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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

DECISION No 1608/2003/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 July 2003 concerning the production and development of Community statistics on science and technology

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285 thereof,

Having regard to the proposal from the Commission [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) There is a need for comparable statistics on research and development, technological innovation and science and technology in general in order to support Community policies.

(2) Council Decision 94/78/EC, Euratom of 24 January 1994 establishing a multiannual programme for the development of Community statistics on research, development and innovation [3], highlighted the objectives of setting out a Community reference framework for statistics and of establishing a harmonised Community statistical information system in this field.

(3) The final report for the programme period 1994 to 1997 emphasises that the work should be continued, that data should be made available more rapidly, that the regional coverage should be extended and that the comparability of the data must be increased.

(4) In accordance with Council Decision 1999/126/EC of 22 December 1998 on the Community statistical programme 1998 to 2002 [4], the statistical information system is to support the management of science and technology policies in the Community and the assessment of R&D and innovation capability of regions for administration of structural funds.

(5) In accordance with Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics [5], those statistics are to be governed by the principles of impartiality, reliability, relevance, cost-effectiveness, statistical confidentiality and transparency.

(6) In order to ensure usefulness and comparability of the data and avoid overlap of work, the Community should take into account work carried out in cooperation with or by the OECD and other international organisations concerning science and technology statistics, especially as regards the details of data to be provided by the Member States.

(7) Community policy on science, technology and innovation attaches particular importance to strengthening the scientific and technological basis of European businesses so as to enable them to be more innovative and competitive on the international and regional level, realising the benefits of the information society and promoting the transfer of technology, improving activities in the domain of intellectual property rights and the development of mobility of human resources, and promoting equality between men and women in science.

(8) The principles of cost-effectiveness and relevance should apply to data collection procedures for industry and administrations, taking into account the necessary quality of the data and the burden on the respondents.

(9) It is essential that developments in official statistics on science and technology are coordinated to cater also for the essential needs of national, regional and local administrations, international organisations, economic operators, professional associations and the general public.

[1] OJ C 332 E, 27.2.2001, p. 238.
[2] Opinion of the European Parliament of 2 July 2002 (not yet published in the Official Journal), Council Common Position of 17 March 2003 (OJ C 125 E, 27.5.2003, p. 58) and Decision of the European Parliament of 19 June 2003 (not yet published in the Official Journal).
[3] OJ L 38, 9.2.1994, p. 30.
[4] OJ L 42, 16.6.1999, p. 1.
[5] OJ L 52, 22.2.1997, p. 1.

(10) Council Decision 1999/173/EC of 25 January 1999 adopting a specific programme for research, technological development and demonstration on improving the human research potential and the socio-economic knowledge base (1998 to 2002) [1] and Decision 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European research area and to innovation (2002 to 2006) [2] should be taken into account to avoid overlap of work.

(11) Council Resolution of 26 June 2001 on science and society and on women in science [3], welcoming the work of the Helsinki Group and inviting Member States and the Commission to pursue efforts to promote women in science at national level should be taken into account, in particular as regards the collection of gender-disaggregated statistics in human resources in science and technology and the development of indicators in order to monitor progress towards equality between men and women in European research.

(12) The measures necessary for the implementation of this Decision 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 [4].

(13) The Statistical Programme Committee established by Decision 89/382/EEC, Euratom [5] has been consulted in accordance with Article 3 of the aforesaid Decision.

(14) The Scientific and Technological Research Committee (Crest) has given its opinion,

HAVE ADOPTED THIS DECISION:

Article 1

The objective of this Decision is to establish a Community statistical information system on science, technology and innovation to support and monitor Community policies.

Article 2

The objective described in Article 1 shall be implemented by individual statistical actions as follows:

— Delivery of statistics by the Member States on a regular basis and within specified deadlines, in particular statistics on R&D activity in all sectors of performance and on the funding of R&D activity, including government budget appropriations for R&D, taking into account the regional dimension by producing whenever possible science and technology statistics based on NUTS classification,

— Development of new statistical variables to be produced on a permanent basis that can provide more comprehensive information about science and technology, in particular for the measurement of the output of science and technology activities, the dissemination of knowledge and more generally the performance of innovation. This information is needed for the formulation and assessment of science and technology policies in the increasingly knowledge-based economies. The Community shall give priority, in particular, to the following domains:

  — innovation (technological and non-technological),

  — human resources devoted to science and technology,

  — patents (patents statistics to be derived from the databases of the national and European patent offices),

  — high-technology statistics (identification and classification of products and services, measurement of economic performance and contribution to economic growth),

  — gender-disaggregated statistics on science and technology,

— improvement and updating of existing standards and manuals on concepts and methods, with particular regard to concepts in the service sector and coordinated methods for measurement of R&D activity. In addition, the Community will intensify cooperation with the OECD and other international organisations with a view to ensuring comparability of data and avoiding duplication of efforts,

— improvement of data quality, specifically comparability, accuracy and timeliness,

— improvement of the dissemination, accessibility and documentation of statistical information.

Available capacities within the Member States for data collection and processing and development of methods and variables will be taken into account.

Article 3

The measures necessary for the implementation of this Decision shall be adopted in accordance with the regulatory procedure referred to in Article 4(2).

Article 4

1. The Commission shall be assisted by the Statistical Programme Committee established by Article 1 of Decision 89/382/EEC/Euratom.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

[1] OJ L 64, 12.3.1999, p. 105.
[2] OJ L 232, 29.8.2002, p. 1.
[3] OJ C 199, 14.7.2001, p. 1.
[4] OJ L 184, 17.7.1999, p. 23.
[5] OJ L 181, 28.6.1989, p. 47.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 5

The Commission shall, within four years of the publication of this Decision, and thereafter every three years, present a report to the European Parliament and the Council to evaluate the implementation of the measures provided for in Article 2.

This report shall consider, *inter alia*, the costs of the actions and the burden on the respondents in relation to the benefits of the data availability and user satisfaction.

Following this report, the Commission may propose any measures to improve the operation of this Decision.

Article 6

This Decision shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 22 July 2003.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	G. ALEMANNO

COMMISSION REGULATION (EC) No 1609/2003

of 15 September 2003

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 1947/2002 [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 16 September 2003.

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

Done at Brussels, 15 September 2003.

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

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 15 September 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	127,7
	060	115,1
	064	129,8
	094	81,8
	999	113,6
0707 00 05	052	120,2
	999	120,2
0709 90 70	052	92,6
	999	92,6
0805 50 10	388	60,6
	524	51,2
	528	53,8
	999	55,2
0806 10 10	052	76,5
	064	85,4
	999	81,0
0808 10 20, 0808 10 50, 0808 10 90	388	74,6
	400	71,0
	512	84,7
	720	52,9
	800	159,6
	804	94,5
	999	89,5
0808 20 50	052	95,4
	388	83,1
	999	89,3
0809 30 10, 0809 30 90	052	98,4
	624	111,9
	999	105,2
0809 40 05	052	70,7
	060	68,0
	064	63,4
	066	63,2
	094	58,5
	624	116,3
	999	73,4

(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 1610/2003

of 15 September 2003

fixing the minimum selling prices for beef put up for sale under the fifth invitation to tender referred to in Regulation (EC) No 1033/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Commission Regulation (EC) No 806/2003 [2], and in particular Article 28(2) thereof,

Whereas:

(1) Tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 1033/2003 on periodical sales by tender of beef [3].

(2) Pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69 [4], as last amended by Regulation (EC) No 2417/95 [5], the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the fifth invitation to tender held in accordance with Regulation (EC) No 1033/2003 for which the time limit for the submission of tenders was 8 September 2003 are as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 September 2003.

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

Done at Brussels, 15 September 2003.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ L 150, 18.6.2003, p. 15.
[4] OJ L 251, 5.10.1979, p. 12.
[5] OJ L 248, 14.10.1995, p. 39.

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO — BIJLAGE — ANEXO — LIITE — BILAGA

Estado miembro / Medlemsstat / Mitgliedstaat / Κράτος μέλος / Member State / État membre / Stato membro / Lidstaat / Estado-Membro / Jäsenvaltio / Medlemsstat	Productos / Produkter / Erzeugnisse / Προϊόντα / Products / Produits / Prodotti / Producten / Produtos / Tuotteet / Produkter	Precio mínimo Expresado en euros por tonelada / Mindstepriser i EUR/t / Mindestpreise Ausgedrückt in EUR/Tonne / Ελάχιστες πωλήσεις εκφραζόμενες σε ευρώ ανά τόνο / Minimum prices Expressed in EUR per tonne / Prix minimaux Exprimés en euros par tonne / Prezzi minimi Espressi in euro per tonnellata / Minimumprijzen Uitgedrukt in euro per ton / Preço mínimo Expresso em euros por tonelada / Vähimmäishinnat euroina tonnia kohden ilmaistuna / Minimipriser i euro per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

DANMARK	— Forfjerdinger	725
DEUTSCHLAND	— Hinterviertel	—
	— Vorderviertel	902
ESPAÑA	— Cuartos traseros	—
	— Cuartos delanteros	852
FRANCE	— Quartiers arrière	—
	— Quartiers avant	—

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

DEUTSCHLAND	— Hinterhesse (INT 11)	700
	— Oberschale (INT 13)	—
	— Unterschale (INT 14)	—
	— Hüfte (INT 16)	—
	— Roastbeef (INT 17)	4 025
	— Hochrippe (INT 19)	—
	— Schulter (INT 22)	—
	— Brust (INT 23)	—
	— Vorderviertel (INT 24)	—
ESPAÑA	— Lomo de intervención (INT 17)	4 000
	— Morcillo de intervención (INT 21)	800

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-Membro Jäsenvaltio Medlemsstat	Productos Produkter Erzeugnisse Προϊόντα Products Produits Prodotti Producten Produtos Tuotteet Produkter	Precio mínimo Expresado en euros por tonelada Mindstepriser i EUR/t Mindestpreise Ausgedrückt in EUR/Tonne Ελάχιστες πωλήσεις εκφραζόμενες σε ευρώ ανά τόνο Minimum prices Expressed in EUR per tonne Prix minimaux Exprimés en euros par tonne Prezzi minimi Espressi in euro per tonnellata Minimumprijzen Uitgedrukt in euro per ton Preço mínimo Expresso em euros por tonelada Vähimmäishinnat euroina tonnia kohden ilmaistuna Minimipriser i euro per ton
FRANCE	— Jarret arrière d'intervention (INT 11)	—
	— Tranche grasse d'intervention (INT 12)	—
	— Tranche d'intervention (INT 13)	—
	— Semelle d'intervention (INT 14)	2 311
	— Filet d'intervention (INT 15)	—
	— Rumsteak d'intervention (INT 16)	2 350
	— Faux-filet d'intervention (INT 17)	4 000
	— Flanchet d'intervention (INT 18)	—
	— Entrecôte d'intervention (INT 19)	—
	— Épaule d'intervention (INT 22)	—
	— Poitrine d'intervention (INT 23)	—
	— Avant d'intervention (INT 24)	—
ITALIA	— Girello d'intervento (INT 14)	—
	— Scamone (INT 16)	—
	— Roastbeef d'intervento (INT 17)	—

COMMISSION REGULATION (EC) No 1611/2003

of 15 September 2003

imposing provisional anti-dumping duties on imports of certain stainless steel cold-rolled flat products originating in the United States of America

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 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Present investigation

Initiation

(1) On 4 November 2002 a complaint was lodged by the European Confederation of Iron and Steel Industries (Eurofer), on behalf of producers representing a major proportion, in this case more than 80 %, of the Community production of certain stainless steel cold-rolled flat products. 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 a proceeding.

(2) Consequently, on 17 December 2002, the Commission announced by a notice ('notice of initiation') 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 certain stainless steel cold-rolled flat products originating in the United States of America (hereinafter, the USA).

Investigation

(3) The Commission officially advised the exporting producers, the importers and the users known to be concerned, as well as the representatives of the exporting country concerned and the complainant Community producers, about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(4) The Commission sent questionnaires to all Community producers, all exporters/producers, all importers and all users and providers of raw materials known to be concerned, as well as to all parties which made themselves known within the deadline set out in the notice of initiation. Replies to these questionnaires were received from six Community producers, one exporting producer, six related importers and seven users of certain stainless steel cold-rolled flat products. No unrelated importer or provider of raw materials replied to the questionnaire.

(5) The Commission sought and verified all the information deemed necessary for the purpose of a provisional determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

— Community producers

  — Ugine, SA, France

  — ThyssenKrupp, Acciai Speciali Terni, SpA, Italy

  — ThyssenKrupp Nirosta GmbH, Germany

— exporting producers

  — AK Steel Corporation, Middletown, Ohio, United States of America

— related importers

  — AK Steel Limited, Hertfordshire, United Kingdom.

(6) The investigation of dumping and injury covered the period from 1 January 2002 to 31 December 2002 ('the investigation period' or 'the IP'). As for the trends relevant for the assessment of injury, the Commission analysed the period from 1999 to the end of the investigation period ('the period considered').

(7) Upon initiation, the Commission advised all parties that, since initiation took place just before the end of the calendar year, it was more appropriate to select an investigation period coinciding with the calendar year, rather than the 12 months immediately prior to initiation, thus facilitating both the reporting by companies and the verification by the Commission. No party objected to this decision.

