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### Legislation

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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 768/2005****of 26 April 2005****establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93  
establishing a control system applicable to the common fisheries policy**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy <sup>(2)</sup> requires Member States to ensure effective control, inspection and enforcement of the rules of the common fisheries policy and to cooperate with each other and with third countries to this end.

(2) To fulfil these obligations it is necessary for the Member States to coordinate their control and inspection activities within their land territory and in Community and international waters in accordance with international law and, in particular, the obligations of the Community in the framework of regional fisheries organisations and under agreements with third countries.

(3) No inspection scheme can be cost effective without providing for inspections on land. It is for that reason that land territory should be covered by joint deployment plans.

(4) Such cooperation, through the operational coordination of control and inspection activities, should contribute to the sustainable exploitation of living aquatic resources as well as ensuring a level playing field for the fishing industry involved in this exploitation thus reducing distortions in competition.

(5) Effective fisheries control and inspection is considered as essential to combat illegal, unreported and unregulated fishing.

(6) Without prejudice to the responsibilities of Member States that arise from Regulation (EC) No 2371/2002, there is need for a technical and administrative Community body to organise cooperation and coordination between Member States regarding fisheries control and inspection.

(7) To this end, it is appropriate within the Community's existing institutional structure, and taking account of the repartition of competences between the Commission and the Member States, to establish a Community Fisheries Control Agency ('the Agency').

(8) For the achievement of the purposes for which the Agency is established, its tasks need to be defined.

(9) In particular, it is necessary for the Agency, at the request of the Commission, to be able to assist the Community and the Member States in their relations with third countries and/or regional fisheries organisations and to cooperate with their competent authorities within the framework of the international obligations of the Community.

<sup>(1)</sup> Opinion of 23 February 2005 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 358, 31.12.2002, p. 59.

- (10) Moreover, there is a need to work towards the effective application of Community inspection procedures. The Agency could over time become a reference source for scientific and technical assistance for fisheries control and inspection.
- (11) In order to meet the objectives of the common fisheries policy, which is to provide for a sustainable exploitation of living aquatic resources in the context of sustainable development, the Council adopts measures concerning conservation, management and exploitation of living aquatic resources.
- (12) To ensure the proper enforcement of these measures adequate control and enforcement means must be deployed by the Member States. In order to make such control and enforcement more effective and efficient it is appropriate for the Commission in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002 and in concert with the Member States concerned to adopt specific control and inspection programmes. Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>(1)</sup> should be amended accordingly.
- (13) Coordination by the Agency of operational cooperation between Member States should be undertaken on the basis of joint deployment plans, which organise the use of the available means of control and inspection of the Member States concerned so as to give effect to control and inspection programmes. Fisheries control and inspection activities undertaken by the Member States should be carried out in accordance with common criteria, priorities, benchmarks and procedures regarding control and inspection activities on the basis of such programmes.
- (14) The adoption of a control and inspection programme obliges Member States to effectively provide the resources necessary to carry out the programme. It is necessary for the Member States to promptly notify the Agency of the means of control and inspection with which they intend to execute any such programme. No additional obligations in terms of control, inspection and enforcement or in relation to making available the resources necessary in this context must be created by the joint deployment plans.
- (15) A joint deployment plan should only be prepared by the Agency if it is foreseen in the work programme.
- (16) The work programme should be adopted by the Administrative Board, which ensures that sufficient consensus is reached, including on the matching of tasks foreseen for the Agency in the work programme and resources available to the Agency, based on the information to be provided by Member States.
- (17) The key task of the Executive Director should be to ensure in his/her consultations with Members of the Board and Member States that the ambitions in the work programme for each year are matched by sufficient resources made available to the Agency by Member States to fulfil the work programme.
- (18) The Executive Director should in particular draft precise deployment plans using the resources notified by Member States for the fulfilment of each control and inspection programme and respecting the rules and aims set out in the specific control and inspection programme on which the joint deployment plan is based, as well as other relevant rules, such as those relating to Community Inspectors.
- (19) In this context it is necessary that the Executive Director manages the timing in such a manner as to give Member States sufficient time to provide their comments, building on their operational expertise, while staying within the work plan of the Agency and the time limits foreseen in this Regulation. It is necessary for the Executive Director to take account of the interest of the Member States concerned in the fisheries covered by each plan. In order to ensure efficient and timely coordination of the joint control and inspection activities, it is necessary to provide for a procedure to allow for decisions on the adoption of the plans when an agreement cannot be reached between the Member States concerned.
- (20) The procedure for the drafting and adopting of joint deployment plans outside Community waters must be similar to that concerning Community waters. The basis for such joint deployment plans must be an international control and inspection programme giving effect to international obligations relating to control and inspection binding upon the Community.
- (21) For the implementation of joint deployment plans, the Member States concerned should pool and deploy the means of control and inspection that they have committed to such plans. The Agency should assess whether the available means of control and inspection suffice and where appropriate inform the Member States concerned and the Commission that the means are not sufficient to perform the tasks required under the control and inspection programme.
- (22) While Member States should respect their obligations relating to inspection and control, in particular under the specific control and inspection programme adopted pursuant to Regulation (EC) No 2371/2002, the Agency should not have the power to impose additional obligations through joint deployment plans or to sanction Member States.

<sup>(1)</sup> OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).

- (23) The Agency should review periodically the effectiveness of joint deployment plans.
- (24) It is appropriate to provide for the possibility to adopt specific implementing rules for the adoption and approval of joint deployment plans. It may be useful to use this possibility once the Agency has started operating and the Executive Director considers that such rules must be laid down in Community law.
- (25) The Agency should be entitled, where so requested, to provide contractual services relating to the means of control and inspection to be used for joint deployment by the Member States concerned.
- (26) For the purpose of fulfilling the Agency's tasks, the Commission, the Member States and the Agency should exchange relevant information on control and inspection through an information network.
- (27) The status and structure of the Agency should correspond to the objective character of the results it is intended to produce and allow it to carry out its functions in close cooperation with the Member States and with the Commission. Consequently, the Agency should be granted legal, financial and administrative autonomy while at the same time maintaining close links with the Community institutions and the Member States. To that end, it is necessary and appropriate that the Agency should be a Community body having legal personality and exercising the powers which are conferred on it by this Regulation.
- (28) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency in accordance with the general principles common to the laws of the Member States.
- (29) The Commission and the Member States should be represented within an Administrative Board that would be entrusted with ensuring the correct and effective functioning of the Agency.
- (30) An Advisory Board should be created in order to advise the Executive Director and to ensure close cooperation with stakeholders.
- (31) Given that the Agency has to fulfil Community obligations and, at the request of the Commission, to cooperate with third countries and regional fisheries organisations within the framework of the international obligations of the Community, it is appropriate that the Chairman of the Administrative Board should be elected from among the Commission representatives.
- (32) Voting arrangements in the Administrative Board should take into account the interests of the Member States and the Commission in the effective operation of the Agency.
- (33) It is appropriate to provide for the participation in the deliberations of the Administrative Board of a representative of the Advisory Board with no voting rights.
- (34) It is necessary to provide for the appointment and dismissal of the Executive Director of the Agency as well as the rules governing the exercise of his/her functions.
- (35) In order to promote the transparent functioning of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>(1)</sup> should apply without restriction to the Agency.
- (36) In the interest of the protection of the privacy of individuals, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(2)</sup> should apply to this Regulation.
- (37) In order to guarantee the functional autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes from a contribution from the Community as well as from payments for contractual services rendered by the Agency. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

- (38) In order to combat fraud, corruption, and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(1)</sup> should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(2)</sup>.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

##### OBJECTIVE, SCOPE AND DEFINITIONS

###### Article 1

##### Objective

This Regulation establishes a Community Fisheries Control Agency ('the Agency'), the objective of which is to organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the Common Fisheries Policy in order to ensure its effective and uniform application.

###### Article 2

##### Definitions

For the purpose of this Regulation the following definitions shall apply:

- (a) 'control and inspection' means any measures taken by Member States, in particular pursuant to Articles 23, 24 and 28 of Regulation (EC) No 2371/2002, to control and inspect fishing activities within the scope of the common fisheries policy including surveillance and monitoring activities such as satellite-based vessel monitoring systems and observer schemes;
- (b) 'means of control and inspection' means surveillance vessels, aircraft, vehicles and other material resources as well as

inspectors, observers and other human resources used by Member States for control and inspection;

- (c) 'joint deployment plan' means a plan setting out operational arrangements for the deployment of available means of control and inspection;
- (d) 'international control and inspection programme' means a programme that sets objectives, common priorities and procedures for control and inspection activities to implement international obligations of the Community relating to control and inspection;
- (e) 'specific control and inspection programme' means a programme that sets objectives, common priorities and procedures for control and inspection activities established in accordance with Article 34 c of Regulation (EEC) No 2847/93;
- (f) 'fishery' means the fishing activities exploiting certain stocks as defined by the Council in particular pursuant to Articles 5 and 6 of Regulation (EC) No 2371/2002;
- (g) 'Community inspectors' means the inspectors included on the list referred to in Article 28(4) of Regulation (EC) No 2371/2002.

#### CHAPTER II

##### MISSION AND TASKS OF THE AGENCY

###### Article 3

##### Mission

The mission of the Agency shall be:

- (a) to coordinate control and inspection by Member States relating to the control and inspection obligations of the Community;
- (b) to coordinate the deployment of the national means of control and inspection pooled by the Member States concerned in accordance with this Regulation;
- (c) to assist Member States in reporting information on fishing activities and control and inspection activities to the Commission and third parties;
- (d) in the field of its competences, to assist Member States to fulfil their tasks and obligations under the rules of the common fisheries policy;

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

- (e) to assist Member States and the Commission in harmonising the application of the common fisheries policy throughout the Community;
- (f) to contribute to the work of Member States and the Commission on research into and development of control and inspection techniques;
- (g) to contribute to the coordination of inspector training and the exchange of experience between Member States;
- (h) to coordinate the operations to combat illegal, unreported and unregulated fishing in conformity with Community rules.

#### Article 4

#### **Tasks relating to the international obligations of the Community relating to control and inspection**

1. The Agency shall, at the request of the Commission:
  - (a) assist the Community and Member States in their relations with third countries and regional international fisheries organisations of which the Community is a member;
  - (b) cooperate with the competent authorities of regional international fisheries organisations regarding the control and inspection obligations of the Community in the framework of working arrangements concluded with such bodies.
2. The Agency may, at the request of the Commission, cooperate with the competent authorities of third countries in matters relating to control and inspection in the framework of agreements concluded between the Community and such countries.
3. The Agency may, within its field of competence, carry out on behalf of Member States tasks under international fisheries agreements to which the Community is a party.

#### Article 5

#### **Tasks relating to operational coordination**

1. Operational coordination by the Agency shall cover inspection and control of fishing activities, including importation, transport and landing of fishery products, up to the point where such products are received by the first buyer after landing.
2. For the purpose of operational coordination, the Agency shall establish joint deployment plans and organise operational coordination of control and inspection by Member States in accordance with Chapter III.

#### Article 6

#### **Provision of contractual services to Member States**

The Agency may provide contractual services to Member States, at their request, relating to control and inspection in connection with their obligations concerning fisheries in Community and/or international waters, including the chartering, operating and staffing of control and inspection platforms and the provision of observers for joint operations by the Member States concerned.

#### Article 7

#### **Assistance to Member States**

In order to assist Member States to better fulfil their obligations under the rules of the common fisheries policy, the Agency shall in particular:

- (a) establish and develop a core curriculum for the training of the instructors of the fisheries inspectors of the Member States and provide additional training courses and seminars to those inspectors and other personnel involved in monitoring, control and inspection activities;
- (b) at the request of Member States, undertake the joint procurement of goods and services relating to control and inspection activities by Member States as well as to prepare for and coordinate the implementation by Member States of joint pilot projects;
- (c) elaborate joint operational procedures in relation to joint control and inspection activities undertaken by two or more Member States;
- (d) elaborate criteria for the exchange of means of control and inspection between Member States and between Member States and third countries and for the provision of such means by the Member States.

#### CHAPTER III

#### **OPERATIONAL COORDINATION**

#### Article 8

#### **Implementation of Community obligations relating to control and inspection**

The Agency shall, at the request of the Commission, coordinate control and inspection activities by Member States on the basis of international control and inspection programmes by establishing joint deployment plans.

*Article 9***Implementation of specific control and inspection programmes**

The Agency shall coordinate the implementation of the specific control and inspection programmes established in accordance with Article 34c of Regulation (EEC) No 2847/93 through joint deployment plans.

*Article 10***Content of joint deployment plans**

Each joint deployment plan shall:

- (a) fulfil the requirements of the relevant control and inspection programme;
- (b) give effect to the criteria, benchmarks, priorities and common inspection procedures determined by the Commission in control and inspection programmes;
- (c) seek to match the existing national means of control and inspection communicated pursuant to Article 11(2) with needs and organise their deployment;
- (d) organise the use of the human and material resources, with regard to the periods and zones in which these have to be deployed, including the operation of teams of Community inspectors from more than one Member State;
- (e) take account of the existing obligations of the Member States concerned in respect of other joint deployment plans, as well as any specific regional or local constraints;
- (f) define the conditions under which the means of control and inspection of a Member State may enter the waters under the sovereignty and jurisdiction of another Member State.

*Article 11***Notification of means of control and inspection**

1. Member States shall each year before 15 October notify the Agency of the means of control and inspection that it has available for the purpose of control and inspection in the following year.
2. Each Member State shall notify the Agency of the means with which it intends to execute the international control and

inspection programme or specific control and inspection programme by which it is concerned, no later than one month from the notification to the Member States of the Decision establishing any such programme.

*Article 12***Procedure for the adoption of joint deployment plans**

1. On the basis of the notifications provided for in Article 11(2) and within three months from the receipt of such notifications, the Executive Director of the Agency shall establish a draft joint deployment plan in consultation with the Member States concerned.

2. The draft joint deployment plan shall identify the means of control and inspection which could be pooled in order to implement the control and inspection programme to which the plan relates on the basis of the interest of the Member States concerned in the relevant fishery.

The interest in a fishery of a Member State shall be assessed by reference to the following criteria whose relative weighting shall depend on the specific features of each plan:

- (a) the relative extent of the waters subject to its sovereignty or jurisdiction, if any, that are covered by the joint deployment plan;
- (b) the quantity of fish landed on its territory in a given reference period as a proportion of the total landings from the fishery that is subject to the joint deployment plan;
- (c) the relative number of Community fishing vessels flying its flag (engine power and gross tonnage) that are involved in the fishery that is subject to the joint deployment plan in relation to the total number of vessels that are involved in that fishery;
- (d) the relative size of its quota allocation or, in the absence of a quota, its catch in a given reference period in respect of that fishery.

3. If, in the course of preparing a draft joint deployment plan, it is apparent that there are insufficient means of control and inspection available to fulfil the requirements of the relevant control and inspection programme, the Executive Director shall promptly notify the Member States concerned and the Commission.

4. The Executive Director shall notify the draft joint deployment plan to the Member States concerned and the Commission. If within fifteen working days of such notification the Member States concerned or the Commission have not raised an objection, the Executive Director shall adopt the plan.

5. If one or more of the Member States concerned or the Commission has raised an objection, the Executive Director shall refer the matter to the Commission. The Commission may make any necessary adjustments to the plan and adopt it in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

6. Each joint deployment plan shall be subject to an annual review by the Agency in consultation with the Member States concerned to take account of any new control and inspection programmes to which the Member States concerned are subject and any priorities determined by the Commission in the control and inspection programmes.

#### Article 13

##### Implementation of joint deployment plans

1. Joint control and inspection activities shall be performed on the basis of the joint deployment plans.
2. The Member States concerned by a joint deployment plan shall:
  - (a) make available those means of control and inspection that are committed for the joint deployment plan;
  - (b) appoint a single national point of contact/coordinator, who shall be conferred with sufficient authority to be able to respond in a timely manner to requests from the Agency that relate to the implementation of the joint deployment plan, and notify this to the Agency;
  - (c) deploy its pooled means of control and inspection in accordance with the joint deployment plan and the requirements mentioned in paragraph 4;
  - (d) provide the Agency on-line access to information necessary for the implementation of the joint deployment plan;
  - (e) cooperate with the Agency regarding the implementation of the joint deployment plan;
  - (f) ensure that any means of control and inspection, assigned to a Community joint deployment plan carry out their

activities in accordance with the rules of the common fisheries policy.

3. Without prejudice to Member States' obligations within the framework of a joint deployment plan established under Article 12, the command and control of the means of control and inspection that have been committed to a joint deployment plan shall be the responsibility of the competent national authorities in accordance with national law.

4. The Executive Director may define requirements for the implementation of a joint deployment plan adopted under Article 12. Such requirements shall remain within the limits of this plan.

#### Article 14

##### Assessment of joint deployment plans

The Agency shall undertake an annual assessment of the effectiveness of each joint deployment plan, as well as an analysis, on the basis of available evidence, of the existence of a risk that fishing activities are not compliant with applicable control measures. Such assessments shall be promptly communicated to the European Parliament, the Commission and the Member States.

#### Article 15

##### Fisheries that are not subject to control and inspection programmes

Two or more Member States may request the Agency to coordinate the deployment of their means of control and inspection in relation to a fishery or an area that is not subject to a control and inspection programme. Such coordination shall take place in accordance with control and inspection criteria and priorities agreed between the Member States concerned.

#### Article 16

##### Information network

1. The Commission, the Agency and the competent authorities of Member States shall exchange relevant information available to them regarding joint control and inspection activities within Community and international waters.

2. Each national competent authority shall take, in accordance with the relevant Community legislation, measures to ensure appropriate confidentiality of the information received by them under this Article in accordance with Article 37 of Regulation (EEC) No 2847/93.

*Article 17***Detailed rules**

Detailed rules for the implementation of this Chapter may be adopted in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

These rules may cover in particular the procedures for the preparation and adoption of draft joint deployment plans.

## CHAPTER IV

**INTERNAL STRUCTURE AND FUNCTIONING***Article 18***Legal status and principal office**

1. The Agency shall be a body of the Community. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency shall be at Vigo, Spain.

