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

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

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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 304/2004

of 20 February 2004

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

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

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 20 February 2004 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	88,9
	204	33,8
	212	114,0
	624	109,5
	999	86,6
0707 00 05	052	154,7
	068	88,3
	204	32,1
	999	91,7
0709 90 70	052	110,5
	204	72,0
	999	91,3
0805 10 10, 0805 10 30, 0805 10 50	052	69,4
	204	46,3
	212	50,0
	220	44,2
	600	41,6
	624	56,4
	999	51,3
0805 20 10	204	101,1
	999	101,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	91,4
	204	104,3
	220	74,5
	400	58,9
	464	75,0
	600	70,6
	624	77,2
	999	78,8
0805 50 10	600	65,3
	999	65,3
0808 10 20, 0808 10 50, 0808 10 90	052	65,0
	060	35,8
	400	103,3
	404	96,2
	512	93,4
	524	85,9
	528	82,4
	720	74,5
	999	79,6
0808 20 50	060	50,5
	388	85,4
	400	88,5
	512	66,2
	528	79,0
	720	48,3
	999	69,7

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 305/2004

of 20 February 2004

opening an invitation to tender for the allocation of A3 export licences for fruit and vegetables (tomatoes, oranges, lemons and apples)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], as last amended by Commission Regulation (EC) No 47/2003 [2], and in particular the third subparagraph of Article 35(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 1961/2001 [3], amended by Regulation (EC) No 1176/2002 [4], lays down the detailed rules of application for export refunds on fruit and vegetables.

(2) Article 35(1) of Regulation (EC) No 2200/96 provides that, to the extent necessary for economically significant exports, the products exported by the Community may be covered by export refunds, within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(3) Pursuant to Article 35(2) of Regulation (EC) No 2200/96, care must be taken to ensure that the trade flows previously brought about by the refund scheme are not disrupted. For this reason and because exports of fruit and vegetables are seasonal in nature, the quantities scheduled for each product should be fixed, based on the agricultural product nomenclature for export refunds established by Commission Regulation (EEC) No 3846/87 [5], as last amended by Regulation (EC) No 2180/2003 [6]. These quantities must be allocated taking account of the perishability of the products concerned.

(4) Article 35(4) of Regulation (EC) No 2200/96 provides that refunds must be fixed in the light of the existing situation and outlook for fruit and vegetable prices on the Community market and supplies available, on the one hand, and, on the other hand, prices on the international market. Account must also be taken of the transport and marketing costs and of the economic aspect of the exports planned.

(5) In accordance with Article 35(5) of Regulation (EC) No 2200/96, prices on the Community market are to be established in the light of the most favourable prices from the export standpoint.

(6) The international trade situation or the special requirements of certain markets may call for the refund on a given product to vary according to its destination.

(7) Tomatoes, oranges, lemons and apples of classes Extra, I and II of the common quality standards can currently be exported in economically significant quantities.

(8) In order to ensure the best use of available resources and in view of the structure of Community exports, it is appropriate to proceed by an open invitation to tender and to set the indicative refund amount and the scheduled quantities for the period concerned.

(9) The Management Committee for Fresh Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. An invitation to tender for the allocation of A3 export licences is hereby opened. The products concerned, the tender submission period, the indicative refund rates and the scheduled quantities are laid down in the Annex hereto.

2. The licences issued in respect of food aid as referred to in Article 16 of Commission Regulation (EC) No 1291/2000 [7] shall not count against the eligible quantities in the Annex hereto.

3. Notwithstanding Article 5(6) of Regulation (EC) No 1961/2001, the term of validity of the A3 licences shall be two months.

Article 2

This Regulation shall enter into force on 3 March 2004.

[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 7, 11.1.2003, p. 64.
[3] OJ L 268, 9.10.2001, p. 8.
[4] OJ L 170, 29.6.2002, p. 69.
[5] OJ L 366, 24.12.1987, p. 1.
[6] OJ L 335, 22.12.2003, p. 1.
[7] OJ L 152, 24.6.2000, p. 1.

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

Done at Brussels, 20 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

Opening an invitation to tender for the allocation of A3 export licences for fruit and vegetables (tomatoes, oranges, lemons and apples)

Tender submission period: 3 to 4 March 2004

Product code (1)	Destination (2)	Indicative refund amount (EUR/t net)	Scheduled quantity (t)
0702 00 00 9100	F08	25	4 632
0805 10 10 9100 0805 10 30 9100 0805 10 50 9100	F00	20	25 172
0805 50 10 9100	F00	31	13 338
0808 10 20 9100 0808 10 50 9100 0808 10 90 9100	F09	23	5 604

(1) The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

(2) The 'A' series destination codes are defined in Annex II to Regulation (EEC) No 3846/87. The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). The other destinations are defined as follows:

F00 All destinations except Estonia.

F03 All destinations except Switzerland and Estonia.

F04 Hong Kong, Singapore, Malaysia, Sri Lanka, Indonesia, Thailand, Taiwan, Papua New Guinea, Laos, Cambodia, Vietnam, Japan, Uruguay, Paraguay, Argentina, Mexico, Costa Rica.

F08 All destinations except Slovakia, Latvia, Lithuania, Bulgaria and Estonia.

F09 The following destinations:
— Norway, Iceland, Greenland, Faeroe Islands, Poland, Hungary, Romania, Albania, Bosnia and Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Serbia and Montenegro, Malta, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qalwain, Ras al Khaimah and Fujairah), Kuwait, Yemen, Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador and Colombia,
— African countries and territories except South Africa,
— destinations referred to in Article 36 of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

COMMISSION REGULATION (EC) No 306/2004

of 19 February 2004

imposing a provisional anti-dumping duty on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and Pakistan

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 Communities [1], as last amended by Regulation (EC) No 1972/2002 [2] (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of poly(-ethylene terephthalate) originating in Australia, the People's Republic of China (PRC) and Pakistan (countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged in April 2003 by the Association of Plastic Manufacturers in Europe (APME) (the complainant) on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of poly(ethylene terephthalate). The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The initiation of a partial interim review concerning imports of the same product originating in the Republic of Korea and Taiwan was announced by a notice published in the *Official Journal of the European Union* [4], on the same date.

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of Australia, the PRC and Pakistan, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Eight companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET, and one company requested only IT.

(7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not required.

(8) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the seven Community producers included in the complaint, four other Community producers, two exporting producers in Australia, nine exporting producers in the PRC, two exporting producers in Pakistan, one importer related to one Australian exporter and located in the EC, two suppliers, four unrelated importers and nine unrelated users in the Community.

(9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and resulting injury and carried out verifications at the premises of the following companies:

(a) Community producers

— Aussapol SpA, San Giorgio Di Nogaro (UD), Italy

— Brilen SA, Zaragoza, Spain

— Catalana di Polimers, Barcelona, Spain

— Dupont Sabanci SA, Middlesbrough, United Kingdom

— INCA International, Milano, Italy

— KoSa, Frankfurt am Main, Germany

— M & G Finanziaria Industriale, Milano, Italy

— Tergal Fibres, Gauchy, France

— VPI SA, Athens, Greece

— Voridian, Rotterdam, Netherlands

— Wellman PET Resins, Arnhem, Netherlands;

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 120, 22.5.2003, p. 9.
[4] OJ C 120, 22.5.2003, p. 13.

(b) Exporting producers/exporters in Australia
- — Leading Synthetics Pty Ltd, Melbourne
- — Novapex Australia Pty Ltd, Melbourne;

(c) Exporting producers in the PRC
- — Sinopec Yizheng Chemical Fibre Company Ltd, Yizheng city
- — Changzhou Worldbest Radici Co. Ltd, Changzhou city
- — Jiangyin Xingye Plastic Co. Ltd, Jiangyin city
- — Far Eastern Industries Shanghai Ltd, Shanghai
- — Yuhua Polyester Co. Ltd. of Zhuhai, Zhuhai
- — Jiangyin Chengsheng New Packing Material Co. Ltd., Jiangyin
- — Hubei Changfeng Chemical Fibres Industry Co. Ltd, Yichang;

(d) Exporting producers in Pakistan
- — Gatron (Industries) Ltd, Karachi
- — Novatex Ltd, Karachi;

(e) Related importers
- — Mitsubishi Chemicals, Düsseldorf, Germany;

(f) Unrelated importers
- — Helm AG, Hamburg, Germany
- — Global Services International, Milano, Italy
- — ABIC Italia, Milano, Italy;

(g) Community suppliers
- — Interquisa SA, Madrid, Spain
- — BP Chemicals, Sunbury-on-Thames, United Kingdom;

(h) Community users
- — Danone Waters Group, Paris, France
- — Aqua Minerale San Benedetto, Scorze (VE), Italy
- — RBC Cobelplast Mononate, Varese, Italy
- — Nestlé Espana SA, Barcelona, Spain.

(10) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following company:

Producer in the United States of America (the US)
- — Wellman Inc., Charlotte.

3. **Investigation period**

(11) The investigation of dumping and injury covered the period from 1 April 2002 to 31 March 2003 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period (period considered).

4. **Product concerned and like product**

4.1 *General*

(12) Poly(ethylene terephthalate) (PET) is a chemical, which is normally used in the plastic industry, for the production of bottles and sheets. There is also another type of PET for use in polyester fibre production. The production process of the two types of poly(ethylene terephthalate) is identical up to a certain stage since they are both produced by the polycondensation of purified terephtalic acid (PTA) or dimethyl terephthalate (DMT) with mono ethylene glycol (MEG). Poly(ethylene terephthalate) for use in the plastics industry is polymerised in a similar way to that for polyester fibre production, in some cases in common facilities. The difference between the two types of poly(ethylene terephthalate) is primarily determined by the fact that the product concerned undergoes a further process called 'solid state processing' which increases its 'intrinsic viscosity' value (IV value or ItV value). It is thus the level of IV that differentiates the product concerned from the poly(ethylene terephthalate) used in the polyester fibre industry. Poly(ethylene terephthalate) with an IV value below 0,7 is used for the production of polyester fibre and is thus not concerned by this anti-dumping investigation.

(13) The viscosity of poly(ethylene terephthalate) may also be expressed in a different form, namely in terms of 'viscosity number'. The equivalent of an IV value of 0,7 as measured by tests performed according to ISO standard 1628-5 is a viscosity number of 78 ml/g which is the coefficient of viscosity for the type of poly(ethylene terephthalate) used in the production of plastic bottles and sheets.

4.2 *Product concerned*

(14) The product concerned is poly(ethylene terephthalate) with a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5 originating in Australia, the PRC and Pakistan, currently classifiable within CN code 3907 60 20.

(15) The investigation has shown that all types of the product concerned as defined in the preceding recital, despite differences in a variety of factors such as, *inter alia*, viscosity, additives, melting behaviour, have the same basic physical, and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

4.3 *Like product*

(16) No differences were found between the product concerned and the PET produced and sold on the domestic market in Australia, the PRC, Pakistan and the US, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC. Indeed, PET has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.

(17) Likewise, no differences were found between the product concerned and the PET produced by the complainant Community industry and sold on the Community market. They both share the same physical and chemical characteristics and uses.

(18) Consequently, PET produced and sold on the domestic market of Australia, the PRC and Pakistan as well as that exported to the Community, PET produced and sold on the domestic market of the analogue country, and PET produced and sold in the Community by the Community industry have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET form one product family and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

1. **General methodology**

(19) The general methodology set out hereinafter has been applied to all exporting producers in Australia and Pakistan as well as for the cooperating Chinese exporting producers for which MET was granted. The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

1.1 *Normal value*

(20) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(21) The Commission subsequently identified those types of PET, sold domestically by the companies having overall representative domestic sales and that were identical or directly comparable to the types sold for export to the Community.

(22) For each type sold by the exporting producers on their domestic markets and found to be directly comparable to the type of PET 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 PET 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 PET type exported to the Community.

(23) An examination was also made as to whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the PET type in question. In cases where the sales volume of PET type, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume of that type, 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 of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of PET type represented less than 80 % of the total sales volume of that type, 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 of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(24) In cases where the volume of profitable sales of any type of PET represented less than 10 % of the total sales volume of that type, 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.

(25) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value had to be used in preference to domestic prices of other exporting producers. Due to the number of different types and the variety of factors (such as viscosity, additives, melting behaviour, etc.) affecting them, using domestic prices of other exporting producers would have meant, in this case, making numerous adjustments, most of which would have had to be based on estimates. It was therefore considered that the construction of the normal value for each exporting producer formed a more appropriate method.

(26) Consequently, 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 amount for selling, general and administrative expenses (SG and A) and a reasonable margin of profit. To this end, the Commission examined whether the SG and A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(27) Actual domestic SG and A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 23 was applied. Where these criteria were not met, a weighted average SG and A expenses and/or profit margin of the other companies with sufficient sales in the ordinary course of trade in the country concerned was used.

1.2 *Export price*

(28) In all cases where the product concerned was exported to independent customers in the Community, the export price was therefore established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(29) In the case where sales were made via a related importer, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG and A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.3 *Comparison*

(30) The normal value and export prices were normally compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

1.4 *Dumping margin*

(31) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price.

(32) For non cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(33) For those countries where the level of cooperation was high and where there was no reason to believe that any exporting producer abstained from cooperating, it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin, in order to ensure the effectiveness of any measures.

(34) In case where the level of cooperation for one country was low, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community of representative quantities. This approach was also considered necessary in view of the fact that there were no indications that a non cooperating party had dumped at a lower level and in order to avoid giving a bonus for non cooperation.

2. **Australia**

(35) Questionnaire replies were received from two exporting producers and one importer related to one of the exporters.

2.1 *Normal value*

(36) For all types of PET exported by the Australian exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation.

2.2 *Export price*

(37) One of the Australian exporting producers made export sales to the Community both directly to independent customers and via a related importer in the Community. Consequently, for the latter a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

2.3 *Comparison*

(38) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit, packing and bank charges have been granted.

2.4 *Dumping margin*

(39) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(40) The comparison showed the existence of dumping in respect of the cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border, duty unpaid are the following:

— Leading Synthetics Pty Ltd: 8,6 %,

— Novapex Australia Pty Ltd: 17,6 %.

(41) Since the level of cooperation was high (indeed, there are only two exporting producers of the product concerned in Australia), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

— Residual dumping margin: 17,6 %.

3. **Pakistan**

(42) Two companies replied to the questionnaire for exporting producers. Both companies were found to be related to each other.

3.1 *Normal value*

(43) For all types of PET, except one, exported by one of the Pakistani exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market in accordance with Article 2(1) of the basic Regulation. For the sole PET type where less than 10 % of the domestic sales are in the ordinary course of trade, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

(44) The second exporting producer had no domestic sales. Therefore, given the sole two exporting producers in Pakistan were linked to each other, the normal value was established on the basis of the prices of the product concerned charged on the domestic market by the first exporting producer, in accordance with Article 2(1) of the basic Regulation.

3.2 *Export price*

(45) All sales of the product concerned made by the two related Pakistani exporting producers on the Community market were made to independent customers in the Community. Consequently, the export price was established according to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.3 *Comparison*

(46) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit and other factors have been granted.

3.4 *Dumping margin*

(47) As provided by Article 2(11) of the Basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(48) The comparison showed the existence of dumping in respect of the cooperating exporting producers. These two companies being related, the provisional dumping margin expressed as a percentage of the cif import price at the Community border has been calculated as the weighted average of the dumping margins of the two cooperating producers, in line with the Community's policy for related exporting producers. This margin amounts to:

— Gatron (Industries) Ltd: 14,8 %,

— Novatex Ltd: 14,8 %.

(49) Since the level of cooperation was high (indeed there are only two exporting producers of the product concerned in Pakistan), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

— Residual dumping margin: 14,8 %.

4. **People's Republic of China**

4.1 *Market Economy Treatment*

(50) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c).

(51) Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions; and without significant State interference;

2. accounting records are independently audited and applied for all purposes;

3. there are no significant distortions carried over from former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(52) Eight exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.

(53) Two companies have been rejected already on the basis of a first analysis of the MET claim form which failed to show that all the criteria were met. Of the remaining six companies, the Commission sought and verified at the premises of these companies all information submitted in the MET applications and deemed necessary.

(54) The investigation revealed that two of the eight Chinese exporting producers fulfilled all of the conditions for granting MET. The remaining six claims had to be rejected. The criteria not met by the six exporting producers are set out in the table of recital 56 below.

(55) The two exporting producers in the PRC which obtained MET are:

— Changzhou Worldbest Radici Co. Ltd,

— Far Eastern Industries Shanghai Ltd.

(56) The following table summarises the determination for each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Summary determination against the five criteria as set out in Article 2(7)(c) of the basic Regulation

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met	Not met	Met	Met	Met
2	Not met	Not met	Met	Met	Met
3	Not met	Met	Met	Met	Met
4	Not met	Not met	Not met	Not met	Met
5	Met	Met	Met	Met	Met
6	Met	Met	Met	Met	Met
7	Met	Not met	Met	Met	Met
8	Met	Not met	Met	Met	Met

Source: Verified questionnaire replies of cooperating Chinese exporters.

(57) The companies concerned and the complainant were given an opportunity to comment on the above findings.

(58) Six exporting producers submitted that the determination was wrong and that MET should be granted to them.

(59) Companies 1 to 4 argued that the sole or one of the reasons to reject their claim for MET was that they are State-owned companies while the State interference regarding decisions of firms could not be demonstrated.

(60) These companies argued that the fact that a company be State-owned does not mean in itself that the State interferes and they also claimed that the Commission failed to establish any State interference in the management and operations of the companies.

(61) Further to Article 2(7)(c) of the basic Regulation, a MET claim must contain sufficient evidence that the exporting producer operates under market economy conditions. In particular, the exporting producer must evidence that its decisions regarding prices, costs and inputs, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard.

(62) Based on the above-referred provision of the basic Regulation, it is not to the Commission to establish any State interference, but to the companies requesting MET to demonstrate the absence of any significant State interference in their business decisions.

(63) Therefore, in cases where companies are entirely or predominantly State owned with all consequences on the decision making process and the nomination of key positions such as directors or managers etc., the aim of the investigation is also to assess to which extent the State could interfere in case anti-dumping measures are imposed and which measures were taken by the company to prevent such interference.

(64) In these particular cases, it was considered that the companies which were all entirely or predominantly State-owned, failed to demonstrate that appropriate measures have been taken to prevent State interference and that the State did not interfere in their business decisions. Under these circumstances, it can be assumed that there was a significant State interference in the business decisions of these entirely or predominantly State-owned companies. In addition, given the nature of the product concerned, which cannot be identified as having been produced by a particular producer, the risk of circumvention of measures by way of exporting via a company with a lower level of duty was also deemed significant.

(65) Companies 1 and 2 also complained about the fact that no verification visit took place in their premises and argued that this was discriminatory in view of the companies which have been visited. It is however recalled that according to Article 16 of the basic Regulation, verification visits are not compulsory but shall be carried out, where it is considered appropriate. In addition, as already explained under recital 53, the claims of these two companies have been rejected already on the basis of a first analysis of their MET claim form, since they failed to show that all the criteria were met. The claim was therefore rejected.

(66) These two companies also claimed that contrary to the Commission's conclusions, their accounts were fully in line with international standards although the auditor made reservations with regard to particular points and that consequently criterion 2 is met. According to these companies, should the accounts not have been in line with international standards, the auditors would not only have made a reservation but would have simply refused to certify the annual accounts.

