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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 360/1999
of 18 February 1999
establishing the standard import values for determining the entry price of certain
fruit and vegetables

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

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

Whereas 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 19 February 1999.

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

Done at Brussels, 18 February 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

ANNEX

to the Commission Regulation of 18 February 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	55,0
	204	41,1
	212	117,1
	624	115,7
	999	82,2
0707 00 05	068	134,5
	999	134,5
0709 10 00	220	132,9
	999	132,9
0709 90 70	052	127,5
	204	143,6
	999	135,6
0805 10 10, 0805 10 30, 0805 10 50	052	62,5
	204	38,2
	212	42,6
	220	27,2
	600	48,3
	624	55,2
	999	45,7
0805 20 10	204	74,1
	999	74,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	54,6
	204	60,8
	464	61,8
	600	84,2
	624	80,3
	999	68,3
0805 30 10	052	62,9
	600	61,9
	999	62,4
0808 10 20, 0808 10 50, 0808 10 90	039	76,4
	060	38,6
	400	74,3
	404	62,3
	528	145,2
	706	107,2
	720	81,7
	728	66,6
	999	81,5
	052	132,7
0808 20 50	388	79,6
	400	85,1
	512	87,2
	528	82,4
	624	55,8
	999	87,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 361/1999

of 18 February 1999

on the sale by the procedure laid down in Regulation (EEC) No 2539/84 of beef held by certain intervention agencies and intended for supplying the Canary Islands and repealing Regulations (EC) No 2509/98 and (EC) No 2319/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 1633/98⁽²⁾, and in particular Article 7(3) thereof,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products⁽³⁾, as last amended by Regulation (EC) No 2348/96⁽⁴⁾, and in particular Article 3(2) thereof,

Whereas certain intervention agencies hold substantial stocks of beef bought into intervention; whereas an extension of the storage period should be avoided on account of the ensuing high costs;

Whereas Commission Regulation (EC) No 1319/98⁽⁵⁾ establishing a forecast balance for the supply to the Canary Islands of live bovine animals and beef and veal products fixes the forecast supply balance for frozen meat of bovine animals for the period 1 July 1998 to 30 June 1999; whereas, in the light of traditional trade patterns, beef should be released from intervention for the purpose of supplying the Canary Islands during that period;

Whereas Commission Regulation (EEC) No 2539/84 of 5 September 1984 laying down detailed rules for certain sales of frozen beef held by the intervention agencies⁽⁶⁾, as last amended by Regulation (EC) No 2417/95⁽⁷⁾, provides for the possibility of a two-stage procedure for the sale of beef from intervention;

Whereas, in order to ensure that the tendering procedure is consistent and uniform, measures should be adopted in addition to those laid down in Commission Regulation (EEC) No 2173/79⁽⁸⁾, as last amended by Regulation (EC) No 2417/95;

Whereas Article 3 of Commission Regulation (EC) No 2790/94 of 16 November 1994 laying down common detailed rules for the implementation of Council Regulation (EEC) No 1601/92 concerning specific measures for the Canary Islands with regard to certain agricultural products⁽⁹⁾, as last amended by Regulation (EEC) No 825/98⁽¹⁰⁾, provides for the use of aid certificates issued by the competent Spanish authorities for supplies from the Community; whereas, in order to improve the operation of the abovementioned arrangements, certain derogations from that Regulation should be laid down, in particular, with regard to the application for and the issue of aid certificates;

Whereas the sale should be conducted in accordance with Commission Regulations (EEC) No 2539/84, (EEC) No 3002/92⁽¹¹⁾, as last amended by Regulation (EC) No 770/96⁽¹²⁾, and (EC) No 2790/94, subject to certain special exceptions on account of the particular use to which the products in question are to be put;

Whereas it is necessary to provide for the lodging of a security to guarantee that the beef arrives at the intended destination;

Whereas Commission Regulations (EC) No 2509/98⁽¹³⁾ and (EC) No 2319/98⁽¹⁴⁾ should be repealed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The sale shall take place of intervention products bought in under Article 6 of Regulation (EEC) No 805/68, of approximately:

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 17.

⁽³⁾ OJ L 173, 27. 6. 1992, p. 13.

⁽⁴⁾ OJ L 320, 11. 12. 1996, p. 1.

⁽⁵⁾ OJ L 183, 26. 6. 1998, p. 22.

⁽⁶⁾ OJ L 238, 6. 9. 1984, p. 13.

⁽⁷⁾ OJ L 248, 14. 10. 1995, p. 39.

⁽⁸⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁹⁾ OJ L 296, 17. 11. 1994, p. 23.

⁽¹⁰⁾ OJ L 117, 21. 4. 1998, p. 5.

⁽¹¹⁾ OJ L 301, 17. 10. 1992, p. 17.

⁽¹²⁾ OJ L 104, 27. 4. 1996, p. 13.

⁽¹³⁾ OJ L 313, 21. 11. 1998, p. 3.

⁽¹⁴⁾ OJ L 289, 28. 10. 1998, p. 20.

- 1 500 tonnes of boneless beef held by the Irish intervention agency,
- 200 tonnes of bone-in beef held by the Spanish intervention agency.

2. This meat shall be sold for delivery to the Canary Islands pursuant to Regulation (EC) No 1319/98.

3. Subject to the provisions of this Regulation, the sale shall take place in accordance with Regulations (EEC) No 2539/84, (EEC) No 3002/92 and (EC) No 2790/94.

4. The qualities and the minimum prices referred to in Article 3(1) of Regulation (EEC) No 2539/84 are set out in Annex I hereto.

5. The intervention agencies shall sell first those products in each product group which have been in storage longest.

Particulars of the quantities and places where the products are stored shall be made available to interested parties at the addresses given in Annex II.

6. Only those tenders shall be taken into consideration which reach the intervention agencies concerned no later than 12 noon on 25 February 1999.

7. Notwithstanding Article 8(1) of Regulation (EEC) No 2173/79 a tender must be submitted to the intervention agency concerned in a closed envelope, bearing the reference to the Regulation concerned. The closed envelope must not be opened by the intervention agency before the expiry of the tender deadline referred to in paragraph 6.

Article 2

1. The tender or the purchase application shall be submitted by an operator entered in the register referred to in Article 5(1) of Regulation (EC) No 2790/94 or by an operator duly authorised by the aforementioned operator to act on his behalf.

2. After receiving a tender or purchase application, the intervention agency shall only conclude the contract after having checked with the competent Spanish agencies referred to in Annex III that the quantity concerned is available within the forecast supply balance.

3. The Spanish agency shall immediately reserve for the applicant the quantity requested until receipt of the application for the relevant aid certificate. Notwithstanding Article 6(1) of Regulation (EC) No 2790/94, the certificate application must be accompanied only by the

original purchase invoice issued by the seller intervention agency or by a certified copy thereof.

The application for the aid certificate shall be submitted not later than 14 days after the date on which the purchase invoice is made out.

4. Notwithstanding Article 3(1) of Regulation (EC) No 2790/94, the aid shall not be granted for meat sold pursuant to this Regulation.

5. Notwithstanding Article 3(4)(b) of Regulation (EC) No 2790/94, box 24 of the aid certificate application and the aid certificate shall contain the entry: 'aid certificate for use in the Canary Islands — no aid to be paid'.

Article 3

Notwithstanding Article 4(2) of Regulation (EEC) No 2539/84, purchase applications may be submitted from the 10th working day following the date referred to in Article 1(6).

Article 4

The security provided for in Article 5(1) of Regulation (EEC) No 2539/84 shall be:

- EUR 3 000 per tonne for boneless beef,
- EUR 1 400 per tonne for bone-in beef.

Delivery of the products concerned to the Canary Islands not later than 30 June 1999 shall be a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85⁽¹⁾. Proof of compliance with this requirement must be provided not later than two months after completion of formalities with the competent authorities in the Canary Islands for the delivery concerned.

Article 5

The removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92 and the T 5 control copy shall contain the entry:

Carne de intervención destinada a las islas Canarias — Sin ayuda [Reglamento (CE) n° 361/1999]

Interventionskød til De Kanariske Øer — uden støtte (forordning (EF) nr. 361/1999)

⁽¹⁾ OJ L 205, 3. 8. 1985, p. 5.

Interventionsfleisch für die Kanarischen Inseln — ohne Beihilfe (Verordnung (EG) Nr. 361/1999)

Κρέας από την παρέμβαση για τις Καναρίους Νήσους — χωρίς ενισχύσεις [Κανονισμός (ΕΚ) αριθ. 361/1999]

Intervention meat for the Canary Islands — without the payment of aid (Regulation (EC) No 361/1999)

Viandes d'intervention destinées aux îles Canaries — Sans aide [règlement (CE) n° 361/1999]

Carni in regime d'intervento destinate alle isole Canarie — senza aiuto [regolamento (CE) n. 361/1999]

Interventievlees voor de Canarische Eilanden — zonder steun (Verordening (EG) nr. 361/1999)

Carne de intervenção destinada às ilhas Canárias — sem ajuda [Regulamento (CE) n.º 361/1999]

Kanariansaarille osoitettu interventioliha — ilman tukea (Asetus (EY) N:o 361/1999)

Interventionskött för Kanarieöarna — utan bidrag (Förordning (EG) nr 361/1999).

Article 6

Regulations (EC) No 2509/98 and (EC) No 2319/98 are 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*.

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

Done at Brussels, 18 February 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I — LIITE I — BILAGA I

Estado miembro	Productos	Cantidad aproximada (toneladas)	Precio mínimo expresado en euros por tonelada (1)
Medlemsstat	Produkter	Tilnærmet mængde (tons)	Mindstepriser i EUR/ton (1)
Mitgliedstaat	Erzeugnisse	Ungefähre Mengen (Tonnen)	Mindestpreise, ausgedrückt in EUR/Tonne (1)
Κράτος μέλος	Προϊόντα	Κατά προσέγγιση ποσότητα (τόνοι)	Ελάχιστες τιμές πώλησης εκφραζόμενες σε ευρώ ανά τόνο (1)
Member State	Products	Approximate quantity (tonnes)	Minimum prices expressed in EUR per tonne (1)
État membre	Produits	Quantité approximative (tonnes)	Prix minimaux exprimés en euros par tonne (1)
Stato membro	Prodotti	Quantità approssimativa (tonnellate)	Prezzi minimi espressi in euro per tonnellata (1)
Lidstaat	Producten	Hoeveelheid bij benadering (ton)	Minimumprijzen uitgedrukt in euro per ton (1)
Estado-membro	Produtos	Quantidade aproximada (toneladas)	Preço mínimo expresso em euros por tonelada (1)
Jäsenvaltio	Tuotteet	Arvioitu määrä (tonneina)	Alimmat hinnat euroina tonnilla (1)
Medlemsstat	Produkter	Ungefärlig kvantitet (ton)	Lägsta priser i euro per ton (1)

a) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

IRELAND	— Thick flank (INT 12)	400	1 000
	— Topside (INT 13)	200	1 200
	— Silverside (INT 14)	100	1 000
	— Rump (INT 16)	100	1 000
	— Striploin (INT 17)	500	2 500
	— Forerib (INT 19)	200	1 200

b) **Cuartos traseros con hueso — Bagfjerdinger, ikke udbenet — Hinterviertel mit Knochen — Οπίσθια τέταρτα με κόκαλα — Bone-in hindquarters — Quartiers arrière avec os — Quarti posteriori non disossati — Achtervoeten met been — Quartos traseiros com osso — Luullinen takaneljannes — Bakkvartsparter med ben**

ESPAÑA	— Cuartos traseros	200	750
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(1) Estos precios se entienden peso neto de acuerdo con las disposiciones del apartado 1 del artículo 17 del Reglamento (CEE) n° 2173/79.

(1) Disse priser gælder netto i overensstemmelse med bestemmelserne i artikel 17, stk. 1, i forordning (EØF) nr. 2173/79.

(1) Diese Preise gelten netto gemäß den Vorschriften von Artikel 17 Absatz 1 der Verordnung (EWG) Nr. 2173/79.

(1) Οι τιμές αυτές εφαρμόζονται επί του καθαρού βάρους σύμφωνα με τις διατάξεις του άρθρου 17 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 2173/79.

(1) These prices shall apply to net weight in accordance with the provisions of Article 17(1) of Regulation (EEC) No 2173/79.

(1) Ces prix s'entendent poids net conformément aux dispositions de l'article 17, paragraphe 1, du règlement (CEE) n° 2173/79.

(1) Il prezzo si intende peso netto in conformità del disposto dell'articolo 17, paragrafo 1, del regolamento (CEE) n. 2173/79.

(1) Deze prijzen gelden netto, overeenkomstig de bepalingen van artikel 17, lid 1, van Verordening (EEG) nr. 2173/79.

(1) Estes preços aplicam-se a peso líquido, conforme o disposto no n.º 1 do artigo 17.º do Regulamento (CEE) n.º 2173/79.

(1) Asetuksen (ETY) N:o 2173/79 17 artiklan 1 kohdan mukaiset nettopainohinnat.

(1) Dessa priser gäller nettovikt enligt bestämmelser i artikel 17.1 i förordning (EEG) nr 2173/79.

