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[1] Text with EEA relevance

I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 778/2003

## of 6 May 2003

## amending Commission Decision No 283/2000/ECSC and Council Regulations (EC) No 584/96, (EC) No 763/2000 and (EC) No 1514/2002 with regard to the anti-dumping measures applicable to certain hot-rolled coils and to certain tube and pipe fittings, of iron or steel

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 452/2003 of 6 March 2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures ([1]),

Having regard to the proposal made by the Commission after consultation of the Advisory Committee established by Article 15 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([2]),

Whereas:

### A. **EXISTING MEASURES**

(1) By Decision No 283/2000/ECSC ([3]), the Commission imposed a definitive anti-dumping duty on certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled (currently classifiable under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 10, 7208 37 90, 7208 38 10, 7208 38 90, 7208 39 10, 7208 39 90 and hereinafter referred to as 'hot–rolled coils') originating in Bulgaria, India, South Africa, Taiwan ([4]), and the Federal Republic of Yugoslavia (hereinafter referred to as Serbia and Montenegro), and accepted certain undertakings. Pursuant to Article 1(1) of Regulation (EC) No 963/2002 ([5]), such anti-dumping measures adopted under Decision No 2277/96/ECSC remain in force notwithstanding the expiry of the ECSC Treaty and shall be governed by the provisions of Regulation (EC) No 384/96 with effect from 24 July 2002.

(2) By Regulation (EC) No 584/96 ([6]), the Council imposed anti-dumping measures on certain tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, currently classifiable under CN codes ex 7307 93 11 (TARIC code 7307 93 11 91 and 7307 93 11 99), ex 7307 93 19 (TARIC code 7307 93 19 91 and 7307 93 19 99), ex 7307 99 30 (TARIC code 7307 99 30 92 and 7307 99 30 98) and ex 7307 99 90 (TARIC code 7307 99 90 92 and 7307 99 90 98) (hereinafter referred to as 'tube and pipe fittings') originating in Croatia, Thailand and the People's Republic of China. The measures on imports of tube and pipe fittings originating in China were extended to certain imports of tube and pipe fittings consigned from Taiwan (hereinafter referred to as Chinese Taipei) pursuant to Regulation (EC) No 763/2000 ([7]). The measures in relation to imports originating in Croatia have since expired ([8]), but those in relation to imports originating in Thailand and China, as extended to imports consigned from Chinese Taipei, remain in force by virtue of the initiation of an expiry review ([9]), pursuant to Article 11(2) of Regulation (EC) No 384/96. The Council, by Regulation (EC) No 1514/2002 ([10]), also imposed anti-dumping measures on imports of tube and pipe fittings originating in the Czech Republic, Malaysia, the Republic of Korea, Russia and Slovakia.

(3) By Commission Regulation (EC) No 1694/2002 ([11]), the Commission adopted safeguard tariff measures with respect to certain steel products, including hot-rolled coils and tube and pipe fittings which were already subject to the aforementioned anti-dumping measures.

([1]) OJ L 69, 13.3.2003, p. 8.
([2]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
([3]) OJ L 31, 5.2.2000, p. 15. Decision as last amended by Decision No 1043/2002/ECSC (OJ L 157, 15.6.2002, p. 45).
([4]) Chinese Taipei is referred to as Taiwan in that Decision.
([5]) OJ L 149, 7.6.2002, p. 3. Regulation as amended by Regulation (EC) No 1310/2002 (OJ L 192, 20.7.2002, p. 9).
([6]) OJ L 84, 3.4.1996, p. 1. Regulation as amended by Regulation (EC) No 1592/2000 (OJ L 182, 21.7.2000, p. 1).
([7]) OJ L 94, 14.4.2000, p. 1. Regulation as amended by Regulation (EC) No 2314/2000 (OJ L 267, 20.10.2000, p. 15).
([8]) OJ C 104, 4.4.2001, p. 7.
([9]) OJ C 103, 3.4.2001, p. 5.
([10]) OJ L 228, 24.8.2002, p. 1.
([11]) OJ L 261, 28.9.2002, p. 1.

In accordance with Article 5 of that Regulation, the tariff quotas and safeguard additional duty ('safeguard duty') in relation to hot-rolled coils do not apply to India or Chinese Taipei, whilst the tariff quotas and safeguard duty in relation to tube and pipe fittings do not apply to China.

(4) The abovementioned anti-dumping measures take the form of either a duty or an undertaking. The safeguard measures take the form of tariff quotas applicable for specified periods, in excess of which a safeguard duty must be paid.

(5) Once the tariff quotas established under the safeguard measures are exceeded, both the safeguard duty and the anti-dumping duty would become payable on the same imports, or, where price undertakings have been accepted, the safeguard duty would become payable in addition to the obligation to observe such price undertakings.

(6) By Regulation (EC) No 452/2003 [1], the Council considered that the combination of anti-dumping or anti-subsidy measures with safeguard measures on the same product could have an effect greater than that intended in terms of the Community's trade defence policy and objectives and could place an undesirably onerous burden on certain exporting producers seeking to export to the Community. As a result, the Council introduced specific provisions to enable the Community institutions, where they consider it appropriate, to take action to ensure that a combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on the same product does not have such an effect.

## B. **MODALITIES**

(7) In the present case, whilst there is some uncertainty as to if and when each of the safeguard tariff quotas imposed by Regulation (EC) No 1694/2002 will be exhausted, it is possible that imports of hot-rolled coils or tube and pipe fittings which are subject to anti-dumping duties or undertakings will also become subject to the payment of a safeguard duty.

(8) In this instance, it is considered that the combination of anti-dumping measures with the safeguard duty could have an effect greater than that intended or desirable in terms of the Community's trade defence policy and objectives. In particular, such a combination could place an undesirably onerous burden on certain exporting producers seeking to export to the Community, which may have the effect of denying them access to the Community market. The Council therefore considers that it is appropriate to amend the existing anti-dumping measures on imports of hot-rolled coils and on imports of tube and pipe fittings.

(9) In these circumstances, and in order to ensure legal certainty for the economic operators concerned, it is considered appropriate to specify for these cases the anti-dumping measures which should apply in the event that the safeguard tariff quotas are exhausted or in case the benefit of the quota is not requested or is not granted.

(10) In those cases where both an anti-dumping duty and a safeguard duty would normally be payable and where the anti-dumping duty is less than, or equal to, the amount of the safeguard duty, it is considered appropriate that no anti-dumping duty should be payable. Where the anti-dumping duty is greater than the amount of the safeguard duty, it is considered appropriate that only that part of the anti-dumping duty which is in excess of the amount of the safeguard duty should be payable.

(11) In those cases in which a price undertaking has been accepted, the Commission and the companies concerned have agreed equivalent reductions in those price undertakings or, as the case may be, they have agreed that the obligation to observe a minimum price will not apply when the safeguard duty is payable.

## C. **PROCEDURE**

(12) All parties directly concerned, namely the national authorities of Bulgaria, South Africa, Serbia and Montenegro, Thailand, Chinese Taipei, the Czech Republic, Malaysia, the Republic of Korea, Russia and Slovakia, relevant exporting producers in those countries and the Community industry received disclosure of the proposed course of action described above, and were given an opportunity to comment.

(13) Responses were received from a number of interested parties. All their arguments have been duly considered. Certain parties fully supported the Community institutions' intended course of action. Other parties argued that for those imports to which the safeguard measures apply, anti-dumping measures should not be imposed, or, if already imposed, they should be suspended or repealed. Others argued that for those imports to which anti-dumping measures apply, the safeguard measures should not apply.

(14) In relation to the first argument, it is considered that it is only when there is a combination of anti-dumping measures with the safeguard duty that an effect greater than that intended or desirable could arise. Indeed, it is only in that circumstance that certain exporting producers are subject to the burden of both anti-dumping measures and safeguard duty on the same import. Therefore, it is considered that it would only be appropriate to take action where safeguard duties become payable.

[1] OJ L 69, 13.3.2003, p. 8.

(15) In relation to the second argument, it must be remembered that anti-dumping measures apply only to imports of hot-rolled coils and tube and pipe fittings originating in certain countries. Therefore, if safeguard measures were not applied to imports of hot-rolled coils and tube and pipe fittings subject to anti-dumping measures, they would only apply to some imports of those products originating in some countries but not in others. It is considered that this would be contrary to the Community's international obligations, which require that safeguard measures shall be applied to a product being imported irrespective of its source.

(16) Therefore, having duly taken account of the submissions made by the parties concerned, it is considered that neither of the alternative solutions suggested by the parties concerned should be adopted and that the present measures are the most appropriate to achieve the objective of avoiding an undesirably onerous burden on certain exporting producers seeking to export to the Community,

HAS ADOPTED THIS REGULATION:

*Article 1*

The following paragraph shall be inserted in Article 1 of Decision No 283/2000/ECSC:

'2a. Notwithstanding paragraph 2, where imports of the product concerned originating in Bulgaria, South Africa or Serbia and Montenegro are subject to payment of a safeguard additional duty pursuant to Article 1(3) of Regulation (EC) No 1694/2002 (*), the rates of anti-dumping duty for products manufactured by the companies listed in the table below applicable to the net, free-at-Community-frontier price, before duty, shall be:

| Country | Company | Rate of AD duty applicable when safeguard additional duty is payable | | | | | TARIC additional code |
|---|---|---|---|---|---|---|---|
| | | to 28.3.03 | 29.3.03 to 28.9.03 | 29.9.03 to 28.3.04 | 29.3.04 to 28.9.04 | 29.9.04 to 28.3.05 | |
| Bulgaria | All companies | 0 % | 0 % | 0 % | 0 % | 0 % | A999 |
| South Africa | Iscor Limited, Roger Dyason Road, Pretoria West, and Saldanha Steel (Pty) Ltd, Private Bag X11, Saldanha 7395 | 0 % | 0 % | 0 % | 0 % | 0 % | A079 |
| | All other companies | 20,3 % | 22,1 % | 22,1 % | 23,7 % | 23,7 % | A999 |
| Serbia and Montenegro | All companies | 0 % | 0 % | 0 % | 1,3 % | 1,3 % | |

(*) OJ L 261, 28.9.2002, p. 1.'

*Article 2*

The following paragraph shall be inserted in Article 1 of Regulation (EC) No 584/96:

'2a. Notwithstanding paragraph 2, where imports of the product concerned from Thailand are subject to payment of a safeguard additional duty pursuant to Article 1(3) of Regulation (EC) No 1694/2002 (*), the rate of anti-dumping duty applicable to the net, free-at-Community-frontier price, before

duty, shall be as follows:

| Country | Company | Rate of AD duty applicable when safeguard additional duty is payable | | | | | TARIC additional code |
|---|---|---|---|---|---|---|---|
| | | to 28.3.03 | 29.3.03 to 28.9.03 | 29.9.03 to 28.3.04 | 29.3.04 to 28.9.04 | 29.9.04 to 28.3.05 | |
| Thailand | | 35,2 % | 37,6 % | 37,6 % | 39,7 % | 39,7 % | 8851 |
| | Except: Thai Benkan Co. Ltd, Prapadaeng Samutprakarn | 0 % | 0 % | 0 % | 0 % | 0 % | A118 |

(*) OJ L 261, 28.9.2002, p. 1.'

*Article 3*

The following paragraph shall be inserted in Article 1 of Regulation (EC) No 763/2000:

'2a. Notwithstanding paragraph 1, with the exception of those fittings produced and exported by the said Chup Hsin Enterprise Co. Ltd, Rigid Industries Co. Ltd and Niang Hong Pipe Fittings Co. Ltd, where imports of fittings consigned from Chinese Taipei are subject to payment of a safeguard additional duty pursuant to Article 1(3) of Regulation (EC) No 1694/2002 (*), the rate of anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

| Country | Company | Rate of AD duty applicable when safeguard additional duty is payable | | | | | TARIC additional code |
|---|---|---|---|---|---|---|---|
| | | to 28.3.03 | 29.3.03 to 28.9.03 | 29.9.03 to 28.3.04 | 29.3.04 to 28.9.04 | 29.9.04 to 28.3.05 | |
| Chinese Taipei | All (except Chup Hsin Enterprise Co. Ltd, Rigid Industries Co. Ltd and Niang Hong Pipe Fittings Co. Ltd) | 34,9 % | 37,3 % | 37,3 % | 39,4 % | 39,4 % | A999 |

(*) OJ L 261, 28.9.2002, p. 1.'

*Article 4*

The following paragraph shall be inserted in Article 1 of Regulation (EC) No 1514/2002:

'2a. Notwithstanding paragraph 2, where imports of the product concerned are subject to payment of a safeguard additional duty pursuant to Article 1(3) of Regulation (EC) No 1694/2002 (*), the rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for the products manufactured by:

| Country | Company | Rate of AD duty applicable when safeguard additional duty is payable | | | | | TARIC additional code |
|---|---|---|---|---|---|---|---|
| | | to 28.3.03 | 29.3.03 to 28.9.03 | 29.9.03 to 28.3.04 | 29.3.04 to 28.9.04 | 29.9.04 to 28.3.05 | |
| Czech Republic | Mavet a.s., Trebic | 0 % | 0 % | 0 % | 0 % | 0 % | A323 |
| | All other companies | 0 % | 1,1 % | 1,1 % | 3,2 % | 3,2 % | A999 |
| Malaysia | Anggerik Laksana Sdn Bhd, Selangor Darul Ehsan | 35,5 % | 37,9 % | 37,9 % | 40 % | 40 % | A324 |
| | All other companies | 51,3 % | 53,7 % | 53,7 % | 55,8 % | 55,8 % | A999 |

| Country | Company | Rate of AD duty applicable when safeguard additional duty is payable | | | | | TARIC additional code |
|---|---|---|---|---|---|---|---|
| | | to 28.3.03 | 29.3.03 to 28.9.03 | 29.9.03 to 28.3.04 | 29.3.04 to 28.9.04 | 29.9.04 to 28.3.05 | |
| Russia | All companies | 19,6 % | 22 % | 22 % | 24,1 % | 24,1 % | |
| Republic of Korea | All companies | 20,3 % | 22,7 % | 22,7 % | 24,8 % | 24,8 % | |
| Slovakia | All companies | 0 % | 0 % | 0 % | 0 % | 0 % | A999 |

(*) OJ L 261, 28.9.2002, p. 1.'

*Article 5*

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

It shall expire on 28 March 2005.

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

Done at Brussels, 6 May 2003.

*For the Council*

*The President*

P. EFTHYMIOU

# COMMISSION REGULATION (EC) No 779/2003

## of 7 May 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1947/2002 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 8 May 2003.

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

Done at Brussels, 7 May 2003.

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

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

*ANNEX*

**to the Commission Regulation of 7 May 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables**

*(EUR/100 kg)*

| CN code | Third country code (1) | Standard import value |
|---|---|---|
| 0702 00 00 | 052 | 86,8 |
| | 212 | 110,8 |
| | 999 | 98,8 |
| 0707 00 05 | 052 | 152,4 |
| | 999 | 152,4 |
| 0709 90 70 | 052 | 97,2 |
| | 999 | 97,2 |
| 0805 10 10, 0805 10 30, 0805 10 50 | 052 | 79,5 |
| | 204 | 44,0 |
| | 220 | 33,1 |
| | 600 | 49,9 |
| | 624 | 50,6 |
| | 999 | 51,4 |
| 0808 10 20, 0808 10 50, 0808 10 90 | 388 | 79,6 |
| | 400 | 103,5 |
| | 508 | 86,7 |
| | 512 | 78,8 |
| | 524 | 84,6 |
| | 528 | 73,2 |
| | 720 | 118,9 |
| | 804 | 106,8 |
| | 999 | 91,5 |

(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 780/2003

## of 7 May 2003

## opening and providing for the administration of a tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (1 July 2003 to 30 June 2004)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Commission Regulation (EC) No 2345/2001 [2], and in particular Article 32(1) thereof,

Whereas:

(1) The WTO schedule CXL requires the Community to open an annual import quota of 53 000 tonnes of frozen beef covered by CN code 0202 and products covered by CN code 0206 29 91. Implementing rules should be laid down for the quota year 2003/2004 starting on 1 July 2003.

(2) The 2002/2003 quota was managed in conformity with the provisions of Regulation (EC) No 954/2002 opening and providing for the administration of a tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (1 July 2002 to 30 June 2003) [3]. These provisions laid down, in particular, stricter criteria for participation so as to avoid registration of fictitious operators. Moreover, reinforced rules on the use of the import licences concerned provided an obstacle towards speculative trade in licences.

(3) The experience obtained from the application of those rules has been positive and similar rules should therefore be laid down for the quota year 2003/2004, including a division of the quota into a subquota I, reserved for the traditional importers, and a subquota II to be allocated on application by operators approved by Member States through an approval procedure.

(4) With the view of providing at the same time stability in the trade with frozen beef while ensuring a gradual increase in the share of the quota open to all genuine beef traders it is appropriate to increase the quantity being attributed under subquota II.

(5) Subquota I should be allocated initially in form of import rights to active importers on the basis of relevant customs documents providing proof that they have imported beef under the same type of quota during the last three quota years. In certain cases administrative errors by the competent national body are liable to restrict traders' access to this part of the quota. Steps should be taken to make good any resulting damage.

(6) Operators who can show that they are genuinely involved in importing or exporting beef from or to third countries should be able to apply for approval under subquota II. Proof of that involvement calls for evidence to be presented of recent import of some significance.

(7) Where there are obvious reasons to suspect that fictitious operators have applied for registration, Member States should proceed to a more detailed examination of the applications.

(8) Penalties should be determined where fictitious operators have applied for registration or the approval was granted on the basis of forged or fraudulent documentation.

(9) If criteria for participation in the quota allocation are to be checked, applications must be submitted in the Member States where the operator is entered in the national VAT register.

(10) With a view to providing a permanent access to the quota, subquota II should be managed on a half-yearly basis with a simultaneous examination of the licence applications from approved importers.

(11) In order to prevent speculation, importers no longer involved in trade in beef should be denied access to the quota and a security relating to import rights should be fixed for each applicant under subquota I. The licence security should be set at a relative high level and the possibility of transferring import licences should be excluded.

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 147, 5.6.2002, p. 8.

(12) In order to provide for more equal access to subquota II for all approved operators, each applicant may apply for a maximum quantity to be fixed.

(13) To oblige operators to apply for import licences for all the import rights allocated, it should be established that such obligation constitutes a primary requirement within the meaning of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agriculture products [1], as last amended by Regulation (EC) No 1932/1999 [2].

(14) A proper management of the import quota requires that the titular licence holder is a genuine importer. Therefore, such importer should actively participate in the purchase, transport and import of the beef concerned. Presentation of proofs of those activities should therefore also be a primary requirement with regard to the licence security.

(15) The cost related to purchase and transport of small consignments from a third country supplier might be excessively high and discourage the use of the licence. It is therefore appropriate to allow import of a small quantity from customs bonded warehouses and provide the consequent derogations as to the release of security.

(16) Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products [3], as last amended by Regulation (EC) No 325/2003 [4] and Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 [5], as last amended by Regulation (EC) No 118/2003 [6], are applicable to import licences issued under this Regulation.

(17) The Management Committee for Beef and Veal has not given an opinion within the time limit set by its President,

HAS ADOPTED THIS REGULATION:

PART I

**Quota**

*Article 1*

1. A tariff quota totalling 53 000 tonnes expressed in weight of boneless meat is hereby opened for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 for the period 1 July 2003 to 30 June 2004.

The order number of the tariff quota shall be 09.4003.

2. For the purposes of the said quota, 100 kilograms of bone-in meat shall be equivalent to 77 kilograms of boneless meat.

3. For the purposes of this Regulation, 'frozen meat' means meat that is frozen and has an internal temperature of - 12 °C or lower when it enters the customs territory of the Community.

4. The Common Custom Tariff duty applicable to the quota provided for in paragraph 1 shall be 20 % *ad valorem*.

5. The quota referred to in paragraph 1 shall be divided into two subquotas:

— subquota I equal to 18 550 tonnes,

— subquota II equal to 34 450 tonnes.

PART II

**Subquota I**

*Article 2*

Community operators may apply for import rights totalling a quantity of 18 550 tonnes on the basis of the quantities imported by them under Commission Regulations (EC) No 995/1999 [7], (EC) No 980/2000 [8] and (EC) No 1080/2001 [9].

However, Member States may accept as the reference quantity import rights under the order number 09.4003 for the preceding quota year which were not allocated because of an administrative error by the competent national body but to which the operator would have been entitled.

*Article 3*

1. Applications for import rights are valid only from operators who are entered in a national VAT register.

2. Operators who at 1 January 2003 have ceased their activities in the beef and veal sector shall not qualify for any allocation under Article 2.

[1] OJ L 205, 3.8.1985, p. 5.
[2] OJ L 240, 10.9.1999, p. 11.
[3] OJ L 152, 24.6.2000, p. 1.
[4] OJ L 47, 21.2.2003, p. 21.
[5] OJ L 143, 27.6.1995, p. 35.
[6] OJ L 20, 24.1.2003, p. 3.
[7] OJ L 122, 12.5.1999, p. 3.
[8] OJ L 113, 12.5.2000, p. 27.
[9] OJ L 149, 2.6.2001, p. 11.

3. A company formed by the merger of companies each having reference imports pursuant to Article 2 may use those reference imports as basis for its application under that Article.

4. Proof of import shall be provided exclusively by means of customs documents of release for free circulation duly endorsed by the customs authorities.

Member States may accept copies of the above documents duly certified by the competent authorities.

*Article 4*

1. Applications for import rights accompanied by the documentary proofs referred to in Article 3(4) shall reach the competent authority in the Member State where the applicant is entered in the national VAT register before 13:00, Brussels time, on 23 May 2003.

All quantities presented as reference quantity, in application of Article 2, shall constitute the import rights applied for, where appropriate, in application of Article 1(2).

2. After verifying the documents submitted, the Member States shall forward to the Commission no later than 6 June 2003 a list of applicants under this subquota, including in particular their names and addresses and the quantities of eligible meat imported during the reference period concerned.

3. Communications of the information referred to in paragraph 2, including nil returns, shall be sent by fax using the form in Annex I.

*Article 5*

The Commission shall decide as soon as possible the extent to which import rights under this subquota may be granted. Where the import rights applied for exceed the available quantity referred to in Article 2 the Commission shall fix a corresponding reduction coefficient.

*Article 6*

1. In order to be valid, the application for import rights must be accompanied by a security of EUR 6 per 100 kilograms net weight.

2. Where application of the reduction coefficient referred to in Article 5 causes less import rights to be allocated than had been applied for, the security lodged shall be released proportionally without delay.

3. The application for one or several import licences totalling the import rights allocated shall constitute a primary requirement within the meaning of Article 20(2) of Regulation (EEC) No 2220/85.

*Article 7*

1. Imports of the quantities allocated shall be subject to presentation of one or more import licences.

2. Licence applications may be lodged solely in the Member State where the applicant has applied and obtained import rights under subquota I.

Each issuing of import license shall result in a corresponding reduction of the import rights obtained.

3. Licence applications and licences shall contain the following entries:

(a) one of the following entries in section 20:

— Carne de vacuno congelada [Reglamento (CE) nº 780/2003] (subcontingente I)

— Frosset oksekød (forordning (EF) nr. 780/2003) (delkontingent I)

— Gefrorenes Rindfleisch (Verordnung (EG) Nr. 780/2003) (Unterkontingent I)

— Κατεψυγμένο βόειο κρέας [κανονισμός (ΕΚ) αριθ. 780/2003] (υποποσόστωση I)

— Frozen meat of bovine animals (Regulation (EC) No 780/2003) (subquota I)

— Viande bovine congelée [Règlement (CE) nº 780/2003] (sous-contingent I)

— Carni bovine congelate [Regolamento (CE) n. 780/2003] (sotto-contingente I)

— Bevroren rundvlees (Verordening (EG) nr. 780/2003) (deelcontingent I)

— Carne de bovino congelada [Regulamento (CE) n.º 780/2003] (subcontingente I)

— Jäädytettyä naudanlihaa (asetus (EY) N:o 780/2003) (osakiintiö I)

— Fryst kött av nötkreatur (förordning (EG) nr 780/2003) (delkvot I)

(b) one of the following groups of CN codes in section 16:

— 0202 10 00, 0202 20,

— 0202 30, 0206 29 91.

PART III

**Subquota II**

*Article 8*

Applications for import licences with regard to subquota II totalling 34 450 tonnes may be lodged only by operators who have been approved in advance for such purposes by the competent authority in the Member State where they are entered in the VAT register. The authority may assign an approval number to each approved operator.

*Article 9*

1. Approval may be granted to an operator who submits a request to the competent authority before 13:00, Brussels time, on 23 May 2003 accompanied by documentary proof that:

(a) he/she has been engaged on his/her own account in the commercial activity of importing into the Community, or exporting from the Community, beef falling within CN codes 0201, 0202 or 0206 29 91 during the years 2001 and 2002;

(b) by virtue of this activity:

— he/she has imported in the course of the two years concerned a minimum of 100 tonnes of such beef expressed in product weight, or

— he/she has exported in the course of the two years concerned a minimum of 220 tonnes of such beef expressed in product weight,

in, at least, two operations per year.

Operators who at 1 January 2003 have ceased their activities in the beef and veal sector shall not be approved for the purpose of this subquota.

2. In order to prove the commercial activity of his/her own account as referred to in paragraph 1(a), the operator shall present documentary proofs in form of commercial invoices and official accounts as well as any other documents showing to the satisfaction of the Member State concerned that the required commercial activity is related solely to the applicant concerned.

3. Proof of import or export shall be provided exclusively by means of customs documents of release for free circulation or export documents duly endorsed by the customs authorities.

Member States may accept copies of the above documents duly certified by the competent authorities.

For the purpose of paragraph 1(a) and (b), beef used as the reference quantity under subquota I can be declared as reference quantity under subquota II.

4. Member States shall examine and verify the validity of the documentation presented.

5. Member States shall verify that applicants are not related to one another within the meaning of Article 143 of Commission Regulation (EEC) No 2454/93 [1], where:

— in the proof of imports or exports referred to in paragraph 3, two or more applicants are entered as having the same postal address, or

— two or more applicants at the time of application are registered for VAT purposes on the same postal address, or

— Member States have grounds to suspect that applicants are connected in terms of management, staff or operation.

Where related applicants are consequently identified, all applications concerned shall be rejected unless the applicants concerned can provide further evidence to the satisfaction of the competent authority that they are independent from one another in terms of management, staff and all operations linked to their commercial or technical activity.

6. In application of paragraph 5, where a Member State has grounds to suspect that an applicant is connected in terms of management, staff or operations with an applicant in another Member State, the two Member States shall mutually verify whether a relationship exists within the meaning of Article 143 of Regulation (EEC) No 2454/93.

For this purpose Member States shall establish a list of applicants, containing their name and address, which shall be sent by fax to the Commission before 31 May 2003. The Commission shall subsequently distribute to all Member States the lists received.

7. A company applying for approval formed by a merger of companies each having rights to apply pursuant to paragraphs 1 to 3 shall enjoy the same rights as those former companies.

*Article 10*

1. The competent authority shall inform applicants of the outcome of the approval procedure before 21 June 2003 and shall, at the same time, send a list to the Commission containing the name and address of each approved operator.

2. Where it is subsequently established that the approval was based upon forged or fraudulent documentation, it shall be withdrawn together with any advantage already granted on the basis of it.

*Article 11*

Only operators approved in application of Article 10 shall be allowed to apply for import licences under subquota II during the period 1 July 2003 to 30 June 2004.

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

*Article 12*

1. Licence applications may be lodged only in the Member State of approval and each approved operator can only lodge one licence application per period. Where an applicant submits more than one application per period, all such applications shall be inadmissible.

2. A licence application may be lodged during the two following periods:

— 1 to 4 July 2003, and

— 5 to 8 January 2004.

The quantity available in each of the two periods is 17 225 tonnes. However, where the total quantity applied for in the first period is less than the quantity available, the residual quantity shall be added to the quantity available in the second period.

Each licence application shall not exceed 5 % of the available quantity for the period concerned.

3. By the fifth working day following the end of the period for submission of licence applications, the Member State shall notify the Commission of the applications submitted.

Notifications, including nil returns, shall be sent by fax, using the model in Annex II.

4. The Commission shall decide as soon as possible the extent to which applications may be met. Where the applications exceed the half-yearly quantity available the Commission shall fix a corresponding reduction coefficient.

Member States shall issue the licences no later than five working days after the publication of the decision in the *Official Journal of the European Union*.

5. Licence applications and licences shall contain the following entries:

(a) one of the following entries in section 20:
   — Carne de vacuno congelada [Reglamento (CE) nº 780/2003] (subcontingente II)
   — Frosset oksekød (forordning (EF) nr. 780/2003) (delkontingent II)
   — Gefrorenes Rindfleisch (Verordnung (EG) Nr. 780/2003) (Unterkontingent II)
   — Κατεψυγμένο βόειο κρέας [κανονισμός (ΕΚ) αριθ. 780/2003] (υποποσόστωση II)
   — Frozen meat of bovine animals (Regulation (EC) No 780/2003) (subquota II)
   — Viande bovine congelée [Règlement (CE) nº 780/2003] (sous-contingent II)
   — Carni bovine congelate [Regolamento (CE) n. 780/2003] (sotto-contingente II)
   — Bevroren rundvlees (Verordening (EG) nr. 780/2003) (deelcontingent II)
   — Carne de bovino congelada [Regulamento (CE) n.º 780/2003] (subcontingente II)
   — Jäädytettyä naudanlihaa (asetus (EY) N:o 780/2003) (osakiintiö II)
   — Fryst kött av nötkreatur (förordning (EG) nr 780/2003) (delkvot II)

(b) one of the following groups of CN codes in section 16:
   — 0202 10 00, 0202 20,
   — 0202 30, 0206 29 91.

PART IV

**Common provisions**

*Article 13*

For the purpose of applying the arrangements provided for in this Regulation, the frozen meat shall be imported into the customs territory of the Community subject to the conditions laid down in Article 17(2)(f) of Council Directive 72/462/EEC [1].

*Article 14*

1. Regulations (EC) No 1291/2000 and (EC) No 1445/95 shall apply, save where otherwise provided in this Regulation.

2. Notwithstanding Article 9(1) of Regulation (EEC) No 1291/2000, import licences issued pursuant to this Regulation shall not be transferable and shall confer the right to use the tariff quota only if made out in the same name and address as the one entered as consignee in the customs declaration of release for free circulation accompanying them.

3. Pursuant to Article 50(1) of Regulation (EC) No 1291/2000, the full Common Customs Tariff duty applicable on the date of acceptance of the customs declaration for free circulation shall be collected in respect of all quantities imported in excess of those shown on the import licence.

4. Import licences shall be valid for 180 days from their date of issue as defined in Article 23(2) of Regulation (EC) No 1291/2000. However, no licence shall be valid after 30 June 2004.

5. The security relating to the import licence shall be EUR 120 per 100 kilograms net weight. The security shall be lodged by the applicant together with the licence application. Where in application of Article 12(4) the licence applications are not accepted in full, the security lodged shall be released proportionally without delay.

6. Notwithstanding the provisions of section 4 of Title III of Regulation (EC) No 1291/2000, the security shall not be released until proof has been produced that the titular holder of the licence has been commercially and logistically responsible for the purchase, transport and clearance for free circulation of the quantity of meat concerned.

Such proof shall at least consist of:

(a) the original commercial invoice made out in the name of the titular holder by the seller or his/her representative, both established in the third country of export, and proof of payment by the titular holder or the opening by the titular holder of an irrevocable documentary credit in favour of the seller;

[1] OJ L 302, 31.12.1972, p. 28.

(b) the bill of lading or, where applicable, the road or air transport document, drawn up in the name of the titular holder, for the quantity concerned;

(c) copy No 8 of form IM 4 with the name and address of the titular holder being the only indication in box 8;

(d) proof of payment of the customs duties by the titular holder or on behalf of him/her.

7. Notwithstanding the provisions of paragraph 6, each titular holder may, during the first and the second half of the quota year and within a maximum quantity of 10 tonnes per respective half year, customs clear for free circulation under this Regulation meat which previously had been stored under the Community bonded warehousing system.