*Article 19***Staff**

1. The Staff Regulations of officials and the conditions of employment of other servants of the European Communities as laid down in Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(1)</sup> and the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and conditions of employment shall apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, shall adopt necessary detailed rules of application.
2. Without prejudice to Article 30, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Agency in respect of its own staff.
3. The Agency's staff shall consist of officials assigned or seconded by the Commission on a temporary basis and of other servants recruited by the Agency as necessary to carry out its tasks.

<sup>(1)</sup> OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 723/2004 (OJ L 124, 27.4.2004, p. 1).

The Agency may also employ officials seconded by Member States on a temporary basis.

*Article 20***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency.

*Article 21***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its servants in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.
4. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

*Article 22***Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community <sup>(2)</sup> shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

*Article 23***Creation and powers of the Administrative Board**

1. The Agency shall have an Administrative Board.
2. The Administrative Board shall:
  - (a) appoint and dismiss the Executive Director pursuant to Article 30;

<sup>(2)</sup> OJ 17, 6.10.1958, p. 385/58.

(b) adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States. The report shall be made public;

(c) adopt by 31 October each year, and taking into account the opinion of the Commission and the Member States, the work programme of the Agency for the coming year and forward it to the European Parliament, the Council, the Commission and the Member States.

The work programme shall contain the priorities of the Agency. It shall give priority to the duties of the Agency relating to control and surveillance programmes. It shall be adopted without prejudice to the annual Community budgetary procedure. In case the Commission expresses, within 30 days from the date of adoption of the work programme, its disagreement with that programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in a second reading;

(d) adopt the final budget of the Agency before the beginning of the financial year, adjusting it, where necessary, according to the Community contribution and any other revenue of the Agency;

(e) perform its duties in relation to the Agency's budget in accordance with Articles 35, 36 and 38;

(f) exercise disciplinary authority over the Executive Director;

(g) establish its rules of procedure which may provide for the establishment of sub-committees of the Administrative Board as necessary;

(h) adopt procedures necessary for the performance by the Agency of its tasks.

#### Article 24

##### Composition of the Administrative Board

1. The Administrative Board shall be composed of representatives of Member States and six representatives of the Commission. Each Member State shall be entitled to appoint one member. The Member States and the Commission shall appoint one alternate to each member who will represent the member in his/her absence.

2. Board members shall be appointed on the basis of their degree of relevant experience and expertise in the field of fisheries control and inspection.

3. The duration of office of each member shall be five years as from the date of appointment. The term of office may be renewed.

#### Article 25

##### Chairing of the Administrative Board

1. The Administrative Board shall elect a Chairperson from among the Commission representatives. The Administrative Board shall elect a Deputy Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson if he/she is prevented from attending to his/her duties.

2. The terms of office of the Chairperson and Deputy Chairperson shall be three years and shall expire when they cease to be members of the Administrative Board. The terms of office shall be renewable once.

#### Article 26

##### Meetings

1. The meetings of the Administrative Board shall be convened by its Chairperson. The agenda shall be determined by the Chairperson, taking into account the proposals of members of the Administrative Board and the Executive Director of the Agency.

2. The Executive Director and the representative appointed by the Advisory Board shall take part in the deliberations without the right to vote.

3. The Administrative Board shall hold an ordinary meeting at least once a year. In addition it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States represented on the Administrative Board.

4. When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the representative appointed by the Advisory Board. Detailed rules for the application of this provision may be laid down in the rules of procedure.

5. The Administrative Board may invite any person whose opinion may be of interest to attend its meetings as an observer.

6. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

7. The secretariat for the Administrative Board shall be provided by the Agency.

#### Article 27

##### Voting

1. The Administrative Board shall take its decisions by an absolute majority of votes.

2. Each member shall have one vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

#### Article 28

##### Declaration of Interests

The members of the Administrative Board shall make a declaration of interests indicating either the absence of any interests which might be prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing or whenever a conflict of interests may arise in relation to the items on the agenda. In the latter case the member concerned shall not be entitled to vote on any such items.

#### Article 29

##### Duties and powers of the Executive Director

1. The Agency shall be managed by its Executive Director. Without prejudice to the respective competencies of the Commission and the Administrative Board, the Executive Director shall neither seek nor take instructions from any government or any other body.

2. The Executive Director shall, in the performance of his/her tasks, give effect to the principles of the common fisheries policy.

3. The Executive Director shall have the following duties and powers:

(a) he/she shall prepare the draft work programme and submit it to the Administrative Board after consultation with the Commission and the Member States. He/she shall take the necessary steps for the implementation of the work

programme within the limits specified by this Regulation, its implementing rules and any applicable law;

(b) he/she shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the organisation and functioning of the Agency in accordance with the provisions of this Regulation;

(c) he/she shall take all necessary steps including the adoption of decisions concerning the responsibilities of the Agency under Chapters II and III including chartering and operation of means of control and inspection and the operation of an information network;

(d) he/she shall respond to requests from the Commission and to requests for assistance from a Member State pursuant to Articles 6, 7 and 15;

(e) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its operational objectives. On this basis the Executive Director shall prepare a draft general report each year and submit it to the Administrative Board. He/she shall establish regular evaluation procedures that meet recognised professional standards;

(f) he/she shall exercise in respect of the staff the powers laid down in Article 19(2);

(g) he/she shall draw up estimates of the Agency's revenue and expenditure in accordance with Article 35 and shall implement the budget in accordance with Article 36.

4. The Executive Director shall be responsible for his/her activities to the Administrative Board.

#### Article 30

##### Appointment and dismissal of the Executive Director

1. The Executive Director shall be appointed by the Administrative Board, on the grounds of merit and documented relevant experience in the field of the common fisheries policy and fisheries control and inspection, from a list of at least two candidates proposed by the Commission after a selection procedure, following publication of the post in the *Official Journal of the European Union*, and elsewhere, of a call for expressions of interest.

2. Power to dismiss the Executive Director shall lie with the Administrative Board. The Board shall deliberate on this item at the request of the Commission or of one third of its members.

3. The Administrative Board shall take the decisions under paragraphs 1 and 2 by a two thirds majority of members.

4. The term of office of the Executive Director shall be five years. The term of office may be extended once for a further five years on a proposal of the Commission and be approved by a two thirds majority of members of the Administrative Board.

#### Article 31

### Advisory Board

1. The Advisory Board shall be composed of representatives of the Regional Advisory Councils provided for by Article 31 of Regulation (EC) No 2371/2002, on the basis of one representative designated by each Regional Advisory Council. Representatives may be replaced by alternates, appointed at the same time.

2. Members of the Advisory Board may not be members of the Administrative Board.

The Advisory Board shall appoint one of its members to take part in the deliberations of the Administrative Board without the right to vote.

3. The Advisory Board shall at the request of the Executive Director advise him/her in the performance of his/her duties under this Regulation.

4. The Advisory Board shall be chaired by the Executive Director. It shall meet at the invitation of the Chair not less than once per year.

5. The Agency shall provide the logistic support necessary for the Advisory Board and provide the Secretariat for its meetings.

6. The members of the Administrative Board may attend the meetings of the Advisory Board.

#### Article 32

### Transparency and communication

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.

2. The Administrative Board shall, within six months of the date of its first meeting, adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.

3. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that the public and any interested party are rapidly given objective,

reliable and easily understandable information with regard to its work.

4. The Administrative Board shall lay down the necessary internal rules for the application of paragraph 3.

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice, under Articles 195 and 230 of the Treaty.

6. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001.

#### Article 33

### Confidentiality

1. Members of the Administrative Board, the Executive Director and members of the staff of the Agency, even after their duties have ceased, shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty.

2. The Administrative Board shall lay down internal rules regarding the practical arrangements for implementing the confidentiality requirements referred to in paragraph 1.

#### Article 34

### Access to information

1. The Commission shall have full access to all information collected by the Agency. The Agency shall furnish any information and an evaluation of that information to the Commission at its request and in the form specified by it.

2. The Member States concerned by any particular operation of the Agency shall have access to the information collected by the Agency in relation to such operation subject to the conditions which may be established in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

## CHAPTER V

### FINANCIAL PROVISIONS

#### Article 35

### Budget

1. The Agency's revenues shall consist of:
  - (a) a contribution from the Community entered in the general budget of the European Union (Commission section);

- (b) charges for services provided by the Agency to Member States in accordance with Article 6;
- (c) charges for publications, training and/or any other services provided by the Agency.

2. The Agency's expenditure shall cover staff and administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year and shall forward it to the Administrative Board, together with a draft establishment plan.

4. Revenue and expenditure shall be in balance.

5. Each year the Administrative Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.

6. This statement of estimates, which shall include a draft establishment plan, together with the provisional work programme, shall by 31 March at the latest be forwarded by the Administrative Board to the Commission.

7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the 'budgetary authority') together with the preliminary draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.

10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

12. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of six weeks from the date of notification of the project.

#### Article 36

#### Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.

2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> (the 'Financial Regulation').

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Administrative Board for an opinion.

5. The Administrative Board shall deliver an opinion on the Agency's final accounts.

6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Administrative Board, to the European Parliament, the Council, the Commission and the Court of Auditors.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

7. The final accounts shall be published.

8. The Agency shall establish an internal audit function which must be performed in compliance with the relevant international standards.

9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Administrative Board.

10. The Executive Director shall submit to the European Parliament, at the request of the latter, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the Financial Regulation.

11. The European Parliament, upon a recommendation from the Council, shall, before 30 April of the second following year, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the year in question.

#### Article 37

##### Combating fraud

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Agency.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall issue, without delay, the appropriate provisions to all of its staff.

3. The decisions concerning funding and the implementing agreements and instruments relating to them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for allocating it.

#### Article 38

##### Financial provisions

The Administrative Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's financial rules. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless specifically required for the Agency's operation and with the Commission's prior consent.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

#### CHAPTER VI

##### FINAL PROVISIONS

#### Article 39

##### Evaluation

1. Within five years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Administrative Board shall commission an independent external evaluation of the implementation of this Regulation. The Commission shall make available to the Agency any information the Agency considers relevant to the evaluation.

2. Each evaluation shall assess the impact of this Regulation, the utility, relevance and effectiveness of the Agency and its working practices and the extent to which it contributes to the achievement of a high level of compliance with rules made under the common fisheries policy. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.

3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.

#### Article 40

##### Start of the Agency's activities

The Agency shall commence its activities within twelve months of the date of entry into force of this Regulation.

#### Article 41

##### Amendment

Article 34c of Regulation (EEC) No 2847/93 shall be replaced by the following:

#### 'Article 34c

1. The Commission, in accordance with the procedure laid down in Article 36 and in concert with the Member States concerned, shall determine which fisheries involving two or more Member States shall be subject to specific control and inspection programmes and the conditions governing such programmes.

The specific control and inspection programme shall determine the fisheries involving two or more Member States subject to the programme and the conditions governing such fisheries.

Each specific control and inspection programme shall state its objectives, common priorities and procedures as well as benchmarks for control and inspection activities, the expected results of the measures specified and the strategy required to ensure that control and inspection activities are as uniform, effective and economical as possible. Each programme shall identify the Member States concerned.

Specific control and inspection programmes may not last longer than three years or any period laid down for this purpose in a recovery plan adopted pursuant to Article 5 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy (\*) or a management plan adopted pursuant to Article 6 of that Regulation.

Specific control and inspection programmes shall be implemented by the Member States concerned on the basis of joint

deployment plans established under Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EC) No 2847/93 establishing a control system applicable to the common fisheries policy (\*\*).

2. The Commission shall control and evaluate the performance of each specific control and inspection programme and shall report to the European Parliament and the Council in accordance with Article 27(4) of Regulation (EC) No 2371/2002.

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(\*) OJ L 358, 21.12.2002, p. 59.

(\*\*) OJ L 128, 21.5.2005, p. 1.

#### Article 42

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following 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 Luxembourg, 26 April 2005.

*For the Council*

*The President*

F. BODEN

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**COMMISSION REGULATION (EC) No 769/2005****of 20 May 2005****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 <sup>(1)</sup>, 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 May 2005.

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

Done at Brussels, 20 May 2005.

*For the Commission*

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> 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 Commission Regulation of 20 May 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables**

*(EUR/100 kg)*

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	052	93,8
	204	82,6
	212	97,2
	999	91,2
0707 00 05	052	124,5
	204	51,2
	999	87,9
0709 90 70	052	85,2
	624	50,3
	999	67,8
0805 10 20	052	41,7
	204	37,7
	212	55,7
	220	44,3
	388	50,1
	400	42,8
	528	45,4
	624	58,6
	999	47,0
0805 50 10	388	65,6
	400	69,6
	528	59,4
	624	61,7
	999	64,1
0808 10 80	388	87,9
	400	116,3
	404	78,7
	508	60,8
	512	69,6
	524	57,3
	528	68,5
	720	70,9
	804	94,0
999	78,2	

<sup>(1)</sup> 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 770/2005

of 20 May 2005

**on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal <sup>(1)</sup>,

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 2247/2003 of 19 December 2003 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 2286/2002 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) <sup>(3)</sup>, and in particular Article 5 thereof,

Whereas:

- (1) Article 1 of Regulation (EC) No 2247/2003 provides for the possibility of issuing import licences for beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.
- (2) The applications for import licences submitted between 1 and 10 May 2005, expressed in terms of boned meat, in accordance with Regulation (EC) No 2247/2003, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.
- (3) The quantities in respect of which licences may be applied for from 1 June 2005 should be fixed within the scope of the total quantity of 52 100 t.
- (4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and

veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries <sup>(4)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

The following Member States shall issue on 21 May 2005 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

United Kingdom:

- 30 t originating in Botswana,
- 800 t originating in Namibia;

Germany:

- 350 t originating in Botswana,
- 425 t originating in Namibia.

*Article 2*

Licence applications may be submitted, pursuant to Article 4(2) of Regulation (EC) No 2247/2003, during the first 10 days of May 2005 for the following quantities of boned beef and veal:

Botswana:	15 606 t,
Kenya:	142 t,
Madagascar:	7 579 t,
Swaziland:	3 337 t,
Zimbabwe:	9 100 t,
Namibia:	9 125 t.

*Article 3*

This Regulation shall enter into force on 21 May 2005.

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Commission Regulation (EC) No 1899/2004 (OJ L 328, 30.10.2004, p. 67).

<sup>(2)</sup> OJ L 348, 21.12.2002, p. 5.

<sup>(3)</sup> OJ L 333, 20.12.2003, p. 37. Regulation as last amended by Regulation (EC) No 1118/2004 (OJ L 217, 17.6.2004, p. 10).

<sup>(4)</sup> OJ L 302, 31.12.1972, p. 28. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

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

Done at Brussels, 20 May 2005.

*For the Commission*  
J. M. SILVA RODRÍGUEZ  
*Director-General for Agriculture and  
Rural Development*

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**COMMISSION REGULATION (EC) No 771/2005****of 20 May 2005****imposing a provisional anti-dumping duty on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> (the 'basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE****1. Initiation of the present proceeding**

- (1) In August 2004, the Commission announced, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of stainless steel fasteners and parts thereof originating in the People's Republic of China (the PRC), Indonesia, Malaysia, the Philippines, Taiwan, Thailand and Vietnam and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged by the European Industrial Fasteners Institute (EIFI), on behalf of Community producers representing a major proportion, in this case more than 50 %, of the total Community production of stainless steel fasteners and parts thereof. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

**2. Parties concerned and verification visits**

- (3) The Commission officially advised the applicant Community producers, their association, other Community producers, the exporting producers, importers, suppliers and users known to be concerned and the representatives of the exporting countries of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) Given the large number of known exporting producers in the PRC and Taiwan, Community producers and importers, sampling for the determination of dumping and injury was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation.
- (5) In order to allow exporting producers in the PRC and Vietnam to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and the authorities of the two countries.
- (6) The Commission sent questionnaires to all parties known to be concerned and received replies from five sampled exporters in Taiwan, four sampled Community producers, two Community producers not selected in the sample, from two exporting producers in the PRC, two in Indonesia, two in Malaysia, two in the Philippines, four in Thailand, one in Vietnam, from four sampled importers, one Community user and from one upstream supplier in the Community.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1, Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ C 212, 24.8.2004, p. 2.

- (7) A German importer/distributor association (Fachverband des Schrauben-Großhandels e.V.) also made their views known in writing. All parties who so requested within the set time limit and indicated that there were particular reasons why they should be heard, were granted a hearing.
- (8) The Commission sought and verified all the information it deemed necessary for the purpose of the preliminary determination of dumping, resulting injury and Community interest and carried out investigations at the premises of the following companies:

*Community producers*

- Bontempi Vibo SpA, Brescia, Italy
- Bulnava Srl, Milano/Suello, Italy
- Inox Viti Snc, Grumello Del Monte, Italy
- Reisser Schraubentechnik GmbH, Ingelfingen-Criesbach, Germany.

*Exporting producers and related companies in the exporting countries*

PRC

- Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang.

Indonesia

- PT. Shye Chang Batam Indonesia, Batam.

Malaysia

- Tigges Stainless Steel Fasteners (M) Sdn. Bhd, Ipoh, Chemor
- Tong Heer Fasteners Co. Sdn., Bhd, Penang.

The Philippines

- Rosario Fasteners Corporation, Cavite
- Philshin Works Corporation, Cavite.

Taiwan

- Arrow Fasteners Co. Ltd and its related company Header Plan Co. Inc., Taipei
- Jin Shing Stainless Ind. Co. Ltd, Tao Yuen
- Min Hwei Enterprise Co. Ltd, Pingtung
- Tong Hwei Enterprise, Co. Ltd and its related companies Tong Jou Enterprise Co. Ltd and Winlink Fasteners Co., Ltd, Kaohsiung
- Yi Tai Shen Co. Ltd, Tainan.

Thailand

- A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya
- Bunyat Industries 1998 Co. Ltd, Samutsakorn
- Dura Fasteners Company Ltd, Samutprakarn
- Siam Screws (1994) Co. Ltd, Samutsakorn.

Related importer in the Community

— Tigges GmbH & Co. KG, Wuppertal, Germany.