(67) Companies 7 and 4 were also found to not meet the criterion 2. These companies argued that the basic Regulation requests that the annual accounts of the companies be audited independently and in line with international accounting standards (IAS). According to these companies, the fact that the auditors mentioned a mistake in their respective annual accounts precisely demonstrates that the conditions of the basic Regulation are met, i.e. that their accounts are audited independently and in line with IAS.

(68) However, from a general point of view, it is noteworthy that the purpose of requesting accounts audited in line with IAS is to assess the reliability of the accounts and more particularly of revenues, costs and profit booked by the company since the bulk of the anti-dumping verification visit consists precisely in verifying these three items. In addition, it is recalled that the opinion expressed by the auditors (approval without or with reservation or refusal to approve) depends on the significance of the mistake found in the accounts and the fact that an auditor does not issue an 'adverse opinion' does not mean in itself that the accounts are correct which could only be guaranteed by an approval without conditions by the auditor. Finally, concerning these particular companies, it is confirmed that the notes included in the auditor's report were deemed sufficiently significant to consider that the criterion was not met. The claim was therefore rejected.

(69) Company 8 claimed that the accounting issues, on the basis of which the Commission decided to reject its claim for MET, relate to a short period of time i.e. last quarter of 2001 when the company was being set up. In addition, according to this company, such transactions would be allowed by 'the generally accepted accounting principles'.

(70) However, likewise the previous companies, the mistakes found were deemed significant and not in line with the IAS. The claim was therefore rejected.

(71) Finally, several exporters claimed that the Commission failed to respect the three month deadline in its assessment for MET as required by Article 2(7)(c) of the basic Regulation. However, it is recalled that the verification visits, which were planned to take place in July and August, had to be postponed due to the SARS issue. Although some of the Chinese Provinces where some of the companies are located, were not on the list of the World Health Organisation at that time, given the uncertainty and in view of the likely changes that could occurred between the decision to go on spot and the arrival of the case-handlers in the PRC, it was decided to postpone all the verifications on behalf of the principle of prudence. It is only when all restrictions have been relieved that the verification visits could take place. Consequently, given the time constraint, the MET claim form and the anti-dumping questionnaire had to be verified at the same time, i.e. during the same verification visit.

(72) One company argued that the time to decide on MET was 'undue and discriminatory'. However, as explained above, the SARS issue entailed serious delays in the verification process and so do also, the number of verification visits to be carried out in view of the large number of Chinese exporting producers which cooperated. In addition, given the decision on MET have been released to all the cooperating exporting producers at the same time, there is no reason to believe that the procedure has been discriminatory.

(73) The two companies whose claims for MET have been rejected on the basis of a first analysis of their MET claim form, i.e. without any verification visit, claimed that there is no reason why the three month deadline was not met. However, in order to avoid any discrimination among the cooperating exporting producers, the decision on MET have been released to all the cooperating exporting producers at the same time.

4.2 *Individual treatment*

(74) Further to Article 2(7)(a), a country-wide duty, if any, is established for countries falling under Article 2(7), except in those cases where companies are able to demonstrate, in accordance with Article 9(5), that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

(75) The eight exporting producers, as well as requesting MET, also claimed individual treatment in the event they were not granted MET and one additional exporting producer requested only individual treatment. On the basis of information available it was found that for three companies all of the requirements for IT, set forth in Article 9(5) of the basic Regulation were met.

(76) The four remaining companies were found to be entirely or predominantly state owned. For these companies, the risk of State interference was deemed significant. Given the nature of the product concerned, which cannot be identified as having been produced by a particular producer, the risk of circumvention of measures by way of exporting via a company with a lower level of duty was also deemed significant. Consequently, the conditions set in Article 9(5)(c) and (e) of the basic Regulation were not met. It was therefore decided not to grant them IT.

(77) It was therefore concluded that IT should be granted to the following three exporting producers in the PRC:

— Jiangyin Xingye Plastic Co. Ltd,

— Jiangyin Chengsheng New Packing Material Co. Ltd,

— Hubei Changfeng Chemical Fibres Industry Co. Ltd.

4.3 *Normal value*

4.3.1 Determination of normal value for all exporting producers not granted MET

(a) Analogue country

(78) According to Article 2(7) of the basic Regulation, for non-market-economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the price or constructed value in an analogue country.

(79) In the notice of initiation, the Commission indicated its intention to use the United States of America as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.

(80) The investigation showed that the United States of America had a highly competitive market for the product concerned with 10 producers operating on the NAFTA market, eight major buyers and significant imports from third countries. The consumption on the American market is large and imports represent about 15 % of the American consumption of the product concerned. The American market was, therefore, deemed substantial and sufficiently representative in comparison to the volume of Chinese exports of the product concerned to the EU.

(81) The exporting producers in the PRC objected to this proposal. The arguments against the choice of the United States of America were the facts that allegedly (i) it is the practice to use one of the countries involved in the same investigation; (ii) the cooperating United States producer is related to a Community producer; and (iii) the costs in the United States of America are higher than in China. The interested parties in question suggested Pakistan or the Republic of Korea as appropriate analogue countries but provided no evidence justifying that these countries would constitute a better alternative to the United States of America. Nevertheless, the Commission considered the two proposals.

(82) Regarding Pakistan it should be noted that only two companies manufacture the product concerned in Pakistan, compared to at least eight producers in the United States of America. In addition, imports of PET in Pakistan are subject to 20 % custom duties while in the United States of America there are 6,8 % customs duty (+ 0,3 c/kg). For these reasons, the Pakistani market appears to be less competitive than the US market for the product concerned. Finally, it was found that the domestic sales of the Pakistani producer to independent customers were small as compared to exports of the product concerned originating in the PRC and were, therefore, much less representative compared to the very large exports from China.

(83) Concerning the Republic of Korea, it is recalled that the Republic of Korea is not subject to the same investigation, as claimed by several exporters, but to a partial interim review pursuant to Article 11(3) of the basic Regulation. In addition, the investigation has shown that, all Korean producers, were producers of a smaller size than the American cooperating company, which had also much larger domestic sales. Furthermore, the biggest Korean producer appeared to be partially integrated (i.e. produces itself at least one of the main raw materials), which was not the case for the producers in China. Therefore, the Republic of Korea was not deemed an appropriate analogue country.

(84) Regarding the allegation that the relationship between the American cooperating company and a European producer could have distorting effects on the data provided, these allegations did not coincide with the findings of the investigation. The Commission checked whether the relationship had any distorting impact on the prices, costs of production and profitability of the United States producer, in particular during the on-the-spot verification of the company's data. No indication was found of any such distortions and the Commission satisfied itself on the accuracy and reliability of the information provided for the purposes of this investigation.

(85) Finally, the argument concerning the difference in costs was also considered. The price of the main raw material (PTA) used in the production of the product concerned by the United States company and which represents the most significant part of PET cost of production was compared to the prices paid by the Chinese companies for PTA and no significant differences were found. The argument was therefore rejected.

(86) In view of the above, it is provisionally concluded that the United States constitutes an appropriate analogue country in accordance with Article 2(7) of the basic Regulation.

(b) Determination of normal value

(87) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of all prices paid or payable on the domestic market of the United States for comparable product types, since these were found to be made in the ordinary course of trade.

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

4.3.2 Determination of normal value for exporting producers granted MET

(89) The companies granted MET were requested to submit a full questionnaire reply including domestic sales information and information on costs of production of the product concerned and these replies were verified at the premises of the companies concerned.

(90) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals 20 to 27.

(91) For all types of PET, except one, exported by the Chinese exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market in accordance with Article 2(1) of the basic Regulation. For the sole PET type where less than 10 % of the domestic sales were made in the ordinary course of trade, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

4.4 *Export prices*

(92) All export sales of exporters granted MET or IT to the Community were made directly to independent customers in the Community and the export price was established pursuant to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

4.5 *Comparison*

(93) The comparison was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions, import charges and after sales costs (warranty/guarantee) were made.

4.6 *Dumping margin*

4.6.1 For the cooperating exporting producers granted MET/IT

(94) For the two companies granted MET, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.

(95) For the three companies granted individual treatment, the weighted average normal value for each type exported to the Community established for the analogue country was compared with the weighted average export price of the corresponding type exported to the Community, as provided for under Article 2(11) of the basic Regulation.

(96) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

Changzhou Worldbest Radici Co. Ltd	17,4 %
Far Eastern Industries Shanghai Ltd	12,6 %
Jiangyin Xingye Plastic Co. Ltd	21,0 %
Jiangyin Chengsheng New Packing Material Co. Ltd	29,5 %
Hubei Changfeng Chemical Fibres Industry Co. Ltd	18,1 %

4.6.2 For all other exporting producers

(97) In order to calculate the country-wide duty applicable to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat and the actual questionnaire replies received from exporters in the PRC. On this basis it was established that the level of cooperation was close to 100 %.

(98) The dumping margin was consequently calculated as a weighted average of the dumping margin established for the remaining cooperating exporters which were neither granted MET nor IT. The dumping margin for the remaining cooperating exporters mentioned above was calculated by comparing the weighted average normal value established for the analogue country and the weighted average export price reported by the exporter concerned.

(99) On this basis the country-wide level of dumping was provisionally established at 23,2 % of the cif Community frontier price.

C. **INJURY**

1. **Community production**

(100) During the investigation period, PET was manufactured by:

— seven complainant Community producers, which fully cooperated with the Commission during the investigation,

— four other producers, which fully supported and cooperated with the Commission during the investigation,

— one other producer which supported the proceedings and provided some general information concerning its production and sales.

(101) The complainant knows of no more producers of the product concerned, nor have any other producer of the product concerned made themselves known to the European Commission. Hence, the PET produced by the 12 companies listed above constitutes the Community production within the meaning of Article 4(1) of the basic Regulation.

2. **Definition of the Community industry**

(102) The accumulated production of the 11 Community producers that fully cooperated in the investigation was at 1 634 477 tonnes during the investigation period, or around 97 % of the estimated total production of PET in the Community. Thus the 11 Community producers that fully cooperated have been considered to represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. **Community consumption**

3.1 *Preliminary remarks*

3.1.1 Import data

(103) Eurostat information, related to volumes and values for CN code 3907 60 20, together with data submitted by exporting producers, were used as the source of the import data.

3.1.2 Community industry data

(104) Community industry data were obtained from the verified questionnaire responses of the 11 cooperating Community producers.

3.2 *Community consumption*

(105) Apparent consumption in the Community was established on the basis of:

— the total imports of the product concerned into the Community as reported by Eurostat together with data submitted by exporting producers,

— the total verified sales of the Community industry on the Community market, and

— the sales data of the other Community producer who provided some general information.

(106) Community consumption reached 1 845 962 tonnes during the IP, which is 37 % above the level of consumption at the beginning of the period considered. The significant increase of PET consumption has been triggered by a significant increase of the consumption of bottled drinks, i.e. soft drinks and bottled water, and follows the trend already established in a previous investigation [1].

	1999	2000	2001	2002	IP
EU consumption	1 348 628	1 349 763	1 420 759	1 795 883	1 845 962
1999 = 100	100	100	105	133	137

4. **Imports into the Community from the countries concerned**

4.1 *Cumulative assessment of the effects of the imports concerned*

(107) It was first examined whether imports from the PRC, Pakistan and Australia should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

(108) The evolution of imports from the countries concerned, in volume (tonnes) and market share, has been the following:

	1999	2000	2001	2002	IP
PRC	144	20	9 000	89 329	120 814
Market share (%)	0	0	0,6	5,0	6,6
Australia	0	0	5 157	17 031	27 538
Market share (%)	0	0	0,4	0,9	1,5
Pakistan	0	8 500	14 678	47 767	74 311
Market share (%)	0	0,6	1,0	2,6	4,0
Total imports from the countries concerned	144	8 520	28 835	154 127	222 663
Total market share (%)	0	0,6	2,0	8,6	12,1

[1] See paragraph 101 in Commission Regulation (EC) No 1742/2000 (OJ L 199, 5.8.2000, p. 48), imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

(109) It was found that:

— the dumping margins established in relation to the imports from each of the countries concerned were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,

— the volumes of imports from each of these countries were not negligible during the investigation period, as market shares for these countries ranged from 1,5 % to 6,6 % in the IP, and

— the cumulative assessment was found to be appropriate in view of the conditions of competition both between imports originating in these countries, and between these imports and the like Community product. This is evidenced by the fact that the level of undercutting, ranging from 10,0 % to 17,9 % is relatively similar, and that they use similar sales channels. Moreover, the investigation has shown that the imports concerned and the like product share the same physical and chemical characteristics. Finally, the imports concerned and the like product follow the same price trends, which reflect the price of their basic raw material, naphta (refined oil).

(110) For this reason, it is provisionally concluded that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports originating in the PRC, Australia and Pakistan should be assessed cumulatively.

4.2 *Market share of imports concerned*

(111) As shown above, the imports from the countries concerned started from the year 2000, but became significant as from 2002 due to the fact that new production facilities in the countries concerned were established. Their market share of the Community consumption went from 0,6 % in 2000 to 8,6 % in 2002 to reach 12,1 % during the investigation period.

4.3 *Prices of imports and undercutting*

(112) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the exporting producers in the countries concerned. This comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to ex-works prices, and the prices of the imports were cif Community frontier, plus duties, with adjustments made for the level of trade and handling costs, based on information collected during the investigation, notably from cooperating unrelated importers.

(113) The comparison showed that, during the IP, the products concerned originating in the countries concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, as follows: PRC 13,5 % to 17,9 %, Australia: 10 % to 11,9 % and Pakistan: 12,7 %.

(114) The relative low average rates of undercutting are due to price depression caused by the behaviour of the exporting producers in the countries concerned which sold at dumped prices. The Community industry was forced to match these prices in order to try to keep its market share. It should be borne in mind that, given the market power of several large users of PET, price considerations is the ultimate driver in the market.

5. **Situation of the Community industry**

(115) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1999 (base year) to the IP.

(116) The Community industry data below represent the aggregated information of the 11 cooperating Community producers.

5.1 *Production, production capacity and capacity utilisation*

(117) The production capacity was established on the basis of the theoretical maximum hourly output of the machines installed, multiplied by the annual theoretical working hours, considering maintenance and other similar production interruptions.

	1999	2000	2001	2002	IP
Production	1 168 334	1 432 785	1 546 672	1 629 703	1 642 100
Index (1999 = 100)	100	123	132	139	141
Production capacity	1 346 074	1 595 962	1 759 762	1 948 248	1 955 954
Index (1999 = 100)	100	119	131	145	145
Capacity utilisation	87 %	90 %	88 %	84 %	84 %
Index (1999 = 100)	100	103	101	96	97

(118) As shown in the table above, production during the period 1999 to the IP increased by 41 %, a reflection of the strong growth in Community consumption. During the same period production capacity increased by 45 %, i.e. somewhat more than consumption. This increase should be seen in the light of the strong demand in the Community consumption during the last years. Moreover, it should also be noted that the Community industry had been affected by injurious dumping up to 5 August 2000 ([1]), and thus could have been expected to benefit from increased sales due to the removal of injurious dumping from these sources. The increase in production capacity for the Community industry was absolutely necessary in order to keep its market shares and to meet the growing demand by the users, which is forecasted to increase further. The capacity utilisation shows an uneven trend during the period considered, with the capacity utilisation rate in the IP at 84 %, slightly below the level at the beginning of the period.

(119) Some exporters have claimed that the increased capacity during the period considered is a sign of strength rather than of injury. The same exporters have also referred to planned new investments into new capacity in this respect.

(120) As stated above, the increases in production capacity were made in order to meet the demand in consumption. Indeed, and as mentioned in the Commission Regulation imposing anti-dumping measures on PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand ([2]), one of the general fears that the Community users had in imposing measures at that time was a possible shortage of PET in the Community market.

(121) Moreover, it normally takes two years between a decision to invest in new capacity and the moment when the new capacity is installed and ready to run. As can be seen above, the major increase in new capacity during the period considered took place between 1999 and 2000. Consequently, the decision to install this capacity must have been taken before the period considered, thus the increased capacity cannot be seen as a 'sign of strength' as suggested by the exporters.

(122) In respect of planned new capacity, some of the Community producers have officially announced further investments into new capacity. Some exporters have consequently taken these announcements as a sign of strength for the Community producers.

([1]) Provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand were introduced by Regulation (EC) No 1742/2000, with effect from 6 August 2000.
([2]) See recital 194 in Regulation (EC) No 1742/2000.

(123) Whereas it is confirmed that several Community producers have plans to further increase their production capacity (with approximately 300 000 to 400 000 tonnes), these plans should be seen in the light of the increased consumption of PET in the Community market. Moreover, under the current circumstances, several of the Community producers are now reconsidering their investment plans, as the level of prices on the Community market makes it difficult for these Community producers to finance the envisaged investments.

(124) Indeed, some of the producers have in fact been forced to temporarily close down capacity during the latter part of the IP and following the end of the IP, as they made financial losses at the prevailing price levels. One producer closed down capacity corresponding to 73 000 tonnes during the IP, and another Community producer closed its operations with a capacity of 270 000 tonnes following the end of the IP.

5.2 *Stocks*

(125) The figures below represent the volume of stocks at the end of each period.

	1999	2000	2001	2000	IP
Stocks (tonnes)	74 796	76 463	112 991	110 020	95 841
as % of production	6,4 %	5,3 %	7,3 %	6,8 %	5,8 %

(126) The level of stocks have remained stable throughout the whole period considered. Moreover, this economic indicator has not been considered relevant in the present injury analysis, as the product concerned is bulky with a relatively low value per m^3. Hence, for purely practical reasons, the Community industry will always try to keep their level of stock to a minimum.

5.3 *Sales volume, market shares, growth and average unit prices in the EC*

(127) The figures below represent the Community industry's sales to independent customers in the Community.

	1999	2000	2001	2002	IP
Sales volume (tonnes)	994 290	1 249 609	1 286 705	1 426 864	1 403 430
Index (1999 = 100)	100	126	129	144	141
Market Share	73,7 %	92,6 %	90,6 %	79,5 %	76,0 %
Index (1999 = 100)	100	126	123	108	103
Average unit prices (EUR/tonne)	686	1 014	1 125	977	986
Index (1999 = 100)	100	148	164	143	144

(128) The Community industry's sales volumes have increased with 41 % during the period considered, of which 26 % occurred between 1999 and 2000. The increase in sales volumes should be seen in the light of the increased consumption during the same period, which increased by 37 %.

(129) Following the introduction of anti-dumping measures on 5 August 2000 [1], the Community industry was able to regain lost market shares. Between 1999 and 2000, the market shares of the Community industry increased from 73,7 to 92,6 % of Community consumption. However, following this period of relative strength, the market share of the Community industry decreased again. Between 2001 and the IP, its share of Community consumption decreased from 90,6 to 76,0 %, as dumped imports from the countries concerned started to penetrate the Community market.

(130) Whereas the Community industry initially could benefit from the increased consumption and from the increase in average sales prices, with its turnover growing with 112 % from 1999 to 2001, this growth abruptly stopped in 2002, as dumped imports from the countries concerned forced the Community industry to cut its average sales prices.

