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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 658/2002**of 15 April 2002****imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, hereinafter referred to as 'the basic Regulation' and in particular Article 11(2) and (3) thereof,

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

Whereas:

A. PROCEDURE**1. Previous investigations**

- (1) In May 1994, by Decision 94/293/EC ⁽²⁾, the Commission accepted undertakings with regard to imports of ammonium nitrate originating in Lithuania and Russia, following a regional anti-dumping proceeding concerning imports into the United Kingdom. The undertaking accepted from the Russian authorities was, however, breached within the first year of operation.
- (2) In June 1994, a Community-wide anti-dumping investigation concerning ammonium nitrate originating in Lithuania and Russia was initiated subsequent to a complaint lodged by the European Fertiliser Manufacturers Association (EFMA). By Commission Decision 95/344/EC ⁽³⁾, the proceeding was terminated in respect of imports from Lithuania and in August 1995, the Council, by Regulation (EC) No 2022/95 ⁽⁴⁾, imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia. The measures applying to imports originating in Russia consisted of a variable duty equal to the difference between ECU 102,9 per tonne net of product ('minimum import price' or 'MIP') and the net cif price, Community frontier before customs clearance, in all cases where the latter was lower.

- (3) Pursuant to a further investigation, which established that these measures were being absorbed, the measures were changed, in March 1998, by Regulation (EC) No 663/98 ⁽⁵⁾, to a specific duty of ECU 26,3 per tonne.

2. Investigations concerning other countries

- (4) In October 1999, an anti-dumping investigation was initiated concerning imports into the Community of ammonium nitrate originating in Lithuania, Poland and Ukraine ⁽⁶⁾. It showed that imports of ammonium nitrate originating in Poland and Ukraine were dumped and caused material injury to the Community industry, whereas imports originating in Lithuania were found not to be dumped. Consequently, by Regulation (EC) No 132/2001 ⁽⁷⁾, definitive anti-dumping measures were imposed on imports of ammonium nitrate originating in Poland and Ukraine, while the proceeding was terminated in respect of imports originating in Lithuania. Duties were imposed in the form of a specific duty per tonne, in order to ensure the efficiency of the measures and to discourage any price manipulation.

3. Present investigation**3.1. Request for review**

- (5) Following the publication, on 24 February 2000, of the notice of the impending expiry of the anti-dumping measures in force on imports of ammonium nitrate originating in Russia ⁽⁸⁾, the Commission received a request for an expiry and an interim review pursuant to Article 11(2) and (3) of the basic Regulation, lodged by EFMA on behalf of producers representing a major proportion of Community production of ammonium nitrate ('applicant Community producers'). The request for an expiry review alleged that injurious dumping of imports originating in Russia would be likely to continue or to recur if measures were allowed to expire. The applicant's request for an interim review was based

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 129, 21.5.1994, p. 24.

⁽³⁾ OJ L 198, 23.8.1995, p. 27.

⁽⁴⁾ OJ L 198, 23.8.1995, p. 1.

⁽⁵⁾ OJ L 93, 26.3.1998, p. 1.

⁽⁶⁾ OJ C 311, 29.10.1999, p. 3.

⁽⁷⁾ OJ L 23, 25.1.2001, p. 1.

⁽⁸⁾ OJ C 52, 24.2.2000, p. 3.

on the grounds that the current measures did not appear to be sufficient to counteract the injurious effects of dumping.

3.2. Notice of initiation

- (6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation pursuant to Article 11(2) and (3) of the basic Regulation by a notice published in the *Official Journal of the European Communities* ⁽¹⁾.

3.3. Period of investigation

- (7) The investigation period ('IP') for the examination of continuation and recurrence of dumping and injury covered the period from 1 July 1999 to 30 June 2000. The examination of trends relevant for the assessment of continuation and/or recurrence of injury covered the period from 1 January 1996 up to the end of the IP ('period under review').

3.4. Parties concerned by the investigation

- (8) The Commission officially advised the applicant Community producers, the exporting producers in Russia, the importers, users and associations known to be concerned, and the representatives of the exporting country concerned of the initiation of the review. The Commission sent questionnaires to the exporting producers, Community producers, importers, users and associations known to be concerned and to those who made themselves known within the time limit set in the notice of initiation.
- (9) In order to allow Russian exporting producers 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.
- (10) Nine Community producers, one analogue country producer, two importers, one importers' association, and two users' associations replied to the questionnaires. With respect to the exporting country concerned, only one reply to the questionnaire was received.

3.5. Verification of information received

- (11) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest. The Commission also gave the parties directly concerned the opportunity to

make their views known in writing and to request and hold a hearing.

- (12) Verification visits were carried out at the premises of the following companies:

Community producers:

- Grande Paroisse SA, France,
- Hydro Agri France, France,
- Kemira Ince Ltd, United Kingdom,
- Terra Nitrogen, United Kingdom;

analogue country producer:

- Mississippi Chemical Corporation, Yazoo City, USA.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (13) The product under consideration is the same as in the previous investigation, i.e. ammonium nitrate ('AN' or 'product under consideration'), a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid and the nitrogen content exceeds 28 % by weight in prilled or granular form.
- (14) The product concerned currently falls within CN codes 3102 30 90 (ammonium nitrate other than in aqueous solutions) and 3102 40 90 (mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight).

2. Like product

- (15) As both the previous investigation and the investigation concerning other countries have shown, AN is a pure commodity product and its basic chemical characteristics are comparable whatever the country of origin. There are two different types of AN: granular and prilled. Granular AN has a larger diameter and therefore has better spreading characteristics. The investigation has shown that imports of AN originating in Russia are prilled and that the majority of AN produced by the Community industry is granular. However, since granular and prilled AN have the same chemical characteristics and end use and are perceived by users as being interchangeable, they are to be regarded as two different types of the same product.
- (16) Therefore, the product produced and sold in the Community by the applicant Community producers is considered to be a like product to that produced in Russia and sold domestically or exported to the Community. The same is true with regard to AN sold on the domestic market of the analogue country.

⁽¹⁾ OJ C 239, 23.8.2000, p. 10.

C. DUMPING AND LIKELIHOOD OF A CONTINUATION OF DUMPING

- (17) In accordance with Article 11(2) of the basic Regulation, it is necessary to examine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.
- (18) In examining whether there is a likelihood of a continuation of dumping, it is necessary to verify whether dumping exists at present and whether any such dumping is likely to continue.

1. Dumping during the IP

1.1. Volume of exports to the Community during the IP

- (19) Exports of AN from Russia amounted to 282 000 tonnes during the IP, i.e. about 20 % of total Community imports of AN and about 5 % of Community AN consumption. These imports are only slightly below the level found in the previous investigation period, i.e. 340 000 tonnes between April 1993 and March 1994.

1.2. MET and IT

- (20) Claims for MET and/or IT were received from three exporting producers. As two of these companies later failed to submit their reply to the Commission's questionnaire within a reasonable period of time, it was considered appropriate not to process further their MET/IT claim forms. Indeed, in the absence of the necessary data for carrying out a dumping calculation, the claims for MET and IT could not be considered. These companies were therefore considered as non-cooperating with the investigation and were subsequently informed that the findings would be based on the facts available, in accordance with Article 18 of the basic Regulation.
- (21) The third company having submitted an MET/IT claim form was found to have no exports of the product concerned to the Community during the IP. In the absence of any actual export sales data for the IP, no dumping calculation was possible in the context of either the expiry review or the interim review. Consequently, neither MET nor IT could be considered.

1.3. Analogue country

- (22) Since imports from Russia fall under Article 2(7)(a) of the basic Regulation except where MET is granted, normal value has to be based on information obtained in an appropriate market economy third country. In the notice of initiation, the Commission suggested Poland as

an appropriate analogue country because it was used as an analogue country in other investigations concerning the same product, and the production processes and access to raw materials are comparable to those prevailing in Russia.

- (23) Comments were received by the European Fertiliser Import Association (EFIA) objecting to this choice. Their main objection was that Poland has very high domestic fertiliser prices due to its high level of protection against fertiliser imports and also it has the highest gas prices in Central Europe because of its monopolistic state-owned gas distribution system. As an alternative, EFIA proposed Lithuania on the grounds of its close proximity and similar manufacturing conditions to Russia, its absence of barter trade and the fact that the sole Lithuanian producer purchases gas from a Russian supplier, which also supplies the Russian producers, at prices which vary in accordance with the published cif northern Europe price for ammonia.

- (24) However, neither the known Polish producers nor the sole Lithuanian producer were willing to cooperate.

- (25) The Commission then approached producers in Australia and the USA as suggested by EFMA. As only one producer from each of these countries was willing to cooperate, a further analysis was carried out into the importance of their respective domestic sales in terms of domestic market share, and into the representativeness of their domestic sales volume compared to Russian exports to the Community. This analysis showed that, whereas both producers had representative domestic sales, the Australian producer did not face any significant competition in its domestic market. Although the USA producer also had significant domestic sales, it faced price competition from both domestic and foreign companies. Consequently, the USA was selected as the most appropriate analogue country.

- (26) The sales of AN by the USA producer on its domestic market were examined and found to be representative in comparison with Russian export sales of AN to the Community.