- (9) The investigation of dumping covered the period from 1 July 2003 to 30 June 2004 (investigation period or IP). The examination of injury covered the period from 1 January 2001 to 30 June 2004 (period considered).

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. General

- (10) Stainless steel fasteners and parts thereof (SSF) are bolts, nuts and screws of stainless steel which are used to mechanically join two or more elements. Screws are fastener products with an external threading on the shank. They can either be used without any other part and fixed into the wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head shapes (cup, socket, flat, hexagonal, etc.), shank lengths and diameters. The shank may be totally or partially threaded. SSF are used by a variety of consumer industries and in a wide range of final applications where resistance to both atmospheric and chemical corrosion is necessary and where hygiene may also be essential, such as equipment for processing and storing food products, plants in the chemical industry, manufacture of medical equipment, public lighting equipment, shipbuilding, etc.

### 2. The product concerned

- (11) SSF, i.e. bolts, nuts and screws of stainless steel which are used to mechanically join two or more elements, are normally declared within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30. There are many types of SSF, each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made.
- (12) In the course of the investigation, it was alleged by importers and by a German importer/distributor association that nuts should be excluded from the scope of the investigation, because of an alleged lack of production in the Community.
- (13) This issue was considered. In the course of the provisional investigation, doubts arose as to whether nuts could indeed be regarded as a single product with other SSF. In this respect, a number of aspects need to be explored further, e.g. whether and to what extent bolts and nuts are marketed together as a system, to what extent these types are developed together etc. Further examination will also be needed to what extent the producers in the Community are able to offer these systems. On this basis, it was provisionally decided not to include nuts normally declared within CN code 7318 16 30 in the definition of the product concerned.
- (14) In this respect, it is pertinent to note that virtually all imports from the Philippines appear to consist of nuts. Therefore, should it be decided at the definitive stage of the investigation that nuts are to be excluded from the product scope, the proceeding will have to be terminated with regard to the Philippines.
- (15) It was further claimed by importers and the German importer/distributor association that the product scope should be limited to CN codes 7318 15 61 and 7318 15 70, i.e. hexagon socket head screws of stainless steel and hexagon bolts of stainless steel, because there is no sufficient production of all other kinds of SSF in the Community. However, the investigation confirmed that these other types of SSF are produced in the Community. Thus, the claim could not be accepted.
- (16) It was found that all types, other than nuts, fall under the broad definition of fasteners and have the same basic physical and technical characteristics, the same basic uses and the same distribution channels.

- (17) Consequently, all different types of SSF, with the exception of nuts, normally declared within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the PRC, Indonesia, Malaysia, Taiwan, Thailand and Vietnam form provisionally one product for the purpose of the present investigation (the product concerned).

### 3. Like product

- (18) The Commission found that any SSF produced and sold on the respective domestic markets in the PRC, Indonesia, Malaysia, Taiwan, Thailand and Vietnam and those exported to the Community from the countries concerned as well as those produced and sold in the Community by the Community industry have the same physical, chemical and technical characteristics and uses. It is therefore provisionally concluded that all are like products within the meaning of Article 1(4) of the basic Regulation.

## C. SAMPLING

### 1. Sampling for exporting producers in the PRC and Taiwan

- (19) In view of the large number of exporting producers in the PRC and Taiwan, sampling was envisaged in the notice of initiation, in accordance with Article 17(1) of the basic Regulation.
- (20) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned. The authorities in the PRC and Taiwan were also consulted.

#### 1.1. Pre-selection of cooperating exporting producers

- (21) Only two exporting producers in the PRC came forward and provided the requested information within the three weeks period set by Article 17(2) of the basic Regulation. In these circumstances, the Commission decided that sampling was not necessary for exporting producers in the PRC.
- (22) Forty nine companies in Taiwan came forward and provided the requested information within the given deadline set by Article 17(2) of the basic Regulation. However, only 37 exporting producers reported exports to the Community during the investigation period. Those exporting producers that exported the product concerned to the Community during the investigation period and expressed a wish to participate in the sample, were initially considered as cooperating companies and were taken into account in the selection of the sample. Eleven out of the 12 remaining companies were either traders or exporting producers without exports to the Community during the investigation period. Therefore, these companies cannot be taken into account for the purposes of a dumping calculation. It should finally be noted that one of the remaining 12 companies was an exclusive exporting producer of nuts and is consequently not concerned by the provisional measures.
- (23) The cooperating exporting producers represented around 78 % of total exports of the product concerned from Taiwan to the Community.
- (24) Exporting producers which did not make themselves known within the aforesaid period were considered as non-cooperating with the investigation.

#### 1.2. Selection of the sample

- (25) According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports, which could reasonably be investigated within the time available. On this basis, five Taiwanese exporting producers were selected for the sample. The selected companies represented around 47 % of Taiwanese exports to the Community and around 57 % of domestic sales in Taiwan. In accordance with Article 17(2) of the basic Regulation, the Taiwanese authorities were consulted and raised no objection.

- (26) The thirty two cooperating exporting producers, which were not finally retained in the sample, were informed through the Taiwanese authorities that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.
- (27) Questionnaires were sent for completion to all five sampled companies and replies from all of them were received within the given deadlines.

### 1.3. Individual examination

- (28) Two exporting producers in Taiwan which have not been included in the sample have claimed an individual dumping margin and duty rate, if any, with a view to the application of Articles 9(6) and 17(3) of the basic Regulation. In view of the large number of countries and parties involved and the time constraints, the Commission concluded that no individual examination of exporting producers in Taiwan could be granted because this would be unduly burdensome and would prevent completion of the investigation in good time. Furthermore, it should be noted that one of the exporting producers requesting such individual examination was only producing nuts, which, as stated above, are provisionally excluded from the scope of this proceeding.

### 2. Sampling of Community producers

- (29) In view of the large number of Community producers, sampling was envisaged in the notice of initiation in accordance with Article 17(1) of the basic Regulation. For these purposes, the Commission requested Community producers to provide information concerning production and sales of the like product.
- (30) Eight Community producers came forward and provided the requested information within the given deadline set by Article 17(2) of the basic Regulation. In accordance with Article 17(1) of the basic Regulation, the Commission selected four companies in two Member States, three in Italy and one in Germany, for the sample as they represented the largest representative volume of production in the Community (around 50 %), which could be reasonably investigated within the time available. In accordance with Article 17(2) of the basic Regulation, the association of Community producers was consulted and raised no objection. In addition, the remaining four producers, situated in Belgium, Germany, Italy and the United Kingdom, were requested to provide certain general data for the injury analysis. All sampled Community producers and two other Community producers cooperated and sent questionnaire replies within the deadlines. However, one of the two non-sampled cooperating companies was an exclusive producer of certain special nuts which have provisionally been excluded from the scope of the investigation and, therefore, this company was not considered further for the provisional findings.

### 3. Sampling of Importers

- (31) In view of the large number of importers in the Community, sampling was envisaged in the notice of initiation in accordance with Article 17(1) of the basic Regulation. For these purposes, the Commission requested importers to provide information concerning imports and sales of the product concerned.
- (32) On the basis of the information received, the Commission selected five importers in four Member States, two in Germany, one in Italy, one in Sweden and one in the United Kingdom, for the sample. Two known associations of importers were consulted. These importers represented the largest representative volume of sales of known importers in the Community (around 37 %), which could be reasonably investigated within the time available. Four importers cooperated and sent questionnaire replies. The Swedish importer failed to cooperate further and only two importers provided complete replies with all information requested.

**D. DUMPING****1. Market economy treatment (MET)**

- (33) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and Vietnam, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a 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, in line with International Accounting Standards (IAS) and applied for all purposes;
  3. there are no significant distortions carried over from the 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.
- (34) Two Chinese producers and one Vietnamese producer requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines.
- (35) One Chinese producer was in a start-up phase and did not have either audited or any other sort of financial accounts. The Commission concluded that the lack of such accounts prevents the determination on whether criteria 2 and 3 are met. Consequently, it was concluded that the company did not meet the requirements for MET. The company was informed accordingly and raised no objection.
- (36) For the other Chinese exporting producer, the Commission sought all information deemed necessary and verified all information submitted in the MET claim at the premises of the company in question.
- (37) The verification established that the company did not have one clear set of basic accounting records which are prepared and audited in line with IAS. Even though the accounts had been audited by independent external auditors, numerous problems and discrepancies persisted. Throughout the investigation, the company submitted diverging versions of their accounts, all of which contained significant errors like closing and opening balances of consecutive financial years that did not correspond (IAS 1), or alleged changes in accounting policy that were not properly substantiated by any kind of disclosure in the accounts (IAS 8). It has not been possible to reconcile important figures such as sales turnover with other company records. Moreover, the company reported significant profits when it actually appeared to be making significant losses and the accounts presented did not contain proper consolidated turnover figures covering all its operations. The reports of the auditors were completely silent on all the problems identified above.

In view of the above, criterion 2 was not fulfilled. Consequently, it was concluded that the company did not fulfil the conditions set out in Article 2(7)(c) of the basic Regulation.

- (38) For the Vietnamese producer the Commission sought all information deemed necessary.

- (39) As far as criterion 1 is concerned, it was concluded that this was not met. In particular, it was established that there was a certain quantity restriction on export and domestic sales. This restriction existed in the business investment licence, the application for the issuance of the licence as well as in the company's charter. Finally, all decisions on matters involving the lease of land policy are explicitly determined by the State in the company's business investment licence. The company also enjoys a waiver on the payment of land lease until its basic construction plans will be completed, as well as an additional waiver from the payment of the land lease for a number of years. Under these circumstances, it was found that the company had not demonstrated that its business decisions and costs were made in response to market conditions, and without significant state interference.
- (40) As far as criterion 2 is concerned, it was concluded that it was not met because contrary to IAS 1 the financial statements of 2002 were not published in good time and they were not properly audited.
- (41) It was consequently concluded that the company did not fulfil the conditions set out in Article 2(7)(c) of the basic Regulation.
- (42) The exporting producers concerned in China and Vietnam as well as the Community industry were given an opportunity to comment on the above findings.
- (43) Two exporting producers contested the determination and argued that they should be granted MET.
- (44) The Chinese exporting producer argued that the accounting policies followed were in line with the Chinese corporate accounting rules and practice.
- (45) In this respect, it is noted that according to the criteria of Article 2(7)(c) of the basic Regulation, the Commission shall examine whether the accounts of the companies are prepared and audited in line with the IAS. The compliance or non-compliance with the Chinese standards is not decisive in the context of a MET assessment. Furthermore, the findings of the verification constitute either non-compliance with basic accounting principles or significant accounting changes that need to be documented and explained properly.
- (46) Notwithstanding the above, it is noted that the Chinese Accounting System for Business Enterprises, in its Article 155, requires companies to present complete and detailed notes to accounting statements. Given the absence of any meaningful notes or explanations in the accounts of the company, it appears that the audit was not only breaching the IAS but it was also not in compliance with the Chinese standards.
- (47) Consequently, it was concluded that the comments of the Chinese exporting producer were not justified and MET could not be granted.
- (48) The Vietnamese exporting producer argued that the export/domestic sales ratio, which appears in the business investment licence, is not binding and only mirrors the special tax incentives that the Vietnamese Government has introduced in order to encourage investments. Hence, no state authority allegedly prescribes how much the company can sell on the export and domestic market.
- (49) In this respect, it is noted that no direct correlation exists between the provisions concerning the issuance of a licence and the provisions concerning tax and financial issues. Furthermore, the business investment licence itself did not contain any indication that the export sales ratio would be set purely for taxation purposes.

- (50) As regards the lease of land, the company argued that the land lease procedure followed in Vietnam was not contrary to the market economy principles and that all special provisions in relation to the land lease policy were merely incentives used by the Vietnamese Government to attract foreign investments. The exporting producer alleged that the lease amount itself was a kind of 'tax' and that it had bought the land from another company which was the 'original landlord'.
- (51) It is noted that there is no free market of land in Vietnam. According to a government circular submitted by the company, the price of land is set by the State. As regards the argument concerning the purchase of land from the 'original landlord', this term is rather misleading since there is no private ownership of land in Vietnam. In fact, the company referred to compensation for the right to use the land paid to the previous tenant, which was determined unilaterally by the State. Moreover, no evidence was submitted which could support the allegation that the land lease is a kind of 'tax'. In any event, as set out in recital 39, the company has not been paying any land lease for a number of years.
- (52) As regards criterion 2, the company argued that the auditors had spotted that it had published its Financial Statements for 2002 later than the IAS prescribed, but it received an approval from the Ministry of Finance to ignore this discrepancy.
- (53) It is noted that this allegation was not confirmed by the auditor's report. On the contrary, the auditors stated that the audit was concluded in accordance with the IAS and no reservation on the accounts or explanation in a form of a note were included on why the company deviated from a clearly defined IAS practice. Moreover, the fact that a letter issued by the Ministry of Finance can allegedly change or relax a clearly stipulated law policy proves that the IAS were not applied properly in practice.
- (54) Consequently, it was concluded that criteria 1 and 2 were not met and, therefore, MET should not be granted.

## 2. Individual treatment (IT)

- (55) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.
- (56) As far as the PRC is concerned, both cooperating exporting producers which requested MET had also claimed IT in the event that they were not to be granted MET.
- (57) On the basis of information available, it was found that the two companies met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (58) It was therefore concluded that IT should be granted to the following exporting producers in the PRC:
- Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City,
  - Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang.
- (59) As far as Vietnam is concerned, the exporting producer who requested MET also claimed IT in the event that it was not to be granted MET.

- (60) On the basis of information available, it was found that this company did not meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

In particular, it was established, as set out under the analysis of MET above, that the export sales quantities were not freely determined by the company, but were fixed by the State in the company's business licence. Therefore, it was found that the company did not meet the conditions for being granted IT.

- (61) Two other Vietnamese exporting producers also claimed IT within the given deadlines. However, one submitted an incomplete reply to the questionnaire and the other did not submit any reply to the questionnaire.

The two companies did not provide the requested information or any other explanation. Consequently, the Commission concluded that these companies had not demonstrated that they met the conditions for being granted IT.

### 3. Normal value

#### 3.1. *Analogue country*

- (62) According to Article 2(7)(a) of the basic Regulation, in economies in transition normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in an analogue country.
- (63) In the notice of initiation, India was proposed as an appropriate analogue country for the purpose of establishing normal value for the PRC and Vietnam. The Commission invited all interested parties to comment on this.

Various interested parties submitted comments proposing as analogue country Taiwan, Thailand, the Republic of Korea or Italy. The Commission contacted known companies in India, which was initially envisaged as an appropriate analogue country. However, no questionnaire replies or any meaningful comments were received from producers in India. With regard to the Republic of Korea and Italy, the parties which have suggested them did not provide any specific information. Therefore, they have not been considered further as alternative analogue countries.

As regards Thailand, it is noted that during the course of the investigation it became apparent from the cooperating producers that there were no domestic sales in the ordinary course of trade in Thailand and, therefore, it could not be considered as an analogue country.

However, Taiwan, which is one of the biggest worldwide producers of the product concerned, was found to have a representative domestic market, where a wide range of products and a large number of suppliers ensured a sufficient level of competition. The investigation established that significant domestic sales in the ordinary course of trade were made by four cooperating sampled exporting producers in Taiwan.

- (64) In view of the above, it is concluded that Taiwan constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

### 3.2. Methodology applied for the determination of normal value

#### 3.2.1. Global representativeness

- (65) In accordance with Article 2(2) of the basic Regulation, the Commission first examined in each exporting country whether the domestic sales of the product concerned to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

#### 3.2.2. Product type comparability

- (66) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community. The criteria used are the following: CN code, type of raw material used, DIN number (i.e. code number under which the product is classified within the DIN nomenclature), diameter in millimetres, length in millimetres.

#### 3.2.3. Product type specific representativeness

- (67) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

#### 3.2.4. Ordinary course of trade test

- (68) The Commission subsequently examined whether the domestic sales of each company in each exporting country could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (69) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the investigation period.
- (a) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.
- (b) For those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question.
- (c) For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

#### 3.2.5. Normal value based on actual domestic price

- (70) For the types sold for export to the Community by investigated companies where the requirements set out in sections 3.2.3 to 3.2.4(a) and (b) above were met, normal value was based, for the corresponding product types, on the actual prices paid or payable, by independent customers in the domestic market of the country under investigation, during the IP, as set out in Article 2(1) of the basic Regulation.

### 3.2.6. Normal value based on constructed value

- (71) For product types falling under section 3.2.4(c) above, as well as for the product types which were not sold by the exporting producer in representative quantities on the domestic market of the countries under investigation, as mentioned in Section 3.2.3 above, normal value had to be constructed.

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

In the countries under investigation where no exporting producers having domestic sales of the like product or of the same general category of products in the ordinary course of trade during the IP existed, normal value was constructed using the cost of manufacturing of the exporting producer concerned, if necessary corrected where appropriate. To this cost of manufacturing, it was provisionally considered appropriate to add the weighted average SG & A expenses incurred and profit realised by four Taiwanese cooperating sampled exporting producers on their domestic sales of the like product during the IP, pursuant to Article 2(6)(c) of the basic Regulation.

### 3.2.7. Economies in transition

- (72) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the PRC and Vietnam was established on the basis of verified information received from the producers in the analogue country, i.e. on the basis of prices paid or payable on the domestic market of Taiwan for comparable product types, where these were found to be made in the ordinary course of trade, or on constructed normal values, where no domestic sales in the ordinary course of trade for comparable product types were found.

As a result, normal value was established as the weighted average domestic sales price to unrelated customers or constructed value per type by the four cooperating sampled producers in Taiwan.

### 3.3. Determination of normal value

#### (a) People's Republic of China

- (73) Since no MET was granted, normal value for the PRC was established as set out in recital 72.

#### (b) Indonesia

- (74) For the sole Indonesian cooperating exporting producer, it was established that no domestic sales of the like product existed. Therefore, normal value had to be constructed in accordance with the provisions set in recital 71.

- (75) It is noted that another Indonesian exporting producer had initially replied to the questionnaire sent by the Commission, but later on it terminated its business activities thus making any verification of its questionnaire response impossible. It was therefore concluded that this particular company did not cooperate anymore with the investigation. The company and the Indonesian authorities were informed accordingly and made no comment on this development.