2. Product concerned and like product

General

(8) Cold-rolled flat products of ferritic stainless steels are manufactured in stainless steel plants according to the following process:

— melting of raw materials in electric furnace,

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 314, 17.12.2002, p. 3.

— decarburation and adjustment of composition,

— continuous casting in slab form,

— hot rolling, annealing and pickling,

— cold rolling,

— annealing and pickling,

— slitting to width required,

— packing and delivery.

(9) Cold-rolled flat products of ferritic stainless steels are mainly used in silencers and exhaust-gas emission-control systems by the automotive industry. Therefore, the most important use of these products is related to the manufacturing of exhaust-system components. Other important uses of cold-rolled flat products of ferritic stainless steel are household and automotive applications other than the mentioned exhaust systems.

Product concerned

(10) The product concerned by this proceeding is certain stainless steel cold-rolled flat products, i.e. chromium-ferritic steel, containing less than 0,15 % of carbon and 10,5 % or more and 18 % or less of chromium, flat rolled, not further worked than cold rolled, of stainless steel containing by weight less than 2,5 % of nickel in the standardised grades AISI 409/409L (EN 1.4512), AISI 441 (EN 1.4509) and AISI 439 (EN 1.4510), originating in the United States of America. Due to its characteristics, the product concerned is mostly used by the automotive industry for the production of exhaust systems. It falls within CN codes ex 7219 31 00, ex 7219 32 90, ex 7219 33 90, ex 7219 34 90, ex 7219 35 90, ex 7220 20 10, ex 7220 20 39, ex 7220 20 59 and ex 7220 20 99. All product types have the same basic physical, technical and chemical characteristics and are therefore one product.

Like product

(11) It is provisionally determined that the product produced in the United States of America and sold to the first independent customers in the Community has the same basic physical, technical and chemical characteristics as the product sold on both the USA domestic market and that produced by Community producers and sold on the Community market. All these products were therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

(12) One company, representing more than 80 % of exports to the Community of the product concerned originating in the United States of America, replied to the questionnaire for exporting producers. Six companies in the Community related to this exporting producer also replied to the questionnaire for related companies. Another exporting producer informed the Commission of its willingness to cooperate but did not provide a reply to the questionnaire. It was therefore considered to be non-cooperating.

1. **Normal value**

(13) As far as the determination of normal value is concerned, the Commission first established whether the cooperating exporting producer's total domestic sales of certain stainless steel cold-rolled flat products were representative in comparison with its total export sales to the Community.

(14) The company reported domestic sales of the product concerned made by two business locations (North and South). However, it was found that most sales made by South were not sales of the product concerned. In addition, the company did not supply cost information for products sold by this location. Therefore, the few sales of the product concerned by South which represented less than 0,1 % of total quantities of the product concerned sold domestically were disregarded. Indeed, the remaining domestic sales were largely representative and, given their negligible volume, the inclusion of these sales would not have had any impact on the dumping calculation. Consequently, and in accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative since the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community.

(15) The Commission subsequently identified those types of certain stainless steel cold-rolled flat products, sold domestically by the company, that were identical or directly comparable with those types sold for export to the Community.

(16) For each type sold by the exporting producer on its domestic markets and found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of certain stainless steel cold-rolled flat products were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of certain stainless steel cold-rolled flat products exported to the Community.

(17) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. Where the sales volume of certain stainless steel cold-rolled flat products, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. Where the volume of profitable sales of certain stainless steel cold-rolled flat products represented 80 % or less of the total sales volume, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume.

(18) In cases where the volume of profitable sales of any type of certain stainless steel cold-rolled flat products represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(19) Wherever domestic prices of a particular type could not be used to establish normal value, another method had to be applied. In view of the fact that no other exporting producer decided to cooperate in this proceeding, no information was available to the Commission regarding the domestic prices of another producer. Consequently, and in the absence of any other reasonable method, constructed normal value was used.

(20) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit.

(21) To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses were considered reliable since the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

2. **Export price**

(22) All export sales of the product concerned to the Community were made via a related importer, which resold the product to both related and unrelated customers. Those related customers, in turn, resold the product concerned to other independent customers. Consequently, pursuant to Article 2(9) of the basic Regulation, the export price was constructed on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale by those importers, including SG&A costs, and assuming a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. In the absence of any other more reliable information, the reasonable profit margin was provisionally estimated at 5 %. This was considered appropriate for this type of business.

3. **Comparison**

(23) 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. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(24) Adjustments to the normal value were claimed for discounts, rebates, inland freight, credit, after-sales expenses, technical support, customer R&D, indirect selling expenses and differences in variable costs of manufacturing.

(25) Regarding the allowances for technical support, customer R&D and indirect selling expenses, it could not be concluded, on the basis of the information made available, that these factors affected price comparability, in particular the claim that customers consistently paid different prices due to these factors. In addition, it could not be demonstrated that these expenses related exclusively to sales of the product concerned in the domestic market and that they did not benefit other products and/or other markets. On the basis of the above the allowances claimed had to be provisionally rejected, since they did not meet the requirements of Article 2(10).

(26) The company also claimed an allowance for differences in variable costs of manufacturing between domestic and export products. It should be noted that the comparison between domestic and export prices was made on the basis of identical or comparable types, i.e. on the basis of the same product characteristics. Consequently, this allowance was found to be unjustified and is thus provisionally rejected.

(27) Adjustments to the export price were made for ocean freight, inland freight and credit.

4. **Dumping margin**

(28) According to Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

— AK Steel Corporation, Middletown, Ohio, United States of America: 69,7 %.

(29) For those producers in the United States of America which neither replied to the Commission's questionnaire nor otherwise made themselves known, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(30) In this case, since one company deliberately refrained from cooperating, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community made in representative quantities. This approach was considered necessary in order to avoid giving a bonus for non-cooperation. On this basis, the residual provisional dumping margin, expressed as a percentage of the cif import price at the Community border, is 128,7 %.

C. **INJURY**

1. **Introduction**

(31) For the purpose of establishing whether or not the Community industry had suffered injury and for determining consumption and the various economic indicators relating to the situation of the Community industry, it was examined whether, and to what extent, the subsequent use of the Community industry's production of the product concerned had to be taken into account in the analysis.

(32) Indeed, the product concerned is sold by the Community industry to both (a) unrelated entities and (b) to entities in the same group of companies ('related entities'). As concerns related entities, there are two different categories: (i) entities which purchase the product concerned and use it as raw material for manufacturing a different product (mainly tubes), and (ii) entities which purchase the product concerned for its further processing according to the needs of the first independent customer whilst not transforming it into a different product altogether ('service centres').

(33) In this context, sales of the product concerned for use as raw material to manufacture other products for companies in the same group shall be considered as 'captive use', in so far as at least any of the following two conditions occur: (i) sales are not made at market prices or (ii) the customer within the same group of companies does not have a free choice of supplier. On the other hand, sales to unrelated customers are provisionally considered to form the 'free market'. In the course of the investigation it was provisionally found that sales to related entities which purchase the product concerned as raw material for manufacturing a different product had to be considered as captive sales; indeed although sales may be made at arms' length conditions, it was found that pursuant to the commercial policy of the companies, these related entities did not have a free choice of supplier.

(34) This distinction is relevant for the injury analysis, as products destined for captive use were found to be only indirectly affected by imports, as sales to captive customers are not exposed to direct competition with the USA imports. By contrast, in the case of the free market, sales were found to be in direct competition with imports of the product concerned.

(35) In order to provide as complete a picture as possible of the situation of the Community industry, data were obtained and analysed, to the extent possible, for the captive and free market taken together, and it was subsequently determined whether products were destined for captive use or for the free market. Indeed, production, capacity, capacity utilisation rates, investments, prices, profitability, cash flow, return on capital employed, ability to raise capital, stocks, employment, productivity, wages and magnitude of the dumping margin were analysed according to the complete activity regarding the product concerned. On the basis of the investigation, it was provisionally found that the abovementioned economic indicators could best be analysed by reference to both the free and captive markets, as in the present proceeding, the evolution of said indicators will not be affected by the fact that sales are addressed to either the free or the captive market.

(36) However, as regards the other injury indicators relating to the Community industry (i.e. sales, market shares and consumption) it was provisionally found that a meaningful analysis was possible only in respect of the situation on the free market, as these indicators can only be analysed in a meaningful way in a competitive environment.

2. **Definition of the Community industry**

(37) Of the six European Community producers of the product concerned, the following three have supported the complaint:

— Ugine, SA, France (UGINE),

— ThyssenKrupp Acciai Terni, SpA, Italy (TKAST),

— ThyssenKrupp Nirosta GmbH, Germany (TKN).

(38) As these three complainant cooperating Community producers represented 85 % of the Community production of the product concerned, they constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. **Community consumption**

(39) Community consumption was established by adding together the volumes of sales on the free Community market of the Community industry, the sales volume of the remaining producers on the Community market, as contained in the responses to the questionnaires supplied by said producers and the volume of imports. The volume of imports was determined on the basis of Eurostat figures corresponding to the relevant CN codes in the present proceeding. Taking into account that these CN codes also include products other than the one concerned, in certain instances an apportionment of the import data on the basis of criteria set out in the complaint was made.

(40) Apart from the companies which constitute the Community industry and the other Community producers, the most significant players in the EU market for the product concerned are USA and Japanese companies. Imports from Japan represented 3 % of the free market during the IP.

(41) On this basis, Community consumption has increased from 157 099 tonnes in 1999 to 182 679 tonnes in the IP, i.e. an increase of 16 %.

4. **Imports from the country concerned**

Volume and market share ([1])

(42) Imports of the product concerned originating in the USA significantly increased in volume by 95 % throughout the period concerned. Sharp increases in imports in 2000 and 2001 were registered (85 % for 2000 and 43 % for 2001). In the IP imports decreased by 14 % but still represented more than the double of the 1999 volume. As a result, the share of the free market increased to 12-14 % over the same period.

Table 1

	1999	2000	2001	IP
Market Share USA Imports	4 to 6 %	9 to 11 %	15 to 17 %	12 to 14 %
Index	100	154	251	195

Prices

(43) The weighted average price of imports originating in the USA increased by 19 % between 1999 and the IP.

Undercutting

(44) The Commission examined whether the cooperating exporting producer in the country concerned undercut the prices of the Community industry during the IP.

([1]) For reasons of confidentiality ranges are given.

(45) The comparison between Community industry prices and export prices was made on the basis of sales transactions to the same clients at the same level of trade, i.e. Community industry delivered prices were compared with prices made by importers, related to the USA exporting producer, as indicated above in recital 22, to the first independent customer in the Community, including any custom duties paid, on the basis of the matching product types. This approach was considered justified because of the particular characteristics of the market for this type of product, in particular the fact that customers may easily shift from one supplier to another, the market is very transparent and prices may move downwards quickly. As a consequence, where prices are being undercut by the imports, this would normally only be identifiable for a very short time, since the prices of the Community industry would have to follow the trend in order not to lose a customer. It therefore seems appropriate to focus on the areas where direct competition took place. The only way to achieve this is to focus on clients that buy from both the USA company and the Community industry, so that price offers can be directly compared. In this sense, as developed below, it is highly illustrative that during the period considered, certain users ([1]) increased their purchases from the sole cooperating USA company considerably and reduced their purchases from the Community industry to a negligible level.

(46) Following this approach, it has been possible to make a price comparison based on 8 % of the export volume by the USA company, taking into account the European and AISI standardised grade designation, the thickness, the width, the edges and the finishing of the product concerned.

(47) The undercutting margin provisionally found on this basis, and expressed as a percentage of the Community industry's prices, amounts to 13,2 %.

5. **Situation of the Community industry**

Effects of past dumping or subsidisation

(48) No anti-dumping or countervailing duties were imposed on the product concerned during the period under consideration. Therefore, this indicator is not relevant in the present case.

Production

(49) Production for the total market (i.e. the free market and the captive market) increased from 188 633 tonnes in 1999 to 219 282 tonnes in the IP, i.e. by 16 %, with a dip in the year 2001.

Table 2

	1999	2000	2001	IP
Production	188 633	218 369	194 304	219 282
Index	100	116	103	116

Capacity and capacity utilisation rates

(50) Two of the Community producers used the same production lines for manufacturing the product concerned and for the production of several other stainless steel products. One of these companies is in the process of building new production facilities. The third company, which used one line of production almost exclusively for the product concerned, has registered an increase in its production capacity from an index of 100 during 1999 to 141 during the IP. The capacity utilisation rate for this producer fell from around 75 % in 1999 to around 50 % in the IP. Whilst, on the basis of the information available for the two producers, the capacity could not be allocated clearly to the product concerned, the information contained no evidence which could invalidate the conclusion that capacity utilisation had fallen.

([1]) During the IP these represented 13 % of total consumption and 47 % of exports by the sole cooperating USA company.

Investments

(51) The development of production capacity is mirrored by the development of investments. On this basis, overall investments increased from EUR 55 million to EUR 125 million in 2001 and reached EUR 79 million in the IP. Overall, they increased by 43 % throughout the period considered. Investments concerned mainly fixed assets such as new lines of production and a new mill, all aimed at increasing production efficiency.