- (27) Following disclosure, EFIA argued that the lack of cooperation from the sole Lithuanian producer should not have prevented the Commission from using Lithuania as the analogue country, as it had relevant information from its recent anti-dumping proceeding concerning imports of ammonium nitrate from Lithuania, Ukraine and Poland⁽¹⁾. There was indeed an overlap of the IPs in the two proceedings. However, this overlapping period was limited to the first three months of the IP for the current proceeding. In accordance with Article 6(1) of the basic Regulation, for a representative finding, the IP should normally cover a period of six months immediately prior to the initiation of the

⁽¹⁾ OJ L 23, 25.1.2001, p. 1.

proceeding. In these circumstances it was considered that data from the first three months of the IP would not be sufficiently representative for the seasonal and volatile AN market. In addition, it should be stressed that using information received in the context of a given proceeding for a precise purpose, in another proceeding for a different purpose, where the party concerned has moreover expressed its unwillingness to cooperate with the second investigation, would be contrary to the provisions of Article 19(6) of the basic Regulation. The argument was, therefore, rejected.

1.4. Normal value

- (28) As stated above, normal value was calculated on the basis of the data verified at the premises of the USA company, which cooperated fully with the investigation.
- (29) In order to establish whether sales in the USA market of the like product were made in the ordinary course of trade, the domestic selling price at an ex-works level was compared to the full cost of production (i.e. the cost of manufacturing plus SG&A expenses). As the weighted average sales price was higher than the weighted average unit cost, normal value was established on the basis of the weighted average domestic selling price for the IP.
- (30) Both EFIA and the cooperating Russian exporter argued that a downward adjustment to constructed normal value should have been made due to high gas prices paid by USA producers. Firstly, it should be noted that normal value was not constructed, but was established on the basis of profitable sales prices in the USA domestic market. Secondly, although gas is an important cost element in the production of AN, it was noted that the domestic AN market in the USA is driven by competition and that there are significant imports. As such, the domestic prices of AN are to a significant extent market-driven rather than cost-driven. No evidence was obtained with regard to the extent to which higher gas prices in the USA market would have affected the domestic sales prices of AN during the IP. Finally, even if high gas prices were deemed to have affected the domestic sales prices of AN to a quantifiable extent, this would have had no impact on the definitive duty, since the dumping margin found would not have fallen below the injury margin. In these circumstances, the argument was rejected.

1.5. Export price

- (31) As the sole cooperating exporting producer had no exports of the product concerned to the Community during the IP, the export price was established on the basis of the available data, in this case, Eurostat statistics of Community frontier cif prices, in accordance with Article 18 of the basic Regulation.

1.6. Comparison

- (32) The normal value was compared to the export price on an ex-works basis. This method was used in order to take into account the differences in internal transport costs in market and non-market economy countries incurred in particular for a bulk product such as the product under consideration, for which transport costs account for a very high proportion of the selling price. The appropriate adjustments were made, therefore, to the cif export price in respect of the costs for transport from ex-works to port, port services, insurance and freight costs.
- (33) The transport costs for AN in the USA were found to be market-driven and there is competition between transport companies. Since the USA is a competitive market, rail fares established during the investigation for the product under consideration in the USA were applied proportionately to the Community frontier export price of Russian exporting producers, on the basis of the weighted average distance to the Community border estimated for all 'export-oriented' (see recital 37) Russian producers.

1.7. Dumping margin

- (34) In accordance with Article 2(11) and (12) of the basic Regulation, the country-wide dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price at an ex-works level. The country-wide dumping margin expressed as a percentage of the 'cif-Community-border' price is 115,8 %.

2. Likelihood of a continuation of dumping

- (35) As indicated in recital 34, exports to the Community were found to be made at dumped prices during the IP. Moreover, the dumping margin found was much higher than that of the previous investigation.
- (36) In examining whether dumping was likely to continue at substantial levels and in significant quantities, a number of sources of information were analysed. First, information submitted by the only cooperating Russian producer was used. However, this producer, although exporting to third countries, did not have any export sales to the Community. Second, in the absence of any cooperating company with exports to the Community market, in accordance with Article 18(1) of the basic Regulation, the analysis was also based on Eurostat data as well as information provided in the review request which permitted projections to be made of likely future export volumes to the Community.

- (37) The total capacity for AN production in Russia is estimated about 8 900 000 tonnes (i.e. 1,6 times the Community consumption for the IP), of which the production capacity of the 'export-oriented' producers (i.e. generally those with reasonable access to a port) is estimated at a minimum of 4 500 000 tonnes. Although capacity utilisation rates vary significantly between different companies and from year to year, local consumption is estimated at only about 2 200 000 tonnes. Taking into account the current level of Russian exports to other third countries (i.e. 2 189 000 tonnes in 1999), this means that there is still significant capacity available for production for export and this could potentially be used to increase further the existing exports to the Community, in the event of expiry of the measures.
- (38) Furthermore, it is recalled that as recently as 1996, Russian exports to the Community accounted for 40 % of total Russian exports ⁽¹⁾ of the product under consideration. This, in conjunction with the fact that a number of third countries (USA, Australia, Poland and Hungary) adopted commercial defence measures against imports from Russia, that China, since 1997, actively pursued a strategy of replacement of imports by domestic production, and that domestic consumption in Russia is likely to stay at relatively low levels in the near future, means that Russian producers would be more likely to direct any additional production to the Community market.
- (39) Having regard to the current price levels on the Community market, it is likely that the Russian exporting producers would continue to adopt a policy of dumped prices in order to regain their lost market shares. This is also confirmed by the Russian exporters' price behaviour on their other most important export markets besides the Community and the USA.
- (40) In addition, even though the world fertiliser consumption is forecast to increase by the year 2004, the bulk of the increase is expected to take place in Asia, mostly China and India. However, China and India have developed massive capacities for fertiliser production in order to reduce the level of imports. More particularly, China imposed a ban on nitrogenous fertiliser imports, including AN.
- (41) As mentioned in recital 21, the one exporting producer which cooperated with the investigation had no exports to the Community during the IP. Although this producer had significant production capacity during the IP, it had limited unused capacity and therefore any substantial production for export to the Community in the event of expiry of the measures would have necessitated a reduction in sales to other markets. Given the substantial volume of exports and margin of dumping during the IP from other exporters, even if this exporter might sell to the Community at non-dumped prices following any expiry of the measures, this would not have altered the

finding with regard to the likelihood of a continuation of dumping for the country as a whole.

- (42) EFIA argued that, since the recent terrorist attacks in the USA, all related costs, such as insurance, transport, unloading, storage and handling, are increasing and that this will be reflected in higher prices of imported fertiliser, as importers have to recover these costs as well. However, this argument was unsubstantiated, as no evidence was provided to show that this would have a greater impact on export prices from Russia than domestic prices in the USA. In addition, developments after the IP can only be taken into consideration if it can be demonstrated that these developments would make the results of the investigation unsuitable and the planned imposition of an anti-dumping duty manifestly inappropriate. This was not found to be the case and the argument was therefore rejected.

3. Conclusion

- (43) Nothing was found during the investigation to suggest that the dumping margin or volume of dumped exports determined for the investigation period would disappear or even decrease should the measures be allowed to expire. Moreover, it was found that Russian producers had substantial spare capacities and that the removal of measures would likely result in further dumped exports to the Community. It was therefore concluded that, should the measures expire, dumping at a substantial level and in increased volumes would very likely continue.

D. DEFINITION OF THE COMMUNITY INDUSTRY

- (44) Out of the 11 applicant Community producers, one did not reply to the questionnaire (Sefanitro) and one did not submit sufficient information (Chemical Industries of Northern Greece). Consequently, both these producers were considered to be non-cooperating and therefore were not regarded as being part of the Community industry. The investigation established that the remaining nine cooperating producers represented more than 85 % of the Community production of AN during the IP. Therefore they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

E. ANALYSIS OF THE SITUATION IN THE COMMUNITY MARKET

1. Preliminary remark

- (45) The introduction of the anti-dumping measures on imports of AN originating in Russia in 1995 in a first stage considerably improved the economic situation of the applicant Community producers, in particular in terms of better financial results, due to the increase in prices between 1995 and 1996.

⁽¹⁾ Source: Eurostat — Comext 'Russian exports'.

2. Consumption

- (46) Community consumption was established on the basis of the sales volume of the Community industry on the Community market, as reported in the questionnaire replies, the sales volume on the Community market of the other Community producers (both non-cooperating and non applicants), as reported in the complaint and the import volumes into the Community from the country concerned and all other third countries, on the basis of Eurostat.

On this basis, Community consumption decreased by 13 % between 1996 and the IP, i.e. from 6 328 000 tonnes in 1996 to 5 525 000 tonnes in the IP. Consumption decreased particularly between 1996 and 1997, and then remained relatively stable until the end of the IP.

3. Imports from the country concerned

3.1. Volume and market share

- (47) Total imports of AN in the Community followed a downward trend during the period under review (- 28 %) even though they increased slightly between 1999 and the IP.