(131) The Community industry's average sale prices increased by 48 % between 1999 and 2000, to reach a more sustainable level following the imposition of anti-dumping measures against dumped imports from India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand in 2000. Part of this increase was linked to higher prices of its raw materials (see recital 169 below), which the Community industry was able to carry forward to its customers. Still, this increase also allowed the Community industry to return to profitability, although the levels of profit and return on investment were, as described in detail below, comparatively low. The Community industry succeeded to increase its prices further in 2001, but this period was followed by the period of price depression in 2002 and during the IP. Indeed, between 2001 and the IP, the prices decreased by 12 %, a development which coincided in time with fierce competition from imports originating in the countries concerned.

5.4 *Profitability, return on investments and cash flow*

(132) 'Profitability on EC sales' represents the profit generated by sales of the product concerned on the Community market. 'Return on total assets' and 'cash flow' could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 3(8) of the basic Regulation.

(133) Moreover, the return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of trend.

	1999	2000	2001	2002	IP
Profitability on EC sales	– 16,4 %	4,0 %	7,6 %	2,9 %	0,9 %
Return on total assets	– 12,1 %	3,7 %	7,7 %	2,2 %	0,4 %
Cash flow (as % on total sales)	– 9,7 %	– 4,4 %	20,2 %	19,5 %	14,0 %

(134) Following the imposition of the anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry could, as seen above, increase the prices to a more sustainable level. Still, it took until 2001 before the Community industry reached the level of profit envisaged as target profit (7 %) in Commission Regulation (EC) No 1742/2000.

(135) Following a price depression in 2002 and during the IP, coinciding with massive increases of dumped imports from the countries concerned, the financial situation of the Community industry started to deteriorate again. The profit level reached during the IP was just above break-even, and is far from sufficient to finance necessary re-investments as requested by the customers.

[1] Regulation (EC) No 1742/2000 imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

(136) Indeed, both the profitability on EC sales as well as return on total assets show the same trends, namely an improvement from 1999 to 2001, followed by a deterioration from 2001 to the IP.

(137) The trend for cash flow developed in a similar fashion, albeit with a backlog of one year, explained by the movements in short-term assets as a result of the sales increases.

5.5 *Investments and ability to raise capital*

	1999	2000	2001	2002	IP
Investments	17 818	19 371	69 813	44 179	34 380

(138) Following the imposition of the anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry decided to make new investments into its capacity.

(139) As mentioned above, there is an approximately two-year time lap between the decision to invest into new capacity and the moment when this new capacity is ready to be used. However, the time lap between the decision to invest and the moment when the new machinery appears on the balance sheet is naturally shorter, as the investments are charged to the balance sheet as soon as they are being built. This explains why the level of investments above does not always correspond to an immediate increase of capacity as given under recital 117.

(140) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not seriously affected during the period considered.

5.6 *Employment, productivity and wages*

	1999	2000	2001	2002	IP
Number of employees	1 606	1 692	1 701	1 681	1 659
Index 1999 = 100	100	105	106	105	103
Employment costs (in EUR '000)	31 291	33 236	34 541	35 478	36 045
Index 1999 = 100	100	106	110	113	115
Productivity (tonne/employee)	727	847	909	969	990
Index 1999 = 100	100	116	125	133	136

(141) As seen above, the Community industry increased its production with 41 % during the period considered. Despite the increase, the number of employees in production remained at approximately the same level.

(142) This is due to the fact that the Community industry has invested in new highly automated installations, which do not require major increases in the work force. Indeed, the productivity increased with 36 % during the period considered, while at the same time the employment costs increased with 15 %.

5.7 *Recovery from past dumping*

(143) Following the imposition of anti-dumping measures in 2000 ([1]), the Community industry could increase its average sales prices to a more sustainable level, while at the same time keeping its market shares in the increasing PET market. As mentioned in recital 134, the Community industry reached a sustainable profit margin in 2001. It can therefore be concluded that the Community has recovered from past dumping.

5.8 *Magnitude of the actual margin of dumping*

(144) The dumping margins are specified in the dumping part (see recitals 40, 48 and 96). These margins established are clearly above *de minimis*, as defined in Article 9(3) of the basic Regulation). Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be negligible.

6. **Conclusion on injury**

(145) It is recalled that, following the imposition of anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry immediately gained confidence. Average prices of its EC sales increased with 64 % between 1999 and 2001 (which partially represented compensation for increased prices of raw materials) and sales volumes in the EC increased with 29 %. The result of these developments was increased profitability; in 2001 the Community industry succeeded to obtain the profit margin envisaged as target profit in the Commission Regulation (EC) No 1742/2000 mentioned above, enabling it to invest in new capacity as demanded by its customers and to engage in environmental-related projects such a recycling of used bottles.

(146) However, as could be seen above, the level of imports from the countries concerned started to penetrate the Community market at a massive scale as from 2002, resulting in price depression on the Community market. The Community industry lost market shares and its financial stability was again threatened as reflected in its poor financial results.

(147) In view of the above, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

D. **CAUSATION**

1. **Preliminary remarks**

(148) In accordance with Article 3(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.

(149) Measures are currently in force against imports originating in India, Indonesia, Republic of Korea, Malaysia, Taiwan and Thailand. As already mentioned in recital 3, the anti-dumping measures against imports of PET originating in the Republic of Korea and Taiwan are presently subject to an interim review pursuant to Article 11(3) of the basic Regulation. These elements have been taken into account in this examination.

2. **Effect of the dumped imports**

(150) The volume of PET originating in the countries concerned increased dramatically during the period considered. As can be seen in the table under recital 108 the imports from the three countries concerned increased from quasi non-existent quantities in 1999 to a level of 223 000 tonnes in the IP which equalled a market share of 12,1 %.

([1]) Regulation (EC) No 1742/2000 imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

(151) The substantial increase in the volume of imports originating in the countries concerned and their gain in market share in 2002 and during the IP, at prices which remained well below those of the Community industry, coincided in time with the deterioration of the situation of the Community industry during the very same period.

(152) As could be established in recital 113, the imports originating in the countries concerned undercut the average sales price of the Community industry with significant amounts, with undercutting margins ranging from 10 % to 17,9 %.

(153) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 2001 onwards, and which were made at low dumped prices, played a determining role in causing price decreases and lost market shares for the Community industry and, as a consequence, a deterioration of its financial situation.

3. **Effect of other factors**

3.1 *Imports originating in other third countries*

(154) The imports from third countries not concerned by this investigation showed the following development during the period considered:

	1999	2000	2001	2002	IP
Third countries with anti-dumping duties in force					
India	38 393	4 920	3 909	2 258	2 899
Indonesia	27 537	3 121	5 370	4 461	3 548
Republic of Korea	88 790	5 361	2 818	86 748	95 414
Malaysia	29 481	4 917	8 327	12 983	10 566
Taiwan	38 595	7 500	589	27 787	25 748
Thailand	23 880	441	0	18	18
Subtotal	247 266	26 260	21 013	134 255	138 193
Third countries with no anti-dumping duties.					
Brazil	0	6	0	8 464	8 464
Turkey	12 811	1 692	2 636	7 206	7 950
United States of America	21 983	32 431	31 465	18 577	15 855
Other third countries with no anti-dumping duties	47 686	3 192	13 381	5 767	7 302
Subtotal	82 480	37 321	47 482	40 014	39 571
Total imports from third countries other than the countries concerned	329 746	63 581	68 495	174 269	177 764

(155) Following the introduction of anti-dumping measures in 2000, the imports from third countries not concerned by this investigation decreased dramatically, as the measures went into effect. With the exception of the Republic of Korea and Taiwan, none of the other countries show an absolute increase in volume at a level which could have caused any injury to the Community industry, or this increase did not coincide in time with the injury evolution of the Community industry.

(156) However, for the Republic of Korea and Taiwan, the imports originating in these countries showed a similar trend to the imports originating in the countries concerned, namely a significant increase in imports volumes towards the end of the period considered. Moreover, this development also coincided in time with the deterioration of the situation of the Community industry. It is however noted that the combined volume of imports from these two countries amounts only to about half of the import volume from the three countries concerned.

(157) No other countries showed a significant increase of import volumes during the period considered.

(158) Furthermore, based on Eurostat data, the average cif prices excluding anti-dumping duties for imports originating in the Republic of Korea was EUR 842/tonne, and for Taiwan EUR 784/tonne during the IP. The range of anti-dumping duties in force varies between EUR 0/tonne to EUR 148,3/tonne for the Republic of Korea, and between EUR 47/tonne to EUR 69,5/tonne for Taiwan. The third country duty rate was 6,5 % for both the Republic of Korea and for Taiwan.

(159) Hence, the average price duty paid for imports of PET originating in the Republic of Korea varied between EUR 896/tonne and EUR 1 044/tonne, and between EUR 882/tonne to EUR 905/tonne for Taiwan. Recalling that the average sales prices of the Community industry during the IP, as given under recital 127, was EUR 986/tonne, the average exports prices correspond to a level of undercutting between 0 to 9,1 % for the Republic of Korea, and 8,2 to 10,5 % for imports originating in Taiwan. Moreover, it is likely that the exporters with the lower level of anti-dumping duty have increased their share of the imports at the expense of the exporters with the higher level of anti-dumping duty.

(160) It is therefore provisionally not excluded that some of the imports or PET originating in the Republic of Korea and Taiwan have also contributed to the injury suffered by the Community industry. It is to be recalled that the measures against these two countries are currently subject to an interim review pursuant of Article 11(3) of the Basic Regulation which will examine whether the existing measures are sufficient to counteract the dumping which is causing injury.

3.2 *Prices of raw materials*

3.2.1 Preliminary remarks

(161) The quarterly data concerning average sales prices of PET in the EC and on cost of raw materials used in this analysis have been supplied by the Community industry.

3.2.2 Causation by prices of raw materials

(162) The cost of production of PET depends to a high degree (approximately two thirds) on the prices of raw material and utilities such as electricity and gas (variable costs). Prices of PTA as well as other production inputs such as MEG and DMT reflect the prices of oil. It has therefore been considered relevant for the proceeding to assess whether or not the price increases of PTA have been passed on to the customers, or if the Community industry have been squeezed between increases in raw material prices and average sales prices.

(163) In this respect, two types of Community producers of PET were found, those who purchased their raw materials from related companies (integrated producers) and those who purchased their raw materials from external suppliers (independent producers).

(164) It was first determined whether the prices of raw materials were structurally different due to the fact that integrated producers bought their raw materials from related suppliers and independent producers bought their raw materials from external suppliers.

(165) It was found that the cost of raw materials for integrated producers did not significantly differ from the independent producers. Hence, for this analysis, the cost of raw materials for the Community producers could be assessed for all Community producers together.

(166) Having determined that the causation by raw materials could be assessed not taking into account whether the producer was integrated or independent, a comparison of the prices at different levels were then carried out for the Community industry as a whole.

(167) As has been explained in recital 12, PET is derived from PTA (or DMT), mixed with MEG. The quarterly evolution of prices for raw materials (PTA/DMT and MEG) for the production of PET and the quarterly average sale price by the Community industry are shown below.

(168) Moreover, to enable a comparison with price of oil, the quarterly prices of naphta (refined oil), being the main input to the production of Paraxylene (PX), which in its turn constitute approximately two thirds of the input for the production of PTA, have been inserted for the same period.

Period	Average naphta price (EUR) (*)	Index	Average price for raw materials to PET (mainly PTA) (**)	Index	Average sales price for PET (**)	Index
Q1/1999	12,67	100	466	100	634	100
Q2/1999	16,36	137	454	97	633	100
Q3/1999	21,61	178	532	114	701	111
Q4/1999	25,09	200	585	126	756	119
Q1/2000	26,55	224	645	138	941	148
Q2/2000	24,93	201	692	148	1 087	171
Q3/2000	27,56	216	741	159	1 108	175
Q4/2000	25,69	208	735	158	1 050	166
Q1/2001	23,85	202	702	151	1 164	184
Q2/2001	23,86	194	734	158	1 228	194
Q3/2001	22,54	158	734	158	1 139	180
Q4/2001	17,36	122	688	148	984	155
Q1/2002	18,53	144	575	123	936	148
Q2/2002	23,02	174	657	141	1 052	166
Q3/2002	26,41	203	667	143	986	155
Q4/2002	26,82	210	653	140	926	146
Q1/2003	33,80	298	690	148	1 001	158

(*) *Source:* International Energy Agency: Oil Product Spot Prices, Rotterdam in EUR/bbl.
(**) *Source:* Information from Community producers, EUR/tonne.

(169) As can be seen above, the prices for the raw materials for the Community producers increased with 59 % from Q1/1999 to Q3/2000, from EUR 466/tonne to EUR 741/tonne, a reflection of the underlying price of Naphta which at the same time increased with 116 %. Between Q3/2000 and Q3/2001, the prices for the raw materials remained relatively stable, whereas the subperiod from Q3/2001 up to the end of the IP, the information shows a slight decrease of the prices of the raw materials, whereas the price of Naphta increased with 188 % during the same subperiod.

(170) Meanwhile, the average sales prices for the Community industry increased by 75 % from Q1/1999 to Q3/2000, from EUR 634/tonne to EUR 1 108/tonne. Between Q3/2000 and Q3/2001, the average sales prices show only minor fluctuations, with a net change of only 3 % during this period. Finally during the period Q3/2001 up to the end of the IP, the average sales price decreased from EUR 1 139/tonne to EUR 1 001/tonne.

(171) When comparing the price evolution for the Community industry, i.e. for the raw materials and for the average sales price, the figures above show that, during the first subperiod (Q1/1999 to Q3/2000), the price of raw materials increased by 59 % and the average sales price increased with 75 %. During the following subperiod (Q3/2000 to Q3/2001), both the price of raw materials and the average sales prices remained stable. Finally, during the last subperiod (Q3/2001 to Q1/2003), the prices of raw materials decreased by 6 % and the average sales price decreased with 13 %, i.e. by more than was necessary to compensate for lower prices for raw materials.

(172) The fact that average sales price decreased more than the corresponding decrease for raw materials should be seen as a direct result of price depression caused by dumped imports.

(173) It is therefore provisionally concluded that the cost of raw materials did not significantly contribute to the injury suffered by the Community industry, as all increases of its raw materials (which includes all upstream price fluctuations) have been passed on to the customers. It is only during the last subperiod when the average sales prices of the Community Industry, as a result of competition from dumped imports, have decreased more than the corresponding decrease for the raw materials.

3.3 *Causation due to changes in the pattern on consumption*

(174) As mentioned in recital 106, the consumption of PET in the Community increased by 37 % during the period considered. The pattern of consumption has therefore provisionally not been considered to have inflicted any injury suffered by the Community industry.

3.4 *Causation due to transfer pricing*

(175) It has been claimed by some exporters that the injury suffered by those of the Community producers that are owned by multinational corporations may have been caused by group companies overcharging its European Community subsidiary for raw materials delivered.

(176) It is recalled that in recital 165, no differences between integrated and independent Community producers were found. Given the fact that the claim concerns integrated producers, and that no structural differences in prices for raw materials were found between integrated and independent producers, this argument could therefore be dismissed.

3.5 *Conclusion of causation*

(177) On the basis of the above, it is provisionally concluded that there is a casual link between dumped imports and the injury suffered by the Community industry. This conclusion is based on the fact that there were significant increases in volumes and market shares of imports, which also undercut considerably the prices of the Community industry, from the countries concerned during the period considered. Moreover, there is a striking coincidence in time between the sharp rise of dumped imports and the deterioration of the financial situation for the Community industry.

(178) The investigation has also shown that it cannot be excluded that some of the imports from Taiwan and the Republic of Korea also have contributed to the injury. However, there is no indication that the potential effect of these imports is such as to break the casual link between dumped imports from Australia, Pakistan and the People's Republic of China, and the injury suffered by the Community Industry as a result of dumped imports. No other factors have been put forward or been found which could have affected in a significant way the situation of the Community industry.

E. **COMMUNITY INTEREST**

1. **General considerations**

(179) It has been examined whether compelling reasons existed that could lead to the conclusion that it would not be in the Community interest to introduce anti-dumping duties against imports from the countries concerned. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product concerned.

(180) The Commission sent questionnaires to importers/traders, suppliers of raw materials, industrial users as well as various associations of users. In all, 84 questionnaires were sent out.

(181) Complete questionnaire replies were received from the following interested parties:

Suppliers

— Interquisa SA

— BP Chemicals;

Importers/Traders

— Mitsui & Co Benelux

— Helm AG

— Global Services International (agent)

— Sabic Italy;

Users

— Schweppes Benelux SA (bottler of soft drinks)

— Resilux SA (preform/bottle converter)

— Danone Waters Europe SA (bottler of mineral water)

— Nestlé Waters Spain SA (bottler of mineral water)

— L'Abeille SA (bottler or soft drinks)

— Pepsico France SA (bottler of soft drinks)

— Amcor PET Europe (preform/bottle converter)

— RBC Cobelplast Mononate (sheet producer)

— Aqua Minerale San Benedetto (bottler of mineral water);

User associations

— European Plastic Converters.

(182) Moreover, several hearing have been held by the parties mentioned above, and by parties who made themselves known to the Commission, but who did not submit a questionnaire. Finally, information have also been submitted and several hearings have also been held by exporters in relation to the Community Interest.

2. **Interest of the Community industry**

(183) It is recalled that the Community industry consisted of 11 producers which employs approximately 1 700 staff for the production and sales of PET. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results in 2002 and during the investigation period. Despite the growing demand of PET in the Community, the Community industry do not at present have the financial stability to invest in new production capacity, as demanded by the users.

(184) Following the introduction of the anti-dumping measures against imports originating in, *inter alia*, India and Indonesia in 2000, the Community Industry showed that it was able to benefit from these measures. Indeed, the industry recovered in a satisfactory way already towards the end of 2000 to 2001 and, by a high level of investment, demonstrated its commitment to the Community market and to remain a viable player. Given the prevailing financial situation for the Community industry, it is clear that anti-dumping measures would be in the interest of the Community industry.

3. **Interest of unrelated importers**

(185) Several importers and one trader made themselves known to the Commission, representing 26 % of the imports from the countries concerned during the IP. They argue that it would not be in the Community interest to impose measures, as the Community market need imports in order to supply the increasing demand for PET in the EC. Moreover, the import restrictions would harm the activities of the importers, which could have an effect on the employment of these companies.

(186) The purpose of the anti-dumping measures is to restore fair trade. It is neither to prohibit imports nor to hamper the activities of the importers in the EC. In fact, any measures to be proposed are to be set at a level which will enable the continuation of imports also in future, but at prices that are non dumped or non injurious, whichever is the lower.

(187) Hence, as fairly-priced imports will still be allowed to enter into the Community market, it is likely that the traditional business of the importers will continue even if anti-dumping measures against dumped imports are imposed.

4. **Interest of suppliers**

(188) It is recalled that several Community producers receive their raw material from group companies (integrated producers). Only suppliers independent of the Community producers have been included in this examination.

(189) The two cooperating suppliers sold the bulk of the Community industry's purchases of PTA (the main input) where this was not supplied internally such as in integrated producers. The two suppliers both supported the procedures. The imposition of measures would help to maintain the Community producers' demand for their raw material and therefore it would be in the interest of the suppliers to have measures in force against dumped imports from the countries concerned.