Sales and market share

(52) Between 1999 and the IP the Community industry increased its sales to the free market in the Community from 110 115 to 116 768 tonnes, or by 6 %. This increase in percentage is, however, well below that of the increase in total consumption in the Community. Sales during the IP were below the 2000 level. While sales in the free market increased by only 6 %, sales in the captive market increased by 15 %. As captive customers have no choice of supplier, this increase appears to mirror the potential increase in the free market in the absence of dumping.

Table 3

Sales free market

	1999	2000	2001	IP
Sales on Community market (tonnes)	110 115	129 895	105 364	116 768
Index	100	118	96	106

Table 4

Captive sales

	1999	2000	2001	IP
Sales on Community market (tonnes)	60 647	69 555	63 547	69 630
Index	100	115	105	115

(53) The Community industry's share of the free market declined by six percentage points over the period considered, from 70 % to 64 %, which shows that the Community industry could not benefit fully from the positive development of the market. The loss of market shares corresponds to the increase in market shares of the imports originating in the country concerned (see recital 42).

Table 5

	1999	2000	2001	IP
Market share Community industry	70 %	69 %	64 %	64 %

Prices

(54) The Community industry's average sales price to the total market (the free and the captive market) increased by 12 % during the period concerned. While prices increased by 5 % in 2000 and 8 % in 2001, they remained stable and even decreased slightly between 2001 and the IP. Prices to the free market and to the captive market were at the same level (see above, recital 33).

Profitability

(55) The weighted average profitability of the Community industry increased from 4,4 % in 1999 to 7,5 % in the IP.

(56) While the development of profitability looks at first sight to be positive, a closer examination reveals that in fact profitability levels are indeed unsatisfactory. Attention must be paid to the peculiarities of the product concerned. The product concerned belongs to a market where profits are usually substantially higher than those obtained in the general stainless steel industry. The normally higher levels of profitability for the product concerned are the result of the following.

— The market for which the product concerned is destined (mainly the automotive exhaust systems market) is characterised by a largely stable demand and is shielded from the usual fluctuations of the economic cycle. Indeed, the product concerned contains at maximum a very low addition of nickel, which makes it cheaper than other stainless steel grades containing higher additions of said alloy element. The low cost of the product concerned, as compared to other stainless steel grades, makes the former an especially suitable substitution product during downwards periods in the economic cycle. As the total automobile production in the European Union has stagnated during the period considered (from 16 978 400 units produced in 1999 to 16 943 700 units produced in 2002), consumption of the product concerned has increased by 16 %, as indicated in recital 41. This arguably indicates that users of the product concerned, and their subsequent customers, have increased their purchases of the product concerned, hence decreasing the purchases of other more expensive stainless steel grades. This conclusion was confirmed by the Community industry companies in the course of the investigation.

— As already mentioned, contrary to most other stainless steel products, the product concerned contains at maximum a very low addition of nickel, a volatile cost element that fluctuates substantially, potentially leading to lower profit margins.

(57) The different pattern of profitability mentioned above is borne out by the current divergent trends in profitability reported by the Community industry companies for general stainless steel production on the one hand and for the product concerned on the other (see table 6 below).

Table 6

	1999	2000	2001	IP
Average pre-tax profit margin on turnover — total stainless steel production	0,8 %	5,6 %	- 2,1 %	3,4 %
Pre-tax profit margin on turnover (product concerned)	4,4 %	3,2 %	6,4 %	7,5 %

(58) The market for the product concerned is therefore characterised by much more robust profit and price levels.

Cash flow, return on capital employed and ability to raise capital

(59) The information on cash flow and return on investments was provided in respect of the total production of the Community industry companies, as two of them were unable to allocate this data to the product concerned.

(60) On this basis, aggregated net cash flow from operating activities has increased from minus EUR 22 357 710 in 1999 to EUR 188 109 683 in the IP.

Table 7

	1999	2000	2001	IP
Cash flow	- 22 357 710	106 262 747	157 262 838	188 109 683
Index	- 100	475	703	841

(61) This development was in line with the cash flow related to the product concerned that could be isolated for one company. However, it is not possible to arrive at a meaningful conclusion on the cash flow generated by the product concerned only, as two of the companies also use their production lines for the manufacturing of a variety of other stainless steel products and the depreciation cannot be allocated to each individual product. Average return on capital employed for the three companies has increased from 3,6 % in 1999 to 6,9 % in the IP.

Table 8

	1999	2000	2001	IP
Return on capital employed	3,6 %	20,5 %	1,6 %	6,9 %

(62) Finally, with regards to the ability to raise capital, it should be noted that the Community industry companies have been shown to rely on intra-group financing as their main source of debt finance, which suggests that the possibility of raising capital is not directly linked with the yearly performance of the companies and the resulting solvency situation. Therefore, the evolution of this indicator is not relevant for the purposes of the injury analysis. With regard to equity as a source of capitalisation for the company, it must be stated that none of the three companies is quoted on a stock exchange or any other kind of secondary market.

Stocks

(63) The evolution of stocks is not a meaningful injury indicator in the present proceeding. In fact, Community industry companies have declared that they only manufacture the product concerned to order, and thus do not maintain stocks, save for delivery or logistical reasons, and even then only in negligible quantities. Therefore, any evolution in stocks is only for logistical reasons, rather than due to market deterioration causes.

Employment and wages

(64) Employment in the Community industry decreased by 12 % during the period considered. Total wages increased by 5 % during the period concerned.

Productivity

(65) Productivity for the total market has increased by 31 % during the period considered. It increased by 17 % in 2000, remained practically stable in 2001 and increased again by 14 % in the IP, mirroring the substantial investment efforts made by the Community industry (see recital 49).

Growth

(66) Overall, it has to be noted that the Community industry's market shares in the free market fell by 6 %, which shows that its growth lagged significantly behind the growth of the overall market (which grew by 16 %).

Magnitude of the dumping margin

(67) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the country concerned, this impact cannot be considered negligible.

6. **Conclusion on injury**

(68) Imports from the USA have increased considerably, both in absolute terms and in terms of market share. Indeed, during the period considered, they gained between six and eight percentage points in market share. Moreover, these imports had a depressing effect on prices which is evident, *inter alia*, from the significant price undercutting found in areas where both the USA exporter and the Community industry competed for the same customers.

(69) Whilst many of these economic indicators for injury show a positive trend (i.e. prices, profitability, sales, investment, cash flow, return on investment, capacity, productivity), a more in-depth analysis nevertheless points to a situation of material injury. First of all, the Community industry's position in the market was significantly weakened, which is demonstrated by a substantial loss of market share. Moreover, and as outlined above, the prices of the Community industry decreased between 2001 and the IP which in turn resulted in lower levels of profitability than found in 1997 in the absence of dumping, despite substantial improvements in productivity which were achieved by a reduction in staffing levels and by investments. Furthermore, the substantial dumping margin of 69,7 % shows that in order to eliminate the dumping, the exporting producer would have to increase its export price by 69,7 %, which would result in a significant decrease in its market share. It is reasonable to conclude that the Community industry would be able to fill in most, if not all, of the market share left by the exporting producer. Finally, it should be pointed out that prices to the captive market are likewise affected by dumped imports. Indeed the investigation has shown that prices to captive customers are by contract fixed to reflect market conditions. Being part of the same group as the Community industry, it was found that, in order not to jeopardise overall group competitiveness, the Community industry would charge prices similar to those it charged to independent customers.

(70) Therefore, it is provisionally concluded that the Community industry has suffered material injury.

D. **CAUSATION**

1. **Introduction**

(71) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of the product concerned originating in the country concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(72) Imports from the USA have increased considerably during the period concerned, by 127 % in terms of volume, and by between six and eight percentage points in terms of market share. Prices of imports originating in the USA considerably undercut Community industry prices (see above, recital 44 and following) by 13,2 %.

(73) The effects of dumped imports can also be illustrated by the decision of some users, representing 13 % of total consumption during the IP, to switch from the Community industry and purchase from USA producers. Whilst these consumers used to purchase only marginal quantities from USA producers at the beginning of the period considered, they now purchase up to 47 % of the exports to the Community of the sole cooperating USA producer. This underlines the fact that over the period considered, the USA producer increased its market share at the expense of the Community industry.

(74) Overall, between 1999 and the IP, the Community industry's loss of market share of six percentage points corresponds to the increase in market share of USA imports. In particular, in 2001, sales by the Community industry decreased by five percentage points in terms of market share when compared with the previous year, whereas at the same time imports from the USA increased by between six and seven percentage points. Conversely, sales by the Community industry to captive customers have remained stable since 2000.

(75) The loss of market shares and insufficient price levels also coincided with the injurious situation of the Community industry evidenced by the insufficient level of profitability and the unfavourable development of wages and employment.

3. **Effect of other factors**

Imports from other third countries

(76) Import volumes from other third countries increased from 1 425 tonnes in 1999 to 5 893 tonnes in the IP, their market share increasing from 0,9 % in 1999 to 3,2 % in the IP. Most of these imports originated in Japan. However, on the basis of Eurostat data, the average prices of the product concerned as imported from third countries were higher than the corresponding prices of imports originating in the USA and European Union. Therefore, these imports cannot have caused any injury to the Community industry.

Non-complainant Community producers

(77) Non-complainant Community producers of the product concerned held a market share of around 18 % during the IP. During the period concerned, their sales volume decreased by 4 % and their market share fell by four percentage points. In addition, the average prices of non-complainant producers are at the same level as the complainant producers' average prices. All this suggests that they are in a similar situation to the Community industry, i.e. that they have suffered injury from the dumped imports. Therefore, it cannot be concluded that other Community producers caused material injury to the Community industry.

Quality and service advantages of the product concerned imported from the USA

(78) The investigation showed that the product concerned imported from the USA had no substantial quality or technical advantages.

(79) In addition, as shown by the Community industry companies, the fact that the Community industry does not hold stocks for the product concerned, as it manufactures the product concerned to order within very short time, does not imply a slower delivery time, when compared with the USA imports. Therefore, there are no indications that quality or service advantages could have caused material injury.

4. **Conclusion on causation**

(80) The coincidence in time, between the increase in USA export volumes and market shares and the undercutting found on the one hand and the deterioration of the situation of the Community industry on the other, leads to the provisional conclusion that the dumped imports originating in the USA have caused the material injury suffered by the Community industry.

(81) Furthermore, the insufficient development of the free market is not reflected in the captive market. This has caused a subsequent stagnation of prices and a limitation of profitability ratios. Indeed, it is in the free market, where the Community industry is in direct competition with imports of the product concerned, that the injurious situation is evident. Indicators for the captive market, where imports do not compete directly with the Community industry, show a positive trend.

(82) The analysis of the purchases of two important users showed that during the period considered, these companies have replaced their purchases from the Community industry with purchases from the USA company.

(83) It is also provisionally concluded that the non-complainant producers cannot have caused the adverse evolution of the Community industry, as their responses to questions from the Commission suggest that they have suffered injury from dumped imports. Finally, investigations showed that the product concerned imported from the USA had no substantial quality or technical advantages compared with the European product.

(84) No other factors that might explain such a deterioration in the situation of the Community industry were found.

(85) Therefore, as the investigation by the Commission has properly distinguished and analysed all known factors and provisionally found that the effects of none of them were such as to break the causal link between dumping and injury, it is provisionally concluded that the dumped imports from the country concerned caused the material injury suffered by the Community industry.

E. **COMMUNITY INTEREST**

1. **Preliminary remark**

(86) In accordance with Article 21 of the basic Regulation, the Commission considered whether the imposition of anti-dumping measures would be contrary to the interests of the Community as a whole. The determination of the Community interest was based on an examination of all the various interests involved, i.e. those of the Community industry, the importers and traders, and the users of the product concerned.

(87) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, three other Community producers, seven importers, 10 users and 16 suppliers of raw materials. The three Community industry producers, three other Community producers, six related importers and seven users replied.

(88) On this basis, it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case.

2. **Community industry**

(89) The Community industry has suffered material injury, as set out above in recital 68 and following.

(90) The imposition of anti-dumping measures would allow the Community industry to reach the levels of profitability which it would have been able to achieve in the absence of dumped imports, and to take advantage of developments in the Community market.

(91) However, should no anti-dumping measures be imposed, it is likely that the negative trend of the Community industry will continue: notably market shares would further decline and profitability would remain below that attainable for the product concerned in the absence of dumped imports.

3. **Users**

(92) Users of the product concerned consist principally of producers of exhaust systems for the automotive industry. They are located mainly in the United Kingdom, Italy, Germany, France, the Netherlands and Belgium. The cooperating users represented only 24 % of free market consumption in the IP. Nevertheless, they accounted for 91 % of total imports from the USA during the IP. Thus, whilst information from cooperating users was highly representative for the situation of users sourcing the product from the USA, it did not enable an accurate picture to be obtained in respect of the remaining proportion of users which did not purchase the product from the USA to the same extent. This analysis should therefore be seen in the light of this limitation.

(93) All cooperating users opposed the imposition of anti-dumping measures, by claiming that they would incur losses and suggesting that they might be obliged to relocate their activities outside the EU, in the event of anti-dumping duties being imposed.