With respect to the volume of the Russian imports, it decreased significantly over the period under review, in particular as from 1997. This trend seems to be the result of the reopening of the investigation published in 1997, the conclusions of which published in 1998 led to the amendment of the anti-dumping measures in that year, and of the significant increase of the imports from certain other third countries, which have benefited from the imposition of anti-dumping duties on Russian imports. Between 1996 and the end of the IP, Russian imports went down by 74 %, while other imports increased by 30 %.

- (48) The market share of the imports from Russia decreased by 12 percentage points during the period under review. However, during the IP, it still represented 5 % of Community consumption and a significant part of overall imports, namely 20 %.

3.2. Prices

- (49) After the imposition of the measures in 1995, the average prices of the imports concerned, as reported by Eurostat, fell by 45 %, between 1996 and the IP.

3.3. Price comparison

- (50) The Commission has examined whether the exporting producers in the country concerned undercut the prices of the Community industry during the IP. For this analysis, the cif prices of the exporting producers have been duly adjusted to a Community frontier ex quay

custom duty paid level (DEQ) and compared, at the same level of trade, to Community producers' ex-works prices, both for bagged products. This was done as imports are always bagged, whereas the Community industry sold its products both in bagged and in bulk form. Thus, adjustments were made where appropriate. In addition, the investigation has shown that granular products were on average sold at a higher price than prilled products. Therefore, an allowance of EUR 3,1 per tonne was made for the price comparison. This amount is the average price difference between granular and prilled AN sold by the Community industry during the investigation period.

- (51) EFIA argued that an adjustment should have been made for the lower quality of the product imported from Russia. However, the investigation established that the quality of the product concerned originating in Russia has improved in recent years and has been upgraded to the higher European standards. Therefore, the argument has been rejected.

- (52) The country-wide price difference found on this basis, expressed as a percentage of the Community producers' prices, is 27,7 %. This difference still amounts to 3,2 % when the anti-dumping duty is added to the export price. Furthermore, prices of the Community industry were depressed, as the industry incurred losses of 18 %.

4. Economic situation of the Community industry

4.1. Production

- (53) The Community industry's production decreased by 17 % between 1996 and the IP, i.e. from 4 713 000 tonnes to 3 903 000 tonnes. A slight increase took place between 1997 and 1998, but the production fell back again in 1999.

4.2. Capacity and capacity utilisation

- (54) It should be noted that capacity and capacity utilisation were not found to be meaningful indicators for this type of production and industry since they are affected by the fact that also other products are produced on the same production equipment. Indeed, based on natural gas transformed into ammonia, various different products are produced using the same production lines. The total production capacity of the Community industry was relatively stable over the period under consideration. Capacity utilisation decreased from 56 % in 1996 to 46 % in 1997 and subsequently remained stable.

4.3. Sales in the Community

- (55) The sales volume of the Community industry decreased from 4 238 000 tonnes in 1996 to 3 766 000 tonnes in the IP, i.e. by 11 %. The decrease was most notable between 1996 and 1997, when the sales decreased by 15 %.

4.4. Stocks

- (56) The level of stocks is not considered to be a relevant injury indicator owing to the seasonal nature of the sales and the fact that AN is partly stored by the producers themselves and partly by the cooperatives of farmers.

4.5. Market share

- (57) The market share of the Community industry decreased between 1996 and 1997 and then increased to gain finally 1,2 percentage points between 1996 and the IP. In the IP, it was 68,2 % compared to 67 % in 1996.

4.6. Prices and factors affecting prices

- (58) The Community producers' average net sales price decreased from ECU 133/tonne in 1996 to ECU 99/tonne in the IP, i.e. by 25 %. The fall was particularly marked between 1996 and 1999, (i.e. - 28 %). Besides the price depressive effect of the imports concerned, other factors that may have contributed to the fall in prices were the decrease in demand on the Community market between 1996 and 1997, imports from countries covered by Regulation (EC) No 132/2001 and the Chinese ban in nitrogen fertiliser imports imposed in 1997.

4.7. Profitability and return on investment

- (59) The weighted average profitability of the Community industry deteriorated by 37 percentage points between 1996 and the IP from 18,6 % to - 18,0 %. This trend has to be seen in the light of the price evolution which showed a similar pattern and of the natural gas price which increased as from the third quarter of 1999.

During the period under review, the return on investment followed a trend similar to the one of profitability.

4.8. Cash flow

- (60) The cash flow generated by the Community industry in relation to sales of AN followed very closely the profitability trend.

4.9. Ability to raise capital

- (61) Due to the structure of the complainant companies, i.e. the fact that the fertiliser producers are a part of large chemical groups also dealing with other products, it was not possible to establish the ability to raise capital for the product under consideration only, and it was there-

fore considered as not being a meaningful indicator to measure injury.

4.10. Employment and wages

- (62) Employment in the Community industry decreased, between 1996 and the IP, from 1 986 to 1 608 employees, i.e. a decrease of 19 %. With respect to overall wages, they followed a similar decline as compared to the decrease of the number of persons employed.

4.11. Investments

- (63) Investment figures remained relatively stable over the period under consideration. These investment figures include investments relating to production steps preceding the production of AN. The most important investments between 1996 and the IP were investments in production facilities for nitric acid, which is a raw material for the production of AN, but which may also be used for other purposes such as the production of urea ammonium nitrate solutions.

4.12. Magnitude of the dumping margin

- (64) The impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, cannot be considered to be negligible.

5. Conclusion

- (65) As explained under recital 45 the introduction of the anti-dumping measures on imports of AN originating in Russia in 1995 in a first stage considerably improved the economic situation of the applicant Community producers. However, starting from the year 1997, the situation deteriorated again. Except market shares, which slightly increased on account of price decreases, all other injury indicators, i.e. production, sales volumes, prices, profitability, return on investment, cash flow and employment, developed negatively. In particular, the sharp decrease in the sales prices of the Community industry had a negative effect on its profitability. As confirmed by Regulation (EC) No 132/2001, this development should be seen in the light of the increased presence in the Community market of imports from these third countries, which have gained more than half of Russian market shares and significantly undercut the prices of the Community industry.

- (66) In this respect it should be noted that Russian prices, on the basis of Eurostat and excluding the specific duty imposed in 1998, were below the sales prices of Poland and Ukraine during the whole period under review (27 % below during the IP), with the exception of the year 1997, when they were at the same level.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Changes with respect to dumping and the situation of the Community industry

1.1. Change in circumstances with respect to dumping

- (67) The investigation has shown that the dumping margin has increased significantly compared to the dumping margin calculated in the previous investigation which led to the measures in force. In fact, the dumping margin calculated in the previous investigation was 41,9 % which is substantially lower than that calculated in the current investigation (115,8 %).

1.2. Change in circumstances with respect to the situation of the Community industry

- (68) The investigation has shown that significant losses have been suffered by the Community industry between 1998 and the IP. The situation is even worse than it was during the investigation which led to the measures in place, since, for instance, the level of losses was almost three times higher during the IP of the current investigation than it was in the investigation period of the previous investigation, conducted under Regulation (EC) No 2022/95.
- (69) Nearly throughout the entire period of the existence of the duty on imports from Russia, substantial price undercutting took place. In March 1998 the variable duty had to be replaced by a specific duty because measures proved not to be effective. Moreover, as from July 1998, the export prices at duty paid level (i.e. including the specific duty) were below the non-injurious price of the Community industry which was established in the original investigation and which determined the level of the duty.

2. Likelihood of recurrence of injury

- (70) In order to assess the likely effect of the expiry of the measures in force, the following elements were considered.
- (71) A pricing behaviour by Russian exporting producers, as evidenced by low prices on third country markets and on the Community market, coupled with their ability to deliver additional significant quantities of AN, would in all likelihood have a general price depressing impact on what is a very price-sensitive commodity market should measures be repealed. Russian exporting producers would in all likelihood take over from the Community industry significant additional market shares. This in turn would lead to a recurrence of injury from imports originating in Russia in terms of decreasing sales prices

of the Community industry, sales volumes and market shares as well as the consequent impact in terms of profitability.

- (72) The Community industry is in a difficult situation having regard in particular to its profitability. Indeed, although the situation of the Community industry, following the imposition of the measures under consideration, markedly improved in the first year of application of the measures, it deteriorated again, in particular as from 1997, due to the injurious dumping of other countries' imports, as established in Regulation (EC) No 132/2001 and is now even worse. In this regard, should the measures against Russia be repealed, not only would the situation of the Community industry again be put at risk, but also the benefit which the Community industry should derive from the measures imposed against other countries could be weakened or even nullified.

- (73) EFIA argued that the price decrease experienced in the Community market as from 1997 is due to a number of factors, amongst which the Chinese import ban on nitrogen fertilisers, and that it cannot be attributed to the Russian price behaviour. However, even if other factors, such as the decrease in demand on the Community market between 1996 and 1997 and the Chinese strategy, may be at the origin of a price decrease, the Russian prices decreased far more than the prices of all other exporters, and were far below other prevailing non-dumped import prices from countries such as Lithuania, Egypt and Bulgaria. This may be explained by the fact that Russia lost one of its most important export markets given that Russian exports to China amounted to more than 1 000 000 tonnes, i.e. 90 % of the Chinese AN imports in 1996, the year before the ban was imposed.