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II — LIITE II — BILAGA II*

Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos
de intervenção — Interventioelinten osoitteet — Interventionsorganens adresser

ESPAÑA:

FEGA (Fondo Español de Garantía Agraria)
Beneficencia, 8
E-28005 Madrid
Tel.: (34) 913 47 65 00/913 47 63 10; télex: FEGA 23427 E/FEGA 41818 E;
fax: (34) 915 21 98 32/915 22 43 87

IRELAND:

Department of Agriculture, Food and Forestry
Agriculture House
Kildare Street
IRL-Dublin 2
Tel. (01) 678 90 11, ext. 2278 and 3806
Telex 93292 and 93607, telefax (01) 661 62 63, (01) 678 52 14 and (01) 662 01 98

*ANEXO III — BILAG III — ANHANG III — ΠΑΡΑΡΤΗΜΑ III — ANNEX III — ANNEXE
III — ALLEGATO III — BIJLAGE III — ANEXO III — LIITE III — BILAGA III*

Organismos españoles a que se refiere el apartado 2 del artículo 2 — De i artikel 2, stk. 2,
omhandlede spanske organer — Die in Artikel 2 Absatz 2 genannten spanischen Stellen —
Οι ισπανικοί οργανισμοί που προβλέπονται στο άρθρο 2 παράγραφος 2 — The Spanish agencies
referred to in Article 2(2) — Les organismes espagnols visés à l'article 2, paragraphe 2 —
Organismi spagnoli di cui all'articolo 2, paragrafo 2 — In artikel 2, lid 2, bedoelde Spaanse
instanties — Organismos espanhóis referidos no n.º 2 do artigo 2.º — 2 artiklan 2 kohdan
tarkoittama espanjalainen toimielin — De i artikel 2.2 avsedda spanska organen

— Dirección Territorial de Comercio en Las Palmas
José Frachy Roca, 5
E-35007
Las Palmas de Gran Canaria
Tel.: (34) 928 26 14 11/928 26 21 36; fax: (34) 928 27 89 75

— Dirección Territorial de Comercio en Santa Cruz de Tenerife
Pilar, 1
E-38002
Santa Cruz de Tenerife
Tel.: (34) 922 24 14 80/922 24 13 79; fax: (34) 922 24 42 61/922 24 68 36

COMMISSION REGULATION (EC) No 362/1999

of 18 February 1999

imposing a provisional anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, Mexico, South Africa and the Ukraine and accepting undertakings offered by certain exporters in Hungary and Poland

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 last amended by Regulation (EC) No 905/98⁽²⁾, and in particular Articles 7 and 8 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 20 May 1998, 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 steel ropes and cables originating in the People's Republic of China (hereinafter 'the PRC'), India, the Republic of Korea (hereinafter 'Korea'), South Africa and the Ukraine.

On 30 July 1998 the Commission similarly announced the initiation of an anti-dumping proceeding concerning imports of the same product originating in Hungary, Mexico and Poland⁽⁴⁾.

- (2) The proceedings were initiated as a result of two complaints lodged in April and June 1998 by the Liaison Committee of European Union Wire Rope Industries (EWRIS) on behalf of Community producers representing a major proportion of the Community production of steel ropes and cables. The complaints contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient, after consultation, to justify the initiation of a proceeding.

It was subsequently considered appropriate for the purposes of both dumping and injury analysis to combine the two proceedings (see recital 6).

- (3) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting countries. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation. All parties who so requested were granted a hearing.

- (4) The Commission sent questionnaires to all parties known to be concerned. In view of the large number of complainant Community producers and the time limits established in Article 6(9) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation') the Commission decided to investigate injury on the basis of a sample of complainant Community producers in accordance with Article 17 of the Basic Regulation. The Commission received replies from 21 exporting producers in the countries concerned, three importers and three suppliers for the upstream industry. No reply was received from the user industry.

- (5) The Commission sought and verified all the information it deemed necessary for the purposes of a preliminary determination of dumping, injury and Community interest and carried out verification visits at the premises of the following companies:

A. Complainant Community producers

- (a) Denmark

Randers Rebslageri

- (b) France

Trefileurope

- (c) Germany

BTS Drahtseile GmbH

- (d) Italy

Redaelli Tecnacordati SpA

- (e) Spain

Trenzas y Cables SL

- (f) United Kingdom

Bridon International Limited

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 128, 30. 4. 1998, p. 18.

⁽³⁾ OJ C 155, 20. 5. 1998, p. 11.

⁽⁴⁾ OJ C 239, 30. 7. 1998, p. 3.

B. Exporting producers**(a) Hungary**

Drótáru és Drótkötél Ipari és Kereskedelmi Rt, Miskolc

(b) India

Usha Martin Industries & Usha Beltron Ltd, Calcutta

Mohatta & Heckel, Mumbai

(c) Korea

Kiswire Ltd, Seoul and Pusan

Manho Rope & Wire Ltd, Pusan

Chung Woo Rope Co., Ltd, Pusan

Chun Kee Steel and Wire Rope Co., Ltd, Suncheon

(d) Mexico

Aceros Camesa SA de CV, Mexico

Cablesa SA de CV, Queretaro

The latter was investigated but it was found not to have exported the product concerned during the investigation period and consequently it is not concerned by the anti-dumping proceeding.

(e) Poland

Drumet SA, Wloclawek

'Linodrut' Group ⁽¹⁾

(f) South Africa

Haggie Rand Limited, Cleveland

C. Related importers in the Community

(a) India: Usha Martin Europe Limited (United Kingdom)
Usha Martin Scandinavia (Denmark)

(b) Korea: Kiswire Europe BV (Netherlands)

(c) South Africa: Haggie Rand Europe (Belgium)
Le Lis (Belgium)

- (6) With regard to both proceedings, the dumping investigation covered the period 1 January 1997 to 31 March 1998 (hereinafter referred to as 'the investigation period' or 'IP').

⁽¹⁾ The following companies of the group are concerned by the anti-dumping proceeding:

— Śląskie Zakłady Lin i Drutu 'Linodrut' Spółka Akcyjna,
— Fabryka Lin i Drutów 'Linodrut' Zabrze Spółka z ograniczoną odpowiedzialnością,
— Fabryka Lin i Drutów 'Falind' Spółka z ograniczoną odpowiedzialnością,
— Górnoślaska Fabryka Lin i Drutu 'Linodrut' Bytom Spółka z ograniczoną odpowiedzialnością,
— Dolnoślaska Fabryka Lin i Drutu 'Linodrut Linmet' spółka z ograniczoną odpowiedzialnością.

The examination of injury covered the period 1 January 1994 to 31 March 1998 (hereinafter referred to as the 'period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

- (7) The product concerned is steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm (hereinafter, using industry terminology, referred to as steel wire ropes or 'SWR'). They are currently classifiable within CN codes 7312 10 82, 7312 10 84, 7312 10 86, 7312 10 88 and 7312 10 99.

SWR consist of three basic components: the steel wire that forms the strand, the strands that are wrapped around a core and the core itself. These components vary in design depending on the physical requirement of the intended application of the SWR. A single strand can in certain cases be used as a SWR.

There are different qualities of steel wire, with varying tensile strength and diameter. The steel wire may be galvanised (i.e. zinc coated) or bright.

The strand is obtained by closely twisting together several wires arranged in different geometric patterns or formations (e.g. 'standard', 'seal', 'filler' and 'warrington'). The quantity, size and quality of the steel wire and the specific construction establish the properties of each type of SWR.

The strands are usually assembled and wrapped around a core which can be of fibre (natural or synthetic), steel, or a combination of the two.

There are other specifications of SWR such as the lay direction, whether there is pre-forming or other special properties (e.g. compacted, cable laid, rotation resistance). They are generally round in cross-section but may also be rectangular. SWR may be cut to length or fitted (hooks, rings), and may be covered with plastic.

SWR are used in a variety of applications including general purposes, fishing, maritime/shipping, oil and gas industries, mining, forestry, aerial transport, civil engineering, construction and elevator. Despite these different applications and minor differences in their physical characteristics, these products are considered as the same product.

2. Like product

- (8) Although it was alleged by certain exporting producers that the products concerned from different exporting countries were not all alike, the Commission found that there were no significant differences in the basic physical and technical

characteristics of the various types of SWR (see description above). As concerns the application and usage of SWR, although a wide range of user industries exists, all SWR were found to have essentially the same use.

SWR produced and sold on the domestic market in Hungary, India, Korea, Mexico, Poland and South Africa, as well as those produced and sold by the Community industry, were found to have the same physical and technical characteristics and uses as those exported to the Community from the countries concerned. Furthermore, within each product type it was found that SWR imported into the Community from the countries concerned were interchangeable with those produced in the Community. It was therefore concluded that all SWR were like products within the meaning of Article 1(4) of the Basic Regulation.

C. DUMPING

1. Normal value

(a) *General method (PRC, Hungary, India, Korea, Mexico, Poland, South Africa and Ukraine)*

- (9) In order to establish normal value, it was first determined for each cooperating exporting producer of the countries involved in the proceeding whether the total volume of the domestic sales of the product concerned was representative in accordance with Article 2(2) of the Basic Regulation, i.e. whether these sales represented more than 5 % of the sales volume of the product concerned exported to the Community.

It was then 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 products meeting the 5 % test it was examined 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 domestic sales above unit cost represented at least 80 % 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 profitable transactions was lower than 80 % but not lower than 10 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

- (10) For those product types where the volume of domestic sales was lower than 5 % of the volume exported to the Community, or where the volume of profitable domestic sales was less than 10 %, domestic sales of those product types were considered insufficient within the meaning of Article 2(2)(4) of the Basic Regulation and were therefore disregarded. In these cases normal value was based on the weighted average of the 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 in accordance with Article 2(1) of the Basic Regulation.

- (11) Where, per product type, there were insufficient sales or no such representative domestic sales by other producers in the country concerned, normal value was constructed on the basis of the costs of manufacturing incurred by the exporting producer concerned for the exported product type in question plus a reasonable amount for selling, general and administrative (SG&A) costs and for profits in accordance with Article 2(3) and (6) of the Basic Regulation. The SG&A costs were based on representative domestic sales and the profit margin on representative sales made in the ordinary course of trade

(b) *Use of available information (India and Poland)*

- (12) One Indian and one Polish exporting producer failed to provide adequate information concerning normal value; in particular the information about costs of production was insufficient. In these circumstances, pursuant to Article 18(1) and (5) of the Basic Regulation, the normal value of these companies had to be established on the basis of the facts available. It was provisionally decided that the information on the normal value of the other cooperating exporting producer in the country concerned constituted the most appropriate basis.

(c) *Analogue country for non-market economy countries (PRC and Ukraine)*

- (13) Since the PRC and Ukraine are considered to be non-market economy countries, in accordance with Article 2(7) of the Basic Regulation it was necessary to establish a normal value by reference to a market economy third country. Norway was suggested by the complainant and mentioned in the notice of

initiation. Within the time limit specified in this notice one exporting Chinese producer expressed disagreement with this proposal and proposed India as an alternative. One Ukrainian producer also expressed disagreement and proposed Turkey.

After investigation it appeared that Norway was not an appropriate analogue country as there was only one producer and only limited imports, therefore competition in this market was very limited; furthermore, the size of the domestic market was very small.

An investigation was made to establish the possibility of using the normal value in the United States, where there is a wide range of products in a competitive market. Only one of the companies contacted in the United States agreed to cooperate. However, during the investigation, it appeared that the level of cooperation from this producer was not sufficient to enable the Commission to verify satisfactorily, for each product type, the level of prices paid on the United States market and the cost of production.

At the same time the Commission examined whether Thailand or Turkey were appropriate choices. A number of companies were contacted but, despite considerable efforts on the part of the Commission, they refused to cooperate.

Under these circumstances it was decided to use one of the market economy countries involved in the proceeding. India was considered the most appropriate analogue country in accordance with Article 2(7) of the Basic Regulation. First, the Indian domestic market is the largest in size, characterised by a significant number of competing local producers; second, Indian domestic sales of the product concerned are the most representative when compared with Chinese and Ukrainian exports to the Community.

For the above reasons the normal value for Chinese and Ukrainian exports to the Community was established on the basis of prices actually paid or payable by independent customers in the Indian market.

2. Export price

(a) *General method*

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

- (15) In India, Korea and South Africa the export prices were constructed on the basis of the prices at which the imported products were first resold to independent buyers in the Community, in accordance with Article 2(9) of the Basic Regulation. Adjustments were made for all costs incurred between importation and resale, including a reasonable margin for SG&A plus profit. The level of profit was determined on the basis of information on profits submitted by the cooperating unrelated importers of the product concerned in the Community where such information was considered both reliable and representative.

(b) *Individual treatment (PRC)*

- (16) Four exporting Chinese producers requested individual treatment, i.e. the establishment of separate export prices and thus the calculation of a dumping margin for each of them.

The Commission verified whether these four companies enjoyed, in fact and in law, a degree of independence from the Chinese State comparable to that which would prevail in a market economy country. To this end detailed questions regarding ownership, management, control and determination of commercial and business policies were addressed to the companies.

The four companies concerned failed to show to the satisfaction of the Commission that they were sufficiently independent of the Chinese authorities. In particular, the capital of these companies is owned by the State, which also owns the production facilities.

With the exception of one company, where it was clear from the company rules that the decision-making power for all essential operations lay with the State, the remaining three companies did not provide copies of their 'articles of association'.

It was therefore impossible to determine whether or not these companies operated independent of the Chinese authorities, if they were free to decide on salaries, level of production and pricing policy and in particular on the quantities sold on the domestic or export markets.

It was therefore decided that individual treatment was not appropriate for these four companies.

3. Comparison

- (17) For the purpose of a fair comparison, due allowance, in the form of adjustments, was made for differences claimed pursuant to Article 2(10) of the Basic Regulation: indirect taxes, charges for transport, insurance, handling, loading, ancillary costs, packing, credit, after-sales costs and commission.