5. **Interest of users**

5.1 *Preliminary remarks*

(190) PET is at present mostly used to produce bottles for soft drinks and mineral and spring water. It is also used for the production of certain types of plastic sheets and films. Bottles in PET are produced in two steps in order to obtain enough strength: 'preforms' are obtained by mould injection of PET, these preforms are then blown and transformed into bottles. Preforms can be fairly easily transported because they are small and dense, while empty bottles are fragile and very expensive to transport.

(191) The water and soft drink markets are organised differently in terms of bottling:

— mineral and spring water producers have more constraints in terms of health regulations. The large majority of preforms used by water producers are self-produced close to the blowing and filling lines,

— soft drinks producers may either purchase blown bottles, purchase preforms and blow them or produce their own preforms and blow their own bottles.

(192) Hence, for the Community industry, there are three major types of customers (the user share information have been obtained from the complainant):

— preform/bottle converters, accounting for approximately 40 % of PET consumption,

— mineral and spring water producers, whose share in PET consumption is around 45 % producers,

— soft drink integrated producers that account for around 7 % of PET consumption by direct purchases, but indirectly consume 40 % of the consumption via the preform/bottle converters mentioned above,

— sheet/film producers that account for approximately 8 % of the PET consumption.

5.2 *Preform/bottle converters*

(193) The two cooperating converters represented approximately 11 % of the PET consumption, of which 10 % was purchased from the Community industry and 1 % was imported. In relation of the estimated consumption of PET by preform/bottle converters, the sales to the two cooperating companies by the Community industry represent approximately 27 % of the sales to this sector; Moreover, the association of the Plastic converters also cooperated in the investigation.

(194) For the cooperating companies, the costs for purchasing PET are essential, representing approximately 65 % of their total costs.

(195) Both companies cooperating in the investigation were in general positive to imposing measures against dumped imports, as this could lead to a certain stability to the prices and a secured supply of various qualities of PET in the Community market. However, the Association of Plastic Converters feared that increased prices for PET would result in difficulties for especially the estimated 50 to 100 small- and medium-sized converters, and that some of the processing would be outsourced to third countries which have no duties in force against imports of PET, and taking advantage of the fact that there are no anti-dumping duties in force on imports of preforms into the Community.

(196) To conclude, whereas the two cooperating converters, assumed to represent the bigger preform/converters, in principle are in favour of anti-dumping measures against dumped imports, the small- and medium-sized preform/bottle converters, represented by the Association of Plastic Converters, were against the imposition of anti-dumping duties. On the basis of these contradictory views, it cannot be established whether it would be in the interest of the preform/bottle converters to impose anti-dumping duties.

5.3 *The mineral and spring water producers*

(197) The three companies cooperating in the investigation represented approximately 13,3 % of the PET consumption, of which 7,8 % was purchased from the Community industry and 5,5 % was imported. In relation of the PET consumed by the mineral and spring water producers, the sales of PET by the Community industry to these three cooperating companies represent approximately 28 % of the sales to this sector.

(198) For the cooperating companies, the costs for purchasing PET are not as essential as for the preform/bottle converters, but still represent approximately 30 % of the total manufacturing costs.

(199) Indeed, for a 1,5 litre bottle with a retail price of 35 to 50 cents at the supermarket (TVA included), the costs for PET represents only 3 cents (6 to 10 %) of this retail price.

(200) Whereas one of the mineral water producers expressed strong opposition to any measures, the two other mineral water producers were in principle in favour of measures against dumped imports, as long as the supply of PET of sufficient quality could be safeguarded, and as they saw the need for the Community industry to invest in new production capacity.

(201) However, they all expressed some concern over the fact that the main retailers are very strong and that the mineral and spring water producers would not be in a position to pass on any major price increases as a result of the imposition of anti-dumping measures.

(202) As noted above, the cost of PET at the retail level only represents 6 to 10 % of the retail price to consumers, which means that a 10 % increase of the prices would entail a 0,6 to 1,0 % price increase at the level of consumers, a level which is not considered significant to the extent that it could not be absorbed by the downstream industry or passed on to retailers or the consumers

5.4 *The soft drink producers*

(203) All the soft drink producers that cooperated in the investigation were non-integrated bottlers, i.e. were indirect users of PET by buying PET indirectly via preform/converting companies. None the less, based on their costs for preforms and knowing the average price for a preform, their indirect consumption of PET corresponded to less than 1 % of Community consumption of PET. Given this low level of representativity among cooperating soft drink producers, the views presented below cannot be said to represent the soft drink producers as a whole.

(204) The three cooperating soft drink producers were in general opposed to imposing measures and expressed concern over the fact that the main retailers are very strong and that the soft drink producers would not be in a position to carry forward any major price increases as a result of the imposition of anti-dumping measures.

(205) It has already been demonstrated that the price of PET is a rather marginal cost for the end-consumer; a 10 % increase of PET entails an increase of 0,3 cents for a 1,5 litre bottle, which represents an increase in the range of 0,6 % for that bottle at the supermarket. Indeed, as a 1,5 litre of soft drink normally cost around EUR 1 at the level of the supermarket, the same 10 % increase of PET would entail a minor 0,3 % increase of the price for the end-consumer.

(206) Given the marginal effect that price increases of PET have on the retail price, it is not unreasonable to believe that the users will be able to pass on this increase to the retailers and to the end-consumer.

6. **Shortages of PET in the Community market**

(207) Several interested parties have expressed concern that the Community industry would not be able to meet the increasing volumes of PET if measures were introduced, and that imports are needed to fill this gap between production and consumption.

(208) It is recalled that the Community industry have increased its capacity by 45 % during the period considered. Moreover, several of the Community producers have announced plans of further increases in their capacity by 300 to 400 thousand tonnes. Taken into account that financial stability normally is a prerequisite for obtaining financial resources, if anti-dumping measures are introduced and financial stability is restored, there is nothing that speaks against that the Community industry will reinvest these profits into capacity building. Moreover, similar comments have already been made in the course of the investigation leading to measures against imports from India, Indonesia, Republic of Korea, Malaysia, Taiwan and Thailand. The current investigation has indeed shown that there was no supply shortage following the imposition of anti-dumping measures as a result of the previous investigation. There are no indications, also in the light of the explanations given in the next recital, as to why this should now be different as a result of this investigation.

(209) Moreover, and as already stated above, if anti-dumping measures are introduced, fairly-priced imports will still be allowed to enter into the Community market in order to cover any gap between production and Community consumption, to ensure a healthy competition on the EC market. It is also noted that the level of anti-dumping measures proposed is not such as to make imports from the countries concerned commercially no longer viable.

7. **Conclusion on Community interest**

(210) The imposition of measures against imports of PET originating in the countries concerned would clearly be in the interest of the Community industry. As expressed by the suppliers in the investigation, it would also be in their interest to ensure a healthy PET-market to which the suppliers could deliver their raw material. Finally, also some of the major users have expressed an interest in introducing measures against dumped imports, if this leads to more production capacity being built in the EC. The interest of some of the other users and the importers do not overturn this positive picture.

(211) In view of the above, it is concluded that there are no compelling reasons not to impose anti-dumping duties against imports of PET originating in the countries concerned.

F. **PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(212) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.

(213) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

(214) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these 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 of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 7 % of turnover i.e. the same as the one which was considered necessary to ensure the viability of the industry in the previous proceeding against India, Indonesia, Malaysia the Republic of Korea, Taiwan and Thailand [1]. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 7 % to the cost of production.

[1] OJ L 199, 5.8.2000, p. 48.

(215) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. These differences were in all cases above the dumping margin found.

2. **Provisional measures**

(216) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above in accordance with Article 7(2) of the basic Regulation.

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

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

(219) That PET prices can fluctuate in line with fluctuations in crude oil prices, should not entail a higher duty. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. These amounts result from the application of the anti-dumping duty rate to the cif export prices used for the calculation of the injury elimination level during the IP.

(220) The proposed anti-dumping duties are the following.

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate	Proposed anti-dumping duty
Australia	Leading Synthetics Pty Ltd	19,3 %	8,6 %	8,6 %	72 EUR/t
	Novapex Australia Pty Ltd	24,9 %	17,6 %	17,6 %	141 EUR/t
	All other companies	24,9 %	17,6 %	17,6 %	141 EUR/t
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	28,9 %	23,2 %	23,2 %	180 EUR/t
	Changzhou Worldbest Radici Co. Ltd	29,4 %	17,4 %	17,4 %	137 EUR/t
	Jiangyin Xingye Plastic Co. Ltd	23,9 %	21,0 %	21,0 %	172 EUR/t
	Far Eastern Industries Shanghai Ltd	21,2 %	12,6 %	12,6 %	106 EUR/t
	Yuhua Polyester Co. Ltd of Zhuhai	28,9 %	23,2 %	23,2 %	188 EUR/t
	Jiangyin Chengsheng New Packing Material Co. Ltd	30,9 %	29,5 %	29,5 %	230 EUR/t

[1] European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate	Proposed anti-dumping duty
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	28,9 %	23,2 %	23,2 %	191 EUR/t
	Wuliangye Group Push Co. Ltd	28,9 %	23,2 %	23,2 %	179 EUR/t
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	27,4 %	18,1 %	18,1 %	144 EUR/t
	All other companies	28,9 %	23,2 %	23,2 %	183 EUR/t
Pakistan	Gatron (Industries) Ltd	21,8 %	14,8 %	14,8 %	128 EUR/t
	Novatex Ltd	21,8 %	14,8 %	14,8 %	128 EUR/t
	All other companies	21,8 %	14,8 %	14,8 %	128 EUR/t

G. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of poly(ethylene terephthalate) having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, classified under CN code 3907 60 20 and originating in Australia, People's Republic of China and Pakistan.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
Australia	Leading Synthetics Pty Ltd	72	A503
	Novapex Australia Pty Ltd	141	A504
	All other companies	141	A999
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	180	A505
	Changzhou Worldbest Radici Co. Ltd	137	A506
	Jiangyin Xingye Plastic Co. Ltd	172	A507
	Far Eastern Industries Shanghai Ltd	106	A508
	Yuhua Polyester Co. Ltd of Zhuhai	188	A509
	Jiangyin Chengsheng New Packing Material Co. Ltd	230	A510

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	191	A511
	Wuliangye Group Push Co. Ltd	179	A512
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	144	A513
	All other companies	183	A999
Pakistan	Gatron (Industries) Ltd	128	A514
	Novatex Ltd	128	A515
	All other companies	128	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code [1] the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

5. 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.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

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

Article 3

This Regulation shall enter into force on the day following 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, 19 February 2004.

For the Commission
Pascal LAMY
Member of the Commission

[1] OJ L 253, 11.10.1993, p. 1.

COMMISSION REGULATION (EC) No 307/2004

of 20 February 2004

amending Regulation (EC) No 1520/2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amounts of such refunds, and providing special measures in respect of certain refund certificates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) As provided for in Article 19 of Commission Regulation (EC) No 1520/2000 [2], that Regulation is to be adapted in line with amendments to the Combined Nomenclature and Annex B is to be adapted so as to maintain equivalence with the respective Annexes to the Regulations referred to in Article 1(1).

(2) Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] introduced amendments to the Combined Nomenclature for certain goods. In addition, Annex V to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [4] provides that from 1 February 2004 no export refunds may be paid on the sugar element of active yeasts.

(3) Regulation (EC) No 1520/2000 should be updated in order to take account of those changes.

(4) With the entry into force of this Regulation the sugar element incorporated in active yeasts, for which operators may have applied for refund certificates in accordance with Regulation (EC) No 1520/2000, will no longer be eligible for refund when they are exported to third countries.

(5) Reduction of refund certificates and pro rata release of the corresponding security should be allowed where operators can demonstrate to the satisfaction of the national competent authority that their claims for refunds have been affected by the entry into force of this Regulation.

(6) When assessing requests for reduction of the amount of the refund certificate and proportional release of the relevant security, the national competent authority should, in cases of doubt, have regard in particular to the documents referred to in Article 1(2) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC [5] without prejudice to the application of the other provisions of that Regulation.

(7) For administrative reasons it is appropriate to provide that requests for reduction of the amount of the refund certificate and release of the security are to be made within a short period and that the amounts for which reductions have been accepted are to be notified to the Commission in time for their inclusion in the determination of the amount for which refund certificates for use from 1 April 2004 are to be issued pursuant to Regulation (EC) No 1520/2000.

(8) Since the amendments to the Combined Nomenclature introduced by Regulation (EC) No 1789/2003 and the amendments introduced by Regulation (EC) No 39/2004 are applicable from 1 January 2004 and 1 February 2004 respectively, the amendments provided for in this Regulation should be applicable from the same dates.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I to the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 1520/2000, Annex B is amended as follows:

(a) in the row beginning with the entry '1905 90 40 to 1905 90 90' in column 1, that entry is replaced by:

'1905 90 45 to 1905 90 90';

(b) in the row beginning with the entry '2102 10 31 and 2102 10 39' in column 1, the 'X' in column 6 is deleted.

[1] OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
[2] OJ L 177, 15.7.2000, p. 1. Regulation as last amended by Regulation (EC) No 740/2003 (OJ L 106, 29.4.2003, p. 12).
[3] OJ L 281, 30.10.2003, p. 1.
[4] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).
[5] OJ L 388, 30.12.1989, p. 18. Regulation as last amended by Regulation (EC) No 2154/2002 (OJ L 328, 5.12.2002, p. 4).

Article 2

1. Refund certificates issued in accordance with Regulation (EC) No 1520/2000 in respect of exports of the agricultural products for which export refunds have been abolished pursuant to point (b) of Article 1 of this Regulation may, at the request of the interested party, be reduced if each of the following conditions are fulfilled:

(a) the certificates have been applied for before the date of entry into force of this Regulation;

(b) the validity of the certificates expires after the date of entry into force of this Regulation.

2. The certificate shall be reduced by the amount for which the interested party is unable to claim export refunds following the entry into force of the amendment provided for in point (b) of Article 1 as demonstrated to the satisfaction of the national competent authority.

In making their appraisal the competent authorities shall, in cases of doubt, have regard in particular to the commercial documents referred to in Article 1(2) of Regulation (EEC) No 4045/89.

3. The relevant security shall be released in proportion to the reduction concerned.

Article 3

1. For a request to be eligible for consideration under Article 2, the national competent authority must receive it by 7 March 2004, at the latest.

2. Member States shall notify the Commission not later than 14 March 2004 of the amounts for which reductions have been accepted in accordance with Article 2(2) of this Regulation. The notified amounts shall be taken into account for the determination of the amount for which refund certificates for use from 1 April 2004 are to be issued pursuant to point (d) of Article 8(1) of Regulation (EC) No 1520/2000.

Article 4

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

Point (a) of Article 1 shall apply from 1 January 2004.

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

Done at Brussels, 20 February 2004.

For the Commission

Erkki LIIKANEN

Member of the Commission

COMMISSION REGULATION (EC) No 308/2004

of 20 February 2004

redistributing unused portions of the 2003 quantitative quotas for certain products originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 520/94 [1] of 7 March 1994 establishing a Community procedure for administering quantitative quotas, and in particular Article 2(5) and Articles 14 and 24 thereof,

Whereas:

(1) Council Regulation (EC) No 427/2003 [2] of 3 March 2003 on a transitional product-specific safeguard mechanism and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries provided for annual quantitative quotas for certain products originating in the People's Republic of China listed in Annex I to that Regulation. The provisions of Regulation (EC) No 520/94 are applicable to those quotas.

(2) The Commission adopted Regulation (EC) No 738/94 [3], laying down general rules for the implementation of Regulation (EC) No 520/94. These provisions apply to the administration of the above quotas subject to the provisions of this Regulation.

(3) In accordance with Article 20 of Regulation (EC) No 520/94, the competent authorities of the Member States notified the Commission of the quantities of quotas assigned in 2003 and not used.

(4) The unused quantities could not be redistributed in time to be used before the end of the 2003 quota year.

(5) Examination of the data received for each of the products in question indicates that the quantities not used in the 2003 quota year should be redistributed in 2004, up to a limit of the amounts set out in Annex I to this Regulation.

(6) The different administrative methods provided for by Regulation (EC) No 520/94 have been analysed and it is considered that the method based on traditional trade flows should be adopted. Under this method quota tranches are divided into two portions, one of which is reserved for traditional importers and the other for other applicants.

(7) This has proved to be the best way of ensuring the continuity of business for the Community importers concerned and avoiding any disturbance of trade flows.

(8) Quantities redistributed under this Regulation should be divided using the same criteria as for the allocation of the 2003 quotas.

(9) It is necessary to simplify the formalities to be fulfilled by traditional importers who already hold import licences issued when the 2004 Community quotas were allocated. The competent administrative authorities already possess the requisite evidence of either 1998 or 1999 imports for all traditional importers. The latter need therefore only enclose a copy of their previous licences with their new licence applications.

(10) Measures should be taken to provide the best conditions for the allocation of that portion of the quota reserved for non-traditional importers with a view to optimum use of quotas. To this end, it is appropriate to provide for that portion to be allocated in proportion to the quantities requested, on the basis of a simultaneous examination of import licence applications actually lodged, and grant access only to importers who can prove that they obtained and made use of at least 80 % of an import licence for the product in question during the 2003 quota year. The amount that any non-traditional importer may request should also be restricted to a set volume or value.

(11) For the purposes of quota allocation, a time limit must be set for the submission of licence applications by importers.

(12) With a view to optimum use of quotas, licence applications for imports of footwear under quotas which refer to several CN codes must specify the quantities required for each code.

(13) The Member States must inform the Commission of the import licence applications received, in accordance with the procedure laid down in Article 8 of Regulation (EC) No 520/94. The information about traditional importers' previous imports must be expressed in the same units as the quota in question.

[1] OJ L 66, 10.3.1994, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[2] OJ L 65, 8.3.2003, p. 1. Regulation as amended by Regulation (EC) No 1985/2003 (OJ L 295, 13.11.2003, p. 43).
[3] OJ L 87, 31.3.1994, p. 47. Regulation as last amended by Regulation (EC) No 983/96 (OJ L 131, 1.6.1996, 47).

(14) In view of the fact that the quota system will expire on 31 December 2004, the expiry date of the redistribution import licences is set at 31 December 2004.

(15) These measures are in accordance with the opinion of the Committee for the administration of quotas set up under Article 22 of Regulation (EC) No 520/94,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down specific provisions for the redistribution in 2004 of portions of the 2003 quantitative quotas referred to in Council Regulation (EC) No 427/2003 which were not used in the 2003 quota year.

The quantities not used in the 2003 quota year shall be redistributed up to the limit of the volumes or values set out in Annex I to this Regulation.

Regulation (EC) No 738/94 shall apply subject to the specific provisions of this Regulation.

Article 2

1. The quantitative quotas referred to in Article 1 shall be allocated using the method based on traditional trade flows, referred to in Article 2(2)(a) of Regulation (EC) No 520/94.

2. The portions of each quantitative quota set aside for traditional importers and non-traditional importers are set out in Annex II to this Regulation.

3. (a) The portion set aside for non-traditional importers shall be apportioned using the method based on allocation in proportion to quantities requested; the volume requested by a single importer may not exceed that shown in Annex III. Only importers who can prove that they imported at least 80 % of the volume of the product for which they were granted an import licence pursuant to Commission Regulation (EC) No 2077/2002 [1] shall be entitled to apply for import licences.