- (74) It was also claimed by the same importers' association that, since the deterioration of the situation of the Community industry has already been attributed to Poland and Ukraine in the context of another investigation, leading to the imposition of anti-dumping measures, it cannot be considered in relation to the imports of AN originating in Russia as well. In this respect, it should be recalled that the scope of an expiry review is to analyse the situation of the Community market as against the likelihood that dumping and injury would continue or recur should the measures in force be removed. Consequently, with regard to the current expiry investigation, the fact that the deterioration of the Community industry has been attributed during a certain period to the presence of other third countries, namely Poland and Ukraine, in the context of another anti-dumping proceeding, does not affect the analysis of the future behaviour in the Community market of Russian exporters and its likely effect on the situation of the Community industry.

- (75) EFIA finally claimed that the decrease of the Community industry's profitability is mainly due to the price increase of natural gas, and that an adjustment should have been made to the non-injurious price to take this into account.

As mentioned under recital 59, it was considered that this gas price increase may have had an influence on profitability. However, profitability is only part of the analysis of the situation of the Community industry and, as explained under recital 65, many other indicators developed negatively over the period under review. It was therefore considered that the gas price evolution should be seen rather as an aggravating factor than as a cause of the injury, given that the price pressure found did not allow the Community industry to pass on the increase via its sales prices.

Finally, the analysis of the gas price evolution in the Community over recent years shows it to be very volatile and no conclusions can be drawn with respect to future development. Consequently, it was concluded that there are no special circumstances on the Community market that justify an adjustment.

- (76) On the basis of the above, it is concluded that, should the measures be repealed, injury is likely to recur.

G. COMMUNITY INTEREST

1. Introduction

- (77) According to Article 21 of the basic Regulation, the Commission examined whether a prolongation and amendment of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users of the product under consideration. In order to assess the likely impact of maintaining or not maintaining the measures, the Commission requested information from all interested parties mentioned above.
- (78) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, would allow the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

- (79) On this basis it was examined whether, despite the conclusions on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interest of the Community industry

- (80) It is considered that if anti-dumping duties are not maintained, injurious dumping is likely to recur and that the situation of the Community industry, which worsened during the period under review, would further deteriorate.
- (81) The Community industry has proved to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the industry's profits achieved until 1997 and its investment in state of the art production capacity. The success of these efforts strongly depends on the existence of a fair competition on the Community market.
- (82) It can reasonably be expected that the Community industry will benefit from the measures imposed by Regulation (EC) No 132/2001 provided that no other source of injurious dumping undermines these measures. As outlined above, since there is a likelihood of a recurrence of injurious dumping from Russia, it is in the interest of the Community industry to maintain the anti-dumping measures on imports of AN originating in Russia.

3. Interest of importers

- (83) Questionnaires and information were received from the EFIA (representing 24 importers) and two importers (out of the 48 questionnaires sent).
- (84) The replies received from the two cooperating importers confirmed the price decrease as from 1998 and the fact that the Community producers had to follow this trend in order to ensure competitiveness. One of them also underlined the necessity to maintain the European infrastructure in order to guarantee good conditions for the supply of the European market, whereas the association was against the continuation of the measures.
- (85) In view of the low level of cooperation and the fact that importers generally deal with a wide range of fertilisers, of which AN is only one, it was concluded that any negative impact of the continuation of measures on importers would not be a compelling reason not to impose the continuation of measures.

4. Interest of users

(86) The users of the product concerned are farmers. The Commission sent questionnaires to six users' associations at European and national levels. Two of them replied to the questionnaire. Both are, as a matter of principle, against the continuation of the measures.

(87) One users' association argued that the analysis of the interest of the users should be closely linked to the British users' interest, on the grounds that the highest level of consumption of AN in the Community is in the United Kingdom. However, the investigation established that, during the IP, the United Kingdom accounted for only 16 % (in volume) of the imports from Russia into the Community of the product concerned, whereas France accounted for 47 % of the Russian imports of AN into the Community. On this basis, the argument has to be rejected.

(88) In addition, the same association argued that maintaining the anti-dumping measures in force would decrease the incomes of British farmers, thus putting them in a much more difficult economic situation. In this respect, as stated in Regulation (EC) No 132/2001, fertilisers represented on average 6 % of the total production costs for farmers. Given that imports from the country concerned represented, during the IP, 5 % of AN consumption in the Community market, and given that only part of any resulting import price increase is likely to be passed on to the users, any increase in farmers' production costs is likely to be minor. Moreover, were the Community industry to increase not only the volume of sales but also the prices, any such price increase would be limited given the existence of other sources of supply. Indeed, 37 % of all imports of AN into the Community are not subject to anti-dumping measures.

(89) EFIA and one users' association argued that the anti-dumping measures restrict competitively priced alternative sources of AN for the farmers since only 37 % of all imports of AN into the Community are not subject to anti-dumping measures.

On the one hand it is recalled that the purpose of the anti-dumping measures is not to restrict supply, but to re-establish fair competition on the Community market.

On the other hand, it should be noted that the percentage of 37 % is partly underestimated due to the fact that the supply of AN to the Community market by non-dumping countries became less attractive owing to the strong price pressure exerted by Russia, Poland and Ukraine. It is therefore highly likely that, should fair

competition be re-established, non-dumping countries will increase their presence on the Community market.

(90) On the basis of the above, the likely impact on farmers was considered not to constitute a compelling reason against the continuation of the measures, as a possible negative effect on farmers is unlikely to offset the positive effect on the Community industry.

5. Conclusion on the Community interest

(91) Given the above, it was concluded that there are no compelling reasons of Community interest against the continuation of the measures.

H. ANTI-DUMPING MEASURES

(92) The complainant submitted that there were indications of the emergence of new forms of AN, i.e. mixtures of AN with other products, whose only purpose is to circumvent possible anti-dumping measures concerning AN. The attention of the customs authorities is drawn to this issue.

(93) In view of the conclusions reached with regard to dumping and injury, and taking into consideration that it could be established that existing measures are not achieving the intended results in removing the injury previously established, it is concluded that anti-dumping measures should be maintained in order to prevent further injury, and that the level of the measures should be modified.

(94) For establishing the level of duty, account has been taken of the level of the dumping margin found and the amount of duty necessary to eliminate the injury suffered by the Community industry. On the basis of the lesser duty rule, the injury margin was used for determining the amount of duty to be imposed.

(95) EFMA argued that a double mechanism (specific duty coupled with a minimum import price) would be more appropriate given the extremely low State-fixed gas prices paid by the Russian producers. It is, however, considered that the specific duty is sufficient as it is based on the findings of the review investigation and that the form of the measure, i.e. a specific duty, discourages price manipulation and absorption of the duties. EFMA's request was therefore rejected.

(96) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average import price, with the non-injurious price of AN sold by the Community industry on the Community market.

- (97) The non-injurious price has been obtained by adding to the full unit cost of production a profit margin that may reasonably be reached in the absence of injurious dumping, taking account of the allowance with respect to the difference between granular and prilled AN already made for the undercutting calculations. The profit margin used for this calculation is 8 %. The difference resulting from the comparison between the weighted average import price and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value.
- (98) The applicant submitted that a profit margin of 15 % return on capital employed would be appropriate. It argued that this level of return was necessary to reinvest for the long term and to achieve an adequate return on equity for shareholders. In the current context, however, the relevant concept is a reasonable profit the Community industry could have reached in the absence of injurious dumping, which does not coincide with the concept of the profit sought by shareholders. Given the findings in recital 56 of Regulation (EC) No 132/2001, and in the absence of any other comments, 8 % of turnover seems to be a reasonable profit. In order to ensure the efficiency of the measures and to discourage the price manipulation which has been observed previously, it is considered appropriate to impose the duty in the form of a specific amount per tonne.
- (99) On the basis of the above, the amount of the duty shall be equal to the fixed amount per tonne of AN as shown below:

Country	Fixed amount of duty (euro per tonne)
Russia	47,07

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of AN, falling within CN codes 3102 30 90 and 3102 40 90, originating in Russia.
2. The amount of the applicable duty per tonne of product shall be a fixed amount per tonne of AN as shown below:

Country	Fixed amount of duty (euro per tonne)
Russia	47,07

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty mentioned in paragraph 2 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Luxembourg, 15 April 2002.

For the Council

The President

J. PIQUÉ I CAMPS

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 993/2001 (OJ L 141, 28.5.2001, p. 1).

COMMISSION REGULATION (EC) No 659/2002
of 17 April 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 18 April 2002.