#### (c) Malaysia

- (76) For the two cooperating Malaysian exporting producers, which were based in free trade zones, it was established that the sales of the like product reported as domestic were mainly made to free trade zones or to bonded warehouses, i.e. sales for export by other independent parties.

Consequently, it was concluded that no representative domestic sales existed during the IP for these exporting producers and therefore normal value had to be constructed in accordance with the provisions set in recital 71.

(d) T a i w a n

- (77) For four exporting producers normal value was established in line with the methodology set out in recitals 65 to 71.
- (78) In the course of the investigation it was established that, of these four cooperating exporting producers, two were related. These companies sold the like product on the domestic market both through a related selling company and directly to unrelated customers. It is noted that, pursuant to the third paragraph of Article 2(1) of the basic Regulation where the product types are sold to a related selling company, these sales may be considered as not made in the ordinary course of trade. For this reason, and in order to establish normal value, the two companies were requested well in advance of the on-the-spot verification to submit the prices charged by the related reselling company to the first independent customer. It was established on the spot that the two cooperating producers could not provide such information. The reselling company purchased the product concerned from various sources, including the two exporting producers and sold it to end-users, retailers and distributors. Nevertheless, the reselling company was not in a position to demonstrate through its accounting records which products were bought from the two cooperating producers and hence could not give resale prices for such products when sold to independent customers.

Based on the above, the Commission provisionally concludes that sales of the product concerned made on the domestic market through the related reselling company should be disregarded in the calculation of normal value, as the remaining domestic sales could still be considered as representative.

- (79) For the fifth sampled exporting producer in Taiwan, it was established that no domestic sales of the like product existed. Therefore, normal value was constructed as set out in recital 71. However, serious discrepancies were found during the course of the investigation in the submitted information. Firstly, the company did not classify the different types of the product concerned according to the clear specifications given by the Commission and, therefore, no comparisons with domestic sales of other producers in Taiwan for a significant number of product types could be established. Secondly, it was not possible during the on-the-spot verification to reconcile the cost of production for the product concerned, as reported in the questionnaire response, with the cost of goods sold in the profit and loss table of the reply to the questionnaire or any accounting record of the company. Nor could a link be established between the purchases of raw materials and the reported cost of production per product type. The company submitted new cost of production following the verification visit which could not be supported by verified information.

Due to the aforesaid developments and pursuant to Article 18 of the basic Regulation, the company was informed that certain information could not be used for the dumping calculations and that provisional findings would be partially established on the basis of facts available. Consequently, in order to determine constructed normal value, the Commission used an adjusted cost of production for the exported product types which could be clearly identified on the basis of the available specifications. To this cost of production was added, the weighted average SGA expenses and profit on domestic sales of the other four cooperating exporting producers in Taiwan.

(e) T h a i l a n d

- (80) For the four Thai cooperating exporting producers, it was established that no representative domestic sales in the ordinary course of trade for the like product existed. Therefore, normal value had to be constructed in accordance with the provisions set in recital 71.

(f) *Vietnam*

- (81) Since no MET was granted to any Vietnamese exporting producer, normal value for Vietnam was established as set out in recital 72.

**4. Export Price**

(a) *People's Republic of China*

- (82) Exports of the two cooperating exporting producers granted IT were made directly to independent customers in the Community. Export prices were therefore based on prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(b) *Indonesia*

- (83) Exports of the sole cooperating exporting producer were made directly to independent customers in the Community. The export price was therefore based on prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(c) *Malaysia*

- (84) For one exporting producer which made export sales to the Community directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

- (85) The other Malaysian exporting producer made exports of the product concerned to independent customers and to one related party in the Community. For the former exports, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation. For the exports made to the related party, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, including duties and taxes, incurred between importation and resale, and of profits normally accruing by independent cooperating importers, so that a reliable export price could be established.

(d) *Taiwan*

- (86) The exporting producers made export sales to the Community either directly to independent customers or through trading companies located in Taiwan.

- (87) Where export sales to the Community were made directly to independent customers, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

- (88) Where export sales to the Community were made through trading companies, export prices were established on the basis of the prices of the product when sold for export to the trading companies by the producers concerned in accordance with Article 2(8) of the basic Regulation.

- (89) One exporting producer, which was also selling the product concerned via trading companies in Taiwan, was not in a position to present any supporting documentation which could clarify the destinations of its products sold via traders. Such sales were therefore disregarded and the export price was based only on direct exports to independent customers in the Community.

(e) *Thailand*

- (90) The exports of the four cooperating exporting producers were made directly to independent customers in the Community. The export price was therefore based on prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(f) *Vietnam*

- (91) As was explained under the analysis of IT above, only one company cooperated in Vietnam, but it was not granted IT. Furthermore, this company was operating as a subcontractor of a Taiwanese related company, which cooperated with the investigation. The Taiwanese company was the owner of the raw materials and it was performing all functions related to export sales. However, it was not able to demonstrate through its accounts that the export prices to independent customers, as reported in the reply to the questionnaire of the Vietnamese subcontractor, concerned products manufactured in Vietnam and exported to the Community. Therefore, such prices cannot be used as export prices from Vietnam to the Community. The company was informed accordingly. Since no other source was available, export prices were provisionally based on Eurostat import statistics for all exporting producers.

**5. Comparison**

- (92) The comparison between normal value and export price was made on an ex-factory basis.
- (93) 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 prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions have been granted where applicable and justified.

**6. Dumping margins**

*6.1. General methodology*

- (94) Pursuant to Article 2(11) and (12) dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.
- (95) The dumping margin for cooperating exporting producers, who made themselves known in accordance with Article 17 of the basic Regulation, but were not examined individually, has been established on the basis of the weighted average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.
- (96) For those exporting producers which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.
- (97) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics.
- (98) Where the level of non-cooperation was high, i.e. more than 20 %, it was considered appropriate to set the dumping margin for the non-cooperating exporting producers at a level higher than the highest dumping margin established for the cooperating exporting producers. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the investigated country generally having dumped at a higher level than any cooperating exporting producer. In such cases, the dumping margin was therefore established at a level which corresponds to the weighted average dumping margin of the most sold representative product types of the cooperating exporting producers with the highest dumping margins.
- (99) Where the level of cooperation was high, it was considered appropriate to set the dumping margin for any non-cooperating exporting producers at the level of the highest dumping margin found for a cooperating exporting producer in the country concerned, since there was no reason to believe that any non-cooperating exporting producer had dumped at a lower level.

- (100) It has been the consistent practice of the Commission to consider related exporting producers or exporting producers belonging to the same group as one single entity for the determination of a dumping margin and thus establish one single dumping margin for them. This is in particular because calculating individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related exporting producers to channel their exports to the Community through the company with the lowest individual dumping margin.

In accordance with this practice, the two related exporting producers in Taiwan belonging to the same group were regarded as one single entity and attributed one single dumping margin. For these exporting producers, it was decided to first calculate a dumping margin per company and then to establish a weighted average of these dumping margins which was attributed to the group as a whole.

## 6.2. Dumping margins

### (a) People's Republic of China

- (101) There was significant non-cooperation of exporting producers in the PRC (around 85 %).
- (102) The provisional dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:
- Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City 21,5 %
  - Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang 12,2 %
  - all other companies 27,4 %.

### (b) Indonesia

- (103) There was significant non-cooperation of exporting producers in Indonesia (around 60 %). The provisional dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:
- PT. Shye Chang Batam Indonesia, Batam 9,8 %
  - all other companies 24,6 %.

### (c) Malaysia

- (104) There was 100 % cooperation of exporting producers in Malaysia. No provisional dumping margins were found for both cooperating exporting producers (Tigges Stainless Steel Fasteners (M) Sdn. Bhd., Ipoh, Chemor and Tong Heer Fasteners Co. Sdn., Bhd, Penang) and, therefore, no provisional measures should be imposed on imports from Malaysia. Should these findings be confirmed in the further course of the investigation, the proceeding shall be terminated as regards Malaysia.

### (d) The Philippines

- (105) As stated in recital 14, it was found that virtually all exports from the Philippines to the Community appear to consist of nuts. Since it was provisionally concluded that nuts should be excluded from the product scope, no dumping margin has been established and no provisional measures should be imposed on imports from the Philippines.

### (e) Taiwan

- (106) For one sampled Taiwanese exporting producer, the dumping margin was established by using partially facts available in accordance with Article 18(1) of the basic Regulation. Therefore, in accordance with Article 9(6) of the basic Regulation, its dumping margin has been disregarded in calculating the weighted average dumping margin for the non-sampled cooperating exporting producers.

- (107) Two sampled exporting producers were related and, therefore, one dumping margin was calculated for them.
- (108) There was significant non-cooperation of exporting producers in Taiwan (around 22). The provisional dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:
- Arrow Fasteners Co. Ltd, Taipei 15,2 %
  - Jin Shing Stainless Ind. Co. Ltd, Tao Yuan 18,8 %
  - Min Hwei Enterprise Co. Ltd, Pingtung 16,1 %
  - Tong Hwei Enterprise, Co. Ltd, Kaohsiung 16,1 %
  - Yi Tai Shen Co. Ltd, Tainan 11,4 %
  - cooperating exporting producers not in the sample 15,8 %
  - all other companies 23,6 %.
- (f) Thailand
- (109) There was 100 % cooperation of exporting producers in Thailand. The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:
- A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya 15,9 %
  - Bunyat Industries 1998 Co. Ltd, Samutsakorn 10,8 %
  - Dura Fasteners Company Ltd, Samutprakarn 14,6 %
  - Siam Screws (1994) Co. Ltd, Samutsakorn 11,0 %
  - all other companies 15,9 %.
- (g) Vietnam
- (110) The provisional dumping margin for all companies in Vietnam, expressed as a percentage of the cif import price at the Community border duty unpaid, is 7,7 %.

## E. INJURY

### 1. Community production

- (111) The investigation established in the framework of the sampling exercise that the like product was manufactured by seven producers in the Community during the investigation period (see recital 30). However, two of them have not cooperated further with the investigation. Furthermore, in the context of the complaint there was a number of other small producers in the Community, which are also not cooperating with the investigation.
- (112) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding the production of the seven producers known from the sampling exercise plus the volume of production of the other small non-cooperating producers known from the complaint.

## 2. Definition of the Community industry

- (113) The five cooperating producers referred to in recital 30 represented 54 % of the total Community production of the like product. These companies, therefore, constitute the Community industry within the meaning of Article 4(1) of the basic Regulation and are referred to as such hereafter. Four of these companies, representing the largest representative volume of production, have been sampled in accordance with Article 17(1) of the basic Regulation. They are referred to as the 'sampled Community producers'.
- (114) Due to the use of sampling, the injury indicators have been established partially for the Community industry as a whole and partially for the sampled Community producers only. The injury analysis with regard to market share, production, capacity and capacity utilisation, sales volume and value, growth, stocks, employment and productivity is based on data of the Community industry as a whole. Otherwise, data with regard to the sampled Community producers have been used (transaction prices, investment & return on investment, wages, profitability, cash flow and ability to raise capital).

## 3. Analysis of the situation on the Community market

### 3.1. Introduction

- (115) The relevant Eurostat statistics for CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 together with data obtained from the verified questionnaire responses of the Community industry were used in the evaluation of volume and price trends. It should be recalled that nuts are, at this provisional, stage not considered as part of the product scope. Therefore, data relating to this item (CN code 7318 16 30) have not been integrated in the present analysis.
- (116) Community industry data were obtained from the verified questionnaire responses of the cooperating Community producers.
- (117) From September 1997 until February 2003 anti-dumping measures with regard to SSF imports from the PRC, India, Malaysia, the Republic of Korea, Taiwan and Thailand were in place <sup>(1)</sup>.

### 3.2. Community consumption

- (118) In calculating the apparent Community consumption of the product concerned and the like product, the Commission added:
- the volume of total imports of the product concerned and the like product into the Community as reported by Eurostat,
  - the volume of sales of the like product in the Community produced by the Community industry,
  - and, on the basis of the information contained in the complaint, the estimated volume of sales of the like product in the Community by the other known Community producers.

As shown in the table below, the Community consumption of the product concerned and the like product increased by 24 % over the period considered.

Consumption in kg	2001	2002	2003	IP
Product concerned and like product	63 907 918	70 113 833	75 854 601	79 427 756
<i>Index</i>	100	110	119	124

<sup>(1)</sup> Council Regulation (EC) No 393/98 (OJ L 50, 20.2.1998, p. 1).

### 3.3. Imports of the product concerned into the Community

#### 3.3.1. Cumulation

- (119) The dumped imports of SSF originating in the PRC, Indonesia, Taiwan, Thailand and Vietnam (the countries concerned) have been assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It is recalled that imports from Malaysia were not found to be dumped and imports from the Philippines concerned only nuts, which have been provisionally excluded from the scope of this proceeding. Therefore, these imports have not been considered with the dumped imports. The margins of dumping established in relation to the imports from each country concerned are more than *de minimis* as defined in Article 9(3) of the basic Regulation, i.e. 2 % of the export prices, and the volume of imports from each country concerned is above the threshold of 1 % market share set by Article 5(7) of the basic Regulation. Average import prices from all countries concerned constantly dropped over the period considered. Furthermore, the SSF imported from the countries concerned were alike in all respects, they are interchangeable and are marketed in the Community through comparable sales channels and under similar commercial conditions, thus competing with each other and with the SSF produced in the Community. Therefore, it is provisionally concluded that a cumulative assessment of the effects of the imports is appropriate.

#### 3.3.2. Volume, price and market share of imports from the countries concerned

Imports (in kg)	2001	2002	2003	IP
Product concerned	13 988 700	14 303 000	22 428 600	27 399 700
<i>Index</i>	100	102	160	196

- (120) The volume of imports of the product concerned increased significantly throughout the period considered. Imports in the investigation period were 96 % greater than in 2001.

Average import price per kg (in EUR)	2001	2002	2003	IP
Product concerned	3,53	2,90	2,50	2,41
<i>Index</i>	100	82	71	68

- (121) The average import price of the product concerned decreased continuously over the period considered. Overall price levels in the investigation period were 32 % lower than in 2001.

EC market share	2001	2002	2003	IP
Product concerned	21,9 %	20,4 %	29,6 %	34,5 %
<i>Index</i>	100	93	135	158

- (122) The share of the countries concerned on the Community market fell from 2001 to 2002 by 7 %. However, starting in 2003, the countries concerned increased their activities strongly and rapidly on the Community market, overall resulting in 58 % growth of their market share in the period considered.

### 3.3.3. Price undercutting

- (123) For the determination of price undercutting, price data referring to the investigation period was analysed. To this end, sales prices of the Community industry to their unrelated customers on an ex-works basis have been compared with sales prices of the exporting producers of the countries concerned to their first independent customers in the Community on a cif import basis, in both cases after deduction of discounts, rebates, commissions and taxes.
- (124) The Community industry's sales prices and the cif import prices of the exporting producers were compared at the same level of trade, namely traders/distributors within the Community market, on the basis of weighted average prices. The comparison was made separately per type of SSF and stainless steel used. During the investigation period, virtually all sales of the exporting producers in the Community were made via traders/distributors.
- (125) The results of the comparison, when expressed as a percentage of the Community industry's sales prices during the investigation period, showed significant price undercutting margins (up to 59,2 %). These price undercutting margins indicate price pressure exerted by the imports from the countries concerned on the Community market.
- (126) Per country concerned the undercutting margins were as follows:

Country	Undercutting margin
PRC	from 8,6 to 59,2 %
Indonesia	from 28 to 31,9 %
Taiwan	from 7 to 38,9 %
Thailand	from 13,1 to 44,4 %
Vietnam	28,2 %

### 3.4. Economic situation of the Community industry

#### 3.4.1. Production, capacity and capacity utilisation

	2001	2002	2003	IP
Production (kg)	18 808 577	24 601 594	21 672 591	21 688 461
<i>Index</i>	100	131	115	115
Capacity (kg)	36 210 417	45 866 665	43 931 762	45 081 275
<i>Index</i>	100	127	121	124
Capacity utilisation	51,9 %	53,6 %	49,3 %	48,1 %
<i>Index</i>	100	103	95	93

- (127) After an increase in output of 31 % in 2002, surpassing growth of Community consumption in relative terms, the production of the Community industry subsequently declined to remain since 2003 stable on a level 15 % higher than in 2001. It is noted that this level of increase lags behind the 24 % growth of Community consumption over the period considered.
- (128) The production capacity of the Community industry, again with a peak in 2002, has increased by 24 %, reflecting the investments made by the sampled Community producers.

- (129) The capacity utilisation rate of the Community industry, after a slight improvement in 2002, subsequently decreased, overall by 7 % over the period considered.

### 3.4.2. Sales volume, sales price, market share and growth

Sales in the Community of the like product	2001	2002	2003	IP
Volume (kg)	20 691 876	25 326 440	23 362 418	22 115 591
<i>Index</i>	100	122	113	107
Average sales price (EUR/kg)	2,83	2,47	2,67	2,99
<i>Index</i>	100	87	94	106
Market share	32,4 %	36,1 %	30,8 %	27,8 %
<i>Index</i>	100	112	95	86

- (130) The sales volume of the Community industry increased by 7 % over the period considered. However, it should be noted that, after an increase by 22 % in 2002, the sales volume of the Community industry constantly decreased. Moreover, this increase is significantly lower than the 24 % growth of Community consumption and by far lagging behind the 96 % increase of imports from the countries concerned over the period considered.
- (131) Average sales prices of the Community industry increased by 6 % over the period considered. After a decrease by 13 % between 2001 and 2002, prices have been constantly increasing.
- (132) Over the period considered market share of the Community industry decreased by 14 %. After an increase by 12 % between 2001 and 2002, the market share has been constantly decreasing. A comparison of the situation in the IP with 2002 reveals even a 26 % decline. At the same time, the share of imports from the countries concerned increased strongly.
- (133) As can be seen by the trends for production and sales volume in absolute terms, the Community industry experienced growth over the period considered, but still a decline since 2002. Furthermore, market share declined over the period considered, indicating that in relative terms, i.e. compared with competitors, the Community industry did not grow.