(94) The product concerned represents on average 15 % of the total cost of production of exhaust systems. However, as stated in recital 42, imports from the USA during the IP represent a market share of between 12 % and 14 %. Consequently, in a worst-case scenario, if importers passed on the full amount of the duties in the form of a price increase, and taking into account the current market share of the USA imports, the total cost of production of all exhaust systems users would increase by about 0,4 %.

(95) In addition, the imposition of anti-dumping measures would not create a shortage of supply of the product concerned to the users, as the purpose of said measures is not to stop imports of the product concerned from the USA, but to re-establish fair trading conditions. In fact, as already mentioned, the Community industry has increased its investments in plant and machinery related to the product concerned by 43 %. One company in particular (the most representative one in terms of sales volume) increased its production capacity by 41 % during the period considered. Furthermore, even if USA producers decided to stop exporting the product concerned, Community producers are the largest suppliers in the world for the product concerned and have historically generated enough capacity to be able to cover any increase in demand.

4. **Unrelated importers**

(96) Questionnaires were sent to a number of allegedly unrelated importers. None of them replied. Given the absence of cooperation, it is provisionally concluded that unrelated importers would not suffer significant negative effects from the imposition of anti-dumping measures.

5. **Competition and trade distorting effects**

(97) The US company submitted that the Community industry is highly concentrated and had a history of anti-competitive conduct. However, the concentration level would not be modified as a consequence of the imposition of anti-dumping measures. Furthermore, even if a company is holding a strong position in the market, this does not automatically imply an abuse of it.

(98) In addition, it must be underlined that through anti-dumping measures, it is intended to restore fair trade conditions in the EU market, and not to exclude or limit the number of participants in the market.

(99) There are six Community producers of the product concerned in the Community:

— Ugine SA, France,

— Ugine & ALZ, Belgium, NV, Belgium,

— ThyssenKrupp Acciai Speciali Terni, SpA, Italy,

— ThyssenKrupp Nirosta GmbH, Germany,

— Acerinox SA, Spain,

— Avesta Polarit Oyj Abp, United Kingdom.

(100) Of the abovementioned companies, Ugine France, and Ugine ALZ Belgium, on the one hand, and ThyssenKrupp Terni and ThyssenKrupp Nirosta, on the other hand, belong to the same group of companies (Arcelor and Thyssen Krupp Steel, respectively).

(101) However, even assuming that there is no competition among companies integrated within the same group, there is nevertheless a substantial degree of competition in the Community, as there are still four suppliers of the product concerned who remain competitors.

(102) Even in the extreme case that the USA companies decided to stop exporting the product concerned after the imposition of anti-dumping measures, the level of competition among the different Community producers would arguably still be sufficiently high as there would remain a considerable number of sources of supply, and, more importantly, supplies from Japan could increase.

(103) Moreover, no evidence of any anti-competitive behaviour by Community industry companies was submitted during the period considered.

6. **Conclusion on Community interest**

(104) Taking into account all of the above factors, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

F. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

(105) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury caused to the Community industry by the dumped imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain an overall profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(106) The investigation has shown that the stainless steel industry in the Community has achieved reasonable levels of profitability due to the reduction in costs of production and the increase in productivity ratios during the last five years. In particular, the product concerned offers a profitability ratio that is more stable and higher than the one normally found for the stainless steel sector, as explained in recital 56.

(107) It has been found that for periods where no dumped imports existed (i.e. 1997) a profit margin of 8,35 % for the product concerned was achieved by the Community industry. However, as described in recital 51 above, after 1997 the Community industry made important investments in production technology which have led to substantial cost reductions and a considerable increase in productivity (+ 31 % over the period concerned).

(108) Due to the speciality of the product concerned and the market in which it is used, as stated in recitals 56 and following, profits are usually higher than for other stainless steel products, which are more subject to the economic cycle. In addition, as explained above under recital 69, it is reasonable to conclude that, in the absence of dumping, the Community industry would have benefited from increased sales and therefore increased output, further lowering its costs through economies of scale.

(109) It has been found that for periods where no dumped imports existed (i.e. 1997) a profit margin of 8,35 % for the product concerned was achieved by the Community industry. However, after 1997 the Community industry carried out important investments, incorporating new production mills and lines of production of high technology and achieved reductions in direct manufacturing costs and a considerable increase in productivity as a result. As explained above in recital 65, the increase in productivity amounted to 31 % over the period considered. Therefore, in the absence of dumping a higher profit margin than the 8,35 % achieved in 1997 should be expected.

(110) In view of the above, the Commission provisionally considers that a 9 % profit margin before tax should be taken into account for the product concerned in view of the fact that in the absence of dumping and before the substantial investments the Community industry already managed to achieve 8,35 %.

(111) The necessary price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price for the like product sold by the Community industry in the Community market. As was the case for the undercutting calculation, the calculation of the injury margin was made on the basis of comparable types sold to the same clients.

(112) The non-injurious price was obtained by adjusting the sales price of the Community industry to reflect the abovementioned profit margin of 9 %. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

2. Provisional measures

(113) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed on imports of the product concerned from the USA, at the level of the injury margin found, since it is lower than the dumping margin.

(114) On the basis of the above, the provisional duty rates are as follows:

Company	Basis for ad duty (%)
AK Steel Corporation, Middletown, Ohio, USA	20,6
All other companies	25,0

(115) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of findings of the present investigation. It therefore reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the country-wide duty applicable to 'all other companies') is thus applicable exclusively to imports of the product originating in the country concerned and produced by the company and thus by the specific legal entity 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 the one specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.

(116) Any claim requesting the application of this individual company anti-dumping duty rate (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. If appropriate, the Commission will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

G. **FINAL PROVISION**

(117) In the interest of a 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 purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain flat rolled products of stainless steel, not further worked than cold rolled, containing by weight less than 0,15 % of carbon, 10,5 % or more but not more than 18 % of chromium and less than 2,5 % of nickel, in the standardised grades AISI 409/409L (EN 1.4512), AISI 441 (EN 1.4509) and AISI 439 (EN 1.4510), falling within CN codes ex 7219 31 00 (TARIC code 7219 31 00 10), ex 7219 32 90 (TARIC code 7219 32 90 10), ex 7219 33 90 (TARIC code 7219 33 90 10), ex 7219 34 90 (TARIC code 7219 34 90 10), ex 7219 35 90 (TARIC code 7219 35 90 10), ex 7220 20 10 (TARIC code 7220 20 10 10), ex 7220 20 39 (TARIC code 7220 20 39 10), ex 7220 20 59 (TARIC code 7220 20 59 10) and ex 7220 20 99 (TARIC code 7220 20 99 10), and originating in the United States of America.

[1] European Commission
Directorate-General Trade
J-79 05/16
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

2. The amount of the provisional anti-dumping duty, applicable to the product described in paragraph 1 above, shall be as follows:

Manufacturer	Provisional anti-dumping duty	TARIC additional code
AK Steel Corporation 703 Curtis Street, Middletown, Ohio 45043 United States of America	20,6 %	A470
All other companies	25,0 %	A999

3. 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 the provisional duty.

4. Unless otherwise specified, the provisions of the Community Customs Code and its related legislation shall apply.

Article 2

1. Without prejudice to Article 20(1) 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, present their views in writing and request a hearing from the Commission within one month of the date of the entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96 the parties concerned may request a hearing concerning the analyses of the Community interest and may comment on the application of this Regulation within one month of the date of the entry in force of this Regulation.

Article 3

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

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, 15 September 2003.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1612/2003
of 12 September 2003
prohibiting fishing for plaice by vessels flying the flag of Belgium

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [1], as last amended by Regulation (EC) No 806/2003 [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required [3], as last amended by Commission Regulation (EC) No 1407/2003 [4], lays down quotas for plaice for 2003.

(2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.

(3) According to the information received by the Commission, catches of plaice in the waters of ICES zones VIII, IX, X, CECAF 34.1.1 (EC waters) by vessels flying the flag of Belgium or registered in Belgium have exhausted the quota allocated for 2003. Belgium has prohibited fishing for this stock from 1 September 2003. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of plaice in the waters of ICES zones VIII, IX, X, CECAF 34.1.1 (EC waters) by vessels flying the flag of Belgium or registered in Belgium are hereby deemed to have exhausted the quota allocated to Belgium for 2003.

Fishing for plaice in the waters of ICES zones VIII, IX, X, CECAF 34.1.1 (EC waters) by vessels flying the flag of Belgium or registered in Belgium is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 1 September 2003.

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

Done at Brussels, 12 September 2003.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries

[1] OJ L 261, 20.10.1993, p. 1.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ L 356, 31.12.2002, p. 12.
[4] OJ L 201, 8.8.2003, p. 3.

COMMISSION REGULATION (EC) No 1613/2003
of 12 September 2003
prohibiting fishing for cod by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [1], as last amended by Regulation (EC) No 806/2003 [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required [3], as last amended by Commission Regulation (EC) No 1407/2003 [4], lays down quotas for cod for 2003.

(2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.

(3) According to the information received by the Commission, catches of cod in the waters of ICES divisions I, IIb, by vessels flying the flag of Spain or registered in Spain have exhausted the quota allocated for 2003. Spain has prohibited fishing for this stock from 1 September 2003. This date should consequently be adopted in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of cod in the waters of ICES divisions I, IIb, by vessels flying the flag of Spain or registered in Spain are hereby deemed to have exhausted the quota allocated to Spain for 2003.

Fishing for cod in the waters of ICES divisions I, IIb, by vessels flying the flag of Spain or registered in Spain is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 1 September 2003.

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

Done at Brussels, 12 September 2003.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries

[1] OJ L 261, 20.10.1993, p. 1.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ L 356, 31.12.2002, p. 12.
[4] OJ L 201, 8.8.2003, p. 3.

COMMISSION REGULATION (EC) No 1614/2003

of 15 September 2003

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [1], as last amended by Regulation (EC) No 1300/97 [2], and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [3], as last amended by Regulation (EC) No 2062/97 [4], those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 16 September 2003.

It shall apply from 17 to 30 September 2003.

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

Done at Brussels, 15 September 2003.

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

[1] OJ L 382, 31.12.1987, p. 22.
[2] OJ L 177, 5.7.1997, p. 1.
[3] OJ L 72, 18.3.1988, p. 16.
[4] OJ L 289, 22.10.1997, p. 1.

ANNEX

to the Commission Regulation of 15 September 2003 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 17 to 30 September 2003

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	18,49	14,45	35,17	17,46
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	—	—	11,74	11,76
Morocco	—	—	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 1615/2003
of 15 September 2003
fixing 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 1104/2003 ([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 1110/2003 ([4]), and in particular Article 2(1) thereof,

Whereas:

(1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 September 2003.

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

Done at Brussels, 15 September 2003.

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

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 158, 27.6.2003, p. 1.
([3]) OJ L 161, 29.6.1996, p. 125.
([4]) OJ L 158, 27.6.2003, p. 12.

ANNEX I

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

CN code	Description	Import duty [1] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	4,66
1005 10 90	Maize seed other than hybrid	49,98
1005 90 00	Maize other than seed [2]	49,98
1007 00 90	Grain sorghum other than hybrids for sowing	14,75

[1] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:
— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

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

ANNEX II

Factors for calculating duties

(period from 29 August to 12 September 2003)

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

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	134,39 (****)	84,53	175,53 (***)	165,53 (***)	145,53 (***)	124,07 (***)
Gulf premium (EUR/t)	—	14,07	—	—	—	—
Great Lakes premium (EUR/t)	16,38	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 2378/2002).
(***) Fob Duluth.
(****) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

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

   Freight/cost: Gulf of Mexico–Rotterdam: 18,54 EUR/t; Great Lakes–Rotterdam: 28,31 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).

DIRECTIVE 2003/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 July 2003

amending Council Directive 86/609/EEC on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) On 23 March 1998 the Council adopted Decision 1999/575/EC concerning the conclusion by the Community of the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes [4] (hereinafter referred to as the Convention).

(2) Council Directive 86/609/EEC [5] is the implementing tool of the Convention incorporating the same objectives as the Convention.

(3) Annex II to Directive 86/609/EEC containing guidelines for accommodation and care of animals takes over Appendix A to the Convention. The provisions contained in Appendix A to the Convention and the Annexes to the said Directive are of a technical nature.

(4) It is necessary to ensure the consistency of the Annexes to Directive 86/609/EEC with the latest scientific and technical developments and results of research within the fields covered. Currently, changes to the Annexes can only be adopted by the long-drawn-out co-decision procedure with the consequence that their content is lagging behind the latest developments in the field.

(5) The measures necessary for the implementation of this Directive 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 [6].

(6) Therefore Directive 86/609/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Directive 86/609/EEC the following Articles shall be inserted:

'*Article 24a*

The measures necessary for the implementation of this Directive relating to the subject matters referred to below shall be adopted in accordance with the regulatory procedure set out in Article 24b(2):

— Annexes to this Directive.