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

Done at Brussels, 17 April 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 17 April 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	167,7
	204	108,4
	999	138,1
0707 00 05	052	128,9
	220	237,0
	999	182,9
0709 90 70	052	123,3
	204	32,0
	624	68,2
	999	74,5
0805 10 10, 0805 10 30, 0805 10 50	052	51,8
	204	48,6
	212	43,5
	220	56,8
	624	59,7
0808 10 20, 0808 10 50, 0808 10 90	999	52,1
	060	34,8
	388	94,3
	400	104,4
	404	103,5
	508	81,1
	512	88,5
	524	71,8
	528	85,4
	720	136,9
	804	114,3
	999	91,5
	388	77,9
	512	71,3
	528	81,1
0808 20 50	800	65,8
	999	74,0

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

COMMISSION REGULATION (EC) No 660/2002**of 17 April 2002****opening and providing for the management of tariff quotas for certain fisheries products from Greenland and Saint Pierre and Miquelon**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') ⁽¹⁾, and in particular Article 36(3)(a) thereof,

Whereas:

- (1) Article 36(3)(a) of Decision 2001/822/EC provides that from 1 February 2002 certain fisheries products in free circulation in Greenland or Saint Pierre and Miquelon and transhipped there may be accepted for import into the Community free of customs duties, subject to certain conditions and within certain annual limits. In particular the products must be accompanied by an export certificate issued in accordance with the provisions laid down in Annex IV to the Decision.
- (2) The annual limits should be managed by the Community authorities and the Member State in accordance with the management system for tariff quotas provided for in Articles 308a, 308b and 308c of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, as last amended by Regulation 444/2002 ⁽³⁾.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Annual duty-free tariff quotas shall be opened for the products referred to in the Annex to this Regulation which satisfy the conditions laid down in Article 36 of Decision 2001/822/EC.

Article 2

The tariff quotas referred to in Article 1 shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

The full annual volume of the tariff quotas shall be opened in 2002.

Article 4

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

This Regulation shall apply from 1 February 2002.

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

Done at Brussels, 17 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 314, 30.11.2001, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ OJ L 68, 12.3.2002, p. 11.

ANNEX

Products referred to in Article 1

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products in this Annex is to be taken as having no more than an indicative value, the coverage of the tariff quotas being determined by the CN codes. Where an ex CN code is indicated, the coverage of the tariff quota concerned is determined by application of that CN code and the corresponding description taken together.

Order No	CN code	TARIC code	Description of goods	Country or territory of transhipment	Annual volume (in tonnes)
09.0692	0303 31 10	* 10	Lesser or Greenland halibut (<i>Reinhardtius hippoglossoides</i>), frozen	Greenland	10 000
	ex 0304 20 95		Fish fillets, frozen: of halibut (<i>Reinhardtius hippoglossoides</i> , <i>Hippoglossus hippoglossus</i> , <i>Hippoglossus stenolepis</i>)		
	0306 13 10		Shrimps and prawns of the family <i>Pandalidae</i> , whether in shell or not, frozen		
09.1641	0302 21 10		Lesser or Greenland halibut (<i>Reinhardtius Hippoglossoides</i>), fresh, chilled, frozen or smoked	Saint Pierre and Miquelon	2 000
	0303 31 10				
	0305 49 10				
	0306 12		Lobsters (<i>Homarus</i> spp.), shrimps and prawns, frozen		
	0306 13				
	0306 22 91		Lobsters, (<i>Homarus</i> spp.), shrimps and prawns, not frozen		
	0306 22 99				
0306 23					

COMMISSION REGULATION (EC) No 661/2002**of 17 April 2002****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 1706/98 of 20 July 1998 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 (EEC) No 715/90 ⁽¹⁾, and in particular Article 30 thereof,

Having regard to Commission Regulation (EC) No 1918/98 of 9 September 1998 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 1706/98 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 and repealing Regulation (EC) No 589/96 ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. 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 April 2002, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, 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 May 2002 should be fixed within the scope of the total quantity of 52 100 tonnes.
- (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 ⁽³⁾, as last amended by Regulation (EC) No 1452/2001 ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 April 2002 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:

Germany:

- 230 tonnes originating in Botswana,
- 130 tonnes originating in Namibia;

United Kingdom:

- 1 200 tonnes originating in Botswana,
- 800 tonnes originating in Namibia,
- 50 tonnes originating in Swaziland.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of May 2002 for the following quantities of boned beef and veal:

Botswana:	15 986 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	3 173 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	10 670 tonnes.

Article 3

This Regulation shall enter into force on 21 April 2002.

⁽¹⁾ OJ L 215, 1.8.1998, p. 12.

⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.

⁽⁴⁾ OJ L 198, 21.7.2001, p. 11.

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

Done at Brussels, 17 April 2002.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 662/2002**of 17 April 2002****laying down to what extent applications for issue of export licences submitted during April 2002 for beef products which may benefit from special import treatment in a third country may be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*Having regard to Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef sector and repealing Regulation (EEC) No 2377/80 ⁽¹⁾, as last amended by Regulation (EC) No 2492/2001 ⁽²⁾, and in particular Article 12(8) thereof,

No applications for export licences were lodged for the beef referred to in Regulation (EEC) No 2973/79 for the second quarter of 2002.

Whereas:

Article 2(1) Regulation (EC) No 1445/95 lays down, in Article 12, detailed rules for export licence applications for the products referred to in Article 1 of Commission Regulation (EEC) No 2973/79 ⁽³⁾, as last amended by Regulation (EEC) No 3434/87 ⁽⁴⁾.

Applications for licences in respect of the meat referred to in Article 1 may be lodged in accordance with Article 12 of Regulation (EC) No 1445/95 during the first 10 days of the third quarter of 2002 the total quantity available being 3 750 t.

(2) Regulation (EEC) No 2973/79 fixed the quantities of meat which might be exported on special terms for the second quarter of 2002. No applications were submitted for export licences for beef,

Article 3

This Regulation shall enter into force on 21 April 2002.

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

Done at Brussels, 17 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission⁽¹⁾ OJ L 143, 27.6.1995, p. 35.⁽²⁾ OJ L 337, 20.12.2001, p. 18.⁽³⁾ OJ L 336, 29.12.1979, p. 44.⁽⁴⁾ OJ L 327, 18.11.1987, p. 7.

TWENTY-SIXTH COMMISSION DIRECTIVE 2002/34/EC**of 15 April 2002****adapting to technical progress Annexes II, III and VII to Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products ⁽¹⁾, as last amended by Commission Directive 2000/41/EC ⁽²⁾, and in particular Article 8(2) thereof,

After consulting the Scientific Committee on Cosmetic Products and Non-Food Products intended for consumers (SCCNFP),

Whereas:

- (1) Entry 293 of Annex II includes radioactive substances among the substances prohibited in cosmetic products. However, footnote 1 to entry 293 allows, under the conditions set out therein, the presence of natural radioactive substances and of radioactive substances caused by artificial contamination from the environment by making reference to Directives of 2 February 1959 laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ⁽³⁾. These Directives were repealed by Council Directive 96/29/Euratom ⁽⁴⁾, Article 6(5) thereof providing that Member States shall permit neither the deliberate addition of radioactive substances in the production of cosmetic products nor the import and export of such goods. Directive 96/29/Euratom also provides for the definition of radioactive substances for the purpose of its application. Therefore, entry 293 of Annex II should be amended accordingly.
- (2) On the basis of IFRA (International Fragrance Association) Code of Practice, the SCCNFP has listed 36 substances that must not form part of fragrance compounds used in cosmetic products. Of these 36 fragrance ingredients, seven are already included in Annex II and one (6-methylcoumarin) under reference No 46 in Annex III, Part 1, which already restricts its use to oral hygiene products. Therefore the 28 remaining fragrance ingredients should be included in the list of Annex II. The safety of these substances has only been assessed by the SCCNFP for their use as fragrance ingredients. Accordingly, it is necessary to regulate their use for this purpose. Further safety assessment of these

substances for other uses is being carried out by the SCCNFP.

- (3) The SCCNFP recommends that methyleugenol should not be intentionally added as a cosmetic ingredient. Therefore methyleugenol should be included in Annex II. As methyleugenol is however naturally present in essential oils that are used as components in cosmetic products, the SCCNFP has set specific maximum concentrations when present in cosmetic products.
- (4) On the basis of information on the use in cosmetic products of lithium hydroxide and calcium hydroxide and their safety evaluation, the SCCNFP recommends that their use should be restricted. Therefore entries 15b and 15c of Annex III, Part 1, should be amended accordingly.
- (5) On the basis of a toxicological evaluation, the SCCNFP recommends that the maximum residual acrylamide content needs to be restricted in the finished product. Therefore, polyacrylamide should be included in Annex III, Part 1.
- (6) The SCCNFP has made toxicological evaluations of 61 hair dyes, including recommendations on their field of application, maximum concentration levels and specific warnings. One is already included under reference No 16 in Annex III, Part 1, which shall therefore be amended. More information on the safety of some hair dyes is still needed, in particular in order to investigate a potential link between long term regular use of permanent hair dyes and an increased risk for bladder cancer, as requested by the SCCNFP. Therefore the 60 remaining hair dyes should be included in Annex III, Part 2. Entry 8 of Annex III, Part 1, covers a group of phenylendiamine derivatives used as hair dyes. In order to avoid double entries, the text in column b should be amended to except those derivatives listed elsewhere in Annex III.
- (7) The SCCNFP recommends that musk xylene can be safely used in cosmetic products, excluding oral care products, up to a maximum daily theoretically absorbed dose of about 10 µg/kg/day. Therefore, until the risk assessment of this substance in the framework of Council Regulation (EEC) No 793/93 ⁽⁵⁾ on the evaluation and control of the risks of existing substances is finalised, musk xylene should be included in Annex III, Part 2.