- (18) Three companies in Korea, the Hungarian company and one company in India claimed an allowance for import charges. This was accepted for the Hungarian company and the Korean companies except in the case of one which was unable to show that there was a direct 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. It was not granted for the Indian company which failed to prove that some raw materials, mainly zinc, were imported with payment of duties and were physically incorporated in the product concerned sold on the domestic market.
- (19) The South African company and one Polish company claimed an adjustment for differences in level of trade. The South African company made the claim on the grounds that on the domestic market sales were made directly to independent customers or through branches, while export sales were made to large distributors which resold the product. With regard to sales via branches, it was alleged that the functions they performed were more extensive and the prices charged higher than those involved when selling directly from the factory. This claim was not granted since the company was unable to demonstrate that there was a consistent difference in prices on the domestic market between sales to independent customers and sales through branches.
- (20) One Polish company claimed that export sales in the Community were made to distributors and wholesalers, who bought large quantities, while sales on the domestic market were made to distributors and end-users who bought small quantities. However, the company neither demonstrated that there was a difference in the functions performed by the alleged various categories of customers, nor that there was a consistent and distinct difference in price between the different levels of trade on the domestic market of the exporting country. Consequently, the adjustment appeared not to be justified.
- (21) One company in India claimed that the Commission should use the actual payment date in the calculation of the credit costs rather than the payment terms mentioned on the invoice. This claim was rejected since it was considered that the actual payment date was not a factor to be taken into account in the determination of the prices charged but rather the payment terms indicated on the invoice.
- (22) The South African company claimed an allowance for currency conversion pursuant to Article 2(10)(j) of the Basic Regulation on the grounds that due to the appreciation of the South African rand in relation to European currencies during the IP the export prices should be adjusted. This claim was rejected since the fluctuations in exchange rates did not show a sustained movement.
- (23) The abovementioned Polish company claimed an adjustment to its normal value on the basis that its domestic sales were made mainly from stock, therefore incurring expenses to finance this stock, whereas for the export market it produced to order. This adjustment was requested pursuant to Article 2(10)(k). Since the company did not demonstrate that the difference in financing expenses affected price comparability and in the absence of evidence showing that customers paid consistently different prices on the domestic market because of this, the request could not be granted.

4. Dumping margins

(a) Methodology

- (24) Weighted average normal value per product type was compared with the weighted average export price on an ex-works basis and at the same level of trade in accordance with Article 2(11) of the Basic Regulation. This comparison showed the existence of dumping for all countries concerned with the exception of Korea.
- (25) For non-cooperating companies concerned by the proceeding who did not reply to the Commission's questionnaire, did not make themselves known or did not supply necessary information during the investigation, 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.

A comparison of Eurostat figures with the data on the volume of exports to the Community supplied by the cooperating exporting producers was made in order to establish the level of cooperation in the current investigation. As a result, for all countries subject to investigation it was found that the overall level of cooperation was high. The Commission therefore considered it appropriate to set the dumping margin for the non-cooperating companies at the level of the highest or the sole dumping margin established for a cooperating exporting producer in the country concerned, since there was no reason to believe that a non-cooperating exporting producer had dumped at a level lower than the highest level found.

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

(b) *Level of the dumping margins*

- (26) The dumping margin provisionally established, expressed as a percentage of the cif price at Community frontier level, is:

PRC: 74,8 %.

- (27) Hungary:

— Dótarú és Drótkötél Ipari és Kereskedelmi Rt: 33,9 %,
— Non-cooperating exporting producers: 33,9 %.

- (28) India:

— Usha Martin Industries & Usha Beltron Ltd: 39,8 %,
— Mohatta & Heckel: 40,2 %,
— Non-cooperating exporting producers: 40,2 %.

- (29) Korea:

— Kiswire Ltd: 1,2 %,
— Manho Rope & Wire Ltd: 0,1 %,
— Chung Woo Rope Co., Ltd: 0,2 %,
— Chun Kee Steel and Wire Rope Co., Ltd: 0,4 %.

These margins are *de minimis*.

- (30) Mexico:

— Camesa SA de CV: 95,6 %,
— Non-cooperating exporting producers: 95,6 %.

- (31) Poland:

— Drumet SA: 35,0 %,
— 'Linodrut' Group: 56,1 %,
— Non-cooperating exporting producers: 56,1 %.

- (32) South Africa:

— Haggie Rand Limited: 132 %,
— Non-cooperating exporting producers: 132 %.

- (33) Ukraine: 54,8 %.

D. COMMUNITY INDUSTRY

1. Community production

- (34) A number of exporting producers alleged that one complainant Community producer should be excluded from the definition of Community industry as it was related to an importer and a chain of distribution/trading companies which had imported the product concerned into the Community from the countries under investigation

during the period examined pursuant to Article 4(1)(a) and (2) of the Basic Regulation.

It should be noted that the complainant Community producer in question had not itself made any imports during the period investigated.

As regards imports by the trading companies in the group, the Commission established that the complainant Community producer in question was indeed part of a group of companies that included an importer and distribution companies, and that these had imported SWR from the countries concerned during the investigation period. The structure of the group was found to have changed between 1994 and the IP. However, throughout the whole period investigated, the complainant Community producer in question and both the importer and the distribution companies had had common holdings and were therefore considered to be related companies.

The Commission examined the nature of the group structure and found that it could not be excluded that a certain degree of control may have existed between the related companies either directly or through the common holding company. The Commission established that the volume of dumped imports made by the related companies in the IP represented 2 % of Community consumption, 6 % of total third country imports and only 11 % of the complainant Community producer's volume of production. The principal activity of this complainant Community producer was therefore the production of SWR.

As concerns the behaviour of the complainant Community producer concerned on the Community market, the Commission found that despite the possible existence of any such control, the complainant Community producer in question was suffering the same injurious effects of the dumped imports as the other complainant Community producers investigated in the course of the current proceeding. It should be noted in this respect that the company concerned did not adopt commercial behaviour on the Community market that was significantly different from that of the other complainant Community producers as a result of the imports in question. The complainant Community producer in question was found to have suffered consistent and significant undercutting by the imports originating in the countries concerned during the IP (a weighted average undercutting of 75,8 % was found). It was therefore considered that the complainant Community producer in question did not benefit unduly from the imports concerned and it had not been shielded from the injurious effects of the dumping.

In view of the above the Commission considered that there were no grounds to exclude the complainant Community producer in question from the total Community production.

(35) The Commission found that during the investigation period certain complainant Community producers had purchased SWR from various sources outside the Community, including the countries concerned. However, the volume of these imports represented a negligible share of total production (i.e. less than 1 % of the complainant Community producers' total production of SWR). The Commission therefore considered that these purchases were in accordance with the standard commercial practice of producers who had to supplement their own range of products with a small proportion of imports. These imports were necessary in order to be able to offer a full range of products and be able to compete on the Community market.

(36) Based on the above, the Commission considered Community production to consist of all companies producing SWR in the Community at the time of the investigation. These companies are hereinafter referred to as the 'Community producers'.

2. Community industry

(37) A number of small producers that supported the complaint did not provide responses to the Commission's questionnaires. In accordance with Article 4(1) the scope of the Community industry was defined as the remaining cooperating producers.

(38) On this basis the following 20 complainant Community producers made up the 'Community industry', i.e. Bremer Drahtseilerei Lüling GmbH (Germany), Bridon International Limited (United Kingdom), BTS Drahtseile GmbH (Germany), Cables Y Alambres Especiales Sa. (Spain), Casar Drahtseilwerk Saar GmbH (Germany), Cordoaria Oliveira SA (Portugal), Drahtseilerei Gustav Kocks GmbH (Germany), Holding Ficadi (France), Iscar Funi Metalliche (Italy), D. Koronakis SA (Greece), Metalcalvi Wire Ropes (Italy), Midland Wire Cordage Co., Ltd (United Kingdom), Randers Rebslageri (Denmark), Redaelli Tecnacordati SpA (Italy), Trefileurope (France), Trenzas Y Cables SL (Spain), Vereinigte Drahtseilwerke GmbH (Germany), Voest-Alpine Austria Draht GmbH (Austria), Vornbäumen-Stahlseile GmbH and Wadra GmbH (both Germany).

(39) The Community industry accounted for 97 % of the total estimated Community production and thus constituted a major proportion of Community production pursuant to Article 5(4) of the Basic Regulation.

E. INJURY

1. Preliminary remarks

(40) As indicated above, for the purposes of establishing injury in the present proceeding the Commission has analysed data relating to 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 purposes of a year-to-year comparison used the figures relating to the full 15 months of the investigation period (1997 and three months of 1998) as a basis for extrapolating the figures for a 12-month IP.

2. Collection of injury data

(41) The Commission requested and obtained information from the Community industry with respect to production, capacity, capacity utilisation, sales, stocks and employment ('global information'). In view of the large number of producers in the Community industry, and in accordance with Article 17 of the Basic Regulation, the Commission based the findings concerning the remaining injury indicators on a sample of companies in the Community industry, i.e., prices, profitability, cost of production and investments ('sampled information').

(42) The sample was made according to geographical location and the size of the companies in terms of production. In this context, the sample includes large as well as small companies. Furthermore, it should be noted that the Commission included six producers from six Member States in their sample.

The sampled companies accounted for 61 % of production of the product concerned by the Community industry during the IP.

3. Community consumption

(43) 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 Community consumption increased slightly over the period going from 141 000 tonnes in 1994 to 147 500 tonnes in the IP, which represents an overall increase of 5 %. It should be noted that between 1994 and 1995 consumption increased (7 %) and declined from 1995 to 1996 (7 %). Consumption increased slightly in 1997 compared to 1996.

4. Imports into the Community from the countries concerned

(a) Imports from Korea

- (44) As the dumping margins of imports of SWR from Korea were found to be *de minimis*, the following injury analysis does not include an assessment of the impact of imports from Korea.

(b) Imports from Mexico

- (45) It was alleged by the complainants that the Eurostat statistics concerning imports from Mexico were significantly lower than the actual level of imports made in the period considered. The reason given was that SWR were being imported as steel wires under two incorrect CN codes.

The Commission contacted the customs officials in the Member State concerned, who after investigation, confirmed that SWR were being imported under the CN codes alleged by the complainants. In the light of the above results, the Commission decided to include Eurostat statistics available for the two CN codes that had been used for importing SWR from Mexico.

(c) Cumulation

- (46) The Commission examined whether imports of SWR originating in the PRC, Hungary, India, Mexico, Poland, South Africa and Ukraine should be assessed cumulatively in accordance with Article 3(4) of the Basic Regulation.
- (47) In this respect, one of the exporting producers argued against the cumulation of the imports originating in Hungary claiming that the evolution of imports originating in Hungary in terms of volume could not be compared with the evolution of imports originating in the other countries concerned.

The Commission examined these arguments and found that the volume of imports from Hungary was significant at all times, having increased from 1 407 tonnes in 1994 to 2 121 tonnes in the IP. It is to be noted that the evolution of imports from individual countries is not in itself a justification for non-cumulation. In any event the evolution of imports from Hungary was found to correspond to the trend of imports of the countries concerned

taken together. The Commission therefore concluded that the imports from Hungary should be cumulated.

- (48) A second exporting producer argued that the imports from Mexico were *de minimis* and therefore Mexico should be excluded from the scope of the investigation and that in any event the imports originating in Mexico should not be cumulated with those of the other countries concerned.

As concerns the imports from Mexico the Commission concluded that the imports were more than *de minimis* (see imports from Mexico above) since they represented 3 % of Community consumption during the IP.

- (49) As stated above the dumping margins found for all the countries concerned ranged from 34 to 132 % and therefore are above the *de minimis* level. Import volumes from the countries concerned are comparable both in absolute and relative terms. Furthermore, the volume of imports from the seven countries concerned could not be considered as negligible.

- (50) As regards the conditions of competition, the investigation has found that SWR imported from the countries concerned, considered on a type-by-type basis, were alike in all their essential physical and technical characteristics. Furthermore these types of SWR were interchangeable with other types imported from the countries concerned and those produced in the Community and they were marketed in the Community during the same period through comparable sales channels under similar commercial conditions. The imported SWR were therefore considered to compete with each other and with the SWR produced in the Community.

- (51) 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 and the conditions of competition between the imported products as well as between the imported products and the like Community products were comparable. The imports from the seven countries concerned were therefore examined cumulatively.

(d) Volume and market share of dumped imports

- (52) The volume of the dumped imports into the Community originating in the countries concerned increased from 17 429 tonnes in 1994 to 33 668 tonnes in the IP, which represents an overall increase of 93 %.

- (53) The market share held by these countries increased from 12 % in 1994 to 23 % in the IP, which represents an increase of 11 percentage points over the period considered. In the investigation period the market shares from each of the countries concerned ranged from 1,4 to 7,8 %.

(e) Prices of the dumped imports

- (54) As regards price undercutting, the analysis was made for each type of SWR. For each of these types, the Commission compared the exporting producers' and the complaining Community producers' weighted average selling prices free of all rebates and taxes, calculated on the basis of sales to the first unrelated customer. The average selling price of the complainant Community producers was weighted in relation to the sales volume of each type of SWR. This was then compared to the corresponding figure for each exporting producer concerned on the basis of their resale prices in the Community and weighted in respect of sales volume.
- (55) In order to arrive at a comparable level of trade with the sales of the complainant Community producers, the import prices from the countries concerned have been adjusted to take into account handling costs and customs duty payable. The adjustments were based on information received from importers.
- (56) As a result of this comparison the following weighted average price undercutting, expressed as a percentage of the Community producers' prices, was found:
- PRC: 60,1 %,
 - Hungary: 47,3 %,
 - India: from 40,1 to 41,2 %,
 - Mexico: 31,9 %,
 - Poland: from 38,7 to 43,7 %,
 - South Africa: 21,6 %,
 - Ukraine: 54,0 %.
- (57) It should be noted that the prices of imports from the countries concerned have been consistently and significantly lower than the Community industry's prices over the period 1994 to the IP.

5. Situation of the Community industry

(a) Production, capacity and utilisation rates

- (58) The volume of production of the product concerned produced by the Community industry remained stable throughout the period considered, going from 144 484 tonnes in 1994 to 145 192 in the IP, which represents an overall increase of less than 1 %.

- (59) Capacity of the Community industry increased by 11 %. As regards the increase in capacity, it should be noted that rope-making machinery has a long effective life span (more than 20 years in certain cases) and consequently it was found that the replacement of old machinery inevitably led to an increase in capacity given the improved performance of the modern machines. The significant investments made in 1995 can, for the most part, be attributed to one Community producer which replaced outdated machinery. In the same period capacity utilisation levels decreased, going from 64 % in 1994 to 58 % in the IP.

(b) Stocks

- (60) The Community industry's stocks increased significantly over the period, going from 30 607 tonnes in 1994 to 39 780 tonnes in the IP, which represents an increase of 30 %. Stocks increased in particular between 1994 and 1995 (24 %).

(c) Volume of sales and market share

- (61) The Community industry's sales on the Community market decreased from 106 042 tonnes in 1994 to 96 776 tonnes in the IP, representing a decrease of 9 266 tonnes (9 %).
- (62) The development of sales volume compared to that of consumption, shows that the market share held by the Community industry decreased over the period considered. The market share held by the Community industry went from 75 % in 1994 to 66 % in the IP, representing a loss of 9 percentage points over the period considered.

(d) Prices

- (63) The weighted average selling price of SWR sold by the Community industry on the Community market showed a small overall increase between 1994 and the IP (going from ECU 1,34 to ECU 1,46 per kilogram).

It should be noted that the prices of the imports concerned always remained significantly below those of the Community industry.

(e) Profitability

- (64) It should be noted that information on the profitability of SWR was not available for all the companies included in the sample (certain companies' cost accounting system could not separately identify SWR). Consequently, in accordance with Article 3(8) of the Basic Regulation, the Commission has used the profitability of the nearest sector

available to represent the situation of the Community industry. The profitability at a total company level was considered to be representative of SWR given that SWR represented a significant proportion of total company turnover for all the companies concerned.

The average profitability of the sampled complainant Community producers went from +1,3 % in 1994 to -0,6 % in 1997. The investigation has shown that despite a moderate increase in average sales prices and production volume, the Community industry's sales and subsequently its market share have fallen (by 9 % and 9 percentage points respectively).

(f) *Investments*

- (65) Investments increased overall by 24 %, going from ECU 7 094 000 in 1994 to ECU 8 826 000 in the IP. Investments have in general been in replacement machinery.

(g) *Employment*

- (66) The number of personnel employed by the Community industry decreased over the period considered, going from 2 710 persons employed in 1994 to 2 559 in the IP (representing a decrease of 6 %).

(h) *Productivity*

- (67) Productivity (volume produced per employee) of the Community industry increased over the period considered (an increase of 6 % was found between 1994 and the IP).

6. Conclusion on injury

- (68) 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. The Community industry lost significant market share at a time when consumption in the market had slightly increased (5 % increase). It should also be noted that although production levels were stable, sales fell throughout the period and stock levels increased continuously and significantly.

Furthermore, the Community industry's financial situation deteriorated during the period going from a profit of 1,3 % in 1994 to losses in 1997 (- 0,6 %).

As a result of the information described above, the Commission has provisionally concluded that the Community industry suffered material injury within the meaning of Article 3(2) of the Basic Regulation.

F. CAUSATION OF INJURY

- (69) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the PRC, Hungary, India, Mexico, Poland, South Africa and Ukraine and also examined other factors in order to ensure that injury caused by other factors was not attributed to the dumped imports in accordance with Article 3(7) of the Basic Regulation.

(a) *Effects of the dumped imports*

- (70) There is a clear coincidence between, on the one hand, the significant price undercutting and increased import volume and market share of the dumped imports found during the period considered and, on the other, the deterioration in 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 in their profitability in the period investigated.

More specifically, with regard to market shares, it should be noted that from 1994 to the IP imports from the countries concerned increased by more than the rate of consumption (an overall increase of 93 %). This represents an overall increase in their market share of 11 percentage points, while the market shares of the Community producers decreased by 9 percentage points. In particular, the significant increase in imports between 1994 and 1995 (an increase of 73 %) coincided with the loss in market share (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 coincides with the gain in market share held by the countries concerned.

- (71) Furthermore, the Community industry's financial situation deteriorated significantly during the period considered going from a profit to a loss-making situation in a market in which demand increased throughout the period considered. In particular the Community industry's financial situation deteriorated between 1994 and 1995 (going from + 1,3 % to - 0,3 %), this occurred at a time when they suffered a significant loss of market share (10 percentage points).

- (72) Finally, in terms of sales prices it should be noted that the Community industry increased its prices in the period 1994 to 1995. This increase coincided with increases in the costs of raw materials. However, due to the pressure caused by the massive increase in low priced imports in 1995 (+73 %), which were made at prices which significantly undercut those of the Community industry, the latter was unable to cover its costs despite the price increase.

In an attempt to regain its market position in 1996 the Community industry reduced prices and regained some lost market share. However profitability only deteriorated further. In 1997 the Community industry was able to retain its position on the market by improving productivity and increasing prices, however its financial situation remained negative (– 0,6 %).

(b) *Effect of other factors*

- (73) 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, the effect of increases in the cost of raw materials and whether the injury suffered could have resulted from imports made by the Community industry.

(i) *Consumption*

- (74) 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 decrease in consumption between 1995 and 1996 (8 %), the overall level of consumption increased over the period considered by 5 %. It is therefore unlikely that the injury could be attributed to the evolution in consumption.

(ii) *Imports from other third countries*

- (75) 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 (9 % in the investigation period), they decreased during the period considered, going from 10 % in 1994 to 9 % in the IP.

In this context, the Commission, based on Eurostat statistics, examined in particular the trends in volumes and prices of imports from Korea, and the trends in relation to imports from the Czech Republic, Romania, Russia and Turkey.

Korea

- (76) Imports from Korea were examined in the context of this investigation and *de minimis* dumping margins were found. The Commission examined the volume of imports during the period considered and found that it had remained stable. The prices of imports from Korea were found to be comparable with the Community industry's prices, therefore the injury suffered by the Community industry could not be attributed to imports originating in Korea.

Czech Republic

- (77) As regards the imports from the Czech Republic, while their unit price remained below that of the Community industry in the IP, their volume of imports decreased over the period.

Romania

- (78) Although there was a significant increase in imports from Romania, at the beginning of the period considered these were at an extremely low level (only 217 tonnes in 1994) and at the end of the period the level of these imports remained very low (0,9 % in the IP).

Russia

- (79) As regards the imports from Russia despite fluctuations over the period considered, Russia's market share in the IP represented only 0,3 %.

Turkey

- (80) As regards the imports from Turkey the investigation found that although imports from Turkey increased over the period, with a consequent increase in market share (1,7 % in the IP), unit prices were significantly higher than those of the countries subject to the investigation for which dumping and injury margins have been established.

Conclusion

- (81) The Commission considered that imports from the abovementioned third countries not concerned by this proceeding may have contributed to the injury suffered, in particular imports from the Czech Republic and Turkey. However, this alone was not found to be sufficient to break the causal link established between the dumped imports and the material injury suffered by the Community industry, particularly in view of the market share held by these third countries and the development of this market share over the period considered (going from 5,9 % in 1994 to 6,7 % in the IP).

Other third countries

- (82) The Commission found that the total market share held by other third countries decreased during the period considered (going from 4 % in 1994 to 2,7 % in the IP) and that the prices of these imports were found to be distinctly higher than those of the dumped imports.

(iii) Raw materials

- (83) 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.

In this regard the Commission considered that given the limited substitutability of SWR by other products, the Community industry should have been able to pass on increases in costs of raw materials. In this regard, the Commission found that the price increases made by the Community industry in 1994/1995 when faced with the increase in low-priced imports were insufficient to cover the increases in costs of raw materials.

(iv) Injury caused by the Community industry's own imports

- (84) A number of exporters alleged that the Community industry had caused injury through its own imports of the product concerned from the countries under investigation during the period examined.

In this respect, as explained in the section on the definition of Community production above, the Commission found that these purchases corresponded, in general, to the standard commercial practice of producers who had to supplement the range of products manufactured by themselves with a small proportion of imports. These imports were necessary in order to be able to offer a full range of products and be able to compete on the Community market. With regard to the relationship of one complainant Community producer with an importer and certain distributors, which was specifically investigated, it was concluded that this company had not behaved any differently to other Community producers investigated. Consequently, the effect of the imports made by these companies cannot be attributed to the Community producer.

The Commission therefore concluded that the Community industry had not caused injury by its own imports of SWR.

(c) *Conclusion on causation*

- (85) Although it cannot be excluded that some of the imports from other third countries may have contributed to the injury suffered by the Community industry, the investigation has shown that these factors in themselves were not such as to break the causal link between the imports subject to the investigation and the material injury suffered by the Community industry.

In the light of the above, the Commission concluded that the imports from the seven countries concerned taken together have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. Preliminary remarks

- (86) 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 the imposition and non-imposition of measures for all parties involved in the proceeding.

2. Collection of Community interest data

- (87) In order to assess the impact of the imposition of measures, the Commission requested information from all interested parties known, including parties in the upstream industries, the complainant Community producers, importers/wholesalers and the users. It should be noted that no replies were received from the user industries. On the basis of the information received from the cooperating parties, the Commission made the following conclusions.

3. Impact on upstream industries

- (88) The principal raw material used in the production of SWR is industrial steel wire, in particular high-carbon steel wire that may be galvanised or otherwise coated. It is to be noted that there are significant other raw materials used in the production of SWR including synthetic fibres, grease and packaging (in particular drums/reels). The steel wire used by the Community industry is principally produced by the major steel-makers in Europe. There are a number of qualities and diameters of steel wire that can be used in this type of production, however, the steel wire makers in the Community produce the full range necessary for the production of SWR.

- (89) Two companies producing raw materials cooperated with the Commission's investigation. These two companies employed some 1 417 people in 1997. Total turnover in 1997 was ECU 312 million of which ECU 54 million related to the raw materials concerned (representing some 17 % of total turnover). As regards the profitability of the companies concerned it was approximately 5 % in 1997.

4. Impact on Community industry

(a) *Nature and structure of the Community industry*

- (90) The Community industry is composed of small and medium-sized companies located in nine of the Member States (Austria, Denmark, France, Germany, Greece, Italy, Portugal, Spain and the United Kingdom). It should be noted that production of SWR is capital intensive and that significant research and development has to be made in order to continue improving the product range, in particular the special SWR used for projects (see below). SWR often undergo further transformation by the Community industry and/or its related companies, (i.e. cutting, splicing and the fitting of fittings or the transformation into other articles such as slings, etc.). It is clear that any negative impact on SWR would significantly impair this activity.
- (91) The total Community production employs some 2 600 people (IP).
- (92) In addition to the production of standard SWR, the Community industry also produces a wide range of special SWR on a project basis, for instance SWR used in the construction of suspension bridges or suspended roofs. This project production is usually for a fixed quantity and a fixed term (i.e. the volume needed for the project and the duration of the project). It should be noted that over the years project work has become an important source of revenue for the Community industry. As project orders usually require close technical cooperation with the customers (often necessitating advanced technology and machinery) and additional services (not only in the installation of the SWR but also in the longer term repair and maintenance work), it should be noted that the Community industry is the principal supplier of project SWR on the Community market.
- (93) It was found that project SWR could be produced on the same machinery and by the same labour force as standard SWR of equivalent dimension, and that the production of project SWR therefore depended very much on the production of standard

SWR, for instance in order to spread overhead costs.

(b) *Viability of the Community industry*

- (94) It should be noted that the situation of the SWR industry in the Community over the past decade has deteriorated, mainly as a result of closures in the user industries, such as mining, and reductions in fishing fleets following the introduction of quotas. As a result, this industry has had to undergo major restructuring and consolidation. During the time period considered in the present investigation, the industry had consolidated and faced an increasing demand, as shown in recital 43.
- (95) Nevertheless, during the period investigated the Community industry went from a profit-making situation to a loss-making one, suffering its most significant loss in profits in 1995 at a time when the imports from the countries concerned came into the Community market in massive volumes. Furthermore, given the low prices of these dumped imports the Community industry had been unable to increase prices in line with cost increases, thus suffering from both the volume of the imports as well as from their low value.
- (96) The Commission considered that given the previous restructuring and improvement in productivity, the Community industry would be structurally viable provided that fair conditions of competition could be restored on the Community market.
- (c) *Effects of the imposition or non imposition of measures*
- (97) Following the imposition of measures, it is expected that the prices of SWR on the Community market will rise. This increase in prices would enable the Community industry to recover profitability and to a certain extent increase sales volume.
- (98) Should measures not be imposed, it is likely that the negative trend in the Community industry will continue, leading in the long term to the closure of companies. It was found that the Community industry had a number of production plants operating almost at a loss. These plants would in all likelihood close in the short term with immediate job losses. The Community industry is particularly likely to continue losing further market share and a continued worsening financial situation is expected to occur. As explained above, should the negative trend continue, not only would the production of standard SWR be affected but also the production of project SWR, which are not exported in significant volumes by the countries concerned.

- (99) In conclusion, it is expected that measures will enable the Community industry to recover from the injury suffered. It is therefore considered to be in the interests of the Community industry to impose measures.

5. Impact on importers/wholesalers

- (100) Four importers/wholesalers in the Community, not related to exporters, cooperated in the proceeding. They submitted that the imposition of measures in the current proceeding would have detrimental effects on the importers/wholesalers of the product concerned in the Community.
- (101) The investigation showed that, for two of the unrelated importers, the SWR business represented a significant proportion of their activities, in terms of turnover (between 40 to 80 %) and profit contribution (overall profits ranged from 3 to 18 %). However it is to be noted that all the importers/wholesalers (with the exception of one) also act as traders for other product ranges including fibre ropes, wire, cable, chain, hardware and fittings. An important part of the business is the transformation of the SWR (i.e. cutting, splicing and the fitting of fittings or the transformation into other articles such as slings, etc.). It was also found that the importers/wholesalers acted as traders for SWR produced in the Community.
- (102) Although the imposition of measures is likely to have an effect on importers/wholesalers, given the transforming business of SWR, the range of trading activities in other products and the fact that they also trade in Community-produced goods, the Commission concluded that the impact resulting from the imposition of measures in the present proceeding would not be significant.

6. Impact on users

- (103) SWR are used in a wide variety of applications therefore a large number of user industries are concerned by this proceeding. The Commission found that SWR were mainly consumed by the following user industries (non-exhaustive list): general purposes, fishing, maritime/shipping, oil and gas industries, mining (deep-shaft and surface mining), forestry, aerial transport (including ski-lifts and cable cars), civil engineering (suspension bridges, towers, guy masts, covered roof structures), construction (cranes), elevator.

- (104) The Commission's analysis reflects the large number of user industries concerned and the wide range of applications within each sector. On the basis of the information available the Commission found that the total costs of the user industries ranged from ECU 50 000 to ECU 18 million, reflecting the vast differences in the size of the companies concerned. Furthermore, the proportion of the costs that related to the product concerned ranged from 0,01 to only 3 %, showing that SWR do not represent a major concern for these companies.

- (105) In examining the possible effect of the imposition of measures on users, the Commission concluded that given the negligible incidence of the cost of SWR on the user industries, any increase in these costs was unlikely to have a significant effect. Furthermore, it should be noted that there are a number of alternative sources of SWR not subject to anti-dumping measures that will remain available for the user industries concerned.

7. Conclusion on Community interest

- (106) Given the rate of increases of imports from the countries concerned over the period considered and the exporter's behaviour on the Community market to constantly and significantly undercut the prices of the Community industry, there is a likelihood that, in the absence of measures, this trend will continue and further aggravate the injury caused to the complainant Community producers.
- (107) The effects of the imposition of measures can be expected to assist the Community industry to improve profitability, with consequent beneficial effects on the competitive conditions on the Community market and the reduction of the threat of closures and consequential reductions in employment. The Commission has taken special consideration of the fact that the Community industry might be forced to shut a number of production sites if correction to the unfair trading practices by the exporting producers is not provided and the medium-term advantages for the user industry of being supplied at lower prices might then disappear.
- (108) As regards the user industries, any expected price increase would only have a marginal impact.
- (109) The Commission has concluded that, in the circumstances there are no compelling reasons not to impose measures.

H. PROVISIONAL MEASURES**1. Injury elimination level**

- (110) Having established that the dumped imports under consideration have caused material injury to the Community industry and that there are no compelling reasons not to take action, the measures envisaged should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found.

The removal of such injury requires that the industry should be put in a position where the prices of imports of the product concerned originating in the countries concerned should be increased to a non-injurious level.

For the purposes of calculating the necessary price increase, i.e. the injury margin, the Commission considered that the prices of the dumped imports had to be compared with the selling prices of the Community industry plus the profit which the industry might be expected to make in the absence of injurious dumping from the countries under investigation.

On this basis, the weighted average export prices for those product types used in the determination of price undercutting were compared, for the IP, at a cif Community-frontier level, adjusted to take account of customs duty paid and handling costs, with the actual weighted average selling prices charged by the sampled complainant Community producers concerned increased to cover the profit shortfall plus a profit margin of 5 %. For the purposes of a preliminary determination this profit margin was considered to be the minimum profit level necessary to make this sector viable.

2. Provisional duties

- (111) According to Article 7(2) of the Basic Regulation the provisional anti-dumping duty should be equal to the dumping margin found or the amount necessary to remove injury, whichever is the lower.

For all companies in the PRC, Hungary, India, Poland and Ukraine the injury margins were in all instances higher than the dumping margins. Consequently, the provisional duties for the companies in the abovementioned countries were based on the dumping margins found.

For the Mexican and South African companies the injury margins were lower than the dumping margins. Therefore the provisional duties for the companies in these two countries were set at the level of the injury margins.

3. Undertakings

- (112) The exporting producers in Hungary and Poland have offered price undertakings in accordance with Article 8(1) of the Basic Regulation. The Commission considers that the undertakings offered by the exporting producers concerned can be accepted.

The acceptance of the price undertakings should be conditional on the presentation to the Member States' customs services of a valid undertaking invoice clearly identifying the producer and containing the information listed in the Annex. Where no such invoice is presented, the appropriate rate of anti-dumping duty will be payable.

- (113) It should be noted that in the event of a breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Articles 8(9) and 10 of the Basic Regulation.

- (114) Furthermore, it should be noted that, in accordance with Article 8(6) of the Basic Regulation, the investigation of dumping, injury and Community interest will be completed, notwithstanding the acceptance of undertakings in the course of the investigation.

I. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not, classifiable within CN codes: ex 7312 10 82 (TARIC code 7312 10 82*10), ex 7312 10 84 (TARIC code 7312 10 84*10), ex 7312 10 86 (TARIC code 7312 10 86*10), ex 7312 10 88 (TARIC code 7312 10 88*10) and ex 7312 10 99 (TARIC code 7312 10 99*10), originating in the People's Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine.

2. The rate of the provisional duty applied to the net free-at-Community-frontier prices of imports of the product concerned manufactured by the companies listed below, before duty, shall be as follows:

Country	Company	Rate of duty (%)	TARIC additional code
PRC	All companies	74,8	—
Hungary	All companies	33,9	8900
India	Usha Martin Industries & Usha Beltron Ltd	39,8	8613
	All other companies	40,2	8900
Mexico	All companies	56,4	—
Poland	Drumet	35,0	8614
	All other companies	56,1	8900
South Africa	All companies	33,9	—
Ukraine	All companies	54,8	—

3. Notwithstanding paragraph 1, the provisional duty shall not apply to imports of the product concerned manufactured and directly exported and invoiced to an importing company in the Community in conformity with Article 2(2) by the companies listed in Article 2(3).

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

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

Article 2

1. The undertakings offered by the companies listed in paragraph 3 in connection with the anti-dumping proceeding concerning steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not, classifiable within CN codes: ex 7312 10 82 (TARIC code 7312 10 82*10), ex 7312 10 84 (TARIC code 7312 10 84*10), ex 7312 10 86 (TARIC code 7312 10 86*10), ex 7312 10 88 (TARIC code 7312 10 88*10) and ex 7312 10 99 (TARIC code 7312 10 99*10), originating in the People's Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine are hereby accepted.

2. When the request for release for free circulation pursuant to an undertaking is presented, exemption from the duty shall be conditional upon presentation to the relevant Member States' customs services of a valid undertaking invoice issued by one of the companies listed in paragraph 3. The essential elements of the undertaking invoice are listed in the Annex.

3. Imports accompanied by an undertaking invoice shall be declared under the following TARIC additional codes:

Country	Company	TARIC additional code
Hungary	Drótarú és Drótkötél Ipari és Kereskedelmi Rt	8616
Poland	Drumet SA	8617
	Slaskie Zakłady Lin i Drutu 'Linodrut' Spółka Akcyjna	8619
	Fabryka Lin i Drutów 'Linodrut' Zabrze Spółka z ograniczoną odpowiedzialnością	
	Fabryka Lin i Drutów 'Falind' Spółka z ograniczoną odpowiedzialnością	
	Górnolaska Fabryka Lin i Drutu 'Linodrut' Bytom Spółka z ograniczoną odpowiedzialnością	
	Dolnolaska Fabryka Lin i Drutu 'Linodrut Linmet' spółka z ograniczoną odpowiedzialnością	

Article 3

1. Pursuant to Article 20(1) of Regulation (EC) No 384/96 and without prejudice to Article 20(2) and (3) of that Regulation interested parties may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96 the parties which made themselves known within the time limit specified in the notice of initiation concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 4

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

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

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

Done at Brussels, 18 February 1999.

For the Commission

Leon BRITTAN

Vice-President

*ANNEX***Elements to be indicated in the undertaking invoice referred to in Article 2(2)**

1. The product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question), including type, number of strands, number of wires per strand and CN code.
2. The exact description of the goods, including:
 - the 'company product code' (CPC),
 - CN code,
 - the TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation),
 - quantity (to be given in kilos),
 - minimum price applicable.
3. The description of the terms of the sale, including:
 - price per kilo,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
4. Name of the importer to which the invoice is issued directly by the company.
5. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation (EC) No 362/1999. I declare that the information provided in this invoice is complete and correct.'

COMMISSION REGULATION (EC) No 363/1999

of 18 February 1999

setting export refunds on products processed from fruit and vegetables other than those granted for added sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Having regard to the Treaty establishing the European Community,

Whereas Article 17 (3) of Regulation (EC) No 2201/96 states that prices on the Community market are to be determined taking account of those most favourable from the exportation standpoint; whereas international trade prices are to be determined account taken of the prices indicated in the second subparagraph of that paragraph;

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the market in products processed from fruit and vegetables ⁽¹⁾, as amended by Regulation (EC) No 2199/97 ⁽²⁾, and in particular Article 16 (3),

Whereas the international trade situation or the special requirements of certain markets may make it necessary to vary the refund on a given product depending on the destination of that product;

Whereas Commission Regulation (EC) No 1429/95 ⁽³⁾, as last amended by Regulation (EC) No 1007/97 ⁽⁴⁾, sets implementing rules for export refunds on products processed from fruit and vegetables;

Whereas economically significant exports can be made at the present time of provisionally preserved cherries, peeled tomatoes, preserved cherries, prepared hazelnuts and some orange juices;

Whereas Article 16 (1) of Regulation (EC) No 2201/96 states that, to the extent necessary to permit exports in economically significant quantities of the products referred to in Article 1 (1) (a) of that Regulation, on the basis of prices for those products in international trade, the difference between those prices and prices in the Community may be covered by export refunds; whereas Article 18 (4) of Regulation (EC) No 2201/96 provides that, if the refund on sugar incorporated into the products listed in Article 1 (1) is insufficient to allow export of the products, the refund fixed in accordance with Article 17 is to be applicable to those products;

Whereas application of the rules mentioned above to the present and forecast market situation, in particular to prices of products processed from fruit and vegetables in the Community and in international trade, leads to the refund rates set in the Annex hereto;

Whereas Article 17 (2) of Regulation (EC) No 2201/96 states that refunds must be fixed with regard to the existing situation and outlook for prices for products processed from fruit and vegetables on the Community market and supply availability, on the one hand, and prices in international trade on the other hand; whereas account must also be taken of the costs indicated at (b) in that paragraph and of the economic aspect of the envisaged exports;

Whereas, pursuant to Article 16 (2) of Regulation (EC) No 2201/96, the most efficient possible use should be made of the resources available without creating discrimination between traders; whereas, therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements;

Whereas Commission Regulation (EEC) No 3846/87 ⁽⁵⁾, as last amended by Regulation (EC) No 2138/98 ⁽⁶⁾, establishes an agricultural product nomenclature for export refunds;

Whereas refunds are, pursuant to Article 16 (1) of Regulation (EC) No 2201/96, to be set with due regard to the

Whereas Commission Regulation (EEC) No 3719/88 ⁽⁷⁾, as last amended by Regulation (EC) No 1044/98 ⁽⁸⁾, lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products;⁽¹⁾ OJ L 297, 21. 11. 1996, p. 29.⁽²⁾ OJ L 303, 6. 11. 1997, p. 1.⁽³⁾ OJ L 141, 24. 6. 1995, p. 28.⁽⁴⁾ OJ L 145, 5. 6. 1997, p. 16.⁽⁵⁾ OJ L 366, 24. 12. 1987, p. 1.⁽⁶⁾ OJ L 270, 7. 10. 1998, p. 4.⁽⁷⁾ OJ L 331, 2. 12. 1988, p. 1.⁽⁸⁾ OJ L 149, 20. 5. 1998, p. 11.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refund rates in the processed fruit and vegetables sector shall be those fixed in the Annex hereto.
2. Quantities for which licences are issued in the context of food aid, as referred to in Article 14a of Regulation (EEC) No 3719/88 shall not count against the eligible quantities referred to in the first paragraph.

Article 2

This Regulation shall enter into force on 22 February 1998.

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

Done at Brussels, 18 February 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Product (The full definitions of the eligible products are given in the 'processed fruit and vegetables' sector of Commission Regulation (EEC) No 3846/87, as amended)		Product code	Destination code ⁽¹⁾	Licence issuing period March to June 1999	
				Period for submission of applications: from 22 February to 23 June 1999	
				Refund rate (EUR/t net)	Quantities provided (in tonnes)
Provisionally preserved cherries		0812 10 00 9100	A	55	3 358
Peeled tomatoes		2002 10 10 9100	B	50	50 000
Preserved cherries		2006 00 31 9000 2006 00 99 9100	A	170	338
Prepared hazelnuts		2008 19 19 9100 2008 19 99 9100	C	66	405
Orange juice	With a sugar content of not less than 10° Brix, but less than 22° Brix	2009 11 99 9110 2009 19 99 9110	C	6	353
	With a sugar content of not less than 55° Brix	2009 11 99 9150 2009 19 99 9150	C	32	354

⁽¹⁾ The destination codes are defined as follows:

- A: All destinations except the countries of North America,
- B: All destinations except the United States of America,
- C: All destinations.

COMMISSION REGULATION (EC) No 364/1999

of 18 February 1999

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 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 in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under 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 2513/98⁽⁴⁾;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

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

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be 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 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 313, 21. 11. 1998, p. 16.

ANNEX

to the Commission Regulation of 18 February 1999 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(EUR/tonne)			(EUR/tonne)		
Product code	Destination ⁽¹⁾	Amount of refund	Product code	Destination ⁽¹⁾	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	01	0	1101 00 15 9100	01	49,25
1001 90 91 9000	—	—	1101 00 15 9130	01	46,00
1001 90 99 9000	03	26,00	1101 00 15 9150	01	42,50
	02	0	1101 00 15 9170	01	39,25
1002 00 00 9000	03	64,50	1101 00 15 9180	01	36,75
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	40,00	1102 10 00 9500	01	82,00
	02	0	1102 10 00 9700	—	—
1004 00 00 9200	—	—	1102 10 00 9900	—	—
1004 00 00 9400	—	—	1103 11 10 9200	01	30,00 ⁽²⁾
1005 10 90 9000	—	—	1103 11 10 9400	01	27,00 ⁽²⁾
1005 90 00 9000	03	40,00	1103 11 10 9900	—	—
	02	0	1103 11 90 9200	01	30,00 ⁽²⁾
1007 00 90 9000	—	—	1103 11 90 9800	—	—
1008 20 00 9000	—	—			

⁽¹⁾ The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Liechtenstein.

⁽²⁾ No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 365/1999**of 18 February 1999****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1079/98**

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 organisation 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 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries with the exception of certain ACP States was opened pursuant to Commission Regulation (EC) No 1079/98 ⁽⁵⁾, as amended by Regulation (EC) No 2005/98 ⁽⁶⁾;

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 maximum export refund 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 lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund 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 12 to 18 February 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1079/98, the maximum refund on exportation of common wheat shall be EUR 35,96 per tonne.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 154, 28. 5. 1998, p. 24.

⁽⁶⁾ OJ L 258, 22. 9. 1998, p. 8.

COMMISSION REGULATION (EC) No 366/1999
of 18 February 1999
concerning tenders notified in response to the invitation to tender for the export
of common wheat issued in Regulation (EC) No 2004/98

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 organisation 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 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2004/98 ⁽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 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 12 to 18 February 1999 in response to the invitation to tender for the refund or the tax for the export of common wheat issued in Regulation (EC) No 2004/98.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 258, 22. 9. 1998, p. 4.

COMMISSION REGULATION (EC) No 367/1999
of 18 February 1999
concerning tenders notified in response to the invitation to tender for the export
of barley issued in Regulation (EC) No 1078/98

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 organisation 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 2513/98 ⁽⁴⁾, and in particular Article 4 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 1078/98 ⁽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 12 to 18 February 1999 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1078/98.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 154, 28. 5. 1998, p. 20.

COMMISSION REGULATION (EC) No 368/1999**of 18 February 1999****fixing the maximum export refund on oats in connection with the invitation to
tender issued in Regulation (EC) No 2007/98**

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 organisation 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 2513/98 ⁽⁴⁾,

Having regard to Commission Regulation (EC) No 2007/98 of 21 September 1998 on a special intervention measure for cereals in Finland and Sweden ⁽⁵⁾, as last amended by Regulation (EC) No 244/1999 ⁽⁶⁾, and in particular Article 8 thereof,

Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 2007/98;

Whereas Article 8 of Regulation (EC) No 2007/98 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 maximum export refund 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 lower than the maximum refund;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund 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 12 to 18 February 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2007/98, the maximum refund on exportation of oats shall be EUR 60,90 per tonne.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 258, 22. 9. 1998, p. 13.

⁽⁶⁾ OJ L 27, 2. 2. 1999, p. 10.

COMMISSION REGULATION (EC) No 369/1999**of 18 February 1999****fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2850/98**

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 2850/98⁽³⁾;

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 12 to 18 February 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2850/98, the maximum reduction in the duty on maize imported shall be EUR 65,69 per tonne and be valid for a total maximum quantity of 30 000 tonnes.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 358, 31. 12. 1998, p. 44.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 370/1999**of 18 February 1999****fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2849/98**

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 2849/98⁽³⁾;

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix a maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Article 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 12 to 18 February 1999 pursuant to the invitation to tender issued in Regulation (EC) No 2849/98, the maximum reduction in the duty on maize imported shall be EUR 69,91 per tonne and be valid for a total maximum quantity of 155 990 tonnes.

Article 2

This Regulation shall enter into force on 19 February 1999.

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

Done at Brussels, 18 February 1999.

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 358, 31. 12. 1998, p. 43.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 371/1999
of 18 February 1999
determining the world market price for unginned 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 last amended by Regulation (EC) No 1419/98 ⁽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 unginned 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 1664/98 ⁽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 differences 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 unginned cotton indicated hereunder;

Whereas the second subparagraph of Article 5(3a) 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 minimum 7,5 % increase in the revised estimate for unginned cotton production; whereas Commission Regulation (EC) No 2591/98 ⁽⁶⁾ fixes the revised estimate of production of unginned cotton for the 1998/99 marketing year and the relevant percentage increase; 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 unginned cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at EUR 22,561 per 100 kilograms.

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

- EUR 61,629 per 100 kilograms in Spain,
- EUR 51,424 per 100 kilograms in Greece,
- EUR 83,739 per 100 kilograms in other Member States.

Article 2

This Regulation shall enter into force on 19 February 1999.

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽³⁾ OJ L 190, 4. 7. 1998, p. 4.

⁽⁴⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁵⁾ OJ L 211, 29. 7. 1998, p. 9.

⁽⁶⁾ OJ L 324, 2. 12. 1998, p. 25.

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

Done at Brussels, 18 February 1999.

For the Commission

Franz FISCHLER

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 1/1999 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part,
and the Republic of Lithuania, of the other part

of 27 January 1999

amending Protocol 3 to the Europe Agreement establishing an association
between the European Communities and their Member States, of the one part,
and the Republic of Lithuania, of the other part

(1999/138/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part⁽¹⁾, signed in Brussels on 12 June 1995, and in particular Article 38 of Protocol 3⁽²⁾ thereof,

Whereas the definition of the term 'originating products' in Protocol 3 needs to be amended to ensure the proper operation of the extended system of cumulation which permits the use of materials originating in the European Community, Poland, Hungary, the Czech Republic, the Slovak Republic, Bulgaria, Romania, Latvia, Lithuania, Estonia, Slovenia, the European Economic Area (hereinafter referred to as the EEA), Iceland, Norway and Switzerland;

Whereas it would seem advisable to maintain in operation until 31 December 2000 the system of flat rate charges provided for in Article 15 of Protocol 3 in connection with the prohibition of drawback and exemption from customs duty;

Whereas, in view of the particular arrangements on industrial products obtaining between the Community and

Turkey, it would also be appropriate to extend the cumulation system to such products originating in Turkey;

Whereas to facilitate trade and simplify administrative tasks it is desirable to amend the wording of Articles 3, 4 and 12 of Protocol 3;

Whereas, to take account of changes in processing techniques and shortages of certain raw materials, some corrections must be made to the list of working and processing requirements which non-originating materials have to fulfil to qualify for originating status,

HAS DECIDED AS FOLLOWS:

Article 1

Protocol 3 concerning the definition of the concept of 'originating products' and methods of administrative cooperation is hereby amended as follows:

1. Article 1(i) shall be replaced by:

'(i) "added value" shall be taken to be the ex-works price minus the customs value of each of the materials incorporated which originate in the other

⁽¹⁾ OJ L 51, 20. 2. 1998, p. 3.

⁽²⁾ Protocol 3 was replaced by Association Council Decision No 3/98 (not yet published in the Official Journal).

countries referred to in Articles 3 and 4 or, where the customs value is not known or cannot be ascertained, the first price verifiably paid for the products in the Community or Lithuania.'

2. Articles 3 and 4 shall be replaced by the following:

Article 3

Cumulation in the European Community

1. Without prejudice to the provisions of Article 2(1), products shall be considered as originating in the Community if such products are obtained there, incorporating materials originating in the Community, Bulgaria, Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Lithuania, Latvia, Estonia, Slovenia, Iceland, Norway, Switzerland (including Liechtenstein^(*)) or Turkey^(**) in accordance with the provisions of the Protocol on rules of origin annexed to the Agreements between the Community and each of these countries, provided that the working or processing carried out in the Community goes beyond that referred to in Article 7 of this Protocol. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in the Community does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in the Community only where the value added there is greater than the value of the materials used originating in any one of the other countries referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in the Community.

3. Products, originating in one of the countries referred to in paragraph 1, which do not undergo any working or processing in the Community, retain their origin if exported into one of these countries.

4. The cumulation provided for in this Article may only be applied to materials and products which have acquired originating status by an application of rules of origin identical to those given in this Protocol.

The Community shall provide Lithuania, through the Commission of the European Communities, with details of the Agreements and their corresponding rules of origin, which are applied with the other countries referred to in paragraph 1. The Commission of the European Communities shall publish in the *Official Journal of the European Communities* (C series) the date on which the cumulation, provided for in this Article may be applied by those countries listed in paragraph 1 which have fulfilled the necessary requirements.

Article 4

Cumulation in Lithuania

1. Without prejudice to the provision of Article 2(2), products shall be considered as originating in Lithuania if such products are obtained there, incorporating materials originating in the Community, Bulgaria, Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Lithuania, Latvia, Estonia, Slovenia, Iceland, Norway, Switzerland (including Liechtenstein^(*)) or Turkey^(**) in accordance with the provisions of the Protocol on rules of origin annexed to the Agreements between Lithuania and each of these countries, provided that the working or processing carried out in Lithuania goes beyond that referred to in Article 7 of this Protocol. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in Lithuania does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in Lithuania only where the value added there is greater than the value of the materials used originating in any one of the other countries referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in Lithuania.

3. Products, originating in one of the countries referred to in paragraph 1, which do not undergo any working or processing in Lithuania, retain their origin if exported into one of these countries.

4. The cumulation provided for in this Article may only be applied to materials and products which have acquired originating status by an application of rules of origin identical to those given in this Protocol.

Lithuania shall provide the Community, through the Commission of the European Communities, with details of the Agreements and their corresponding rules of origin, which are applied with the other countries referred to in paragraph 1. The Commission of the European Communities shall publish in the *Official Journal of the European Communities* (C series) the date on which the cumulation, provided for in this Article, may be applied by those countries listed in paragraph 1 which have fulfilled the necessary requirements.

(*) The Principality of Liechtenstein has a customs union with Switzerland, and is a contracting party to the Agreement on the European Economic Area.

(**) Cumulation as provided for in this Article does not apply to materials originating in Turkey which are mentioned in the list at Annex V to this Protocol.'

3. Article 12 shall be replaced by the following:

Article 12

Principle of territoriality

1. Except as provided for in Article 2(1)(c), Articles 3 and 4 and paragraph 3 of this Article, the conditions for acquiring originating status set out in Title II must continue to be fulfilled at all times in the Community or Lithuania.

2. Except as provided for in Articles 3 and 4, where originating goods exported from the Community or Lithuania to another country return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those that were exported

and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

3. The acquisition of originating status in accordance with the conditions set out in Title II shall not be affected by working or processing done outside the Community or Lithuania on materials exported from the Community or Lithuania and subsequently reimported there, provided:

(a) the said materials are wholly obtained in the Community or Lithuania or have undergone working or processing beyond the insufficient operations listed in Article 7 prior to being exported

and

(b) it can be demonstrated to the satisfaction of the customs authorities that:

(i) the reimported goods have been obtained by working or processing the exported materials

and

(ii) the total added value acquired outside the Community or Lithuania by applying the provisions of this Article does not exceed 10 % of the ex-works price of the end product for which originating status is claimed.

4. For the purposes of paragraph 3, the conditions for acquiring originating status set out in Title II shall not apply to working or processing done outside the Community or Lithuania. But where, in the list in Annex II, a rule setting a maximum value for all the non-originating materials incorporated is applied in determining the originating status of the end product,

the total value of the non-originating materials incorporated in the territory of the party concerned, taken together with the total added value acquired outside the Community or Lithuania by applying the provisions of this Article, shall not exceed the stated percentage.

5. For the purposes of applying the provisions of paragraphs 3 and 4, "total added value" shall be taken to mean all costs arising outside the Community or Lithuania, including the value of the materials incorporated there.

6. The provisions of paragraphs 3 and 4 shall not apply to products which do not fulfil the conditions set out in the list in Annex II or which can be considered sufficiently worked or processed only if the general values fixed in Article 6(2) are applied.

7. The provisions of paragraphs 3 and 4 shall not apply to products coming under chapters 50 to 63 of the harmonised system.

8. Any working or processing of the kind covered by the provisions of this Article and done outside the Community or Lithuania shall be done under the outward processing arrangements, or similar arrangements.'

4. In Articles 13, 14, 15, 17, 21, 27, 30 and 32, the phrase 'referred to in Article 4' shall be replaced by 'referred to in Articles 3 and 4'.

5. In the last paragraph of Article 15(6), the date '31 December 1998' shall be replaced by '31 December 2000'.

6. In Article 26(1), the terms 'C2/CP3' shall be replaced by 'CN22/CN23'.

7. In Annex I, note 5.2:

(a) between the indents:

'— artificial man-made filaments'

and

'— synthetic man-made staple fibres of polypropylene'

the following shall be inserted:

'— current conducting filaments';

(b) the fifth example ('A carpet with tufts ... are met.') shall be deleted.

8. Annex II shall be amended as follows:

(a) the following shall be inserted between the entries for HS heading Nos 2202 and 2208:

'HS heading No	Description of product	Working or processing carried out on non-originating materials that confers originating status	
(1)	(2)	(3)	(4)
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength	Manufacture: — using materials not classified in heading Nos 2207 or 2208'	

(b) the entry for chapter 57 shall be replaced by:

Chapter 57	Carpets and other textile floor coverings: — Of needleloom felt — Of other felt — Other	Manufacture from ⁽¹⁾: — Natural fibres or — Chemical materials or textile pulp However: — Polypropylene filament of heading No 5402, — Polypropylene fibres of heading Nos 5503 or 5506 — Polypropylene filament tow of heading No 5501, of which the denomination in all cases of a single filament or fibre is less than 9 decitex, may be used provided their value does not exceed 40 % of the ex-works price of the product — Jute fabric may be used as backing Manufacture from ⁽¹⁾: — Natural fibres not carded or combed or otherwise processed for spinning or — Chemical materials or textile pulp Manufacture from ⁽¹⁾: — Coir or jute yarn ^(e) — Synthetic or artificial filament yarn — Natural fibres, or — Man-made staple fibres not carded or combed or otherwise processed for spinning — Jute fabric may be used as backing	
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(¹) For special conditions relating to products made of a mixture of textile materials, see Introductory Note 5.

(a) The use of jute yarn is authorised from 1 July 2000.*

(c) the entry for HS heading No 7006 shall be replaced by:

7006	Glass of heading Nos 7003, 7004 or 7005, bent, edgeworked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials: — Glass plate substrate coated with dielectric thin film, semiconductor grade, in accordance with SEMII standards⁽¹⁾ — Other	Manufacture from non-coated glass plate substrate of heading No 7006 Manufacture from materials of heading No 7001	
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⁽¹⁾ SEMII — Semiconductor Equipment and Materials Institute Incorporated.

(d) the rule for HS heading No 7601 shall be replaced by:

7601	Unwrought aluminium	Manufacture in which: — All the materials used are classified within a heading other than that of the product and — The value of all the materials used does not exceed 50 % of the ex-works price of the product or Manufacture by thermal or electrolytic treatment from unalloyed aluminium or waste and scrap of aluminium'	
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9. the following Annex shall be added:

ANNEX V

List of products originating in Turkey to which the provisions of Articles 3 and 4 do not apply, listed in the order of HS chapters and headings

Chapter 1 Chapter 2 Chapter 3 0401 to 0402 ex 0403 0404 to 0410 0504 0511 Chapter 6 0701 to 0709	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter
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ex 0710	Vegetables, except sweetcorn of heading No 0710 40 00 (uncooked or cooked by steaming or boiling in water), frozen
ex 0711	Vegetables, except sweetcorn of heading No 0711 90 30, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
0712 to 0714	
Chapter 8	
ex Chapter 9	Coffee, tea and spices, excluding maté of heading No 0903
Chapter 10	
Chapter 11	
Chapter 12	
ex 1302	Pectic substances, pectinates and pectates
1501 to 1514	
ex 1515	Other fixed vegetable fats and oils (excluding jojoba oil and its fractions) and their fractions, whether or not refined, but not chemically modified
ex 1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared, excluding hydrogenated castor oil known as "opalwax"
ex 1517 and ex 1518	Margarines; imitation lard and other prepared edible fats
ex 1522	Residues resulting from the treatment of fatty substances or animal or vegetable waxes, excluding degreas
Chapter 16	
1701	
ex 1702	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 excluding that of heading Nos 1702 11 00, 1702 30 51, 1702 30 59, 1702 50 00 and 1702 90 10
1703	
1801 and 1802	
ex 1902	Pasta, stuffed, containing more than 20 % by weight of fish, crustaceans, molluscs or other aquatic invertebrates, sausages and the like or meat and meat offal of any kind, including fats of all kinds
ex 2001	Cucumbers and gherkins, onions, mango chutney, fruit of the genus <i>Capsicum</i> other than sweet peppers or pimentos, mushrooms and olives, prepared or preserved by vinegar or acetic acid
2002 and 2003	
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006, excluding potatoes in the form of flour, meal or flakes, and sweetcorn
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006, excluding potatoes in the form of flour, meal or flakes, and sweetcorn
2006 and 2007	
ex 2008	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, excluding peanut butter, palm hearts, maize, yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch, vine leaves, hop shoots and other similar edible parts of plants
2009	

ex 2106	Flavoured and coloured sugar, syrups
2204	
2206	
ex 2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher obtained from agricultural produce listed here
ex 2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol obtained from agricultural produce listed here'
2209	
Chapter 23	
2401	
4501	
5301 and 5302	

Article 2

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

It shall apply as from 1 January 1999.

Done at Brussels, 27 January 1999.

For the Association Council

The President

A. SAUDARGAS

COMMISSION

COMMISSION DECISION

of 22 April 1998

on aid granted by Germany to SHB Stahl- und Hartgußwerke Bösdorf AG

(notified under document number C(1998) 1325)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/139/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

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

Having given the parties concerned the opportunity to submit their comments, in accordance with the above-mentioned provisions,

Whereas:

I

On 5 February 1997, the Commission decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of restructuring aid to SHB Stahl- und Hartgußwerke Bösdorf AG (hereinafter referred to as SHB) which had been notified by Germany. The aid in question consisted of a non-repayable grant of DEM 4,5 million and the extension of the repayment period for a loan of DEM 1,5 million by the Bundesanstalt für Vereinigungsbedingte Sonderaufgaben (BvS), both of which were notified on 19 August 1996, and an acquisition of shares in SHB valued at DEM 5 million by the Konsolidierungsfonds des Freistaats Sachsen (Saxony Consolidation Fund), which had been the subject of a decision of 12 June 1996 not to raise any objections⁽¹⁾. The Commission's decision

to initiate Article 93(2) proceedings was taken after bankruptcy proceedings had been initiated in respect of SHB on 18 October 1996.

The decision of 12 June 1996 had been taken after the restructuring plan had been assessed for its compliance with the Guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾. The additional aid notified on 19 August 1996 was also described by Germany as restructuring aid to the same firm. However, this aid had already been granted in the first half of 1996, at a time when the correspondence between Germany and the Commission on the first aid measure had not been completed.

In its Decision of 5 February 1997, the Commission had pointed out that, in accordance with the Guidelines, restructuring aid should normally only need to be granted once, but that this was not reason enough for concluding that the new aid was incompatible without examining all the relevant facts in the context of the proceedings. These would also include the conditions and requirements stipulated in the previous decision of 12 June 1996.

The restructuring plan on the basis of which the first aid measure had been granted and the Commission had adopted its decision of 12 June 1996 entailed the closure of the firm's forging capacity, concentration on cast-steel production, and a reduction of costs (raw materials and staff). The firm's founding capacity was to be kept at the same level. The estimated cost of restructuring was DEM 10 million.

⁽¹⁾ Aid N 743/95, letter SG(96) D/5958 of 28 June 1996.

⁽²⁾ OJ C 368, 23. 12. 1994, p. 12.

In its decision to initiate Article 93(2) proceedings, the Commission had found, on the basis of the information available at the time, that the additional aid did not comply with the conditions of the said Guidelines for the following reasons: (a) the notification submitted by Germany did not contain a sufficiently detailed, coherent and suitable restructuring plan; (b) the plan which was submitted did not involve any reduction in capacities despite the fact that SHB was a large company active in a sector in which there was overcapacity; (c) it was not possible to demonstrate the proportionality of the aid in question.

The information concerning restructuring measures was all the less convincing given that bankruptcy proceedings were initiated in respect of the firm a few months after the aid had been granted. The Commission did not at that time have any information on the implementation of the original plan (to which the first aid measure N 743/95 was linked).

Before deciding to initiate proceedings, the Commission informed the German authorities, by letter of 31 January 1997 (D/50466) that, since bankruptcy proceedings had been initiated in respect of the SHB, they should take the necessary steps to enter their claims on the list of creditors in order to ensure repayment in the event that the Commission adopted a negative decision regarding the aid. In its letter of 25 February 1997 informing Germany of the initiation of Article 93(2) proceedings, the Commission repeated this request.

II

By letter of 25 February 1997 (SG(97) D/1420) informing Germany of the initiation of Article 93(2) proceedings, the Commission called on Germany to submit its comments and supply the information needed for the Commission to assess the aid. Germany stated its views by letter of 7 April 1997 (registered on 7 April 1997 under file number A/32789).

This letter informed the Commission that the additional aid was designed to rescue SHB, which was threatened with bankruptcy owing to an acute liquidity crisis, and to attract a new investor. According to the information supplied by Germany, it had not been possible to foresee the need to initiate bankruptcy proceedings at the time when the additional aid was granted (at the beginning of 1996, although it was not notified until August 1996).

The German authorities informally confirmed that, in connection with the bankruptcy proceedings, they had entered on the list of creditors their claim arising from the second aid measure. They also indicated that their shareholding (the first aid measure) had been declared in connection with the initiation of bankruptcy proceedings.

At the time of writing, the German authorities did not have any detailed information regarding progress on

implementing the restructuring plan on which the Commission's first decision of June 1996 had been based.

III

The letter by which Germany was informed of the Commission's decision to initiate Article 93(2) proceedings was reproduced in a notice published in the *Official Journal of the European Communities*⁽³⁾. In this notice, the Commission also asked the other Member States and interested third parties to submit their comments.

France accordingly submitted its comments on the proceedings by letter of 30 June 1997.

In so doing, it wished to inform the Commission that the sector in question (cast steel) suffered from overcapacity and that the French authorities supported the Commission in the interests of the proper functioning of the common market.

These comments were forwarded to Germany by letter of 15 July 1997. Germany did not react to them.

IV

The information supplied by Germany in connection with the proceedings was not sufficiently complete to enable the Commission to reach a final decision. Consequently, in its Decision 97/793/EC, the Commission formally instructed Germany to provide, within two months, all the information necessary to enable it to assess the case⁽⁴⁾, stipulating that, should Germany fail to reply or should the information provided be incomplete, it would take a final decision on the basis of the information available to it.

In particular, the Commission requested details as to the state of progress in implementing the restructuring plan on which its first decision had been based, an exposition of the reasons and economic circumstances which had prompted the BvS to grant additional aid, an explanation of the restructuring plan as adapted to the firm's new difficulties and the progress made in its implementation, and the situation regarding the insolvency proceedings.

Germany replied to the Commission's letter of 18 August 1997, by which it had been informed of this Decision, by letters of 16 October and 27 October 1997 (registered on 17 October and 31 October 1997 respectively). From the information contained therein, the Commission learned:

- that the restructuring plan in relation to which the first Commission Decision of June 1996 had been adopted had not been implemented either on time or correctly,
- that the second aid granted at the beginning of 1996 had been designed to stave off the initiation of bankruptcy proceedings threatening the firm as a result of the delay which had occurred in implementing the restructuring measures,

⁽³⁾ OJ C 165, 31. 5. 1997, p. 10.

⁽⁴⁾ OJ L 323, 26. 11. 1997, p. 29.

- that the restructuring plan for the additional aid had been the same as the one presented for the initial grant of aid, the additional aid having been necessitated by the delay in implementing that plan,
- that the firm had continued operating while bankruptcy proceedings were in progress with the aim of finding a new investor. A new company had been formed, 'Stahl- und Hartgußwerke Bösdorf GmbH', which had taken over the bulk of the assets belonging to SHB (in liquidation). The remaining fixed assets were to be sold. Neither the BvS nor the Land of Saxony were financially involved in this takeover.

V

The individual financial measures in favour of SHB were notified by Germany as restructuring aid. The first measure took the form of a secured equity holding of DEM 5 million from the Consolidation Fund of Saxony (Commission decision of 12 June 1996). Subsequently, a non-repayable grant amounting to DEM 4,5 million and a deferral of redemption payments on a DEM 1,5 million loan were granted. These measures are to be regarded as State aid within the meaning of Article 92(1) of the EC Treaty, since SHB was a firm in difficulty which would not have been able to obtain credit from any bank or any other private financial institution.

The additional aid notified subsequently must be deemed illegal under Article 93(2) since it was granted before the Commission had reached a final decision in its regard. However, this is not to prejudge the aid's compatibility with the common market.

In order to be compatible with the common market, aid must be covered by one of the derogations or exemptions provided for in Article 92(2) and (3) of the EC Treaty and the corresponding Article 61(2) and (3) of the EEA Agreement. For the purposes of assessing restructuring aid under Article 92(3)(c) of the EC Treaty, the criteria set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty must be met.

As far as the first aid scheme was concerned, the Commission decided, following an examination of the restructuring plan, that it was compatible with the common market and that, accordingly, no objections were to be raised against it. This decision of 12 June 1996 was based on the following restructuring measures: the closure of the firm's forging capacity, its concentration on cast-steel production without any increase in production capacities, and a reduction of staffing levels and production costs. These measures were designed to enable SHB to regain its long-term profitability and viability.

However, the information now available to the Commission (letters of 16 and 27 October 1997) indicates that the plan was not implemented correctly or on time. Yet, this plan is the very basis on which the Commission adopted its decision of 12 June 1996 declaring the aid in question to be compatible with the common market. Consequently, the Commission is obliged to conclude that the aid approved by it on 12 June 1996 has not been granted in accordance with the conditions set out in that decision. According to point 3.2.2(iv) of the Community Guidelines on State restructuring aid, the firm must implement the restructuring plan in full. If it fails to do so, the Commission may, under Article 93(3) of the EC Treaty, take measures to recover the aid provided that it does not amend its original decision on the basis of a notification.

The fact that the German authorities had decided to approve additional aid to this firm in financial difficulty even before a decision on the first grant of aid had been adopted is proof that the plan was not going to enable the firm to restore its profitability in the long term. However, the Commission, which did not receive notification of the additional aid until August 1996, two months after the firm had filed for bankruptcy, was not informed of this.

