therefore concluded that the measures did not qualify for exemption under Article 87(2) and (3) of the Treaty. Italy was therefore requested to put an end to the aid scheme as regards the part not covered by the *de minimis* rule and to take the necessary steps to recover all the aid granted unlawfully. However, no unlawful aid was recovered as Italy announced that it would not proceed with any recovery until a final decision had been adopted.

II.2. Sirap and the measures in question

- (8) Sirap had the task of awarding contracts for and superintending infrastructure development works to encourage businesses to locate there. In the case in point, the works comprised primary and secondary site development for the serviced small business areas and the construction of industrial buildings. The measure adopted by the Italian authorities provided for the payment of claims held by members of the professions in respect of design, works supervision and accountancy services, by the firms that carried out the works and the owners of the land where the work was carried out. The payment of these debts was to have been made by Sirap using funds paid in several instalments by the Sicilian Region, since Sirap operated under a contract concluded with the Region. Following the bankruptcy of Sirap in February 1993, much of the work had to be left unfinished as the firms

were not paid, which is why the Region is financing the completion of the works and hand them over to the municipalities ⁽⁶⁾. Payment of the claims is to be made within the limits of the funds originally earmarked for financing the works. Where the total claims exceed the available funds, the reimbursement is to be reduced proportionately.

II.3. The notified measure (ex N 693/97)

- (9) By letter of 6 October 1997 the Italian authorities notified the Commission, under Article 88(3) of the Treaty, of the measures for the recovery and completion of serviced small business areas developed by Sirap SpA, already in liquidation. The measures are provided for in Law No 46/1997 ⁽⁷⁾ and concern three types of action:
- (a) works on serviced small business areas (essentially primary and secondary site development) entrusted to Sirap but not completed following the declaration of the latter's bankruptcy are to be handed over to the administrations of the relevant municipalities. The Sicilian Region is authorised to settle claims by firms that carried out work on behalf of Sirap within the limits of the amounts available under the finance originally granted at the time the works in question were carried out. Payment is subject to the condition that creditors have not asked for their claim to be included in the list of Sirap's liabilities as part of the bankruptcy proceedings. Articles 2 and 3 of Law No 46/1997 provide that, once completed, the works financed by the Sicilian Region are to be handed over to the municipalities;
 - (b) Article 4 of Law No 46/1997 authorises the Region to grant ITL 21 billion (EUR 10 845 594) to the municipalities in 1997 for completion of the works on serviced small business areas;
 - (c) the Region grants a contribution representing up to 80 % of the necessary expenditure to craft cooperatives and their partners or to cooperative firms that carry out or complete the work themselves. The contribution is reduced to 50 % of the necessary expenditure in the case of any businesses that also own the land. Under the Law, craft cooperatives or cooperative firms are craft associations which have the object of managing the completed business areas on condition that the areas, once completed, can be used immediately. Article 7 of Law No 46/1997 provides for a budget of ITL 5 billion (EUR 2 582 284) to complete the work in 1997.

⁽⁶⁾ It should be noted that the municipalities were regarded as the owners of the works although the latter were transferred to them only once completed.

⁽⁷⁾ See footnote 2.

⁽⁵⁾ OJ L 269, 19.10.1999, p. 29.

II.4. The non-notified measures (ex NN 130/98)

- (10) The fourth type of measure, contained in the provisions on the allocation of plots and industrial buildings ⁽⁸⁾ and applicable throughout Sicily, concerns the letting of plots and buildings to SMEs by municipalities against payment of rent fixed by the administrations on the basis of the estimated cost of maintaining the infrastructure and the buildings over a five-year period.

III. REASONS WHY THE COMMISSION INITIATED PROCEEDINGS UNDER ARTICLE 88(2) OF THE EC TREATY

- (11) In view of the similarity of this case with that forming the subject of Decision 1999/678/EC, the Commission concludes that the financing of the creditors of Sirap (the first measure) was intended to avoid the rules on bankruptcy and hence to give an advantage to the recipient firms.
- (12) The Commission takes the view that payment of the work ordered by Sirap is one of the latter's contractual obligations. However, despite the fact that Sirap should have ensured that its contract with the Sicilian Region allowed the latter to succeed it in contracts with the firms carrying out the work, this was not done. Consequently, there is no contractual relationship between Sirap's creditors and the Sicilian Region which in this case requires the Region to pay the creditors. The Commission believes that there were other ways the Region could have recovered the works already carried out. It could have paid Sirap in liquidation the sums corresponding to the work carried out, in exchange for ownership of the works, or acquired the works carried out during the liquidation if the official receiver had decided to sell them by means of an open and non-discriminatory invitation to bid. Instead of choosing one of the two options, it seems that the Sicilian Region preferred to pay the creditors directly, thus obliging it to pay them on a statutory basis using the funds initially earmarked for carrying out the whole of the work.
- (13) The measure in question therefore constitutes operating aid as it is not intended to be used for investment or job creation.
- (14) Furthermore, none of the information communicated indicates that the conditions applicable to operating aid provided for in the guidelines for regional aid have been satisfied ⁽⁹⁾.

- (15) Whilst the financing granted to the municipalities, craft cooperatives and cooperative firms (second and third measures) does not appear to constitute State aid, its close connection with the arrangements for the acquisition of the works by the Sicilian Region places it in the more general context of those arrangements.
- (16) As regards the rents paid by SMEs to municipalities, which are determined by the latter (fourth measure), the Commission had objected to the level of the rents and had considered that aid might be involved as the rent may have been lower than the market price. In that event, the aid granted could be regarded as investment aid for SMEs or as operating aid subject to the conditions provided for in the regional aid guidelines. The Commission had also stated that 'it is possible that some or all of the aid granted in this manner to craft firms and SMEs may be covered by the *de minimis* rule, under which aid amounting to not more than ECU 100 000 may be granted over a three-year period' ⁽¹⁰⁾. However, the Italian authorities have not provided any reasons since the initiation of proceedings to indicate that the advantages in question fell within the limits of the *de minimis* rule.

IV. ASSESSMENT OF THE AID

IV.1. First measure

- (17) As regards the arrangements for the acquisition of the works by the Sicilian Region, Italy provided explanations by letter of 10 March 1999. The works to be completed clearly belonged to the municipal administrations from the beginning, pursuant to Article 37(2) of Sicilian Regional Law No 35 of 23 May 1991. It was therefore not a question of acquisition but of restitution to the rightful owner. For that reason the other two options proposed by the Commission were not applicable as the municipalities had been the owners of the works right from the beginning. The sole purpose of the contributions towards the completion of the work was to speed up the restitution of the works to the municipalities. The measures were designed to conserve the work already carried out. In any event, if the Region had not acted, the creditors would have instituted proceedings against the municipalities which would in turn have instituted proceedings against the Region. The outcome would have been identical, but the solution taken was more rapid. Accordingly, the first measure is not covered by Article 87(1) of the Treaty and does not constitute State aid.

⁽⁸⁾ Decree of 8 February 1991, Italian Official Gazette, 20.4.1991.

⁽⁹⁾ OJ C 74, 10.3.1998, p. 4, point 4.15.

⁽¹⁰⁾ See footnote 4.

IV.2. Second measure

- (18) The second measure is the financing granted to the municipalities in order to complete the work. It does not constitute State aid as no advantage is transferred to a firm but to another public authority. Furthermore, even if it did constitute aid, the commitment given by Italy on 7 June 2001 to comply with the limits of the *de minimis* rule means that aid can be ruled out.

IV.3. Third measure

- (19) The third measure enables the Region to grant financing to groups of firms in order to complete the work. The financing amounts to 80 % of costs or 50 % if the firms own the land on which the works are carried out. As the works belong to the municipalities, it is for them to bear the total costs incurred. The Region is not granting any advantage as it not paying for all the costs to the groups of firms. As a result, the third measure is not caught by Article 87(1) of the Treaty and does not constitute State aid. Even if it were to be regarded as aid, the commitment given by the Italian authorities on 7 June 2001 to comply with the limits of the *de minimis* rule means that aid can be ruled out.

IV.4. Fourth measure

- (20) As regards assessing the advantage resulting from the letting of the industrial buildings and plots, the regional authorities have emphasised the difficulty of quantifying any advantage derived by the tenant firms in view of the lack of any directly comparable situation on the market.

However, the Region has undertaken, by letter of 7 June 2000, to comply with the limits of the *de minimis* rule.

V. CONCLUSIONS

- (21) The beneficiaries of the measure are small and medium-sized firms⁽¹¹⁾, which is a favourable factor in the Commission's assessment. There is also the undertaking given by the Italian authorities to comply with the limits of the *de minimis* rule in respect of all the measures referred to in the initiation of proceedings. The Commission therefore concludes that no aid is involved.
- (22) This Decision is consistent with Decision 1999/678/EC which concludes that the part not covered by the *de minimis* rule constitutes aid,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by the Italian authorities for the recovery and completion of serviced small business areas developed by Sirap SpA and for the allocation of plots and industrial buildings to municipalities do not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 27 February 2002.

For the Commission

Mario MONTI

Member of the Commission

⁽¹¹⁾ Pursuant to Article 7 of Regional Law No 46/97 which refers to Law No 96/81, as subsequently amended (Measures for small and medium-sized industrial, commercial and craft enterprises, cooperatives and fisheries). SMEs are therefore covered by Article 7 of Regional Law No 46/97.