⁽¹⁾ OJ L 262, 27.9.1976, p. 169.

⁽²⁾ OJ L 145, 20.6.2000, p. 25.

⁽³⁾ OJ 11, 20.2.1959, p. 221/59.

⁽⁴⁾ OJ L 159, 29.6.1996, p. 1.

⁽⁵⁾ OJ L 84, 5.4.1993, p. 1.

- (8) The SCCNFP recommends that musk ketone can be safely used in cosmetic products, excluding oral care products, up to a maximum daily theoretically absorbed dose of about 14 µg/kg/day. Therefore, until the risk assessment of this substance in the framework of Regulation (EEC) 793/93 is finalised, musk ketone should be included in Annex III, Part 2.
- (9) The SCCNFP has expressed the opinion that the UV-filter dimethicodiethylbenzalmalonate can be safely used in cosmetic products under certain restrictions. Therefore, dimethicodiethylbenzalmalonate should be included in Annex VII, Part 1.
- (10) The SCCNFP has expressed the opinion that titanium dioxide can be safely used as UV-filter in cosmetic products under certain restrictions. Therefore, titanium dioxide should be included in Annex VII, Part 1.
- (11) The measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directives on the Removal of Technical Barriers to Trade in the Cosmetic Products Sector,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/768/EEC is hereby amended as indicated in the Annex to this Directive.

Article 2

Member States shall take the necessary measures to ensure that cosmetic products containing the substances listed in Annexes II, III and VII to Directive 76/768/EEC, as set out in the Annex

to this Directive, which are supplied to the final consumer after 15 April 2004, comply with the provisions of this Directive.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 April 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 15 April 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

Annexes II, III and VII to Directive 76/768/EEC are amended as follows:

1. In Annex II:

(i) Reference No 293 and corresponding footnote 1 are replaced by the following:

‘293. Radioactive substances, as defined by Directive 96/29/Euratom ⁽¹⁾ laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.

⁽¹⁾ OJ L 159, 29.6.1996, p. 1.’

(ii) Reference Nos 423 to 451 are added as indicated below:

- ‘423. Alanroot oil (*Inula helenium*) (CAS No 97676-35-2), when used as a fragrance ingredient.
- 424. Benzyl cyanide (CAS No 140-29-4), when used as a fragrance ingredient.
- 425. Cyclamen alcohol (CAS No 4756-19-8), when used as a fragrance ingredient.
- 426. Diethyl maleate (CAS No 141-05-9), when used as a fragrance ingredient.
- 427. Dihydrocoumarine (CAS No 119-84-6), when used as a fragrance ingredient.
- 428. 2,4-Dihydroxy-3-methylbenzaldehyde (CAS No 6248-20-0), when used as a fragrance ingredient.
- 429. 3,7-Dimethyl-2-octen-1-ol (6,7-Dihydrogeraniol) (CAS No 40607-48-5), when used as a fragrance ingredient.
- 430. 4,6-Dimethyl-8-*tert*-butylcoumarin (CAS No 17874-34-9), when used as a fragrance ingredient.
- 431. Dimethyl citraconate (CAS No 617-54-9), when used as a fragrance ingredient.
- 432. 7,11-Dimethyl-4,6,10-dodecatrien-3-one (CAS No 26651-96-7), when used as a fragrance ingredient.
- 433. 6,10-Dimethyl-3,5,9-undecatrien-2-one (CAS No 141-10-6), when used as a fragrance ingredient.
- 434. Diphenylamine (CAS No 122-39-4), when used as a fragrance ingredient.
- 435. Ethyl acrylate (CAS No 140-88-5), when used as a fragrance ingredient.
- 436. Fig leaf absolute (*Ficus carica*) (CAS No 68916-52-9), when used as a fragrance ingredient.
- 437. *trans*-2-Heptenal (CAS No 18829-55-5), when used as a fragrance ingredient.
- 438. *trans*-2-Hexenal diethyl acetal (CAS No 67746-30-9), when used as a fragrance ingredient.
- 439. *trans*-2-Hexenal dimethyl acetal (CAS No 18318-83-7), when used as a fragrance ingredient.
- 440. Hydroabietyl alcohol (CAS No 13393-93-6), when used as a fragrance ingredient.
- 441. 6-Isopropyl-2-decahydronaphthalenol (CAS No 34131-99-2), when used as a fragrance ingredient.
- 442. 7-Methoxycoumarin (CAS No 531-59-9), when used as a fragrance ingredient.
- 443. 4-(4-Methoxyphenyl)-3-butene-2-one (CAS No 943-88-4), when used as a fragrance ingredient.
- 444. 1-(4-Methoxyphenyl)-1-penten-3-one (CAS No 104-27-8), when used as a fragrance ingredient.
- 445. Methyl *trans*-2-butenolate (CAS No 623-43-8), when used as a fragrance ingredient.
- 446. 7-Methylcoumarin (CAS No 2445-83-2), when used as a fragrance ingredient.
- 447. 5-Methyl-2,3-hexanedione (CAS No 13706-86-0), when used as a fragrance ingredient.
- 448. 2-Pentylidenecyclohexanone (CAS No 25677-40-1), when used as a fragrance ingredient.
- 449. 3,6,10-Trimethyl-3,5,9-undecatrien-2-one (CAS No 1117-41-5), when used as a fragrance ingredient.
- 450. Verbena oil (*Lippia citriodora* Kunth.) (CAS No 8024-12-2), when used as a fragrance ingredient.

451. Methyleugenol (CAS No 95-15-2) except for normal content in the natural essences used and provided that the concentration does not exceed:

- (a) 0,01 % in fine fragrance
- (b) 0,004 % in eau de toilette
- (c) 0,002 % in fragrance cream
- (d) 0,001 % in rinse-off products
- (e) 0,0002 % in other leave-on products and oral hygiene products.'

2. In Annex III, Part 1:

(i) In reference No 8, column b is replaced by the following:

'm- and p-Phenylenediamines, their N-substituted derivatives and their salts; N-substituted derivatives of o-Phenylenediamines ⁽¹⁾, with the exception of those derivatives listed *elsewhere* in this Annex

⁽¹⁾ These substances may be used singly or in combination provided that the sum of the ratios of the levels of each of them in the cosmetic product expressed with reference to the maximum level authorised for each of them does not exceed 1.'

(ii) Reference Nos 15b and 15c are replaced by the following:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
15b	Lithium hydroxide	(a) Hair straighteners 1. General use 2. Professional use (b) pH adjuster — for depilatories (c) Other uses — as pH adjuster (for rinse-off products only)	(a) 1. 2 % ⁽³⁾ by weight 2. 4,5 % ⁽³⁾ by weight	(b) pH value not to exceed pH 12,7 (c) pH value not to exceed pH 11	(a) 1. Contains alkali Avoid contact with eyes Can cause blindness Keep out of reach of children 2. For professional use only Avoid contact with eyes Can cause blindness (b) Contains alkali Keep out of reach of children Avoid contact with eyes
15c	Calcium hydroxide	Hair straighteners containing two components: calcium hydroxide and a guanidine salt (b) pH adjuster — for depilatories (c) Other uses (e.g. pH adjuster, processing aid)	(a) 7 % by weight of calcium hydroxide	(b) pH value not to exceed pH 12,7 (c) pH value not to exceed pH 11	(a) Contains alkali Avoid contact with eyes Keep out of reach of children Can cause blindness (b) Contains alkali Keep out of reach of children Avoid contact with eyes

⁽³⁾ The concentration of sodium, potassium or lithium hydroxide is expressed as weight of sodium hydroxide. In case of mixtures, the sum should not exceed the limits given in column d.'

(iii) Reference No 16 is replaced by the following:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
'16	1-Naphthol (CAS No 90-15-3) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction'

(iv) Reference No 66 is inserted as shown in the following table:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
'66	Polyacrylamides	(a) Body-care leave-on products (b) Other cosmetic products		(a) Maximum residual acrylamide content 0,1 mg/kg (b) Maximum residual acrylamide content 0,5 mg/kg'	