According to the information submitted, the additional aid was divided up into instalments, the first of which was paid over in January 1996. Germany justified the decision to grant this first instalment of DEM 2 million in its letter of 14 November 1996 (registered under file No A/38134 on 19 November 1996), by stressing the need to stave off a serious liquidity crisis in order to avoid bankruptcy. At the same time, the BvS had decided to defer repayment of the funds paid out in the period 18 January 1996 to 30 September 1996. By preventing bankruptcy, the BvS hoped, as part of a second privatisation, to find a new investor for the firm and to integrate it into a group of foundries. However, the group in question subsequently withdrew from the project.

On the basis of the conditions for its approval, this first instalment should be classified as rescue aid rather than restructuring aid (as the German authorities had portrayed it) given that, according to the definitions contained in point 2.1 of the Community Guidelines, such aid 'provides a brief respite [...] while a long-term solution can be worked out'.

However, according to point 3.1 of the Guidelines, rescue aid, in order to be compatible with the common market, must take the form of loan guarantees or repayable loans. By contrast, the aid approved for SHB in January consisted of a non-repayable grant and the deferment of redemption payments for a loan which can be regarded as

a new loan, the terms and interest rate of which are unknown to the Commission. That part of the aid granted in the form of a non-repayable grant does not comply with this requirement laid down by the Guidelines; as for the deferment of redemption payments, the Commission is not in possession of complete information.

Rescue aid must also be restricted to the amount needed and be paid only for the time needed to devise the necessary recovery plan. The Guidelines stipulate that this should not generally exceed six months. However, the deferment of redemption payments is for a period of more than six months (18 January to 30 September). Consequently, the conditions for rescue aid cannot be deemed to have been met.

SHB received a total of DEM 4,5 million in the form of a non-repayable grant in the period January to July 1996 and deferment of redemption payments for an amount of DEM 1,5 million. All of this aid was notified as restructuring aid, the notifications having been accompanied by brief information concerning a restructuring plan. When adopting its decision of 5 February 1997, the Commission found that, on the basis of the information then at its disposal, the restructuring plan did not seem to meet the relevant conditions of the Guidelines.

The plan on the basis of which the additional aid was approved was the same as the one which had been submitted to the Commission for the purposes of assessing the initial aid in October 1995. The forecasts contained in this plan went up to 1995/1996. Even though it was stated that the firm would end 1997 with a positive result, the results obtained in 1995 did not match the plan's forecasts. The delay in implementing the plan means that the plan is no longer coherent, and the assumptions on which it is based have become unrealistic. The necessary corrections had clearly not been made. The Commission is therefore unable to conclude whether it is a restructuring plan which will help the firm return to long-term profitability and viability.

SHB operates in a sector (founding and forging) in which there are structural overcapacities. Its forging activities were, according to the plan, to be closed down in full during 1995/1996, although the Commission does not have a detailed description of the measures which have been implemented. Germany indicated that it was precisely this closure that has been postponed.

The plan did not envisage any additional capacity reduction, whereas the aid was doubled and the planned closure of the firm's forging capacities was not properly put into effect. When the aid was granted, SHB was a large firm. Even though it is located in a region falling

within the scope of Article 92(3)(a) of the EC Treaty, a large firm operating in a sector characterised by overcapacity must carry through a reduction in its capacities proportionate to the amount of aid received in order to avoid undue distortions of competition. This was not provided for in the plan.

Extracts from the plan which have been submitted to the Commission do not contain any information on the recipient's contribution to the restructuring. Similarly, they do not contain any undertaking that implementation will be monitored to ensure adherence to the plan, nor any obligation to submit annual reports on such implementation.

VI

In view of the above, and in particular by virtue of Section V, the Commission finds that the aid granted to SHB and notified as restructuring aid does not satisfy the conditions set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. The aid must therefore be deemed incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The following restructuring aid measures granted by Germany to SHB Stahl- und Hartgußwerke Bösdorf AG are incompatible with the common market in accordance with Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement and does not meet any of the conditions for a derogation or exemption under Article 92(2) and (3) of the EC Treaty or Article 61(2) and (3) of the EEA Agreement:

- (a) the equity holding of DEM 5 million from the Consolidation Fund of Saxony,
- (b) the non-repayable grant of DEM 4,5 million and the loan of DEM 1,5 million in respect of which it was decided that repayments should be deferred.

Article 2

Germany shall take appropriate measures to ensure repayment of the aid granted illegally. The amount to be repaid shall bear interest from the date on which the aid was granted at a rate equal to the reference rate used for calculating the net grant equivalent of regional aid in Germany applicable on that date.

Aid shall be recovered in accordance with the procedures and provisions of German law. The applicable provisions shall be applied in such a way as not to make repayment impossible.

Article 3

Germany shall inform the Commission within two months of the date of notification of this Decision of the measures which it has taken to comply with this Decision.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 22 April 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 17 June 1998

concerning aid granted by Luxembourg to ProfilARBED in connection with its investment in environmental protection

(notified under document number C(1998) 1764)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/140/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules on aid to the steel industry⁽¹⁾, and in particular Article 6 thereof,

Whereas:

I

By letter dated 30 December 1993, registered by the Commission on 4 January 1994, the Luxembourg authorities notified the Commission of a plan to grant aid to the steel company ProfilARBED (ARBED) in connection with investment undertaken by the company in environmental protection.

By letter dated 14 June 1994⁽²⁾, the Commission informed the Luxembourg Government of its decision, taken on 1 June 1994, to initiate proceedings in respect of the aid in question under Article 6(4) of Decision No 3855/91/ECSC⁽³⁾ (hereinafter 'the Steel Aid Code', since replaced by Decision No 2496/96/ECSC).

On 9 August 1993 ARBED had requested State aid covering 25 % of the LUF 613 million it was committed to spending on environmental protection in connection with the development of the Esch-Schifflange steelworks, which in the event entailed the construction of a new electric steel plant. By letter of 19 December 1994, the Luxembourg Government stated that it planned to provide ARBED with a capital grant not exceeding 15 % of the eligible investment, i.e. not exceeding LUF 91,95 million, which it said was in accordance with the Community guidelines on State aid for environmental protection⁽⁴⁾.

In response to the decision initiating proceedings, the Luxembourg authorities put forward the following arguments:

- (1) the steelworks as a whole had come into being in the late 19th century and, in any case, the liquid phase at Esch had been operating for more than two years by the time that the new standards entered into force;
- (2) it was technically impossible for the old LD-AC steel-making plant to achieve the environmental protection levels required by the new standards laid down in February 1993;
- (3) according to the second recital under Part II of the preamble to the Steel Aid Code, the relevant reference text was the Community guidelines on State aid for environmental protection;
- (4) lastly, the Esch electric steel plant satisfied all the criteria set out therein. In this regard, it was pointed out that:
 - the new environmental protection standards had entered into force in 1990 and had been tightened in 1993. The liquid phase at Esch, however, had been in place for more than two years before the introduction of the new standards,
 - the building of the electric steel plant was an adaptation of a production process: the liquid phase based on the LD-AC process and continuous casting had been converted into a liquid phase based on an electric process and continuous casting,
 - the aid requested related solely to that part of the investment that was not economically viable, while the expenditure connected with replacement and productivity-enhancing schemes, i.e. the part of the investment with an economic objective, was borne entirely by ARBED, in accordance with the said Community guidelines.

The Luxembourg authorities also argued that, in view of the heavy investment needed to bring the existing LD-AC steel plants into line with the environmental standards, and in order to avoid losing much of that investment

⁽¹⁾ OJ L 338, 28. 12. 1996, p. 42.

⁽²⁾ OJ C 212, 3. 8. 1994, p. 7.

⁽³⁾ OJ L 362, 31. 12. 1991, p. 57.

⁽⁴⁾ OJ C 72, 10. 3. 1994, p. 3.

when the existing steel plants were replaced, ARBED had decided to speed up the programme for replacing its steel mills by facilities meeting the environmental requirements. The cost of ARBED's investment in environmental protection for the new steel plant was LUF 613 million. If the existing facilities had been retained, the estimated total investment cost to ARBED would have been LUF 1,5 billion. That was why the Luxembourg Government considered that the granting of aid was in accordance with the spirit of Article 3 of the Steel Aid Code.

II

In the light of the comments received from the Luxembourg authorities, the Commission took the following view of the matter:

- (1) Article 3 of Decision No 3855/91/ECSC, i.e. the Steel Aid Code in force when the decision was taken, had provided that aid designed to facilitate the alignment on the new statutory environmental standards of plant which had entered into service at least two years before the introduction of those standards could be considered compatible with the common market;
- (2) Part II of the recitals to the Steel Aid Code laid down the principle that the steel industry and other industries had to have equal access to aid for environmental protection. It followed that, in principle, the same provisions of Community legislation regarding aid for environmental protection should be generally applicable to all firms, whether steel firms or not;
- (3) the Community guidelines on State aid for environmental protection, while stating at the outset that, in keeping with the 'polluter pays' principle, no aid should normally be given to offset the cost of complying with mandatory standards in new plants, expressly stipulated that firms which, instead of simply adapting existing plants more than two years old, opted to replace them by new plants meeting the new standards, could receive aid in respect of that part of the investment costs that did not exceed the cost of adapting the old plant.

The Commission therefore considered that it was possible, under Article 3(1) of the Steel Aid Code, to regard as compatible with the common market aid not

exceeding 15 % gross granted to firms which, instead of bringing into line with new environmental standards plants which had entered into service at least two years before the introduction of the standards, decided to replace them by new facilities meeting the new standards, provided that the aid did not exceed that which would have been granted for adapting the old steelworks.

It therefore concluded that, as the aid complied with Article 3 of Decision No 3855/91/ECSC, it could be considered compatible with the common market.

Accordingly, it decided on 21 December 1994 to terminate the proceedings initiated in respect of the aid granted to ProfilARBED for environmental protection⁽⁵⁾ without raising any objections.

III

That Commission decision was challenged before the Court of First Instance of the European Communities by the British Iron and Steel Producers Association (BISPA) on the ground that the Steel Aid Code could not be extended to include the provisions of the Community guidelines on State aid for environmental protection applicable to sectors covered by the EC Treaty.

In its judgment of 25 September 1997 in Case T-150/95 UK Steel Association, formerly BISPA v. Commission⁽⁶⁾, the Court annulled the Commission's decision; it held that the aid granted to ARBED could not be authorised, because:

- (a) it was clear that in this case the State aid was intended for investments in new plants replacing the old facilities;
- (b) the Steel Aid Code, which derogated from the ban on all aid to steel companies provided for in Article 4(c) of the ECSC Treaty, had to be interpreted strictly, with particular attention being paid to the wording;
- (c) Article 3 of the Steel Aid Code stated that aid could be authorised only for bringing into line with new statutory environmental standards plants which entered into service at least two years before the introduction of the standards, and did not provide for aid to firms which, rather than adapting existing plants, decided to replace them with new facilities meeting the new standards;
- (d) consequently, the reasoning contained in the Decision being contested before the Court, namely that Article 3 of the Steel Aid Code could be read in conjunction

⁽⁵⁾ OJ C 400, 31. 12. 1994, p. 10.

⁽⁶⁾ [1997] ECR II-1433.

with the Community guidelines on State aid for environmental protection, which allowed aid for new plants, had to be rejected, since the rules of the guidelines ran counter to the clear wording of the Article.

IV

In view of the foregoing, and especially Section IIII of this Decision, the Commission concludes, in accordance with the above-mentioned judgment and contrary to its final Decision of 21 December 1994⁽⁷⁾, that the comments made by the Luxembourg authorities were not such as to alter in substance the Commission's initial assessment of the case when it decided to initiate proceedings, namely that the aid was not covered by any of the exemptions from the general ban on aid laid down in Article 4(c) of the ECSC Treaty and, in particular, that Article 3 of the Steel Aid Code could not be invoked in order to authorise the aid in question.

Consequently, the aid received by ARBED, which totals LUF 91,95 million, must be regarded as incompatible with the common market, as it does not qualify for exemption under the Steel Aid Code from the ban contained in Article 4(c) of the ECSC Treaty; it must therefore be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The State aid totalling LUF 91,95 million granted to ARBED by Luxembourg is incompatible with the

common market for coal and steel under Article 4(c) of the ECSC Treaty.

Article 2

Luxembourg shall recover the aid in question in accordance with the provisions of national law applicable to the recovery of amounts owed to the State. In order to offset the effects of such aid, interest shall be added, calculated from the day on which the aid was granted up until the time of recovery. The interest rate applicable shall be that used by the Commission to calculate the net grant equivalent for regional aid in the period under consideration.

Article 3

Luxembourg shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 17 June 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽⁷⁾ See footnote 5.

COMMISSION DECISION
of 10 February 1999
amending the Decision on the Liaison Group on the Elderly
(notified under document number C(1999) 211)

(1999/141/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas, in the light of developments at Community level, it is necessary to adjust the membership of the Group set up by Commission Decision 91/544/EEC ⁽¹⁾, as amended by Decision 93/417/EEC ⁽²⁾; whereas at the same time, in the interests of administrative efficiency, the terms of office of the Chairman and of the Members of the Group should be reduced,

HAS DECIDED AS FOLLOWS:

Sole Article

Decision 91/544/EEC is amended as follows:

1. in Article 3(2), '25 members' is replaced by '24 members';
2. Article 4(3) is amended as follows:
 - (a) in each case, 'five seats' is replaced by 'four seats';
 - (b) the following indent is added:
 '— ESCU-European Senior Citizens Union: four seats';
3. in Article 5(1), '18 months' is replaced by '12 months';
4. in Article 7(1), '18 months' is replaced by '12 months';
5. in the Annex, the following indent is added:
 '— ESCU-European Senior Citizens Union'.

Done at Brussels, 10 February 1999.

For the Commission
Pádraig FLYNN
Member of the Commission

⁽¹⁾ OJ L 296, 26. 10. 1991, p. 42.

⁽²⁾ OJ L 187, 29. 7. 1993, p. 60.