(b) Operators that are deemed to be related persons as defined by Article 143 of Regulation (EEC) No 2454/93 [2] may only submit single licence application for the portion of the quota set aside for non-traditional importers regarding the goods described in the application. In addition to the statement required by Article 3(2)(g) of Regulation (EC) No 738/94, the licence application for the non-traditional quota shall state that the applicant is not related to any other operator applying for the non-traditional quota line in question.

Article 3

Applications for import licences shall be lodged with the competent authorities listed in Annex IV to this Regulation from the day following the day of publication of this Regulation in the *Official Journal of the European Union* until 15.00, Brussels time, on 10 March 2004.

Article 4

1. For the purposes of allocating the portion of each quota set aside for the traditional importers, 'traditional' importers shall mean importers who can show that they have imported goods in the calendar year 1998 or 1999.

2. The supporting documents referred to in Article 7 of Regulation (EC) No 520/94 shall relate to the release for free circulation during either calendar year 1998 or 1999, as indicated by the importer, of products originating in the People's Republic of China which are covered by the quota in respect of which the application is made.

3. Instead of the documents referred to in the first indent of Article 7 of Regulation (EC) No 520/94 applicants may enclose with their licence applications documents drawn up and certified by the competent national authorities on the basis of available customs information as evidence of the imports of the product in question during calendar year 1998 or 1999 carried out by themselves or, where applicable, by the operator whose activities they have taken over.

Applicants already holding import licences issued for 2004 under Commission Regulation (EC) No 1956/2003 [3] or under Commission Regulation (EC) No 215/2004 [4] for products covered by the licence application may enclose a copy of their previous licences with their licence applications. In that case they shall indicate in their licence application the aggregate quantity of imports of the product in question during the chosen reference period.

Article 5

Member States shall inform the Commission no later than 1 April 2004 at 10.00, Brussels time, of the number and aggregate quantity of import licence applications and, in the case of applications from traditional importers, of the volume of previous imports carried out by traditional importers during the chosen reference period referred to in Article 4(1) of this Regulation.

Article 6

No later than 30 days after having received all the information required under Article 5, the Commission shall adopt the quantitative criteria to be used by the competent national authorities for the purpose of meeting importers' applications.

[1] OJ L 319, 23.11.2002, p. 12.
[2] OJ L 253, 11.10.1993, p. 1.
[3] OJ L 289, 7.11.2003, p. 10.
[4] OJ L 36, 7.2.2004, p. 10.

Article 7

Import licences shall be valid up to 31 December 2004.

Article 8

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

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

Done at Brussels, 20 February 2004.

For the Commission
Pascal LAMY
Member of the Commission

ANNEX I

Quantities to be redistributed

Product description	HS/CN code	Quantities redistributed
Footwear falling within HS/CN codes	ex 6402 99 (1)	9 720 296 pairs
	6403 51 6403 59	1 577 200 pairs
	ex 6403 91 (1) ex 6403 99 (1)	1 966 283 pairs
	ex 6404 11 (2)	4 169 083 pairs
	6404 19 10	10 151 135 pairs
Tableware, kitchenware of porcelain or china falling within HS/CN code	6911 10	10 983 tonnes
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china falling within HS/CN code	6912 00	16 565 tonnes

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

ANNEX II

Allocation of the quotas

Product description	HS/CN code	Portion reserved for traditional importers 75 %	Portion reserved for non-traditional importers 25 %
Footwear falling within HS/CN codes	ex 6402 99 (1)	7 290 222 pairs	2 430 074 pairs
	6403 51 6403 59	1 182 900 pairs	394 300 pairs
	ex 6403 91 (1) ex 6403 99 (1)	1 474 712 pairs	491 571 pairs
	ex 6404 11 (2)	3 126 812 pairs	1 042 271 pairs
	6404 19 10	7 613 351 pairs	2 537 784 pairs
Tableware, kitchenware of porcelain or china falling within HS/CN code	6911 10	8 237 tonnes	2 746 tonnes
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china falling within HS/CN code	6912 00	12 424 tonnes	4 141 tonnes

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

ANNEX III

Maximum quantity which may be requested by each non-traditional importer

Product description	HS/CN code	Predetermined maximum quantity
Footwear falling within HS/CN codes	ex 6402 99 (1)	5 000 pairs
	6403 51 6403 59	5 000 pairs
	ex 6403 91 (1) ex 6403 99 (1)	5 000 pairs
	ex 6404 11 (2)	5 000 pairs
	6404 19 10	5 000 pairs
Tableware, kitchenware of porcelain or china falling within HS/CN code	6911 10	5 tonnes
Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china falling within HS/CN code	6912 00	5 tonnes

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

ANNEX IV

List of the competent national authorities in the Member States

1. BELGIQUE/BELGÏE

Service public fédéral Économie, PME, Classes moyennes & énergie
Administration du Potentiel économique
Politiques d'accès aux marchés, Service Licences

Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie
Bestuur Economisch Potentieel
Markttoegangsbeleid, Dienst Vergunningen
Generaal Lemanstraat 60, Rue Général-Leman 60
B-1040 Brussel/Bruxelles
Tél./Tel.: (32-2) 206 58 16
Télécopieur/Fax: (32-2) 230 83 22/231 14 84

2. DANMARK

Erhvervs- og Boligstyrelsen
Vejlsøvej 29
DK-8600 Silkeborg
Tlf. (45) 35 46 64 30
Fax (45) 35 46 64 01

3. DEUTSCHLAND

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
Frankfurter Straße 29-35
D-65760 Eschborn
Tel. (49) 619 69 08-0
Fax (49) 619 69 42 26/(49) 619 69 08-800

4. GREECE

Ministry of Economy & Finance
General Directorate of Policy Planning & Implementation
Directorate of International Economic Issues
1, Kornarou Street
GR-105-63 Athens
Tel.: (30-210) 328-60 31/328 60 32
Fax: (30-210) 328 60 94/328 60 59

5. ESPAÑA

Ministerio de Economía y Hacienda
Dirección General de Comercio Exterior
Paseo de la Castellana 162
E-28046 Madrid
Tel.: (34) 913 49 38 94/913 49 37 78
Fax: (34) 913 49 38 32/913 49 37 40

6. FRANCE

Service des titres du commerce extérieur
8, rue de la Tour-des-Dames
F-75436 Paris Cedex 09
Tél. (33) 155 07 46 69/95
Télécopieur (33) 155 07 48 32/34/35

7. IRELAND

Department of Enterprise, Trade and Employment
Licensing Unit, Block C
Earlsfort Centre
Hatch Street
Dublin 2
Ireland
Tel. (353-1) 631 25 41
Fax (353-1) 631 25 62

8. ITALIA

Ministero Attività Produttive
Direzione Generale Politica Commerciale e la Gestione del regime degli scambi
Div. VII
Viale Boston 25
I-00144 Roma
Tel. (39-6) 599 32 489/(39-6) 599 32 487
Fax (39-6) 592 55 56

9. LUXEMBOURG

Ministère des affaires étrangères
Office des licences
Boîte postale 113
L-2011 Luxembourg
Tel. (352) 22 61 62
Fax (352) 46 61 38

10. NEDERLAND

Belastingdienst/Douane
Engelse Kamp 2
Postbus 30003
9700 RD Groningen
Nederland
Tel. (31-50) 523 91 11
Fax (31-50) 523 22 10

11. ÖSTERREICH

Bundesministerium für Wirtschaft und Arbeit
Außenwirtschaftsadministration
Abteilung C2/2
Stubenring 1
A-1011 Wien
Tel. (43-1) 71 10 00
Fax (43-1) 711 00 83 86

12. PORTUGAL

Ministério das Finanças
Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo, Edifício da Alfândega de Lisboa
Largo do Terreiro do Trigo
P-1100 Lisboa
Tel.: (351-21) 881 4263
Fax: (351) -21 881 4261

13. SUOMI

Tullihallitus/Tullstyrelsen
Erottajankatu/Skillnadsgatan 2
FIN-00101 Helsinki/Helsingfors
P./Tel: (358-9) 6141
F. (358-9) 614 28 52

14. SVERIGE

Kommerskollegium
Box 6803
S-113 86 Stockholm
Tfn (46-8) 690 48 00
Fax (46-8) 30 67 59

15. UNITED KINGDOM

Department of Trade and Industry
Import Licensing Branch
Queensway House
West Precinct
Billingham
TS23 2NF
United Kingdom
Tel. (44-1642) 36 43 33/36 43 34
Fax (44-1642) 53 35 57

COMMISSION REGULATION (EC) No 309/2004

of 20 February 2004

fixing the maximum export refund on wholly milled and parboiled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1877/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1877/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled and parboiled long grain B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1877/2003 is hereby fixed on the basis of the tenders submitted from 16 to 19 February 2004 at 265,00 EUR/t.

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 20.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 310/2004

of 20 February 2004

concerning tenders submitted in response to the invitation to tender for the export of husked long grain B rice to the island of Réunion referred to in Regulation (EC) No 1878/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [2], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1878/2003 [3] opens an invitation to tender for the subsidy on rice exported to Réunion.

(2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 16 to 19 February 2004 in response to the invitation to tender referred to in Regulation (EC) No 1878/2003 for the subsidy on exports to Réunion of husked long grain B rice falling within CN code 1006 20 98.

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 261, 7.9.1989, p. 8. Regulation as last amended by Regulation (EC) No 1453/1999 (OJ L 167, 2.7.1999, p. 19).

[3] OJ L 275, 25.10.2003, p. 23.

COMMISSION REGULATION (EC) No 311/2004

of 20 February 2004

fixing the maximum export refund on wholly milled round grain rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1875/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1875/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1875/2003 is hereby fixed on the basis of the tenders submitted from 16 to 19 February 2004 at 118,00 EUR/t.

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 14.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 27).

COMMISSION REGULATION (EC) No 312/2004

of 20 February 2004

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1876/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1876/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1876/2003 is hereby fixed on the basis of the tenders submitted from 16 to 19 February 2004 at 118,00 EUR/t.

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 17.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 313/2004
of 20 February 2004
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 29,291/100 kg.

Article 2

This Regulation shall enter into force on 21 February 2004.

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

Done at Brussels, 20 February 2004.

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

[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

DIRECTIVE 2004/8/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 February 2004

on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

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

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

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) The potential for use of cogeneration as a measure to save energy is underused in the Community at present. Promotion of high-efficiency cogeneration based on a useful heat demand is a Community priority given the potential benefits of cogeneration with regard to saving primary energy, avoiding network losses and reducing emissions, in particular of greenhouse gases. In addition, efficient use of energy by cogeneration can also contribute positively to the security of energy supply and to the competitive situation of the European Union and its Member States. It is therefore necessary to take measures to ensure that the potential is better exploited within the framework of the internal energy market.

(2) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 [5] establishes common rules for the generation, transmission, distribution and supply of electricity within the internal market in electricity. In this context, the development of cogeneration contributes to enhancing competition, also with regard to new market actors.

(3) The Green Paper entitled 'Towards a European strategy for the security of energy supply' points out that the European Union is extremely dependent on its external energy supplies currently accounting for 50 % of requirements and projected to rise to 70 % by 2030 if current trends persists. Import dependency and rising import ratios heighten the risk of interruption to or difficulties in supply. However, security of supply should not be conceived as merely a question of reducing import dependency and boosting domestic production. Security of supply calls for a wide range of policy initiatives aimed at, *inter alia*, diversification of sources and technologies and improved international relations. The Green Paper emphasised furthermore that security of energy supply is essential for a future sustainable development. The Green Paper concludes that the adoption of new measures to reduce energy demand is essential both in terms of reducing the import dependence and in order to limit greenhouse gas emissions. In its Resolution of 15 November 2001 on the Green Paper [6], the European Parliament called for incentives to encourage a shift towards efficient energy production plants, including combined heat and power.

(4) The Commission's Communication 'A Sustainable Europe for a better world — A European Union Strategy for Sustainable Development' presented at the Gothenburg European Council on 15 and 16 June 2001 identified climate change as one of the principal barriers to sustainable development and emphasised the need for increased use of clean energy and clear action to reduce energy demand.

(5) The increased use of cogeneration geared towards making primary energy savings could constitute an important part of the package of measures needed to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and of any policy package to meet further commitments. The Commission in its Communication on the implementation of the first phase of the European Climate Change Programme identified promotion of cogeneration as one of the measures needed to reduce the greenhouse gas emissions from the energy sector and announced its intention to present a proposal for a Directive on the promotion of cogeneration in 2002.

(6) In its Resolution of 25 September 2002 on the Commission communication on the implementation of the first phase of the European Climate Change Programme [7], the European Parliament welcomes the idea of submitting a proposal to strengthen Community measures to promote the use of combined heat and power (CHP) and calls for prompt adoption of a Directive on the promotion of CHP.

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[1] OJ C 291 E, 26.11.2002, p. 182.
[2] OJ C 95, 23.4.2003, p. 12.
[3] OJ C 244, 10.10.2003, p. 1.
[4] Opinion of the European Parliament of 13 May 2003 (not yet published in the Official Journal), Council Common Position of 8 September 2003 (not yet published in the Official Journal) and Position of the European Parliament of 18 December 2003 (not yet published in the Official Journal).
[5] OJ L 176, 15.7.2003, p. 37.
[6] OJ C 140 E, 13.6.2002, p. 543.
[7] OJ C 273 E, 14.11.2003, p. 172.

(7) The importance of cogeneration was also recognised by the Council Resolution of 18 December 1997 ([1]) and by the European Parliament Resolution of 15 May 1998 ([2]) on a Community strategy to promote combined heat and power.

(8) The Council in its Conclusions of 30 May 2000 and of 5 December 2000 endorsed the Commission's Action Plan on energy efficiency and identified promotion of cogeneration as one of the short-term priority areas. The European Parliament in its Resolution of 14 March 2001 on the Action Plan on energy efficiency ([3]) called on the Commission to submit proposals establishing common rules for the promotion of cogeneration, where this makes environmental sense.

(9) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([4]), Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants ([5]) and Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste ([6]) highlight the need to evaluate the potential for cogeneration in new installations.

(10) Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ([7]) requires the Member States to ensure that for new buildings with a total useful floor area of over 1 000 m^2, the technical, environmental and economic feasibility of alternative systems, such as cogeneration of heat and power, is considered and taken into account before construction starts.

(11) High efficiency cogeneration is in this Directive defined by the energy savings obtained by combined production instead of separate production of heat and electricity. Energy savings of more than 10 % qualify for the term 'high-efficiency cogeneration'. To maximise the energy savings and to avoid energy savings being lost, the greatest attention must be paid to the functioning conditions of cogeneration units.

(12) In the context of the evaluation of primary energy savings, it is important to take into account the situation of Member States in which the most of electricity consumption is covered by imports.

(13) It is important for transparency to adopt a harmonised basic definition of cogeneration. Where cogeneration installations are equipped to generate separate electricity or heat production, such production should not be specified as cogeneration for issuing a guarantee of origin and for statistical purposes.

(14) To ensure that support for cogeneration in the context of this Directive is based on the useful heat demand and primary energy savings, it is necessary to set up criteria to determine and assess the energy efficiency of the cogeneration production identified under the basic definition.

(15) The general objective of this Directive should be to establish a harmonised method for calculation of electricity from cogeneration and necessary guidelines for its implementation, taking into account methodologies such as those currently under development by European standardisation organisations. This method should be adjustable to take account of technical progress. Application of the calculations in Annexes II and III to micro-cogeneration units could, in accordance with the principle of proportionality, be based on values resulting from a type testing process certified by a competent, independent body.

(16) The definitions of cogeneration and of high-efficiency cogeneration used in this Directive do not prejudge the use of different definitions in national legislation, for purposes other than those set out in this Directive. It is appropriate to borrow in addition the relevant definitions contained in Directive 2003/54/EC and in Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market ([8]).

(17) Measuring the useful heat output at the point of production of the cogeneration plant underlines the need to ensure that advantages of the cogenerated useful heat are not lost in high heat losses from distribution networks.

(18) The power to heat ratio is a technical characteristic that needs to be defined in order to calculate the amount of electricity from cogeneration.

(19) For the purpose of this Directive, the definition of 'cogeneration units' may also include equipment in which only electrical energy or only thermal energy can be generated, such as auxiliary firing and after burning units. The output from such equipment should not be considered as cogeneration for issuing a guarantee of origin and for statistical purposes.

([1]) OJ C 4, 8.1.1998, p. 1.
([2]) OJ C 167, 1.6.1998, p. 308.
([3]) OJ C 343, 5.12.2001, p. 190.
([4]) OJ C 257, 10.10.1996, p. 26.
([5]) OJ L 309, 27.11.2001, p. 1.
([6]) OJ L 332, 28.12.2000, p. 91.
([7]) OJ L 1, 4.1.2003, p. 65.
([8]) OJ L 283, 27.10.2001, p. 33.

(20) The definition of 'small scale cogeneration' comprises, *inter alia*, micro-cogeneration and distributed cogeneration units such as cogeneration units supplying isolated areas or limited residential, commercial or industrial demands.

(21) To increase transparency for the consumer's choice between electricity from cogeneration and electricity produced on the basis of other techniques, it is necessary to ensure that, on the basis of harmonised efficiency reference values, the origin of high-efficiency cogeneration can be guaranteed. Schemes for the guarantee of origin do not by themselves imply a right to benefit from national support mechanisms.

(22) It is important that all forms of electricity produced from high-efficiency cogeneration can be covered by guarantees of origin. It is important to distinguish guarantees of origin clearly from exchangeable certificates.

(23) To ensure increased market penetration of cogeneration in the medium term, it is appropriate to require all Member States to adopt and publish a report analysing the national potential for high-efficiency cogeneration and to include a separate analysis of barriers to cogeneration in the report, and of measures taken to ensure the reliability of the guarantee system.

(24) Public support should be consistent with the provisions of the Community guidelines on State aid for environmental protection [1], including as regards the non-cumulation of aid. These guidelines currently allow certain types of public support if it can be shown that the support measures are beneficial in terms of protection of the environment because the conversion efficiency is particularly high, because the measures will allow energy consumption to be reduced or because the production process will be less damaging to the environment. Such support will in some cases be necessary to further exploit the potential for cogeneration, in particular to take account of the need to internalise external costs.

(25) Public support schemes for promoting cogeneration should focus mainly on support for cogeneration based on economically justifiable demand for heat and cooling.

(26) Member States operate different mechanisms of support for cogeneration at the national level, including investment aid, tax exemptions or reductions, green certificates and direct price support schemes. One important means to achieve the aim of this Directive is to guarantee the proper functioning of these mechanisms, until a harmonised Community framework is put into operation, in order to maintain investor confidence. The Commission intends to monitor the situation and report on experiences gained with the application of national support schemes.

(27) For the transmission and distribution of electricity from high-efficiency cogeneration, the provisions of Article 7(1), (2) and (5) of Directive 2001/77/EC as well as relevant provisions of Directive 2003/54/EC should apply. Until the cogeneration producer is an eligible customer under national legislation within the meaning of Article 21(1) of Directive 2003/54/EC, tariffs related to the purchase of additional electricity sometimes needed by cogeneration producers should be set according to objective, transparent and non-discriminatory criteria. Especially for small scale and micro-cogeneration units access to the grid system of electricity produced from high-efficiency cogeneration may be facilitated subject to notification to the Commission.

(28) In general, cogeneration units up to 400 kW falling within the definitions of Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels [2] are unlikely to meet the minimum efficiency requirements therein and should therefore be excluded from that Directive.