3. In Annex III, Part 2:

Reference Nos 1 to 62 are inserted as shown in the following table:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
'1	Basic Blue 7 (CAS No 2390-60-5)	Non-oxidising colouring agents for hair dyeing	0,2 %		Can cause allergic reaction	30.9.2004
2	2-Amino-3-nitro-phenol (CAS No 603-85-0) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 3,0 % (b) 3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	(a) (b) Can cause allergic reaction	30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
3	4-Amino-3-nitrophenol (CAS No 610-81-1) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 3,0 % (b) 3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	(a) (b) Can cause allergic reaction	30.9.2004
4	2,7-Naphthalene-diol (CAS no 582-17-2) and its salts	Oxidising colouring agents for hair dyeing	1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,5 %		30.9.2004
5	m-Aminophenol (CAS no 591-27-5) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
6	2,6-Dihydroxy-3,4-dimethylpyridine (CAS No 84540-47-6) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
7	4-Hydroxypropylamino-3-nitrophenol (CAS No 92952-81-3) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 5,2 % (b) 2,6 %	In combination with hydrogen peroxide the maximum use concentration upon application is 2,6 %	(a) (b) Can cause allergic reaction	30.9.2004
8	6-Nitro-2,5-pyridinediamine (CAS No 69825-83-8) and its salts	Non-oxidising colouring agent for hair dyeing	3,0 %		Can cause allergic reaction	30.9.2004
9	HC Blue No 11 (CAS No 23920-15-2) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 3,0 % (b) 2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	(a) (b) Can cause allergic reaction	30.9.2004
10	Hydroxyethyl-2-nitro-p-toluidine (CAS No 100418-33-5) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	(a) (b) Can cause allergic reaction	30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
11	2-Hydroxyethylpicramic acid (CAS No 99610-72-7) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 3,0 % (b) 2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	(a) (b) Can cause allergic reaction	30.9.2004
12	p-Methylaminophenol (CAS No 150-75-4) and its salts	Oxidising colouring agent for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	Can cause allergic reaction	30.9.2004
13	2,4-Diamino-5-methylphenoxyethanol (CAS No 141614-05-3) and its salts	Oxidising colouring agent for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	Can cause allergic reaction	30.9.2004
14	HC Violet No 2 (CAS No 104226-19-9) and its salts	Non-oxidising colouring agent for hair dyeing	2,0 %			30.9.2004
15	Hydroxyethyl-2,6-dinitro-p-anisidine (CAS No 122252-11-3) and its salts	Non-oxidising colouring agent for hair dyeing	3,0 %		Can cause allergic reaction	30.9.2004
16	HC Blue No 12 (CAS No 104516-93-0) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 1,5 % (b) 1,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,75 %	(a) (b) Can cause allergic reaction	30.9.2004
17	2,4-Diamino-5-methylphenetol (CAS No 141614-04-2) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
18	1,3-Bis-(2,4-diaminophenoxy)propane (CAS No 81892-72-0) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
19	3-Amino-2,4-dichlorophenol (CAS No 61693-42-3) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
20	Phenyl methyl pyrazolone (CAS No 89-25-8) and its salts	Oxidising colouring agents for hair dyeing	0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,25 %		30.9.2004
21	2-Methyl-5-hydroxyethylaminophenol (CAS No 55302-96-0) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
22	Hydroxybenzomorpholine (CAS No 26021-57-8) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %	Can cause allergic reaction	30.9.2004
23	1,7-Naphthalene-diol (CAS No 575-38-2) and its salts	Oxidising colouring agents for hair dyeing	1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,5 %	Can cause allergic reaction	30.9.2004
24	HC Yellow No 10 (CAS No 109023-83-8) and its salts	Non-oxidising colouring agents for hair dyeing	0,2 %			30.9.2004
25	2,6-Dimethoxy-3,5-pyridinediamine (CAS No 85679-78-3) and its salts	Oxidising colouring agents for hair dyeing	0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,25 %	Can cause allergic reaction	30.9.2004
26	HC Orange No 2 (CAS No 85765-48-6) and its salts	Non-oxidising colouring agents for hair dyeing	1,0 %			30.9.2004
27	HC Violet No 1 (CAS No 82576-75-8) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 0,5 % (b) 0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,25 %		30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
28	3-Methylamino-4-nitro-phenoxy-ethanol (CAS No 59820-63-2) and its salts	Non-oxidising colouring agents for hair dyeing	1,0 %			30.9.2004
29	2-Hydroxy-ethylamino-5-nitro-anisole (CAS No 66095-81-6) and its salts	Non-oxidising colouring agents for hair dyeing	1,0 %			30.9.2004
30	2-Chloro-5-nitro-N-hydroxy-ethyl-p-phenylenediamine (CAS No 50610-28-1) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
31	HC Red No 13 (CAS No 29705-39-3) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,5 % (b) 2,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,25 %		30.9.2004
32	1,5-Naphthalenediol (CAS No 83-56-7) and its salts	Oxidising colouring agents for hair dyeing	1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,5 %		30.9.2004
33	Hydroxypropyl bis (N-hydroxyethyl-p-phenylenediamine) (CAS No 128729-30-6) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %	Can cause allergic reaction	30.9.2004
34	o-Aminophenol (CAS No 95-55-6) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
35	4-Amino-2-hydroxytoluene (CAS No 2835-95-2) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
36	2,4-Diaminophenoxyethanol (CAS No 70643-19-5) and its salts	Oxidising colouring agents for hair dyeing	4,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 2,0 %		30.9.2004
37	2-Methylresorcinol (CAS No 608-25-3) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
38	4-Amino-m-cresol (CAS No 2835-99-6) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
39	2-Amino-4-hydroxyethylaminoanisole (CAS No 83763-47-7) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
40	3,4-Diaminobenzoic acid (CAS No 619-05-6) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
41	6-Amino-o-cresol (CAS No 17672-22-9) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
42	2-Aminomethyl-p-aminophenol (CAS No 79352-72-0) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
43	Hydroxyethylamino-methyl-p-aminophenol (CAS No 110952-46-0) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
44	Hydroxyethyl-3,4-methylenedioxyaniline (CAS No 81329-90-0) and its salts	Oxidising colouring agents for hair dyeing	3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
45	Acid Black 52 (CAS No 16279-54-2) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
46	2-Nitro-p-phenylenediamine (CAS No 5307-14-2) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 0,3 % (b) 0,3 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,15 %		30.9.2004
47	HC Blue No 2 (CAS No 33229-34-4) and its salts	Non-oxidising colouring agents for hair dyeing	2,8 %			30.9.2004
48	3-Nitro-p-hydroxyethylaminophenol (CAS No 65235-31-6) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 6,0 % (b) 6,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 3,0 %		30.9.2004
49	4-Nitrophenyl aminoethylurea (CAS No 27080-42-8) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 0,5 % (b) 0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,25 %		30.9.2004
50	HC Red No 10 + HC Red No 11 (CAS No 95576-89-9 + 95576-92-4) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
51	Yellow No 6 (CAS No 104333-00-8) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
52	HC Yellow No 12 (CAS No 59320-13-7) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 1,0 % (b) 0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,5 %		30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
53	HC Blue No 10 (CAS No 173994-75-7) and its salts	Oxidising colouring agents for hair dyeing	2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
54	HC Blue No 9 (CAS No 114087-47-1) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 1,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
55	2-Chloro-6-ethylamino-4-nitrophenol (CAS No 131657-78-8) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 3,0 % (b) 3,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,5 %		30.9.2004
56	2-Amino-6-chloro-4-nitrophenol (CAS No 6358-09-4) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 2,0 % (b) 2,0 %	In combination with hydrogen peroxide the maximum use concentration upon application is 1,0 %		30.9.2004
57	Basic Blue 26 (CAS No 2580-56-5) (CI 44045) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 0,5 % (b) 0,5 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,25 %		30.9.2004
58	Acid Red 33 (CAS No 3567-66-6) (CI 17200) and its salts	Non-oxidising colouring agents for hair dyeing	2,0 %			30.9.2004
59	Ponceau SX (CAS No 4548-53-2) (CI 14700) and its salts	Non-oxidising colouring agents for hair dyeing	2,0 %			30.9.2004
60	Basic Violet 14 (CAS No 632-99-5) (CI 42510) and its salts	(a) Oxidising colouring agents for hair dyeing (b) Non-oxidising colouring agents for hair dyeing	(a) 0,3 % (b) 0,3 %	In combination with hydrogen peroxide the maximum use concentration upon application is 0,15 %		30.9.2004

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label	Allowed until
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements		
a	b	c	d	e	f	g
61	Musk xylene (CAS no 81-15-2)	All cosmetic products, with the exception of oral care products	(a) 1,0 % in fine fragrance (b) 0,4 % in eau de toilette (c) 0,03 % in other products			28.2.2003
62	Musk ketone (CAS No 81-14-1)	All cosmetic products, with the exception of oral care products	(a) 1,4 % in fine fragrance (b) 0,56 % in eau de toilette (c) 0,042 % in other products			28.2.2003'

4. In Annex VII, Part 1

Reference Nos 26 and 27 are inserted as shown in the following table:

Reference number	Substance	Maximum authorised concentration	Other limitations and requirements	Conditions of use and warnings which must be printed on the label
'26	Dimethicodiethylbenzalmalonate (CAS No 207574-74-1)	10 %		
27	Titanium dioxide	25 %'		

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 April 2002

conferring management of aid on implementing agencies for pre-accession measures in agriculture and rural development in the Czech Republic in the pre-accession period

(2002/298/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 ⁽¹⁾, and in particular Article 12(2) thereof,

Having regard to Commission Regulation (EC) No 2222/2000 of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period ⁽²⁾, as amended by Regulation (EC) No 2252/2001 ⁽³⁾, and in particular Article 3(2) thereof,

Whereas:

- (1) In accordance with Article 4(5) of Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the Applicant Countries of central and eastern Europe in the pre-accession period ⁽⁴⁾, as last amended by Regulation (EC) No 2500/2001 ⁽⁵⁾, a Programme for Agriculture and Rural Development was approved by Commission Decision C(2000) 3105 final of 26 October 2000 for the Czech Republic.
- (2) The Government of the Czech Republic and the Commission, acting on behalf of the European Community, has signed on 5 February 2001 the Multi-annual Financing Agreement laying down the technical, legal and administrative framework for the execution of the Sapard Programme.
- (3) Regulation (EC) No 1266/1999 provides that the *ex-ante* approval requirement referred to in Article 12(1) thereof may be waived on the basis of a case-by-case analysis of

national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance; Regulation (EC) No 2222/2000 provides for detailed rules for the carrying out of said analysis.