### 3.4.3. Profitability

	2001	2002	2003	IP
Profitability Community industry	2,0 %	- 2,7 %	- 0,7 %	4,3 %
<i>Index</i>	100	- 134	- 37	214

- (134) Over the period considered profitability of the sampled Community producers improved. After making small profits in 2001, profitability decreased resulting in a loss-making situation in 2002. Between 2002 and 2003 profitability improved, but the Community industry still remained loss-making. In the period 2003-IP the Community obtained its best profitability result over the period considered and achieved on average a profit margin of 4,3 %. This might appear at first sight positive but requires further evaluation in its proper context.

- (135) In fact, even in the IP the sampled Community producers on average did not achieve the minimum profit margin considered adequate and achievable in the absence of dumping, i.e. 5 % (see recital 178) and were remote from the profitability level the Community industry reached in 1995, i.e. 9,1 % <sup>(1)</sup> achieved before dumped imports arrived on the market.
- (136) In addition, it is pertinent to consider that such improved profitability in the IP was (i) achieved at the expense of decreasing market share and (ii) essentially the result of a strong speculative increase of the price for the main cost driver, i.e. stainless steel. The anticipated increase of stainless steel prices, enabled the Community industry to achieve higher prices for the like product, by using temporarily in their production stocks of comparatively cheap stainless steel procured before the speculative increase in price. However, this cost advantage was brought to an end once the existing stocks of raw material were used up and new steel had to be procured at significantly increased price levels. Furthermore, such speculative phase is generally not of a lasting nature and customers, notably large distributors with strong negotiating power, restart exercising severe price pressure again, once a stagnation or downturn of steel prices is perceived. Consequently, the increased profitability is essentially due to very benevolent market conditions for the Community industry mainly in the second phase of the IP and not of a sustainable nature.

#### 3.4.4. Stocks

	2001	2002	2003	IP
Stocks (kg)	7 965 825	6 425 035	4 194 493	3 800 389
<i>Index</i>	100	81	53	48

- (137) The Community industry's year-end stock levels strongly dropped by 52 % over the period considered. This can be explained by: (i) increased 'on demand' production (in that case stocks becomes of limited relevance) and (ii) a decrease in production since 2002.

#### 3.4.5. Investments, return on investment, cash flow and the ability to raise capital

	2001	2002	2003	IP
Investments	1 595 223	1 977 279	2 776 586	1 039 989
<i>Index</i>	100	124	174	65
Return on investment	8,6 %	- 11,1 %	- 3,0 %	19,3 %
<i>Index</i>	100	- 129	- 34	224
Cash flow	7 170 700	- 979 445	3 178 050	4 602 063
<i>Index</i>	100	- 14	44	64

- (138) From 2001 to 2003 the sampled Community producers continually increased their investments, in particular because of replacement of obsolete machinery and equipment. In the investigation period investment decreased by 35 % as compared to the beginning of the period considered. However, this decline in the IP can partially be explained by significant investments in previous years. Investments for the manufacture of the like product are necessary to maintain and improve competitiveness and improve environmental and security standards.

<sup>(1)</sup> OJ L 243, 5.9.1997, p. 17, recital 69.

- (139) Return on investment improved over the period considered. This (i) confirms the appropriateness of investment decisions taken by the management; and (ii) reflects the improved profitability levels of the sampled Community producers during the IP. However, as already set out in the context of the profitability analysis, the improved profitability can largely be explained by special, non-lasting circumstances (speculative steel price development during the IP). Furthermore, the fact that part of the sampled Community producers increasingly used leased machinery for their production explains the relatively better performance of the return on investment indicator compared with the profitability indicator.
- (140) Although the cash flow of the sampled Community producers generated by the sales of the like product improved since 2002, over the period considered it decreased by 36 %.
- (141) The sampled Community producers did not experience any significant difficulty to raise capital as demonstrated by their ability to make investments during the period considered.

#### 3.4.6. Employment, productivity and wages

	2001	2002	2003	IP
Employment	266	285	269	252
<i>Index</i>	100	107	101	95
Productivity (in kg per worker)	70 643	86 463	80 427	86 159
<i>Index</i>	100	122	114	122
Labour cost EUR	7 429 616	8 347 464	8 266 487	7 870 657
<i>Index</i>	100	112	111	106
Labour cost EUR per employee	33 887	34 704	36 341	37 350
<i>Index</i>	100	102	107	110

- (142) The Community industry increased employment in 2002. However, subsequently employment constantly decreased, overall by 5 % over the period considered. This negative development coincides with the reduced production since 2002.
- (143) Productivity, as expressed in kg of production per worker, improved by 22 % over the period considered, indicating a determination and capability to maintain and improve competitiveness.
- (144) Wages per worker increased by 10 % over the period considered. Such increase reflects rewards for improved productivity and compensation for inflation with regard to employees' remuneration. Furthermore, in absolute terms labour costs decreased since 2002.

#### 3.4.7. Magnitude of dumping and recovery from past dumping

- (145) Given in particular the volume of dumped imports from the countries concerned, the margins of dumping found cannot be considered to be negligible.

- (146) Until the beginning of 2003, anti-dumping measures were in place with regard to imports of the product concerned from the PRC, India, Malaysia, the Republic of Korea, Taiwan and Thailand. However, the Community industry did not fully recover from past dumping, as in particular shown by the evolution of market share, sales volume and employment. This became particularly apparent after the expiry of the previous anti-dumping measures.

#### 3.4.8. Conclusion on injury

- (147) Over the period considered the Community industry increased production and sales volume, was able to reduce its stocks and it continually invested. It did not experience difficulties to raise capital and improved productivity. Labour costs in absolute terms decreased. Furthermore, the Community industry was able to increase its prices in the IP so as to improve its profitability and return on investment.
- (148) Yet, these positive aspects require evaluation in their context. Higher prices and improved profitability were gained at the expense of significant losses in market share for the Community industry, i.e. 14 % over the period considered and even 26 % since 2002. In particular, due to the availability of cheap dumped imports, customers opted for alternative sources of supply and the Community industry was not able to keep track.
- (149) Furthermore, and in line with the findings on market share, over the period considered, growth in production (15 %) and sales volume (7 %) of the Community industry did not keep pace with the significantly more favourable development of consumption on the Community market (24 %). Employment in the Community industry dropped by 5 %, which, in fact, is the explanation for reduced labour costs. In addition, the profitability situation for the sampled Community producers cannot, overall, be considered to be satisfactory. For the most part of the period considered, it was clearly insufficient (losses or insufficient profit margin). Although profitability of the sampled Community producers improved in the IP (4,3 % profit margin), this (i) is still lagging behind the minimum margin of 5 % that the Community industry could be expected to obtain in the absence of injurious dumping and (ii) can largely be attributed to non-lasting effects of rising steel prices. The negative situation of the Community industry is further reflected in the picture displayed by the trend for cash flow.
- (150) As a result, overall the negative trend indicators outweigh the positive trends and it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(1) of the basic Regulation.

### F. CAUSATION

#### 1. Introduction

- (151) According to Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of the product concerned originating in the countries concerned have caused material injury to the Community industry. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

#### 2. Effect of the dumped imports

- (152) The countries concerned have, since 2003, strongly improved their market position. It can clearly be observed that their increase in market share by 58 % coincides with a decrease for the Community industry. Moreover, the import volume from the countries concerned (96 % increase) grew much stronger than the consumption on the Community market (24 %). Finally, the average import price of the countries concerned was since 2003, as a consequence of unfair trade in the form of dumping following the expiry of the anti-dumping measures, significantly lower than the price level of the Community industry, thus exercising price pressure.

It was therefore provisionally established that the dumped imports from the countries concerned had a considerable negative impact on the situation of the Community industry during the period considered, in particular in terms of market share and sales volume.

### 3. Impact of other factors

#### 3.1. Imports from other third countries

Third country imports	2001	2002	2003	IP
Volume (in 000 kg)				
Switzerland	3 901	3 218	3 971	3 970
<i>Index</i>	100	82	102	102
Japan	2 825	2 600	3 062	1 612
<i>Index</i>	100	92	108	57
Malaysia	1 242	437	1 057	1 456
<i>Index</i>	100	35	85	117
India	35	21	701	1 148
<i>Index</i>	100	61	2 021	3 307
Norway	681	384	406	438
<i>Index</i>	100	56	60	64
Republic of Korea	40	36	109	221
<i>Index</i>	100	89	271	549
Philippines	89	28	59	80
<i>Index</i>	100	31	66	89
Rest of the world	2 833	2 011	2 150	2 574
<i>Index</i>	100	71	76	91
Average import price per kg (EUR)				
Switzerland	10,48	11,47	9,82	9,90
<i>Index</i>	100	109	94	94
Japan	5,52	4,68	3,99	7,55
<i>Index</i>	100	85	72	137
Malaysia	3,20	3,15	2,62	2,70
<i>Index</i>	100	98	82	84
India	6,20	10,69	1,76	1,91
<i>Index</i>	100	172	28	31
Norway	2,33	1,61	2,36	2,89
<i>Index</i>	100	100	100	100
Republic of Korea	5,04	5,61	2,65	2,72
<i>Index</i>	100	111	53	54
Philippines	3,38	4,06	3,45	3,47
<i>Index</i>	100	120	102	103
Rest of the world	11,70	12,37	10,23	8,34
<i>Index</i>	100	106	87	71

- (153) Imports of the product under consideration from countries, other than the countries concerned, decreased overall. In fact, the market share of such other imports declined by 20 % over the period considered. Furthermore, on average the import price of those other countries was significantly higher as compared with the price levels from the countries concerned.
- (154) Two exporters submitted that imports from India, the Republic of Korea and Norway would break any causal link that may exist between the material injury that might be sustained by the Community industry and the dumped imports from the countries concerned.
- (155) However, on the basis of the facts at hand, imports from the Republic of Korea (IP: 221 tonnes at 2,72 EUR/kg on average) and Norway (IP: 438 tonnes at 2,89 EUR/kg on average) can both in terms of their small volume and their price levels not explain the injury caused to the Community industry. It is further noted that imports from Norway decreased during the period considered by 36 %.
- (156) With regard to India though, it can be observed that starting in 2003 imports increased considerably (IP: 1 147,6 tonnes) at low prices (average 1,91 EUR/kg). It cannot be ruled out that in the IP those imports from India could have had a certain negative impact, in particular in terms of price pressure on the state of the Community industry. Yet, given the relatively small amount of the Indian import volume in comparison to the import volume from the countries concerned (27 400 tonnes on average at 2,41 EUR/kg), it was concluded that the impact of the Indian imports (market share in the IP 1,4 %) was not such as to break the causal link of the dumped imports and the material injury suffered by the Community industry. Imports from India in isolation cannot explain the significant loss of market share sustained by the Community industry and, in relation to the growth in consumption, its much less favourable increase of sales.
- (157) Furthermore, despite the allegations of two exporters, it is not discriminatory in the meaning of Article 9(5) of the basic Regulation that imports from India were not subject to the present investigation. In this context, it should be recalled that over the period considered imports from India have been until the IP negligible in the meaning of Article 5(7) of the basic Regulation. Only in the IP have imports increased but even then, they remain relatively minor (1,4 % market share). Furthermore, it should be noted that the Commission had no *prima facie* evidence that such imports from India were dumped when this proceeding was initiated.
- (158) Since imports from the Philippines and Malaysia are now excluded from the present investigation, it was further considered if those imports have broken the causal link between dumped imports and the material injury suffered by the Community industry. However, after the exclusion of nuts from the product scope, imports from the Philippines of other SSF were clearly negligible (IP market share 0,1 %) and at a rather high price level (3,47 EUR/kg). On this basis, no relevant injurious impact could have been asserted. Imports from Malaysia were also lower in volume and on average higher in prices (IP: 1 456 tonnes at 2,70 EUR/kg) in comparison to the imports from the countries concerned. Furthermore, the market share of Malaysian imports decreased by 6 % over the period considered. Consequently, although Malaysian imports could have had a negative impact on the state of the Community industry, it is provisionally concluded that this was not such as to neutralise the injurious effects caused by dumped imports from the countries concerned.
- (159) It was therefore provisionally concluded that imports from countries other than the countries concerned have not broken the causal link between the material injury suffered by the Community industry and the dumped imports from the countries concerned.

### 3.2. *Development of consumption of the Community market*

- (160) Consumption of the product under investigation on the Community market increased by 24 % during the period considered. Thus, the injury suffered by the Community industry cannot be attributed to a contraction of demand on the Community market.

### 3.3. *Competitiveness of the Community industry*

- (161) The Community industry is an important competitor for the like product as demonstrated by its market share and has constantly invested to maintain the state-of-the-art of its production. Indeed, productivity per worker even improved by 22 % over the period considered. Contrary to the allegations made by four exporters, this improved productivity of the Community industry, which coincides with its investments, shows that its investment policy cannot explain the material injury it suffered. To the contrary, in view of the improved productivity, the investments contributed to minimise injury. Consequently, no evidence was found that lack of competitiveness could have broken the causal link between imports from the countries concerned and the injury suffered by the Community industry.

### 4. **Conclusion on causation**

- (162) Overall, it was therefore provisionally concluded that the imports from the five countries concerned taken together have caused material injury to the Community industry. No other factor has been established which has broken this causal link.

## G. **COMMUNITY INTEREST**

### 1. **Introduction**

- (163) It was examined whether compelling reasons existed which would lead to the conclusion that it is not in the Community interest to provisionally impose measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the likely impact of measures on all parties concerned in the investigation was considered. In order to assess whether it is in the interest of the Community to introduce measures, questionnaires were sent to users and importers of the product concerned and to upstream suppliers of raw materials used in producing the like product.

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

- (164) The investigation has shown that the Community industry is viable and able to compete under fair market conditions. As set out above, the Community industry has significant spare capacity to produce the like product. Usage of this spare capacity would be beneficial for improving its sales and market share, for increased employment and, by means of augmented economies of scale, eventually for a sustainable adequate profitability. However, such improvements are prevented, in particular, by the continuous price pressure exerted by the dumped imports of the product concerned on the Community market. The imposition of anti-dumping measures would alleviate the effects of such unfair price pressure.
- (165) It is considered that without measures to correct the negative effects of the dumped imports, the Community industry will continue to face price undercutting and thus price depression with its adverse effects, in particular, on the industry's market share and sales volume. Eventually, this could even put the viability of the Community industry at risk. Consequently, it is considered that the imposition of measures would be in the interest of the Community industry.

### 3. **Interest of the importers/distributors**

- (166) Importers/distributors have a virtually exclusive role as intermediaries between producers (in and outside the Community) and users of SSF. Their negotiating power and their capacity to stock large quantities of SSF have a strong impact on the prices of SSF.

- (167) Four of the sampled importers/distributors sent questionnaire replies. Only two importers, though, provided complete replies. These two importers accounted for around 14 % of Community imports of the product concerned during the IP. In addition, a German importer/distributor association made comments. Further, a hearing with importers/distributors and this association was held.
- (168) Importers/distributors in the Community are not in favour of the imposition of measures. The cooperating importers and their association argued that the imposition of measures will increase prices for users whilst allegedly the product concerned and the like product produced by the Community industry is not always comparable. Furthermore, such measures would be to the detriment of their business and their employees.
- (169) However, on the basis of the information received, it appears that importers/distributors purchase the product under investigation from a variety of sources in and outside the Community, including from the Community industry. Since there are no fundamental quality or product type differences between the product imported from the countries concerned and the like product obtained from any other sources, it is provisionally considered that the importers/distributors in the Community would have no difficulty in obtaining the product if anti-dumping measures are imposed, in particular, in view of the significant number of alternative suppliers. Furthermore, the importers did not substantiate their claim that the imposition of anti-dumping measures would have any significant impact on employment, especially that import activities are not labour intensive. Concerning the increase in prices that would result from the imposition of provisional anti-dumping duties, it is noted that the anti-dumping measures in place from 1997 to 2003 did not put the economic situation of the importers/distributors at risk. Furthermore, the profit margins of the importers appear, on the basis of the received questionnaire replies, over the period considered well above the profitability of the Community industry. In such circumstances, it is not expected that any increase on prices, because of the imposition of measures, would automatically be passed through to users.
- (170) Although importers/distributors are not in favour of measures, it can be concluded on the basis of the information available that any advantage they may gain from not having anti-dumping measures imposed are outweighed by the interest of the Community industry in having the unfair and injurious trading practices from the countries concerned redressed.

#### **4. Interest of upstream suppliers**

- (171) In order to assess the likely effect that anti-dumping measures could have on the upstream suppliers of the Community industry, questionnaires were sent to all such known suppliers. In total, nine questionnaires were sent out and one reply was received. This upstream supplier, a stainless steel producer, is in favour of the imposition of measures. Although the Community industry is not one of the most important customers of this upstream supplier, this business still contributes to its employment and profitability. If the Community industry would curb or even stop production of the like product, upstream suppliers would lose some of their business.
- (172) Therefore, and in the absence of any information to the contrary, it is concluded that the imposition of anti-dumping measures would be in the interests of upstream suppliers.

#### **5. Interest of users and consumers**

- (173) Consumer associations have neither made themselves known nor provided any information in accordance with Article 21(2) of the basic Regulation. Therefore, and since utilisation of SSF essentially takes place in the assembly of further downstream products, the analysis has been limited to the effect of measures on users. SSF are used in a wide variety of sectors, *inter alia*, automotive, ship-building, construction, chemical, pharmaceutical, medical and foodstuffs. Questionnaires were sent to 12 known Community users of the product concerned. The Commission requested, amongst other information, their comments on whether the imposition of anti-dumping measures would be in the interest of the Community and how these measures would affect them. One questionnaire reply was received by a manufacturer of rolling stock vehicles. It pointed out that the product under investigation accounts for less than 1 % of the total costs of its finished products.

- (174) Taking into consideration that users could obtain the product under investigation not only from the countries concerned but from other sources as well, and given the marginal impact of SSF on the costs of downstream products, no adverse users' interest of tantamount importance was established.

## 6. Conclusion

- (175) Having examined the various interests involved, it is provisionally concluded that, from an overall Community interest perspective, no interest outweighs the Community industry's interest to provisionally impose measures with the aim to eliminate trade distorting effects resulting from dumped imports.