(29) The specific structure of the cogeneration sector, which includes many small and medium-sized producers, should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct cogeneration capacity.

(30) Within the purpose of this Directive to create a framework for promoting cogeneration it is important to emphasise the need for a stabile economical and administrative environment for investments in new cogeneration installations. Member States should be encouraged to address this need by designing support schemes with a duration period of at least four years and by avoiding frequent changes in administrative procedures etc. Member States should furthermore be encouraged to ensure that public support schemes respect the phase-out principle.

(31) The overall efficiency and sustainability of cogeneration is dependent on many factors, such as technology used, fuel types, load curves, the size of the unit, and also on the properties of the heat. For practical reasons and based on the fact, that the use of the heat output for different purposes requires different temperature levels of the heat, and that these and other differences influence efficiencies of the cogeneration, cogeneration could be divided into classes such as: 'industrial cogeneration', 'heating cogeneration' and 'agricultural cogeneration'.

[1] OJ C 37, 3.2.2001, p. 3.

[2] OJ L 167, 22.6.1992, p. 17. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

(32) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing a framework for the promotion of cogeneration in the internal energy market should be set at Community level, but the detailed implementation should be left to Member States, thus allowing each Member State to choose the regime, which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(33) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June laying down the procedures for the exercise of implementing powers conferred on the Commission [1],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to increase energy efficiency and improve security of supply by creating a framework for promotion and development of high efficiency cogeneration of heat and power based on useful heat demand and primary energy savings in the internal energy market, taking into account the specific national circumstances especially concerning climatic and economic conditions.

Article 2

Scope

This Directive shall apply to cogeneration as defined in Article 3 and cogeneration technologies listed in Annex I.

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

(a) 'cogeneration' shall mean the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

(b) 'useful heat' shall mean heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling;

(c) 'economically justifiable demand' shall mean the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

(d) 'electricity from cogeneration' shall mean electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex II;

(e) 'back-up electricity' shall mean the electricity supplied through the electricity grid whenever the cogeneration process is disrupted, including maintenance periods, or out of order;

(f) 'top-up electricity' shall mean the electricity supplied through the electricity grid in cases where the electricity demand is greater than the electrical output of the cogeneration process;

(g) 'overall efficiency' shall mean the annual sum of electricity and mechanical energy production and useful heat output divided by the fuel input used for heat produced in a cogeneration process and gross electricity and mechanical energy production;

(h) 'efficiency' shall mean efficiency calculated on the basis of 'net calorific values' of fuels (also referred to as 'lower calorific values');

(i) 'high efficiency cogeneration' shall mean cogeneration meeting the criteria of Annex III;

(j) 'efficiency reference value for separate production' shall mean efficiency of the alternative separate productions of heat and electricity that the cogeneration process is intended to substitute;

(k) 'power to heat ratio' shall mean the ratio between electricity from cogeneration and useful heat when operating in full cogeneration mode using operational data of the specific unit;

(l) 'cogeneration unit' shall mean a unit that can operate in cogeneration mode;

(m) 'micro-cogeneration unit' shall mean a cogeneration unit with a maximum capacity below 50 kW_e;

(n) 'small scale cogeneration' shall mean cogeneration units with an installed capacity below 1 MW_e;

(o) 'cogeneration production' shall mean the sum of electricity and mechanical energy and useful heat from cogeneration.

In addition, the relevant definitions in Directive 2003/54/EC, and in Directive 2001/77/EC shall apply.

Article 4

Efficiency criteria of cogeneration

1. For the purpose of determining the efficiency of cogeneration in accordance with Annex III, the Commission shall, in accordance with the procedure referred to in Article 14(2), not later than 21 February 2006, establish harmonised efficiency reference values for separate production of electricity and heat. These harmonised efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction and types of fuel, and must be based on a well-documented analysis taking, *inter alia*, into account data from operational use under realistic conditions, cross-border exchange of electricity, fuel mix and climate conditions as well as applied cogeneration technologies in accordance with the principles in Annex III.

[1] OJ L 184, 17.7.1999, p. 23.

2. The Commission shall, in accordance with the procedure referred to in Article 14(2), review the harmonised efficiency reference values for separate production of electricity and heat referred to in paragraph 1, for the first time on 21 February 2011, and every four years thereafter, to take account of technological developments and changes in the distribution of energy sources.

3. Member States implementing this Directive before the establishment by the Commission of harmonised efficiency reference values for separate production of electricity and heat referred to in paragraph 1, should, until the date referred to in paragraph 1, adopt their national efficiency reference values for separate production of heat and electricity to be used for the calculation of primary energy savings from cogeneration in accordance with the methodology set out in Annex III.

Article 5

Guarantee of origin of electricity from high-efficiency cogeneration

1. On the basis of the harmonised efficiency reference values referred to in Article 4(1), Member States shall, not later than six months after adoption of these values, ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each Member State. They shall ensure that this guarantee of origin of the electricity enable producers to demonstrate that the electricity they sell is produced from high efficiency cogeneration and is issued to this effect in response to a request from the producer.

2. Member States may designate one or more competent bodies, independent of generation and distribution activities, to supervise the issue of the guarantee of origin referred to in paragraph 1.

3. Member States or the competent bodies shall put in place appropriate mechanisms to ensure that the guarantee of origin are both accurate and reliable and they shall outline in the report referred to in Article 10(1) the measures taken to ensure the reliability of the guarantee system.

4. Schemes for the guarantee of origin do not by themselves imply a right to benefit from national support mechanisms.

5. A guarantee of origin shall:

— specify the lower calorific value of the fuel source from which the electricity was produced, specify the use of the heat generated together with the electricity and finally specify the dates and places of production,

— specify the quantity of electricity from high efficiency cogeneration in accordance with Annex II that the guarantee represents,

— specify the primary energy savings calculated in accordance with Annex III based on harmonised efficiency reference values established by the Commission as referred to in Article 4(1).

Member States may include additional information on the guarantee of origin.

6. Such guarantees of origin, issued according to paragraph 1, should be mutually recognised by the Member States, exclusively as proof of the elements referred in paragraph 5. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria.

In the event of refusal to recognise a guarantee of origin, the Commission may compel the refusing party to recognise it, particularly with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

Article 6

National potentials for high-efficiency cogeneration

1. Member States shall establish an analysis of the national potential for the application of high-efficiency cogeneration, including high-efficiency micro-cogeneration.

2. The analysis shall:

— be based on well-documented scientific data and comply with the criteria listed in Annex IV,

— identify all potential for useful heating and cooling demands, suitable for application of high-efficiency cogeneration, as well as the availability of fuels and other energy resources to be utilised in cogeneration,

— include a separate analysis of barriers, which may prevent the realisation of the national potential for high-efficiency cogeneration. In particular, this analysis shall consider barriers relating to the prices and costs of and access to fuels, barriers in relation to grid system issues, barriers in relation to administrative procedures, and barriers relating to the lack of internalisation of the external costs in energy prices.

3. Member States shall for the first time not later than 21 February 2007 and thereafter every four years, following a request by the Commission at least six months before the due date, evaluate progress towards increasing the share of high-efficiency cogeneration.

Article 7

Support schemes

1. Member States shall ensure that support for cogeneration — existing and future units — is based on the useful heat demand and primary energy savings, in the light of opportunities available for reducing energy demand through other economically feasible or environmental advantageous measures like other energy efficiency measures.

2. Without prejudice to Articles 87 and 88 of the Treaty, the Commission shall evaluate the application of support mechanisms used in Member States according to which a producer of cogeneration receives, on the basis of regulations issued by public authorities, direct or indirect support, which could have the effect of restricting trade.

The Commission shall consider whether those mechanisms contribute to the pursuit of the objectives set out in Articles 6 and 174(1) of the Treaty.

3. The Commission shall in the report referred to in Article 11 present a well-documented analysis on experience gained with the application and coexistence of the different support mechanisms referred to in paragraph 2 of this Article. The report shall assess the success, including cost-effectiveness, of the support systems in promoting the use of high-efficiency cogeneration in conformity with the national potentials referred to in Article 6. The report shall further review to what extent the support schemes have contributed to the creation of stable conditions for investments in cogeneration.

Article 8

Electricity grid system and tariff issues

1. For the purpose of ensuring the transmission and distribution of electricity produced from high-efficiency cogeneration the provisions of Article 7(1), (2) and (5) of Directive 2001/77/EC as well as the relevant provisions of Directive 2003/54/EC shall apply.

2. Until the cogeneration producer is an eligible customer under national legislation within the meaning of Article 21(1) of Directive 2003/54/EC, Member States should take the necessary measures to ensure that the tariffs for the purchase of electricity to back-up or top-up electricity generation are set on the basis of published tariffs and terms and conditions.

3. Subject to notification to the Commission, Member States may particularly facilitate access to the grid system of electricity produced from high-efficiency cogeneration from small scale and micro cogeneration units.

Article 9

Administrative procedures

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 6 of Directive 2003/54/EC, which are applicable to high-efficiency cogeneration units.

Such evaluation shall be made with a view to:

(a) encouraging the design of cogeneration units to match economically justifiable demands for useful heat output and avoiding production of more heat than useful heat;

(b) reducing the regulatory and non-regulatory barriers to an increase in cogeneration;

(c) streamlining and expediting procedures at the appropriate administrative level; and

(d) ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various cogeneration technologies.

2. Member States shall — where this is appropriate in the context of national legislation — provide an indication of the stage reached specifically in:

(a) coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations;

(b) the drawing up of possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for cogeneration producers; and

(c) the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.

Article 10

Member States' reporting

1. Member States shall, not later than 21 February 2006, publish a report with the results of the analysis and evaluations carried out in accordance with Articles 5(3), 6(1), 9(1) and 9(2).

2. Member States shall not later than 21 February 2007 and thereafter every four years, following a request by the Commission at least six months before the due date, publish a report with the result of the evaluation referred to in Article 6(3).

3. Member States shall submit to the Commission, for the first time before the end of December 2004 covering data for the year 2003, and thereafter on an annual basis, statistics on national electricity and heat production from cogeneration, in accordance with the methodology shown in Annex II.

They shall also submit annual statistics on cogeneration capacities and fuels used for cogeneration. Member States may also submit statistics on primary energy savings achieved by application of cogeneration, in accordance with the methodology shown in Annex III.

Article 11

Commission reporting

1. On the basis of the reports submitted pursuant to Article 10, the Commission shall review the application of this Directive and submit to the European Parliament and to the Council not later than 21 February 2008 and thereafter every four years, a progress report on the implementation of this Directive.

In particular, the report shall:

(a) consider progress towards realising national potentials for high-efficiency cogeneration referred to in Article 6;

(b) assess the extent to which rules and procedures defining the framework conditions for cogeneration in the internal energy market are set on the basis of objective, transparent and non-discriminatory criteria taking due account of the benefits of cogeneration;

(c) examine the experiences gained with the application and coexistence of different support mechanisms for cogeneration;

(d) review efficiency reference values for separate production on the basis of the current technologies.

If appropriate, the Commission shall submit with the report further proposals to the European Parliament and the Council.

2. When evaluating the progress referred to in paragraph 1(a), the Commission shall consider to what extent the national potentials for high-efficiency cogeneration, referred to in Article 6, have been or are foreseen to be realised taking into account Member State measures, conditions, including climate conditions, and impacts of the internal energy market and implications of other Community initiatives such as Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1].

If appropriate, the Commission shall submit further proposals to the European Parliament and Council, notably aiming at the establishment of an action plan for the development of high efficiency cogeneration in the Community.

3. When evaluating the scope for further harmonisation of calculation methods as referred to in Article 4(1), the Commission shall consider the impact of the coexistence of calculations as referred to in Article 12, Annex II and Annex III, on the internal energy market also taking into account the experiences gained from national support mechanisms.

If appropriate, the Commission shall submit further proposals to the European Parliament and Council aiming at further harmonisation of the calculation methods.

Article 12

Alternative calculations

1. Until the end of 2010 and subject to prior approval by the Commission, Member States may use other methods than the one provided for in Annex II(b) to subtract possible electricity production not produced in a cogeneration process from the reported figures. However, for the purposes referred to in Article 5(1) and in Article 10(3), the quantity of electricity from cogeneration shall be determined in accordance with Annex II.

2. Member States may calculate primary energy savings from a production of heat and electricity and mechanical energy according to Annex III(c), without using Annex II to exclude the non-cogenerated heat and electricity parts of the same process. Such a production can be regarded as high-efficiency cogeneration provided it fulfils the efficiency criteria in Annex III(a) and, for cogeneration units with an electrical capacity larger than 25 MW, the overall efficiency is above 70 %. However, specification of the quantity of electricity from cogeneration produced in such a production, for issuing a guarantee of origin and for statistical purposes, shall be determined in accordance with Annex II.

3. Until the end of 2010, Member States may, using an alternative methodology, define a cogeneration as high-efficiency cogeneration without verifying that the cogeneration production fulfils the criteria in Annex III(a), if it is proved on national level that the cogeneration production identified by such an alternative calculation methodology on average fulfils the criteria in Annex III(a). If a guarantee of origin is issued for such production then the efficiency of the cogeneration production specified on the guarantee shall not exceed the threshold values of the criteria in Annex III(a) unless calculations in accordance with Annex III prove otherwise. However, specification of the quantity of electricity from cogeneration produced in such a production, for issuing a guarantee of origin and for statistical purposes, shall be determined in accordance with Annex II.

Article 13

Review

1. The threshold values used for calculation of electricity from cogeneration referred to in Annex II(a) shall be adapted to technical progress in accordance with the procedure referred to in Article 14(2).

2. The threshold values used for calculation of efficiency of cogeneration production and primary energy savings referred to in Annex III(a) shall be adapted to technical progress in accordance with the procedure referred to in Article 14(2).

3. The guidelines for determining the power to heat ratio referred to in Annex II(d) shall be adapted to technical progress in accordance with the procedure referred to in Article 14(2).

Article 14

Committee procedure

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 15

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 21 February 2006. They shall forthwith inform the Commission thereof.

[1] OJ L 275, 25.10.2003, p. 32.

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

Article 16

Amendment to Directive 92/42/EEC

The following indent shall be added to Article 3(1) of Directive 92/42/EEC:

'— cogeneration units as defined in Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on useful heat demand in the internal energy market (*).

(*) OJ L 52, 21.2.2004, p. 50.'

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 February 2004.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	M. McDOWELL

ANNEX I

Cogeneration technologies covered by this Directive

(a) Combined cycle gas turbine with heat recovery
(b) Steam backpressure turbine
(c) Steam condensing extraction turbine
(d) Gas turbine with heat recovery
(e) Internal combustion engine
(f) Microturbines
(g) Stirling engines
(h) Fuel cells
(i) Steam engines
(j) Organic Rankine cycles
(k) Any other type of technology or combination thereof falling under the definition laid down in Article 3(a)

ANNEX II

Calculation of electricity from cogeneration

Values used for calculation of electricity from cogeneration shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use. For micro-cogeneration units the calculation may be based on certified values.

(a) Electricity production from cogeneration shall be considered equal to total annual electricity production of the unit measured at the outlet of the main generators;

(i) in cogeneration units of type (b), (d), (e), (f), (g) and (h) referred to in Annex I, with an annual overall efficiency set by Member States at a level of at least 75 %, and

(ii) in cogeneration units of type (a) and (c) referred to in Annex I with an annual overall efficiency set by Member States at a level of at least 80 %.

(b) In cogeneration units with an annual overall efficiency below the value referred to in paragraph (a)(i) (cogeneration units of type (b), (d), (e), (f), (g), and (h) referred to in Annex I) or with an annual overall efficiency below the value referred to in paragraph (a)(ii) (cogeneration units of type (a) and (c) referred to in Annex I) cogeneration is calculated according to the following formula:

$$E_{CHP} = H_{CHP} . C$$

where:

E_{CHP} is the amount of electricity from cogeneration

C is the power to heat ratio

H_{CHP} is the amount of useful heat from cogeneration (calculated for this purpose as total heat production minus any heat produced in separate boilers or by live steam extraction from the steam generator before the turbine).

The calculation of electricity from cogeneration must be based on the actual power to heat ratio. If the actual power to heat ratio of a cogeneration unit is not known, the following default values may be used, notably for statistical purposes, for units of type (a), (b), (c), (d), and (e) referred to in Annex I provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:

Type of the unit	Default power to heat ratio, C
Combined cycle gas turbine with heat recovery	0,95
Steam backpressure turbine	0,45
Steam condensing extraction turbine	0,45
Gas turbine with heat recovery	0,55
Internal combustion engine	0,75

If Member States introduce default values for power to heat ratios for units of type (f), (g), (h), (i), (j) and (k) referred to in Annex I, such default values shall be published and shall be notified to the Commission.

(c) If a share of the energy content of the fuel input to the cogeneration process is recovered in chemicals and recycled this share can be subtracted from the fuel input before calculating the overall efficiency used in paragraphs (a) and (b).

(d) Member States may determine the power to heat ratio as the ratio between electricity and useful heat when operating in cogeneration mode at a lower capacity using operational data of the specific unit.

(e) The Commission shall, in accordance with the procedure referred to in Article 14(2), establish detailed guidelines for the implementation and application of Annex II, including the determination of the power to heat ratio.

(f) Member States may use other reporting periods than one year for the purpose of the calculations according to paragraphs (a) and (b).

ANNEX III

Methodology for determining the efficiency of the cogeneration process

Values used for calculation of efficiency of cogeneration and primary energy savings shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

(a) *High-efficiency cogeneration*

For the purpose of this Directive high-efficiency cogeneration shall fulfil the following criteria:

— cogeneration production from cogeneration units shall provide primary energy savings calculated according to point (b) of at least 10 % compared with the references for separate production of heat and electricity,

— production from small scale and micro cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

(b) *Calculation of primary energy savings*

The amount of primary energy savings provided by cogeneration production defined in accordance with Annex II shall be calculated on the basis of the following formula:

$$PES = \left(1 - \frac{1}{\frac{CHP\ H\eta}{Ref\ H\eta} + \frac{CHP\ E\eta}{Ref\ E\eta}} \right) \times 100\ \%$$

Where:

PES is primary energy savings.

CHP Hη is the heat efficiency of the cogeneration production defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration.

Ref Hη is the efficiency reference value for separate heat production.

CHP Eη is the electrical efficiency of the cogeneration production defined as annual electricity from cogeneration divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with Article 5.

Ref Eη is the efficiency reference value for separate electricity production.

(c) *Calculations of energy savings using alternative calculation according to Article 12(2)*

If primary energy savings for a process are calculated in accordance with Article 12(2) the primary energy savings shall be calculated using the formula in paragraph (b) of this Annex replacing:

'CHP Hη' with 'Hη' and

'CHP Eη' with 'Eη',

where:

Hη shall mean the heat efficiency of the process, defined as the annual heat output divided by the fuel input used to produce the sum of heat output and electricity output.

Eη shall mean the electricity efficiency of the process, defined as the annual electricity output divided by the fuel input used to produce the sum of heat output and electricity output. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with Article 5.

(d) Member States may use other reporting periods than one year for the purpose of the calculations according to paragraphs (b) and (c) of this Annex.

(e) For micro-cogeneration units the calculation of primary energy savings may be based on certified data.