- (4) The competent authority of the Czech Republic has appointed the Sapard Agency for the implementation of measures 'Investments in Agricultural Holdings'; 'Improving the processing and marketing of agricultural and fishery products'; 'Improving the structures for quality controls of foodstuffs and for consumer protection'; 'Land improvement and reparacling'; 'Renovation and development of villages and rural infrastructure'; 'development and diversification of economic activities providing for multiple activities and alternative income'; 'Technical Assistance' as defined in the Programme for Agriculture and Rural Development that was approved by Decision C(2000) 3105 final for the Czech Republic. The Ministry of Finance, National Fund has been appointed for the financial functions it is due to perform in the framework of the implementation of the Sapard programme.
- (5) Pursuant to Regulation (EC) No 1266/1999 and Regulation (EC) No 2222/2000, the Commission has analysed the national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance and has established that, for the implementation of the aforementioned measures, the Czech Republic complies with the provisions of Articles 4 to 6 and of the Annex to Regulation (EC) No 2222/2000, with the minimum conditions set out in the Annex to Regulation (EC) No 1266/1999.
- (6) In particular, the Sapard Agency has implemented the following key accreditation criteria satisfactorily: written procedures, segregation of duties, pre-project approval and pre-payment checks, payment procedures, accounting procedures, computer security, internal audit, and, where appropriate, public procurement provisions.
- (7) On 1 February 2002 the Czech authorities provided a list of eligible expenditure in conformity with Article

⁽¹⁾ OJ L 161, 26.6.1999, p. 68.

⁽²⁾ OJ L 253, 7.10.2000, p. 5.

⁽³⁾ OJ L 304, 21.11.2001, p. 8.

⁽⁴⁾ OJ L 161, 21.6.1999, p. 87.

⁽⁵⁾ OJ L 342, 27.12.2001, p. 1.

4(1), section B of the Multiannual Financial Agreement, this did not give rise to objections by the Commission.

- (8) The Ministry of Finance, National Fund has implemented the following criteria satisfactorily for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Czech Republic: audit trail, treasury management, receipt of funds, disbursement to beneficiaries, computer security and internal audit.
- (9) It is therefore appropriate to waive the *ex-ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 and to confer on the Sapard Agency and on the Ministry of Finance, National Fund, in the Czech Republic the management of aid on a decentralised basis.
- (10) However, since the verifications carried out by the Commission are based on an operational but not operating system it is therefore appropriate to confer the management of the Sapard Programme on the Czech Republic and on the Ministry of Finance, National Fund, on a provisional basis.
- (11) The full conferral of management of the Sapard Programme is only envisaged after further verifications in order to ensure that the system operates satisfactorily have been carried out and after any recommendations the Commission may issue, with regard to the conferral of management of aid on the Sapard Agency and on the Ministry of Finance, National Fund, have been implemented,

HAS DECIDED AS FOLLOWS:

Article 1

The requirement of *ex-ante* approval by the Commission of project selection and contracting by the Czech Republic is hereby waived.

Article 2

Management of the Sapard Programme is conferred on a provisional basis to:

1. the Sapard Agency of the Czech Republic, Tesnov 17, 117 05 Prague 1 for the implementation of measures 'Investments in Agricultural Holdings'; 'Improving the processing and marketing of agricultural and fishery products'; 'Improving the structures for quality controls of foodstuffs and for consumer protection'; 'Land improvement and reparacling'; 'Renovation and development of villages and rural infrastructure'; 'Development and diversification of economic activities providing for multiple activities and alternative income'; 'Technical Assistance' as defined in the Programme for Agricultural and Rural Development that was approved by Decision C(2000) 3105 final; and
2. the Ministry of Finance, National Fund, located at Letenska 15, 118 10 Prague 1, Czech Republic, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Czech Republic.

Done at Brussels, 15 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 15 April 2002

conferring management of aid on implementing agencies for pre-accession measures in agriculture and rural development in the Slovak Republic in the pre-accession period

(2002/299/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 ⁽¹⁾, and in particular Article 12(2) thereof,

Having regard to Commission Regulation (EC) No 2222/2000 of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period ⁽²⁾, as amended by Regulation (EC) No 2252/2001 ⁽³⁾, and in particular Article 3(2) thereof,

Whereas:

- (1) In accordance with Article 4(5) of Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the Applicant Countries of central and eastern Europe in the pre-accession period ⁽⁴⁾, as last amended by Regulation (EC) No 2500/2001 ⁽⁵⁾, a programme for agriculture and rural development was approved by Commission Decision C(2000) 3327 final on 17 November 2000 for the Slovak Republic.
- (2) The Government of the Slovak Republic and the Commission, acting on behalf of the European Community, has signed on 26 March 2001 the Multi-annual Financing Agreement laying down the technical, legal and administrative framework for the execution of the Sapard Programme.
- (3) Regulation (EC) No 1266/1999 provides that the *ex-ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 may be waived on the basis of a case-by-case analysis of national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance; Regulation (EC) No 2222/2000 provides for detailed rules for the carrying out of said analysis.

- (4) The competent authority of the Slovak Republic has appointed a Sapard Agency under the Ministry of Agriculture for the implementation of measures 'Investments in agricultural enterprises', 'Improvement of processing and marketing of agricultural and fish products', 'Diversification activities in rural areas, only investments not involving infrastructure', 'Forestry' and 'Land consolidation' as defined in the Programme for Agriculture and Rural Development that was approved by Decision C(2000) 3327 final for the Slovak Republic; the National Fund Department within the Ministry of Finance has been appointed for the financial functions it is due to perform in the framework of the implementation of the Sapard programme.
- (5) On 25 January 2002 the Slovak authorities provided the revised list of eligible expenditure in conformity with Article 4(1), Section B of the Multiannual Financing Agreement; this did not give rise to objections by the Commission.
- (6) Pursuant to Regulation (EC) No 1266/1999 and Regulation (EC) No 2222/2000, the Commission has analysed the national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance and has established that, for the implementation of the aforementioned measures, the Slovak Republic complies with the provisions of Articles 4 to 6 and of the Annex to Regulation (EC) No 2222/2000, with the minimum conditions set out in the Annex to Regulation (EC) No 1266/1999.
- (7) In particular, the Sapard Agency under the Ministry of Agriculture has implemented the following key accreditation criteria satisfactorily: written procedures, segregation of duties, pre-project approval and pre-payment checks, payment procedures, accounting procedures, computer security, internal audit, and, where appropriate, public procurement provisions.
- (8) The National Fund Department within the Ministry of Finance has implemented the following criteria satisfactorily for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Slovak Republic: audit trail, treasury management, receipt of funds, disbursement to the Sapard Agency, computer security and internal audit.

⁽¹⁾ OJ L 161, 26.6.1999, p. 68.⁽²⁾ OJ L 253, 7.10.2000, p. 5.⁽³⁾ OJ L 304, 21.11.2001, p. 8.⁽⁴⁾ OJ L 161, 21.6.1999, p. 87.⁽⁵⁾ OJ L 342, 27.12.2001, p. 1.

- (9) It is therefore appropriate to waive the *ex-ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 and to confer on the Sapard Agency under the Ministry of Agriculture and on the National Fund Department within the Ministry of Finance in the Slovak Republic the management of aid on a decentralised basis.
- (10) However, since the verifications carried out by the Commission are based on an operational, but not operating, system, it is therefore appropriate to confer the management of the Sapard Programme on the Sapard Agency under the Ministry of Agriculture and on the National Fund Department within the Ministry of Finance on a provisional basis.
- (11) Full conferral of management of the Sapard Programme is only envisaged after further verifications in order to ensure that the system operates satisfactorily have been carried out and after any recommendations the Commission may issue, with regard to the conferral of management of aid on the Sapard Agency under the Ministry of Agriculture and on the National Fund Department within the Ministry of Finance, have been implemented,

HAS DECIDED AS FOLLOWS:

Article 1

The requirement of *ex-ante* approval by the Commission of project selection and contracting by the Slovak Republic is hereby waived.

Article 2

Management of the Sapard Programme is conferred on a provisional basis to:

1. the Sapard Agency under the Ministry of Agriculture of the Slovak Republic, Dobrovicova 12; SK-81 266 Bratislava, for the implementation of measures 'Investments in agricultural enterprises', 'Improvement of processing and marketing of agricultural and fish products', 'Diversification activities in rural areas, only investments not involving infrastructure', 'Forestry' and 'Land consolidation' as defined in the Programme for Agricultural and Rural Development that was approved by Decision C(2000) 3327 final; and
2. the National Fund Department within the Ministry of Finance of the Slovak Republic, Štefanovicova 5; SK-81 782 Bratislava, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Slovak Republic.

Done at Brussels, 15 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission