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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1729/97**of 4 September 1997****on the adjustment, following a change in prices or the storage levy in the sugar sector, of certain export refunds fixed in advance**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾, and in particular Article 17 (5) and (15) thereof,

Whereas Article 7 of Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector⁽³⁾ lays down that if, where the refund is fixed periodically, during the period between the day on which the application for an export licence is lodged and the day of export, there is a change in the prices of sugar fixed pursuant to Regulation (EEC) No 1785/81, provision may be made for the refund to be adjusted; whereas such an adjustment is only permitted where there is a change in the prices fixed in ecus;

Whereas, in determining export refunds, account is taken of the storage levy to be paid on disposal of the sugar because it forms part of the ex-factory price of the sugar irrespective of its destination; whereas, therefore, the adjustment of export refunds fixed by invitation to tender is provided for not only following changes in prices fixed in ecus but also following changes in the storage levy between the day an application for an export licence is lodged and the day of export; whereas in order to ensure equal treatment and optimum management of the sugar markets, this latter possibility of adjustment should be extended to the refunds which are fixed periodically for the export of white sugar, raw sugar, sugar syrup and isoglucose exported in the form of the products listed in Annex I to Regulation (EEC) No 1785/81 where they are

fixed before the change in the intervention price in question and/or the change in the storage levy and customs formalities are completed on the date of the change or later;

whereas the third subparagraph of Article 5 (2) of Commission Regulation (EC) No 1222/94⁽⁴⁾ lays down that the rate of refunds fixed in advance should be adjusted in accordance with the same rules as apply for the advance fixing of refunds for basic products exported in the natural state; whereas that adjustment is therefore made on the basis of the difference between the intervention price for the sugar concerned on the day an application for an export licence is lodged and that valid for the same sugar on the day of export, the two prices being increased by the storage levy applicable at the same time as the prices concerned;

Whereas, given the increase in trade in certain products referred to in Article 1 (1) (d) of Regulation (EEC) No 1785/81 and white and raw candy sugar, the possibility of adjusting refunds should be extended to those products under the same conditions and, in order to ensure equal treatment, to isoglucose and inulin syrup exported in the natural state;

Whereas, in the interests of efficient management of these arrangements, a number of administrative and technical rules should be laid down enabling the uniform application of the adjustment of the refund for the basic product concerned;

Whereas Commission Regulation (EEC) No 747/89 of 22 March 1989 on the adjustment, following a change in prices in the sugar sector, of certain export refunds fixed in advance⁽⁵⁾ should be repealed and this Regulation applied for the first time to exports of sugar from the new harvest for which licences are applied for from 1 October 1997;

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 214, 8. 9. 1995, p. 16.

⁽⁴⁾ OJ L 136, 31. 5. 1994, p. 5.

⁽⁵⁾ OJ L 80, 20. 3. 1989, p. 48.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. Notwithstanding Article 7 of Regulation (EC) No 2135/95, if, between the date on which an application is lodged for an export licence with advance fixing of the refund and the date on which the product is exported, there is a change in the intervention prices fixed in ecus under Regulation (EEC) No 1785/81 and/or a change in the storage levy fixed in ecus under that Regulation, the export refunds in question, fixed periodically, shall be adjusted in accordance with the conditions set out below.

2. Paragraph 1 shall apply:

- (a) to products listed in Annex I hereto exported in the natural state; and
- (b) to products listed in Annex II hereto exported in the form of the products listed in Annex I to Regulation (EEC) No 1785/81;

from the date of application of the new intervention price and/or of the new amount of the storage levy.

3. For the purposes of the adjustment referred to in paragraph 1, the competent authority of the Member State of issue shall, when issuing the export licence, mark the document as follows:

'To be adjusted in accordance with Commission Regulation (EC) No 1729/97 (OJ L 243, 5. 9. 1997) in the case of goods exported from the date on which the new intervention price in question and/or the new storage levy takes effect.'

The adjustment shall be made when the export refund in question is paid.

Article 2

For white sugar falling within CN code 1701 99 10 listed in Annexes I and II, the adjustment referred to in Article 1 shall be obtained by increasing or reducing, as the case may be, the export refund by the difference, expressed in ecus per 100 kilograms of sugar, between the intervention price for white sugar in the non-deficit areas plus the storage levy applicable on the day the application for the export licence was lodged and the intervention price for white sugar plus the storage levy applicable on the day of export.

Article 3

For products listed in Annexes I and II, with the exception of inulin syrup, falling within CN codes:

- (a) 1701 91 00, ex 1701 99 90, 1702 60 90, 1702 90 60, 1702 90 71, ex 1702 90 99 and 2106 90 59, the adjustment determined in accordance with Article 2 shall apply for every 1 % of sucrose contained in the product in question; the amount shall be equal to one-hundredth of the difference established in accordance with the said Article;
- (b) 1702 40 10, 1702 60 10, 1702 90 30 and 2106 90 30, the adjustment determined in accordance with Article 2 shall apply per 100 kilograms of dry matter contained in the product in question.

Article 4

1. For standard-quality raw sugar falling within CN codes 1701 11 90 and 1701 12 90 listed in Annexes I and II, the adjustment referred to in Article 1 shall be obtained by increasing or reducing, as the case may be, the export refund by the difference, expressed in ecus per 100 kilograms of sugar, between the intervention price for raw sugar plus the storage levy, expressed as raw sugar, which are applicable on the day the application for the export licence was lodged and the intervention price for raw sugar plus the storage levy, expressed as raw sugar, which are applicable on the day of export.

2. Where the yield of the raw sugar differs from that of the standard quality referred to in Council Regulation (EEC) No 431/68⁽¹⁾, the refund payable adjusted in accordance with paragraph 1 shall be further adjusted in accordance with Article 5 (1) of Commission Regulation (EC) No 1423/95⁽²⁾.

Article 5

For inulin syrup referred to in Annex I falling within CN code ex 1702 60 90, the adjustment per 100 kilograms of dry matter shall be equal to that calculated in accordance with Article 2 multiplied by 1.9.

Article 6

Regulation (EEC) No 747/89 is hereby repealed.

Article 7

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

It shall apply from 1 October 1997.

⁽¹⁾ OJ L 89, 10. 4. 1968, p. 3.

⁽²⁾ OJ L 141, 24. 6. 1995, p. 16.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

CN code	Description
ex 1701 11 90 } ex 1701 12 90 }	Beet sugar and cane sugar, in solid form:
ex 1701 99 10	— Raw candy sugar
1701 91 00 } ex 1701 99 90 }	— White candy sugar
	— Sugar containing added flavouring or colouring matter or other substances
	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel; inulin syrup:
	— Glucose and glucose syrup, containing in the dry state at least 20 % but less than 50 % by weight of fructose:
1702 40 10	— — Isoglucose:
	— Containing, in the dry state, 41 % or more by weight of fructose
	— Other fructose and fructose syrup, containing in the dry state more than 50 % by weight of fructose:
1702 60 10	— — Isoglucose
1702 60 90	— — Other
	— Other, including invert sugar:
1702 90 30	— — Isoglucose
1702 90 60	— — Artificial honey, whether or not mixed with natural honey
	— — Caramel:
1702 90 71	— — — Containing 50 % or more by weight of sucrose in the dry matter
	— — Other:
1702 90 90	— Other,
	Food preparations not elsewhere specified or included:
	— Other:
	— — Flavoured or coloured sugar syrups:
2106 90 30	— — — Isoglucose
	— — — Other:
2106 90 59	— — — — Other

ANNEX II

CN code	Description
1701 99 10	White sugar
1701 11 90 } 1701 12 90 }	Raw sugar
1702 40 10 } 1702 60 10 } 1702 90 30 }	Isoglucose
ex 1702 90 99	Beet syrup and cane syrup containing, in the dry state, 85 % or more by weight of sucrose (including invert sugar calculated in terms of sucrose)

COMMISSION REGULATION (EC) No 1730/97

of 4 September 1997

amending Regulation (EEC) No 1729/78 laying down detailed rules of application in respect of the production refund for sugar used in the chemical industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in sugar⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾, and in particular Article 9 (6) thereof,

Whereas Article 5a (1) of Commission Regulation (EEC) No 1729/78 of 24 July 1978 laying down detailed rules of application in respect of the production refund for sugar used in the chemical industry⁽³⁾, as last amended by Regulation (EC) No 1126/96⁽⁴⁾, provides for the production refund to be adjusted if, during the period between the day of receipt of an application for a production refund certificate and the day of processing of the basic product, a change occurs in the intervention price for white sugar fixed in ecus for non-deficit areas;

Whereas the production refund is based on the price of Community sugar and the trend in sugar prices on the world market; whereas, within the meaning of Article 4a of Council Regulation (EEC) No 1010/86⁽⁵⁾, the price of Community sugar is defined as the intervention price for white sugar plus the storage levy and the world market price for sugar is defined as the price of Community sugar less the average of the export refunds for white sugar recorded during the reference period in question; whereas, therefore, the amount of the storage levy is necessarily taken into account for the determination of production refunds; whereas the possibility of the above-mentioned adjustment should accordingly be provided not only in the case of a change in the intervention price of white sugar alone, but also in the case of a change in the storage levy between the day of receipt of the certificate and the day on which the basic product is processed; whereas the adjustment should be established taking account of the storage levies applicable before and after the change;

Whereas this Regulation should be made applicable for the first time to operations for which production refund certificates are requested from 1 October 1997 for the processing of sugar from the new marketing year;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

Article 5a of Regulation (EEC) No 1729/78 is hereby replaced by the following:

'Article 5a

1. If during the period between the day of receipt of an application for a production refund certificate pursuant to this Regulation and the day of processing of the basic product within the meaning of Council Regulation (EEC) No 1010/86 a change occurs in the intervention price for white sugar fixed in ecus for non-deficit areas and/or a change in the storage levy fixed in ecus pursuant to Regulation (EEC) No 1785/81, the production refund in question shall be adjusted for the quantities of basic product processed from the day of such change.
2. For the purposes of applying the adjustment provided for in paragraph 1, the competent authority of the Member State issuing the refund certificate in question shall add the following to the certificate when it is issued: "To be adjusted in accordance with Commission Regulation (EC) No 1730/97 (OJ L 243, 5. 9. 1997, p. 5) for processing from the date of application of the new intervention price in question and/or of the storage levy."

The adjustment is to be made at the time of payment of the production refund in question.

3. Where the basic product is white sugar as referred to in Article 1 (1) of Regulation (EEC) No 1010/86, the adjustment provided for in paragraph 1 shall be obtained by increasing or reducing, as the case may be, the production refund by the difference, expressed in ecus per hundred kilograms of sugar, between the intervention price for white sugar for non-deficit areas applicable on the day of receipt of the certificate application plus the storage levy applicable on that day and the price for white sugar applicable on the day of processing of the basic product in question, plus the storage levy applicable on that day.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 201, 25. 7. 1978, p. 26.

⁽⁴⁾ OJ L 150, 25. 6. 1996, p. 3.

⁽⁵⁾ OJ L 94, 9. 4. 1986, p. 9.

4. Where the basic product is raw sugar of the standard quality referred to in Article 1 (1) of Regulation (EEC) No 1010/86, the adjustment provided for in paragraph 1 shall be obtained by increasing or reducing, as the case may be, the production refund by the difference, expressed in ecus per 100 kilograms of sugar, between the intervention price for raw sugar applicable on the day of receipt of the certificate application plus the storage levy, expressed as raw sugar, applicable on that day and that price applicable on the day of processing of the basic product in question plus the storage levy expressed as raw sugar.

5. If the raw sugar yield differs from that laid down in the definition of the standard quality referred to in Council Regulation (EEC) No 431/68⁽¹⁾, the refund, adjusted in accordance with paragraph 4, shall be adjusted for payment in accordance with Article 5 (1) of Regulation (EC) No 1423/95⁽²⁾.

6. Where the basic product is sucrose syrup as referred to in Article 1 (1) of Regulation (EEC) No 1010/86, the adjustment shall be determined in accordance with paragraph 4 above and Article 6 of Regulation (EEC) No 1010/86.

7. Where the basic product is isoglucose as referred to in Article 1 (1) and Article 2 of Regulation (EEC) No 1010/86, the adjustment shall be determined in accordance with paragraph 4 and shall apply per 100 kilograms of dry matter of the product concerned.

Article 2

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

It shall apply from 1 October 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 89, 10. 4. 1968, p. 3.

⁽²⁾ OJ L 141, 24. 6. 1995, p. 16.

COMMISSION REGULATION (EC) No 1731/97

of 4 September 1997

imposing a provisional anti-dumping duty on imports of glyphosate 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⁾, as amended by Regulation (EC) No 2331/96⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 13 October 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of glyphosate originating in the People's Republic of China and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged in May 1995 by Monsanto Europe SA/NV (Belgium), with the support of Cheminova Agro A/S (Denmark), representing a major proportion of the Community production of glyphosate. The complaint contained sufficient evidence of dumping by the imports concerned and of material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

2. Investigation

- (3) The Commission officially advised the exporters, importers and users known to be concerned, the representatives of the exporting country and the complainant Community producers about the initiation of the proceeding. Interested parties were given the opportunity to make their views known

in writing and to request a hearing within the time limit set out in the notice of initiation.

- (4) A number of producers in the country concerned as well as some Community importers and producers made their views known in writing. All parties who so requested within the above time limit were granted a hearing.
- (5) The Commission sent questionnaires to the exporters and importers listed in the complaint as well as to the two complainant Community producers. Questionnaires were also sent to the national authorities of the People's Republic of China (with a view to allowing any other producer/exporter in this country to cooperate) and to those exporters who, while not listed in the complaint, made themselves known and requested a questionnaire within the limit set in the notice of initiation.
- (6) The Commission received detailed replies from two Community producers, four producers in the People's Republic of China and one exporter in Hong Kong as well as from four unrelated importers in the Community.
- (7) The Commission sought and verified all the information it considered necessary for a preliminary determination of dumping and injury and carried out verification visits at the premises of the following companies:
- (a) *Community producers*
- Monsanto Europe SA/NV (Belgium),
 - Cheminova Agro A/S (Denmark);
- (b) *Unrelated importers*
- Helm (Germany),
 - Calliope (France).

- (8) The Commission conducted an investigation at the premises of Mobras and Nortox in Brazil, since Brazil had been selected as an analogue country for the purposes of calculating the People's Republic of China's normal value (see recitals 15 to 20).

- (9) The period of investigation for the determination of dumping was 1 September 1994 to 31 August 1995 (hereinafter referred to as 'the investigation period'). The examination of injury covers the period 1991 to the end of the investigation period.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ C 266, 13. 10. 1995, p. 22.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**C. DUMPING****1. Product under consideration**

- (10) The product concerned by this proceeding is glyphosate, which is used as a herbicide in the Community, falling within CN Codes 2931 00 80 and 3808 30 27, the latter when put up in forms or packing for retail use or as preparations or articles.
- (11) Glyphosate can be produced in different grades or forms of concentration: formulated (with 36 % glyphosate content), salt (with 62 %), cake (with 84 %), and acid (with 95 %). In order to reduce the costs of transportation, distributors normally purchase glyphosate in a concentrated form (usually acid, but also salt) and dilute it to obtain the formulated glyphosate, the only form which can be used as an end-product.
- (12) As there are no differences in the basic characteristics (chemical composition) or properties (selective herbicide), of all above mentioned forms of glyphosate, which are all intended for the same use (herbicide), and as the transformation costs from one form to another are limited, the Commission Services found that all these forms should be considered as one product for the purposes of the investigation.

2. Like product

- (13) Glyphosate produced by both the Community and the People's Republic of China for the Community market were alike in all respects within the meaning of Article 1 (4) of Regulation (EC) 384/96 (hereinafter the 'Basic Regulation').
- (14) The findings made by the Commission in this respect also apply to glyphosate investigated in Brazil for the purpose of establishing normal value (see recitals 15 to 20), which is therefore a like product to the glyphosate being exported from the People's Republic of China into the Community and to the glyphosate manufactured by the Community producers.

1. Analogue country

- (15) Since the People's Republic of China is considered to be a non-market economy country, the Commission had to determine the normal value on the basis of data obtained from producers in a market economy third country (the 'analogue country'), in accordance with Article 2 (7) of the Basic Regulation.
- (16) As stated in the Notice of Initiation, Brazil was envisaged as an appropriate market economy third country for the purpose of establishing normal value in this proceeding.
- (17) All interested parties were given the opportunity to comment on the choice envisaged. Some exporters and importers objected for several reasons which appeared after examination to be groundless.
- (18) It has been argued that Brazil would be a highly protected and restrictive market for glyphosate because of high import duties (which would limit imports of the product into Brazil), restrictions on the registration of manufacturers and the existence of only two producers in the country. As a result, the price in the market would not reflect full competition, but be kept at an 'artificial level'. The import duties in Brazil for glyphosate were lower than claimed (around 13 %), which would not prevent imports of the product into that country. However, it has been found that such imports accounted for up to an 11 % share of the Brazilian market in 1995. Competition resulting from these imports as well as competition between the two Brazilian producers led to a reduction in prices of 11 % from 1992 to 1994. In this sense, it should be noted that the domestic sales volume of the Brazilian producers was representative of the Chinese exports into the Community. Finally, the allegation that the registration process would limit free competition in that market appeared to be exaggerated, given the fact that six other companies (besides the producers) had received authorization to sell glyphosate on the Brazilian market.
- (19) On the allegation that the production process would be different in China and Brazil, and the latter would have poor self-sufficiency in raw material supply; it should be noted that the raw materials in both China and Brazil are amino acids, freely available on the world market, having similar properties and undergoing similar reactions resulting in exactly the same chemical product, i.e.

glyphosate. Furthermore, not only have some Chinese producers recently changed to the chemical process used by the Brazilians but, as the latter is much more cost-effective, this would be more advantageous for the establishment of normal value for Chinese production.

- (20) Finally, it has been claimed that the manufacturing cost would be excessively high in Brazil, due to inflation. However, this reached manageable levels in the investigation period after the control plan undertaken by the Brazilian Government, and special attention was paid to this issue in the normal value calculation to avoid any distortion.
- (21) Instead of Brazil, some exporters proposed the following analogue countries: Argentina, Australia, India, Malaysia and Taiwan. None of the exporters were able, however, to present any valid argument as to why these countries were more appropriate than Brazil. On the contrary, some exporters submitted contradictory information leading to the conclusion that the alternative analogue countries proposed were less appropriate than Brazil.
- (22) For the above reasons it was concluded that Brazil was the most appropriate choice of analogue country. The Commission sought and obtained the co-operation of the two producers in the country, i.e. Mobras (related to one of the complainants) and Nortox.

2. Normal value

- (23) Normal value was calculated for the two forms of glyphosate produced and sold in Brazil, i.e. glyphosate acid and formulated. Normal value was calculated on the basis of information provided mainly by the producer Mobras and, to the extent possible, on the basis of data from Nortox, which partially co-operated with the investigation. It appeared nevertheless from the information gathered that its costs of production were similar to, if not higher, than those of Mobras. Finally, the relationship between Mobras and one of the complainants was examined carefully to see that it did not affect its costs of production or selling prices.
- (24) With regard to formulated glyphosate, the Commission services found that the quantity sold in Brazil was representative in accordance with Article 2 (2) of the Basic Regulation and that all domestic sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Consequently, normal value

was established on the basis of the weighted average prices actually paid for all domestic sales of formulated glyphosate.

- (25) As regards glyphosate acid, it was found that domestic sales were representative, but not made in the ordinary course of trade. Therefore, in accordance with Article 2 (3) of the Basic Regulation, normal value was constructed on the basis of the manufacturing costs plus a reasonable amount for selling, general and administrative costs (SGA) and for profits.
- (26) In order to construct normal value, the manufacturing costs of the acid form was added to the SGA based on the total SGA of Mobras, less certain expenses which could not be incurred by sales of the acid form. Costs incurred by a related company in the US, which were claimed by Mobras as part of the acid cost of production, were not taken into account due to lack of evidence. In accordance with Article 2 (6) (C) of the Basic Regulation, and as no reliable information could be obtained from other producers of the like product, or in the same business sector, a profit margin limited to 5 % was judged not to exceed the profit normally realised by producers on sales of the same category of products in Brazil. Glyphosate acid is indeed a commodity, theoretically sold in bulk to intermediate customers, who bear the extra cost of formulation before selling it on the market to end-users.

3. Export price

- (27) Five Chinese exporters co-operated with the investigation.

Four companies (Asia Pacific Agricultural Chemical (Group) Co., Citic Trading Co. Ltd., Shanghai Chemicals Import & Export Corporation, and Sinochem International Chemicals Co. Ltd.) exported the product from the People's Republic of China, while the fifth was a trader from Hong Kong (Quickett Co. Ltd.). The exports of the five companies represented a large majority of total exports of Chinese glyphosate during the period of investigation.

- (28) As all co-operating exporters made export sales in the Community directly to independent importers, export prices were established on the basis of the prices actually paid or payable by these independent importers (in accordance with Article 2 (8) of the Basic Regulation).

4. Comparison

- (29) In accordance with Article 2 (10) and (11) of the Basic Regulation, the weighted average normal value of each form was compared with the weighted average export price at the same level of trade and at FOB Chinese frontier/FOB Brazilian frontier level.
- (30) As the large majority of exports concerned the acid and formulated forms, it was decided to base the dumping calculation on these two forms, as the remaining form (glyphosate salt), is not produced in Brazil and is only exported from the People's Republic of China in limited quantities.
- (31) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport, insurance, handling and ancillary costs, credit costs as well as commissions in accordance with Article 2 (10) of the Basic Regulation.

5. Dumping margins

- (32) The four Chinese exporters requested individual treatment. However, these companies did not meet the necessary requirements, as, in particular, the majority of the shares of the Chinese exporters did not belong to genuinely private companies. It had therefore, to be concluded that they were not independent from the State and, consequently, individual treatment could not be granted.
- (33) For all co-operating exporters, the comparison revealed the existence of dumping with regard to imports of the product concerned originating in the People's Republic of China, the dumping margin being equal to the amount by which the normal value exceeded the price for export to the Community.
- (34) In the absence of individual treatment for any of the companies concerned and taking into account the high level of co-operation, a single dumping margin was calculated for the People's Republic of China, which was the weighted average of the margins found for the five companies. The weighted average dumping margin expressed as a percentage of the free-at-Community frontier price, duty unpaid, is 38,2 %.

D. COMMUNITY INDUSTRY

- (35) The Community producers supporting the complaint represented a major proportion of

Community production of the like product. These companies (Monsanto S.A./N.V. and Cheminova Agro A/S) will be referred to hereafter as 'Community industry'.

It should be noted that there are two other producers in the Community, one of which is an important chemical group which started the production after the investigation period. These two producers expressed their support for the complaint in the course of the investigation, and their submissions were taken into account for the assessment of Community interest.

E. INJURY

1. Collection of injury data: methodology and sources

- (36) For the purpose of examining injury in the present proceeding, the Commission services analysed data relating to the period 1991 to the investigation period (September 1994 — August 1995). The geographical scope of the investigation was the Community of 15 Member States.
- (37) Since one of the two complainant producers started production close to the investigation period and the data prior to this period relates to the other company, some injury indicators are indexed in order to preserve the confidentiality of the data submitted by the latter.

2. Consumption in the Community market

- (38) In calculating total apparent consumption on the Community market, the Commission added the sales of Community producers to the imports into the Community (Eurostat statistics).
- (39) On this basis, it was found that Community consumption increased by 129 % from 1991 to the end of the investigation period. This increase in consumption can be explained partly by the expiry of a patent on the sales of glyphosate in the Community, held by one of the complainant producers. This patent expired in 1991, following which generic products entered the market, generating an increase in lower priced supply. This, together with the growing sense that glyphosate is a good quality herbicide which farmers tend to prefer over others, resulted in an increase in overall consumption.

3. Volume and market share of imports

- (40) The total volume of dumped imports of glyphosate originating in the People's Republic of China increased continually and substantially from 48 tonnes in 1991 to 1 397 tonnes in the investigation period. Glyphosate of Chinese origin is sold in its three main forms, and is sold in larger quantities in some Member States than in others.
- (41) The market share of the Chinese imports followed a similar progressive trend: 1 % in 1991 and 1992, 4 % in 1993, 8 % in 1994 and 11 % in the investigation period, i.e. a rapid rate of increase, particularly between 1993 and the investigation period. Imports from China accounted for more than 75 % of all imports of glyphosate into the Community in the investigation period.

4. Prices of dumped imports and undercutting

- (42) For the assessment of the price undercutting during the investigation period, the Commission compared the prices of the Community industry with comparable prices for glyphosate of Chinese origin in the Member States where the majority of sales had been made. Prices were consequently compared at the formulated stage which was found to constitute the majority of sales of the Community industry and of the independent formulators using imported base product.
- (43) Considering that there is a great variety of concentrations on the market and that some products contain a non-toxic type of surfactant (alkylpolyox-alkylammoniumquat) which increases their efficiency, prices of glyphosate products can vary considerably. In order to ensure a fair comparison, the Commission selected the most common formulation called '3A', which has 360g of glyphosate content per litre and no non-toxic surfactant.
- (44) For the Chinese imports, the prices of formulated product obtained from Chinese acid provided by co-operating importers in the Community, together with prices provided by one Chinese exporter for formulated product were used. Comparisons made at ex-works level showed that, during the investiga-

tion period, price undercutting margins ranged from 3 % to 18 % with an overall weighted average of 12,2 %.

- (45) Moreover, although no representative sales of glyphosate acid were made by the Community industry in the investigation period and prices could therefore not be compared at the acid stage, the price of acid imported from the People's Republic of China, at the Community frontier level, in the investigation period was found to be below the manufacturing cost of acid of the Community industry, i.e. at a level excluding any general, sales, administrative or other overhead costs, thus exerting a commensurate downward influence on the prices of formulated products.

5. Situation of the Community industry

(a) *Production*

- (46) For a clear assessment of the injury factors below, it should be recalled that the injury determination was based on information provided by two complainant producers ('the Community industry'). Of these, one held a patent for glyphosate in the Community until 1991 whereas the other started production just before the investigation period.

The factors below should therefore be seen in the light of the expansion of the market which followed the patent expiry (see recital 38) together with the entrance in the market of a new producer just before the investigation period.

- (47) The Commission found that the production of the Community industry rose, on an indexed basis, from 100 in 1991 to 293 in the investigation period. This increase in production should be seen in relation to the market expansion together with the entrance into the market of a new Community producer of glyphosate in 1994.

(b) *Capacity*

- (48) Capacity of the Community industry increased, on an indexed basis, from 100 in 191 to 269 in the investigation period in the context of the market growth. The capacity utilisation rate fluctuated in the period examined and was, on a weighted average basis, 78 % in the investigation period.

(c) Sales volume/Market share

- (49) Sales of the Community industry in the period considered rose, on an indexed basis, from 100 in 1991 to 200 in the investigation period. However, the market share of Community industry decreased continuously from 98 % in 1991, 96 % in 1992, 92 % in 1993, 87 % in 1994 to 85 % in the investigation period.
- (50) The price of formulated glyphosate of the Community industry decreased by 33 % between 1991 and the investigation period on a Community-wide basis. It should be noted that in the markets where the products of Chinese origin were mostly sold, the fall in prices was even greater, reaching in some cases 49 % over the period considered.

(d) Profitability

- (51) With regard to profitability, one producer was incurring significant financial losses. The profitability of the other producer was found to have decreased constantly during the period examined, from levels close to 13 % in 1991 to levels close to 2 % in the investigation period. In this context it should be noted that the product concerned is a high technology product which requires considerable investment in R&D, and continuous updating in terms of compliance with environmental and registration requirements. In addition, a calculation was made of the profitability of this company in the markets where the Chinese product was most present. This calculation revealed significant losses being incurred by this producer in its sales of glyphosate in certain of these markets.
- (52) This finding is underlined by the analysis of import prices made in recitals 41 to 44 above in which it was found that these import prices were below the producers' manufacturing costs. This demonstrates the magnitude of the pressure exerted on the Community industry's financial results.

(e) Employment

- (53) Employment for the product concerned increased slightly during the period examined (+4 %). During the investigation period, the Community industry employed 814 people.

(f) Conclusion on injury

- (54) During the period examined, the Community industry's capacity, production and sales increased

in the context of market expansion. However, in addition to a loss in market share, the prices and profits of the Community industry decreased considerably.

- (55) Profitability was decreasing and reached low levels during the investigation period, or even, in the market most exposed to Chinese competition, losses. It should be noted that the injury factors found for the two complaining companies varied given that one was in the situation of losing considerable market share (partly due to loss of patent) while the other, being a new entrant, was gaining market share. Both, however, were showing non-sustainable financial results. In the light of the above, it was concluded that the Community industry suffered material injury during the period examined.

F. CAUSATION**1. Effects of the dumped imports**

- (56) The investigation has shown that dumping has had a negative impact on the situation of the Community industry. In this context, it is noted that, although the decrease in market share, prices and profits suffered by one of the complainants in the period examined can be attributed, to a certain extent, to the expiry of the patent (such developments are to be expected in all cases following patent expiry), the dumped imports have clearly and significantly exacerbated this negative trend. This conclusion is based, in particular, on the low price level of the Chinese imports of acid, which were found to be lower than the manufacturing costs of acid of both Community producers, thus putting constant downward pressure on the prices of the final formulated product in the Community.

Due to the very low price of acid as formulated in Chinese imports, the profitability of the patent holder was found to be, on average, at low levels and to be negative on certain markets where the sales of glyphosate of Chinese origin prevailed.

- (57) The other complainant, which has made considerable investments to enter the glyphosate market following the patent expiry, has not been able to obtain the sales volume, the corresponding reduction in unit costs and the prices which would have led to the anticipated profits on its sales of glyphosate, due to the pressure exerted by the Chinese imports on prices.

2. Effects of other factors

Imports from other third countries

- (58) Imports from other countries were found to be minimal and had consequently no significant impact on the situation of the Community industry.

3. Conclusion on causation

- (59) Although factors other than dumping, such as patent expiry, may have had a negative effect on the situation of the Community industry, this does not detract from the fact that the imports of the glyphosate originating in the People's Republic of China, taken in isolation, have caused material injury to the Community industry.
- (60) This conclusion is based, in particular, on the significant price pressure exerted by the Chinese imports on the Community market with a consequent significant gain in market share, resulting in a decrease of market share and losses suffered by the Community producers on their sales of glyphosate.

- (63) It should be noted that during the investigation period there were three producers of glyphosate acid in the Community (one of which was not a complainant). Since then, another important chemical group has started to produce glyphosate acid in the Community. This group has made considerable investments in production facilities and has forecast the production of significant quantities of glyphosate which will contribute to increased competition in the Community with considerable beneficial effects on employment. However, the viability of such an enterprise is being jeopardised by the presence of the dumped imports.

- (64) In this context the Commission established that the forecast of this new producer, in particular with regard to the development of prices, have proved to be inaccurate. These forecasts had taken into account the competition from Chinese imports, but the prices of Chinese imports declined much faster than anticipated.

As a result, measures would appear to be essential to ensure the continued presence of new Community producers on the glyphosate market, while safeguarding the viability of those already producing.

G. COMMUNITY INTEREST

1. General considerations

- (61) Pursuant to Article 21 (1) of the Basic Regulation, the Commission examined, on the basis of all evidence submitted, the aspects pertinent to the assessment of Community interest and, in particular, the likely impact of measures on all the parties involved in the proceeding. In such an examination, it should be noted that no arguments were submitted by farmers, who are the consumers of the product, whereas a number of importers presented a joint submission.

2. Impact on the Community industry

- (62) As regards the Community industry, it is considered that if the pressure exerted by the dumped imports on the Community industry is allowed to continue, the financial losses incurred during the investigation period are likely to spread and cause a further deterioration in the state of the industry. This could lead to a reduction in the production of glyphosate acid in the Community, with a consequent loss of investment and employment.

3. Impact on importers/formulators & consumers

- (65) Since the major part of glyphosate imports from the People's Republic of China into the Community is in the form of acid or salt and is therefore resold in a formulated form, the formulating industry is concerned by this proceeding.
- (66) Three importers/formulators co-operated with the Commission. They presented a submission in which they stated their position against measures because any increase in the price of their main raw material would reduce their profit margin. As most of the importers/formulators deal with a number of products other than glyphosate, the Commission considers that even if measures have the effect of increasing prices, their impact on the overall business of these companies will be limited.
- (67) Moreover, the importers/formulators should not obtain advantages through dumping since this creates an imbalance *vis-à-vis* the other competitors, namely the Community glyphosate industry.

- (68) As regards the consumers of the product, these are the farmers. A slight increase in the prices of the herbicide would have a minimal effect on their profitability since it is only a minor item in the overall cost of crop growing and, in any event, sources of supply other than the People's Republic of China are available, as well as other products which serve the same purpose.

- (69) For the above-mentioned reasons, the Commission is of the opinion that any benefits afforded to the Community industry resulting from the imposition of measures would greatly outweigh any marginal negative impact that may result for the formulators and consumers concerned.

4. Competition in the Community

- (70) The Commission examined competition in the Community carefully. It appears that until 1991, the former patent holder held almost 100 % market share in the Community. When they decided to enter the glyphosate market, the two new producers had as their target a certain market share which had therefore to be taken from the former patent holder. In making their forecast, while including a factor for increasing Chinese imports, the new entrants did not anticipate the sharp decline in Chinese prices combined with their equally sharp increase in volume. The result is that, although these companies now account for a considerable proportion of the total production capacity of the Community industry, they claim to be re-examining their projected return on investment and are inevitably considering their continued presence in this growing market. Thus, should measures not be imposed, their recent significant investments would cease to be viable and the new entrants could be forced to withdraw from the glyphosate market, with a considerable negative impact on employment and on the overall competitive situation.
- (71) Furthermore, there is a likelihood that, without the imposition of measures, competition in the Community would be limited to the former patent holder and the Chinese, to the extent that the former patent holder would be able to compete with the very low prices of the Chinese. This would clearly not be in the interests of the Community, in particular because both new entrants would ensure a more effective competition on the Community market as there would be a greater number of players involved on that market. In doing so, a greater variety of reliable sources of supply for

Community consumers would be maintained than would be the case if Chinese imports were the only alternative to the former patent holder products.

5. Conclusion on Community interest

- (72) Given the rate of increase of imports from the People's Republic of China, in particular the substantial increase between 1993 and the investigation period, and the exporters behaviour on the Community market, i.e. constantly and significantly undercutting the prices of the Community industry and thereby gaining market share, there is a likelihood that, in the absence of measures, this trend would continue and further aggravate the injury caused to the Community industry.
- (73) The Commission considers that a further deterioration of the Community industry would not be in the interests of the Community since the likely consequence would be the loss of considerable investment, much of it from new entrants. This would result in the reduction of the number of producers in the Community with a subsequent loss of employment. Measures, on the other hand, would ensure the maintenance or even an increase in the number of competitors in this newly expanding market.
- (74) In the light of all the above factors, it is concluded that there are no compelling reasons why measures should not be imposed. It is, therefore, in the Community interest to impose provisional anti-dumping measures on imports of glyphosate originating in the People's Republic of China.

H. PROVISIONAL DUTY

- (75) Having established that the dumped imports under consideration have caused material injury to the Community industry and that it is in the Community's interest to take action, the measures envisaged should be sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found.
- (76) The removal of such injury requires that the industry should be put in a position where prices can be increased and profitability improved. In order to achieve this, the prices of imports of the product concerned originating in the People's Republic of China should be increased accordingly.

(77) The product type used as a reference to determine the duty rate was the acid form because it is the common base of all forms of glyphosate exported from the People's Republic of China and produced in the Community. Acid accounts for 76 % of the manufacturing costs of the equivalent quantity of formulated product. It is therefore considered that a duty based on acid would be representative of all different forms of glyphosate imported from the People's Republic of China. Moreover, the acid form represented 67 % of the volume imported from the People's Republic of China during the investigation period.

(78) For the purposes of calculating the necessary price increase, the Commission considered that the prices of the dumped imports had to be compared with the production costs of acid of the Community industry plus a reasonable level of profit. Costs incurred by a related company in the US, which were claimed by one of the complainants as part of the costs of acid production, were not taken into account due to lack of evidence that these costs related to the production of acid in the Community. Although the profitability rate considered as normal for the formulated product was claimed to be around 15 %, the Commission took the view that a profit margin limited to 5 % represented a reasonable profit since glyphosate is a commodity, theoretically sold in bulk, to intermediate customers who bear the extra cost of formulation before selling it in the market to end users.

(79) On this basis, the weighted average of export prices for this product type, for the period of investigation, on a CIF Community frontier level, after deduction of the customs duty and of an allowance in respect of post importation costs and profit, was compared with the weighted average cost of production of the Community producers, increased by a profit margin of 5 %.

This comparison showed an injury margin of 21,1 %.

(80) Since the injury margin is lower than the dumping margin found, the provisional anti-dumping duties should be based on this lower level in accordance with the provisions of Article 7 (2) of the Basic Regulation.

On the basis of the above, a provisional anti-dumping duty of 21,1 % should be imposed on imports of glyphosate originating in the People's Republic of China.

I. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of glyphosate falling within CN codes ex 2931 00 80 (code Taric 29310080*80) and ex 3808 30 27 (code Taric 38083027*10), originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty on the basis of the net, free-at-Community-frontier price, before duty, shall be 21,1 %.

3. Unless otherwise specified, the provisions in force concerning duties and other customs practices shall apply.

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

Article 2

Pursuant to Articles 20 and 21 of Regulation (EC) No 384/96 of 22 December 1995, the Parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96 of 22 December 1995, Article 1 of this Regulation shall apply for a period of 6 months unless the Commission extends its validity or the Council adopts definitive measures before the expiry of that period.

Article 4

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

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

Done at Brussels, 4 September 1997.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 1732/97

of 4 September 1997

imposing a provisional anti-dumping duty on imports of stainless steel fasteners and parts originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as amended by Regulation (EC) No 2331/96⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) In December 1996, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽³⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of stainless steel fasteners and parts originating in the People's Republic of China (hereafter 'the PRC'), India, Malaysia, the Republic of Korea (hereafter 'Korea') and Taiwan, and commenced an investigation.

In January 1997, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽⁴⁾ the extension of the proceeding to imports from Thailand.

- (2) The proceeding was initiated and subsequently extended as a result of two complaints lodged by the European Industrial Fasteners Institute (EIFI), on behalf of Community producers representing a major proportion of the Community production of stainless steel fasteners. The complaints contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the producers/exporters and importers known to be concerned, the representatives of the exporting countries and the complainants, of the initiation of the proceeding; it gave the parties directly concerned the

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

- (4) The Commission sent questionnaires to all parties known to be concerned and received replies from the complaining Community producers, from four companies in India, from two companies in Malaysia, from one company in Korea, from seven companies in Taiwan, from three companies in Thailand, from six companies in the PRC, from one company in Hong Kong exporting products originating in the PRC, from one company in Brazil (originally envisaged as analogue country) and from one Community importer related to one Malaysian company. The Commission received also complete replies from two unrelated importers in the Community.

- (6) The Commission verified all the information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following companies:

Community producers

- Bulnava srl, Milano (Italy)
- Inox Viti snc di Cattinori Enrico e Bruno, Grumello Del Monte (Italy)
- Tevi srl (Trafilerie e Viterie Italiane srl), Ponte Dell'Olio (Italy)
- Tornillería del Besos SA (Torbesa), Barcelona (Spain)
- Ugivis SA, Belley (France)

Producers/exporters and companies related to them in the exporting countries

India

- Audler Fasteners, Vasai
- Lakshmi Precision Screws Ltd, Rohtak
- Kundan Industries Ltd, Vasai
- Tata Exports Ltd, Bombay

Malaysia

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

Korea

- Daegil Trading Co. Ltd, Seoul

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ C 369, 7. 12. 1996, p. 3.

⁽⁴⁾ OJ C 25, 25. 1. 1997, p. 9.

Taiwan

- Arrow Fastener Co. Ltd, Taipei
- CLC Industrial Co. Ltd, Tainan
- Min Hwei Enterprise Co., Kaohsiung
- Rodex Fasteners Corp., Chung Li
- Sen Chang Industrial Co. Ltd, Tao Yuen
- Taiwan Shan Yin Intern. Co. Ltd, Kaohsiung
- Tong Hwei Enterprise Co. Ltd, Kaohsiung
- Tong Jou Enterprise Co. Ltd, Kaohsiung

Thailand

- Dura Fastener Co. Ltd, Samutprakarn
- A.B.P. Stainless Fastener Co. Ltd, Ayutthaya
- Thailock Fastener Co. Ltd, Chon Buri

Hong Kong (companies exporting products originating in the PRC)

- Power Van Industrial Co. Ltd
- Tung Wah Metal Manufactory (related to one company in the PRC)

Brazil (originally envisaged as analogue country)

- Industrias Micheletto, Canoas

Related importer in the Community

- Tigges GmbH & Co. KG, Wuppertal (Germany)

Unrelated importer in the Community

- Acton SA, La Grand-Croix, France

- (6) The investigation of dumping covered the period from 1 January 1996 to 30 November 1996 (hereafter referred to as 'the investigation period'). The examination of injury covered the period 1992 to 30 November 1996.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (7) The product under consideration is stainless steel fasteners (hereafter referred to as 'SSF'), i.e. bolts, nuts and screws of stainless steel which are used to mechanically join two or more elements. The products described above fall within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.

Screws are fastener products with an external threading on the shank. They can either be used without any other part and fixed into wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head-shapes (cup, socket, flat, hexagonal, etc.), shank lengths and

diameters. The shank may be totally or partially threaded.

SSF are used by a variety of consumer industries and in a wide range of final applications where resistance to both atmospheric and chemical corrosion is necessary and where hygiene may also be essential, such as equipment for processing and storing food products, plants in the chemical industry, manufacture of medical equipment, public lighting equipment, shipbuilding, etc.

- (8) There are many types of SSF, each one being defined by its specific physical and technical characteristics and by the grade of stainless steel from which it is made. However, all the products under consideration which fall under the broad definition of fasteners have the same basic physical characteristics and the same uses and are distributed via the same distribution channels. They are consequently considered as forming one single category of product for the purpose of the present investigation. It was however decided that, for technical investigation requirements, it would be appropriate to divide the product concerned into 'types' and to gather and handle the data collected on the basis of those types. To this end, five criteria were considered⁽¹⁾. Each combination of these criteria, which is referred to as 'product control number' (hereafter 'pcn'), corresponds to a specific type of SSF.

- (9) In the course of the investigation, it was noted that some non-standard SSF were sold by the exporters concerned. These products, manufactured to order, are not classified under any standard nomenclature. Although their cost, price and profit margin are unusually high and therefore not representative of the average SSF, they are nevertheless considered as like products. However, the dumping determination was based on standard SSF only, which were considered sufficiently representative of total exports of SSF to the Community.

- (10) In the course of the investigation, it was alleged that nuts (CN code 7318 16 30) should be excluded from the scope of the investigation given that no production of nuts existed in the Community. It should be noted, however, that the fact that a specific product type would no longer be produced by the Community industry is not in itself sufficient to determine whether it should be excluded from the scope of the anti-dumping proceeding. The Commission found, in any event, that although a sizeable proportion of the Community consumption of nuts was imported, in particular from the countries concerned, the Community industry has also some production of nuts which could be affected by the imports concerned.

⁽¹⁾ These criteria are the following: (1) CN code; (2) type of raw material used; (3) DIN number, i.e. code number under which the product is classified within the DIN nomenclature; (4) diameter in millimetres; (5) length in millimetres.

The producers which have maintained a capacity for production of nuts would in all likelihood increase or resume their production of nuts once a reasonable price level has been re-established on the Community market. In the circumstances the Commission services did not consider it justifiable to remove nuts from the scope of the investigation

2. Like product

- (11) The Commission found that SSF produced and sold on the respective domestic markets in India, Malaysia, Korea, Taiwan and Thailand and those exported to the Community from the countries concerned as well as those produced and sold by the Community industry have the same physical, chemical and technical characteristics and uses. It was therefore concluded that all are like products within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereafter referred to as 'the Basic Regulation').

C. DUMPING

1. Normal value

(a) *India*

- (12) Of the four cooperating Indian companies, two produced and exported the product concerned but did not sell it on the domestic market during the investigation period. A third cooperating company produced and sold the product concerned on the domestic market and sold it for export to the Community through the fourth company, which was an export trading company. Therefore, as far as India is concerned, normal value was only calculated for the three producers.
- (13) In order to establish normal value, the Commission services first analysed whether domestic sales were representative in accordance with Article 2 (2) of the Basic Regulation. In this respect, for the only cooperating producer selling on the domestic market, it was established that the total domestic sales of the product concerned represented more than 5 % of the sales volume destined for the Community.
- (14) It was examined whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community.

For those product types meeting the 5 % test, the Commission services assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Where, per product type, the volume of sales below unit cost was less than 20 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. Where, per product type, the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

Where, per product type, the volume of domestic sales was lower than 5 % of the volume destined for export to the Community, or where the volume of domestic sales made at a loss was more than 90 %, domestic sales were considered insufficient in the sense of Article 2 (3) of the Basic Regulation and were therefore disregarded. In these cases, in the absence of any other domestic sales made by other Indian producers, normal value was constructed in accordance with Article 2 (3) and (6) of the Basic Regulation. For each product type, normal value was calculated on the basis of all costs of manufacturing plus all selling, general and administrative costs (hereafter 'SGA') incurred by this company and a reasonable amount for profits. The amount for profits was established on the basis of the weighted average profit made on profitable domestic sales of the product concerned.

- (15) For the two exporting producers which did not sell the product concerned on the domestic market and for the export trading company, pursuant to Article 2 (1) of the Basic Regulation, normal value was based, wherever a corresponding product type was found, on the weighted average of the ex-works prices charged by the only cooperating producer selling on the domestic market representative quantities of the corresponding type in the ordinary course of trade.

Where, for the corresponding product type, there were no or insufficient similar domestic sales in the ordinary course of trade by the other producer, normal value was constructed in accordance with Article 2 (3) and Article 2 (6) (a) of the Basic Regulation, i.e. on the basis of all costs of manufacturing incurred by the exporting producer concerned when producing the product type concerned plus a reasonable amount for SGA and profits based on the data found for the only Indian producer selling on the domestic market.

(b) Korea

- (16) For the only cooperating exporting producer in Korea it was established that the total sales volume of the product concerned represented more than 5 % of the sales volume exported to the Community.
- (17) It was then examined whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type sold for export to the Community.

For those product types meeting the 5 % test, the Commission services assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Where, per product type, the volume of sales below unit cost was less than 20 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. Where, per product type, the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

Where, per product type, the volume of domestic sales was lower than 5 % of the volume exported to the Community, or where the volume of domestic sales made at a loss was more than 90 %, domestic sales in the ordinary course of trade were considered insufficient in the sense of Article 2 (3) of the Basic Regulation and were therefore disregarded. In these cases, in the absence of any other cooperating Korean producer, normal value was constructed in accordance with Article 2 (3) and (6) of the Basic Regulation, i.e., for each product type, on the basis of all costs of manufacturing plus SGA incurred by this company and a reasonable amount for profits. The amount for profits was established on the basis of the weighted profit made on profitable domestic sales of the product concerned.

(c) Malaysia

- (18) For both Malaysian exporting producers, it was established that the total domestic sales volume of the product concerned represented less than 5 % of the sales volume exported to the Community.

Therefore, in the absence of other cooperating Malaysian producers, normal value was constructed in accordance with Article 2 (3) and (6) of the Basic Regulation, i.e. on the basis of all costs of manufacturing incurred by these companies, plus a reasonable amount for SGA costs and for profits. As such amounts could not be determined on the basis of the data pertaining to these producers since their domestic sales were not representative, they were determined in accordance with Article 2 (6) (c) of the Basic Regulation on the basis of any other reasonable method. The amount for SGA was established on the basis of the data pertaining to the producer which sold the product concerned on the domestic market during the investigation period, as it was proved that this amount was in line with the average SGA found for all companies investigated in the proceeding. With regard to profits, the amount was therefore established on the basis of the weighted average profit made by the group to which the company belonged, i.e. the company in Malaysia plus two companies in Taiwan, on domestic sales made directly to independent customers, excluding inter-group sales.

(d) Taiwan

- (19) For three exporting producers it was established that the total domestic sales of the product concerned represented 5 % more of the sales volume exported to the Community and was therefore representative in accordance with Article 2 (2) of the Basic Regulation.
- (20) For those product types meeting the 5 % test, the Commission services assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Where, per product type, the volume of sales below unit cost was less than 20 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales of that type. Where, per product type, the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 %, of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales of that type.

Where, per product type, the volume, of domestic sales was lower than 5 % of the volume exported to the Community, or where the volume of domestic

sales made at a loss was more than 90 %, domestic sales in the ordinary course of trade was considered insufficient in the sense of Article 2 (3) of the Basic Regulation. In these cases, pursuant to the second paragraph of Article 2 (1) of the Basic Regulation, normal value was based on the weighted average of the ex-works prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade.

Where, for the corresponding product type, there were no representative domestic sales made by other producers in the country concerned, normal value was constructed in accordance with Article 2 (3) and (6) of the Basic Regulation, i.e. on the basis of all costs of manufacturing incurred by the exporting producer concerned when producing the product type in question plus a reasonable amount for SGA and profits. In general, the amount for SGA and profits was established on the basis of the remaining representative domestic sales of the product under investigation made by the producer concerned in the ordinary course of trade.

(21) In the course of the investigation it was established that two of these companies were related. Consequently, it should be noted that for the establishment of the constructed normal value, a weighted averaged of the profits of these two related exporting producers was used and one dumping margin was therefore calculated.

(22) These two related exporting producers sold the product concerned on the domestic market both through a related reselling company and directly to unrelated customers. Where the product types were sold to the related reselling company, it was considered, pursuant to the third paragraph of Article 2 (1) of the Basic Regulation, that those sales were not made in the ordinary course of trade. In these cases, normal value was established on the basis of the prices at which the product was first resold to an independent customer.

(23) As far as the three remaining exporting producers in Taiwan are concerned, it was established that the total domestic sales of the product concerned represented less than 5 % of the sales volume

exported to the Community and were not therefore representative in the sense of Article 2 (2) of the Basic Regulation. In these cases normal value was determined, wherever possible, on the basis of the domestic prices of the other Taiwanese companies, or on the basis of constructed normal value according to the method set out above.

Where, for a particular product type, normal value had to be constructed, the amount allowed for SGA and profits was, pursuant to Article 2 (6) (a) of the Basic Regulation, established on the basis of the average amounts found for the other Taiwanese producers selling the product concerned on the domestic market.

(e) *Thailand*

(24) Of the three cooperating Thai companies, only one had made sales on its domestic market during the investigation period. For this company, the investigation showed that the total domestic sales of the product concerned represented more than 5 % of the sales volume exported to the Community.

For the product types meeting the 5 % test, the Commission services assessed whether sufficient sales had been made in the ordinary course of trade in the sense of Article 2 (4) of the Basic Regulation. Normal value was therefore based either on the prices of domestic sales or on the constructed normal value in application of the methodology explained under recital 13.

Where the volume of sales per product type was lower than 5 % or where the volume of sales at a loss was more than 90 %, normal value was constructed according to the methodology explained under recital 14.

(25) For the other two Thai exporting producers, in the absence of sales of a similar product type sold on the Thai domestic market by the first company, constructed normal value was used in accordance with Article 2 (3) and (6) of the Basic Regulation. A reasonable amount for SGA and profits was added to the manufacturing cost per product type. The SGA and profit margin used were calculated on the basis of data pertaining to production and domestic sales made by the Thai company selling on the domestic market.

(f) *People's Republic of China*1. *Analogue country*

- (26) Since the PRC is considered to be a non-market economy country, an analogue market economy country had to be selected for the establishment of normal value in accordance with Article 2 (7) of the Basic Regulation. Brazil or India were proposed in the notice of initiation. No comments were received within the time limit specified in the notice of initiation from any interested party or authority in the PRC.

However, during the investigation, it appeared that neither Brazil nor India were appropriate. With regard to Brazil, it was found that the range of product types covered by the only Brazilian producer who cooperated was not sufficiently representative. Concerning India, the investigation showed that despite the existence of a wider range of product, the Commission services were not in a position to assess sufficiently the conditions of competition in the Indian market. The Commission services finally considered that in accordance with Article 2 (7) of the Basic Regulation, the most reasonable choice of analogue country in this case was Taiwan. In the course of the investigation, it appeared that in Taiwan, a representative range of products was covered and that a large number of suppliers in that market ensured a sufficient level of competition.

2. *Normal value*

- (27) For the reasons indicated above, normal value was established on the basis of the prices and costs of the Taiwanese producers selling on the domestic market. The investigation showed that the domestic sales in Taiwan represented 5 % or more of the total Chinese export sales to the Community.
- (28) For those product types meeting the 5 % test, the Commission services assessed whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2 (4) of the Basic Regulation. Where, per product type, the volume of sales below unit cost was less than 20 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. Where, per product type, the volume of transactions made at a loss was equal to or higher than 20 %, but not higher than 90 % of sales, normal value was established on the basis of the weighted

average prices actually paid for the remaining profitable domestic sales.

Where, per product type, the volume of domestic sales was lower than 5 % of the volume destined for export to the Community, or where the volume of domestic sales made at a loss was more than 90 %, domestic sales in the ordinary course of trade were considered insufficient in the sense of Article 2 (3) of the Basic Regulation and were therefore disregarded. In these cases, normal value was constructed in accordance with Article 2 (3) and (6) of the Basic Regulation. For each product type, normal value was calculated on the basis of all costs of manufacturing plus all SGA incurred by the Taiwanese companies and a reasonable amount for profits. The amount for profits was established on the basis of the weighted average profit made on profitable domestic sales of the product concerned.

2. *Export price*(a) *India*

- (29) For the two exporting producers which made export to the Community directly to independent importers, in accordance with Article 2 (8) of the Basic Regulation, export prices were established on the basis of the prices actually paid or payable by these independent customers. As the third company sold the product concerned to an unrelated exporting trading company located in India, knowing at the moment of the sale that this product was destined for export to the Community, export prices were established on the basis of the price charged by the producer to the trading company.

(b) *Korea*

- (30) The only cooperating exporting producer in Korea made export sales to the Community directly to independent importers, invoicing its deliveries either directly to the importers or via an independent trading company in Korea. In the first case, export prices were established on the basis of the prices actually paid or payable by independent customers, in accordance with Article 2 (8) of the Basic Regulation. In the latter, export prices were established on the basis of the prices invoiced to the trading company by the producer concerned.

(c) *Malaysia*

- (31) For one exporter in Malaysia which made export sales to the Community directly to independent importers export prices were established on the

basis of the prices actually paid or payable by these independent importers, in accordance with Article 2 (8) of the Basic Regulation.

- (32) The other Malaysian exporter made all exports of the product concerned to the Community via a related importer. It was therefore considered that the prices of the sales from the producing company in Malaysia to the importing company in Europe were unreliable. For the reason, in accordance with the provisions of Article 2 (9) of the Basic Regulation, the export prices were constructed on the basis of the price at which the imported product was first resold to an independent buyer, with adjustments being made for all costs incurred between importation and resale and provisionally for a profit margin which corresponded to the profit margin made by this company on its sales to independent customers in the Community.

(d) *Taiwan*

- (33) The exporting producers made export sales to the Community either directly to independent importers or through unrelated companies located in Taiwan.

Where export sales to the Community were made directly to independent importers, export prices were established on the basis of the prices actually paid or payable by these importers, in accordance with Article 2 (8) of the Basic Regulation.

Where export sales to the Community were made through these trading companies, export prices were established on the basis of the prices invoiced to the trading companies by the producers concerned.

(e) *Thailand*

- (34) For the two exporting producers which made export sales to the Community directly to independent customers, export prices were established on the basis of the prices paid or payable by these independent customers, in accordance with Article 2 (8) of the Basic Regulation. As the third producer sold the product concerned to an unrelated exporting trading company located in Thailand, knowing at the moment of the sale that this product was destined for export to the Community, export prices were established on the basis of the price charged by the producer to the trading company.

(f) *People's Republic of China*

1. *Individual treatment*

- (35) All exporting producers in the PRC who replied fully to the Commission's questionnaire and exported the product concerned to the Community during the investigation period, as well as a company from Hong Kong which exported SSF of PRC origin, requested individual treatment, i.e. the establishment of separate export prices and thus of individual dumping margins.

The Commission services verified whether these seven companies enjoyed a degree of legal and factual independence from the influence of the State comparable to that which would prevail in a market economy country. To this end it addressed detailed questions to these companies regarding their ownership, management, control over commercial and business policies.

- (36) The six companies concerned in the PRC failed to show, to the satisfaction of the Commission services, that their operations were sufficiently independent of the Chinese authorities and, in particular, it was found that some of these companies were subject to restrictions concerning their freedom to decide their pricing policy and the quantities to be sold on the domestic and export markets. Moreover, the approval of the Chinese authorities was required at different stages in the life of some companies, such as the creation of the company, the modification of the articles of association, and the interruption of the activity. Finally, in some cases, foreign investors withdrew from the joint-venture agreements concluded with the companies concerned in the PRC before the start of the period of investigation. It was therefore decided that individual treatment was not appropriate for these six companies.

- (37) As far as the company in Hong Kong which exported SSF originating in the PRC is concerned, it was established that this company was registered in Hong Kong, that no party from the PRC had any participation in its ownership, and that it had no connections with any company in the PRC. The investigation in Hong Kong showed that the company ran a SSF production plant in the PRC on a leasehold basis and that the factory undertook production under the direction and control of the Hong Kong office. Moreover, it appeared that this company operated independently from the Chinese authorities, in particular with regard to export prices to the Community and marketing policy.

In the light of these considerations, it was provisionally decided to grant individual treatment to this company for the purpose of the current anti-dumping investigation.

2. Export price

- (38) The investigation showed that the exports of five cooperating companies in the PRC and one company in Hong Kong exporting SSF originating in the PRC were made directly to independent importers in the Community. The export prices were therefore based on the prices actually paid or payable for the product sold to the Community in accordance with Article 2 (8) of the Basic Regulation.
- (39) With regard to another company in the PRC it was found that exports to the Community were made via a related company in Hong Kong which sold the product concerned to independent importers in the Community. In this case, pursuant to Article 2 (9) of the Basic Regulation, export prices were established, after adjustments for all costs and profits incurred between importation and resales, on the basis of the prices invoiced by the related company to independent importers in the Community.

3. Comparison

- (40) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed, and demonstrated to affect price comparability. In accordance with Article 2 (10) of the Basic Regulation, these adjustments were made, in respect of packing, transport, insurance, handling and ancillary costs, indirect taxes and import charges, credit costs and commissions.
- (41) One company in India claimed an allowance for the credit cost of sales on the domestic market and requested that the actual payment date be used. This claim was rejected on the grounds that, in accordance with Article 2 (10) (g) of the Basic Regulation, an adjustment can only be given for the number of days agreed at the time of the sale, as only the expense of that number of days can be considered to have influenced the buyer's decision.
- (42) The adjustments requested by the same Indian company for import charges were rejected as the company in question was not able to show a clear link between the imported raw materials used for

the production of the product concerned sold on the domestic market and the allowance claimed for import charges.

- (43) Some exporting producers in Taiwan claimed an adjustment for differences in levels of trade on the grounds that they sold different quantities to different types of customers. However, they were unable to demonstrate consistent and distinct differences in functions and prices for the different levels of trade in the Taiwanese domestic market. In view of the above, no adjustment was granted for differences in level of trade.
- (44) One company in Thailand claimed an allowance for differences in physical characteristics and for a difference in level of trade. These two requests had to be rejected on the following grounds.

With regard to the first claim, it was not considered relevant to the extent that the dumping calculation is based on a comparison of product types sold on both the domestic and the export markets and that the products were subject to the same internal technical codes given by the company. On the contrary, it was found that the products were probably the same.

As to the second request, the investigation showed that less than 10 % of domestic sales were made to a specific type of customers. However, they were unable to demonstrate consistent and distinct differences in functions and prices for the different levels of trade in the Thai domestic market. In view of the above, no adjustment was granted for differences in level of trade.

4. Dumping margin

1. General method

- (45) In general, pursuant to Article 2 (10) and (11) of the Basic Regulation, the dumping margins were established on the basis of a comparison between the weighted average normal value and the weighted average normal value and the weighted average export prices at ex factory level and at the same level of trade.
- (46) For any exporting producer involved in the proceeding which neither replied to the Commission's questionnaire nor otherwise made itself known, the dumping margin was determined on the basis of the facts available in accordance with the provisions of Article 18 (1) of the Basic Regulation.

- (47) A comparison of Eurostatistics with the data on the volume of exports to the Community, provided by the cooperating exporting producers from the countries concerned, was made in order to establish the level of cooperation.

Where the level of non-cooperation was high, the Commission services decided that the most reasonable facts available were those established in the investigation, namely the weighted average of all dumped transactions found for the company with the highest dumping margin.

Where the level of cooperation was high, the Commission services considered it appropriate to base the dumping margin for non-cooperating companies on the highest dumping margin found for one cooperating exporting producer in the country concerned since there was no reason to believe that a non-cooperating exporting producer had dumped at a lower level than the highest found.

This approach was also considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention.

2. Dumping margins

(a) India

- (48) The dumping margins expressed as a percentage of the cif price at Community frontier level were as follows:

— Audler Fasteners, Vasai	108,8 %
— Lakshmi Precision Screws Ltd., Rohtak	113,0 %
— Kundan Industries Ltd. / Tata Export Ltd.	68,4 %

- (49) For the non-cooperating exporting producers in India, given that the level of non-cooperation was high and in accordance with the general method explained under recitals 46 to 47, the dumping margin provisionally established is 133,5 %, expressed as a percentage of the free-at-Community frontier price.

(b) Korea

- (50) The dumping margin expressed as a percentage of the cif price at Community frontier level was as follows:

— Daegil Trading Co. Ltd., Seoul	24,0 %
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- (51) For the non-cooperating exporting producers in Korea, given that the level of non-cooperation was high and in accordance with the general method explained under recitals 46 to 47, the dumping

margin provisionally established is 26,7 %, expressed as a percentage of the free-at-Community frontier price.

(c) Malaysia

- (52) For one exporting producer investigated in Malaysia, pursuant to Article 2 (11) of the Basic Regulation, the weighted average normal value was compared to prices of all individual export transactions to the Community, as it was found that there was a pattern of export prices which differed significantly among different time periods and that a calculation based on weighted average would not have reflected the full degree of dumping being practised.

The dumping margins expressed as a percentage of the cif price at Community frontier level were as follows:

— Tigges Stainless Steel Fastener (M) Sdn. Bhd., Ipoh	6,6 %
— Tong Heer Fasteners Co., Sdn. Bhd., Penang	10,0 %

- (53) For the non-cooperating exporting producers in Malaysia, given that the level of cooperation was high and in accordance with the general method explained under recitals 44 to 46, the dumping margin provisionally established is 9,5 %, expressed as a percentage of the free-at-Community frontier price.

(d) Taiwan

- (54) For three exporting producers investigated in Taiwan, pursuant to Article 2 (11) of the Basic Regulation, the weighted average normal value was compared to prices of all individual export transactions to the Community, as it was found that there was a pattern of export prices which differed significantly among different time periods or regions, and that a calculation based on weighted average would not have reflected the full degree of dumping being practised.

The dumping margins expressed as a percentage of the cif price at Community frontier level were as follows:

— Arrow Fastener Co. Ltd., Taipei	8,3 %
— CLC Industrial Co. Ltd., Tainan	9,6 %
— Min Hwei Enterprise Co. Ltd., Kaohsiung	12,5 %
— Rodex Fasteners Corp., Chung Li	11,9 %
— Sen Chang Industrial Co. Ltd., Tao Yuen	12,5 %
— Tong Hwei Enterprise Co. Ltd., Kaohsiung	12,5 %

- (55) As indicated above, two companies in Taiwan were related. Consequently, there was a high risk that anti-dumping measures could be circumvented by channelling exports to the Community through the company with the lower dumping margin if two different margins were established. It was therefore concluded that only one dumping margin, based on the weighted average of the dumping margin found for both, should be established for the two companies.

- (56) For the non-cooperating exporting producers in Taiwan, given that the level of non-cooperation was high and in accordance with the general method explained under recitals 46 to 47, the dumping margin provisionally established is 27,7 %, expressed as a percentage of the free-at-Community frontier price.

(e) *Thailand*

- (57) The dumping margins expressed as a percentage of the cif price at Community-frontier level were as follows:

— Dura Fastener, Samutprakarn	13,3 %
— A.B.P. Stainless Fastener, Ayutthaya	18,3 %
— Thailock Fastener, Chon Buri	32,9 %

- (58) For the non-cooperating exporting producers in Thailand, given that the level of cooperation was high and in accordance with the general method explained under recitals 44 to 46, the dumping margin provisionally established is 32,9 %, expressed as a percentage of the free-at-Community frontier price.

(f) *People's Republic of China*

- (59) For six cooperating exporting producers in the PRC, as they were refused the individual treatment, their export prices had to be clubbed with Eurostat in order to cover the total exports of the PRC to the Community. Consequently, the comparison could only be made by customs code, i.e. grouping several pcn codes together. Therefore, the weighted average normal value fob Taiwan national frontier was compared with the weighted average export price fob China national frontier at the same level of trade by customs code.

The provisionally established dumping margin is 75,6 %, expressed as a percentage of the cif price at Community frontier level.

With regard to the company in Hong Kong which was granted individual treatment, the weighted average normal value fob Taiwan national frontier

was compared with its own weighted average export prices fob China national frontier at the same level of trade. The provisionally established dumping margin is 16,2 %, expressed as a percentage of the cif price at Community frontier level.

D. COMMUNITY INDUSTRY

- (60) The Commission examined whether the complainants represented a major proportion of total Community production of the product concerned and arrived at the conclusion that the complainant producers (hereinafter referred to as the 'Community industry') produced 63 % of the Community's total output of the like product produced during the investigation period. The Commission therefore considered that the complainants represent the Community industry within the meaning of Articles 4 (1) and 5 (4) of the Basic Regulation.

E. INJURY

1. Preliminary remarks

- (61) For the purposes of establishing injury in the present proceeding the Commission has analysed data relating to the period 1992 to November 1996 (hereinafter referred to as the 'period considered'). It should be noted, however, that as regards the development of the injury indicators over the period considered, the Commission has for the purpose of a year to year comparison used the figures relating to the investigation period (eleven months of 1996) as a basis for extrapolating the figures for the full year 1996.

The geographical scope of the investigation was the Community as composed at the time of the initiation of the proceeding, i.e. the Community of 15 Member States.

2. Cumulation

- (62) The Commission examined whether imports of SSF originating in PRC, India, Malaysia, Korea, Taiwan and Thailand should be assessed cumulatively in accordance with Article 3 (4) of the Basic Regulation.

The Commission concluded that SSF imported from the countries concerned were alike in all respects (it should be noted that imported SSF are produced to the same quality standards as Community products, usually a DIN standard or an ISO

standard), they are interchangeable and are marketed in the Community through comparable sales channels under similar commercial conditions and, in particular, are sold at similar levels of prices substantially below those of the Community industry. The imported SSF were considered therefore to compete with each other and with the SSF produced in the Community.

The import volumes of each of the six countries concerned taken in isolation accounted for a non-negligible market share.

In the light of the above, the Commission considered that all the criteria set out in Article 3 (4) of the Basic Regulation were met, i.e. the margin of dumping from each exporting country was more than *de minimis*, the volume of imports from each country was not negligible (see recital 64 below), and a cumulative assessment of the effects of the imports was appropriate in light of the conditions of competition between the imported products as well as between the imported products and the like Community products. The imports from the countries concerned were therefore examined cumulatively.

3. Community consumption

- (63) Community consumption was based on the questionnaire replies (volume of sales of the Community industry), Eurostat information (volume of imports) and the complaint (non-complaining Community producers' level of sales).

On the above basis, the apparent Community consumption remained stable in 1992 and 1993 at 47 200 tonnes, and increased to 59 900 tonnes in 1994, to 86 500 tonnes in 1995 and to 82 400 tonnes in 1996, which represents an overall increase of 75 % over the period considered.

It should be noted that the development of apparent consumption is largely influenced by the behaviour of the stockholders on the Community market given that they act as intermediaries between all producers of SSF, both the Community industry and exporters. The apparent consumption figures therefore reflect the purchases made by the stockholders during the period considered and not necessarily those made by the users. The slight decrease in apparent consumption in 1996 appears to be a consequence of the massive increase in imports in the previous years.

4. Cumulated volume and market share of dumped imports

- (64) The cumulated volume of the dumped imports into the Community of SSF originating in the countries concerned decreased from 15 800 tonnes in 1992 to 14 800 tonnes in 1993 and increased thereafter to 20 600 tonnes in 1994 to 42 300 tonnes in 1995, and remained at a similar level in 1996 at 41 200 tonnes, which represents an overall increase of 161 %.

The cumulated market share held by these countries decreased from 33,5 % in 1992 to 31,4 % in 1993 and increased thereafter to 34,3 % in 1994, to 48,9 % in 1995 and to 50,1 % in 1996, which represents an increase of 17 percentage points over the period considered. In the investigation period the market shares from each of the countries concerned were Thailand 2 %, India 3 %, Korea 3,2 %, Malaysia 5,3 %, PRC 12,5 % and Taiwan 24 %.

5. Price undercutting

- (65) As regards price undercutting, the analysis was made according to each type of SSF. For each of these types, the Commission compared the exporters' and the Community industry's monthly weighted average selling prices free of all rebates and taxes, calculated on the basis of sales to the first unrelated customer duly adjusted to take into account the differences in distribution channels. The monthly average selling price of the Community industry was weighted in relation to the individual company's sales volume. This monthly Community average selling price was then compared to the corresponding figure for each exporter concerned on the basis of their monthly resale prices in the Community and weighted in respect of sales volume.

In order to arrive at a comparable level of trade with the sales of the Community industry, the import prices from the countries concerned have been adjusted to take into account post-importation costs (including handling, financing and transport costs), repackaging costs and customs duty payable. The adjustments were based on information received from importers.

The margins of undercutting are expressed as a percentage of the Community industry's prices (at ex works level) as distinct from the method of calculation of the margins of underselling which are expressed as a percentage of the weighted average free-at-Community frontier price. The undercutting margins were as follows:

Country/company	Undercutting margin
PRC	from 38,4 % to 38,9 %
Malaysia	from 20,1 % to 56,5 %
Taiwan	from 23,1 % to 60,5 %
India	from 23,2 % to 34,7 %
Korea	22,4 %
Thailand	from 23,6 % to 33,0 %

An overall weighted average price undercutting from all countries concerned of 28 % was found for the investigation period.

6. Situation of the Community industry

6.1. Production capacity and utilization rates

- (66) The volume of production of the product concerned produced by the Community industry increased from 12 800 tonnes in 1992 to 12 900 tonnes in 1993 to 23 100 tonnes in 1994, decreased slightly to 22 400 tonnes in 1995 and further decreased to 19 000 in 1996, which represents an overall increase of 48 % over the period considered.

It should be noted that production increased significantly from 1993 to 1994 (80 percentage points). However, this increase in production is mainly due to the acquisition of a non-complaining company producing the product concerned by one of the complaining Community producers. The Community industry's capacity, sales, investments and employment levels discussed below also reflect this acquisition.

Capacity of the Community industry increased by 91 % in the same period. It should be noted, however, that despite the increase in production, capacity utilization levels decreased over the period going from 81 % in 1992 to 63 % in 1996.

6.2. Stocks

- (67) The Community industry's stocks increased significantly over the period, going from 2 400 tonnes in 1992 to 2 900 tonnes in 1993, to 4 600 tonnes in 1994, to 5 200 tonnes in 1995 and to 5 300 tonnes in 1996, which represents an increase of 124 % over the period considered.

6.3. Volume of sales and market share

The Community industry's sales on the Community market increased from 12 400 tonnes in 1992 to 13 200 tonnes in 1993, to 17 900 tonnes in 1994, decreased slightly to 17 400 tonnes in 1995 and further decreased to 15 800 tonnes in 1996, representing an overall increase of 3 400 tonnes (27 %). This increase in sales is modest compared to the increase in consumption of 35 200 tonnes (75 %) over the period considered.

The market share held by the Community industry increased from 26 % in 1992 to 28 % in 1993 and to 30 % in 1994 and thereafter decreased to 20 % in 1995 and to 19 % in 1996, representing an overall loss of 7 percentage points over the period considered.

6.4. Prices

- (68) The weighted average selling price of SSF sold by the Community industry on the Community market showed an overall negligible increase between 1992 and 1996. The weighted average selling price of the Community industry expressed in ECU per tonne decreased from 3,36 in 1992 to 3,19 in 1993, to 3,02 in 1994, increased to 3,89 in 1995 and decreased to 3,40 in 1996. It should be noted that the prices of the imports concerned always remained significantly below those of the Community industry and the price movement has to be seen in relation to the substantial increase in consumption, in particular from 1994 to 1995.

6.5. Profitability

- (69) The financial situation of the Community industry went from -3 % in 1992 to 1,5 % in 1993, to 4,7 % in 1994, to 9,1 % in 1995 and decreased to 0,1 % in 1996. The improvement in profitability in the initial years can be attributed to the efforts of the industry to improve productivity (see recital 72).

It should be noted that the Community industry's profitability significantly improved in 1994 and 1995. This situation should be seen in the light of the Community industry's significant loss of market share during the same period (a decrease of 10 percentage points between 1994 and 1995). This shows that the Community industry tried to maintain profits at the expense of market share. However, the Community industry was barely reaching break even (a slight profit of 0,1 %) in 1996, while having suffered further losses in market share.

The weighted average profitability of 0,1 % for the investigation period represents the lowest profitability since 1992.

6.6. *Investments*

- (70) Investments (expressed in ecu) increased overall by 72 %, from 764 700 in 1992 to 1 993 900 in 1993, to 3 658 600 in 1994, decreased to 1 520 100 in 1995 and to 1 312 000 in 1996. The overall increase in investments over the period considered results from the fact that a high level of investment is needed in the SSF industry in order to maintain competitiveness. It was found that this industry needed to constantly replace their machinery and make new investments in order to comply with environmental requirements.

It should be noted that the high investments made in 1994 can, for the most part, be attributed to one of the Community industry having acquired a producing company (see recital 66 above).

6.7. *Employment*

- (71) Employment increased by 16 % over the period considered, going from 325 persons employed in 1992 to 378 in 1996. Again, it should be noted that this increase in employment is a reflection of the expansion of the market. All Community producers, including the non-complainants, employed a total of 574 people during the investigation period.

6.8. *Productivity*

- (72) Productivity of the Community industry increased by 10 % between 1992 and 1996.

6.9. *Conclusion on injury*

- (73) The Commission concluded that the Community industry had suffered significant price pressure from imports originating in the countries concerned over the period considered which were entering the Community market in growing quantities and were found to significantly undercut the Community industry's prices in the investigation period. As a consequence, the Community industry lost significant market share at a time when consumption in the market was increasing, despite having increased production and productivity. It should be noted that stock levels have increased continuously and significantly.

Furthermore, the Community industry's financial situation, after an improvement in 1994/1995, was poor and largely insufficient in the light of the expectation and the investment made by the industry (a weighted average profit of 0,1 % was

found in the investigation period). Overall it should be noted that the situation of the Community industry particularly deteriorated in the later years of the period considered (1994 to 1996).

In view of the above, the Commission has provisionally concluded that the Community industry suffered material injury within the meaning of Article 3 (2) of the Basic Regulation.

7. *Causation of injury*

7.1. *Effects of the dumped imports*

- (74) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from PRC, India, Malaysia, Korea, Taiwan and Thailand.

There is a clear coincidence between the significant price undercutting found during the period considered and the deterioration of the situation of the Community industry. This is evidenced in particular by a decrease in the market share held by the Community industry and the deterioration of their profitability in the investigation period.

With regard to market shares, it should be noted that from 1992 to 1996, imports from the countries concerned increased by more than the rate of consumption (an overall increase of 161 %). This represents an overall increase in their market share of 17 percentage points, while the market shares of the Community industry decreased by 7 percentage points. In particular, the significant increase in imports between 1994 and 1995 (an increase of 15 percentage points) coincided with the loss in market share (less 10 percentage points) of the Community industry in this period.

The Commission therefore concluded that the loss of market share suffered by the Community industry can be entirely attributed to the gain in market share held by the countries concerned.

The Community industry's financial situation was poor at the beginning and at the end of the period considered, showing that the Community industry was unable to benefit either from their investments or from the increase in demand for SSF in the Community market. Although the Community industry's financial situation improved in 1994 and 1995 this occurred at a time when they were suffering loss of market share showing the Community industry's strategy came under pressure from

the dumped imports to maintain profits at the expense of market share. However, the continued pressure of dumped imports caused the Community industry to lose further market share and profits in 1996. In particular the cumulated effect of the massive increase in imports in the period considered, leading to an excess in supply on the Community market in 1996, forced the Community industry to lower its prices in 1996 whilst losing further market share. In this context, the negative impact of the increased volume of imports was enhanced by the significant price undercutting in this period.

7.2. *Effect of other factors*

- (75) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the dumped imports. In particular the Commission looked at the development of consumption, the evolution and impact of imports from other third countries, and the effect of increases in the cost of raw materials.

(a) *Consumption*

- (76) The Commission considered whether the development of consumption affected the situation of the Community industry. It is to be noted that although there was a small decline in consumption at the end of the period considered (4 100 tonnes), the overall level of consumption increased substantially by 35 200 tonnes (75 %). It is therefore highly unlikely that the injury could be attributed in any significant way to the trend in consumption.

(b) *Imports from other third countries*

- (77) As regards imports from other third countries not concerned by this proceeding, the Commission found that although these imports represented a significant share in the Community market (20 % in the investigation period), they decreased overall during the period considered, going from 25 % in 1992 to 23 % in 1993, to 20 % in 1994, to 19 % in 1995 and 1996.

In this context the Commission examined in particular the trend in volumes and prices of imports from South Africa and the Philippines as it was claimed that imports from these countries had influenced the situation of the Community industry and that the complaint was discriminatory as these countries had not been included.

South Africa

- (78) Although Eurostat figures showed the existence of imports from South Africa over the period, the data relating to these imports was provisionally found to be unreliable.

Philippines

- (79) The market share of imports from the Philippines slightly decreased over the period considered going from 3 % in 1992 to 2 % in 1996. Furthermore the prices of these imports were significantly higher than the prices charged by the countries concerned. The Commission therefore considers that imports from the Philippines have not contributed to the injury suffered by the Community industry.

Other third countries

- (80) The Commission found that the total market share held by other third countries decreased during the period considered (going from 19 % in 1992 to 14 % in 1996) and that the prices of these imports were found to be distinctly higher than those of the dumped imports. The Commission, therefore, considered that these imports were also adversely affected by the dumped imports concerned and, therefore, these imports did not contribute to the injury suffered by the Community industry.

(c) *Raw materials*

- (81) The Commission also considered whether the injury suffered by the Community industry could have been caused by increases in the costs of raw materials during the period considered, as it was claimed that these increases were at least in part responsible for the injury suffered. In this regard the Commission found that the fluctuations in the raw materials were not sufficiently significant, in particular in 1996, in order to have any impact on the viability of the Community industry.

(d) *Other arguments*

- (82) It has been alleged that anti-competitive practices took place between the Community industry during the period under consideration and that the Community industry therefore contributed to the injury suffered.

However, the Commission did not find the allegation made was substantiated by the findings of the investigation and therefore no account was taken of this argument at the provisional stage.

7.3. *Conclusion on causation*

- (83) In the light of the above, the Commission concluded that the imports from the six countries concerned taken together have caused material injury to the Community industry.

F. COMMUNITY INTEREST

1. General considerations

- (84) The Commission provisionally examined, on the basis of the information submitted, whether despite the dumping and injury findings, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in the present case.

For this purpose the Commission has considered the impact of possible measures for all parties involved in the proceeding and also the consequences for those same parties, of not taking provisional measures.

2. Collection of information

- (85) In order to assess the impact of possible measures, the Commission sent Community interest questionnaires to all interested parties in the upstream and downstream industries known to the Commission at the time of the initiation of the proceeding. The Commission also requested information on Community interest from the Community industry.

The Commission considered that the responses from the contacted parties were reliable given that the information provided did not appear to be contradictory. In the circumstances the Commission did not consider it necessary to perform verification visits for its analysis of Community interest.

3. The supplier industry

3.1. *Situation of the raw material suppliers*

- (86) The raw material used in the production of SSF is stainless steel wire rod. This raw material is produced by the major stainless steel makers in Europe who supply the entirety of the raw materials consumed by the Community industry. There are a number of different grades of stainless steel wire rod that can be used in this type of production, however, the two most commonly used grades, by both the Community industry and the producers in the countries concerned, are austenitic steel type A2 (AISI 304 grade) and A4 (AISI 316). These grades of steel are mainly used on account of their heat and corrosion resistance and their superior strength. The following information relates to data supplied by the contracted raw material suppliers.

The Community suppliers of the raw materials concerned employed more than 5 000 people in 1996 of which approximately 800 were specifically concerned with the production of the raw material concerned (representing 16 % of employees). Total turnover in 1996 was ECU 1 400 million of which ECU 120 million related to the raw materials

concerned (representing some 8,4 % of total turnover). Total turnover decreased by some 26,5 % between 1995 and 1996, and turnover relating to the raw materials concerned decreased by 34 %. Sales in the Community also decreased in the same period going from ECU 149 million in 1995 to ECU 93 million in 1996 representing a decrease of 38 %.

As regards the profitability of the sales of the raw materials concerned in the Community, on the basis of the information available a weighted average profit of 0,5 % was found in 1996.

3.2. *Effect of imposition/non-imposition of measures*

- (87) Although the companies producing the raw materials concerned do supply other non-EU markets and may, theoretically, be able to redirect their sales to these markets, any major decline in Community production of the product concerned is likely nevertheless to have a substantial effect on them given that the Community industry is an important customer of these companies.

Given that total Community production of the raw materials concerned represents more than a negligible proportion of the total turnover and employment of the companies concerned, it was considered that in the event of the imposition of measures, their situation would improve as they would benefit from higher sales volumes and an improvement on their current low profitability level. On the other hand, should measures not be imposed there is nothing to suggest that the downward trend in the companies' turnover, sales and profitability would not be worsened and the threat of a possible future loss of employment would be created.

4. The Community industry

4.1. *Nature and structure of the Community industry*

- (88) The Community industry is composed of small and medium-sized companies located in France, Spain and Italy. Production is capital intensive and highly automated. It should be noted that SSF are finished products (i.e. SSF do not undergo any further transformation), and are mainly consumed by end-user industries that incorporate SSF into various applications (see recital 95).

The total Community production employs some 600 people (1996). Account should also be taken of the employment relating to approximately 800 people employed in the production of the raw materials to which this proceeding relates.

The range of SSF is highly standardized and both the Community industry and the exporters in the countries concerned produce SSF to agreed norms

(DIN or ISO standards). Given this high degree of standardization, SSF, and in particular the most common SSF types, are price sensitive.

4.2. *Viability of the Community industry*

- (89) It will be recalled (see recital 70) that, during the period considered for the injury analysis, the Community industry made significant investments. Apart from the acquisition of a company by the Community industry, these investments mainly related to machinery replacement. This high level of machinery replacement is considered necessary by the Community industry to remain competitive on the Community and other markets.

The Community industry also produce a wide range of special SSF varying from simple modifications of existing standard SSF to completely custom-made fasteners, that require not only additional machine tool investments but also and perhaps more importantly close technical cooperation between themselves, the customers and the raw material suppliers (who often undertake considerable research to provide an appropriate raw material given the specifications of the special SSF). With regard to the production of special SSF, it should be noted that the Community industry are the main suppliers given that exporters from third countries do not as a general rule have the level of technical cooperation necessary for the production of these largely custom-made SSF.

It was found that special SSF could be produced on the same machinery (with the addition of special machine tools) and by the same labour force as the standard SSF, and that therefore the production of specials very much depended on the production of standards, for instance in order to spread the overhead costs.

In the light of the above and given the increasing use of stainless steel products on the Community and the consequent increase in demand for special SSF, the Commission considers that it is in the interests of the Community, in particular that of the user industry who it would appear have no alternative source of supply, to maintain a production base of special SSF in the Community. The Commission also considers that any injury suffered by the Community industry on the standards would have a negative impact on the production of special SSF.

4.3. *Effects of the imposition of measures on the Community industry*

- (90) In order to assess the effects of any possible measures on the Community industry, the Commission has assumed an increasing demand situation. The Commission considers that, given the increase in production of stainless steel generally in the Community, consumption of SSF will also increase because in general only SSF may be used in conjunction with stainless steel appliances. In the course of its investigation, the Commission found that the only possible substitute product for a SSF was a carbon-steel fastener with an anti-corrosion coating, however, given the lower quality of such a product, substitution was not found to exist.

Following the imposition of measures, it is expected that the prices of SSF and to a certain extent the volume of sales on the Community market would rise. This increase would enable the Community industry to recover lost market share and to increase their sales in line with future increases in consumption. Although a reduction in volume of imports is possible, given that the Community industry does not have the capacity to supply the whole Community market (in the investigation period, the Community industry could supply approximately 36 % of demand), this reduction in imports may not be significant. The level of the Community industry's prices and any increase in sales volume would, in all likelihood, increase to enable it to restore its financial situation, thus allowing the companies concerned to continue trading and investing in new capacity. However, given alternative sources of supply any price increase is unlikely to be as high as the level of duties.

4.4. *Effects of the non-imposition of measures on the Community industry*

- (91) Should measures not be imposed, it is likely that the negative trend of the Community industry will continue, leading in the long-term to the closure of companies. The Community industry is particularly marked by a loss of market share and a negative financial situation. In this context, a future loss of employment is probable. As explained above, should the negative trend continue, not only would the production of the product concerned be affected but also the production of special stainless steel fasteners, which are not made in significant volumes by the countries concerned.

In conclusion, given that the analysis of the Community industry indicated that it is structurally viable, it is expected that measures would be effective in affording the industry the opportunity to recover from the injury suffered. While the Community industry's prices would not necessarily rise to the extent of the duty, it would be expected to improve its sales volume and recover lost market share. The Community industry's volume increase would also reduce unit costs and increase profitability. Therefore, it is considered to be in the interests of the Community industry to impose measures.

5. Importers and traders

5.1. *Structure of the import and distribution channels*

- (92) The distribution of SSF in the Community is characterized by a significant number of importers/traders who hold large stocks of the product concerned. Essentially the importers/traders act between the producers (Community and non-Community) and the users and their behaviour on the market very much influences the prices of SSF. It was found that the Community industry has little or no direct contact with the user industries and therefore rely on the well-established distribution network for almost the entirety of its sales. Given the large number of players in the distribution network and their important role, their situation merits close examination.

5.2. *Economic situation of importers/traders*

- (93) Firstly it should be noted that although the importers/traders hold significant stocks of the product concerned, they also trade in a large number of other items that are not concerned by this proceeding.

The Commission found that the average importer/trader's total turnover in 1996 was ECU 262 million whereas the turnover relating to the product concerned was ECU 79 million representing some 30 %. On the basis of the information available the total employment was estimated to be 4 500, 1 600 of these related to the product concerned, that is to say some 35 %. Given that the importers/traders in both Community and imported goods, approximately half of the employment relating to the product concerned, can be attributed to activities linked to imports from the

countries concerned. With regard to the financial situation on the importers/traders in 1996 it should be noted that profits ranged for the most part from 8 % to 35 %. The situation in 1995 was found to be largely similar.

5.3. *Effect of imposition/non-imposition of measures*

- (94) As previously stated, the Commission considers that in the event of the imposition of measures, prices of SSF on the Community market will increase. Although the prices of the imports will in all likelihood increase to the full extent of the duty, prices of the Community products may not increase to the same extent. This increase in prices is likely to have a negative impact on importers and traders who may see their margins reduced, however, it should be noted that the importers also act to a large extent as traders and may choose an alternative source of supply, for instance the Community produced SSF, thus it is unlikely that these economic operators' activities will suffer overall. In particular it was found that the importers/traders' margins have remained good throughout this period it has been considered that any negative impact of price increases can be minimized by combining reduced margins with price increases to the user industries.

Furthermore, it is to be noted that given the Community industry is unable to supply the entirety of consumption on the Community market, the importance of the import and distribution network is not likely to be affected by the imposition of measures, i.e. the volume of imports will in all likelihood remain significant and the Community industry will continue to use the distribution network for almost the entirety of its sales in the Community.

In the light of the above, it was considered by the Commission that if measures are not imposed, the positive trend observed in the situation of the importers/traders is likely to continue. However, in the event of the imposition of measures, their situation would not be significantly worsened.

6. Users

6.1. *Nature and structure of user industries*

- (95) The Commission found that SSF were not sold directly to consumers and have therefore limited their analysis of Community interest to the effect of measures on users.

SSF are used in a wide variety of applications therefore a large number of user industries are concerned by this proceeding. The Commission found that SSF were mainly consumed by the following user industries (non-exhaustive list): food-stuffs, catering, pharmaceutical, medical equipment, household appliances (white goods), automobile, maritime and shipbuilding, building and construction, environment, energy, chemical and petrochemical, and transport.

Given the number of user industries concerned and, in turn, the wide range of applications within each sector, the information available for the Commission's analysis has been very limited.

6.2. *Economic situation of users*

- (96) The total turnover of the user industries ranged from ECU 3 million to ECU 460 million, reflecting the vast differences in the size of the companies concerned. Furthermore, the proportion of the turnover that related to the product concerned ranged from 0,1 % to only 6 % showing that SSF do not represent a major concern for these companies. In line with turnover, the number of persons employed by the companies concerned ranged from 19 to 2 500, whereas the number of employees concerned with SSF ranged from 1 to 40.

In examining the possible effect of the imposition of measures on users, the Commission considered to what extent the cost of SSF had an impact on the final product produced by the user industries and found that the incidence of SSF was negligible.

6.3. *Effect of imposition/non-imposition of measures*

- (97) As previously stated, the Commission considers that in the event of the imposition of measures, prices of SSF on the Community market will increase. It is likely, therefore, that the cost of such a price increase will, to some extent, be passed on to the users, although the extent of this will depend on both the behaviour of the Community industry in their pricing strategy and the importers/distributors.

In any event, given the negligible incidence of the cost of SSF on the final products produced by the user industries, any increase in these costs is unlikely to have a significant effect. Furthermore,

since the Commission considers that the total volume of imports would, in all likelihood, not be significantly reduced as the Community industry cannot satisfy total Community consumption, it is unlikely that the user industries would suffer any reduction of supply of SSF as a result of the imposition of measures.

On the other hand, should measures not be imposed, the user industries would continue to benefit from the existing low prices of SSF on the Community market. However, it should be noted that, in the event of a reduction or the eventual disappearance of the Community industry's output of SSF, the supply of special SSF would also be reduced with consequent negative effects for users. As previously explained, special SSF are mainly produced in the Community and the Commission considers that an increasing consumption trend is likely.

7. Conclusion on Community interest

- (98) Information received from the parties has allowed the Commission to evaluate the various interests involved, as stipulated in Article 21 (1) of the Basic Regulation, and the overall effect of the imposition or of the non-imposition of anti-dumping measures. In carrying out this examination, the Commission gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.

The effects of the imposition of measures can be expected to afford the Community industry with the opportunity to regain lost market share and restore profitability, with consequent beneficial effects on the competitive conditions on the Community market. The beneficial effects are also expected to assist the supply industry and to ensure the continued existence and possible expansion of the special SSF industry.

Whilst negative effects are likely to ensue for the importers/traders from the likely price increase, the extent of these may be reduced by decreasing what are often significant margins (see recital 93) or the cost increases to the user industry. The user industry, in turn, is unlikely to suffer serious consequences from such an increase given the low incidence of SSF on their final products. Furthermore, they would benefit from the maintenance and even increase of special SSF on the Community market.

In the light of the above, the Commission considers that no compelling reasons exist for not imposing measures and that the application of anti-dumping measures would be in the interests of the Community.

G. PROPOSED MEASURES

Injury elimination level

- (99) When calculating the amount of duty necessary to remove the effects of injurious dumping and enable the Community industry to recover, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a reasonable profit on sales of the like product. In this respect, it was found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious dumping.

In order to calculate the amount of duty, a price level was established which would permit the Community industry to achieve this result. Since there were different categories of SSF, the Commission calculated a price level for each category consisting of the weighted average cost of production of the Community industry, together with a 5 % profit margin.

It was considered that the duty should, for corresponding categories, cover the difference between the calculated price and the actual selling prices of the exporters in the Community. Such duties would enable the Community industry to increase their prices to a reasonable profit level. In order to determine the level of duty, the price increases thus established have been expressed as a percentage of the weighted average free-at-Community value of the imported goods as distinct from the undercutting margins which are expressed as a percentage of the weighted average prices of the Community industry at ex works level.

The following injury elimination levels were found:

PRC	from 87,3 % to 88,8 %
Malaysia	from 41 % to 161 %

Taiwan	from 41,1 % to 206,9 %
India	from 47,9 % to 77,3 %
Korea	44,5 %
Thailand	from 50,0 % to 69,8 %

- (100) Since the injury elimination margins thus established exceed the dumping margins established for the Chinese, Malaysian, Taiwanese, Korean and Thai exporters, the duties should be based on the dumping margins and since the injury elimination margins established for the Indian exporters were lower than the dumping margins the duties for the Indian exporters should be based on injury elimination margins, pursuant to Article 7 (2) of the Basic Regulation.

- (101) Provisional anti-dumping duties for PRC, Malaysia, Taiwan, Korea and Thailand should therefore correspond to the margins of dumping set out in recitals 50 to 59 respectively, and the anti-dumping duties for India should correspond to the margins in recital 49 and recital 99.

H. RIGHTS OF INTERESTED PARTIES

- (102) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty which the Commission may impose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty hereby imposed on imports of stainless steel fasteners and parts thereof falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 and originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand.
2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Manufacturer	Rate of duty (%)	Taric additional code
People's Republic of China	Power Van Industrial Co. Ltd	16,2	8333
	All other companies	75,7	8900
Malaysia	Tigges Stainless Fasteners (M) Sdn. Bhd.	6,6	8334
	Tong Heer Fasteners Co. Sdn. Bhd.	9,5	8335
	All other companies	9,5	8900

Country	Manufacturer	Rate of duty (%)	Taric additional code
Taiwan	Arrow Fastener Co. Ltd.	8,3	8336
	Sen Chang Industrial Co. Ltd	12,5	8337
	Tong Hwei Enterprise Co. Ltd	12,5	8338
	Rodex Fasteners Corp.	11,0	8408
	CLC Industrial Co. Ltd	9,6	8409
	Min Hwei Enterprise Co. Ltd	12,5	8414
	All other companies	27,7	8900
India	Lakshmi Precision Screws Ltd	47,9	8415
	Kundan Industries Ltd	53,6	8416
	Audler Fasteners	77,3	8417
	All other companies	133,5	8900
Republic of Korea	Daegil Trading Co. Ltd	24,0	8418
	All other companies	26,7	8900
Thailand	A.B.P. Stainless Fastener Co. Ltd	18,3	8419
	Dura Fasteners Co. Ltd	13,3	8420
	Thailock Fasteners Co. Ltd	32,9	8421
	All other companies	32,9	8900

3. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21 (4) of 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 Communities*.

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

Done at Brussels, 4 September 1997.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 1733/97

of 4 September 1997

determining the quantities of certain categories of milk and milk products available for the fourth quarter of 1997 under the arrangements provided for in the Europe Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic and the Slovak Republic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 584/92 of 6 March 1992 laying down detailed rules for the application to milk and milk products of the arrangements provided for in the Europe Agreements between the Community and the Republic of Poland, the Republic of Hungary, the Czech Republic and the Slovak Republic⁽¹⁾, as last amended by Regulation (EC) No 1597/97⁽²⁾, and in particular Article 4 (5) thereof,

Whereas, pursuant to Commission Regulation (EC) No 1641/97⁽³⁾ determining the extent to which applications lodged in July 1997 for import licences for the above-mentioned products can be accepted, applications for import licences for certain of the products referred to in Regulation (EEC) No 584/92 were for quantities ex-

ceeding those available; whereas, therefore the quantity of each product available for the period 1 October to 31 December 1997 should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available pursuant to Regulation (EEC) No 584/92 as amended for the period 1 October to 31 December 1997 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 62, 7. 3. 1992, p. 34.

⁽²⁾ OJ L 216, 8. 8. 1997, p. 58.

⁽³⁾ OJ L 228, 19. 8. 1997, p. 1.

ANNEX

Total quantity available for the period 1 October to 31 December 1997

Country	Poland			Czech Republic			Slovak Republic			Hungary		
	0402 10 19 0402 21 19 0402 21 99	0405 10 11 0405 10 19 0405 10 30 0405 10 50 0405 10 90 0405 20 90	0406	0402 10 19 0402 21 19 0402 21 91	0405 10 11 0405 10 19 0405 10 30 0405 10 50	0406	0402 10 19 0402 21 19 0402 21 91	0405 10 11 0405 10 19 0405 10 30 0405 10 50	0406	0402 10	0406 90 29	0406
Quantity available	1 376,750	386,160	1 240,665	632,500	275,687	659,450	331,980	165,—	388,080	165,—	100,—	1 006,200

(tonnes)

COMMISSION REGULATION (EC) No 1734/97
of 4 September 1997
fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

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

Whereas Article 13 of Regulation (EC) No 3072/95 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 (4) of Regulation (EC) No 3072/95, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market with limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas Article 13 (5) of Regulation (EC) No 3072/95 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

Whereas the refund must be fixed at least once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 of Regulation (EC) No 3072/95 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

ANNEX

to the Commission Regulation of 4 September 1997 fixing the export refunds on rice and broken rice

(ECU/tonne)			(ECU/tonne)		
Product code	Destination (1)	Amount of refunds	Product code	Destination (1)	Amount of refunds
1006 20 11 9000	01	176,00	1006 30 65 9900	01	220,00
1006 20 13 9000	01	176,00		04	220,00
1006 20 15 9000	01	176,00	1006 30 67 9100	—	—
1006 20 17 9000	—	—	1006 30 67 9900	—	—
1006 20 92 9000	01	176,00	1006 30 92 9100	01	220,00
1006 20 94 9000	01	176,00		02	226,00
1006 20 96 9000	01	176,00		03	231,00
1006 20 98 9000	—	—		04	220,00
1006 30 21 9000	01	176,00	1006 30 92 9900	01	220,00
1006 30 23 9000	01	176,00		04	220,00
1006 30 25 9000	01	176,00		—	—
1006 30 27 9000	—	—	1006 30 94 9100	01	220,00
1006 30 42 9000	01	176,00		02	226,00
1006 30 44 9000	01	176,00		03	231,00
1006 30 46 9000	01	176,00		04	220,00
1006 30 48 9000	—	—	1006 30 94 9900	01	220,00
1006 30 61 9100	01	220,00		04	220,00
	02	226,00		—	—
	03	231,00	1006 30 96 9100	01	220,00
	04	220,00		02	226,00
1006 30 61 9900	01	220,00		03	231,00
	04	220,00		04	220,00
1006 30 63 9100	01	220,00	1006 30 96 9900	01	220,00
	02	226,00		04	220,00
	03	231,00		—	—
	04	220,00	1006 30 98 9100	—	—
1006 30 63 9900	01	220,00	1006 30 67 9100	—	—
	04	220,00	1006 30 98 9900	—	—
1006 30 65 9100	01	220,00	1006 40 00 9000	—	—
	02	226,00			
	03	231,00			
	04	220,00			

(1) The destinations are identified as follows:

- 01 Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,
- 02 Zones I, II, III, VI, Ceuta and Melilla,
- 03 Zones IV, V, VII (c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,
- 04 Destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87.

NB: The zones are those defined in the Annex to amended Commission Regulation (EEC) No 2145/92.

COMMISSION REGULATION (EC) No 1735/97
of 4 September 1997
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 2375/96 ⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas 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;

Whereas, 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 5 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 4 September 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0709 90 79	052	74,1
	999	74,1
0805 30 30	388	58,0
	524	62,0
	528	56,2
	600	62,5
	999	59,7
	052	81,6
0806 10 40	400	169,0
	624	156,4
	999	135,7
	388	62,5
0808 10 92, 0808 10 94, 0808 10 98	400	56,2
	512	39,5
	528	55,4
	804	69,7
	999	56,7
	052	83,2
0808 20 57	064	62,4
	388	39,7
	512	8,9
	999	48,5
0809 40 30	052	47,2
	064	51,0
	066	50,7
	068	66,3
	093	47,5
	400	110,5
	624	187,6
	999	80,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1736/97
of 4 September 1997
determining the world market price for unginning cotton and the rate for the aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995⁽²⁾ laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81, as amended by Regulation (EC) No 1584/96⁽³⁾, and in particular Articles 3, 4 and 5 thereof,

Whereas Article 3 of Regulation (EC) No 1554/95 requires a world market price for unginning cotton to be periodically determined from the world market price determined for ginned cotton, using the historical relationship between the two prices as specified in Article 1 (2) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules for implementing the system of aid for cotton⁽⁴⁾, as last amended by Regulation (EC) No 1645/96⁽⁵⁾; whereas if it cannot be determined in this way it is to be based on the last price determined;

Whereas Article 4 of Regulation (EC) No 1554/95 requires the world market price for ginned cotton to be determined for a product of specific characteristics using the most favourable offers and quotations on the world market of those considered representative of the real market trend; whereas to this end an average is to be calculated of offers and quotations on one or more European exchanges for a cif product to a North European port from the supplier countries considered most representative as regards international trade; whereas these rules for determination of the world market price for ginned cotton provide for adjustments to reflect dif-

ferences in product quality and the nature of offers and quotations; whereas these adjustments are specified in Article 2 of Regulation (EEC) No 1201/89;

Whereas application of the above rules gives the world market price for unginning cotton indicated hereunder;

Whereas Article 5 (3) of Regulation (EC) No 1554/95 stipulates that the advance payment rate for the aid is to be the guide price less the world market price and less a further amount calculated by the formula applicable when the guaranteed maximum quantity is overrun but with a 15 % increase in the estimate for unginning cotton production; whereas Commission Regulation (EC) No 1670/97⁽⁶⁾ determined estimated production for the 1997/98 marketing year; whereas application of these rules gives the advance payment rates for each Member State indicated hereunder,

HAS ADOPTED THIS REGULATION:

Article 1

1. The world market price for unginning cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at ECU 39,374 per 100 kilograms.

2. Advance payment of the aid as indicated in Article 5 (3) of Regulation (EC) No 1554/95 shall be at the rate of:

- ECU 28,020 per 100 kilograms in Spain,
- ECU 34,079 per 100 kilograms in Greece,
- ECU 66,926 per 100 kilograms in other Member States.

Article 2

This Regulation shall enter into force on 5 September 1997.

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽³⁾ OJ L 206, 16. 8. 1996, p. 16.

⁽⁴⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁵⁾ OJ L 207, 17. 8. 1996, p. 3.

⁽⁶⁾ OJ L 237, 28. 8. 1997, p. 1.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1737/97

of 4 September 1997

fixing the minimum export tax on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1259/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas Article 16 of Regulation (EEC) No 1766/92 provides that where quotations or prices on the world market for certain products reach the level of Community prices and such situation is likely to continue and deteriorate thereby disturbing or threatening to disturb the Community market, appropriate measures may be taken; whereas Article 15 of Regulation (EC) No 1501/95 provides that, where such conditions are met, an export tax may be fixed;

Whereas prices on the world market for common wheat have reached the level of those in the Community and the trend in those prices is that they will increase; whereas this situation will give rise to problems; whereas it has therefore been decided to fix an export tax at a level which will avoid disturbance on the Community market;

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries was opened pursuant to Commission Regulation (EC) No 1339/97 ⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a minimum export tax taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or higher than the minimum tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the minimum export tax being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 29 August to 4 September 1997, pursuant to the invitation to tender issued in Regulation (EC) No 1339/97, the minimum tax on exportation of common wheat shall be ECU 0,01 per tonne.

Article 2

This Regulation shall enter into force on 5 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 174, 2. 7. 1997, p. 10.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 7.

COMMISSION REGULATION (EC) No 1738/97

of 4 September 1997

concerning tenders notified in response to the invitation to tender for the export
of barley issued in Regulation (EC) No 1337/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 923/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 1259/97⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1337/97⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No

1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or a minimum tax should not be fixed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 29 August to 4 September 1997 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1337/97.

Article 2

This Regulation shall enter into force on 5 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 174, 2. 7. 1997, p. 10.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 1739/97

of 4 September 1997

temporarily suspending the issue of export licences for certain milk products and determining what proportion of the amounts covered by pending applications for export licences may be allocated

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EC) No 1587/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1466/95 of 27 June 1995 laying down special detailed rules of application for export refunds on milk and milk products⁽³⁾, as last amended by Regulation (EC) No 417/97⁽⁴⁾, and in particular Article 8 (3) thereof,

Whereas the market in certain milk products is currently subject to uncertainty; whereas licence applications of a speculative nature should be avoided which may lead to distortions of competition between operators and potentially disrupt the continuity of exports of these products for the remainder of the period in question; whereas the

issue of export licences for the products involved should be temporarily suspended,

HAS ADOPTED THIS REGULATION:

Article 1

1. The issue of export licences for milk products falling within CN code 0406 is hereby suspended for the period 5 September to 11 September 1997.
2. Licences shall be issued for milk products falling within CN code 0406 30 for requests submitted up to 3 September 1997.

Article 2

This Regulation shall enter into force on 5 September 1997.

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

Done at Brussels, 4 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 144, 28. 6. 1995, p. 22.

⁽⁴⁾ OJ L 64, 5. 3. 1997, p. 1.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 June 1997

concerning the granting of additional implementation periods to Spain for the implementation of Commission Directive 90/388/EEC as regards full competition in the telecommunications markets

(Only the Spanish text is authentic)

(Text with EEA relevance)

(97/603/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement establishing the European Economic Area,

Having regard to Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services⁽¹⁾, as last amended by Directive 96/19/EC⁽²⁾, and in particular Article 2 (2) thereof,

Having given notice⁽³⁾ to interested parties to submit their comments in accordance with Article 2 (2) of Directive 90/388/EEC,

Whereas:

A. THE FACTUAL AND LEGAL BACKGROUND

I. The requests of Spain

- (1) In a bilateral meeting on 9 October 1996 and further confirmed by letter of 26 November 1996, Spain requested the following additional imple-

mentation periods concerning Articles 3 and 3b of Directive 90/388/EEC as amended by Directive 96/19/EC:

- (a) until 1 January 1998 for notification to the Commission before implementation of any licensing or declaration procedure for the provision of voice telephony and the establishment of public telecommunications networks, and of the details of the national scheme envisaged to share the net cost of the provision of the Universal Service Obligation ('USO'). This provisions had to be implemented no later than 1 January 1997 under Article 3 of Directive 90/388/EEC;
- (b) until 1 August 1998 for publication of any licensing or declaration procedure for the provision of voice telephony and the establishment of public telecommunications networks, and of the details of the national scheme envisaged to share the net cost of the provision of the USO. This provision has to be implemented no later than 1 July 1997 under Article 3 of Directive 90/388/EEC;
- and
- (c) until 30 November 1998 for the requirement that adequate numbers are available for all telecommunications services. This requirement is

⁽¹⁾ OJ L 192, 24. 7. 1990, p. 10.

⁽²⁾ OJ L 74, 22. 3. 1996, p. 13.

⁽³⁾ OJ C 4, 8. 1. 1997, p. 5.

in order to give full effect to the liberalization to the telecommunications market. This provision has to be implemented before 1 July 1997 under Article 3b of Directive 90/388/EEC.

As a consequence of the additional implementation periods mentioned under (a), (b) and (c), and although by January 1998 there will be three nation-wide licences to operate voice telephony and public telecommunications networks in Spain, in addition to the licences granted to cable operators to provide voice telephony, the Spanish Government intends to delay the full implementation of the liberalization of the Spanish telecommunications market until 1 December 1998. As from that date, further licences will be granted for the provision of voice telephony and public telecommunications networks to all the undertakings which apply for them in compliance with the conditions set out in the relevant Spanish law and implementing regulations.

(2) Spain considers those additional implementation periods necessary for the following reasons:

(a) the introduction of competition on 1 January 1998 would oblige Telefónica de España SA ('Telefónica'), the Spanish telecommunications operator, to speed up the rebalancing of its tariffs which will affect significantly its profit margin up to the end of 1998;

(b) the introduction of competition also requires further capital investment in Telefónica's network, in particular for the implementation of the new numbering plan allowing the granting of adequate numbers to all new market entrants. For Telefónica to complete the necessary work in time, it is necessary to grant an additional implementation period of at least eleven months between the interconnection of the operator which will be licensed in early January 1998 and the interconnection of all other new operators in the voice-telephony market. The conditions for interconnection between the first and second operators will be established during 1997.

(3) In response to the Commission's letter of 8 November 1996, the Spanish authorities confirmed in their letter received by the Commission on 15 November 1996 that they will:

(a) not seek any derogation for the lifting of restrictions on the provision of already liberalized telecommunications services on:

(i) networks established by the provider of telecommunications services;

(ii) infrastructures provided by third parties;

and

(iii) shared networks, other facilities and sites,

as from 1 July 1996 as provided in Article 2 (2) of Directive 90/388/EEC. Consequently, such networks can be provided without restrictions;

(b) allow in the course of 1997, as already decided, cable operators who apply in compliance with the conditions set out in the relevant law and implementing regulations to provide voice telephony, including the possibility to interconnect their networks for this purpose;

(c) ensure that the new General Telecommunications Law (*Ley General de Telecomunicaciones*) is adopted before the end of 1997, which will implement all outstanding provisions of Community law in the telecommunications sector;

(d) grant in early January 1998 a third nation-wide licence to operate voice telephony and public telecommunications networks, in addition to the licence already granted in 1996 to a second operator;

(e) ensure that all laws and regulations necessary for the complete opening of the telecommunications market to competition will be in place before the end of July 1998;

(f) ensure that on 1 December 1998, licences are granted effectively, without further conditions, for the provision of voice telephony and public telecommunications networks to all undertakings which applied in the course of August 1998, in compliance with the conditions set out in the relevant law and implementing regulations and in conformity with Directive 90/388/EEC; and

(g) abolish foreign ownership limitations in the conditions for licensing telecommunications operators in line with its obligations under the World Trade Organization.

- (4) Further details were provided by the Spanish authorities by letter of 6 February 1997.

II. The comments received

- (5) Four undertakings and associations provided comments following the notice published by the Commission on 8 January 1997, which amongst others:

- (a) state that Spain has a developed and highly digitalized telephone network. According to those comments, the cost of tariff rebalancing has been overestimated by the Spanish authorities. It is also noted that Telefónica is strongly positioned and that this was reflected in the oversubscription for shares offered for sale by the Spanish Government at the beginning of 1997. Furthermore, reference is made to the investments of Telefónica in America;
- (b) state that in order to give undertakings the time to submit licence applications, the licensing and USO financing schemes should be published as soon as possible following notification to the Commission; and
- (c) state that the cost of renumbering has been overestimated by the Spanish authorities. Although there will be some expenditure by Telefónica, the largest share of the cost of the new numbering scheme will be borne by subscribers; and
- (d) stress that licensed voice telephony operators should still have equal access to the numbers available from 1 January 1998;
- (e) refer to late implementation of various Community provisions in Spain and state that the timetable for the other provisions set out above to which the Spanish authorities have agreed should be rigorously followed by the Spanish authorities; and
- (f) state the licensing procedure for the third voice telephony operator should be published during September 1997 to allow undertakings to submit applications and a licence to be awarded early in January 1998.

By letter dated 28 February 1997, the Commission transmitted to Spain the comments of third parties received following the publication of the Commis-

sion's notice of 8 January 1997. The Commission invited the Spanish authorities to comment on the third party submissions. The Spanish authorities replied to those comments by letter dated 19 March 1997 and confirmed their original request.

III. Article 2 (2) of Directive 90/388/EEC

- (6) Detailed rules for the application of Article 90 (2) of the Treaty in the telecommunications sector were laid down in Directive 90/388/EEC which provides for the introduction of full competition in the telecommunications markets at the latest by 1 January 1998. However, under Article 2 (2) of Directive 90/388/EEC, as amended by Directive 96/19/EC, the Commission will grant additional implementation periods, upon request, to a number of Member States giving the right to (a) derogate from the dates set out in Directive 90/388/EEC and (b) maintain during additional periods the special or exclusive rights granted to undertakings to which they entrust the provision of a public telecommunications network and telecommunications services.
- (7) Unlike to the requests of Ireland (Commission Decision 97/114/EC⁽¹⁾) and Portugal (Commission Decision 97/310/EC⁽²⁾), which pertained to the continuation of the exclusive rights granted to their respective telecommunications organizations, the Spanish request for additional implementation periods relates mainly to the time schedule for the implementation of full competition in Spain, in the context of a progressive opening to competition of the Spanish telecommunications market. On 7 June 1996, by Royal Decree Law 6/1996 on Liberalization of Telecommunications, the monopoly on voice telephony and the oligopoly on public telecommunications networks were formally abolished, and the public body Retevisión was granted a licence to provide voice telephony and the corresponding infrastructures. Moreover, during 1997 Spain will authorize the cable TV companies to provide the voice-telephony service and in early January 1998 it will grant a third nation-wide licence to operate voice telephony and public telecommunications networks; it is fully committed to

⁽¹⁾ OJ L 41, 12. 2. 1997, p. 8.

⁽²⁾ OJ L 133, 24. 5. 1997, p. 19.

completing the introduction of competition by the end of November 1998. Telefónica remains, however, under obligation to provide the USO in Spain under the Telecommunications Law (*Ley de Ordenación de las Telecomunicaciones*) 31/1987 of 18 December 1987⁽¹⁾ and Telefónica's concession contract of 26 December 1991⁽²⁾.

- (8) The starting point of the examination of the Spanish request is the assessment whether Telefónica, which is entrusted with a task of general economic interest within the meaning of Article 90 (2) of the Treaty, could continue to perform its task in conditions of economic equilibrium during this transition towards full competition, if the timetable set out in Directive 90/388/EEC is strictly complied with.

B. LEGAL ASSESSMENT

Arguments adduced by Spain

- (9) The Spanish authorities state that:
- in order to face the competition from Retevisión, Telefónica must significantly rebalance its tariffs,
 - Telefónica must introduce cost accounting mechanisms,
 - Telefónica must further develop and modernize its network.

Spain has moreover decided by Resolution of 16 October 1996⁽³⁾, to introduce a new national numbering plan to solve the current numbering shortage in Spain and to prepare the market for full competition under Article 3b of Directive 90/388/EEC. This new numbering scheme is also being used to implement the common European emergency number. The numbering shortage has been caused by increases in demand brought about by increases in telephone penetration and development of the market to date. It is expected that further growth in this market will be strong. Telefónica expects to rebuild or modernize its analogue telephone exchanges, to rebuild its small-capacity digital exchanges and to develop further exchanges

to meet growing demand. In addition, a large public awareness campaign must be organized. This will require significant capital investment.

Assessment by the Commission

- (10) Given the fact that Spain refrained from asking for an additional implementation period for the abolition of the former exclusive rights of Telefónica, the latter now needs to address in a period of a few months and in competition with the newly authorized operators, structural adjustments for which the public operators in other Member States with less developed networks were granted additional periods of up to three years whilst sheltered by continued monopoly rights. In the case of Spain, those structural adjustments encompass (a) the completion of the rebalancing of Telefónica's tariffs, (b) the introduction of cost accounting, and (c) the improvement in network penetration which appears to be too low.

(a) *Tariff rebalancing*

- (11) The Spanish authorities state that most of Telefónica's tariffs are too high and out of alignment with the tariffs of other Community operators. Rebalancing by adjusting charges to bring prices closer to underlying costs is also still required to achieve this objective. Telefónica is proceeding with a gradual and flexible approach to tariff rebalancing, while maintaining safeguards for consumers in terms of price and quality of service. The Commission recognizes that every operator in the Community is or has been carrying out a programme of rebalancing.
- (12) The following table, based on information in the Commission's possession⁽⁴⁾, comparing certain telephone tariffs of Telefónica and the equivalent figures for an operator which has already rebalanced its tariffs⁽⁵⁾, supports the arguments of the Spanish authorities:

⁽⁴⁾ Tarifica study implemented for CEC — DG XIII.

⁽⁵⁾ A direct comparison of the telephony tariffs of Telefónica with the Community average (which is not a weighted average) would not be appropriate, given that the tariff structures of the 15 Community telecommunications organizations are still widely divergent and in addition, given that they are currently in the process of rebalancing tariffs. A comparison with British Telecom was also made in Decisions 97/114/EC with respect to Ireland, 97/310/EC with respect to Portugal and Decision 97/568/EC with respect to Luxembourg (OJ L 234, 26. 8. 1997, p. 7 — Decision not published at the time of notification).

⁽¹⁾ BOE No 303, 19. 12. 1987, p. 37409. Amended, *inter alia*, by Law 32/1992 of 3 December 1992 (BOE No 291, 4. 12. 1992, p. 41268).

⁽²⁾ BOE No 20, 23. 1. 1992, p. 2132.

⁽³⁾ BOE No 262, 30. 10. 1996, p. 32538.

Tariffs in ecus on 1 January 1996	Telefónica	British Telecom	Difference Telefónica/BT (BT = 100)
Charge for new connection	154,6	137,53	112
Bi-monthly rental	18,07	19,53	93
Local calls, resp. 3/10 minutes (cheap rate)	0,08-0,17	0,06-0,19	133-89
Local calls, resp. 3/10 minutes (peak rate)	0,08-0,21	0,14-0,47	57-45
Trunk calls, resp. 3/10 minutes (peak rate)	1,16-3,58	0,35-1,16	331-309
Intra EC, resp. 3/10 minutes (peak rate)	2,08-6,15	1,29-4,31	161-143

- (13) Given that due to technical progress in the network, cost is increasingly less dependent on distance, cost orientation of tariffs means as a general rule that prices are adjusted such that revenues are rebalanced with costs, that is:

— connection and rental revenues cover fixed costs (plus a standard margin),

— call revenues cover call costs (plus standard margin).

Consequently, telecommunications organizations should normally raise connection charges, bi-monthly rental and local calls (or at least not decrease these charges) and reduce tariffs for long-distance calls. It appears, however, that some of Telefónica's cheap rate local charges are already high in comparison with British Telecom and Telefónica will therefore not be able to compensate decreases in trunk and international charges with increases in local cheap-rate charges. Consequently, it is difficult for Telefónica to align its tariffs which are excessive in comparison to cost before 1 January 1998, which it would have to do if, in addition to the limited number of voice-telephony operators already authorized or to be authorized, other new providers were authorized by that date to enter the market. Those new entrants would concentrate on those segments of the voice-telephony market where the difference between the tariffs of Telefónica and costs is substantial with a view to conquering a share of that lucrative market.

The Spanish request to delay the granting of additional licences until the end of November 1998 therefore seems justified. On the other hand, as long as the voice-telephony market is not fully liberalized, Spain should not introduce a scheme to share the USO burden of Telefónica. The introduction of such a financing scheme should therefore also be delayed until that date.

- (14) Given the need not to affect the resources required to develop further the telecommunications network and to satisfy the USO, the Commission would expect a gradual tariff rebalancing process to be implemented by Telefónica. The Commission accepts that the introduction of competition in voice telephony is obliging Telefónica to speed up the rebalancing of its tariffs which will affect significantly its profit margin up to the end of 1998. That effect would not be mitigated by the establishment of the national scheme envisaged to share the net cost of the provision of the USO, given that competitors will need time to acquire significant market share and that Telefónica would for this reason remain the main contributor to the cost of the USO in the course of 1998.

(b) *Cost accounting*

- (15) The Spanish authorities have submitted that full tariff rebalancing will only be possible once Telefónica's new cost accounting system is fully operational. However, the Commission cannot accept that as a reason for granting an additional imple-

mentation period because Member States had to implement cost accounting systems by 31 December 1993 at the latest under Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines ⁽¹⁾ and by 31 December 1996 at the latest under Directive 95/62/EC of the European Parliament and the Council of 13 December 1995 on the application of open network provision to voice telephony ⁽²⁾.

(c) *Development of the network and provision of universal service*

- (16) In 1994 approximately 48 % of Telefónica's local exchanges were digitalized against a weighted Community average of 67 %. Moreover, Telefónica has not achieved particularly fast telephone penetration growth in the Community until recently (from 32 main lines per 100 inhabitants in 1990 to 37 lines against a Community average of 48 in 1994). Telefónica has the third lowest telephone penetration of the Community (after Ireland and Portugal), although in the last two years (1994-1996) Telefónica has intensified its efforts to modernize the network in Spain and has increased penetration to 40 main lines per 100 inhabitants and the rate of digitalization to 60 % ⁽³⁾. It is also noted that due to the relatively low population density in Spain in comparison with most other Member States, combined with the relatively low digitalization rate of Telefónica's network, increasing telephone penetration and developing the network generally is likely to be more costly in Spain than in other Member States.

- (17) The Commission therefore acknowledges that, combined with the need for further development of the network in Spain and for the more rapid rebalancing of Telefónica's tariffs, the cost of implementing the new numbering scheme is likely to affect a significant proportion of Telefónica's revenues. The Commission considers that the fact that Spain intends to complete the implementation of the new national numbering plan by 1 December 1998, in order to allow Telefónica to spread the cost in time and avoid its financial

stability being affected in the crucial year of transition to full competition, is not incompatible with the Spanish Government's obligation under Article 3 b of Directive 90/388/EEC, as amended by Directive 96/19/EC, to ensure by 1 July 1997 that adequate numbers are available for the liberalized telecommunications services. In any case, such numbers must be allocated in an objective, non-discriminatory, proportionate and transparent manner, in particular on the basis of individual application procedures.

- (18) As regards comments by third parties referring to the investments by Telefónica outside Spain, the Commission notes that investments by Telefónica in Central and South America are profitable. Such investments have diversified Telefónica's activities so that it is better placed to fulfil the task of general economic interest and in due course to face competition in the Spanish telecommunications market. Those investments have thus helped to avoid the need for Spain to request for an additional implementation period in other market segments of up to five years as foreseen by Directive 90/388/EEC.

Development of trade

- (19) The granting of the requested additional implementation periods to Spain would not foreclose the voice-telephony market in Spain. A second operator has already been authorized to provide voice telephony and public telecommunications networks. Cable TV operators are going to be granted the right to provide voice telephony and a third voice-telephony operator will be licensed by early January 1998. Further applicants will only be prevented from entering the Spanish market during a limited period (until 1 December 1998). Since the establishment of a new public telephony service requires a preparation of many months, the possible harm to potential investors by this additional implementation period of eleven months will be limited due to the following circumstances: (a) those investors can already plan their investments and (b) the formal licensing conditions will be published no later than 1 August 1998. That will mean that new entrants will be ready to be operational in advance of full liberalization. In addition, the effective liberalization of the market will be more rapidly achieved to the benefit of new market

⁽¹⁾ OJ L 165, 19. 6. 1992, p. 27.

⁽²⁾ OJ L 321, 30. 12. 1995, p. 6.

⁽³⁾ Internal data CEC DG XIII.

entrants given that the access conditions will in the meantime be settled between Telefónica and the initial competitors. Finally, no additional implementation period with regard to any other market segment has been requested by the Spanish authorities.

On the basis that the publication of licences will take place no later than 1 August 1998, and mindful of Article 9 (2) of Directive 97/13/EC of the European Parliament and the Council of 10 April 1997 on a common framework for general authorizations and individual licences in the field of telecommunications services⁽¹⁾, the Spanish authorities have stated that they will grant licences for the provision of public fixed voice telephony within four months of publication, to those undertakings which submit licence applications in good time. This will coincide with the completion of the implementation of the new numbering plan and will achieve the full liberalization of the voice-telephony and public telecommunications networks market in Spain.

- (20) The Commission moreover takes note that the new numbering plan has already been decided and that Spain will only spread over time the completion of its full implementation and will respect its obligations under Article 3b of Directive 90/388/EEC. Sufficient numbers will be granted already before that date to Retevisión, to the new operator to be licensed in early January, to the cable TV companies and to providers of services other than voice telephony.

Conclusion

- (21) On the basis of the above assessment, the Commission considers that the development of trade which would result from the granting to Spain of the following additional implementation periods under Article 2 (2) of Directive 90/388/EEC will not be affected to such an extent as to be contrary to the interests of the Community, in so far as the circumstances set out above are fulfilled:

- (a) until 1 January 1998 instead of 1 January 1997 as regards the notification to the Commission

of licensing or declaration procedures for the provision of voice telephony and the establishment of public telecommunications networks, and of the details of the national scheme envisaged to share the net cost of the provision of the USO;

and

- (b) until 1 August 1998 instead of 1 July 1997 as regards the publication of licensing or declaration procedures for the provision of voice telephony and public telecommunications networks, including details of the national scheme envisaged to share the net cost of the provision of the USO;
- (c) as a consequence of those two extensions, and in accordance with the deadlines set out in Article 9 (2) of Directive 97/13/EC, further licences for the provision of voice telephony and public telecommunications networks (in addition to those mentioned in paragraph 7 of this Decision) will only be granted as from 1 December 1998,

HAS ADOPTED THIS DECISION:

Article 1

Spain may postpone until:

- (a) 1 January 1998 the notification to the Commission before implementation of any licensing or declaration procedure for the provision of voice telephony and the establishment of public telecommunications networks, and of the details of the national scheme envisaged to share the net cost of the provision of the Universal Service Obligation;
- (b) 1 August 1998 the publication of any licensing or declaration procedure for the provision of voice telephony and the establishment of public telecommunications networks, and of the details of the national scheme envisaged to share the net cost of the provision of the Universal Service Obligation; and
- (c) 1 December 1998 the effective granting of further licences for the provision of voice telephony and public telecommunications networks, in compliance with the conditions set out in the relevant Spanish law and implementing regulations and in conformity with Directive 90/388/EEC.

⁽¹⁾ OJ L 117, 7. 5. 1997, p. 15.

Article 2

Spain shall inform the Commission of the implementation in national law of the following obligations in accordance with the following timetable:

- (a) during 1997, cable operators who apply in compliance with the conditions set out in the relevant law and implementing regulations shall be allowed to provide voice telephony including the possibility of interconnecting their networks for this purpose;
- (b) before the end of 1997, the new General Telecommunications Law (*Ley General de Telecomunicaciones*), which will implement the outstanding provisions of Community law in the telecommunications sector, shall be adopted;
- (c) in early January 1998, a third nation-wide licence to operate voice telephony and public telecommunications networks shall be granted, in addition to the licence which was granted in 1996 to a second operator; and
- (d) before the end of July 1998, all laws and regulations necessary for the complete opening of the telecommunications market to competition shall be in place.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 10 June 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 5 August 1997

modifying Commission Decision 95/199/EC and approving a modification of the single programming document for Community structural measures for improving the processing and marketing conditions for agricultural products in Hessen (Germany), in respect of Objective 5 (a), covering the period between 1994 and 1999

(Only the German version is authentic)

(97/604/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 951/97 of 20 May 1997, on improving the processing and marketing conditions for agricultural products⁽¹⁾ and in particular Article 15 (1) thereof,

Whereas, on 31 May 1995, the Commission has adopted Decision 95/199/EC⁽²⁾, approving the single programming document for Community structural measures for improving the processing and marketing conditions for agricultural products in Hessen (Germany), in respect of Objective 5 (a), covering the period between 1994 and 1999;

Whereas, on 19 August 1996 the German government submitted to the Commission a request for a modification of the single programming document approved, supplemented by additional information on 18 February, 14 March and 12 May 1997;

Whereas this request concerns the inclusion of the sector flowers and plants into the single programming document and the transfer of financial allocations initially attributed to the sectors other vegetable products (non-food products and medical plants) and miscellaneous products (products from organic farming) to the sectors meat, fruit and vegetables and to a minor extent to the sector potatoes; whereas these transfers take account of the result of the implementation of the measures in the first three years of the programming period and of the development of markets; whereas this reallocation between sectors is based on reductions and extensions respectively of support activities in the relevant sectors;

Whereas the second subparagraph of Article 2 of Commission Regulation (EEC) No 1866/90 of 2 July 1990 on arrangements for using the ecu for the purposes of the budgetary management of the Structural Funds⁽³⁾, as amended by Regulation (EC) No 2745/94⁽⁴⁾, provides

that in Commission decisions approving single programming documents, the Community assistance decided upon for the entire period and the annual breakdown thereof are to be set out in ecus, at prices for the year in which the decision is taken, and are to be subject to indexation; whereas Germany decided to use the amounts created by indexation for 1996 and 1997 by adding them to the initially granted amount in constant prices of 1995;

Whereas according to Article 25 (5) third subparagraph of Council Regulation (EEC) No 4253/88⁽⁵⁾, at last amended by Council Regulation (EEC) No 3193/94⁽⁶⁾, the monitoring committee of the single programming document for Community structural measures for improving the processing and marketing conditions for agricultural products in Germany, outside the Objective 1 region, in respect of Objective 5 (a) covering the period between 1994 and 1999, has expressed a positive opinion on the request in its meeting of 13 May 1997;

Whereas, during the implementation of the single programming document, the Member State will ensure that the individual projects included therein will conform with the selection criteria for investments for improving the processing and marketing conditions for agricultural products currently in force, in application of Article 8 (1) of Regulation (EC) No 951/97;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Committee on Agricultural Structures and Rural Development,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision 95/199/EC of 31 May 1995 is amended as follows:

1. in Article 2, the sector 'flowers and plants' is added for joint action.

⁽¹⁾ OJ L 142, 2. 6. 1997, p. 22.

⁽²⁾ OJ L 127, 10. 6. 1995, p. 23.

⁽³⁾ OJ L 170, 3. 7. 1990, p. 36.

⁽⁴⁾ OJ L 290, 11. 11. 1994, p. 4.

⁽⁵⁾ OJ L 374, 31. 12. 1988, p. 1.

⁽⁶⁾ OJ L 337, 24. 12. 1994, p. 11.

2. in Article 3, first subparagraph, the maximum amount of assistance from the EAGGF (Guidance Section) is changed to ECU 21 196 375.

3. in Article 4, the table indicating the annual breakdown is replaced by the following table:

in ECU (prices indexed to 1997)

1994	3 330 000
1995	3 980 000
1996	3 017 788
1997	3 337 918
1998	3 622 862
1999	3 907 807

4. the financial plan annexed to Decision 95/199/EC is replaced by a new plan which takes account of the

amendments in the different sectors and which is included in Annex I of the present decision ⁽¹⁾.

Article 2

The modifications of the single programming document approved by Decision 95/199/EC of 31 May 1995 and indicated in Annex II to this Decision ⁽²⁾ are approved.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 5 August 1997.

For the Commission

Monika WULF-MATHIES

Member of the Commission

⁽¹⁾ Annex not to be published in the Official Journal.

⁽²⁾ Annex not to be published in the Official Journal.

COMMISSION DECISION

of 11 August 1997

authorizing Member States to permit temporarily the marketing of forest reproductive material not satisfying the requirements of Council Directive 66/404/EEC

(97/605/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 15 thereof,

Having regard to the requests submitted by certain Member States,

Whereas production of reproductive material of the species set out in the Annex is at present insufficient in the Member States with the result that their requirements for reproductive material conforming to the provisions of Directive 66/404/EEC cannot be met;

Whereas third countries are not in a position to supply sufficient reproductive material of the relevant species which can afford the same guarantees as Community reproductive material and which conforms to the provisions of the abovementioned Directive;

Whereas the Member States should therefore be authorized to permit, for a limited period, the marketing of reproductive material of the relevant species which satisfies less stringent requirements to cover the shortage of reproductive material satisfying the requirements of Directive 66/404/EEC;

Whereas, for genetic reasons, the reproductive material must be collected at places of origin within the natural range of the relevant species and the strictest possible guarantees should be given to ensure the identity of the material;

Whereas, furthermore, reproductive material should be marketed only if it is accompanied by a document bearing certain details of the reproductive material in question;

Whereas each of the Member States should furthermore be authorized to permit the marketing in its territory of seed which satisfy less stringent requirements in respect of provenance, as laid down in Directive 66/404/EEC, if the marketing of such material has been authorized in the other Member States pursuant to this Decision;

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

HAS ADOPTED THIS DECISION:

Article 1

1. Member States are authorized to permit the marketing in their territory of seed satisfying less stringent requirements in respect of provenance, as laid down in Directive 66/404/EEC, on the terms set out in the Annex hereto and on condition that the proof specified in Article 2 is furnished with regard to the place of provenance of the seed and the altitude at which it was collected.

2. Member States are authorized to permit the marketing in their territory of plants produced in the Community from the abovementioned seed.

Article 2

1. The proof referred to in Article 1 (1) shall be deemed to be furnished where the reproductive material is of the category 'source-identified reproductive material' as defined in the Organization for Economic Cooperation and Development (OECD) scheme for the control of forest reproductive material moving in international trade, or of another category defined in that scheme.

2. Where the OECD scheme referred to in paragraph 1 is not used at the place of provenance of the reproductive material, other official evidence shall be admissible.

3. Where official evidence cannot be provided, Member States may accept other non-official evidence.

Article 3

The Member States other than the applicant Member States are also authorized to permit, on the terms set out in the Annex and for the purposes intended by the applicant Member States, the marketing in their territory of the seeds authorized to be marketed pursuant to this Decision.

⁽¹⁾ OJ 125, 11. 7. 1966, p. 2326/66.

Article 4

The authorization provided for in Article 1 (1) in so far as it concerns the first placing of forest reproductive material on the market of the Community, shall expire on 30 November 1998. Such authorization, in so far as it concerns subsequent placing on the market of the Community, shall expire on 31 December 2000.

Article 5

With regard to the first placing on the market of forest reproductive material, as referred to in Article 4, Member States shall, by 1 January 1999, notify the Commission of the quantities of such material satisfying less stringent

requirements which have been approved for marketing in their territory pursuant to this Decision. The Commission shall inform the other Member States thereof.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 11 August 1997.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

*LEGEND**1. Member States*

A	= Republic of Austria
B	= Kingdom of Belgium
D	= Federal Republic of Germany
DK	= Kingdom of Denmark
E	= Kingdom of Spain
F	= French Republic
GB	= United Kingdom
GR	= Greece
I	= Italian Republic
IRL	= Ireland
L	= Grand Duchy of Luxembourg
NL	= Kingdom of the Netherlands
P	= Republic of Portugal

2. States or regions of provenance

CDN	= Canada
CDN (QCI)	= Canada (Queen Charlotte Island)
CDN (BC)	= Canada (British Columbia)
CH	= Switzerland
CROATIA	= Croatia
CZ	= Czech Republic
EC	= European Community
FYROM	= Former Yugoslav Republic of Macedonia
J	= Japan
PL	= Poland
R	= Romania
SL	= Slovenia
USA	= United States of America

3. Other abbreviations

max. alt.	= maximum altitude
OEP	= or equivalent provenance
ECSA	= from EC selected areas

*ANEXO — BILAG — ANLAGE — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —
BIJLAGE — ANEXO — LIITE — BILAGA*

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	<i>Abies alba</i>		<i>Larix leptolepis</i>		<i>Pinus strobus</i>	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
A	250	SL, CROATIA, CZ, PL	—	—	30	USA (Eastern States, Appalachians), SL
B	25	R	40	J	15	CDN (Ontario), USA, CROATIA, SL
D	100	EC (D/OEP), CZ, CH, R, FYROM	50	EC (D/OEP), J	50	USA (Appalachians), EC (D/OEP)
DK	550	R	50	J	—	—
E	85	EC (E/OEP)	75	J	50	USA
F	—	—	—	J	—	—
GB	10	EC (GB/OEP)	250	J (Hokkaido, Nagano), EC (GB/OEP)	—	—
GR	—	—	—	—	—	—
I	—	—	15	J (Hokkaido)	45	USA (Eastern States, Appalachians)
IRL	—	—	180	J	—	—
L	—	—	—	—	—	—
NL	40	R	20	J (Hokkaido)	25	USA, CDN
P	—	—	—	—	1	EC (P/OEP)

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	<i>Picea sitchensis</i>		<i>Pseudotsuga taxifolia</i>	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
A	—	—	100	USA (Washington, Oregon) CDN (BC)
B	20	USA (Washington)	400	USA (Washington, max. alt. 450 m ECSA)
D	100	CDN (QCI, West Coast) USA (Washington), EC (D/OEP)	2 000	USA (Washington, Oregon) CDN (BC), EC (D/OEP)
DK	100	CDN (QCI, BC)	40	USA (Washington)
E	140	USA (.....)	735	USA (Oregon, Washington, California)

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	Picea sitchensis		Pseudotsuga taxifolia	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
F	—	—	—	—
GB	500	EC (GB/OEP), CDN (BC), USA (Washington, Oregon)	400	USA (Washington max. alt. 450 m), CDN (BC)
GR	—	—	—	—
I	—	—	75	USA (Oregon, California)
IRL	800	USA (Washington, Oregon) CDN (QCI)	150	USA (Washington, Oregon)
L	—	—	10	USA (Washington, max. alt. 610 m)
NL	2	USA, CDN (.)	—	—
P	2	EC (P [Serra da Estrela]/OEP)	500	EC (P [Serra da Estrela]/OEP), USA (Washington, Oregon)