Article 24b

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 16 September 2004. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

[1] OJ C 25 E, 29.1.2002, p. 536.
[2] OJ C 94, 18.4.2002, p. 5.
[3] Opinion of the European Parliament of 2 July 2002 (not yet published in the Official Journal), Council Common Position of 17 March 2003 (OJ C 113 E, 13.5.2003, p. 59) and Decision of the European Parliament of 19 June 2003 (not yet published in the Official Journal).
[4] OJ L 222, 24.8.1999, p. 29.
[5] OJ L 358, 18.12.1986, p. 1.
[6] OJ L 184, 17.7.1999, p. 23.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 July 2003.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	G. ALEMANNO

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 September 2003

relating to national provisions on banning the use of genetically modified organisms in the region of Upper Austria notified by the Republic of Austria pursuant to Article 95(5) of the EC Treaty

(notified under document number C(2003) 3117)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/653/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(5) and (6) thereof,

Whereas:

I. FACTS

(1) In a letter dated 13 March 2003, the Austrian Permanent Representation to the European Union notified the Commission, in accordance with Article 95(5) of the EC Treaty of a draft Upper Austrian Act on the prohibition of genetic engineering 2002 banning the use of genetically modified organisms in the region of Upper Austria (hereinafter national provisions) in derogation of the provisions of Directive 2001/18/EC of the European Parliament and of the Council [1].

1. Article 95(5) and (6) of the EC Treaty

(2) Article 95(5) and (6) of the Treaty provides:

'5. (…) If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notification as referred to in paragraphs (…) 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs (…) 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.'

2. Relevant Community legislation

2.1. *Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms*

(3) The deliberate release of genetically modified organisms (GMOs) into the environment is governed by Directive 2001/18/EC as of 17 October 2002, on which date Member States are required to have implemented the relevant national measures. This Directive is based on Article 95 of the Treaty establishing the European Community and aims at approximating legislation and procedures in Member States for the authorisation of GMOs intended for deliberate release into the environment.

[1] OJ L 106, 17.4.2001, p. 1.

(4) Directive 2001/18/EC puts in place a step-by-step approval process on a case-by-case assessment of the risks to human health and the environment before any GMO or product consisting of or containing GMOs or genetically modified micro-organisms (GMMs) can be released into the environment or placed on the market.

(5) The Directive provides for two different procedures, for experimental releases (referred to as part B releases) and for placing on the market releases (referred to as part C releases). Part B releases require an authorisation at national level, whereas part C releases are subject to a Community procedure, with an eventual decision being valid throughout the European Union.

(6) At the current time, authorisation for placing on the market of genetically modified seeds for the purpose of cultivation is exclusively provided for by Directive 2001/18/EC. To date, no genetically modified seeds have been authorised under this Directive although 22 applications are pending authorisation some of which include uses that include cultivation.

(7) 18 authorisations for the placing on the market of GMOs were granted under the previous Council Directive 90/220/EEC ([1]), which was repealed by Directive 2001/18/EC on 17 October 2002. Of these products, seeds from three genetically modified maize varieties, three genetically modified oilseed rape varieties and a chicory variety have been authorised for the placing on the market to include cultivation as a use. In addition, approval has also been granted for cultivation of two genetically modified carnation varieties.

(8) Directive 2001/18/EC provides for the placing on the market and experimental release into the environment of transgenic animals on the basis that they are classified as GMOs. Whilst no transgenic animals or fish have as yet been approved for these purposes, or applications for such submitted for approval, the Directive does provide for this possibility.

(9) In addition to the above provisions regarding the authorisation procedures, Article 23 of Directive 2001/18/EC contains a 'safeguard clause'. The provisions of this Article mainly foresee that, 'where a Member State, as a result of new or additional information made available since the date of the consent and affecting the environmental risk assessment or reassessment of existing information on the basis of new or additional scientific knowledge, has detailed grounds for considering that a GMO as or in a product which has been properly notified and has received written consent under this Directive constitutes a risk to human health or the environment, that Member State may provisionally restrict or prohibit the use and/or sale of that GMO as or in a product on its territory'. Furthermore, in the event of a severe risk, Member States may take emergency measures, such as the suspension or termination of the placing on the market of a GMO and must inform the Commission of the decision taken on the basis of Article 23, as well as the reasons for having made such a decision. On this basis, a decision shall be taken at Community level on the invoked safeguard clause, in accordance with the comitology procedure foreseen under Article 30(2) of Directive 2001/18/EC.

(10) Directive 2001/18/EC has not yet been transposed into the Austrian legal order, in contradiction with the provisions of its Article 34, which requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 October 2002.

2.2. *Council Directive 90/219/EEC (as amended by Directive 98/81/EC)*

(11) Directive 90/219/EEC ([2]), as amended by Directive 98/81/EC ([3]), governs the contained use of genetically modified micro-organisms (GMMs). Austria, as well as 11 other Member States, has transposed this Directive in order to also cover other GMOs, including transgenic animals and fish, and not just GMM. This is admissible under the contained use Directive. Progeny have already been bred from transgenic animals and fish in certain Member States under the contained use conditions of Directive 90/219/EC as transposed into their national law. However, consents for such activities are issued on a national basis, under the provisions of the Directive, with no associated Community procedure.

2.3. *Seeds legislation*

(12) The seeds legislation comprises Council Directives 66/401/EEC ([4]), 66/402/EEC ([5]), 2002/54/EC ([6]), 2002/55/EC ([7]), 2002/56/EC ([8]) and 2002/57/EC ([9]), as last amended by Directive 2003/61/EC ([10]). These Directives foresee that a seed variety can circulate freely within the Community provided that:

— the variety has passed with success tests proving that it is distinct, stable and sufficiently homogenous. Furthermore, it must have a satisfactory use and cultivation value,

([1]) OJ L 117, 8.5.1990, p. 15.

([2]) OJ L 117, 8.5.1990, p. 1.
([3]) OJ L 330, 5.12.1998, p. 13.
([4]) OJ 125, 11.7.1966, p. 2298/66.
([5]) OJ 125, 11.7.1966, p. 2309/66.
([6]) OJ L 193, 20.7.2002, p. 12.
([7]) OJ L 193, 20.7.2002, p. 33.
([8]) OJ L 193, 20.7.2002, p. 60.
([9]) OJ L 193, 20.7.2002, p. 74.
([10]) OJ L 165, 3.7.2003, p. 23.

— if the seeds of this variety have been, at a later stage, officially examined with regard to their qualities and certified as basic seeds or certified seeds or, for some species, officially examined and admitted as commercial seeds.

(13) These directives have therefore an agronomic and botanical objective, and only aim at GMO as seeds, which have to fulfil the same criteria as conventional seeds under the same Directives.

(14) To be placed on the market and allowed to move freely throughout the Community, a genetically modified seed has to pass successively two separate stages:

— its genetic modification has to receive prior authorisation according to part C of Directive 2001/18/EC,

— its characteristic as a variety has to have been subject to tests foreseen by Community legislation on seeds.

(15) If results are positive, Member States register this variety in the corresponding national catalogue of seeds, which allows the seeds of this variety to circulate freely on the Member State territory and be admitted for commercial cultivation (once officially examined and certified). It is only once it has been registered in the Community catalogue of varieties that the seeds of this variety can benefit from freedom of movement throughout the Community territory (also only once officially examined and certified).

(16) Therefore, there is not only one Directive regulating in a specific and global manner the issue of transgenic seeds, but two Directives (Directive 2001/18/EC and the relevant seeds Directive applying to the GMO at stake) which apply jointly and regulate two separate aspects of the genetically modified variety.

2.4. *Regulation (EC) No 258/97 of the European Parliament and of the Council on novel foods*

(17) Regulation (EC) No 258/97 [1] sets out rules for authorisation and labelling of novel foods including food products containing, consisting of or produced from GMOs. This Regulation notably foresees that risks to the environment may be associated with novel foods or novel food ingredients, which contain or consist of genetically modified organisms. Therefore, it establishes a link with Directive 2001/18/EC, which stipulates that, for such products, an environmental risk assessment must always be undertaken to ensure environmental safety. The Regulation therefore imposes a specific environmental risk assessment similar to that laid down in Directive 2001/18/EC, but must also include the assessment of the suitability of the product to be used as a food or food ingredient.

3. **National provisions notified**

3.1. *Scope of the national provisions notified*

(18) The draft Act [2] is primarily concerned with the protection of GMO-free (organic) production systems in the province of Upper Austria. Protection of nature and the environment as well as natural biodiversity are also cited as objectives.

(19) In its first page, the Report of the Committee on National Economic Affairs [3], hereinafter 'the Committee Report' gives a summary of the grounds for and content of the draft Act:

'The use of genetically modified organisms (GMOs) in agriculture and forestry, and in crop farming in particular, is not, according to current scientific knowledge, free from risk with respect to either the maintenance of GMO-free agricultural production (coexistence) or the conservation of the natural environment (biodiversity).

The aim of this Act is to safeguard organic farming as well as traditional agricultural crop and animal products from GMO contamination (hybridisation). In addition, natural biodiversity, particularly in sensitive ecological areas, as well as genetic resources in nature, including those of hunting and fishing, are to be protected from GMO contamination.'

(20) On this basis, the draft Act primarily seeks to ban the use of genetically modified seeds (including those with Community authorisation) in the province of Upper Austria as a means to (i) safeguard organic and traditional farming (coexistence) and (ii) protect natural biodiversity, particularly in sensitive ecological areas, as well as genetic resources from 'contamination' of GMOs. It does, however, accept adventitious traces of genetically modified seeds in conventional stocks to a level of 0,1 % (apparently both authorised and non-authorised genetically modified seed).

[1] OJ L 43, 14.2.1997, p. 1.

[2] Provincial Act, prohibiting the cultivation of genetically modified seed and planting material and the use of transgenic animals for breeding purposes as well as the release of transgenic animals especially for the purposes of hunting and fishing (Upper Austrian Act prohibiting genetic engineering 2002).

[3] Report of the Committee on National Economic Affairs concerning the Provincial Act prohibiting the cultivation of genetically modified seed and planting material and the use of transgenic animals for breeding purposes as well as the release of transgenic animals especially for the purposes of hunting and fishing (Upper Austrian Act prohibiting genetic engineering 2002).

(21) It also seeks to ban the use of transgenic animals for breeding and in particular their release for hunting and fishing.

(22) It requires that Upper Austria will provide compensation to persons for monetary losses due to the presence of GMOs in conventional products.

(23) The Act is a temporary measure, applicable for three years after its adoption.

3.2. *Impact on Community legislation of the national provisions notified*

(24) The scope of the draft Upper Austrian Act implies that it will primarily impact on:

— experimental releases of GMOs in accordance with the provisions of part B of Directive 2001/18/EC,

— the cultivation of genetically modified seed varieties authorised under the provisions of part C of Directive 2001/18/EC,

— the cultivation of genetically modified seed varieties already approved under the provisions of Directive 90/220/EEC as now governed by Directive 2001/18/EC. The consents for these products will have to be renewed under Directive 2001/18/EC but not until the year 2006,

— contained use activities involving the breeding of transgenic animals and fish. However, this would not be in contradiction of the Directive per se, given that the provisions of Directive 90/219/EEC as amended by Directive 98/81/EC (as opposed to those of national laws) do not explicitly extend to such GMOs,

— placing on the market and experimental release into the environment of transgenic animals on the basis that they are classified as GMOs, if such approvals were to be granted (which is not the case for the time being) in accordance with Directive 2001/18/EC.

(25) In this context it is also important to mention that during second reading of the Commission Proposal for a Regulation on genetically modified food and feed, the European Parliament adopted an amendment aiming to introduce a new Article 26a in Directive 2001/18/EC. Following agreement from the Council on 22 July 2003, this Article will be inserted into the Directive on the entry into force of the new Regulation. The Article reads:

'Member States may take appropriate measures to avoid the unintended presence of GMOs in other products.

The Commission shall gather and coordinate information based on studies at Community and national level, observe the developments regarding coexistence in the Member States and, based on the information and observations, develop guidelines on the coexistence of genetically modified, conventional and organic crops.'

(26) On the other hand, the draft Act is unlikely to impact on the novel food Regulation. This Regulation addresses food or food ingredients containing or consisting of a GMO, which are not to be used as seed or planting material. Therefore, the novel food Regulation shall be considered as out of the scope of the draft Act.

(27) Regarding the horizontal issue of coexistence, the Commission adopted, on 23 July 2003, a Recommendation with guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming [1]. The Recommendation states that:

'It is important to make a clear distinction between the economic aspects of coexistence and the environmental and health aspects dealt with under Directive 2001/18/EC on the deliberate release of GMOs into the environment.

According to the procedure laid down in Directive 2001/18/EC, the authorisation to release GMOs into the environment is subject to a comprehensive health and environmental risk assessment. The outcome of the risk assessment can be one of the following:

— a risk of an adverse effect to the environment or health that cannot be managed is identified, in which case authorisation is refused,

— no risk of adverse effects on the environment or health is identified, in which case authorisation is granted without requiring any additional management measures other than those specifically prescribed in the legislation,

— risks are identified, but they can be managed with appropriate measures (e.g. physical separation and/or monitoring); in this case the authorisation will carry the obligation to implement environmental risk management measures.

If a risk to the environment or health is identified after the authorisation has been granted, a procedure for the withdrawal of the authorisation or for modifying the conditions of consent can be initiated under the safeguard clause set out in Article 23 of the Directive.

[1] OJ L 189, 29.7.2003, p. 36.