In that case, the commercial invoice referred to in the first indent of paragraph 6 and the transport documents referred to in the second indent of paragraph 6 may be replaced by the original commercial invoice made out in the name of the titular holder by the owner of the meat not yet cleared for free circulation. Furthermore, the titular holder must present proof of payment of such an invoice.

8. All proofs required for release of the licence security, including those required in Article 35(1) and (2) of Regulation (EC) No 1291/2000, shall be presented to the competent authorities within the deadlines laid down in the first indent of Article 35(4)(a) and in Article 35(4) (c) of that Regulation.

*Article 15*

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

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

Done at Brussels, 7 May 2003.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

*ANNEX I*

Fax (32-2) 296 60 27 or
(32-2) 295 36 13

**Application of Article 4(2) of Regulation (EC) No 780/2003**

**Serial No 09.4003**

COMMISSION OF THE EUROPEAN COMMUNITIES — DG AGRI/D/2 — BEEF AND VEAL SECTOR

**Import rights application**

Date: ..... Period: .....

| Number of applicant (1) | Applicant (Name and address) | Quantity imported | | | Total |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | Total | | | | |

Member State: ..... Fax .....

Tel. .....

(1) Continuous numbering.

*ANNEX II*

Fax (32-2) 296 60 27 or
(32-2) 295 36 13

**Application of Article 12(3) of Regulation (EC) No 780/2003**

**Serial No 09.4003**

COMMISSION OF THE EUROPEAN COMMUNITIES — DG AGRI/D/2 — BEEF AND VEAL SECTOR

**Import licence application**

Date: ..... Period: .....

| | Number of applicant [1] | Applicant (Name and address) | Quantity (tonnes) | CN code(s) |
|---|---|---|---|---|
| | | | | |
| | | | | |

Member State: ..... Fax .....

Tel. .....

[1] Continuous numbering.

# COMMISSION REGULATION (EC) No 781/2003

## of 7 May 2003

## imposing a provisional anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

### A. PROCEDURE

### 1. Complaint

(1) A complaint concerning imports of furfuryl alcohol originating in the People's Republic of China (PRC) was lodged on 25 June 2002 by the International Furan Chemicals BV, the Netherlands (IFC) on behalf of its related company Transfurans Chemicals BVBA (TFC), Belgium, the sole producer in the Community representing 100 % of the Community production of furfuryl alcohol.

(2) This complaint contained evidence of dumping of the product concerned, and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

### 2. Notice of initiation

(3) On 9 August 2002, the proceeding was opened by the publication of a notice of initiation [3] (Notice of Initiation).

### 3. Investigation period

(4) The investigation of dumping and injury covered the period from 1 July 2001 to 30 June 2002 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 1998 to 30 June 2002 (period considered). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

### 4. Parties concerned by the proceeding

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

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

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 189, 9.8.2002, p. 30.

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

(8) In the Notice of Initiation, the Commission indicated that sampling may be applied in this investigation. However, given the relatively small number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not necessary for assessing the cooperating exporters.

(9) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the Notice of initiation. Replies were received from the complaining Community producer, four exporting producers, three unrelated importers and 11 unrelated users in the Community.

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

(a) *Community producer and related companies*

— TransFurans Chemicals BVBA, Geel, Belgium, (TFC),

— International Furan Chemicals BV, Rotterdam, The Netherlands, (IFC),

— Central Romana Corporation, Ltd, La Romana, Dominican Republic, (CRC);

(b) *Exporting producers in the PRC*

— Gaoping Chemical Industry Co. Ltd,

— Zhucheng Huaxiang Chemical Co. Ltd,

— Linzi Organic Chemical Inc.,

— Henan Huilong Chemical Industry Co. Ltd.

(11) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value took place at the premises of the following company:

(c) *Producer in the United States of America.*

— Penn Speciality Chemicals Inc.

## 5. **Product concerned and like product**

### 5.1. Product concerned

(12) The product concerned is furfuryl alcohol (FA) originating in the PRC currently classifiable within CN code ex 2932 13 00.

(13) FA is a chemical product. It is a member of the family of heterocyclic compounds, which are characterised by an unsaturated nucleus consisting of four carbon atoms and one oxygen atom. It is a mobile, colourless to pale yellow liquid that is soluble in many common organic solvents. The raw material for the production of FA, furfural (FF) is obtained from agricultural waste such as from corncobs, sugar cane or rice hulls.

(14) FA is a commodity product. The principal use of FA is in the production of foundry resins, which are used to make metal castings for industrial purposes. Furthermore, it is also used for the production of, *inter alia*, corrosion-resistant mortar, laminating resins, and fibreglass-reinforcement equipment.

(15) The investigation has shown, that there are two types of FA, one of more than 98 % purity as well as a high purity FA of more than 99 % purity, known as tetra hydro furfuryl alcohol (THFA). It was found that THFA represents less than 1 % of Community consumption. THFA is a speciality product used for specific applications. It was also found that FA and THFA do not share the same basic physical and technical characteristics. Accordingly, the higher quality THFA was not considered to constitute a single product together with FA for the purpose of this investigation.

### 5.2. Like product

(16) The investigation showed that the basic physical and technical characteristics of FA produced and sold by the Community industry in the Community, FA produced and sold on the domestic Chinese market, FA imported into the Community from the PRC as well as FA produced and sold in the United States of America are the same and that they have the same use.

(17) It was therefore provisionally concluded that all these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

## B. **DUMPING**

### 1. **Market Economy Treatment (MET)**

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

(19) In order to be granted MET, companies must demonstrate that they meet all five criteria set out in Article 2(7)(c) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions;
2. accounting records independently audited and applied for all purposes;
3. no significant distortions in 'carry over' from former non-market economy system;
4. legal environment and stability provided by bankruptcy and property laws;
5. currency exchanges carried out at the market rate.

(20) However, none of the four Chinese exporting producers fulfilled all of these conditions for granting MET, and therefore, all claims for MET had to be rejected. The following table summarises the determination for each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

TABLE 1

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

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

| Company | Criteria | | | | |
|---|---|---|---|---|---|
| | Article 2(7)(c) indent 1 | Article 2(7)(c) indent 2 | Article 2(7)(c) indent 3 | Article 2(7)(c) indent 4 | Article 2(7)(c) indent 5 |
| 3 | Met | Not met | Not met | Met | Met |
| 4 | Met | Not met | Possibly met | Met | Met |

*Source:* verified questionnaire replies of cooperating Chinese exporters.

(21) In respect of indent 3 for Company 4, it was not possible to conclude that State-owned shares had been sold freely and at a market price during the transfer of the company into private ownership. As the company failed to establish that it met one of the other criteria, and as the burden of proof to show that all conditions are met rests with the exporter, it was decided that no decision was necessary for this criterion given that the second criterion had already not been met by that company.

(22) The companies concerned and the complainant were given an opportunity to comment on the above findings. Two companies submitted that the determination was wrong and that MET should be granted to them.

(23) One company claimed that their accounts were fully in line with international standards, and that there was no significant distortion carried over from the non-market economy system with regard to the valuation of the company. However, it was found that the auditor of the company had identified errors in the accounts which were not in compliance even with applicable accounting regulations in the PRC. Moreover, it was also established that certain errors, identified in the accounts, were in fact repeated in subsequent years, and that the company had made no correction of the errors. On the basis of these errors the auditor considered that profit figures were unreliable and that there was over-distribution of profits. It is therefore determined that the company does not have 'basic accounting records (….) in line with international accounting standards' as required by Article 2(7)(c) of the basic Regulation. The exporter's claim is accordingly rejected.

(24) In light of this conclusion, and in the absence of any new evidence, the conclusion to reject MET for this company is provisionally confirmed.

(25) A second company claimed that it met all five criteria required by the basic Regulation. In particular, it was claimed that business decisions and costs were made in response to market conditions and that their accounts were fully in line with international standards. On the first point, the company was unable to demonstrate its normal stock valuation method of its main raw material, furfural. Nor could the company explain the reasons for certain adjustments made even to this unverifiable valuation. Therefore, the company could not establish that 'costs of major inputs substantially reflect market values' as required by Article 2(7)(c) of the basic Regulation.

(26) On the second point, it was found that the company had used a higher profit figure for distributing dividends, whilst using a different lower profit figure for other purposes. The company could not satisfactorily explain how these two profit figures could be reconciled. In these circumstances it could not be concluded that the company had 'one clear set of basic accounting records (….) applied for all purposes' which is also required by Article 2(7)(c) of the basic Regulation. The company's claim is accordingly rejected.

## 2. **Individual treatment**

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

(28) The four exporting producers, as well as requesting MET, also claimed individual treatment in the event they were not granted MET. On the basis of information available it was found that for all four companies, the export prices, export quantities, conditions and terms of sale were freely determined, and that the exchange rate conversions were carried out at the market rate.

(29) For one Chinese producer it was found that, during the IP, the company had in addition to its own-produced FA, also bought and then sold a substantial quantity of the product under investigation from at least two other competing Chinese producers, none of which cooperated in the investigation. Thus, it was found that this company acted both as a producer and as a trader of FA. Considering that it is not possible to distinguish the source of production when the product is ultimately exported to the Community and the lack of cooperation by the competing producers in question and hence the lack of any information on their relationship with the Chinese producer, it is considered, in the absence of any further information, that there is a serious risk of circumvention if this Chinese producer is granted individual treatment. On the issue of State interference the company provided no explanation or evidence to substantiate its claim, except for a mere statement that there was no State interference. The Commission has thus, also considering the circumstances described above, not been provided with sufficient information to grant the request for individual examination, but it will continue to investigate this matter during the remainder of the investigation. Therefore, it is considered that the company has failed to establish that it meets the criteria set out in Article 9(5) of the basic Regulation and therefore provisionally concluded that no individual duty can be specified for this exporter.

(30) It was therefore concluded that individual treatment should only be granted to three exporting producers in the PRC, i.e. Gaoping Chemical Industry Co. Ltd, Zhucheng Huaxiang Chemical Co. Ltd, and Linzi Organic Chemical Inc.

## 3. **Analogue country**

(31) According to Article 2(7) of the basic Regulation, for exporting producers others than those to which MET could be granted, normal value is established on the basis of the price or constructed value in an analogue country.

(32) In the Notice of Initiation, either the United States of America or South Africa was envisaged as the analogue country for the purpose of establishing normal value for the PRC, and invited interested parties to comment on this intention.

(33) The Chinese exporters and other interested parties suggested that South Africa or even Thailand would be the most appropriate choice, mainly because competition and market conditions in these countries were more comparable to the situation in the PRC than was the United States of America. The Chinese exporters also pointed to commercial links existing between the Community producer and the sole producer in the United States of America. The Commission contacted all known exporters of FA in the countries concerned, but only one producer, in the United States of America, was prepared to cooperate with the investigation. The investigation also revealed that the American market was substantial and sufficiently representative in comparison to the volume of Chinese exports of the product concerned to the EU. In addition it was determined that there was a significant volume of imports as well as the presence of various customers on the American market. As regards the alleged commercial links between the Community producer and the American producer, it was found that any such links did not have a distorting impact on the prices, costs and profitability for the American producer used to determine the normal value. Accordingly, it is provisionally concluded that the United States of America constitutes an appropriate analogue country.

## 4. **Dumping**

### 4.1. Normal value

(34) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the Chinese producers was established on the basis of verified information received from the producer in the analogue country. It was found that the FA exported by Chinese producers was identical to that sold by the co-operating producer in the analogue country. Normal value was therefore determined on the basis of the prices of furfuryl alcohol sales made by the cooperating company in the analogue country, which were found to be made in the ordinary course of trade.

### 4.2. Export price

(35) The three producers which were granted individual treatment sold the product concerned to the Community either via unrelated traders in the EU, or direct to end users. For these three producers, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of the export prices actually paid or payable to the first independent customer located in the Community.

(36) The volume of exports covered by the cooperating Chinese exporters represented 59,8 % of imports into the EU during the IP. It is, therefore, considered that the level of cooperation is low. Accordingly, the export price for all other companies was based on facts available in accordance with Article 18(1) of the basic Regulation. In this case, the export price was calculated by using the prices and volumes provided by the cooperating producer to which individual treatment was not granted, i.e. Henan Huilong Chemical Industry Co. Ltd. To this was added the remaining tonnages for which no cooperation was received and at an average price equal to the lowest average transaction price provided by the cooperating exporting producers. Therefore, the 'all others' dumping margin for the PRC is established on the basis of a weighted average of the prices provided by the cooperating company to which individual treatment was not granted, as well as the lowest transaction price for any transaction where no cooperation was received.

### 4.3. Comparison

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

### 4.4. Dumping margin

(38) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average of export prices, in accordance with Articles 2(11) and 2(12) of the basic Regulation.

(39) This comparison showed the existence of dumping, the dumping margin being equal to the amount by which the normal value exceeded the export price. The dumping margin was then expressed as a percentage of the CIF import price at the Community border. The provisional dumping margins so obtained are as follows:

4.4.1. Companies to which individual treatment was granted:

| | |
|---|---|
| Gaoping: | 93 % |
| Linzi: | 78 % |
| Zhucheng: | 81 %. |

4.4.2. Residual Dumping Margin

All others: 118 %.

## C. COMMUNITY INDUSTRY

### 1. Definition of the Community production

(40) There is only one producer of FA in the Community: TFC, Belgium which is part of the complainant. Accordingly, the production of the complainant constitutes the total Community production within the meaning of Article 4(1) of the basic Regulation.

### 2. Definition of the Community industry

(41) It was found that the Community production is fully integrated in a single economic entity which consists of three companies and operates as follows:

(42) TFC transforms the raw material FF delivered by the mother company Central Romana Corporation (CRC), Dominican Republic, into the product concerned. IFC situated in the Netherlands acts as the worldwide sales agent for the product concerned produced by TFC. TFC, IFC and CRC are related through common ownership.

(43) The investigation has shown that FA produced by TFC is of Community origin and that the manufacturing operations, the technological and capital investment for the manufacturing operations and the sales operations take place in the Community.

(44) Based on the above, TFC and IFC constitute the Community industry within the meaning of Articles 5(4) and 4(1) of the basic Regulation. It should be noted, that in order to make a meaningful assessment of certain injury indicators, it was necessary to take into account also the data from CRC which forms an economic entity with the aforementioned companies.

## D. INJURY

### 1. Preliminary remark

(45) Given that the Community industry comprises only TFC and IFC, specific data relating to the Community industry, as reported in the verified questionnaire replies, consumption and the market share of the Chinese exporting producers have been indexed in order to preserve the confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

### 2. Community consumption

(46) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, on Eurostat information on imports from other third countries, as well as import figures for the country concerned.

(47) With regard to the import volumes from the country concerned it was decided to use the Chinese export data rather than the Eurostat import statistic, since the former appeared to be more accurate in view of data submitted by the cooperating exporting producers and other interested parties.

TABLE 2

**Community consumption (based on sales volumes)**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 109 | 122 | 129 | 128 |
| Y/Y | | + 9 % | + 12 % | + 6 % | – 1 % |

*Source:* verified questionnaire replies of Community industry, Eurostat, Chinese export statistics.

(48) The above table shows that consumption of FA in the Community increased by 28 % during the period considered. Between the year 2000 and the IP consumption increased by 5 %, whereas between the year 2001 and the IP consumption slightly decreased.

## 3. **Imports concerned**

### 3.1. Volume of the imports concerned

(49) Between 1998 and the IP imports measured in metric tonnes (MT) originating in the country concerned into the Community developed as follows:

TABLE 3

**Volume of imports concerned**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| MT | 4 958 | 7 915 | 7 091 | 10 540 | 10 362 |
| Index | 100 | 159 | 143 | 212 | 208 |
| Y/Y trend | | + 59 % | – 10 % | + 48 % | – 1 % |

*Source:* Chinese export statistics.

(50) Over the period considered imports from the PRC more than doubled. Indeed, during the IP they were 108 % above 1998 levels. The above table shows that the imports concerned increased by 43 % (or around + 2 100 MT) from 1998 to 2000 and further increased by 46 % (or around + 3 300 MT) in the period 2000-IP, whilst consumption increased only by 5 % (or by around 2 000 MT) in the same period.

(51) The above table also shows that the imports from the country concerned decreased between 1999 and 2000 (- 10 % or by around 800 MT). This decrease in imports is explained by a drought in the PRC during the year 2000, which resulted in a decreased agricultural production leading to a substantial shortage of the raw material FF. This situation led to a shortage of production and supply of FA by the Chinese exporting producers. Therefore the Chinese exporting producers could not maintain the export level of the year 1999.

(52) After the drought in the PRC, which persisted until the third quarter of the year 2000, the Chinese exporting producers could re-establish the production and were able to largely exceed the export level of the year 1999. Between 2000 and the IP, the market share held by the exporting producers increased significantly in line with the development of its market share. Indeed, in the period 2000 to the IP the exports increased by 46 % (or around + 3 300 MT).

### 3.2. Market share of the imports concerned

(53) The market share held by imports from the country concerned developed as shown below:

TABLE 4

**Market share of the imports from the country concerned (based on sales volume)**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 146 | 117 | 165 | 163 |
| Y/Y trend | | + 45 % | – 19 % | + 40 % | – 0,7 % |

*Source:* verified questionnaire replies of Community industry, Eurostat and Chinese export statistics.

(54) During the IP the market share of imports from the PRC was between 20 % and 30 %. Over the period considered, the market share of the dumped imports increased by over 9,6 percentage points (or by 63 %).

(55) Between 1999 and 2000 the exporting producers lost market share (- 4,4 percentage points or 19 %). This loss is explained by the drought in the PRC during the year 2000 mentioned in recital 51.

(56) After the drought in the PRC, the Chinese exporting producers could regain market shares exceeding the levels of 1999. Between 2000 and the IP, the market share held by the exporting producers increased significantly in line with the above development of its import volume. In the period 2000 to the IP the market share of the exporting producers increased by around 7 percentage points (or by 39 %).

### 3.3. Average prices of dumped imports

(57) The price evolution of Chinese FA sold on the Community market is shown below.

TABLE 5

**Average price of dumped imports**

*(EUR/tonne)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| | 1 008 | 857 | 834 | 979 | 817 |
| Index | 100 | 85 | 83 | 97 | 81 |
| Y/Y trend | | – 15 % | – 2 % | + 17 % | – 16 % |

*Source:* verified questionnaire replies of cooperating exporting producers, Chinese export statistics and the complaint.

(58) The average sales prices shown in the table above include transport costs up to Community border level.

(59) Over the period considered, the average price of dumped imports decreased by 19 %. The price decrease was particularly evident between 1998 and the year 2000 (- 17 %). Between 2000 and 2001 prices could recover (+ 17 %) due to the shortage of Chinese FA caused by the drought in the PRC referred to in recital 51. After the drought Chinese exporting producers could re-establish production and continued to decrease prices as already done during the years 1998 and 2000. Indeed, between 2001 and the IP the prices of the Chinese exporting producers decreased again by 16 %. Between 2000 and the IP the price decrease was 2 %.

### 3.4. Price undercutting and price depression

(60) For the determination of price undercutting, the Commission analysed data referring to the IP. It is recalled that the price undercutting analysis concentrated on only one type of FA which is produced and sold by the Community industry on the Community market and represents around 99 % of the consumption on the Community market. Price undercutting was established on the basis of a comparison of the sales prices for that type of FA charged by the Community industry and the sales prices charged by the exporting producers concerned. For the same type all prices were compared after deducting discounts and rebates.

(61) The sales prices considered for the exporting producers concerned were those at CIF Community border level, including customs duties. The sales prices of the Community industry considered were adjusted where necessary to an ex-works level, i.e. excluding transport costs.

(62) The results of the comparison (on a weighted-average to weighted-average basis) showed that the average price undercutting margins, expressed as a percentage of the Community industry's average selling prices, were over 10 % for the PRC.

(63) This level of undercutting should also be seen in the light of the fact that over all prices decreased significantly over the period considered and can be considered to be depressed.

## 4. **Economic situation of the Community industry**

### 4.1. Preliminary remark

(64) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the industry on the domestic market.

### 4.2. Production, production capacity and capacity utilisation

TABLE 6

**Production**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 88 | 93 | 98 | 96 |
| Y/Y trend | | – 12 % | + 5 % | + 5 % | – 2 % |

*Source:* verified questionnaire reply of Community industry.

(65) During the period considered, the Community industry production decreased by 4 %. Between 2001 and the IP, Community industry production decreased by 2 %.

TABLE 7

**Production capacity**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 100 | 100 | 100 | 100 |
| Y/Y trend | | 0 % | 0 % | 0 % | 0 % |

*Source:* verified questionnaire reply of the Community industry.

(66) Production capacity remained unchanged during the period considered. Contrary to the allegation made by some interested parties, it was not found that the Community industry faced production capacity problems during the period considered.

TABLE 8

**Capacity utilisation**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 88 | 93 | 98 | 96 |
| Y/Y trend | | – 11 % | + 5 % | + 5 % | – 2 % |

*Source:* verified questionnaire reply of the Community industry.

(67) The above table shows that during the period considered the capacity utilisation decreased by 4 %, in line with production. Between 2001 and the IP, the Community industry capacity utilisation decreased by 2 %.

### 4.3. Sales volume and sales prices

TABLE 9

**Sales volume**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 102 | 123 | 111 | 109 |
| Y/Y trend | | + 2 % | + 20 % | – 10 % | – 2 % |

*Source:* verified questionnaire reply of the Community industry.

(68) The Community industry's sales to unrelated customers in the Community increased by 9 % from 1998 to the IP. During the period 1998 to 2000, despite its decreased production, the Community industry managed to increase its Community sales volume by 23 %, mainly by selling stocks built up during the year 1999. Between 2000 and the IP a 12 % fall in sales volume coincided with an increased consumption volume (5 %).

TABLE 10

**Community industry sales prices of FA**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 86 | 80 | 99 | 89 |
| Y/Y trend | | – 14 % | – 7 % | + 24 % | – 11 % |

*Source:* verified questionnaire reply of the Community industry.

(69) In the period 1998 to the IP, the average sales price of FA charged by the Community industry on the Community market dropped significantly by 11 %. The price decrease was particularly evident between 1998 and 2000 (- 20 %). Between 2000 and the IP prices have increased by 11 % without ever reaching the level of 1998 again. The reason for the price increase in the year 2001 was, that the Community industry could take advantage of the production and supply difficulties of the Chinese exporting producers due to the draught in the PRC referred to in recital 51.

### 4.4. Market share

TABLE 11

**Market share**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 94 | 101 | 86 | 84 |
| Y/Y trend | | – 6 % | + 8 % | – 15 % | – 1 % |

*Source:* verified questionnaire reply of the Community industry.

(70) The market share held by the Community industry decreased substantially by 16 % during the period considered and during the period 2000 and the IP.

4.5. Stocks

TABLE 12

**Stocks**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 119 | 101 | 139 | 183 |
| Y/Y trend | | + 19 % | – 15 % | + 37 % | + 31 % |

*Source:* verified questionnaire reply of the Community industry.

(71) The above table shows that during the period considered stocks increased by 83 %. Between 2000 and the IP stock increased by 81 %. The level of stocks was significantly higher at the end of the IP than in 2001.

(72) This development suggests that although production decreased by 2 % during the period 2001 and the IP, the part which was not sold on the Community market or to third countries increased considerably and went into stocks. During the IP the stocks represented around 70 % of the Community industry's sales volume on the Community market.

4.6. Profitability and cash flow

(73) During the period considered profitability expressed as a percentage of net sales value developed as follows:

TABLE 13

**Profitability**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 45 | 26 | 35 | 8 |
| Y/Y trend | | – 54 % | – 42 % | + 34 % | – 77 % |

*Source:* verified questionnaire reply of the Community industry.

(74) Between 1998 and the IP profitability deteriorated, due to a decrease in sales prices by 92 %. In the period 2000 to the IP, profitability worsened by 69 % in parallel with sales price pressure faced by the Community industry on its domestic market.

(75) In 2001, the situation improved slightly due to efforts made by the Community industry to restructure and reduce costs and due to the higher prices which could be obtained. However, at the same time the Community industry's sales volume and market share decreased, while imports from the PRC increased again considerably and took over part of the market share from the Community industry. Moreover, the price depression experienced by the Community industry during the IP, undermined the efforts of the Community industry and the slight improvements experienced in the year 2001. This suggests that without the restructuring of its activities, the decrease of profitability of the Community industry would have been even higher.

(76) Cash flow deteriorated by 91 % during the period considered, in line with the trend for profitability.

TABLE 14

**Cash flow**

*(1 000/EUR)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 42 | 28 | 40 | 9 |
| Y/Y trend | | – 58 % | – 34 % | 44 % | – 78 % |

*Source:* verified questionnaire reply of the Community industry.

4.7. Investments, return on investments and ability to raise capital

TABLE 15

**Investments**

*(1 000/EUR)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 54 | 25 | 184 | 276 |
| Y/Y trend | | – 46 % | – 54 % | 640 % | 50 % |

*Source:* verified questionnaire reply of the Community industry.

(77) The significant increase in investments in particular during the period 2001 and the IP is explained by increased safety and environmental requirements resulting from amendments of Belgian law. Another significant investment during the period considered has been the extension of the storage facility in order to increase the storage capacity.

(78) The investigation showed that the operating return on investments during the IP deteriorated in line with the development of profitability.

TABLE 16

**Return on investments**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| | 100 | 55 | 21 | 51 | 19 |
| Y/Y trend | | – 45 % | – 61 % | 142 % | – 62 % |

*Source:* verified questionnaire reply of the Community industry.

(79) However, the Community industry was not found to be experiencing difficulties in their ability to raise capital.

4.8. Employment, productivity and wages

TABLE 17

**Employment**

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| Index | 100 | 103 | 108 | 105 | 109 |
| Y/Y trend | | + 3 % | + 2 % | 0 % | + 2 % |

*Source:* verified questionnaire reply of the Community industry.

(80) The above table shows that employment increased by 9 % during the period considered, despite the difficulties encountered by the Community industry, employment.

(81) Given the level of production and the increase of personnel employed, productivity decreased by 12 % during the period considered as shown in the table below:

TABLE 18

**Productivity**

*(MT)*

| | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| | 100 | 88 | 89 | 94 | 88 |
| Y/Y trend | | – 12 % | 1 % | 6 % | – 7 % |

*Source:* verified questionnaire reply of the Community industry.

(82) During the period considered the average wages of the employees of the Community industry increased by around 25 %. However, between 2000 and the IP the increase of wages was less than 4 %.

### 4.9. Magnitude of dumping margins

(83) The impact on the Community industry of the magnitude of the actual margin of dumping cannot be considered to be negligible given the volume and the prices of the imports concerned. Indeed, the investigation showed that overall the imports originating in PRC were sold at dumped prices on the Community market during the IP. Price pressure on Community prices would obviously have been lower or even non-existent without dumping.

### 4.10. Growth

(84) It is noted that the growth in the Community industry was particularly negative between 2000 and the IP in term of sales volume (- 12 %) and in term of loss in market share (- 16 %). At the same time the imports from the PRC increased by around 3 200 MT and the gain in market share of the low-priced dumped imports was as high as 7 percentage points.

### 4.11. Recovery from past dumping

(85) Although it has been found that Chinese prices have decreased by 17 % between 1998 and 2000 it is considered that recovery from past dumping was not a relevant indicator.

### 4.12. Conclusion on injury

(86) During the period considered the presence of low-priced dumped imports from the PRC significantly increased on the Community market and the main relevant injury indicators pertaining to the Community industry showed a negative development.

(87) The situation was particularly evident between 2000 and the IP. Indeed, the investigation showed that during that period Community consumption slightly increased by 5 % but the volume of dumped imports increased by 46 %. This allowed the Chinese exporting producer to gain a significant additional share of the Community market (7 percentage points) mainly at the expense of the Community industry. It also showed that during the IP dumped imports from the PRC were undercutting the Community industry's prices by over 10 % and that sales prices of the Community industry were depressed.

(88) It was found appropriate to focus on the period 2000-IP, i.e. the more recent part of the period considered, because in 2000 imports from the PRC developed again towards 1998 levels from which they increased in 2001 and the IP to their highest levels ever. Moreover, as far as Chinese import prices are concerned, in 2000 they were already considerably below 1998 levels but they even slightly decreased further during the IP.

(89) It was also found that the main negative development in the economic situation of the Community industry took place during the same period from 2000-IP: sales volume decreased by 12 % and stocks increased (+ 81 %). The loss in market share suffered by the Community industry was 16 %. Profitability worsened in parallel with sales price pressure faced by the Community industry on its domestic market (- 69 %). Cash flow, return on investment and productivity also deteriorated.

(90) Although some indicators such as production, capacity utilisation and sales prices of the Community industry also showed a positive development in 2000-IP this can to a large extent be explained by the production and supply difficulties of the Chinese exporters in 2000, from which the Community industry could temporarily take advantage. These positive factors therefore do not change the overall picture of the injurious situation of the Community.

(91) In the light of the foregoing, in particular the decrease in profitability and market share experienced by the Community industry, particularly in the period from 2000 to the IP, the Commission have provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

## E. **CAUSATION**

### 1. **Introduction**

(92) In order to reach its provisional conclusion as to whether there is a causal link between the dumped imports and the injury suffered by the Community industry, the Commission first examined the impact of the dumped imports from the country concerned on the situation in that industry.

(93) Secondly, Known factors other than dumped imports, such as the development of consumption, the export activity of the Community industry, the trading activity of IFC and the imports into the Community from third countries, which could at the same time be injuring the Community industry, were also analysed in order to ensure that possible injury caused by other factors was not attributed to the dumped imports.

### 2. **Effect of the dumped imports from the country concerned**

(94) The volume of imports of Chinese FA into the Community was always significant. During the period considered, the volume of dumped imports from the PRC into the Community increased by 108 % and their market share rose by 63 %, meaning a gain of 9,6 percentage points at the expense of the producer in the Community.

(95) As shown in recital 57, Chinese prices decreased by 17 % between 1998 and 2000. Whilst Chinese prices increased between 2000 and 2001 by 17 % they saw an overall decrease of 2 % in the period 2000 to the IP. This was due to a significant price decrease between 2001 and the IP of 16 %. This situation shows that the Community industry was subject to price pressure exacerbated by dumped imports on the Community market. The price pressure is further evidenced by the price undercutting practised by the Chinese exporting producers and the prices of the Community industry, which were depressed to a considerable extent during the IP.

(96) The link between the injury suffered by the Community industry and the dumped imports is demonstrated in particular by the developments observed from 2000 until the end of the IP. During this period, dumped imports from the PRC increased by 46 % in terms of volume and the gain in the share of the Community market was as high as 7 percentage points (or 39 %).

(97) The above developments coincided with the significant declining trend of the main economic indicators pertaining to the Community industry from 2000 to the IP: sales volume decreased by 12 % and 16 % of market share were lost. As a result, the profitability of the Community industry decreased considerably by 69 %.

## 3. **Effect of other factors**

### 3.1. Development of consumption

(98) The investigation showed that consumption increased during the period considered. Overall, consumption in the Community market increased by 28 % (or by over 9 100 MT). In the period between 2000, and the IP the increase in consumption was limited to 5 %.

(99) During the period considered Chinese imports increased by 108 % (or by around 5 400 MT). The increase in imports between 2000 and the IP was as high as 48 % (or around + 3 300 MT) whilst consumption increased only by 5 % (or by around 2 000 MT) in the same period.

(100) It is therefore considered that the development of consumption did not contribute to the material injury suffered by the Community industry.

### 3.2. Export activity of the Community industry

(101) From 1998 up to 2001 export sales volumes of the Community industry to third countries represented around 40 % of its total sales. During the IP the export sales represented around 35 % of its total sales.

(102) On this basis, the Commission does not exclude that such a decrease in the export sales affected the overall economic situation of the Community industry. In particular the decreased export activity can explain to a certain extent the increase in stocks during the IP. However, it was found that the increase in stocks was much higher than the decrease in exports. These findings suggest that the contribution of the export activity of the Community industry to the increased stocks was limited.

(103) In addition, it is recalled that the present investigation exclusively covered the economic situation of the Community industry as regards the Community market. Accordingly, prices and revenues from export sales were excluded from the injury analysis. Any effect on the situation of the Community industry by the decreasing export volumes was therefore very limited.

(104) It is therefore provisionally considered that the export activity of the Community industry did not in any significant way contribute to the material injury suffered by the Community industry.