## H. PROVISIONAL ANTI-DUMPING MEASURES

- (176) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, it is considered appropriate to introduce provisional anti-dumping measures in order to prevent further injury being caused to the Community industry by the dumped imports. For the purpose of determining the level of these measures, account was taken of the dumping margins found during the investigation period and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

### 1. Injury elimination level

- (177) The necessary price increase to eliminate injury was determined on a per-company basis by comparing the weighted average import price of the product concerned with the non-injurious price of the like product sold by the Community industry on the Community market. The price difference was expressed as a percentage of the cif import value.
- (178) The non-injurious price has been obtained by taking the weighted cost of production of the Community industry together with a profit margin of 5 %. This is provisionally considered to be the profit margin that the Community industry could achieve in the absence of dumped imports. It reflects the achievable profit margin for similar product groups of the Community industry not subject to unfair competition, e.g. fasteners which do not fall under the CN codes of the product scope of the present investigation.

### 2. Level of the provisional anti-dumping duty

- (179) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed on imports from the countries concerned. This duty should be imposed at the level of the dumping margins found or the injury elimination level, if the latter is lower (Article 7(2) of the basic Regulation).
- (180) With regard to the level of duty, in the case of two cooperating exporting producers (one in Taiwan and one in the PRC) the injury elimination level was found to be lower than the dumping margin. In these cases, the level of the duty should be restricted by the injury elimination level. In all other cases, the level of the duty should be set at the level of the dumping margin found. The rates of the provisional anti-dumping duty for the countries concerned should be as follows:

Country	Exporting producer	AD duty rate
The PRC	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4 %
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2 %
	All other companies	27,4 %
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8 %
	All other companies	24,6 %
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2 %
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8 %
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1 %
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1 %
	Yi Tai Shen Co. Ltd, Tainan	11,4 %
	Cooperating exporting producers not in the sample	15,8 %
	All other companies	23,6 %
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	15,9 %
	Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8 %
	Dura Fasteners Company Ltd, Samutprakarn	14,6 %
	Siam Screws (1994) Co. Ltd, Samutsakorn	11,0 %
	All other companies	15,9 %
Vietnam	All companies	7,7 %

- (181) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, 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'.
- (182) 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<sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

#### I. FINAL PROVISION

- (183) 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,

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, and 7318 15 70 originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.

2. The rate of the provisional duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the Taiwanese exporting producers listed in the Annex shall be 15,8 % (TARIC additional code A649).

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

Country	Exporting producer	AD duty rate (%)	TARIC additional code
The People's Republic of China	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4	A650
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2	A651
	All other companies	27,4	A999
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8	A652
	All other companies	24,6	A999
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2	A653
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8	A654
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1	A655
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1	A656
	Yi Tai Shen Co. Ltd, Tainan	11,4	A657
	All companies other than the above and those listed in the Annex	23,6	A999
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	15,9	A658
	Bunyat Industries 1998 Co. Ltd, Samut-sakorn	10,8	A659
	Dura Fasteners Company Ltd, Samut-prakarn	14,6	A660
	Siam Screws (1994) Co. Ltd, Samut-sakorn	11,0	A661
	All other companies	15,9	A999
Vietnam	All companies	7,7	—

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

Without prejudice to Article 20 of Council 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 one month of the date of entry into force of this Regulation.

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

#### *Article 3*

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European 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, 20 May 2005.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

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## ANNEX

**(TARIC additional code A649)**

A-STAINLESS INTERNATIONAL CO LTD, Taipei  
BOLTUN CORPORATION, Tainan  
CHAEN WEI CORPORATION, Taipei  
CHIAN SHYANG ENT CO LTD, Chung-Li City  
CHONG CHENG FASTENER CORP., Tainan  
DIING SEN FASTENERS & INDUSTRIAL CO LTD, Taipei  
DRAGON IRON FACTORY CO LTD, Kaohsiung  
EXTEND FORMING INDUSTRIAL CORP. LTD, Lu Chu  
FORTUNE BRIGHT INDUSTRIAL CO LTD, Lung Tan Hsiang  
FWU KUANG ENTERPRISES CO LTD, Tainan  
HSIN YU SCREW ENTERPRISE CO LTD, Taipin City  
HU PAO INDUSTRIES CO LTD, Tainan  
J C GRAND CORPORATION, Taipei  
JAU YEOU INDUSTRY CO LTD, Kangshan  
JOHN CHEN SCREW IND CO LTD, Taipei  
KUOLIEN SCREW INDUSTRIAL CO LTD, Kwanmiao  
KWANTEX RESEARCH INC, Taipei  
LIH LIN ENTERPRISES & INDUSTRIAL CO LTD, Taipei  
LIH TA SCREW CO LTD, Kweishan  
LU CHU SHIN YEE WORKS CO LTD, Kaohsiung  
M & W FASTENER CO LTD, Kaohsiung  
MULTI-TEK FASTENERS & PARTS MANUFACTURER CORP., Tainan  
NATIONAL AEROSPACE FASTENERS CORP., Ping Jen City  
QST INTERNATIONAL CORP., Tainan  
SEN CHANG INDUSTRIAL CO LTD, Ta-Yuan  
SPEC PRODUCTS CORP., Tainan  
SUMEEKO INDUSTRIES CO LTD, Kaohsiung  
TAIWAN SHAN YIN INTERNATIONAL CO LTD, Kaohsiung  
VIM INTERNATIONAL ENTERPRISE CO LTD, Taichung  
YEA-JANN INDUSTRIAL CO LTD, Kaohsiung  
ZONBIX ENTERPRISE CO LTD, Kaohsiung  
ZYH YIN ENTERPRISE CO LTD, Kaohsiung

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**COMMISSION REGULATION (EC) No 772/2005****of 20 May 2005****concerning the specifications for the coverage of the characteristics and the definition of the technical format for the production of annual Community statistics on steel for the reference years 2003 to 2009****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*

1. The specifications for the coverage of the characteristics shall be as laid down in the Annex I of this Regulation.

Having regard to Regulation (EC) No 48/2004 of the European Parliament and the Council of 5 December 2003 <sup>(1)</sup> and in particular Article 7 thereof,2. In these specifications, references to company accounts use the headings laid down in Article 9 and Article 23 of Council Directive 78/660/EEC <sup>(2)</sup> for the purposes of presentation of the balance sheet and the profit and loss account, respectively.

Whereas:

*Article 2*

(1) Regulation (EC) No 48/2004 established a common framework for the production of annual Community statistics on steel for the reference years 2003 to 2009.

The technical format referred to in Article 6.2 of Regulation (EC) No 48/2004 shall be as laid down in Annex II to this Regulation.

(2) Pursuant to point (a) of Article 7 of Regulation (EC) No 48/2004, implementing measures are necessary to specify the coverage of the characteristics required.

*Article 3*

(3) Pursuant to point (b) of Article 7 of Regulation (EC) No 48/2004, implementing measures are necessary to define the technical format for the transmission of annual Community statistics on steel.

Member states shall apply these specifications and this technical format with respect to reference year 2003 and subsequent years.

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

*Article 4*This Regulation shall enter into force on the twentieth day following that 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 May 2005.

*For the Commission*

Joaquín ALMUNIA

*Member of the Commission*<sup>(1)</sup> OJ L 7, 13.1.2004, p. 1.<sup>(2)</sup> OJ L 222, 14.8.1978, p. 11.

## ANNEX I

## COVERAGE OF CHARACTERISTICS

## 1. YEARLY STATISTICS ON THE STEEL AND CAST IRON SCRAP BALANCE SHEET

**Preliminary remarks**

Member States will be expected to collect this information from all works which produce iron, steel or products defined as group 27.1 of NACE. Rev. 1.1 and which consume and/or produce scrap. For the first reference year 2003 the Commission will accept that the population covered refers to group 27.1 of NACE Rev.1. A separate questionnaire must be completed for each works even if several of them form part of the same company. Where the works has a locally integrated steel foundry this should be considered an integrated part of the works. Locally integrated works are those under the same management and in the same location. The form applies to rolling mills which directly re-roll used products not usually considered as scrap. All iron and steelworks which have no resources of their own and which therefore buy in their scrap from other works must complete this survey in the same way as producers. As they are not classified in group 27.1 of NACE Rev. 1.1, iron foundries, whether locally integrated or not, and non-integrated steel foundries are excluded.

Scrap is considered to be:

- any iron or steel scrap arising during the production and processing of iron or steel or recovered from old articles of iron or steel which is suitable for remelting (including scrap which is purchased; but not including burnt calcinated castings or castings attacked by acid),
- runners and other steel pouring scrap (normal or bottom-poured), including tunnels and gates, waste from delivery pipes in bottom pouring etc., and also reject and defective ingots not included on production,
- ladle skulls (except from sand casting).

On the other hand, waste containing iron which is significantly contaminated with non-metallic material and which arises during melting or heat treatment or mechanical treatment should not be included under scrap, for example:

- blast-furnace runners,
- launders from casting, splash and other waste from pouring of iron, waste from casting pits,
- steelworks slag,
- scale from reheating furnaces and rolling and forging,
- splatter from converters,
- flue skull and lip skull, skulls and remainders arising from sand casting.

**Specifications**

**Code: 1010**

**Title: Stocks on first day of year**

Stocks in the whole works including locally integrated activities should be entered in these codes (including steel foundries) with the exception of stocks held in iron foundries.

**Code: 1020**

**Title: Arising within the works**

It includes:

- runners and other casting scrap, from the steelworks and from integrated steel foundries: sprues, dozzle from steel casting. Include faulty and reject ingots not counted in production,
  
- process scrap is that which arises in the manufacture of semis and rolled products including hire working, also ingot waste and defective ingots and steel casting which are detected as being defective after having left the smelting plant or foundry (i.e. after they have been counted in production of crude or cast steel). Includes scrap arising in locally integrated steel foundries, forges, tube works and wire works, and cold rolling plants, works for metal construction and other departments processing steel, with the exception of iron foundries (See general note 1 above). Mill scrap which is to be re-rolled in own rolling mills does not count as new scrap,
  
- recovered scrap is steel and cast iron arising from repair and dismantling of old plant, machinery and apparatus, e.g. ingot moulds.

**Code: 1030**

**Title: Receipts (1031 + 1032 + 1033)**

Scrap received via a merchant acting as an intermediary is allocated as appropriate to the sources given as codes 1031, 1032 and 1033.

Ship-breaking scrap from demolition yards in the Community should be counted as domestic and Community scrap.

**Code: 1031**

**Title: Receipts from home sources**

This includes receipts of scrap from other works or divisions of the same company in the same country, including blast furnaces, steel works, rolling mills, iron foundries (including the integrated iron foundries). Receipts of scrap from other steel companies' works and from works other than those making or using steel, e.g. mines, should be included.

This also includes receipts of scrap from the domestic market received directly from non-steel companies such as steel or iron foundries, tube works, forges, construction industry, extraction industry, shipyards, railway companies, engineering industry and metal manufacture, etc.

**Code: 1032**

**Title: Receipts from Community countries**

This comprises receipts of scrap from other Community countries.

**Code: 1033**

**Title: Receipts from third countries**

This comprises receipts of scrap from non-EU (or third) countries

**Code: 1040**

**Title: Total available (1010 + 1020 + 1030)**

Sum of stocks on first day of the year, arising within the works and as receipts.

**Code: 1050**

**Title: Consumption total ...**

Consumption total shows the total quantities of scrap consumed in the production of iron in blast-furnaces, electric iron-making furnaces and also sinter plants, as well as the total consumption of scrap used in the total production of crude steel including the manufacture of special pig iron by recarburising steel and production of locally integrated steel foundries.

**Code: 1051**

**Title: ... of which electric furnaces**

Consumption of scrap in the production of steel in electric furnaces.

**Code: 1052**

**Title: ... of which stainless scrap**

Consumption of stainless scrap containing 10,5 % or more of chromium and not more than 1,2 % of carbon, with or without other alloy elements.

**Code: 1060**

**Title: Deliveries**

Report all deliveries of scrap, including to all foundries, even those locally integrated.

**Code: 1070**

**Title: Stocks on last day of year (1040 – 1050 – 1060)**

Stocks in the whole works including locally integrated activities should be entered in these codes (including steel foundries) with the exception of stocks held in iron foundries.

## 2. FUEL AND ENERGY CONSUMPTION AND BALANCE SHEET FOR ELECTRICAL ENERGY IN THE STEEL INDUSTRY

### ***Preliminary remarks on the types of plant***

Plant for load preparation include plant for preparation of burden and sinter plant.

As far as blast furnaces and electric iron making furnaces are concerned, only the consumption of fuel that is directly charged or used in furnaces as substitute for coke, that is, excluding consumption in hot blast stoves, fans and other ancillary blast furnace equipment (to be reported under other plants) is to be taken into account.

Melting shops include steelworks melting shops and continuous casting.

Electricity generating stations include consumption of fuel and energy used to produce all electricity in the works or in the joint generating stations of several steelworks. See also general note No 2.

Member States will be expected to collect this information from all iron and steelworks defined as group 27.1 of NACE Rev. 1.1, including re-rollers and electricity generating stations of the steel industry which are shared between several works and companies. These generating stations should be considered as steelworks of group 27.1 of NACE Rev. 1.1 for the purposes of these statistics.

### **Joint steel industry electricity generating stations**

Electricity generating stations common to several works or steel companies should be included as an entity.

Joint steel industry generating stations should answer the survey directly. Works using the output of these generating stations should not, as to avoid double entries, include these data in their individual replies.

The steelworks should however show in their resources the receipts of electricity from joint generating stations as a total (code 3102) among their receipts from outside.

Electricity generating stations linked to other industries, e.g. the coal industry, are excluded.

#### **Plant producing electricity and steam**

These mixed plants should be considered in part as electricity generating stations. The fuel consumption should include only that used for production of electrical energy, i.e. excluding the quantities attributable to heat supply.

#### **Energy consumption**

In part A, enter the consumption of fuel and energy in the iron and steelworks and their auxiliary plants with the exception of coke ovens (blast furnaces, sinter plants, locally integrated steel foundries, rolling mills, etc.).

Include all the consumption by auxiliary plant (for example power stations and steam plant) even if they do not function solely for the iron and steelworks plant.

Exclude workshops integrated with the iron and steelworks whose activities are not covered by group 27.1 of NACE Rev. 1.1.

#### **Part A: Annual statistics on the Fuel and Energy Consumption broken down by type of plant**

*Code:* **2010**

*Title:* **Solid fuels (2011 + 2012)**

Solid fuels are to be recorded according to their state on receipt.

*Code:* **2011**

*Title:* **Coke**

Includes coke, semi-coke, petroleum coke and coke fines.

*Code:* **2012**

*Title:* **Other solid fuels**

Includes coal and agglomerates, lignite and briquettes.

*Code:* **2020**

*Title:* **Liquid fuels**

Includes the consumption of all liquid fuels in the iron and steelworks and their auxiliary plant, in electricity generating stations, but with the exception of coke ovens.

*Code:* **2030**

*Title:* **Gas (2031 + 2032 + 2033 + 2034)**

The consumption to be recorded should be net consumption, not including losses and gas burnt off.

Gas consumption is to be recorded in gigajoules (1 gigajoule =  $10^9$  joules = 1 gigacalorie/4,186) based on the lower calorific value for each gas (for dry gas at 0° and 760 mm/Hg).

**Code: 2040**

**Title: External deliveries of blast furnace gas**

It includes total external deliveries of blast furnace gas to public supply, to integrated steel coking plants, to other steelworks and to other customers.

**Code: 2050**

**Title: External deliveries of converter gas**

It includes total external deliveries of converter gas to public supply, to integrated steel coking plants, to other steelworks and to other customers.

**Part B: Annual statistics on the Balance Sheet for Electrical Energy in the Steel Industry**

**Specifications**

**Code: 3100**

**Title: Resources (3101 + 3102)**

See specifications for 3101 and 3102.

**Code: 3101**

**Title: Gross production**

Gross production corresponding to the total consumption in electricity generating stations as reported in part A for electricity generating stations.

**Code: 3102**

**Title: Receipts from outside**

Outside comprises the public networks, other countries, iron and steelworks (including common generating stations), steelworks coke ovens, locally integrated departments etc.

**Code: 3200**

**Title: Used (3210 + 3220 + 3230)**

Total of line 3200 should correspond to that of line 3100.

**Code: 3210**

**Title: Consumption by plant (3211 + 3212 + 3213 + 3214 + 3215 + 3216 + 3217)**

Includes the total consumption by plant of lines (3211 + 3212 + 3213 + 3214 + 3215 + 3216 + 3217).

**Code: 3217**

**Title: Other plant**

Refers to other types of plant as specified in part A.

**Code: 3220**

**Title: Deliveries to outside**

See code 3102.

Code: **3230**

Title: **Losses**

Includes all electric energy losses.

### 3. ENQUIRY ON INVESTMENTS IN THE IRON AND STEEL INDUSTRY (EXPENDITURE AND CAPACITY)

#### Part A: Annual statistics on expenditure

##### *Preliminary remarks*

A separate questionnaire must be completed for each works even if several of them form part of the same company.

Investment expenditure represents investment during the reference period in tangible goods. Included are new and existing tangible capital goods, whether bought from third parties or produced for own use (i.e. capitalised production of tangible capital goods), having a service life of more than one year and including non-produced tangible goods such as land. The threshold for the useful life of a good that can be capitalised may be increased according to company accounting practices where these practices require a greater expected service life than the one-year threshold indicated above.

All investments are valued prior to (i.e. gross of) value adjustments, and before the deduction of income from disposals. Purchased goods are valued at purchase price, i.e. transport and installation charges, fees, taxes and other costs of ownership transfer are included. Own produced tangible goods are valued at production cost. Goods acquired through restructuring process (such as mergers, take-overs, break-ups, spin-off) are excluded. Purchases of small tools which are not capitalised are included under current expenditure.

Also included are all additions, alterations, improvements and renovations which prolong the service life or increase the productive capacity of capital goods.

Current maintenance costs are excluded as is the value and current expenditure on capital goods used under rental and lease contracts.