Since only authorised GMOs can be cultivated in the European Union, and the environmental and health aspects are already covered by Directive 2001/18/EC, the pending issues still to be addressed in the context of coexistence concern the economic aspects associated with the admixture of genetically modified and non-genetically modified crops.'

(28) Concerning territorial measures, the Recommendation states:

'While considering all the options available, priority should be given to farm-specific management measures and to measures aimed at coordination between neighbouring farms.

Measures of a regional dimension could be considered. Such measures should apply only to specific crops whose cultivation would be incompatible with ensuring coexistence, and their geographical scale should be as limited as possible. Region-wide measures should only be considered if sufficient levels of purity cannot be achieved by other means. They will need to be justified for each crop and product type (e.g. seed versus crop production) separately.'

(29) From the above considerations, it clearly appears that the main Community legislation potentially affected by the Austrian notification is Directive 2001/18/EC. In fact, this horizontal piece of legislation can be seen as the cornerstone of any deliberate release of GMOs in the European Union, notably since authorisations under seeds and novel foods legislation are carried out in line with its governing principle. This interpretation is accepted in the assessment carried out by the Austrian authorities in their Committee Report that states:

'The national legislator's room to manoeuvre with regards to authorised GMOs is therefore determined in accordance with the specific primary law stipulations relating to the "Release Directive" ([1]) or in accordance with the safeguard clause of the same Directive.'

(30) For these reasons, the legal assessment contained in this Decision will focus on Directive 2001/18/EC and will not touch upon other pieces of legislation covering biotechnology, since their importance is minor in the present context.

4. **Justifications put forward by Austria**

(31) Justification for the draft Act is provided by the Committee report and a recent study on coexistence commissioned by the province of Upper Austria and the Federal Ministry of Social Security and Generations, hereinafter 'the Müller Study' ([2]).

(32) The basis for the Act, as detailed in the report, is that the use of GMOs is not free from risk with respect to either the maintenance of genetically modified-free agricultural production (coexistence) or the conservation of the natural environment (biodiversity). The Müller study produces a broad compilation of generic information on GM crops and coexistence, together with scientific data on causes and contexts of GMOs contamination.

(33) The Müller study purportedly confirms long-term negative effects on genetically modified-free agricultural production and naturally occurring crop formations cannot be ruled out.

(34) The study suggests that it is practically impossible for organic and conventional production to coexist alongside a large GMO cultivation, with a feared long-term damage to the environment. The above justification, in terms of biodiversity and coexistence, is applied to transgenic animals in a similar manner as to genetically modified seeds. Along this line, the Müller study considers that:

'The danger as far as the (Upper) Austrian environment is concerned lies in the fact that recombinated genes may harm conventional genetically modified-free and organic agricultural crop production. If genetically modified varieties of seed or planting material are cultivated extensively, genetically modified-free agricultural crop production would no longer be possible in future. Since the danger facing this type of production appears to relate to all products that are permitted as seed and planting material, all these products are covered by the cultivation ban contained in the draft. The same applies to transgenic animals used for breeding purposes and, to the release of transgenic animals especially for the purposes of hunting and fishing. In the long run, these animals reproduce and threaten the existence of the naturally occurring animal.'

(35) On this basis, the Müller study concludes that:

'Genetically modified-free areas represented the only approach, which could ensure long-term security in relation to the problems of coexistence within the small-structured Austrian agricultural sector. Given that the proportion of organic farmers is particularly high in Upper Austria (around 7 %), hardly any areas would be available for a GMO cultivation if the intention was to safeguard the organic production of agricultural products by establishing protection zones with a 4 km radius from sources of foreign contamination.'

([1]) The "Release Directive" being defined prior in the Committee Report as Directive 2001/18/EC.

([2]) 'Genetically modified-free areas of farming: conception and analysis of scenarios and steps for realisation', Werner Müller, 28 April 2002 (carried out on behalf of the department for environment of the region of Upper Austria and of the Federal Ministry for social security and generations).

(36) The specificity to the province of Upper Austria is founded on the fact that production in this region is based on a small-structured farming system and that management measures to control the presence of GMOs in organic/conventional production systems is not possible. The Committee Report therefore concludes:

'(…) it must be emphasised in Austria's case that in accordance with the study mentioned, "genetically modified-free areas" represent the only approach which can ensure the long-term security of coexistence within Austria's "small-structured agricultural sector". In relation to the province of Upper Austria, it arises from this study that hardly any areas would be available for a GMO cultivation if the intention is to safeguard the organic production of agricultural products by establishing protection zones with a 4 km radius from the foreign contamination source. In this regard, particular reference is made to the high proportion of organic farmers (in the case of Upper Austria) who are distributed over the province as a whole and whose existence would be threatened.'

II. **PROCEDURE**

(37) In a letter dated 13 March 2003, the Austrian Permanent Representation to the European Union notified the Commission, in accordance with Article 95(5) of the EC Treaty, of a draft Upper Austrian Act on the prohibition of genetic engineering 2002 banning the use of genetically modified organisms in the region of Upper Austria in derogation of the provisions of Directive 2001/18/EC.

(38) By a letter dated 25 March 2003, the Commission informed the Austrian authorities that it had received the notification under Article 95(5) of the EC Treaty and that the six-month period for its examination pursuant to Article 95(6) had begun on 14 March 2003, the day after the notification was received.

(39) By a letter dated 6 May 2003, the Commission informed the other Member States of the request received from the Austrian Republic. The Commission also published a notice regarding the request in the *Official Journal of the European Union* [1] to inform the other parties concerned of the draft national measures that Austria intended to adopt [2].

III. **LEGAL ASSESSMENT**

1. **Consideration of admissibility**

(40) Article 95(5) of the Treaty reads as follows: 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.'

(41) The notification submitted by the Austrian authorities on 14 March 2003 is intended to obtain approval for the introduction of new national provisions which are deemed to be incompatible with Directive 2001/18/EC, a Community measure concerning the approximation of the laws, regulations and administrative provisions of the Member States, aiming at the establishment and operation of the Internal Market.

(42) Directive 2001/18/EC harmonises at Community level the rules with regards to deliberate release of GMOs, for experimental release or for placing on the market. This horizontal piece of legislation can be seen as the cornerstone of any deliberate release of GMOs in the European Union, notably since authorisations under seeds and novel foods legislation are carried out in line with its governing principle. Therefore, and for the reasons developed in detail under point III.2, the legal assessment contained in this Decision will focus on Directive 2001/18/EC and will not touch upon other pieces of legislation covering biotechnology, which importance is minor in the present context.

(43) As required by Article 95(5) of the EC Treaty, Austria notified the Commission of the exact wording of the draft provisions, which are incompatible with those set out namely in Directive 2001/18/EC, as well as of an explanation of the reasons which, in its opinion, justifies the introduction of those provisions.

(44) When comparing the provisions of Directive 2001/18/EC and the national measures notified, it emerges that the latter are more restrictive than those contained in the Directive, notably in the following aspects:

— the governing principle of Directive 2001/18/EC is a case-by-case risk analysis, whereas the Austrian Act foresees a 'blanket' ban,

— Directive 2001/18/EC, in combination with the seeds Directives, enable free circulation of genetically modified seeds approved at Community level, whereas the Austrian Act foresees prohibition of all genetically modified seeds, irrelevant whether they have been approved or not.

(45) The justifications put forward by Austria are mainly that:

— the Müller study commissioned by the Region of Upper Austria has brought to light new scientific evidence showing a danger for the (Upper) Austrian environment,

[1] OJ C 126, 28.5.2003, p. 4.
[2] Comments were received from Italy, the Netherlands and Europabio.

— the same study has also demonstrated that the Upper Austrian agricultural structure was specific (notably since based on small-scale farms, with a substantial proportion of organic farming),

— the Müller study was published after the adoption of Directive 2001/18/EC and according to Austria, the issue of coexistence, which is not tackled by this Directive, is still considered as unsolved.

(46) In the light of the foregoing, the Commission considers that the notification submitted by Austria in order to obtain approval for the introduction of national provisions derogating from the provisions of Directive 2001/18/EC is therefore to be considered admissible under Article 95(5) of the EC Treaty.

2. **Assessment of merits**

(47) In accordance with Article 95(6) of the Treaty, the Commission must ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this Article are fulfilled:

'6. The Commission shall, within six months of the notification as referred to in paragraphs (…) 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a Decision by the Commission within this period the national provisions referred to in paragraphs (…) 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.'

(48) The Commission must therefore assess whether the conditions provided for by Article 95(5) of the Treaty are met. This Article requires that when a Member State deems it necessary to introduce national provisions derogating from a harmonisation measure, that Member State should base the introduction on:

— new scientific evidence relating to the protection of the environment or the working environment,

— grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure.

(49) Article 95(5) of the EC Treaty applies to new national measures, which introduce incompatible requirements with those of a Community harmonisation measure on the basis of the protection of the environment or the working environment, on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, and which are justified by new scientific evidence.

(50) Furthermore, under Article 95(6) of the EC Treaty, the Commission is either to approve or reject the draft national provisions in question after verifying whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States, and whether or not they shall constitute an obstacle to the functioning of the internal market.

(51) Therefore, the national provisions notified and the reasons given by the Member State are examined in light of the Community harmonisation measure from which they derogate, in this case, the provisions of Directive 2001/18/EC on the deliberate release into the environment of GMOs. Again, for the reasons developed in detail under point I.3.2, the legal assessment contained in this Decision will focus on Directive 2001/18/EC and will not touch upon other pieces of legislation covering biotechnology, which are of minor importance in the present context.

(52) This specific Directive is affected, in so far as the draft act bans the use of all GMOs in the region of Upper Austria, whereas the Directive foresees a case-by-case risk analysis prior to the authorisation of a GMO.

(53) The proposed ban on the cultivation of genetically modified seeds in the province of Upper Austria also creates an obstacle to the placing on the market of genetically modified seeds that would have been authorised for this purpose under Directive 2001/18/EC. The draft Act would, therefore, have implications for genetically modified seeds already approved for the placing on the market under existing Community legislation as well as future approvals.

(54) Whilst the Act does not seek to ban genetically modified seeds for experimental releases, this is only on the proviso that these activities are effected in closed systems. Experimental releases of genetically modified seeds are regulated under Directive 2001/18/EC although at a national rather than Community level. National authorities have the jurisdiction to include 'containment type measures', such as isolation distances and barriers, in consents issued for experimental releases on the basis of potential risk to human health or the environment ([1]). However, to put in place national measures requiring that such releases have to be conducted under 'closed systems', irrespective of any potential risk, has to be considered in contradiction with the Directive.

([1]) In this context it is also important to mention that the seeds Directives stipulate the adoption of such measures to ensure a high level of purity for basic and certified seeds. However, no distinction is made regarding admixture between conventional and genetically modified varieties.

(55) In addition to this, Directive 2001/18/EC does not contain any (*de minimis*) thresholds for the adventitious or technically unavoidable presence of non-authorised GMOs in seeds. Consequently, Member States do not have discretion in judging which quantities of GMOs are dangerous, and subsequently introduce such thresholds.

(56) Finally, in accordance with Article 23 of Directive 2001/18/EC, if on the basis of new information, made available since the date of consent, a Member State has detailed grounds for considering that a GMO as or in a product which has been properly notified and has received written consent under Directive 2001/18/EC constitutes a risk to human health or the environment, that Member State may provisionally restrict or prohibit the use and/or sale of that GMO as or in a product on its territory. The Committee Report shows that Austria is fully aware of this possibility, but considers it inappropriate to meet its objective, which is a total ban of GMOs in the province of Upper Austria:

'The Upper Austrian Act prohibiting genetic engineering 2002 is not only to apply to individual GMOs (that have already been authorised) but also makes provision for a general ban on all GMOs as or in a product that are already presently approved and those still to be approved in future.

(…)

It does appear somewhat impractical, however, to carry out a procedure in accordance with Article 23 of the "Release Directive" following every approval procedure conducted in relation to a GMO.'

(57) In accordance with the Court's case law, any exception to the principle of the uniform application of Community law and of the unity of the internal market must be strictly interpreted. Article 95(5) of the EC Treaty provides an exception to the principles of uniform application of Community law and the unity of the market. Therefore, it must be interpreted in such a way that its scope is not extended beyond the cases for which it formally provides.

(58) In the light of the time-frame established by Article 95(6) of the EC Treaty, the Commission, when examining whether the draft national measures notified under Article 95(5) are justified, has to take as a basis 'the grounds' put forward by the Member State. This means that, under the Treaty, the responsibility of proving that these measures are justified lies with the Member State making the request. Given the procedural framework established by Article 95 of the EC Treaty, including in particular a strict deadline for a Decision to be adopted, the Commission normally has to restrict itself to examining the relevance of the elements which are submitted by the requesting Member State, without having to seek possible justifications itself.

(59) The introduction of national measures which are incompatible with a Community harmonisation measure needs to be justified by new scientific evidence concerning the protection of the environment or the working environment. Of course, whether the scientific evidence is new must be judged in light of developments in scientific knowledge.

(60) It is therefore up to the Member State, which has requested that there is a need for a derogation, to provide new scientific evidence, in support of the measures notified.