(f) *Efficiency reference values for separate production of heat and electricity*

The principles for defining the efficiency reference values for separate production of heat and electricity referred to in Article 4(1) and in the formula set out in paragraph (b) of this Annex shall establish the operating efficiency of the separate heat and electricity production that cogeneration is intended to substitute.

The efficiency reference values shall be calculated according to the following principles:

1. For cogeneration units as defined in Article 3, the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared.
2. Each cogeneration unit shall be compared with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the cogeneration unit.
3. The efficiency reference values for cogeneration units older than 10 years of age shall be fixed on the reference values of units of 10 years of age.
4. The efficiency reference values for separate electricity production and heat production shall reflect the climatic differences between Member States.

ANNEX IV

Criteria for analysis of national potentials for high-efficiency cogeneration

(a) The analysis of national potentials referred to in Article 6 shall consider:
- — the type of fuels that are likely to be used to realise the cogeneration potentials, including specific considerations on the potential for increasing the use of renewable energy sources in the national heat markets via cogeneration,
- — the type of cogeneration technologies as listed in Annex I that are likely to be used to realise the national potential,
- — the type of separate production of heat and electricity or, where feasible, mechanical energy that high-efficiency cogeneration is likely to substitute,
- — a division of the potential into modernisation of existing capacity and construction of new capacity.

(b) The analysis shall include appropriate mechanisms to assess the cost effectiveness — in terms of primary energy savings — of increasing the share of high-efficiency cogeneration in the national energy mix. The analysis of cost effectiveness shall also take into account national commitments accepted in the context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

(c) The analysis of the national cogeneration potential shall specify the potentials in relation to the timeframes 2010, 2015 and 2020 and include, where feasible, appropriate cost estimates for each of the timeframes.

COUNCIL DIRECTIVE 2004/15/EC

of 10 February 2004

amending Directive 77/388/EEC to extend the facility allowing Member States to apply reduced rates of VAT to certain labour-intensive services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

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

Whereas:

(1) Article 28(6) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment [3], allows the reduced rates provided for in the third subparagraph of Article 12(3)(a) also to be applied to the labour-intensive services listed in the categories set out in Annex K to that Directive for a maximum period of four years from 1 January 2000 to 31 December 2003.

(2) Council Decision 2000/185/EC of 28 February 2000 authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC [4], authorised certain Member States to apply a reduced rate of VAT to those labour-intensive services for which they had submitted an application up to 31 December 2003.

(3) On the basis of the assessment reports submitted by the Member States that have applied the reduced rate, the Commission submitted its global evaluation report on 2 June 2003.

(4) In line with its strategy to improve the operation of the VAT system within the context of the internal market, the Commission adopted a proposal for a general review of the reduced rates of VAT to simplify and rationalise them.

(5) Since the Council has not reached an agreement on the content of the proposal, it should be given the necessary time to do so, in order to avoid legal uncertainty from 1 January 2004 the maximum period of application set for this measure in Directive 77/388/EEC should therefore be extended.

(6) In order to ensure the continuous application of Article 28(6) of Directive 77/388/EEC, provision should be made for this Directive to apply retroactively.

(7) Implementation of this Directive in no way implies change in the legislative provisions of Member States.

(8) Decision 77/388/EEC should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In the first subparagraph of Article 28(6) of Directive 77/388/EEC the words 'four years between 1 January 2000 and 31 December 2003' shall be replaced by the words 'six years between 1 January 2000 and 31 December 2005'.

Article 2

This Directive shall enter into force on the day of its adoption.

It shall apply from 1 January 2004.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 10 February 2004.

For the Council

The President

C. McCREEVY

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[1] Opinion delivered on 15 January 2004 (not yet published in the Official Journal).

[2] Opinion delivered on 28 January 2004 (not yet published in the Official Journal).

[3] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/7/EC (OJ L 27, 30.1.2004, p. 44).

[4] OJ L 59, 4.3.2000, p. 10. Decision as amended by Decision 2002/954/EC (OJ L 331, 7.12.2002, p. 28).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 February 2004

extending the period of application of Decision 2000/185/EC authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC

(2004/161/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment [1], and in particular Article 28(6) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Pursuant to Council Decision 2000/185/EC [2], Belgium, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom are authorised to apply, up to 31 December 2003, a reduced rate of VAT on the labour-intensive services for which they submitted an application.

(2) On 23 July 2003 the Commission adopted a proposal for a Directive for a general review of the reduced rates of VAT. Since the Council did not reach an agreement before 31 December 2003, the present system of reduced rates of VAT for labour-intensive services should be extended for two years.

(3) The maximum period of application set for this measure in Directive 77/388/EEC has been extended.

(4) The period of application of Decision 2000/185/EC should also be extended.

(5) In order to ensure that the authorisations referred to by the said Directive are continuously applied, provision should be made for the Decision to be applied retroactively,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2000/185/EC is hereby amended as follows:

1. in the first subparagraph of Article 1, 'four years running from 1 January 2000 to 31 December 2003' shall be replaced by 'six years running from 1 January 2000 to 31 December 2005';

2. in the second subparagraph of Article 3, '31 December 2003' shall be replaced by '31 December 2005'.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/15/EC (see page 61 of this Official Journal).
[2] OJ L 59, 4.3.2000, p. 10. Decision as amended by Decision 2002/954/EC (OJ L 331, 7.12.2002, p. 28).

Article 3

This Decision shall apply from 1 January 2004.

Done at Brussels, 10 February 2004.

For the Council
The President
C. McCREEVY

COUNCIL DECISION

of 10 February 2004

concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC

(2004/162/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) Pursuant to Article 299(2) of the Treaty, the provisions of the Treaty apply to the outermost regions and hence the French overseas departments, taking account of their structural social and economic situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development. This Treaty provision dovetails with measures adopted previously in aid of the outermost regions, in particular the French overseas departments (DOMs), in Council Decision 89/687/EEC of 22 December 1989 establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poseidom) [2].

(2) Article 2(3) of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments [3] states that in the light of the specific constraints on the overseas departments, partial or total exemptions from dock dues may be authorised for local production activities for a period of not more than 10 years from the date of the introduction of the charge. This period should have expired on 31 December 2002 as the system was introduced on 1 January 1993.

(3) Pursuant to Article 3 of Decision 89/688/EEC, the Commission had to submit a report on the implementation of the arrangements in order to ascertain the impact of the measures adopted and decide whether to maintain the possibility of exemptions. In the report that it sent to the Council on 24 November 1999, the Commission concludes that the four DOMs are in a much more fragile economic and social situation compared with the rest of the European Union by virtue of being outermost regions. The Commission underlines the importance of dock dues and exemptions for local production in terms of the social and economic development of these regions.

(4) According to the Commission report of 14 March 2000 on the measures to implement Article 299(2) of the Treaty, this Article must be implemented in partnership with the Member States concerned on the basis of detailed requests from them.

(5) On 12 March 2002 France sent a request to the Commission to extend exemptions from dock dues for 10 years. The request did not specify which goods were to be exempted under the future system or the rate differentials between local products and imports or the grounds for these exemptions and rate differentials with regard to the handicaps of the DOMs. In these circumstances, in order to avoid a legal vacuum being created by the lack of a complete request, the period of application of Decision 89/688/EEC was extended by one year under Decision 2002/973/EC [4].

(6) On 14 April 2003 France sent a further request to the Commission, in response to the above requirements. In this request, the French authorities asked for the Council Decision to apply for a period of 15 years, subject to a three-yearly review of the need to adjust the scheme. France sought to apply a scheme of differential taxation of dock dues enabling goods from outside the DOMs to be taxed more heavily that products from the DOMs in question. The differential of 10 percentage points would apply mainly to basic products and those for which a balance has been achieved between local and external production. The 20-point differential would cover products requiring substantial investment which had an impact on the cost price of goods manufactured locally for a limited market. The 30-point differential would apply mainly to products manufactured by large-scale enterprises and to products which are extremely vulnerable to imports from the DOMs' neighbouring countries.

[1] Opinion of 15 January 2004 (not yet published in the Official Journal).
[2] OJ L 399, 30.12.1989, p. 39.
[3] OJ L 399, 30.12.1989, p. 46. Decision as amended by Decision 2002/973/EC (OJ L 337, 31.12.2002, p. 83).
[4] OJ L 337, 13.12.2002, p. 83.

The 50-point differential would apply, in Guyana and Réunion, to alcohol, in particular to rum. The French request sought additional measures such as permission not to require payment of dock dues on products manufactured locally by enterprises with an annual turnover of less than EUR 550 000, permission to apply a 15 % reduction in the taxable amount to dock dues for products manufactured locally, and permission for local authorities to take emergency measures to amend the list of products covered by a tax differential in respect of dock dues.

(7) The Commission has assessed this request in the light of the scale of the handicaps affecting industrial production activities in the DOMs. The main handicaps found to affect the DOMs are the result of the factors listed in Article 299(2) of the Treaty: remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products. From time to time these areas are also affected by natural phenomena such as cyclones, volcanic eruptions and earthquakes.

(8) The remoteness of these regions considerably hinders the free movement of people, goods and services. The dependence on air and sea transport is compounded by the fact that these modes of transport are not fully liberalised and, as they are less efficient and more costly than road, rail or trans-European networks, they have a knock-on effect on production costs.

(9) Higher production costs are not only due to isolation but also to raw material and energy dependence, the obligation to build up stocks and difficulties affecting the supply of production equipment.

(10) The small size of the market and the low level of export activity because of the low purchasing power of the countries in the region, and the obligation to maintain diversified but small production lines in order to meet the requirements of a small market restrict the opportunities for economies of scale. 'Exporting' products made in the DOMs to metropolitan France or the other Member States is difficult because transport costs force up the cost of these products and hence their competitiveness. The weakness of the local market also leads to overstocking, which again affects firms' competitiveness.

(11) The need to bring in specialised maintenance teams that have been properly trained and are capable of intervening swiftly and the virtual impossibility of subcontracting, also raise firms' costs and affect their competitiveness.

(12) The combination of these handicaps means, in financial terms, that the cost price of goods produced locally is increased, so that without specific measures they could not compete with those produced elsewhere without such handicaps, even taking into account the cost of transporting such goods to the DOMs. If local products cannot compete it will become impossible to sustain local production, with harmful consequences in terms of employment for the inhabitants of the DOMs.

(13) Products from the DOMs face the additional handicap of having European cost prices which make it hard for their local products, especially agricultural products, to compete with those produced in neighbouring countries where labour costs are very much lower.

(14) The French request has been considered in the light of the principle of proportionality in order to ensure that, overall, the tax differentials which the French authorities would like to apply will not significantly exceed the scale of the handicaps faced by local products, in terms of cost price, compared with external products.

(15) In the light of these considerations, the Commission therefore proposes to authorise the implementation of a tax applicable to a list of products for which tax exemptions or reductions can be envisaged for local products from the DOMs. The effect of this differentiated taxation is to restore the competitiveness of local production and so to enable employment-generating activities to be maintained in the DOMs. A separate list of products for each DOM must be drawn up because the local products from each DOM are different.

(16) However, it is necessary to meet a combination of the requirements of Article 299(2) and Article 90 of the Treaty and also to ensure the coherence with Community law and the internal market. This means only taking measures that are strictly necessary and proportionate to the objectives pursued, in the light of the handicaps of the DOMs' remoteness. The scope of the Community framework therefore consists of a list of sensitive products whose local production costs have been demonstrated to be significantly higher than the production costs of similar products from elsewhere. The level of taxation must, however, be modulated so that the sole purpose of the tax differential in dock dues is to offset the handicaps and not to turn this tax into a protectionist weapon that undermines the operating principles of the internal market.

(17) Similarly, coherence with Community law means ruling out a tax differential for agricultural products which benefit from aid under Articles 2 and 3 of Council Regulation (EC) No 1452/2001 of 28 June 2001, introducing specific measures for certain agricultural products for the French overseas departments (Poseidom) [1], and in particular the specific supply arrangements.

(18) The products which could be entitled to tax exemptions or reductions in favour of local production can be divided into three categories, according to the size of the tax differential that it is proposed to authorise: 10, 20 or 30 percentage points.

(19) However, it should be possible to exempt local producers with an annual turnover of less than EUR 550 000 from payment of the tax. For this purpose, where the products they manufacture are subject only to a tax reduction, it should be possible to exceed the maximum differentials authorised. This provision should not, however, result in an increase of more than five percentage points in the ceilings set.

(20) For the sake of consistency, the planned exemption from dock dues on locally manufactured products not listed in the Annex for firms with an annual turnover of less than EUR 550 000, should be such that the tax differential for such products depends on whether or not such products are locally manufactured. As in the previous case, this tax difference should not exceed five percentage points.

(21) The objectives of supporting the social and economic development of the DOMs, already provided for in Decision 89/688/EEC, are confirmed by the requirements regarding the purpose of the tax. It is a legal obligation that the revenues from this tax are to be incorporated in the resources of the DOMs' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.

(22) The importance of updating the lists of products in the Annex, made necessary by the possible emergence of new production activities in the DOMs, of safeguarding local production if it is threatened by certain commercial practices, and, consequently, of the need to change the amount of exemptions from or reductions in the dues applicable mean that the Council itself must be able to adopt the measures necessary for the application of this Decision, particularly as such measures may have a major budgetary impact for the recipients of dock dues revenue. Furthermore, the need for action concerning such measures to be taken as a matter of urgency justifies the Council's adopting the relevant provisions in accordance with an accelerated procedure, acting by qualified majority on a Commission proposal.

(23) France should notify the Commission of any arrangement adopted in the light of this Decision.

(24) The arrangements are set to last for 10 years. It will nevertheless be necessary to evaluate the proposed system at the end of a five-year period. The French authorities should therefore present a report to the Commission by 31 July 2008 on the application of the arrangements authorised, in order to assess the impact of the measures taken and their contribution to promoting or maintaining local economic activities, in the light of the handicaps affecting the DOMs. On this basis, the lists of products and the authorised exemption will be revised as necessary.

(25) To ensure continuity with the arrangements provided for in Decisions 89/688/EEC and 2002/973/EC this Decision should apply from 1 January 2004. However, in order to enable the French authorities to adopt a national law in order to implement this Decision, it is proposed that the provisions of the Decision concerning the products entitled to a tax differential and the adoption of the measures necessary for the implementation of the Decision should take effect on 1 August 2004, and to avoid any sort of legal vacuum, the application of Decision 89/688/EEC should be extended until 31 July 2004,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 23, 25 and 90 of the Treaty, the French authorities shall be authorised, until 1 July 2014, to apply exemptions or reductions to the dock dues tax for the products listed in the Annex which are produced locally in the French overseas departments of Guadeloupe, Guyana, Martinique and Réunion.

These exemptions or reductions must be in keeping with the economic and social development strategy of the DOMs, taking account of its Community framework, and contribute to promoting local activities while not being such as to adversely affect the terms of trade to an extent contrary to the common interest.

[1] OJ L 198, 21.7.2001, p. 11. Regulation as amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

2. With reference to the rate of taxation applied to similar products not originating in the DOMs, the application of the exemptions or reductions referred to in paragraph 1 may not result in differences of more than:

(a) 10 percentage points for the products listed in part A of the Annex;

(b) 20 percentage points for the products listed in part B of the Annex;

(c) 30 percentage points for the products listed in part C of the Annex.

3. In order to allow the French authorities to exempt products produced locally by a trader with a turnover of less than EUR 550 000, the differentials provided for in paragraph 2 may be increased by a maximum of five percentage points.

4. For products not listed in the Annex which are produced locally by a trader referred to in paragraph 3, the French authorities may nonetheless apply a difference in taxation in order to exempt them. This shall not, however, exceed five percentage points.

Article 2

The French authorities shall apply the same taxation arrangements as those applied to products produced locally to products that have benefited from the specific supply arrangements under Articles 2 and 3 of Regulation (EC) No 1452/2001.

Article 3

The Council, acting by qualified majority on a proposal from the Commission, shall adopt the measures necessary for the application of this Decision with regard to the updating of the lists of products in the Annex because of the emergence of new production in the DOMs and the taking of urgent measures if local production is threatened by certain commercial practices.

Article 4

France shall immediately notify the Commission of the taxation arrangements referred to in Article 1.

The French authorities shall present to the Commission by 31 July 2008 a report on the application of the taxation arrangements referred to in Article 1, in order to check the impact of the measures taken and their contribution to the promotion or maintenance of local economic activities, in the light of the handicaps affecting the outermost regions.

On the basis of this report, the Commission shall present a report to the Council giving a full economic and social analysis, and where appropriate a proposal for adapting the provisions of this Decision.

Article 5

Articles 1 to 4 shall be applicable as from 1 August 2004.

Article 6 shall be applicable as from 1 January 2004.

Article 6

The period of validity of Decision 89/688/EEC is hereby extended to 31 July 2004.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels, 10 February 2004.

For the Council

The President

C. McCREEVY

ANNEX

A. **List of products referred to in Article 1(2)(a) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

0105, 0201, 0203, 0205, 0207, 0208, 0209, 0305 except 0305 10, 0403, 0405, 0406, 08 except 0807, 1106, 2001, 2005, 2103, 2104, 2209, 2302, 2505, 2710, 2711 12, 2711 13, 2712, 2804, 2806, 2811, 2814, 2836, 2851 00, 2907, 3204, 3205, 3206, 3207, 3211 00 00, 3212, 3213, 3214, 3215, 3808, 3809, 3925 except 3925 10 00, 3925 20 00, 3925 30 00 and 3925 90, 4012, 4407 10, 4409 except 4409 20, 4415 20, 4818 except 4818 10, 4818 20 and 4818 30, 4820, 7003, 7006 00, 7225, 7309 00, 7310, 7616 91 00, 7616 99, 8419 19 00, 8471, 8902 00 18 and 8903 99.

2. Department of Guyana

3824 50 and 6810 11.

3. Department of Martinique

0105, 0201, 0203, 0205, 0207, 0208, 0209, 0305, 0403 except 0403 10, 0406, 0706 10 00, 0707, 0709 60, 0709 90, 0710, 0711, 08 except 0807, 1106, 1209, 1212, 1904, 2001, 2005, 2103, 2104, 2209, 2302, 2505 10 00, 2505 90 00, 2710, 2711 12, 2711 13, 2712, 2804, 2806, 2811, 2814, 2836, 2851 00, 2907, 3204, 3205, 3206, 3207, 3211 00 00, 3212, 3213, 3214, 3215, 3808 90, 3809 91, 3820 00 00, 4012, 4401, 4407, 4408, 4409, 4415 20, 4418 except 4418 10, 4418 20, 4418 30, 4418 50 and 4418 90, 4421 90, 4811, 4820, 6902, 6904 10 00, 7003, 7006 00, 7225, 7309 00, 7310, 7616 91 00, 7616 99, 8402 90 00, 8419 19 00, 8438, 8471 and 8903 99.