Concerning the recording of investments where the invoicing, delivery, payment and first use of the good may take place in different reference periods, the following method is proposed as an objective:

— Investments are recorded when the ownership is transferred to the unit that intends to use them. Capitalised production is recorded when produced. Concerning the recording of investments made in identifiable stages, each part-investment should be recorded in the reference period in which it is made.

In practice this may not be possible and company accounting conventions may mean that the following approximations to this method need to be used:

— Investments are recorded in the reference period in which they are delivered,

— investments are recorded in the reference period in which they enter into the production process,

— investments are recorded in the reference period in which they are invoiced,

— investments are recorded in the reference period in which they are paid for,

— investment is not recorded in the balance sheet. However, the additions, disposals and transfers of all fixed assets as well as the value adjustments of these fixed assets are shown in the balance sheet or the notes to the accounts.

Tangible goods are listed in company accounts under 'Fixed assets — tangible assets'.

**Specifications by type of plant**

Code: **4010**

Title: **Coking plant**

These include:

- Ovens including coke-oven batteries with ancillary equipment such as charges, pushers, crushers, etc., as well as coke cars and quenching towers,
- ancillary plant.

NB: Under each heading are included plant, buildings and ancillary equipment.

Code: **4020**

Title: **Plant for load preparation**

Includes plant for the preparation of iron ore and burden.

Code: **4030**

Title: **Plant for iron-making and ferro-alloys (including blast furnaces)**

Includes electric pig-iron furnaces, low shaft furnaces and other pre-melting plant, etc.

Code: **4040**

Title: **Steelworks melting shops**

The AOD process, vacuum and ladle treatments, etc. are regarded as treatment subsequent to the final process; the relevant investment expenditure (like all production) must be included in the category covering the appropriate final process.

When the works includes (or will include) a steel melting shop and a mixer, the expenditure relating to the mixer should be included with the corresponding melting shop. If the works has no melting shop, this expenditure should be included with the expenditure relating to the blast furnaces.

Code: **4041**

Title: **of which electric**

Includes EAF process for crude steel production, by electric (arc or induction) furnace.

Code: **4050**

Title: **Continuous casting**

Relates to continuously cast slabs, blooms, billets, beam blanks and tube semis, excluding head and tail crops.

Code: **4060**

Title: **Rolling mills (4061 + 4062 + 4063 + 4064)**

For each type of rolling mill, account should be taken of not only the expenditure relating to the mill itself, but also of those expenditures relating to plant upstream of the mills (e.g. reheating furnaces) and downstream (e.g. cooling beds, shears). Under the heading 'Others' (code 4070) are included the expenditures relating to all equipment that does not come under a special mill category apart from coating installations (tinning, zinc-coating, etc.), distinguished at code 4064.

Expenditure for skin-pass mills should be shown on code 4063 — cold wide strip mill.

*Code:* **4061**

*Title:* **Flat products**

This code records expenditure for hot rolling flat products mills.

*Code:* **4062**

*Title:* **Long products**

This code records expenditure for hot rolling long products mills.

*Code:* **4063**

*Title:* **Cold wide strip mills**

This code records expenditure for cold wide strip mills, continuous or not.

*Code:* **4064**

*Title:* **Coating installations**

This code records expenditure for coating installations (coating lines).

*Code:* **4070**

*Title:* **Other plant**

This code includes:

- All the central plants and distribution networks for electric power, gas, water, steam, air and oxygen.
- Transport, engineering workshops, laboratories and all other installations, which form part of the whole works but cannot be classified as part of a particular sector.
- Blooming, slabbing and billet mills when these semi-products are not continuously cast and reported under code 4050.

*Code:* **4200**

*Title:* **Of which to combat pollution**

Capital expenditures for methods, technologies, processes or equipment designed to collect and remove pollution and pollutants (e.g. air emissions, effluents or solid waste) after their creation, prevent the spread of and measure the level of the pollution, and treat and dispose of pollutants generated by the operating activity of the company.

This heading is the sum of expenditure in the environmental domains: Protection of ambient air and climate, Wastewater management, Waste management and Other environmental protection activities. Other environmental protection activities includes Protection and remediation of soil, groundwater and surface water, Noise and vibration abatement, Protection of biodiversity and landscape, Protection against radiation, Research and development, General environmental administration and management, Education, training and information, Activities leading to indivisible expenditure and Activities not elsewhere classified.

Included are:

- Investments in distinct, identifiable components supplementing existing equipment, which are implemented at the end of or completely outside the production line (end-of-pipe equipment).
- Investments in equipment (e.g. filters or separate cleaning steps) which compose or extract pollutants within the production line, when the removal of these added facilities would not affect in the main the functioning of the production line.

The main purpose or function of this capital expenditure is environmental protection and the total expenditure for these should be reported.

The expenditure should be reported gross of any cost-offsets resulting from the generation and sale of marketable by-products, savings made, or subsidies received.

Purchased goods are valued at the purchase price excluding deductible VAT and other deductible taxes directly linked to turnover.

Excluded are:

- Actions and activities beneficial to the environment that would have been taken regardless of environmental protection considerations, including measures that primarily aim at health and safety of the workplace and production security.
- Measures to reduce pollution when the products are used or scrapped (environmental adaptation of products), unless environmental policy and regulation extends the legal responsibility of the producer to cover also the pollution generated by the products when used, or for taking care of the products when they become waste.
- Resource use and saving activities (e.g. water supply or the saving of energy or raw materials), unless the primary purpose is environmental protection: e.g. when these activities aim at implementing national or international environmental policy and are not undertaken for cost-saving reasons.

## **Part B: Annual statistics on capacity**

### ***Preliminary remarks***

The maximum possible production corresponds with that production which a works could produce during the year under consideration, taking into account normal or expected operating practices, operating methods and product mix. It is by definition higher than the actual production.

Changes in MPP will in general be related:

- to investments made although the expenditure and the change will not necessarily occur simultaneously,
- to effective or planned permanent closures, transfer or sale. The maximum possible production does not correspond to the technical or rated capacity of any piece of equipment but is based on the overall technical structure of the works, taking into account the relationships between the various stages of production, e.g. between steelworks and blast-furnaces.

The maximum possible annual production is the maximum production that can be attained during the year in question in ordinary working conditions, having regard to repairs, maintenance, and normal holidays, with the equipment available at the beginning of the year, taking account also of the supplementary production of equipment that will come into operation and existing equipment that should definitely be closed down during the course of the year. The development of the production is based on the probable proportions of the composition of the charge for each of the pieces of equipment under consideration and on the assumption that raw materials will be available.

### **General methods of calculation**

All installations not permanently closed must be included in the replies to the enquiry.

The calculation of MPP is based on the assumption of normal operating conditions, including:

- normal availability of labour, i.e. no changes should be made to MPP in the situation where a works adapts to fluctuating market conditions by temporary reductions or increases in its manning levels,
- normal availability of equipment, i.e. allowance should be made for periodic closures, for paid holidays, for routine maintenance and, where applicable, for the seasonal availability of electricity <sup>(1)</sup>,
- normal availability of raw materials,
- normal distribution of charges, both raw materials and semi-finished products (unless otherwise specified, 'normal' means that of the preceding year) to the various installations. In cases where, for reasons specific to a given plant, changes to this distribution are necessary, such changes can be made only if the raw materials or semi-finished products are likely to be available in sufficient quantity,
- normal product mix, that of the previous year, unless specific changes are planned,
- no problems with the disposal of products,
- no strikes or lockouts,
- no technical accidents or plant failures,
- no serious interruptions due to the weather, e.g. flooding.

#### **Commissioning or withdrawal from service**

In cases where plant is to be commissioned, closed permanently, transferred or sold during the year in question, it is necessary to consider the date on which the entry or withdrawal will occur and calculate the MPP pro rata for the number of months the equipment is expected to operate. In the case of new equipment, particularly very large schemes, prudence should be exercised concerning the production achievable during the working-up period, which may extend over several years.

#### **1. Steelworks**

- *Converter steels*: in the case of converter steels (e.g. LD, OBM, etc.) all iron- and steelmaking plant must be considered together, i.e. the MPP of the steelworks can be limited by the availability of hot metal; in such cases the MPP of the steelworks must be calculated on the basis of the iron available allowing for the normal distribution of the iron between the steelworks, foundries, granulating plant and sales as appropriate and the normal scrap charge required for 1 tonne of the finished product.
- *Electric steels*: the normally available supplies of electric power must be considered.
- *General*: technical bottlenecks may exist in certain auxiliary plant which may limit, for example, the simultaneous utilization to only two furnaces out of three. (The cause may be a technical bottleneck in the oxygen supply, soaking-pits, overhead travelling cranes, etc.). Therefore each melting shop must be considered with all the auxiliary equipment which affects its utilisation.

#### **2. Rolling mills and coating lines**

The MPP of a rolling mill or coating line must be established on the basis of a given product mix, i.e. on the basis of fixed volumes of given product sizes and sections. Where a company, as a result of unpredictable market conditions, feels unable to make a forecast, the product mix of the previous year should be used.

<sup>(1)</sup> Regular overhauls over a period of years (e.g. blast-furnace) may, however, be reduced to an annual 'average'.

In addition, the MPP must also be established on the basis of the normal range of dimensions of the semi-finished products charged to the mill.

In calculating the MPP, account must be taken of upstream and downstream bottlenecks that exist in the whole plant, e.g. the availability of semi-finished products, the capacity for handling or finishing the product.

The purchase of semi-finished steel may allow the MPP of an otherwise constrained mill or group to be increased only if the necessary volume of semi-finished steel is likely to be available in a year of good trading conditions. This generally implies long-term contracts or well-defined supply programmes.

Generally, in an integrated works or in the works of a single group, there should be a balance between the steel production and production of rolled products, after allowing for a normal distribution of the available steel between rolling mills, foundries and semi-finished products for tube-making or forging.

As far as the actual production (code ACP) is concerned, it should be reported on the gross basis, at the final completion of each process stage, before any transformation.

It should include all products made in the works whether or not these are for its own account. In particular, all hire-worked products must be included in the production of the works where they were made, and not in that of the works which has ordered the hire working. It should cover all products and qualities (non-alloy and alloy grades), including those downgrades but not for immediate remelting, such as non-prime products, plate and sheet cutting and cropped ends; products recovered by cutting rolled or part-rolled steel products, or semis where the defective areas are scraped for immediate remelting.

The transmission of data related to the actual production is optional.

A separate questionnaire must be completed for each works even if several of them form part of the same company.

### **Specifications**

*Code:* **5010**

*Title:* **Coke**

Output of coke ovens.

*Code:* **5020**

*Title:* **Load preparation**

Output of all sinter pellet and other plants producing agglomerated materials for blast furnace charge and directly reduced sponge iron.

*Code:* **5030**

*Title:* **Pig iron and ferro-alloys**

Output of all the iron, spiegel and high carbon ferro-manganese coming from blast furnaces and electric iron-making furnaces in the works.

*Code:* **5040**

*Title:* **Crude steel**

Total crude steel.

**Code: 5041**

**Title: of which electric**

— of which crude steel from electric (arc and induction) furnaces.

**Code: 5042**

**Title: of which used in continuous casting**

— of which continuously cast slabs, blooms, billets, beam blanks and tube semis.

**Code: 5050**

**Title: Products obtained directly by hot rolling (5051 + 5052)**

Includes total hot rolled products.

**Code: 5051**

**Title: Flat products**

Includes total hot rolled flat products.

**Code: 5052**

**Title: Long products**

Total hot rolled long products. For reasons of convenience, this code includes rolled semis for tubes as they cannot be classified under any other code.

**Code: 5060**

**Title: Products obtained from hot rolling products**

(Excluding coated products)

Products obtained from hot rolling products (excluding coating products). This code includes hot narrow strip from hot rolled wide strip, hot plates cut from hot rolled wide strip, cold rolled flat products in sheet or coil form.

**Code: 5061**

**Title: of which products obtained by cold rolling**

— of which flat products (sheet and strips) obtained by cold rolling.

**Code: 5070**

**Title: Coated products**

This code includes packaging steels (tinplate, tinned sheet and strip, ECCS), all hot-dipped or electrolytically metal-coated sheet, plate and coils, flat or corrugated, and all sheet, plate and coils, flat or corrugated, coated with organic coatings.

The definition of codes in this survey is given with reference to the former Eurostat ECSC questionnaire 2-61.

Code in this survey	Brief description of products	Reference to lines in ECSC questionnaire 2-61
5010	Output of coke ovens	1001
5020	Output of all sinter pellet and other plants producing agglomerated materials for blast furnace charge and directly reduced sponge iron	2001 + 2002
5030	Output of all the iron, spiegel and high carbon ferromanganese coming from blast furnaces and electric iron-making furnaces in the works	3001
5040	Total crude steel	4000
5041	— of which crude steel from electric (arc and induction) furnaces	4002
5042	— of which continuously cast slabs, blooms, billets, beam blanks and tube semis	4099
5050	Total hot rolled products	5000
5051	Total hot rolled flat products	5100
5052	Total hot rolled long products. For reasons of convenience, this code includes rolled semis for tubes as they cannot be classified under any other code	5200 + 8001
5060	Products obtained from hot rolling products (excluding coating products). This code includes hot narrow strip from hot rolled wide strip, hot plates cut from hot rolled wide strip, cold rolled flat products in sheet or coil form	6010 + 6020 + 6030
5061	— of which flat products (sheet and strips) obtained by cold rolling	6030
5070	Coated products. This code includes packaging steels (tinplate, tinned sheet and strip, ECCS), all hot-dipped or electrolytically metal-coated sheet, plate and coils, flat or corrugated, and all sheet, plate and coils, flat or corrugated, coated with organic coatings	7100 + 7200 + 7300

## ANNEX II

## TECHNICAL FORMAT

## 1. THE FORM OF THE DATA

The data are sent as a set of records of which a large part describes the characteristics of the data (country, year, economic activity etc.). The data itself is a number which can be linked to flags and explanatory footnotes. Confidential data should be sent with the true value being recorded in the value field and a flag indicating the nature of the confidential data being added to the record.

## 2. RECORD STRUCTURE

Records are made up of fields of variable length separated by semi-colons (;). The maximum expected length is shown in the table for your information. In order from left to right they are:

Field	Type	Maximum length	Values
Series	A	3	Alphanumeric code of the series (see list below).
Year	A	4	Year in four characters e.g. 2003.
Country	A	6	Country code (see list below).
Type of production	A	3	To distinguish Maximum Possible Production from the Actual Production (only used for the statistics on capacity) or to distinguish the type of plant (plant for load preparation, rolling mill departments, blast furnaces and electric iron making furnaces, electricity generating stations, melting shops, other plant) (only used for the statistics on fuel and energy consumption).
Variable	A	4	Variable code. The codes laid down in Regulation (EC) No 48/2004 on the production of annual Community statistics on the steel industry for the reference years 2003-2009 have 4 characters (see list below).
Data value	N	12	Numeric value of the data expressed as a whole number without decimal places.
Confidentiality flag	A	1	A, B, C, D: indicates that the data are confidential and the reason for that confidentiality (see list below). A blank space indicates non-confidential data.
Dominance	N	3	A numeric value less than or equal to 100. This indicates the percentage dominance of one or two enterprises which dominate the data and make it confidential. The value is rounded to the nearest whole number: e.g. 90,3 becomes 90, 94,50 becomes 95. This field is blank for non-confidential data. This field is only used when the confidentiality flags B or C are used in the previous field.
Units of data values	A	4	Codes for indicating the units.

## 3. DESCRIPTION OF THE FIELDS

## 3.1. The type of series

Series type	Code
Yearly statistics on the steel and cast iron scrap balance sheet	S10
Annual statistics on the Fuel and Energy Consumption broken down by type of plant	S2A
Annual statistics on the Balance Sheet for Electrical Energy in the Steel Industry	S2B
Enquiry on Investments in the Iron and Steel Industry	S3A
Annual statistics on capacity	S3B

## 3.2. Countries

Country	Code
Belgium	BE
Czech Republic	CZ
Denmark	DK
Germany	DE
Estonia	EE
Greece	GR
Spain	ES
France	FR
Ireland	IE
Italy	IT
Cyprus	CY
Latvia	LV
Lithuania	LT
Luxembourg	LU
Hungary	HU
Malta	MT
Netherlands	NL
Austria	AT
Portugal	PT
Poland	PL
Slovenia	SI
Slovakia	SK
Finland	FI
Sweden	SE
United Kingdom	UK
Iceland	IS
Liechtenstein	LI
Norway	NO
Switzerland	CH

## 3.3. Type of production or type of plant

Type of production	Code
Maximum possible production	MPP
Actual production (optional)	ACP
Type of plant	
Plant for load preparation	PLP
Rolling mill departments	RMD
Blast furnaces and electric iron making furnaces	FRN
Electricity generating stations	EGS
Melting shops	MLS
Other plant	OTH

## 3.4. Variables and unit of data value

Code	Title	Unit of data value
	Steel and Cast Iron Scrap Balance Sheet	Metric tonnes
1010	Stocks on first day of year	MTON
1020	Arising within the works	MTON
1030	Receipts (1031 + 1032 + 1033)	MTON
1031	from home sources	MTON
1032	from Community countries	MTON
1033	from third countries	MTON
1040	Total available (1010 + 1020 + 1030)	MTON
1050	Consumption total ...	MTON
1051	... of which electric furnaces	MTON
1052	... of which stainless scrap	MTON
1060	Deliveries	MTON
1070	Stocks on last day of year (1040 – 1050 – 1060)	MTON
	Fuel and Energy Consumption	
2010	Solid fuels (2011 + 2012)	MTON
2011	Coke	MTON
2012	Other solid fuels	MTON
2020	Liquid fuels	MTON
2030	Gas (2031 + 2032 + 2033 + 2034)	GJ
2031	Blast furnace gas	GJ
2032	Coke oven gas	GJ
2033	Converter gas	GJ
2034	Other gas	GJ
2040	External deliveries of blast furnace gas	GJ
2050	External deliveries of converter gas	GJ

Code	Title	Unit of data value
	Annual statistics on the Balance Sheet for Electrical Energy in the Steel Industry	MWh
3100	Resources (3101 + 3102)	MWh
3101	Gross production	MWh
3102	Receipts from outside	MWh
3200	Used (3210 + 3220 + 3230)	MWh
3210	Consumption by plant (3211 + 3212 + 3213 + 3214 + 3215 + 3216 + 3217)	MWh
3211	Sinter plant and plant for preparation of burden	MWh
3212	Blast furnaces and electric iron making furnaces	MWh
3213	Electric melting shops and continuing casting	MWh
3214	Other melting shops and continuing casting	MWh
3215	Rolling mill departments	MWh
3216	Electricity generating stations	MWh
3217	Other plant	MWh
3220	Deliveries to outside	MWh
3230	Losses	MWh

Monetary data must be expressed in thousands of euros for euro zone countries and in thousands of national currencies for countries outside the euro area.