### 3.3. IFC's own trading activity

(105) The investigation has shown that IFC buys quantities of FA from third countries, *inter alia*, from the PRC and trades this FA under its own trading activity. However, the investigation has shown that these quantities were limited and that there is no indication that such FA ever entered the Community market. In this respect it should be noted that the trading activity had a positive effect on the overall financial situation of IFC. Without IFC's own trading activity the Community industry's situation would have been even worse, leading to even greater financial losses.

(106) It is therefore considered that IFC's own trading activity did not in any significant way contribute to the material injury suffered by the Community industry.

3.4. Imports into the Community from other third countries

(107) Total imports of FA into the Community and average import prices from countries other than the PRC increased by 40 % in volume terms:

TABLE 19

**Imports into the Community from other third countries**

| Imports | 1998 | 1999 | 2000 | 2001 | IP |
|---|---|---|---|---|---|
| MT | 5 920 | 6 674 | 7 083 | 8 293 | 8 310 |
| *Index* | *100* | *113* | *119* | *140* | *140* |
| EUR/MT | 1 140 | 1 027 | 939 | 1 171 | 1 081 |
| *Index* | *100* | *90* | *82* | *103* | *95* |

*Source:* Eurostat.

(108) It has been argued that injury to the Community industry has been caused by imports into the Community from other third countries, in particular given the increased import volumes between 1998 and the IP.

(109) The above table shows that imports of FA from other third countries overall increased by around 2 300 MT during the period considered. Between 2000 and the IP the increase was limited to around 1 200 MT. These developments should be seen the light of the development of consumption and the dumped imports from the PRC. As shown in recitals 47 and 48, consumption increased by 28 % (or over 9 100 MT) during the period considered but the increase of consumption was limited to 5 % (or to around 2 000 MT) between 2000 and the IP. As explained in recital 49, the imports from the PRC increased by around 5 400 MT during the period considered and it was more pronounced between 2000 and the IP (around + 3 300 MT). It should also be noted that the total market share of imports from all third countries together even after the significant increase remained still below that of imports from the PRC by around 20 % during the IP.

(110) Furthermore, it was also found that import prices from those countries were above the level of those of Chinese exporting producers (above around 32 % during the IP) and even above those of the Community industry (above around 13 % during the IP). These findings therefore suggest that the contribution of such imports to the price deterioration noticed in the market, if any, was limited.

(111) It is therefore considered that imports into the Community from other third countries did not in any significant way contribute to the material injury suffered by the Community industry.

## 4. **Conclusion on causation**

(112) The dumped imports which increased significantly during the period considered, as well as the price undercutting and the price depression found, had significant negative consequences on the situation of the Community industry, notably in terms of sales volumes and prices which in turn had an effect on market share and profitability. The impact of the dumped imports on the situation of the Community industry is such that they caused material injury.

(113) Given the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors do not break the causal link between the dumped imports and the injury suffered by the Community industry.

## F. COMMUNITY INTEREST

### 1. Preliminary remarks

(114) In accordance with Article 21 of the basic Regulation, it was provisionally examined whether the imposition of 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 interests involved, i.e. those of the Community industry, the unrelated importers/traders and the users of the product concerned to the extent that the relevant parties submitted the information requested in this respect.

(115) In order to assess the likely impact of the imposition of measures, the Commission requested information from all known interested parties. The Commission sent questionnaires in particular to the Community industry, importers and users of the product concerned.

(116) On this basis it was examined whether, despite the conclusions on dumping, injury and causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures in this particular case.

### 2. Interest of the Community industry

(117) The Community industry has been suffering from low-priced imports of FA. In view of the nature of the injury suffered by the Community industry, the Commission considers that, in the absence of anti-dumping measures, a further deterioration in the situation of the Community industry is unavoidable. This will most likely entail further injury and in the medium term, potentially the disappearance of that industry, bearing in mind the scale of profit deterioration during the period considered. Furthermore, there being only one producer of FA in the Community, should it disappear, the Community market would be totally dependent of FA from third countries.

(118) If however anti-dumping measures are taken, these would reinstate to fair trading conditions. Under these conditions the Community industry will be able to remain a viable FA producer. It has made considerable investments in order to comply with strict environmental protection and safety requirements. Furthermore the Community industry constantly improves and develops new products based on FA.

(119) The adoption of anti-dumping measures would therefore be in the interest of the Community industry.

### 3. Interest of unrelated importers and users and possible impact on consumers

(120) In order to evaluate the impact of taking or not taking measures, the Commission sent questionnaires to the known unrelated importers and users of FA in the Community.

(121) Three unrelated importers and 11 users submitted meaningful replies. The three importers and the 11 users represented about 74 % of Community imports and 47 % of Community consumption of FA during the IP.

### 4. Possible impact on importers

(122) As far as the three cooperating importers are concerned, the FA segment represented on average 28,9 % of their total turnover during the IP.

(123) The Commission also examined the likely average impact of the proposed anti-dumping duty on the importers' overall profitability. Given the share of the FA segment in their overall turnover and assuming that the measures would be fully passed on by the importers to the users the maximum negative impact of the proposed measures on the three importers is likely to be minimal.

## 5. **Possible impact on users**

(124) Users of the product under consideration are manufacturers of furan resin, a product which is used in the foundry casting industry. 11 users submitted a meaningful reply to the questionnaire. These 11 users represented around 31 % of total FA consumption in the Community. Submissions were also received from associations of users in the Community.

(125) As far as the 11 cooperating users are concerned, the FA segment represented on average 4,6 % (varying between 1 % and 37 %) of their total turnover during the IP.

(126) Overall it has been found that the cooperating users actually achieve an average profit margin of around 8,7 % in their overall activities during the IP. It has further been found that the part of FA in the total cost of the furan resin manufacturers is 60 % to 90 %, as FA constitutes the major part of the cost of resin. Thus, it cannot be excluded that measures will have an impact on users. However, given the fact that FA constitutes a rather low proportion in the overall cost of the foundry casting industry (less than 3 %) it can be assumed that the users will pass on the measures to the foundry casting industry. The possible impact of the proposed measures on the cost of the foundry casting industry will thus be less than 0,3 %. Consequently, some negative effects on certain users cannot be excluded. However, in view of the limited proportion of FA in their total activities, and bearing in mind the level of the measures proposed and the profitability situation of the cooperating users, it is concluded that the possible negative effects of the measures proposed on users cannot be considered such as to outweigh the expected benefits for the Community industry.

(127) On this basis it is reasonable to assume that the measures will be to a large extent, if not fully, passed on by the users to the foundry casting industry. It is therefore considered that the overall impact will be negligible.

## 6. **Possible impact on consumers**

(128) Given the nature of the product being an industrial commodity product it appears unlikely that the proposed measures will have any impact on individual consumers.

## 7. **Competition and trade distorting effects**

(129) It has been argued that the imposition of anti-dumping measures would strengthen the allegedly dominant position of the complaining Community industry, which already had a substantial market share in the Community during the IP, allowing it to gain a quasi-monopolistic position in the FA market.

(130) However, given that the level of the proposed measures is not such as, from an economic point of view, to foreclose the Community market to the exporting producers, the continued presence of FA originating in the PRC in the market will be ensured. Furthermore, competition with imports of FA from third countries will continue to exist.

(131) Some parties have further alleged that the measures would reduce users' and consumers' choice. However, as outlined above, FA originating in the PRC will most likely still be available on the Community market, as well as imports from third countries. Thus users will continue to have the choice between the competing products, albeit at fair prices. Conversely, such freedom of choice would be affected if the Community industry would be allowed to disappear which could happen in case of non-imposition of anti-dumping measures.

(132) Measures are expected to re-establish fair and effective competition on the Community market, merely correcting the distorting effects of the injurious dumping practised by the Chinese exporting producers. Not imposing measures in the present case would maintain and amplify the distortion of competition, resulting in a further deterioration of the situation of the Community industry. The disappearance of the Community industry would lead to reduced competition and reduced choice for users on the Community market.

### 8. **Conclusion on Community interest**

(133) On the basis of the above facts and considerations it is provisionally concluded, that there are no compelling reasons against the imposition of measures on imports of FA originating in the PRC.

## G. **PROVISIONAL MEASURES**

### 1. **Provisional injury elimination level**

(134) Having established that the dumped imports under consideration have caused material injury to the Community industry and that there are no compelling reasons against the imposition of measures, the duties envisaged should be imposed at a level sufficient to eliminate the injury caused without exceeding the dumping margins found.

(135) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain an overall pre-tax profit that could be achieved in the absence of dumped imports on the sales of the like product in the Community.

(136) On this basis it was provisionally found that a profit margin of 10 % on total turnover could be regarded as an appropriate minimum which the Community industry could reasonably expect to obtain in the absence of injurious dumping. This profit margin is deemed to be reasonable in view of the development of profitability of the Community industry during the period considered which was on average higher in the absence of dumped imports.

(137) Accordingly, injury elimination levels were determined as the difference between the cost of production of the Community industry, increased by the abovementioned profit margin on the one hand, and the adjusted actual net sales price of the imported FA used for the price undercutting calculation on the other. This difference was then expressed as a percentage of the CIF import price at the Community frontier customs duty unpaid. As a result of these calculations, injury margins of 2,2 % to 23,0 % were found.

### 2. **Proposed provisional anti-dumping duty**

(138) In the light of the foregoing, and in accordance with the lesser duty rule set in Article 7(2) of the basic Regulation, the provisional anti-dumping duty should be set at the level of the injury elimination level.

(139) The exporters concerned sell a variety of other products as well as FA to the importers and users in the Community. In order to ensure the efficiency of the measures and in order to minimise the risk of the duties being evaded by price manipulation, which has been observed in some previous proceedings involving the same general category of product, i.e. FF [1], it is considered appropriate to impose the provisional duty in form of a specific amount of EUR per metric tonne. The calculation of the injury threshold related to cif import price results in duties ranging between EUR 21 and EUR 181 per metric tonne.

[1] OJ L 328, 22.12.1999, p. 1.

H. **FINAL PROVISION**

(140) In the interest of sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore it should be stated that the findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of furfuryl alcohol currently classifiable within CN code ex 2932 13 00 (TARIC code 2932 13 00 90), originating in the People's Republic of China.

2. The provisional duty applicable for the product originating in the People's Republic of China shall be as follows:

| Companies | Rate of anti-dumping duty (EUR per tonne) | TARIC additional code |
|---|---|---|
| Gaoping Chemical Industry Co. Ltd | 96 | A442 |
| Linzi Organic Chemical Inc. | 21 | A440 |
| Zhucheng Huaxiang Chemical Co. Ltd | 33 | A441 |
| All other companies | 181 | A999 |

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

*Article 2*

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

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

*Article 3*

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

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

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

Done at Brussels, 7 May 2003.

*For the Commission*

Pascal LAMY

*Member of the Commission*

II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION
## of 2 October 2002
## on the State aid granted by Italy to Iveco SpA

*(notified under document number C(2002) 3580)*

**(Only the Italian text is authentic)**

**(Text with EEA relevance)**

(2003/310/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provisions [1],

Whereas:

### I. PROCEDURE

(1) By letter dated 21 June 2001 the Italian authorities notified a plan to grant regional aid to Iveco SpA (Iveco). On 27 July the Commission requested further information, which the Italian authorities provided by letter dated 5 October, received on 17 October.

(2) On 19 December 2001 the Commission decided to initiate the formal enquiry procedure laid down in Article 88(2) of the Treaty, as it had doubts as to the compatibility of the measure with the common market. Italy submitted its comments on the initiation of proceedings by letter of 12 February 2002, received on 19 February 2002. On 12 April 2002 the Commission carried out a visit to the plant in Foggia, Italy, and on 22 April 2002 requested further information, which was provided by Italy by letter of 11 June, received on 12 June.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2], with an invitation to interested parties to submit their comments. No comments were received.

### II. DETAILED DESCRIPTION OF THE MEASURE

#### The project

(4) The notified project concerns the production of a new family of diesel engines to be known as the F1, with 2,3-litre and 3,0-litre versions. Production started in 2001; the engine replaces the ageing 8140 model, and will power light commercial vehicles of the Fiat group and other motor vehicle manufacturers.

(5) The project is taking place at the existing Iveco plant in Foggia, in the region of Puglia. Puglia is an Article 87(3)(a) area, with a regional ceiling of 35 % for the 2000 to 2006 period.

[1] OJ C 53, 28.2.2002, p. 2.

[2] See footnote 1.

(6) The project started in August 2000 and is to be completed by December 2003. The Italian authorities state that it involves the installation of completely new lines for the production of the F1 engines, with the 8140 engine being phased out gradually at the same time. When the project is complete the capacity of the plant will be 290 000 engines a year, comprising 230 000 F1s and 60 000 8140s. The plant will also be producing about 120 000 stand-alone crankshafts, mainly to be sold to a competing engine producer.

(7) According to the Italian authorities the project is a mobile one. In 1998 a site owned by the Fiat group in Bielsko-Biała, Poland, was chosen for the same project. Car assembly at the Polish site had been discontinued, thus freeing space for a new investment that could have exploited the existing infrastructure and part of the workforce. Production at the Foggia site was to be reduced as the 8140 engine was phased out. At the end of the project Foggia would still be producing 60 000 engines a year of model 8140, to satisfy demand in less developed markets. A centre for the renovation of old engines would also be opened in Foggia.

(8) The Italian authorities state that Iveco informed them of its decision to scale down production in Foggia at the beginning of 2000. They asked Iveco to reconsider its choice, offering State aid as partial compensation for the extra costs in Foggia. Following negotiations with the Italian authorities, and the approval of the new regional aid map for Article 87(3)(a) regions in March 2000 ([1]), Iveco decided to move the project to Foggia, and work started during the summer break of August 2000. The formal application for aid was made in July 2000, and approved by the Italian authorities in December 2000.

**Legal basis and amount of aid**

(9) The notified aid is being granted under schemes already authorised ([2]), set up by the Act of 19 December 1992, No 488 (Act No 488/92) ([3]) and the Act of 23 December 1996, No 662 (Act No 662/96) ([4]).

(10) Iveco intends to invest a nominal EUR 323 270 000 (EUR 304 600 864 at current values, base year 2000, discount rate 5,70 %), of which EUR 265 610 000 is considered eligible by the Italian authorities.

(11) The planned aid takes the form of an outright grant, and amounts to a nominal EUR 121 658 000 in gross grant equivalent (gge), equal to EUR 108 915 621 at current values. The aid intensity notified by the Italian authorities is 35,76 % gge.

(12) No other aid or Community financing has been allocated to the project.

**Grounds for initiating the procedure**

(13) In its decision to initiate the proceedings, taken on 19 December 2001 ([5]), the Commission expressed doubts as to the mobility of the project, and whether it represented a 'transformation'; it said it needed to verify that there was evidence to show that Iveco considered Bielsko-Biała a viable alternative location.

(14) The Commission also doubted a number of elements in the cost-benefit analysis, and particularly:

— the inclusion of ineligible investment costs in the cost-benefit analysis,

— the justification for the higher investment costs for machinery and equipment in Foggia as opposed to Bielsko-Biała,

— whether investment costs for vendor tooling were provided for in the project, and if so the exact amount of these investments, the location of the investments, and the names of the suppliers involved,

— the exact calculation of outward transport costs,

— the number of workers needed for production at the two sites,

— labour costs in Foggia.

III. **COMMENTS FROM ITALY**

(15) On 12 February 2002 the Italian authorities sent their comments on the initiation of proceedings. Additional information was provided during the visit to Foggia on 12 April 2002, and by letter dated 11 June 2002.

([1]) Commission decision of 1 March 2000 on case N 792/99: OJ C 175, 24.6.2000, p. 11.
([2]) Commission decision of 12 July 2000 to raise no objection in case N 715/99: OJ C 278, 30.10.2000.
([3]) Converting into statute, with amendments, the Decree-law of 22 October 1992, No 415, amending the Act of 1 March 1986, No 64, with respect to the organisation of the special measures for the South and rules for measures to facilitate production activities.
([4]) On measures to rationalise public finances.
([5]) See footnote 1.

(16) In their comments, the Italian authorities first reaffirmed that the project was mobile. They provided internal documents showing that the final decision to carry out the investment in Foggia was taken in July 2000, and that the Bielsko-Biała plan was abandoned at the same time.

(17) Second, the Italian authorities affirmed that the figure of EUR 323 270 000 nominal investment in the cost-benefit analysis represented all the mobile costs incurred by Iveco for the project. Of this figure, EUR 265 610 000 was considered eligible under Act No 488/92, which constituted the legal basis for the aid. According to the Italian authorities, the former figure gave a better understanding of the economic choice the company had to make between the chosen location and the alternative site, and it was for that reason that it had been referred to in the cost-benefit analysis. But they supplied detailed information on the nature and timing of expenses for mobile eligible investment, and for the depreciation methods used for the eligible investment in machinery and buildings.

(18) Third, the Italian authorities provided detailed information and supporting evidence on the investment in machinery and equipment that made the costs in Foggia higher than those in Bielsko-Biała. While the work stations were very similar at both locations, significant differences were identified in Foggia in the transfer lines, in the technical solutions selected for the machinery, and in the adaptation of the site to summer climatic conditions. During the visit of 12 April 2002, the Italian authorities provided additional evidence supporting their claims.

(19) Fourth, the Italian authorities provided clarification of the difference in vendor tooling investment costs for the supplier Teksid. The costs of such investment would have been lower in Poland, they said, owing to lower prices and a lower degree of automation at the supplier's plant.

(20) Fifth, the Italian authorities repeated that the engines produced in Foggia would be shipped to the destination plants by road; from Bielsko-Biała they would have been shipped by rail. To substantiate this claim, they provided documents showing the logistics facilities currently operating in the departure and destination plants. They also provided more detailed information on transport routes and times.

(21) Sixth, the Italian authorities provided detailed evidence of the number of workers employed in engine production, and the number of lost production hours. They also supplied material confirming the reported labour costs in Foggia.

(22) Seventh, the Italian authorities provided more detailed information on the redundancy costs that would have occurred in Foggia had the project been carried out in Bielsko-Biała, and on the redundancy costs that did occur in Bielsko-Biała as a consequence of the choice of Foggia.

(23) In the case of Foggia, the Italian authorities estimated that in the absence of the project, taking account of natural turnover and of requirements for the residual production of the old engine, 950 workers would have been made redundant by 2004. Of these, 200 would have received incentives to leave the job. The remaining 750 could have been transferred at little cost to other plants operated by Iveco, the Fiat group, or component suppliers. If necessary, 150 could have qualified for a special mobility scheme (istituto della mobilità) for workers reaching retirement age. The Italian authorities estimated that the total cost of the redundancies in Foggia would be between EUR 6 500 000 and EUR 8 070 000 at current values.

(24) In the case of Bielsko-Biała, the Italian authorities confirmed that the redundancy costs reported in the notification were only those directly and unequivocally linked to the decision not to carry out the project in Poland. They also provided evidence of layoff costs amounting to EUR 7 230 000 for 1 250 of the 1 600 workers who became redundant in connection with the project.

(25) Finally, the Italian authorities supplied data showing that European production capacity for light commercial vehicles in the segments for which the engines were intended would remain constant over the lifetime of the project at the Fiat group level.

## IV. **ASSESSMENT OF THE AID**

(26) The measure notified by Italy in favour of Iveco constitutes State aid within the meaning of Article 87(1) of the Treaty. It would be financed by the State or through State resources. As it constitutes a significant proportion of the funding of the project, the aid is liable to distort competition in the Community by giving Iveco an advantage over competitors that do not receive aid. There is extensive trade between Member States in the automobile market.

(27) Article 87(2) of the EC Treaty lists certain types of aid that are compatible with the EC Treaty. In view of the nature and purpose of the aid, and the geographical location of the firm, none of its subparagraphs (a), (b) or (c) applies to the plan in question. Article 87(3) specifies other forms of aid which may be considered to be compatible with the common market. The project is located in the region of Puglia, which qualifies for assistance under Article 87(3)(a), up to a regional ceiling which for large companies is 35 % net grant equivalent (nge); this corresponds to 53,50 % gge.

(28) The aid is to be granted to Iveco, which manufactures and assembles engines, light commercial vehicles and lorries. Iveco therefore operates in the motor vehicle industry within the meaning of the Community framework on State aid to the motor vehicle industry (the framework) ([1]).

(29) The framework states that all aid which the public authorities plan to grant towards individual project under an authorised aid scheme to a firm operating in the motor vehicle industry must be notified before being granted, in accordance with Article 88(3) of the Treaty, if either of the following thresholds is reached: (a) the total cost of the project is no less than EUR 50 million, and (b) the total gross aid for the project, whether State aid or aid from Community instruments, is no less than EUR 5 million. In the case under consideration both the total cost of the project and the amount of aid exceed the notification thresholds. By notifying the proposed aid to Iveco, the Italian authorities have complied with the requirements of Article 88(3) of the Treaty.

(30) According to the framework, the Commission is to ensure that the aid granted is both necessary for the realisation of the project and proportional to the gravity of the problems it is intended to solve. Both tests, necessity and proportionality, must be satisfied if the Commission is to authorise State aid in the motor vehicle industry.

(31) Paragraph 3.2(a) of the framework states that in order to demonstrate the necessity for regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project. If there were no other industrial site, whether new or in existence, capable of receiving the investment in question within the group, the undertaking would be compelled to carry out its project in the sole plant available even in the absence of aid. Thus no regional aid may be authorised for a project that is not geographically mobile.

(32) With the help of its outside automotive expert, the Commission has assessed the documentation and information provided by Italy, and concluded that the project is indeed mobile.

(33) First, the Italian authorities have shown that Bielsko-Biała was a viable alternative location for the project. The documents provided demonstrate that Bielsko-Biała was chosen to host the project in April 1999, and that preparatory work started at the Polish site in the course of that year. The preparatory work was suspended in March 2000, following official contact between Iveco and the Italian authorities, and pending a final decision on the location. In March 2000 Iveco held a meeting with machinery supplier Comau during which the possible alternatives of Bielsko-Biała and Foggia were considered. In July 2000 Iveco finally decided to carry out the investment in Foggia, and at the same abandoned the Bielsko-Biała plan. The official application for aid was submitted to the Italian authorities on 24 July 2000. The aid was approved, subject to the Commission's authorisation, on 21 December 2000.

(34) Second, at the visit to the site on 12 April 2002, the Commission verified that the project involved the complete dismantling of the old production lines, and the installation of completely new machinery and equipment in an overall production structure that was clearly different from the previous one. The project therefore qualifies as a 'transformation' under the framework.

(35) The Commission concludes that the project is mobile, and can accordingly be considered eligible for regional aid, since the aid is necessary to attract the investment to the assisted region.

(36) Regarding the eligible costs, paragraph 3.2(b) of the framework states that eligibility is defined by the scheme applicable in the assisted region concerned. The eligible costs form the basis on which both regional handicaps and aid intensities are calculated, and are compared with the regional aid ceiling. In the present case, the eligible costs as defined by Act No 488/92 amount to a nominal EUR 265 610 000, corresponding to EUR 247 763 583 in current values, base year 2000 and discount rate 5,70 %. The aid intensity notified by the Italian authorities is 43,96 % gge.

([1]) OJ C 279, 15.9.1997, p. 1 and OJ C 368, 22.12.2001 p. 10.

(37) According to point 3.2(c) of the framework the Commission has to ensure that the planned aid is proportional to the regional problems it is intended to solve. The method used is cost-benefit analysis.

(38) A cost-benefit analysis is made which compares, with regard to the mobile elements, the costs which an investor would bear in order to carry out the project in the region in question with those it would bear for an identical project in a different location; this makes it possible to determine the specific handicaps of the assisted region concerned. The Commission authorises regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.

(39) In accordance with point 3.2(c) of the framework, the cost-benefit analysis assessed the operating handicaps in Foggia and Bielsko-Biała over three years, since the project in question is a transformation, and not a greenfield development. The period covered by the cost-benefit analysis submitted is 2002-2004, or three years from the beginning of production, in compliance with section 3.3 of Annex I to the framework.

(40) The Commission has taken into account the additional information received from Italy following the initiation of proceedings. Based on this new information, and with the help of its external automotive expert, the Commission has modified some elements of the cost-benefit analysis, as detailed below.

(41) Regarding the higher investment costs for machinery and equipment in Foggia, the information provided by Italy, and the evidence gathered during the visit to the site, have demonstrated that the difference in costs between Foggia (a nominal EUR 286 650 000) and Bielsko-Biała (a nominal EUR 241 290 000) is justified. Although the production process and production machines are the same, the installation of transfer lines is more costly in Foggia, owing to the layout of the buildings and the lack of available space. In some cases overhead trolleys had to be installed in Foggia for the transfer of components between work stations. Additional though smaller costs arose in Foggia as a result of the necessity to upgrade the cooling systems for electric and electronic units.

(42) Investment costs for vendor tooling were not included in the nominal EUR 265 610 000 considered eligible by the Italian authorities. For this reason they do form part of the basis on which the handicap and aid intensities are calculated and compared with the regional aid ceiling.

(43) As regards outward transport costs, the Commission has verified the new information provided by Italy, and concluded that Iveco had the logistic capability to ship engines by rail from Bielsko-Biała to the destination plants. This would have allowed substantial savings in transport costs per engine per kilometre as compared with the road transport to be used in the Foggia solution. But the greater distance between the Polish site and the destination plants would have outweighed those savings. Based on the information provided, the Commission calculates that Foggia enjoys an advantage in outward transport costs equal to EUR 28 000 at current values in the 2002-2004 period.

(44) Regarding the forecast employment levels, the additional Iveco internal documents provided by Italy clearly demonstrate that the number of workers to be taken on for the project is indeed as reported in the cost-benefit analysis. The documents also confirm the relatively high incidence of lost hours in the total hours necessary for engine production. Lost hours are due to two main factors: a high level of absenteeism at the plant, and the difficult transition between the production of the old and new engine models. The Commission concludes that the employment levels have been correctly reported in the cost-benefit analysis.

(45) Regarding labour costs in Foggia, the additional figures provided by the Italian authorities show that wage costs in Foggia are in line with those in other Italian plants of the Fiat group. The Italian authorities state that in recent years the differential between labour costs in Northern and in Southern Italy has decreased, owing to the phasing out of fiscal incentives for employment in the South. The proportion of specialised, highly skilled workers is higher in an engine production plant like Foggia than in car assembly plants. The Commission concludes that the labour costs reported in the cost-benefit analysis can be accepted.

(46) The Commission takes the view that potential redundancy costs in Foggia have to be considered in the cost-benefit analysis in order to assess the comparative disadvantages of Foggia with respect to Bielsko-Biała. The Commission has verified the figures provided by the Italian authorities, and it has concluded that figures on natural turnover, residual workforce needs in Foggia, and early retirement through mobility (istituto della mobilità) can be accepted. However, the Commission finds that the Italian authorities have not sufficiently demonstrated that 750 of the workers made redundant could be easily transferred to other plants belonging to Iveco, the Fiat group or component suppliers.

(47) To support the claim that workers could have been transferred to Iveco plants in the north of Italy, the Italian authorities provided a copy of a 1996 agreement between the company and the unions, whereby a number of workers in Foggia were transferred to other Iveco plants. The Commission however doubts that a similar agreement could have been reached in connection with the partial shutdown of the Foggia plant. The 1997 workforce transfer took place at a time when Iveco was investing heavily at the Foggia plant, but also faced a temporary drop in demand for the engines produced. The agreement stipulated that the company would provide incentives for the return of the transferred workers to Foggia as the requirements of production allowed. It is doubtful that the workers' unions would have agreed to a similar arrangement in the event of a very important and permanent cut in production at the plant.

(48) To support the claim that workers could have been transferred to other plants of the Fiat group, the Italian authorities provided figures for staff recruitment in Fiat Auto's plants in the region. The figures, however, show that the great majority of new workers were hired either on a temporary basis or under contracts designed to reduce the indirect costs of employing young workers (contratti di formazione-lavoro). The Commission considers that no convincing evidence has been provided to show that these plants would have been ready to hire workers made redundant in Foggia, who, according to the Italian authorities, were on average relatively old, and enjoyed high wage levels. Nor is it clear that these workers would have accepted a transfer to a new place of work offering contractual conditions that were not as good. As for the capacity of component suppliers to hire workers made redundant in Foggia, the Italian authorities have not provided evidence that would prove this claim.

(49) Based on the information in its possession, in particular that provided by Italy in response to the initiation of the inquiry proceedings, the Commission concludes that in the absence of the project the number of workers made redundant in Foggia would have been 950. Of these, 150 could have benefited under the special mobility scheme for workers close to retirement age (istituto della mobilità). The remaining workers would have had to be compensated for leaving their jobs. On this basis the Commission estimates the redundancy costs that would have arisen in Foggia in the absence of the project over the period 2002-2004 at EUR 21 870 000.

(50) As regards the potential redundancy costs in Bielsko-Biała, redundancies have in fact taken place as a direct consequence of Iveco's decision to carry out the project in Foggia. The downsizing of the Polish plant has resulted in several thousand redundancies in recent years, and the F1 project would have made it possible to maintain 1 600. The Commission concludes that the redundancy costs relating to these jobs can be imputed entirely to the decision not to carry out the project in Poland. The Italian authorities have provided sufficient documentation to show that the costs related to the redundancy of 1 250 workers in the years 2000-2001 was EUR 7 230 000, and that a further 350 workers are being made redundant in the short term. On the basis of the information in its possession the Commission estimates the total redundancy costs in Bielsko-Biała over the period 2000-2002 at EUR 9 264 000.

(51) These changes to the analysis produce cost-benefit results different from those initially notified by Italy. The modified cost-benefit analysis indicates a net cost handicap for Foggia of EUR 128 381 000 at 2000 values, as compared with EUR 139 280 000 initially notified. This brings the handicap ratio of the project to 51,82 %, as compared with 45,72 % initially notified. In absolute values the regional handicap is lower than that notified by Italy, but the ratio increases, because the costs considered eligible under the framework amount to only EUR 265 610 000.

(52) Finally, the Commission has considered the question of a 'top-up', which is an increase in the allowable aid intensity intended as a further incentive to invest in the region in question. The documentation provided shows that European production capacity for light commercial vehicles in the segments for which the engines are intended will remain constant over the lifetime of the project at the Fiat group level. The regional handicap ratio resulting from the cost-benefit analysis should accordingly be increased by two percentage points, giving a final ratio of 53,82 %.

## V. **CONCLUSION**

(53) The aid intensity of the project, at 43,96 % gge, is less than both the disadvantage identified by the cost-benefit/top-up analysis, which is 53,82 %, and the regional aid ceiling, which is 35 % in net grant equivalent, a figure which allows a gross grant equivalent of up to 53,50 %. The regional aid that the Italy plans to grant to Iveco therefore can therefore be considered compatible with the common market under Article 87(3)(a) of the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which Italy plans to grant to Iveco SpA in Foggia, amounting to EUR 121 658 000 gross grant equivalent at nominal values (corresponding to EUR 108 915 621 at current values, base year 2000, discount rate 5,70 %), towards an eligible investment of EUR 265 610 000 in nominal terms (corresponding to EUR 247 763 583 at current values), is compatible with the common market within the meaning of Article 87(3)(a) of the Treaty.

*Article 2*

This Decision is addressed to the Italian Republic.

Done at Brussels, 2 October 2002.

*For the Commission*

Mario MONTI

*Member of the Commission*

# COMMISSION RECOMMENDATION

## of 11 February 2003

## on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services

*(notified under document number C(2003) 497)*

**(Text with EEA relevance)**

(2003/311/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services [1], and in particular Article 15 thereof,

Whereas:

(1) Directive 2002/21/EC (hereinafter the Framework Directive), establishes a new legislative framework for the electronic communications sector that seeks to respond to convergence trends by covering all electronic communications networks and services within its scope The aim is to reduce *ex ante* sector-specific rules progressively as competition in the market develops.

(2) The purpose of this Recommendation is to identify those product and service markets in which *ex ante* regulation may be warranted. However, this first Recommendation has to be consistent with the transition from the 1998 regulatory framework to the new regulatory framework. Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities [2], hereinafter the Access Directive, and Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services [3] hereinafter the Universal service Directive already identify specific market areas which need to be analysed by national regulatory authorities in addition to the markets listed in this Recommendation. In accordance with the Framework Directive, it is for national regulatory authorities to define relevant geographic markets within their territory.

(3) Under the 1998 regulatory framework, several areas in the telecommunications sector are subject to *ex ante* regulation. These areas have been delineated in the applicable directives, but are not always 'markets' within the meaning of competition law and practice. Annex I of the Framework Directive provides a list of such market areas to be included in the initial version of the Recommendation.

(4) As the title of Annex I of the Framework Directive makes clear, all the market areas listed therein need to be included in the initial version of the Recommendation in order that NRAs can carry out a review of existing obligations imposed under the 1998 regulatory framework.

(5) Article 15(1) of the Framework Directive requires the Commission to define markets in accordance with the principles of competition law. The Commission has therefore defined markets (corresponding to the market areas listed in Annex I of the Framework Directive) in accordance with competition law principles.

(6) There are in the electronic communications sector at least two main types of relevant markets to consider: markets for services or products provided to end users (retail markets), and markets for the inputs which are necessary for operators to provide services and products to end users (wholesale markets). Within these two types of markets, further market distinctions may be made depending on demand and supply side characteristics.

(7) The starting point for the definition and identification of markets is a characterisation of retail markets over a given time horizon, taking into account demand-side and supply-side substitutability. Having characterised and defined retail markets which are markets involving the supply and demand of end users, it is then appropriate to identify relevant wholesale markets which are markets involving the demand of products of, and supply of products to, a third party wishing to supply end users.

[1] OJ L 108, 24.4.2002, p. 33.
[2] OJ L 108, 24.4.2002, p. 7.
[3] OJ L 108, 24.4.2002, p. 51.

(8) Defining markets in accordance with the principles of competition law means that some of the market areas in Annex I of the Framework Directive comprise a number of separate individual markets on the basis of demand side characteristics. This is the case of products for retail access to the public telephone network at a fixed location and for telephone services provided at a fixed location. The market area in Annex I referring to wholesale leased lines is defined as separate markets for wholesale terminating segments and wholesale trunk segments on the basis of both demand side and supply side characteristics.

(9) In identifying markets in accordance with competition law principles, recourse should be had to the following three criteria. The first criterion is the presence of high and non-transitory entry barriers whether of structural, legal or regulatory nature. However, given the dynamic character and functioning of electronic communications markets, possibilities to overcome barriers within a relevant time horizon have also to be taken into consideration when carrying out a prospective analysis to identify the relevant markets for possible *ex ante* regulation. Therefore the second criterion admits only those markets the structure of which does not tend towards effective competition within the relevant time horizon. The application of this criterion involves examining the state of competition behind the barriers of entry. The third criterion is that application of competition law alone would not adequately address the market failure(s) concerned.

(10) In particular, as far as entry barriers are concerned, two types of entry barriers are relevant for the purpose of this Recommendation: structural barriers and legal or regulatory barriers.

(11) Structural barriers to entry result from original cost or demand conditions that create asymmetric conditions between incumbents and new entrants impeding or preventing market entry of the latter. For instance, high structural barriers may be found to exist when the market is characterised by substantial economies of scale and/or economies of scope and high sunk cost. To date, such barriers can still be identified with respect to the widespread deployment and/or provision of local access networks to fixed locations. A related structural barrier can also exist where the provision of service requires a network component that cannot be technically duplicated or only duplicated at a cost that makes it uneconomic for competitors.

(12) Legal or regulatory barriers are not based on economic conditions, but result from legislative, administrative or other state measures that have a direct effect on the conditions of entry and/or the positioning of operators on the relevant market. Examples are legal or regulatory barriers preventing entry into a market where there is a limit on the number of undertakings that have access to spectrum for the provision of underlying services. Other examples of legal or regulatory barriers are price controls or other price related measures imposed on undertakings, which affect not only entry but also the positioning of undertakings on the market.

(13) Entry barriers may also become less relevant with regard to innovation-driven markets characterised by ongoing technological progress. In such markets, competitive constraints often come from innovative threats from potential competitors that are not currently in the market. In such innovation-driven markets, dynamic or longer term competition can take place among firms that are not necessarily competitors in an existing 'static' market. This Recommendation does not identify markets where entry barriers are not expected to persist over a foreseeable period.

(14) Even when a market is characterised by high barriers to entry, other structural factors in that market may mean that the market tends towards an effectively competitive outcome within the relevant time horizon. This may for instance be the case in markets with a limited, but sufficient, number of undertakings having diverging cost structures and facing price-elastic market demand. There may also be excess capacity in a market that would allow rival firms to expand output very rapidly in response to any price increase. In such markets, market shares may change over time and/or falling prices may be observed.

(15) The decision to identify a market as justifying possible *ex ante* regulation should also depend on an assessment of the sufficiency of competition law in reducing or removing such barriers or in restoring effective competition. Furthermore, new and emerging markets, in which market power may be found to exist because of 'first-mover' advantages, should not in principle be subject to ex-ante regulation.

(16) In undertaking periodic reviews of the markets identified in this Recommendation, the three criteria should be used. These criteria should be applied cumulatively, so that failing any one of them means that the market should not be identified in subsequent recommendations. Thus, whether an electronic communications market continues to be identified by subsequent versions of the Recommendation as justifying possible *ex ante* regulation would depend on the persistence of high entry barriers, on the second criterion measuring the dynamic state of competitiveness and thirdly on the sufficiency of competition law (absent *ex ante* regulation) to address persistent market failures. A market could also be removed from a recommendation once there is evidence of sustainable and effective competition on that market within the Community, provided that the removal of existing regulation obligations would not reduce competition on that market.

(17) The Annex to this Recommendation indicates how each market in the Recommendation is linked to the market areas in Annex I to the Framework Directive. When reviewing existing obligations imposed under the previous regulatory framework, in order to determine whether to maintain, amend or withdraw them, NRAs should undertake the analysis on the basis of the markets identified in this Recommendation, in order to give effect to the requirement that market definition for the purposes of *ex ante* regulation should be based on competition law principles. Pending the first market analysis by NRAs under the new regulatory framework, existing obligations remain in force.

(18) The identification of markets in this Recommendation is without prejudice to markets that may be defined in specific cases under competition law.

(19) The range of different network topologies and technologies deployed across the Community means that in some cases national regulatory authorities must decide the precise boundaries between, or elements within, particular markets identified in the Recommendation, while adhering to competition law principles. National regulatory authorities may identify markets that differ from those of the Recommendation, provided they act in accordance with Article 7 of the Framework Directive. Since the imposition of *ex ante* regulation on a market could affect trade between Member States as described in recital 38 of the Framework Directive, the Commission considers that the identification of any market that differs from those of the Recommendation are likely to be subject to the appropriate procedure in Article 7 of the Framework Directive. Failure to notify a market which affects trade between Member States may result in infringement proceedings being taken. Any market identified by national regulatory authorities should be based on the competition principles developed in the Commission Notice on the definition of relevant market for the purposes of Community competition law [1], and be consistent with the Commission Guidelines on market analysis and the assessment of significant market power and satisfy the three criteria set out above. Should an NRA consider that demand and supply patterns may justify an alternative market definition of a market listed in this Recommendation, it should then follow the appropriate procedures set out in Article 6 and 7 of the Framework Directive.

(20) The fact that this Recommendation identifies those product and service markets in which *ex ante* regulation may be warranted does not mean that regulation is always warranted or that these markets will be subject to the imposition of regulatory obligations set out in the specific Directives. Regulation will not be warranted if there is effective competition on these markets. In particular, regulatory obligations must be appropriate and be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in the Framework Directive, in particular maximising benefits for users, ensuring no distortion or restriction of competition, encouraging efficient investment in infrastructure and promoting innovation, and encouraging efficient use and management of radio frequencies and numbering resources.

(21) The Commission will review the need for any update of this Recommendation no later than 30 June 2004 on the basis of market developments.

(22) This Recommendation has been subject to a public consultation and to consultation with national regulatory authorities and national competition authorities.

HAS ADOPTED THIS RECOMMENDATION:

1. In defining relevant markets in accordance with Article 15(3) of Directive 2002/21/EC, national regulatory authorities are recommended to analyse the product and service markets identified in the Annex.
2. This Recommendation is addressed to the Member States.

Done at Brussels, 11 February 2003.

*For the Commission*
Erkki LIIKANEN
*Member of the Commission*

[1] OJ C 372, 9.12.1997, p. 5.

*ANNEX*

**Retail level**

1. Access to the public telephone network at a fixed location for residential customers.

2. Access to the public telephone network at a fixed location for non-residential customers.

3. Publicly available local and/or national telephone services provided at a fixed location for residential customers.

4. Publicly available international telephone services provided at a fixed location for residential customers.

5. Publicly available local and/or national telephone services provided at a fixed location for non-residential customers.

6. Publicly available international telephone services provided at a fixed location for non-residential customers.

   These six markets are identified for the purpose of analysis in respect of Article 17 of the Universal Service Directive.

   Together, markets 1 through 6 correspond to 'the provision of connection to and use of the public telephone network at fixed locations', referred to in Annex I(1) of the Framework Directive. This combined market is also referred to in Article 19 of the Universal Service Directive (for possible imposition of carrier call-by-call selection or carrier selection).

7. The minimum set of leased lines (which comprises the specified types of leased lines up to and including 2Mb/sec as referenced in Article 18 and Annex VII of the Universal Service Directive).

   This market is referred to in Annex I(1) of the Framework Directive in respect of Article 16 of the Universal Service Directive (the provision of leased lines to end users).

   A market analysis must be undertaken for the purposes of Article 18 of the Universal Service Directive which covers regulatory controls on the provision of the minimum set of leased lines.

**Wholesale level**

8. Call origination on the public telephone network provided at a fixed location. For the purposes of this Recommendation, call origination is taken to include local call conveyance and delineated in such a way as to be consistent with the delineated boundaries for the markets for call transit and for call termination on the public telephone network provided at a fixed location.

   This market corresponds to that referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call origination in the fixed public telephone network).

9. Call termination on individual public telephone networks provided at a fixed location.

   For the purposes of this Recommendation, call termination is taken to include local call conveyance and delineated in such a way as to be consistent with the delineated boundaries for the markets for call origination and for call transit on the public telephone network provided at a fixed location.

   This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call termination in the fixed public telephone network).

10. Transit services in the fixed public telephone network.

    For the purposes of this Recommendation, transit services are taken as being delineated in such a way as to be consistent with the delineated boundaries for the markets for call origination and for call termination on the public telephone network provided at a fixed location.

    This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (transit services in the fixed public telephone network).

11. Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services.

    This market corresponds to that referred to in Annex I(2) of the Framework Directive inrespect of Directive 97/33/EC and Directive 98/10/EC (access to the fixed public telephone network, including unbundled access to the local loop) and to that referred to in Annex I (3) of the Framework Directive in respect of Regulation No 2887/2000.

12. Wholesale broadband access.

    This market covers 'bit-stream' access that permit the transmission of broadband data in both directions and other wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bit-stream access. It includes 'Network access and special network access' referred to in Annex I(2) of the Framework Directive, but does not cover the market in point 11 above, nor the market in point 18.

13. Wholesale terminating segments of leased lines.

14. Wholesale trunk segments of leased lines.

    Together, the wholesale markets 13 and 14 correspond to those referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC and Directive 98/10/EC (leased line interconnection) and to those referred to in Annex I(2) of the Framework Directive in respect of Directive 92/44/EEC (wholesale provision of leased line capacity to other suppliers of electronic communications networks or services).

15. Access and call origination on public mobile telephone networks, referred to (separately) in Annex I(2) of the Framework Directive in respect of Directives 97/33/EC and 98/10/EC.

16. Voice call termination on individual mobile networks.

    This market corresponds to the one referred to in Annex I(2) of the Framework Directive in respect of Directive 97/33/EC (call termination on public mobile telephone networks).

17. The wholesale national market for international roaming on public mobile networks.

    This market corresponds to the one referred to in Annex I(4) of the Framework Directive.

18. Broadcasting transmission services, to deliver broadcast content to end users.

*Note*

National regulatory authorities have discretion with respect to the analysis of the market for 'Conditional access systems to digital television and radio services broadcast' in accordance with Article 6(3) of the Access Directive. Article 6(3) of the Access Directive provides that Member States may permit their NRAs to review the market for conditional access system to digital television and radio services broadcast, irrespective of the means of transmission.

# COMMISSION DECISION

## of 9 April 2003

## on the publication of the reference of standards relating to thermal insulation products, geotextiles, fixed fire-fighting equipment and gypsum blocks in accordance with Council Directive 89/106/EEC

*(notified under document number C(2003) 1161)*

**(Text with EEA relevance)**

(2003/312/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/106/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to construction products [1], as amended by Directive 93/68/EEC [2] and in particular Article 5(1) thereof,

Having regard to the opinion of the Standing Committee set up in accordance with Article 5 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [3], as amended by Directive 98/48/EC [4],

Whereas:

(1) Article 2 of Directive 89/106/EEC stipulates that Member States shall take all necessary measures to ensure that construction products may be placed on the market only if the works in which they are to be incorporated fulfil the essential requirements referred to in Article 3 of that Directive.

(2) Under Article 4(2) of Directive 89/106/EEC, construction products are presumed to be fit for use and allow the works in which they are employed to satisfy the essential requirements referred to in Article 3 of that Directive, if they conform to the national standards applicable to them transposing the harmonised standards, the references of which have been published in the *Official Journal of the European Communities*.

(3) Member States are required to publish the reference numbers of national standards transposing harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Communities*.

(4) Pursuant to Article 5(1) of Directive 89/106/EEC, Germany raised a formal objection in respect of certain harmonised standards on the grounds that they do not permit the works in which the products are installed to fully satisfy the essential requirements of Directive 89/106/EEC. The standards concerned are ten harmonised standards for thermal insulation products, adopted by the European Committee for Standardisation (CEN) on 23 May 2001, the reference numbers of which were published in the *Official Journal of the European Communities (OJEC)* of 15 December 2001 [5]; nine geotextiles standards adopted by the CEN on 13 December 2000, the reference numbers of which were published in the *(OJEC)* of 26 June 2001 [6]; ten fixed fire-fighting equipment standards adopted by the CEN on 13 December 2000, 21 March 2001 and 11 April 2001, the reference numbers of which were published in the *OJEC* of 18 July 2001 [7], 15 December 2001 and 14 February 2002 [8]; and harmonised standard EN12859: 2001 'Gypsum blocks — definitions, requirements and test methods', adopted by the CEN on 13 June 2001, the reference number of which was published in the *(OJEC)* of 15 December 2001.

(5) The information received in the course of the consultations with the CEN and the national authorities in the Committee set up by Directive 89/106/EEC, and with the Committee set up by Directive 98/34/EC, has disclosed no evidence of the risk alleged by Germany.

(6) Consequently, it has not been demonstrated that the 30 harmonised standards contested, fail to allow the works in which the products are installed to meet the essential requirements of Directive 89/106/EEC.

(7) It is therefore not necessary to withdraw the references to those standards,

HAS ADOPTED THIS DECISION:

*Article 1*

The references to ten thermal insulation standards, set out in Table 1 of the Annex, adopted by the European Committee for Standardisation (CEN) on 23 May 2001 and published for the first time in the *Official Journal of the European Communities* of 15 December 2001, shall not be withdrawn from the list of standards published in the *Official Journal of the European Communities*.

[1] OJ L 40, 11.2.1989, p. 12.
[2] OJ L 220, 30.8.1993, p. 1.
[3] OJ L 204, 21.7.1998, p. 37.
[4] OJ L 217, 5.8.1998, p. 18.
[5] OJ C 358, 15.12.2001, p. 9.
[6] OJ C 180, 26.6.2001, p. 8.
[7] OJ C 202, 18.7.2001, p. 9.
[8] OJ C 40, 14.2.2002, p. 3.

*Article 2*

The references to nine geotextiles standards, set out in Table 2 of the Annex, adopted by the CEN on 13 December 2000 and published for the first time in the *Official Journal of the European Communities* of 26 June 2001, shall not be withdrawn from the list of standards published in the *Official Journal of the European Communities*.

*Article 3*

The references to ten fixed fire-fighting standards, set out in Table 3 of the Annex, adopted by the CEN on 13 December 2000, 21 March 2001 and 11 April 2001 and published for the first time in the *Official Journal of the European Communities* of 18 July 2001, 15 December 2001 and 14 February 2002, shall not be withdrawn from the list of standards published in the *Official Journal of the European Communities*.

*Article 4*

The reference of standard EN12859: 2001 'Gypsum blocks — definitions, requirements and test methods', adopted by CEN on 13 June 2001 and published for the first time in the *Official Journal of the European Communities* of 15 December 2001, shall not be withdrawn from the list of standards published in the *Official Journal of the European Communities*.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 9 April 2003.

*For the Commission*

David BYRNE

*Member of the Commission*

*ANNEX*

TABLE 1

**Publication of titles and references of harmonised standards for thermal insulation products referred to in Article 1**

| ESO | Reference | Title of harmonised standard | Year of ratification | OJ reference |
|---|---|---|---|---|
| CEN | EN 13162:2001 | Thermal insulation products for buildings — factory made mineral wool (MW) products — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13163:2001 | Factory made products of expanded polystyrene (EPS) — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13164:2001 | Factory made products of extruded polystyrene foam (XPS) — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13165:2001 | Factory made rigid polyurethane foam (PUR) products — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13166:2001 | Factory made products of phenolic foam (PF) — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13167:2001 | Factory made cellular glass (CG) products — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13168:2001 | Factory made wood wool (WW) products — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13169:2001 | Factory made products of expanded perlite (EPB) — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13170:2001 | Factory made products of expanded cork (ICB) — specifications | 2001 | C 358 15.12.2001 |
| CEN | EN 13171:2001 | Factory made wood fibre products — specifications | 2001 | C 358 15.12.2001 |

TABLE 2

**Publication of titles and references of harmonised standards for geotextiles products referred to in Article 2**

| ESO | Reference | Title of harmonised standard | Year of ratification | OJ reference |
|---|---|---|---|---|
| CEN | EN 13249:2000 | Geotextiles/geotextile-related products — required characteristics for use in the construction of roads and other trafficked areas | 2000 | C 180 26.6.2001 |
| CEN | EN 13251:2000 | Geotextiles/geotextile-related products — required characteristics for use in earthworks, foundations and retaining structures | 2000 | C 180 26.6.2001 |

| ESO | Reference | Title of harmonised standard | Year of ratification | OJ reference |
|---|---|---|---|---|
| CEN | EN 13252:2000 | Geotextiles/geotextile-related products — required characteristics for use in drainage systems | 2000 | C 180 26.6.2001 |
| CEN | EN 13253:2000 | Geotextiles/geotextile-related products — required characteristics for use in external erosion control systems | 2000 | C 180 26.6.2001 |
| CEN | EN 13254:2000 | Geotextiles/geotextile-related products — required characteristics for use in the construction of reservoirs and dams | 2000 | C 180 26.6.2001 |
| CEN | EN 13255:2000 | Geotextiles/geotextile-related products — required characteristics for use in the construction of canals | 2000 | C 180 26.6.2001 |
| CEN | EN 13256:2000 | Geotextiles/geotextile-related products — required characteristics for use in the construction of tunnels and structures underground | 2000 | C 180 26.6.2001 |
| CEN | EN 13257:2000 | Geotextiles/geotextile-related products — required characteristics for use in solid waste disposals | 2000 | C 180 26.6.2001 |
| CEN | EN 13265:2000 | Geotextiles/geotextile-related products — required characteristics for use in liquid waste containment projects | 2000 | C 180 26.6.2001 |

TABLE 3

**Publication of titles and references of harmonised standards for fixed fire-fighting products referred to in Article 3**

| ESO | Reference | Title of harmonised standard | Year of ratification | OJ reference |
|---|---|---|---|---|
| CEN | EN 671-1:2001 | Fixed fire fighting systems — hose systems Part 1: hose reels with semi-rigid hose | 2001 | C 202 18.7.2001 |
| CEN | EN 671-2:2001 | Fixed fire fighting systems — hose systems Part 2: hose systems with lay-flat hose | 2001 | C 202 18.7.2001 |
| CEN | EN 12094-5: 2000 | Fixed fire fighting systems — components for gas extinguishing systems: Requirements and test methods for high and low pressure selector valves and their actuators for $CO_2$ systems | 2000 | C 202 18.7.2001 |
| CEN | EN 12094-6: 2000 | Fixed fire fighting systems — components for gas extinguishing systems: Requirements and test methods for non-electrical disable devices for $CO_2$ systems | 2000 | C 202 18.7.2001 |
| CEN | EN 12094-7: 2000 | Fixed fire fighting systems — components for gas extinguishing systems: Requirements and test methods for nozzles for $CO_2$ systems | 2000 | C 202 18.7.2001 |
| CEN | EN 12416-1: 2001 | Fixed fire fighting systems — powder systems Part 1: Specifications and test methods for system and components | 2001 | C 40 14.2.2002 |

| ESO | Reference | Title of harmonised standard | Year of ratification | OJ reference |
|---|---|---|---|---|
| CEN | EN 12094-13: 2001 | Fixed fire fighting systems — components for gas extinguishing systems — Pt 13 Requirements and test methods for check valves and non-return valves | 2001 | C 202 18.7.2001 |
| CEN | EN 12259-2: 1999/A1:2001 | Fixed fire fighting systems — sprinkler/waterspray systems — Wet alarm valves | 2001 | C 358 15.12.2001 |
| CEN | EN 12259-3: 2000/A1:2001 | Fixed fire fighting systems — sprinkler/waterspray systems — Dry alarm valves | 2001 | C 358 15.12.2001 |
| CEN | EN 12259-4: 2000/prA1 | Fixed fire fighting systems — sprinkler/waterspray systems — Water motor alarms | 2001 | C 358 15.12.2001 |
| CEN | EN 12859:2001 | Gypsum blocks — definitions, requirements and test methods | 2001 | C 358 15.12.2001 |

# COMMISSION DECISION

## of 7 May 2003

## on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2002 financial year

*(notified under document number C(2003) 1519)*

(2003/313/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the Common Agricultural Policy [1], and in particular Article 7(3) thereof,

After consulting the Fund Committee,

Whereas:

(1) Under Article 7(3) of Regulation (EC) No 1258/1999, the Commission, on the basis of the annual accounts submitted by the Member States, accompanied by the information required for clearance and a certificate regarding the veracity, completeness, and accuracy of the accounts transmitted clears the accounts of the paying agencies referred to in Article 4(1) of this Regulation.

(2) With regard to Article 7(1) of Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be transmitted by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) [2], as last amended by Regulation (EC) No 1997/2002 [3], account is taken for the 2002 financial year of expenditure incurred by the Member States between 16 October 2001 and 15 October 2002.

(3) The time limits granted to the Member States for the submission to the Commission of the documents referred to in Article 6(1)(b) of Regulation (EC) 1258/1999 and in Article 4(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of accounts of the EAGGF Guarantee Section [4], as last amended by Regulation (EC) No 2025/2001 [5], have expired.

(4) The Commission has checked the information submitted and communicated to the Member States before the 31 March 2003 the results of its verifications with the necessary amendments.

(5) Under the first subparagraph of Article 7(1) of Regulation (EC) No 1663/95, the accounts clearance decision referred to in Article 7(3) of Regulation (EC) No 1258/1999 must determine, without prejudice to decisions taken subsequently in accordance with Article 7(4) of the Regulation, the amount of expenditure effected in each Member State during the financial year in question recognised as being chargeable to the EAGGF Guarantee Section, on the basis of the accounts referred to in Article 6(1)(b) of Regulation (EC) No 1258/1999 and the reductions and suspensions of advances for the financial year concerned, including the reductions referred to in the second subparagraph of Article 4(3) of Regulation (EC) No 296/96. Under Article 154 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 [6] on the Financial Regulation applicable to the general budget of the European Communities, the outcome of the clearance decision, that is to say, any discrepancy which may occur between the total expenditure booked to the accounts for a financial year pursuant to Article 151(1) and Article 152 and the total expenditure taken into consideration by the Commission in this Decision, is to be booked, under a single article, as additional expenditure or a reduction in expenditure.

(6) For certain paying agencies, in the light of the verifications made, the annual accounts and the accompanying documents permit the Commission to take a decision on the completeness, accuracy and veracity of the accounts submitted. Annex I lists the amounts cleared by Member State. The details of these amounts have been described in the Summary Report that has been presented to the Fund Committee at the same time as the present Decision.

(7) In the light of the verifications made, the information submitted by certain other Paying Agencies requires additional inquiries and their accounts cannot be cleared in this decision. Annex II lists the paying agencies concerned.

[1] OJ L 160, 26.6.1999, p. 103.
[2] OJ L 39, 17.2.1996, p. 5.
[3] OJ L 308, 9.11.2002, p. 9.
[4] OJ L 158, 8.7.1995, p. 6.
[5] OJ L 274, 17.10.2001, p. 3.
[6] OJ L 248, 16.9.2002, p. 1.

(8) Article 4(2) of Regulation (EC) No 296/96, in liaison with Article 14 of Council Regulation (EC) No 2040/2000 of 26 September 2000 on budgetary discipline [1] lays down that advances against booking are to be reduced for expenditure effected by the Member States after the limits or deadlines laid down; however, pursuant to Article 4(3) of Regulation (EC) No 296/96, any overrun of deadlines during August, September and October is to be taken into account in the accounts clearance decision except where noted before the last decision of the financial year relating to advances. Part of the expenditure claimed by certain Member States during the abovementioned period and for the measures for which the Commission did not accept any extenuating circumstances was effected after the limits or deadlines laid down; this Decision should therefore lay down the relevant reductions. A decision will be taken at a later date, in accordance with Article 7(4) of Regulation (EC) No 1258/1999, definitively fixing the expenditure for which Community financing will not be granted regarding those reductions and any other expenditure which may be found to have been effected after the limits or deadlines laid down.

(9) The Commission, in accordance with Article 14 of Regulation (EC) No 2040/2000 and Article 4(2) of Regulation (EC) No 296/96, reduced or suspended a number of monthly advances on entry into the accounts of expenditure for the 2002 financial year and proceeds in this Decision to the reductions laid down in Article 4(3) of Regulation (EC) No 296/96. In the light of the above, to avoid any premature or even only temporary reimbursement of the amounts in question, they should not be recognised in this Decision, without prejudice to further examination according to Article 7(4) of Regulation (EC) No 1258/1999.

(10) The second subparagraph of Article 7(1) of Regulation (EC) No 1663/95, lays down that the amounts that, in accordance with the accounts clearance decision referred to in the first subparagraph, are recoverable from, or payable to, each Member State shall be determined by deducting advances paid during the financial year in question, i.e. 2002, from expenditure recognised for that year in accordance with the first subparagraph. Such amounts are to be deducted from, or added to, advances against expenditure from the second month following that in which the accounts clearance decision is taken.

(11) In accordance with the final subparagraph of Article 7(3) of Regulation (EC) No 1258/1999 and Article 7(1) of Regulation (EC) No 1663/95, this Decision, adopted on the basis of accounting information, does not prejudice decisions taken subsequently by the Commission excluding from Community financing expenditure not effected in accordance with Community rules,

HAS ADOPTED THIS DECISION:

*Article 1*

With the exception of the paying agencies referred to in Article 2 the accounts of the paying agencies of the Member States concerning expenditure financed by the EAGGF Guarantee Section in respect of the 2002 financial year are hereby cleared. The amounts which are recoverable from, or payable to, each Member State in accordance with the present Decision are determined in Annex I.

*Article 2*

For the 2002 financial year, the accounts of the Member States' paying agencies in respect of expenditure financed by the EAGGF Guarantee Section, shown in Annex II, are disjoined from this Decision and shall be the subject of a future clearance Decision.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 7 May 2003.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

[1] OJ L 244, 29.9.2000, p. 27.

*ANNEX I*

**Clearance of the paying agencies' accounts**

**Financial year 2002**

**Amount to be recovered from or paid to the Member State**

| Member State | | 2002 expenditure for the paying agencies for which the accounts are | | Total a + b | Reductions and suspensions for the whole financial year | Total including reductions and suspensions | Advances paid to the Member State for the financial year | Amount to be recovered from (-) or paid to (+) the Member State |
|---|---|---|---|---|---|---|---|---|
| | | cleared | disjoined | | | | | |
| | | = expenditure declared in the annual declaration | = total of the expenditure in the monthly declarations | | | | | |
| | | a | b | c = a + b | d | e = c + d | f | g = e - f |
| AT | EUR | 1 090 063 163,87 | 0,00 | 1 090 063 163,87 | 0,00 | 1 090 063 163,87 | 1 090 063 163,87 | 0,00 |
| BE | EUR | 945 763 244,13 | 0,00 | 945 763 244,13 | – 3 266 994,21 | 942 496 249,92 | 942 043 391,55 | 452 858,37 |
| DE | EUR | 6 336 261 527,06 | 449 932 773,32 | 6 786 194 300,38 | – 2 246 762,19 | 6 783 947 538,19 | 6 784 385 251,91 | – 437 713,72 |
| DK | DKK | 9 084 569 818,54 | 0,00 | 9 084 569 818,54 | – 1 170 470,12 | 9 083 399 348,42 | 9 081 567 824,16 | 1 831 524,26 |
| ES | EUR | 5 885 026 695,34 | 53 054 974,84 | 5 938 081 670,18 | – 10 602 446,74 | 5 927 479 223,44 | 5 933 065 331,75 | – 5 586 108,31 |
| FI | EUR | 838 018 925,01 | 0,00 | 838 018 925,01 | – 58 459,31 | 837 960 465,70 | 837 969 536,77 | – 9 071,07 |
| FR | EUR | 1 819 772 961,78 | 7 963 067 983,08 | 9 782 840 944,86 | – 31 644 507,47 | 9 751 196 437,39 | 9 752 167 012,04 | – 970 574,65 |
| GR | EUR | 0,00 | 2 646 229 855,76 | 2 646 229 855,76 | – 16 299 893,40 | 2 629 929 962,36 | 2 633 805 475,53 | – 3 875 513,17 |
| IE | EUR | 1 710 981 853,47 | 0,00 | 1 710 981 853,47 | – 75 116,75 | 1 710 906 736,72 | 1 709 291 011,21 | 1 615 725,51 |
| IT | EUR | 5 636 732 951,35 | 52 184 144,74 | 5 688 917 096,09 | – 16 560 025,84 | 5 672 357 070,25 | 5 671 877 810,70 | 479 259,55 |
| LU | EUR | 38 668 063,89 | 0,00 | 38 668 063,89 | – 1 762 013,76 | 36 906 050,13 | 36 906 050,13 | 0,00 |
| NL | EUR | 1 131 103 724,45 | 0,00 | 1 131 103 724,45 | – 493 444,22 | 1 130 610 280,23 | 1 132 590 573,63 | – 1 980 293,40 |
| PT | EUR | 610 453 583,50 | 148 271 066,66 | 758 724 650,16 | – 4 627 760,50 | 754 096 889,66 | 753 613 049,56 | 483 840,10 |
| SE | SEK | 7 507 066 673,68 | 0,00 | 7 507 066 673,68 | 0,00 | 7 507 066 673,68 | 7 507 070 291,33 | – 3 617,65 |
| UK | GBP | 2 158 399 176,00 | 107 458 962,07 | 2 265 858 138,07 | – 1 166 323,58 | 2 264 691 814,49 | 2 264 305 291,01 | 386 523,48 |

(1) For the calculation of the amount to be recovered from or paid to the Member State the amount taken into account is, the total of the annual declaration for the expenditure cleared (column a) or, the total of the monthly declarations for the expenditure disjoined (column b).

(2) The reductions and suspensions are those taken into account in the advance system, to which are added in particular the corrections for the non-respect of payment deadlines established in August, September and October 2002.

*ANNEX II*

**Clearance of the paying agencies' accounts**

**Financial year 2002**

**List of paying agencies for which the accounts are disjoined and are subject of a later clearance decision**

| Member State | Paying agency |
|---|---|
| Germany | Baden-Württemberg (DE03) |
| Germany | Bayern-Umwelt (DE05) |
| Spain | Balearic Islands |
| Spain | Rioja |
| Greece | OPEKEPE |
| France | SDE |
| France | OFIVA |
| France | ONIC |
| France | ONIFLHOR |
| France | ONILAIT |
| France | ODEADOM |
| France | FIRS |
| France | ONIVINS |
| Italia | ARTEA |
| Italia | Lombardy |
| Portugal | IFADA |
| United Kingdom | NAWAD |

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