4. Department of Réunion

0105, 0207, 0208, 0209, 0301, 0302, 0303, 0304, 0305, 0403, 0405, 0406, 0407, 0408, 0601, 0602, 0710, 0711, 08, 0904, 0905 00 00, 0910 91, 1106, 1212, 1604 14, 1604 19, 1604 20, 1701, 1702, 1902 except 1902 11 00, 1902 19, 1902 20, 1902 30 and 1902 40, 1904, 2001, 2005 except 2005 51, 2006, 2007, 2103, 2104, 2201, 2309, 2710, 2712, 3211 00 00, 3214, 3402, 3505, 3506, 3705 10 00, 3705 90 00, 3804 00, 3808, 3809, 3811 90, 3814 00, 3820, 3824, 39 except 3917, 3919, 3920, 3921 90 60, 3923, 3925 20 00 and 3925 30 00, 4009, 4010, 4016, 4407 10, 4409 except 4409 20, 4415 20, 4421, 4806 40 90, 4811, 4818 except 4818 10, 4820, 6306, 6809, 6811 90 00, 7009, 7312 90, 7314 except 7314 20, 7314 39 00, 7314 41 90, 7314 49 and 7314 50 00, 7606, 8310, 8418, 8421, 8471, 8537, 8706, 8707, 8708, 8902 00 18, 8903 99, 9001, 9021 29 00, 9405, 9406 except 9406 00 and 9506.

B. **List of products referred to in Article 1(2)(b) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

0210, 0301, 0302, 0303, 0304, 0305 10, 0306, 0307, 0407, 0409 00 00, 0601, 0602, 0603, 0604, 0702, 0705, 0706 10 00, 0707 00, 0709 60, 0709 90, 0807, 1008 90 90, 1601, 1602, 1604 20, 1605, 1702, 1704, 1806, 1902, 1905, 2105 00, 2201 10, 2202 10 00, 2202 90, 2309, 2523 21 00, 2523 29 00, 2828 10 00, 2828 90 00, 3101 00 00, 3102, 3103, 3104, 3105, 3301, 3302, 3305, 3401, 3402, 3406 00, 3917, 3919, 3920, 3923, 3924, 3925 10 00, 3925 20 00, 3925 30 00, 3925 90, 3926 10 00, 3926 90, 4409 20, 4418, 4818 10, 4818 20, 4818 30, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 6306, 6805, 6810, 6811 90 00, 7213, 7214, 7217, 7308, 7314, 7610 10 00, 7610 90 90, 9401, 9403, 9404 and 9406.

2. Department of Guyana

0303 79, 0306 13, 0403 10, 1006 20, 1006 30, 2009 80, 2202 10, 2309 90, 2505 10 00, 2517 10, 2523 21 00, 3208 20, 3209 10, 3917, 3923, 3925, 7308 90 and 7610 90.

3. Department of Martinique

0210, 0302, 0303, 0304, 0306, 0307, 0403 10, 0405, 0407, 0409 00 00, 0601, 0602, 0603, 0604, 0702, 0705, 0807, 1008 90 90, 1102, 1601, 1602, 1604 20, 1605, 1702, 1704, 1806, 1902, 2105 00, 2106, 2201, 2202 10 00, 2202 90, 2309, 2523 21 00, 2523 29 00, 2828 10 00, 2828 90 00, 3101 00 00, 3102, 3103, 3104, 3105, 3301, 3302, 3305, 3401, 3402, 3406 00, 3808 except 3808 90, 3809 except 3809 91, 3820 except 3820 00 00, 3917, 3919, 3920, 3923, 3924, 3925, 3926, 4418 10, 4418 20, 4418 30, 4418 50 and 4418 90, 4818, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 6103, 6104, 6105, 6107, 6203, 6204, 6205, 6207, 6208, 6306, 6805, 6810, 6811 90 00, 7213, 7214, 7217, 7308, 7314, 7610, 9401, 9403, 9404, 9405 60 and 9406.

[1] Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1). Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

4. Department of Réunion

0306, 0307, 0409 00 00, 0603, 0604, 0709 60, 0901 21 00, 0901 22 00, 0910 10 00, 0910 30 00, 1507 90, 1508 90, 1510 00 90, 1512 19, 1515 29, 1516, 1601, 1602, 1605, 1704, 1806, 1901, 1902 11 00, 1902 19, 1902 20, 1902 30, 1902 40, 1905, 2005 51, 2008, 2105 00, 2106, 2828 10 00, 2828 90 00, 3208, 3209, 3210, 3212, 3301, 3305, 3401, 3917, 3919, 3920, 3921 90 60, 3923, 3925 20 00, 3925 30 00, 4012, 4418, 4818 10, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 4911 91, 7308, 7309 00, 7310, 7314 20, 7314 39 00, 7314 41 90, 7314 49, 7314 50 00, 7326, 7608, 7610, 7616, 8419 19 00, 8528, 9401, 9403, 9404 and 9406 00.

C. **List of products referred to in Article 1(2)(c) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

0901 11 00, 0901 12 00, 0901 21 00, 0901 22 00, 1006 30, 1006 40 00, 1101 00, 1517 10, 1701, 1901, 2006, 2007, 2009, 2106, 2203 00, 2208 40, 2517 10, 3208, 3209, 3210, 3705 10 00, 3705 90 00, 7009 91 00, 7009 92 00, 7015 10 00, 7113, 7114, 7115, 7117, 9001 40, 2208 70 [2] and 2208 90 [2].

2. Department of Guyana

2208 40, 4403 49 and 4407 29.

3. Department of Martinique

0901 11 00, 0901 21 00, 0901 22 00, 1006 30, 1006 40 00, 1101 00, 1517 10, 1701, 1901, 1905, 2006, 2007, 2008, 2009, 2203 00, 2208 40, 2517 10, 3208, 3209, 3210, 7009, 7015 10 00, 7113, 7114, 7115, 7117, 9001 40, 2208 70 [2] and 2208 90 [2].

4. Department of Réunion

2009, 2202 10 00, 2202 90, 2203 00, 2204 21, 2206 00, 2208 40, 2402 20, 2403, 7113, 7114, 7115, 7117, 8521, 2208 70 [2] and 2208 90 [2].

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[1] Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1). Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

[2] Only rum-based products under heading 2208 40.

COMMISSION

COMMISSION RECOMMENDATION

of 17 February 2004

on the coordinated inspection programme in the field of animal nutrition for the year 2004 in accordance with Council Directive 95/53/EC

(Text with EEA relevance)

(2004/163/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition [1], and in particular Article 22(3) thereof,

Whereas:

(1) Directive 95/53/EC provides for the Commission to submit an overall summary report on the results of inspections carried out at Community level. This overall summary report provides data on official controls based on the information reported by the Member States concerning the implementation of the inspection programmes for the year 2002.

(2) In 2003 Member States identified certain issues as worthy of a coordinated inspection programme to be carried out in the year 2004.

(3) Although Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed [2] establishes maximum contents of aflatoxin B_1 in feedingstuffs, there are no Community rules for other mycotoxins, such as ochratoxin A, zearalenone, deoxynivalenol and fumonisins. Gathering information on the presence of those mycotoxins through random sampling could provide useful data for an assessment of the situation with a view to the development of the legislation. Furthermore, certain feed materials such as cereals and oil seeds are particularly exposed to mycotoxin contamination because of harvesting, storage and transport conditions. As mycotoxin concentration varies from year to year, it is appropriate to collect data from consecutive years for all mycotoxins mentioned.

(4) Previous checks for the presence of antibiotics and coccidiostats in certain feedingstuffs where those substances are not authorised indicate that this type of infringement still occurs. The frequency of such findings and the sensitivity of this matter justify the continuation of checks.

(5) It is important to ensure that the restrictions on the use of feed materials of animal origin in feedingstuffs, as laid down in the relevant Community legislation, are effectively enforced.

(6) The case of contamination of the feed and food chain with medroxyprogesterone acetate (MPA) highlighted the value of the selection of supplies in the safety of feedingstuffs. Some ingredients in feedingstuffs are by-products of agri-food industries, or of other industries, or of mineral extraction. The source of feed materials of industrial origin and the processing methods applied to them may be of particular significance in the safety of the products. Therefore the competent authorities should consider this aspect when carrying out their checks.

(7) The measures provided for in this Recommendation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HEREBY RECOMMENDS:

1. It is recommended that Member States carry out during the year 2004 a coordinated inspection programme aimed to check:

   (a) the concentration of mycotoxins (aflatoxin B_1, ochratoxin A, zearalenone, deoxynivalenol and fumonisins) in feedingstuffs, indicating the methods of analysis; the method of sampling should comprise both random and targeted sampling; in the case of targeted sampling, the samples should be feed materials suspected of containing higher concentrations of mycotoxins, such

[1] OJ L 265, 8.11.1995, p. 17. Directive as last amended by Directive 2001/46/EC of the European Parliament and of the Council (OJ L 234, 1.9.2001, p. 55).

[2] OJ L 140, 30.5.2002, p. 10. Directive as last amended by Commission Directive 2003/100/EC (OJ L 285, 1.11.2003, p. 33).

as cereal grains, oil seeds, oil fruits, their products and by-products, and feed materials stored for a long time or transported by sea over a long distance; the results of the checks should be reported using the model set out in Annex I;

(b) certain medicinal substances, whether or not authorised as feed additives for certain animal species and categories, in non-medicated pre-mixtures and compound feedingstuffs in which these medicinal substances are not authorised; the checks should target those medicinal substances in pre-mixtures and compound feedingstuffs if the competent authority considers that there is a greater probability of finding irregularities; the results should be reported using the model set out in Annex II;

(c) the implementation of restrictions on the production and use of feed materials of animal origin, as set out in Annex III;

(d) the procedures applied by manufacturers of compound feedingstuffs in order to select and assess their supplies of feed materials of industrial origin and to ensure the quality and safety of such ingredients, as set out in Annex IV.

2. It is recommended that Member States include the results of the coordinated inspection programme provided for in paragraph 1 in a separate chapter in the annual report on inspection activities to be transmitted by 1 April 2005 in accordance with Article 22(2) of Directive 95/53/EC and the latest version of the harmonised reporting model.

Done at Brussels, 17 February 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

Concentration of certain mycotoxins (aflatoxin B_1, ochratoxin A, zearalenone, deoxynivalenol, fumonisins) in feedingstuffs

Individual results of all tested samples; model for reports as referred to in paragraph 1(a)

Feedingstuffs		Sampling (random or targeted)	Type and concentration of mycotoxins (µg/kg relative to a feedingstuff with a moisture content of 12%)				
Type	Country of origin		Aflatoxin B_1	Ochratoxin A	Zearalenone	Deoxynivalenol	Fumonisins [a]

[a] The concentration of fumonisins comprises the total of fumonisins B_1, B_2 and B_3.

The competent authority should also indicate:

— the action taken when maximum levels for aflatoxin B_1 are exceeded,

— the methods of analysis used,

— the limits of detection.

ANNEX II

Presence of certain medicinal substances not authorised as feed additives

Certain antibiotics, coccidiostats and other medicinal substances may be legally present as additives in pre-mixtures and compound feedingstuffs for certain species and categories of animals, when authorised pursuant to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs [1].

The presence of unauthorised medicinal substances in feedingstuffs constitutes an infringement.

The medicinal substances to be controlled should be chosen from the following:

1. medicinal substances authorised as feed additives for certain animal species or categories only:

   avilamycin,
   decoquinate,
   diclazuril,
   flavophospholipol,
   halofuginone hydrobromide,
   lasalocid A sodium,
   maduramicin ammonium alpha,
   monensin sodium,
   narasin,
   narasin — nicarbazin,
   robenidine hydrochloride,
   salinomycin sodium,
   semduramicin sodium;

2. medicinal substances no longer authorised as feed additives:

   amprolium,
   amprolium/ethopabate,
   arprinocid,
   avoparcin,
   carbadox,
   dimetridazole,
   dinitolmid,
   ipronidazol,
   meticlorpindol,
   meticlorpindol/methylbenzoquate,
   nicarbazin,
   nifursol,
   olaquindox,
   ronidazol,
   spiramycin,
   tetracyclines,
   tylosin phosphate,
   virginiamycin,
   zinc bacitracin,
   other antimicrobial substances;

3. medicinal substances never authorised as feed additives:

   other substances.

Individual results of all non-compliant samples; model for reports as referred to in paragraph 1(b)

Type of feedingstuff (animal species and category)	Substance detected	Level found	Reason for the infringement [a]	Reason for the infringement

[a] Reason leading to the presence of the unauthorised substance in the feedingstuff, as concluded after an investigation carried out by the competent authority.

The competent authority should also indicate:
— the total number of samples tested,
— the names of the substances which have been investigated,
— the methods of analysis used,
— the limits of detection.

[1] OJ L 270, 14.12.1970, p. 1.

ANNEX III

Restrictions on the production and use of feed materials of animal origin

Without prejudice to Articles 3 to 13 and Article 15 of Directive 95/53/EC, Member States should, during 2004, undertake a coordinated inspection programme to determine whether restrictions on the production and use of feed materials of animal origin have been complied with.

In particular, in order to ensure that the ban on feeding processed animal protein to certain animals, as laid down in Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies [1], are effectively applied, Member States should implement a specific control programme based on targeted controls. In accordance with Article 4 of Directive 95/53/EC, that control programme should be based on a risk-based strategy where all stages of production and all types of premises where feed is produced, handled and administered are included. Member States should pay special attention to the definition of criteria that can be related to a risk. The weighting given to each criterion should be proportional to the risk. The inspection frequency and the number of samples analysed in the premises should be in correlation to the sum of weightings allocated to those premises.

The following indicative premises and criteria should be considered when drawing up a control programme:

Premises	Criteria	Weighting
Feed mills	— Double-stream feed mills producing ruminant compound feed and non-ruminant compound feed containing derogated processed animal proteins — Feed mills with previous history, or suspicion, of non-compliance — Feed mills with a large amount of imported feedingstuffs with high protein content such as fishmeal, soybean meal, corn gluten meal and protein concentrates — Feed mills with a high production of compound feed — Risk of cross-contamination resulting from internal operational procedures (dedication of silos, control of the effective separation of lines, control of ingredients, internal laboratory, sampling procedures, etc.)	
Border inspection posts and other points of entry into the Community	— Large/small amount of imports of feedingstuffs — Feedingstuffs with high protein content	
Farms	— Home mixers using derogated processed animal proteins — Farms keeping ruminants and other species (risk of cross-feeding) — Farms purchasing feedingstuffs in bulk	
Dealers	— Warehouses and intermediate storage of feedingstuffs with high protein content — High volume of bulk feedingstuffs traded — Dealers in compound feedingstuffs produced abroad	

[1] OJ L 147, 31.5.2001, p. 1.

Premises	Criteria	Weighting
Mobile mixers	— Mixers producing for both ruminants and non-ruminants — Mixers with previous history, or suspicion, of non-compliance — Mixers incorporating feedingstuffs with high protein content — Mixers with high production of feedingstuffs — Large number of farms served including farms which keep ruminants	
Means of transportation	— Vehicles used for the transportation of processed animal proteins and feedingstuffs — Vehicles with previous history, or suspicion, of non-compliance	

As an alternative to these indicative premises and criteria, Member States may forward their own risk assessment to the Commission before 31 March 2004, or 31 May 2004 for those Member States which joined on 1 May 2004.

Sampling should be targeted on batches or events where cross-contamination with prohibited processed proteins is most likely (first batch after the transport of feedingstuffs containing animal protein prohibited in this batch, technical problems or changes in production lines, changes in storage bunkers or silos for bulk material).

The minimum number of inspections per year in a Member State should be 10 per 100 000 tonnes of compound feed produced. The minimum number of official samples per year in a Member State should be 20 per 100 000 tonnes of compound feed produced. Pending the approval of alternative methods, microscopic identification and estimation as described in Commission Directive 98/88/EC of 13 November 1998 establishing guidelines for the microscopic identification and estimation of constituents of animal origin for the official control of feedingstuffs [1] should be used for analysing samples. Any presence of prohibited constituents of animal origin in feedingstuffs should be considered as a breach of the feed ban.

The results of the inspection programmes should be communicated to the Commission using the following formats:

[1] OJ L 318, 27.11.1998, p. 45.

Summary of checks concerning feeding restrictions for feed of animal origin (feeding of prohibited processed animal proteins)

A. *Documented inspections*

Stage	Number of inspections comprising checks on the presence of processed animal proteins	Number of breaches based on documentary checks etc. rather than laboratory testing
Import of feed materials		
Storage of feed materials		
Feed mills		
Home mixers/mobile mixers		
Intermediaries of feedingstuffs		
Means of transport		
Farms keeping non-ruminants		
Farms keeping ruminants		
Others: ……		

B. *Sampling and testing of feed materials and compound feedingstuffs for processed animal proteins*

Premises	Number of official samples tested for processed animal proteins			Number of non-compliant samples					
				Presence of processed animal protein from terrestrial animals			Presence of processed animal protein from fish		
	Feed materials	Compound feedingstuffs		Feed materials	Compound feedingstuffs		Feed materials	Compound feedingstuffs	
		for ruminants	for non-ruminants		for ruminants	for non-ruminants		for ruminants	for non-ruminants
At import									
Feed mills									
Intermediaries/storage									
Means of transport									
Home mixers/mobile mixers									
On farm									
Others: ……									

C. *Summary of prohibited processed animal proteins found in samples of feedingstuffs intended for ruminants*

	Month of sampling	Type degree and origin of contamination	Sanctions (or other measures) applied
1			
2			
3			
4			
5			
…			

In addition, Member States should analyse fats and vegetable oils intended for feedingstuffs for the presence of traces of bones and include the results of such analyses in the report referred to in paragraph 2 of this Recommendation.

ANNEX IV

Procedures for selection and assessment of supplies of feed materials of industrial origin

The competent authorities should identify and shortly describe the procedures followed by manufacturers of compound feedingstuffs in order to select and assess supplies of feed materials of industrial origin. Some procedures may be related to the prior establishment of characteristics or requirements for the products to be supplied, or for the suppliers. Other procedures may be related to own checks for the verification of compliance with certain parameters, carried out by manufacturers of compound feedingstuffs at the reception of supplies.

For each identified procedure (procedure for selection and assessment of supplies), the competent authorities should indicate the advantages and disadvantages of the application of the procedure in terms of feed safety. Finally they should assess whether, taking into account the potential risks, each procedure is acceptable, insufficient or unacceptable for ensuring the safety of feedingstuffs, stating the reasons leading to that conclusion.

Evaluation of procedures

Procedure (short description, including criteria for acceptance/rejection of feed materials)	Advantages	Disadvantages	Assessment of acceptability of procedures

COMMISSION DECISION

of 19 February 2004

amending Decision 2004/130/EC providing for the temporary marketing of certain seed of the species *Vicia faba* L., not satisfying the requirements of Council Directive 66/401/EEC

(notified under document number C(2004) 492)

(Text with EEA relevance)

(2004/164/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed [1], as last amended by Directive 2003/61/EC [2], and in particular Article 17, paragraph 1 thereof,

Whereas:

(1) Pursuant to Commission Decision 2004/130/EC [3], the marketing in the Community of seed of spring field beans which does not satisfy the minimum germination requirements laid down in Directive 66/401/EEC was authorised in accordance with defined terms and subject to certain conditions for a period expiring on 15 February 2004.

(2) The period left to market seed at the less stringent germination requirements, until 15 February 2004, will be insufficient.

(3) Consequently, the authorisation should be extended and Decision 2004/130/EC should therefore be amended accordingly.

(4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION

Article 1

In Article 1 of Decision 2004/130/EC the date '15 February 2004' is replaced by the date '31 March 2004'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 19 February 2004.

For the Commission

David BYRNE

Member of the Commission

[1] OJ 125, 11.7.1966, p. 2298/66.
[2] OJ L 165, 3.7.2003, p. 23.
[3] OJ L 37, 10.2.2004, p. 32.