(61) The Austrian authorities argue that 'the extensive use of genetically modified seed and planting material in crop production would at first interfere with and then, in the long-term, displace organic and conventional genetically modified-free production, resulting in an expansion of the GMO cultivation'.

(62) The Austrian authorities have commissioned the 'Müller study', on which the Committee Report is based, and which demonstrates, according to Austria, that 'new scientific evidence has now come to light which justifies an Upper Austrian Act prohibiting genetic engineering 2002 in the form proposed'. Furthermore, this study is also supposed to demonstrate that 'genetically modified-free areas' represent the only approach which can ensure the long-term security of coexistence within Austria's 'small-structured agricultural sector'.

(63) The Commission has sent the full Austrian notification ([1]) to the European Food Safety Authority (hereinafter the EFSA) and requested it in a mandate ([2]), under Article 29(1) and in accordance with Article 22(5)(c) of Regulation (EC) No 178/2002 of the European Parliament and of the Council ([3]), to provide a scientific opinion as to whether:

'— the information provided by Austria in the Report entitled GMO-free agricultural areas — Design and analysis of scenarios and implementational measures provides any new scientific evidence, in terms of risk

([1]) These documents are: Letter dated 13 February 2003 Ref: Verf-5-1300000/37-GM; 'Notification to the Commission concerning the introduction of a national provision (draft Committee Report) prohibiting the cultivation of genetically modified seeds and propagating material, the use of transgenic animals for breeding purposes and the release of transgenic animals, in particular for hunting and fishing purposes (Upper Austria Genetic Engineering Prohibition Act 2002. (Oö: GTVG 2002)), in accordance with Article 95(5) of the EC Treaty'; 'Report of the Committee on National Economic Affairs concerning the Provincial Act prohibiting the cultivation of genetically modified seed and planting material and the use of transgenic animals for breeding purposes as well as the release of transgenic animals especially for the purpose of hunting and fishing (Upper Austrian Act prohibiting genetic engineering 2002)'; 'GMO-free agricultural areas: Design and analysis of scenarios and implementation measures', study by Engineer Werner Müller; 'Green Report 2001, Report on the economic and social situation of Upper Austrian agriculture and forestry in 2001'; and 'Report on the Implementation of NATURA 2000 in Upper Austria over the next five years'.

([2]) Question No EFSA-Q-2003-001.

([3]) OJ L 31, 1.2.2002, p. 1.

to human health and the environment, that would justify the banning of cultivation of genetically modified seeds and propagating material, the use of transgenic animals for breeding purposes and the release of transgenic animals, authorised for these purposes under Directive 90/220/EEC or Directive 2001/18/EC,

— in particular, EFSA is requested to comment as to whether the scientific information presented in the report provides new data that would invalidate the provisions for the environmental risk assessment under the above legislation.'

(64) The EFSA concluded, on 4 July [1], that: The Scientific Panel on Genetically Modified Organisms is of the opinion that

'— the scientific information presented in the report provided no new data that would invalidate the provisions for the environmental risk assessment established under Directive 90/220/EEC or Directive 2001/18/EC,

— the scientific information presented in the report provided no new scientific evidence, in terms of risk to human health and the environment, that would justify a general prohibition of cultivation of genetically modified seeds and propagating material, the use of transgenic animals for breeding purposes and the release of transgenic animals, authorised for these purposes under Directive 90/220/EEC or Directive 2001/18/EC in this region of Austria.'

(65) With regard to the 'new' scientific information, the Commission considers that the Müller Report contains data, which were for a large part available prior to the adoption of Directive 2001/18/EC on 12 March 2001. This assessment is confirmed by the EFSA. In addition to this, Austria relies on the fact that the Müller Study was released on 28 April 2002, about a year after the date of adoption of Directive 2001/18/EC (12 March 2001). However, the vast majority of the sources referred to in the bibliography were published prior to the adoption of Directive 2001/18/EC. Therefore, the core of the study appears more as a validation of previous works than like new material identifying specific problems arising after the adoption of Directive 2001/18/EC.

(66) Moreover, the Austrian authorities have not provided any new scientific evidence, which specifically concerns the protection of the environment or the working environment.

(67) It therefore appears that Austrian concerns about coexistence relate more to a socio-economic problem than to the protection of the environment or the working environment. Again, this assessment is confirmed by the EFSA, which opinion states:

'No evidence was presented in the report to show that coexistence is an environmental or human health risk issue. EFSA was not asked by the Commission to comment on the management of coexistence of genetically modified and non-genetically modified crops, but the Panel recognised that it is an important agricultural issue.'

(68) On this basis, and in line with the definition of coexistence contained in its Recommendation on the issue [2], the Commission therefore considers that the concerns relating to coexistence raised by Austria cannot be specifically regarded as protection of the environment or the working environment within the meaning of Article 95(5) of the EC Treaty.

(69) The Commission also considers that any measure for coexistence, to be introduced on a regional basis, in the context of economic risk should be proportionate. In accordance with the new Article 26(a) of Directive 2001/18/EC and the Commission Recommendation of coexistence, such measures would have to take account of (i) specific crop-type, (ii) specific crop use and (iii) if sufficient levels of purity cannot be achieved by other means.

(70) Furthermore, in light of the documentation provided by Austria, particularly the excerpts from the Müller study included with the notification, it is clear that small-structured farming systems are certainly not specific to this region and exist in all Member States. The acceptance of the Act with regard to Article 95(5) of the Treaty cannot, therefore, be founded on such justification.

(71) There again, the EFSA opinion does not corroborate the Austrian justification:

'The scientific evidence presented contained no new or uniquely local scientific information on the environmental or human health impacts of existing or future GM crops or animals. No scientific evidence was presented which showed that this area of Austria had unusual or unique ecosystems that required separate risk assessments from those conducted for Austria as a whole or for other similar areas of Europe. No specific cases were presented of impacts of GMOs on biodiversity, either directly or through changes in agricultural practices.'

[1] Opinion of the Scientific Panel on Genetically Modified Organisms on a question from the Commission related to the Austrian notification of national legislation governing GMOs under Article 95(5) of the Treaty, The EFSA Journal (2003) 1, 1-5.

[2] See recital 27.

(72) As for the arguments, which, in the view of the Austrian authorities, justify recourse to the precautionary principle, the Commission must point out that 'recourse to the precautionary principle presupposes that potentially dangerous effects deriving from a phenomenon, product or process have been identified, and that scientific evaluation does not allow the risk to be determined with sufficient certainty' ([1]). Indeed, it follows from the Community courts' interpretation of the precautionary principle ([2]) that a preventive measure may be taken only if the risk, although the reality and extent thereof have not been 'fully' demonstrated by conclusive scientific evidence, appears nevertheless to be adequately backed up by the scientific data available at the time when the measure was taken. A preventive measure cannot properly be based on a purely hypothetical approach to the risk, founded on mere conjecture, which has not yet been scientifically verified.

(73) The Commission considers that the allegations being made for recourse to the precautionary principle are too general and lack substance. Furthermore, the EFSA has not identified a risk that would justify taking action on the basis of the precautionary principle at Community or national level. As a result, in this case, there is no justification for applying the precautionary principle.

IV. **CONCLUSION**

(74) Article 95(5) of the EC Treaty requires that, if a Member States deems it necessary to introduce national provisions in derogation from Community harmonisation measures, the national provisions must be justified by new scientific evidence relating to the protection of the environment or the working environment, there must be a problem specific to the State making the request, and the problem must have arisen after the adoption of the harmonisation measure.

(75) In this case, after having examined the Austrian request, the Commission considers that Austria has not provided new scientific evidence relating to the protection of the environment or the working environment, and has not demonstrated that there is a specific problem within the territory of Upper Austria, which arose following the adoption of Directive 2001/18/EC on the deliberate release into the environment of GMOs, and which makes it necessary to introduce the notified national measures.

(76) Consequently, the request from Austria for introducing national measures aimed at prohibiting the use of GMOs in Upper Austria does not fulfil the conditions set out in Article 95(5).

(77) Under Article 95(6) of the EC Treaty, the Commission is either to approve or reject the draft national provisions in question after verifying whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States, and whether or not they shall constitute an obstacle to the functioning of the internal market.

(78) Since the request made by Austria does not fulfil the basic conditions set out in Article 95(5), there is no need for the Commission to verify whether or not the notified national provisions are a means of arbitrary discrimination or disguised restriction on trade between Member States, and whether or not they constitute an obstacle to the functioning of the internal market.

(79) In light of the elements which it had available to assess the merits of the justifications put forward for the national measures notified, and in light of the considerations set out above, the Commission considers that Austria's request for introducing national provisions derogating from Directive 2001/18/EC, submitted on 13 March 2003:

— is admissible,

— does not fulfil the conditions set out in Article 95(5) of the EC Treaty, as Austria did not provide new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to Upper Austria.

(80) The Commission therefore has grounds to consider that the national provisions notified cannot be approved in accordance with Article 95(6) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on banning the use of GMOs in Upper Austria notified by Austria pursuant to Article 95(5) of the EC Treaty are rejected.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 2 September 2003.

For the Commission

Margot WALLSTRÖM

Member of the Commission

([1]) See the Commission Communication on recourse to the precautionary principle (COM(2000)1 final, 2.2.2000).

([2]) See in particular judgments in cases T-13/99 and T-70/99 of the Court of First Instance, (2002) ECR-II, p. 3305.

COMMISSION DECISION

of 8 September 2003

laying down a code and standard rules for the transcription into a machine-readable form of the data relating to intermediate statistical surveys of areas under vines

(notified under document number C(2003) 3191)

(Text with EEA relevance)

(2003/654/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 357/79 of 5 February 1979 on statistical surveys of areas under vines [1], as last amended by Regulation (EC) No 2329/98 [2], and in particular Article 5(6) and Article 6(7) thereof,

Whereas:

(1) Commission Decision 80/765/EEC of 8 July 1980 laying down a code and standard rules for the transcription into a machine-readable form of the data relating to intermediate statistical surveys of areas under vines [3] has been substantially amended several times [4]; in the interests of clarity and rationality the said Decision should be codified.

(2) Regulation (EEC) No 357/79 requires the Member States to submit to the Commission the information collected in the framework of intermediate surveys of areas under vines in the form of a schedule of tables broken down by geographical units which shall be fixed in accordance with the procedure laid down in Article 8 of the said Regulation, i.e. by a Commission Decision following an opinion from the Standing Committee on Agricultural Statistics.

(3) Member States which process their survey results electronically are required to submit these results to the Commission in a machine-readable form. The codes for transmitting survey results are also determined in accordance with the procedure laid down in Article 8 of Regulation 357/79 (EEC).

(4) For practical reasons the Member States should forward the data referred to in Article 6 of Regulation (EEC) No 357/79 also in machine-readable form.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee for Agricultural Statistics,

HAS ADOPTED THIS DECISION:

Article 1

The machine-readable form for submission of the data provided for in Articles 5 and 6 of Regulation (EEC) No 357/79 by those Member States which process their survey results electronically shall be magnetic tape.

Article 2

The code and rules governing the transcription onto magnetic tape of the data provided for in Articles 5 and 6 of Regulation (EEC) No 357/79 shall be as set out in Annexes I and II hereto.

Article 3

Decision 80/765/EEC is repealed.

The references made to the said repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex IV.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 8 September 2003.

For the Commission

Pedro SOLBES MIRA

Member of the Commission

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[1] OJ L 54, 5.3.1979, p. 124.
[2] OJ L 291, 30.10.1998, p. 2.
[3] OJ L 213, 16.8.1980, p. 34.
[4] See Annex III.

ANNEX I

MAGNETIC TAPE SPECIFICATION FOR THE DELIVERY TO EUROSTAT OF THE DATA ON THE BASIC SURVEYS OF THE AREAS UNDER VINES

(Council Regulation (EEC) No 357/79)

GENERAL PROVISIONS

I. The information recorded in accordance with the characteristics referred to in Articles 5 and 6 of Regulation (EEC) No 357/79 is to be delivered to Eurostat in the following form by those Member States which process their information electronically:

1. The information shall refer to summaries of holdings if the survey is exhaustive (or to raised summaries of holdings if the survey is based on random sampling) and not to individual holdings.

2. The information shall be delivered on nine-track magnetic tape/1 600 BPI (630 bytes/cm) standard label.

3. The information shall be of fixed record length consisting of 145 positions, and shall be recorded in EBCDIC.

4. The first two fields of each record shall contain information to permit identification. The first field (three positions) identifies the geographical unit, the codification of which is given in the detailed provisions and in Annex II.

5. The second field (two positions) identifies the table in the schedule of tables provided for in Regulation (EEC) No 357/79. The codification of these tables is given in the detailed provisions.

6. The number and size of the fields in each record vary according to the table. If all the 145 positions are not filled in the case of certain tables, the record shall be completed by blanks.

7. The information shall be entered right justified in each field and noughts added to fill in. If any optional information is not supplied the record shall be completed by blanks in the corresponding bytes.

8. Surface area data shall be given in areas, production data in hl.

9. Member States shall have a choice of blocking factor and shall inform Eurostat which blocking factor has been used.

10. The record shall be sorted according to geographical unit, table and changes in that order.

11. Standard administrative procedures governing the transmission of the magnetic tape files to Eurostat shall be established jointly by Eurostat and the Member States.