Code	Title	Unit of data value
	Investment expenditure in the Iron and Steel Industry	Thousands of euros or thousands of national currency
4010	Coking plant	KEUR or KNC
4020	Plant for load preparation	KEUR or KNC
4030	Plant for iron making and ferro-alloys (including blast furnaces)	KEUR or KNC
4040	Steelworks melting shops	KEUR or KNC
4041	of which electric	KEUR or KNC
4050	Continuous casting	KEUR or KNC
4060	Rolling mills (4061 + 4062 + 4063 + 4064)	KEUR or KNC
4061	Flat products	KEUR or KNC
4062	Long products	KEUR or KNC
4063	Cold wide strip mills	KEUR or KNC
4064	Coating installations	KEUR or KNC

Code	Title	Unit of data value
	Investment expenditure in the Iron and Steel Industry	Thousands of euros or thousands of national currency
4070	Other plant	KEUR or KNC
4100	General total (4010 + 4020 + 4030 + 4040 + 4050 + 4060 + 4070)	KEUR or KNC
4200	Of which to combat pollution	KEUR or KNC
	Maximum Possible Production in the Iron and Steel Industry (Capacity)	1 000 tonnes per year
5010	Coke	1 000
5020	Load preparation	1 000
5030	Pig iron and ferro-alloys	1 000
5040	Crude steel	1 000
5041	of which electric	1 000
5042	of which used in continuous casting	1 000
5050	Products obtained directly by hot rolling (5051 + 5052)	1 000
5051	Flat products	1 000
5052	Long products	1 000
5060	Products obtained from hot rolling products (excluding coated products)	1 000
5061	of which products obtained by cold rolling	1 000
5070	Coated products	1 000

### 3.5. Confidentiality flags

Member States are asked to clearly indicate confidential data using the flags listed below:

Reason for confidentiality	Flag
Too few enterprises	A
One enterprise dominates the data	B
Two enterprises dominate the data	C
Confidential data due to secondary confidentiality	D

## 4. EXAMPLES OF RECORDS

### Example 1

S10;2003;DE;;1010;12345;;;MTON

As far as the yearly statistics on the steel and cast iron scrap balance sheet is concerned, the stocks on 1.1.2003 in Germany was 12 345 metric tonnes. These data were not confidential.

### Example 2

S3B;2003;SK;MPP;5010;12000;;;MTON

As far as the annual statistics on capacity are concerned, the maximal possible production of Coke in Slovakia in 2003 was 12 000 tonnes. These data were not confidential.

**Example 3**

S3B;2003;ES;ACP;5040;12000;B;95;MTON

As far as the annual statistics on capacity are concerned, the actual production of crude steel in Spain in 2003 was 12 000 tonnes. These data were confidential, as one enterprise dominated the data and represented 95 % of the production.

**5. ELECTRONIC FORM**

Member States shall transmit to the Commission (Eurostat) the data and metadata required by this Regulation in an electronic format compliant with an interchange standard proposed by the Commission (Eurostat).

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## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 2 May 2005

**concerning the measures necessary as regards an obstacle to trade constituted by trade practices maintained by Brazil affecting trade in retreaded tyres**

*(notified under document number C(2005) 1302)*

(2005/388/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 <sup>(1)</sup> laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (WTO), and in particular Articles 12(1) and 13(2) thereof,

Whereas:

- (1) On 5 November 2003, the Commission received a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (the Trade Barriers Regulation). The complaint was lodged by the Bureau international permanent des associations de vendeurs et recapeurs de pneumatiques (Bipaver).
- (2) The complaint concerned certain alleged Brazilian trade practices that prevented the importation into Brazil of retreaded tyres <sup>(2)</sup>. In particular, the complaint alleged that these practices were inconsistent with Articles III and XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994). On that basis, the complainant asked the Commission to take the necessary action.

- (3) The complaint contained sufficient evidence to justify the initiation of a Community examination procedure pursuant to Article 8(1) of the Trade Barriers Regulation. Consequently, the Commission initiated the procedure after consulting with the Member States in the framework of the Advisory Committee, on 7 January 2004 <sup>(3)</sup>.
- (4) Following the initiation of the examination procedure, the Commission carried out an investigation. The investigation concerned an alleged import ban and financial penalties relating to imported retreaded tyres.
- (5) The investigation considered the relevant Brazilian legislation relating to the import ban and the imposition of financial penalties, and equally took into account the views expressed by the various Brazilian Government Ministries, as well as Brazilian trade associations.
- (6) The investigation concluded that the Brazilian measures under investigation are inconsistent with several provisions of GATT 1994, specifically Articles I:1, III:4, XI:1 and XIII:1, and are not justified under Article XX of GATT 1994, the Enabling Clause or other applicable instruments of international law. Since the WTO Agreement prohibits the challenged practices, there is evidence of an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.
- (7) The investigation showed that Brazil was an important market for European manufactures of retreaded tyres prior to the introduction of the ban on 25 September 2000. In the period 1995 to 2000 exports of retreaded tyres to Brazil for passenger cars rose at an average of 58 % and for the first time in the six-year period dropped by 32 % in 2001, i.e. after the imposition of the ban.

<sup>(1)</sup> OJ L 349, 31.12.1994, p. 71. Regulation as amended by Regulation (EC) No 356/95 (OJ L 41, 23.2.1995, p. 3).

<sup>(2)</sup> The proceeding concerns retreaded tyres falling under the codes 4012 11, 4012 12, 4012 13 and 4012 19 of the Combined Nomenclature. Retreaded tyres (also referred to as retreads) are tyres that are produced by removing the worn part of a used tyre and reconditioning it with a new tread.

<sup>(3)</sup> OJ C 3, 7.1.2004, p. 2.

- (8) Whilst exports continued after the ban's imposition, either on account of import licenses that were still in circulation, or as result of legal challenge by some importers through the Brazilian courts, it is evident that the market was gradually being closed off to European exporters. Whilst many of the Community exporters were eventually able to find new markets, they were still unable to compensate for what had been a large proportion of their export revenue. Not all were successful in finding new markets, or in creating new lines of retreaded tyre for specialist vehicles (4×4, sports, etc.) and therefore the ban, combined with other factors (late payment by the Brazilian importer, exchange-rate fluctuations) drove some Community producers into receivership.
- (9) The evidence clearly shows that Community industry has suffered and continues to suffer adverse effects within the meaning of Article 2(4) of the Trade Barriers Regulation.
- (10) Export data and the replies to the questionnaires sent by the Commission to European producers and exporters of retreaded tyres support Community industry's claim that Brazil had been an important export market prior to the imposition of the ban and that they had anticipated annual sales reaching 3 million units by the end of 2002. The evidence also corroborates their claim that they have been suffering for the past three years as a result of the Brazilian import ban. In some instances, companies which were unable to find new export markets went into liquidation.
- (11) On the basis of the above, it can be concluded that it is in the Community's interest in the sense of Article 12(1) of the Trade Barriers Regulation to take action, within the WTO framework, to seek a rapid removal of the Brazilian import ban on retreaded tyres, which represents a breach of fundamental WTO rules and an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.
- (12) It is of utmost importance for the Community to ensure that WTO partners fully comply with their obligations, just as the Community is required to do. It is therefore fundamental for the good functioning of the multilateral

trading system that this incompatibility with WTO rules should be addressed in that forum.

- (13) Attempts to resolve this dispute through numerous meetings with the Brazilian authorities since the imposition of the ban, and throughout the course of this investigation, have failed to identify a willingness on the part of the Brazilian authorities to reach a mutually agreed solution. In the absence of any likelihood that the Brazilian position will change, the initiation of a procedure within the framework of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes is therefore deemed necessary.
- (14) The measures provided for in this Decision are in accordance with the opinion of the TBR Committee,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

The Brazilian Government's imposition of an import ban on retreaded tyres and the related financial penalties appear to be inconsistent with Brazil's obligations under the Marrakech Agreement Establishing the World Trade Organisation and, in particular, provisions of the General Agreement on Tariffs and Trade 1994, and constitutes an obstacle to trade within the meaning of Article 2(1) of Regulation (EC) No 3286/94.

#### *Article 2*

The Community will initiate dispute settlement proceedings against Brazil under the Understanding on Rules and Procedures Governing the Settlement of Disputes and other relevant WTO provisions with a view to securing removal of the obstacle to trade.

Done at Brussels, 2 May 2005.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

## COMMISSION DECISION

of 18 May 2005

## amending Decision 1999/217/EC as regards the register of flavouring substances used in or on foodstuffs

(notified under document number C(2005) 1437)

(Text with EEA relevance)

(2005/389/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2232/96 of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs<sup>(1)</sup>, and in particular Article 3(2) and Article 4(3) thereof,

Whereas:

- (1) Regulation (EC) No 2232/96 lays down the procedure for the establishment of rules in respect of flavouring substances used or intended to be used in foodstuffs. That Regulation provides for the adoption of a register of flavouring substances (the register) following notification by the Member States of a list of the flavouring substances which may be used in or on foodstuffs marketed in their territory and on the basis of scrutiny by the Commission of that notification. That register was adopted by Commission Decision 1999/217/EC<sup>(2)</sup>.
- (2) In addition, Regulation (EC) No 2232/96 provides for a programme for the evaluation of flavouring substances in order to check whether they comply with the general criteria for the use of flavouring substances set out in the Annex to that Regulation.
- (3) The European Food Safety Authority (the Authority) concluded in its opinion of 13 July 2004 on para-hydroxybenzoates, that propyl 4-hydroxybenzoate (FL 09.915) had effects on sex hormones and the male reproductive organs in juvenile rats. The Authority was unable to recommend an acceptable daily intake (ADI) for this substance because of the lack of clear no-observed-adverse-effect-level (NOAEL). The use of propyl 4-hydroxybenzoate as a flavouring substance in food is not acceptable, as it does not comply with the general criteria for the use of flavouring substances set out in

the Annex to Regulation (EC) No 2232/96. As a consequence, propyl 4-hydroxybenzoate should be deleted from the register.

- (4) The Authority concluded in its opinion of 7 December 2004 on aliphatic dialcohols, diketones and hydroxyketones, that pentane-2,4-dione (FL 07.191) is genotoxic *in vitro* and *in vivo*. Accordingly, its use as a flavouring substance is not acceptable, because it does not comply with the general criteria for the use of flavouring substances set out in the Annex to Regulation (EC) No 2232/96. As a consequence, pentane-2,4-dione should be deleted from the register.
- (5) In application of Regulation (EC) No 2232/96 and Commission Recommendation 98/282/EC of 21 April 1998 on the ways in which the Member States and the signatory States to the Agreement on the European Economic Area should protect intellectual property in connection with the development and manufacture of flavouring substances referred to in Regulation (EC) No 2232/96 of the European Parliament and of the Council<sup>(3)</sup>, for a number of substances, the notifying Member States requested that they should be registered in such a way as to protect the intellectual property rights of the manufacturer.
- (6) Protection for these substances, listed in Part B of the register, is limited to a maximum period of five years following the date of receipt of the notification. That period has now expired for 28 substances which should consequently be transferred to Part A of the register.
- (7) Decision 1999/217/EC should therefore be amended accordingly.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

<sup>(1)</sup> OJ L 299, 23.11.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 84, 27.3.1999, p. 1. Decision as last amended by Decision 2004/357/EC (OJ L 113, 20.4.2004, p. 28).

<sup>(3)</sup> OJ L 127, 29.4.1998, p. 32.

HAS ADOPTED THIS DECISION:

*Article 1*

The Annex to Decision 1999/217/EC is amended in accordance with the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 18 May 2005.

*For the Commission*  
Markos KYPRIANOU  
*Member of the Commission*

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## ANNEX

The Annex to Decision 1999/217/EC is amended as follows:

1. Part A is amended as follows:

(a) The rows set out in the table for the substances attributed with FL-numbers 07.191 (pentane-2,4-dione) and 09.915 (propyl 4-hydroxybenzoate) are deleted.

(b) The following rows are inserted in the table:

FL No	Chemical group	CAS	Name	Fema	Einecs	Synonyms	Comments
01.070	31	111-66-0	1-Octene		203-893-7		
01.071	31	111-67-1	2-Octene		203-894-2		
01.072	31	544-76-3	Hexadecane		280-878-9		
07.251	21	577-16-2	Methylacetophenone				CAS No corresponds to 2-methylacetophenone
01.073	31	592-99-4	4-Octene				
01.074	31	593-45-3	Octadecane		209-790-3		
16.084	30	627-67-8	3-Methyl-1-nitrobutane		211-008-0		
01.075	31	629-78-7	Heptadecane		211-108-4		
12.260	20	4131-76-4	Methyl-2-methyl-3-mercaptopropionate		223-949-4		
12.261	20	6725-64-0	Methanedithiol				
01.076	31	20996-35-4	3,7-Decadiene				
16.085	20	27959-66-6	4,4-Dimethyl-1,3-oxathiane				
12.262	20	29414-47-9	(Methylthio)methanethiol				
05.210	04	30390-51-3	4-Dodecenal		250-174-9		
05.211	02	30689-75-9	6-Methyloctanal				
14.166	30	32536-43-9	Indole acetic acid				
07.252	05	33665-27-9	4-Octen-2-one				
02.244	04	54393-36-1	4-Octen-1-ol				
10.070	09	57681-53-5	4-Hydroxy-2-heptenoic acid lactone		260-902-7		
05.212	04	76261-02-4	6-Dodecenal				
05.213	04	90645-87-7	5-Nonenal				
15.124	29	103527-75-9	3-Methyl-2-butenylthiophene			Rose thiophene	
05.214	04	121052-28-6	8-Dodecenal				
05.215	03	134998-59-7	2,6-Decadienal (c,c)				
05.216	03	134998-60-0	2,6-Decadienal (t,t)				
12.263	20		3-Mercapto-3-methylbutanal				
12.264	20	92585-08-5	4,2-Thiopentanone				
03.021	16	142-96-1	Dibutyl ether		205-575-3		

2. The table of part B is replaced by the following:

**Flavouring substances notified in application of Article 3(2) of Regulation (EC) No 2232/96, for which the protection of the intellectual property rights of the manufacturer has been requested**

Code	Date of receipt of the notification by the Commission	Comments
CN065	26.1.2001	
CN074	18.4.2003	6
CN075	18.4.2003	6
CN076	18.4.2003	6

## COMMISSION DECISION

of 18 May 2005

**amending for the fifth time Decision 2004/122/EC concerning certain protection measures in relation to avian influenza in North Korea***(notified under document number C(2005) 1451)***(Text with EEA relevance)**

(2005/390/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC <sup>(1)</sup>, and in particular Article 18(7) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries <sup>(2)</sup>, and in particular Article 22(6) thereof,

Whereas:

(1) Commission Decision 2000/666/EC of 16 October 2000 laying down the animal health requirements and the veterinary certification for the import of birds, other than poultry and the conditions for quarantine <sup>(3)</sup> provides that Member States are to authorise the import of birds from third countries listed as members of the Office International des Epizooties (OIE) and that those birds are to be subjected to quarantine and testing upon entry into the Community.

<sup>(1)</sup> OJ L 268, 24.9.1991, p. 56. Directive as last amended by the 2003 Act of Accession.

<sup>(2)</sup> OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1).

<sup>(3)</sup> OJ L 278, 31.10.2000, p. 26. Decision as last amended by Decision 2002/279/EC (OJ L 99, 16.4.2002, p. 17).

(2) The Democratic People's Republic of Korea (North Korea) has confirmed an outbreak of avian influenza on its territory. North Korea is a member of the OIE and accordingly Member States are to accept imports of such birds from that country under Decision 2000/666/EC. Taking into account the potential serious consequences related to the specific avian influenza virus strain involved in the rest of Asia, the importation of those birds from North Korea should be suspended as a precautionary measure.

(3) Under Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption <sup>(4)</sup>, the importation of unprocessed feathers and parts of feathers originating in North Korea is authorised. In view of the current disease situation in North Korea those imports should be suspended.

(4) Commission Decision 2004/122/EC of 6 February 2004 concerning certain protection measures in relation to avian influenza in several Asian countries <sup>(5)</sup> was adopted in response to outbreaks of avian influenza in several Asian countries. Article 4 of that Decision provides that Member States are to suspend the importation from certain third countries of unprocessed feathers and parts of feathers and live birds other than poultry, as defined in Decision 2000/666/EC. In the interests of animal and public health, North Korea should be added to the third countries referred to in Article 4 of Decision 2004/122/EC.

(5) Decision 2004/122/EC should be amended accordingly.

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

<sup>(4)</sup> OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 416/2005 (OJ L 66, 12.3.2005, p. 10).

<sup>(5)</sup> OJ L 36, 7.2.2004, p. 59. Decision as last amended by Decision 2005/194/EC (OJ L 63, 10.3.2005, p. 25).

HAS ADOPTED THIS DECISION:

*Article 1*

Article 4(1) of Decision 2004/122/EC is replaced by the following text:

‘1. Member States shall suspend the importation from Cambodia, China including Hong Kong, Indonesia, Laos, Malaysia, North Korea, Pakistan, Thailand and Vietnam of:

— unprocessed feathers and parts of feathers, and

— “live birds other than poultry” as defined in Decision 2000/666/EC, including birds accompanying their owners (pet birds).’

*Article 2*

The Member States shall amend the measures they apply to imports so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 18 May 2005.

*For the Commission*  
Markos KYPRIANOU  
*Member of the Commission*

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