II. The following pages give for each table and for the various items of a record:

(a) the codes which are to be used;

(b) the maximum number of digits required for the item in question;

(c) the consecutive numbering of the positions for the various items.

DETAILED PROVISIONS

The first two fields of each record contain the following information:

	Code	Number of digits	Byte number on tape
1. Geographical Unit	See Annex II	3	1 — 3
2. Tables		2	4 — 5
5 ([1])	50		
6	60		
7 ([1])	70		
8 ([1])	80		

([1]) For these tables, it would be desirable for Member States which process their intermediate survey information electronically to send the information provided for in Article 6 of Regulation (EEC) No 357/79 to Eurostat on magnetic tape.

Table 5 (*)

5.1. *Type of area*		1	6
In production	1		
Not yet in production	2		
5.2. *All*			
Area (ares)		10	7 — 16
5.3. *Quality wines psr*			
Total areas (ares)		10	17 — 26
Yield class I			
Classification	11	2	27 — 28
Area (ares)		10	29 — 38
Yield class II			
Classification	12	2	39 — 40
Area (ares)		10	41 — 50
Yield class III			
Classification	13	2	51 — 52
Area (ares)		10	53 — 62
Yield class IV			
Classification	14	2	63 — 64
Area (ares)		10	65 — 74
5.4. *Other wines*			
Total area (ares)		10	75 — 84
Yield class I			
Classification	21	2	85 — 86
Area (ares)		10	87 — 96
Yield class II			
Classification	22	2	97 — 98
Area (ares)		10	99 — 108
Yield class III			
Classification	23	2	109 — 110
Area (ares)		10	111 — 120
Yield class IV			
Classification	24	2	121 — 122
Area (ares)		10	123 — 132
Yield class V			
Classification	25	2	133 — 134
Area (ares)		10	135 — 144

(*) Specification: see Annex I to Commission Decision 79/491/EEC.

Table 6

6.1. *Wine-growing year*		1	6
1979/1981	2		
1981/1982	3		
1982/1983	4		
1983/1984	5		
1984/1985	6		
1985/1986	7		
1986/1987	8		
1987/1988	9		
6.2. *Changes*		1	7
Grubbed or no longer cultivated	1		
Planted	2		
Replanted	3		
6.3. *Total*			
Area (are)		10	8 — 17
6.4. *Quality wines psr*			
Total area (ares)		10	18 — 27
Yield class I			
Classification	11	2	28 — 29
Area (ares)		10	30 — 39
Yield class II			
Classification	12	2	40 — 41
Area (ares)		10	42 — 51
Yield class III			
Classification	13	2	52 — 53
Area (ares)		10	54 — 63
Yield class IV			
Classification	14	2	64 — 65
Area (ares)		10	66 — 75
6.5. *Other wines*			
Total area (ares)		10	76 — 85
Yield class I			
Classification	21	2	86 — 87
Area (ares)		10	88 — 97
Yield class II			
Classification	22	2	98 — 99
Area (ares)		10	100 — 109
Yield class III			
Classification	23	2	110 — 111
Area (ares)		10	112 — 121
Yield class IV			
Classification	24	2	122 — 123
Area (ares)		10	124 — 133
Yield class V			
Classification	25	2	134 — 135
Area (ares)		10	136 — 145

Table 7

7.1. *Wine-growing year*		1	6
1979/1981	2		
1981/1982	3		
1982/1983	4		
1983/1984	5		
1984/1985	6		
1985/1986	7		
1986/1987	8		
1987/1988	9		
7.2. *Alcoholic strength unit*		1	7
% vol	1		
° Oechsle	2		
7.3. *Quality wines psr*			
Yield class I			
Classification	11	2	8 — 9
Production (hl)		10	10 — 19
Yield class II			
Classification	12	2	20 — 21
Production (hl)		10	22 — 31
Yield class III			
Classification	13	2	32 — 33
Production (hl)		10	34 — 43
Yield class IV			
Classification	14	2	44 — 45
Production (hl)		10	46 — 55
Alcoholic strength (1 decimal place, 1 virtual point)		3	56 — 58
7.4. *Other wines*			
Yield class I			
Classification	21	2	59 — 60
Production (hl)		10	61 — 70
Yield class II			
Classification	22	2	71 — 72
Production (hl)		10	73 — 82
Yield class III			
Classification	23	2	83 — 84
Production (hl)		10	85 — 94
Yield class IV			
Classification	24	2	95 — 96
Production (hl)		10	97 — 106
Yield class V			
Classification	25	2	107 — 108
Production (hl)		10	109 — 118
Alcoholic strength (1 decimal place, 1 virtual point)		3	119 — 121

Table 8

8.1. *First year*	Current year	4	6 — 9
8.2. *Sign*			
+	1	1	
-	2		
8.3. *Quality wines psr*			
Yield class I			
Classification	11	2	10 — 11
Sign		1	12
Changes (1 decimal point, 1 virtual point)		3	13 — 15
Yield class II			
Classification	12	2	16 — 17
Sign		1	18
Changes		3	19 — 21
Yield class III			
Classification	13	2	22 — 23
Sign		1	24
Changes		3	25 — 27
Yield class IV			
Classification	14	2	28 — 29
Sign		1	30
Changes		3	31 — 33
8.4. *Other wines*			
Yield class I			
Classification	21	2	34 — 35
Sign		1	36
Changes		3	37 — 39
Yield class II			
Classification	22	2	40 — 41
Sign		1	42
Changes		3	43 — 45
Yield class III			
Classification	23	2	46 — 47
Sign		1	48
Changes		3	49 — 51
Yield class IV			
Classification	24	2	52 — 53
Sign		1	54
Changes		3	55 — 57
Yield class V			
Classification	25	2	58 — 59
Sign		1	60
Changes		3	61 — 63

ANNEX II

GEOGRAPHICAL UNITS LAID DOWN BY ARTICLE 4(3) OF COUNCIL REGULATION (EEC) No 357/79

	Code
FEDERAL REPUBLIC OF GERMANY (wine-growing regions)	100
Ahr	101
Mittelrhein	102
Mosel-Saar-Ruwer	103
Nahe	104
Rheinhessen	105
Pfalz	106
Hessische Bergstraße	107
Rheingau	108
Württemberg	109
Baden	110
Franken	111
Saale-Unstrut	112
Sachsen	113
GREECE	600
Ανατολική Μακεδονία, Θράκη	601
Κεντρική Μακεδονία	602
Δυτική Μακεδονία	603
Ήπειρος	604
Θεσσαλία	605
Ιόνια Νησιά	606
Δυτική Ελλάδα	607
Στερεά Ελλάδα	608
Αττική	609
Πελοπόννησος	610
Βόρειο Αιγαίο	611
Νότιο Αιγαίο	612
Κρήτη	613
SPAIN (provinces or autonomous regions)	700
Galicia	701
Principado de Asturias	702
Cantabria	703
País Vasco A (Territorio Histórico de Álava)	704
País Vasco B (Territorios Históricos de Guipúzcoa y Vizcaya)	705
Navarra	706
La Rioja	707
Aragón A (provincia de Zaragoza)	708
Aragón B (provincias de Huesca y Teruel)	709
Catalunya A (provincia de Barcelona)	710
Catalunya B (provincia de Tarragona)	711
Catalunya C (provincias de Girona y Lleida)	712
Illes Balears	713
Castilla y León A (provincia de Burgos)	714
Castilla y León B (provincia de León)	715
Castilla y León C (provincia de Valladolid)	716
Castilla y León D (provincia de Zamora)	717
Castilla y León E (provincias de Ávila, Palencia, Salamanca, Segovia y Soria)	718
Madrid	719
Castilla-La Mancha A (provincia de Albacete)	720
Castilla-La Mancha B (provincia de Ciudad Real)	721
Castilla-La Mancha C (provincia de Cuenca)	722
Castilla-La Mancha D (provincia de Guadalajara)	723
Castilla-La Mancha E (provincia de Toledo)	724
Comunidad Valenciana A (provincia de Alicante)	725
Comunidad Valenciana B (provincia de Castellón)	726
Comunidad Valenciana C (provincia de Valencia)	727
Región de Murcia	728
Extremadura A (provincia de Badajoz)	729
Extremadura B (provincia de Cáceres)	730
Andalucía A (provincia de Cádiz)	731
Andalucía B (provincia de Córdoba)	732
Andalucía C (provincia de Huelva)	733
Andalucía D (provincia de Málaga)	734
Andalucía E (provincias de Almería, Granada, Jaén y Sevilla)	735
Canarias	736
FRANCE (departments or groups of departments)	200
Aude	201
Gard	202
Hérault	203
Lozère	204
Pyrénées-Orientales	205
Var	206
Vaucluse	207
Bouches-du-Rhône	208
Gironde	209
Gers	210
Charente	211

	Code
Charente-Maritime	212
Ardèche	213
Aisne	214
Seine-et-Marne	215
Ardenne, Aube, Marne, Haute-Marne	250
Cher, Eure-et-Loir, Indre, Indre-et-Loire, Loir-et-Cher, Loiret	251
Côte-d'Or, Nièvre, Saône-et-Loire, Yonne	252
Meurthe-et-Moselle, Meuse, Moselle, Vosges	253
Bas-Rhin, Haut-Rhin	254
Doubs, Jura, Haute-Saône, Territoire de Belfort	255
Loire-Atlantique, Maine-et-Loire, Sarthe, Vendée	256
Deux-Sèvres, Vienne	220
Dordogne, Landes, Lot-et-Garonne, Pyrénées-Atlantiques	221
Ariège, Aveyron, Haute-Garonne, Lot, Hautes-Pyrénées, Tarn, Tarn-et-Garonne	222
Corrèze, Haute-Vienne	223
Ain, Drôme, Isère, Loire, Rhône, Savoie, Haute-Savoie	224
Cantal, Allier, Haute-Loire, Puy-de-Dôme	257
Alpes-de-Haute-Provence, Hautes-Alpes, Alpes-Maritimes	225
Corse-du-Sud, Haute-Corse	258
ITALY (provinces)	300
Torino	301
Vercelli	302
Novara	303
Cuneo	304
Asti	305
Alessandria	306
Biella	307
Verbano — Cusio — Ossola	308
Aosta	309
Imperia	310
Savona	311
Genova	312
La Spezia	313
Varese	314
Como	315
Sondrio	316
Milano	317
Bergamo	318
Brescia	319
Pavia	320
Cremona	321
Mantova	322
Lecco	323
Lodi	324
Bolzano-Bozen	325
Trento	326
Verona	327
Vicenza	328
Belluno	329
Treviso	330
Venezia	331
Padova	332
Rovigo	333
Pordenone	334
Udine	335
Gorizia	336
Trieste	337
Piacenza	338
Parma	339
Reggio nell'Emilia	340
Modena	341
Bologna	342
Ferrara	343
Ravenna	344
Forlì	345
Rimini	346
Massa Carrara	347
Lucca	348
Pistoia	349
Firenze	350
Livorno	351
Pisa	352
Arezzo	353
Siena	354
Grosseto	355
Prato	356
Perugia	357
Terni	358
Pesaro e Urbino	359
Ancona	360
Macerata	361
Ascoli Piceno	362
Viterbo	363
Rieti	364
Roma	365
Latina	366
Frosinone	367
Caserta	368
Benevento	369
Napoli	370
Avellino	371

	Code
Salerno	372
L'Aquila	373
Teramo	374
Pescara	375
Chieti	376
Campobasso	377
Isernia	378
Foggia	379
Bari	380
Taranto	381
Brindisi	382
Lecce	383
Potenza	384
Matera	385
Cosenza	386
Catanzaro	387
Reggio di Calabria	388
Crotone	389
Vibo Valentia	390
Trapani	391
Palermo	392
Messina	393
Agrigento	394
Caltanissetta	395
Enna	396
Catania	397
Ragusa	398
Siracusa	399
Sassari	400
Nuoro	401
Cagliari	402
Oristano	403
LUXEMBOURG (constitutes a single geographical unit)	500
AUSTRIA	900
Burgenland	901
Niederösterreich	902
Steiermark	903
Wien und die anderen Bundesländer	904
PORTUGAL	800
Entre Douro e Minho	801
Trás-os-Montes	802
Beira Litoral	803
Beira Interior	804
Ribatejo e Oeste	805
Alentejo	806
Algarve	807
Região Autónoma dos Açores	808
Região Autónoma da Madeira	809
UNITED KINGDOM (constitutes a single geographical unit)	550

ANNEX III

Repealed Directive with its successive amendments

Commission Decision 80/765/EEC	(OJ L 213, 16.8.1980, p. 34)
Commission Decision 85/621/EEC	(OJ L 379, 31.12.1985, p. 12)
Commission Decision 96/20/EC, only as regards the reference made in Article 1 to Annex II to Decision 80/765/EEC	(OJ L 7, 10.1.1996, p. 6)
Commission Decision 1999/661/EC, only as regards the reference made in Article 1 to Annex II to Decision 80/765/EEC	(OJ L 261, 7.10.1999, p. 42)

ANNEX IV

CORRELATION TABLE

Decision 80/765/EEC	This Decision
Articles 1 - 2	Articles 1 - 2
—	Article 3
Article 3	Article 4
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV