

English edition

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 900/2001
of 7 May 2001
imposing definitive anti-dumping duties on imports of urea ammonium nitrate solutions
originating in Poland**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PREVIOUS INVESTIGATION

- (1) By Regulation (EC) No 3319/94 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of urea ammonium nitrate solutions ('UAN') originating in Bulgaria and Poland. The measures applying to imports from Bulgaria consisted of a specific duty, except for one producer and one exporter from whom a joint undertaking was accepted by Commission Decision 94/825/EC ⁽³⁾. Polish imports of UAN were made subject to a variable duty based on a minimum import price when directly invoiced by certain companies to an unrelated importer. In all other cases, imports of UAN from Poland were subject to a specific duty.

B. INVESTIGATIONS CONCERNING OTHER COUNTRIES

- (2) By Regulation (EC) No 1995/2000 ⁽⁴⁾, the Council imposed definitive anti-dumping duties on imports of UAN originating in Algeria, Belarus, Lithuania, Russia, and Ukraine. It was established that the imports of UAN

originating in these other countries were dumped and had caused material injury to the Community industry. It was considered appropriate to impose duties in the form of a specific amount per tonne, in order to ensure the efficiency of the measures and to discourage any price manipulation.

C. PRESENT INVESTIGATION

- (3) Following the publication, in June 1999 ⁽⁵⁾, of a notice of the impending expiry of the anti-dumping measures in force, the Commission received a request for an expiry review lodged by the European Fertiliser Manufacturers Association (EFMA) on behalf of a major proportion of Community producers of UAN ('applicant Community producers'). The request alleged that injurious dumping of imports originating in Poland would be likely to recur if measures expired. The applicant Community producers did not request the initiation of an expiry review concerning imports originating in Bulgaria on the grounds that such recurrence was not likely for Bulgarian imports. Consequently the measures applicable to imports originating in Bulgaria expired on 1 January 2000.
- (4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation pursuant to Article 11(2) of Regulation (EC) No 384/96 (the 'basic Regulation').
- (5) At the same time, likewise after consultation of the Advisory Committee, the Commission initiated an *ex officio* interim review pursuant to Article 11(3) of the basic Regulation, limited to the form of the

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

⁽²⁾ OJ L 350, 31.12.1994, p. 20.

⁽³⁾ OJ L 350, 31.12.1994, p. 115.

⁽⁴⁾ OJ L 238, 22.9.2000, p. 15.

⁽⁵⁾ OJ C 176, 22.6.1999, p. 14.

measures in force with respect to the imports originating in Poland⁽¹⁾. The Commission initiated this interim review in order to allow for a possible adaptation of the type of measures for Poland, in the event of the measures against Polish imports being maintained, taking into account the need to ensure the effectiveness of the measures and the form of measures which might eventually be imposed on imports of the same product originating in other countries.

- (6) The investigation into the continuation and/or recurrence of dumping and injury covered the period from 1 January 1999 to 30 November 1999 ('IP'). The examination of the trends relevant for the assessment of a likelihood of a continuation and/or recurrence of injury covered the period from 1 January 1995 up to the end of the IP ('period under review').
- (7) The Commission officially advised the applicant Community producers, the exporter and exporting producers in Poland, importers/traders, their representative associations, associations of users known to be concerned, and the representatives of the Polish Government of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the notice of initiation. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (8) The following Community producers replied to the questionnaire:
 - (a) Agrolinz Melamin GmbH, ADM — Linz, Austria
 - (b) DSM Agro BV — Sittard, Netherlands
 - (c) Fertiberia S.A — Madrid, Spain
 - (d) Grande Paroisse SA — Paris, France
 - (e) Hydro Agri Chafers — Immingham, United Kingdom
 - (f) Hydro Agri France — Nanterre, France
 - (g) Hydro Agri Rostock — Rostock, Germany
 - (h) Hydro Agri Sluiskil BV — Sluiskil, Netherlands
 - (i) Kemira Agro Rozenburg B.V. — Rotterdam, Netherlands
 - (j) SKW Stickstoffwerke Piesteritz GmbH — Wittenberg, Germany
- (9) In view of the fact that the information provided by these same Community producers was duly verified in the framework of the proceeding referred to in recital 2 concerning imports of UAN originating in Algeria, Belarus, Lithuania, Russia and Ukraine, for which the investigation covered the years 1995 to 1998 as well as five months of the present IP, it was considered appropriate, in the current proceeding, not to carry out additional verification visits at the premises of the companies in question. However, the accuracy of the data provided

was verified by examining their coherence and consistency with the previously verified data.

- (10) The Commission sent out questionnaires to 20 unrelated importers/traders and to one association of importers. Nine answers were received including that from the association. None of these importers provided any specific figures since they did not import UAN from Poland during the period under review and accordingly no verification visit was carried out.
- (11) Following the receipt of a questionnaire reply, verification visits were also carried out at the premises of the following companies:
 - (a) Zakłady Azotowe 'Pulawy' SA, Pulawy ('ZAP'), an exporting producer
 - (b) CIECH SA, Warsaw, an exporter

D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (12) The product under consideration in this proceeding is urea ammonium nitrate solution, falling within CN code 3102 80 00. It is the same as in the original investigation, i.e. a liquid fertiliser commonly used in agriculture. It consists of a mixture of urea and ammonium nitrate in water. The water content is approximately 70 % of the mixture (depending on the nitrogen content), the remaining part consisting equally of urea and ammonium nitrate. The nitrogen (N) content is the most significant element of the product, and it can vary between 28 % and 32 %.
- (13) As the previous investigation has shown, UAN is a pure commodity product, having the same basic physical and chemical characteristics whatever the country of origin. Therefore UAN produced and sold in the Community by the applicant Community producers and UAN produced in Poland and sold domestically or exported to the Community are considered to be like products, within the meaning of Article 1(4) of the basic Regulation.

E. LIKELIHOOD OF A RECURRENCE OF DUMPING

1. Preliminary remark

- (14) Under Article 11(2) of the basic Regulation, the purpose of this type of review is to determine whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. Since there were no imports of the product under consideration from Poland to the Community during the IP, the analysis focused on whether the removal of the measures would be likely to lead to a recurrence of dumping in significant volumes. In this respect, the pricing behaviour of Polish producers on third country markets was examined in order to determine whether the product under consideration was sold there at dumped prices. It has been further assessed whether, should the measures be repealed, the Polish producers would be likely to resume exporting UAN to the Community following the same pricing behaviour.

⁽¹⁾ OJ C 369, 21.12.1999, p. 22.

- (15) It is recalled that, in the original investigation, the individual dumping margins found for the two producers amounted to 40 % and 27 % respectively. The investigation did not reveal the existence of any Polish UAN producers other than the two aforementioned producers.
- (16) One company did not provide any detailed information on sales to other countries, domestic sales or cost of production, and was accordingly informed that the findings would be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation, if the information was not submitted within a set time limit. No information was submitted subsequently by that company. It should be noted that, on the basis of information available, that company had a much smaller production capacity than the cooperating one.

2. Exports to third countries

(a) Export price

- (17) Exports by the cooperating producer were made directly to independent importers in other countries, mainly to the North American market which accounted for a high proportion (two thirds) of the company's total exports in the IP, and a smaller proportion (one third) to the Czech Republic. Polish exports to the USA and Canada accounted for a not insignificant part of combined total imports by these two countries, and represented a significant proportion of the producer's output.
- (18) In view of the nature of this investigation, it was considered that it would be unreasonable to request, for the purpose of a likelihood of recurrence of dumping test, detailed information on exports for the whole IP. Instead, information was requested on all transactions covering the last three month period included in the IP. The export price was therefore determined on the basis of the prices paid or payable by unrelated importers in third countries during the said three month period. The cooperating producer challenged this approach at a later stage in the procedure and requested that data concerning the whole IP be used. In view of the lateness of the suggestion, it was not considered practicable to alter the basis of the analysis. Furthermore, even if unverified data for previous months were to be taken into account, the picture would not change so significantly as to alter the conclusions found regarding exports to third countries from Poland.

(b) Normal value

- (19) For the cooperating producer, it was first determined that the total volume of domestic sales of UAN was representative in relation to export sales. Indeed, the sales volume on the Polish domestic market was higher than the sales volume exported to third countries. It was

then determined whether these domestic sales had been made in the ordinary course of trade. In this regard, the investigation showed that the volume of sales above unit production cost represented more than 10 % but less than 80 % of all sales. Therefore normal value was established on the basis of the prices actually paid for all profitable sales of the product under consideration.

(c) Conclusion on exports to third countries

- (20) For the cooperating producer, the normal value was compared with the export price for each country of destination on a weighted average to weighted average basis, after making certain adjustments to ensure a fair comparison.
- (21) It was found that the export prices charged by the cooperating producer (which accounted for 90 % of total Polish exports in the IP) to the North American market were substantially below the normal value established for it, resulting in significant dumping margins in respect of its sales to both the USA and Canada. The export sales to these two countries accounted for two thirds of total export sales of this company. With regard to sales to the Czech Republic, a neighbouring market which accounted for the remaining one third of the company's total exports, little or no dumping was found. Indeed, the company adopted the same price strategy as for its domestic market.
- (22) Since the other producer failed to provide detailed information, no calculations were made. It should be noted that this producer only exported to the Czech Republic, in relatively low volumes.

3. Potential for a rise in dumped exports to the Community

- (23) The investigation established that Polish companies have the capacity to produce significant additional volumes for export to the Community. These additional volumes could well reach the significant levels found for the IP of the original investigation. Moreover, these exports would in all likelihood be made at dumped prices.

(a) Cooperating exporting producer

- (24) Given the cooperating producer's relatively low level of capacity utilisation in the IP, there is room for a considerable increase in production. There is also a real possibility of shifting production from ammonium nitrate to UAN, given the fact that the additional equipment required for producing UAN would not involve any major investment.

- (25) Should the measures be repealed, the Community market might become more attractive for Polish producers than the North American market. As a matter of fact, the investigation showed that, during the IP, UAN prices on the North American market were slightly lower than prices on the Community market. Moreover, this latter market is considered more attractive by Polish exporting producers due to its geographical proximity, which entails cheaper transport costs. Thus, for the same selling price charged on the North American market, Polish exporting producers could achieve a higher margin on the Community market. Indeed, if the same or a slightly lower selling price were to be charged to Community customers, such a price would still be dumped, despite the lower transport costs. Moreover, in view of the cooperating producer's low capacity utilisation rate, it has every economic interest in selling at even lower prices as long as its variable costs are covered and as long as there is no risk of endangering the prices charged to the US. It should be recalled that the Community market used to be Poland's major export market for UAN before the imposition of anti-dumping duties. Moreover, even when measures were in force, in particular during 1996 when the Community market price was above the minimum import price imposed by the measures, approximately 50 % of Polish production was exported to the Community.
- (26) In addition, following the imposition of anti-dumping measures on imports of UAN originating in Algeria, Belarus, Lithuania, Russia and Ukraine, there will be greater opportunities for other producers/exporters to regain market share.
- (27) The cooperating exporting producer argued, on the basis of sales projections, that in the future it would no longer be in a position to export UAN to the Community market. The reasons for this were (i) the expected significant increase in its domestic sales of ammonium nitrate, limiting the availability of ammonium nitrate for the production of UAN, and (ii) the growing domestic market for UAN.
- (28) Even though the investigation confirmed that domestic sales of ammonium nitrate had indeed significantly increased between 1998 and 1999, this increase started from relatively low levels because domestic consumption decreased by 15 % between 1996 and 1998. It is expected that these domestic sales will remain at the 1999 level or increase only slightly in the future. This has even been confirmed by the Polish cooperating producer's own sales figures for the first eight months of the year 2000. It seems, therefore, that the large increase in domestic sales between 1998 and 1999 should be considered exceptional.
- (29) As far as the development of domestic sales of UAN is concerned, it is clear from the Polish cooperating producer's sales figures for the first eight months of the year 2000 in fact increased far less than forecast.
- (30) Furthermore, it has been found that a considerable volume of UAN was again exported to the Community in the year 2000. Indeed, in the period from January to October 2000, total exports of UAN from Poland to the Community amounted to 5 % of Community consumption in the IP.
- (b) *Non-cooperating producer*
- (31) The second Polish exporting producer was found to have exported a significant volume to the Community in 1996 while the Community market price was temporarily above the minimum import price. During the previous investigation, it was found that this producer had a significant production capacity and there is no indication that this has changed. From this it can be concluded that the company is potentially a significant exporter to the Community should anti-dumping measures be repealed. In the absence of cooperation from this producer, it was concluded that its pricing behaviour concerning any future exports to the Community would not significantly differ from that adopted by the other producer and from its own behaviour during the original investigation.
- (c) *Conclusion on potential exports to the Community*
- (32) Given the above it can be concluded that the Polish exporting producers clearly have the capacity to export large quantities of UAN at dumped prices.
- (33) The Community market used to be Poland's major export market for UAN. Even when measures were in force, in particular during 1996 when the Community market price was above the minimum import price, approximately 50 % of production was exported to the Community. Should the measures be repealed, this market is likely to become once again an attractive outlet for Polish producers.
- 4. Conclusion on the likelihood of a recurrence of dumping**
- (34) Polish exporting producers have the capacity to increase significantly their production volume of UAN because of their substantial unused production capacity.
- (35) Any future increase in domestic consumption will not be sufficient to absorb these possible additional volumes, which will therefore most likely be exported. This conclusion is reinforced by the fact that, during the period from the beginning of 1995 until the end of the year 1998, Polish producers exported in general a high percentage of their production (more than 80 % on average).

- (36) In the event of the measures being repealed, it is likely that most Polish exports of UAN would be directed to the Community market due to its geographical proximity and consequent cheaper transport costs. In addition, the imposition of anti-dumping measures on imports of UAN originating in five other third countries might provide a further incentive to increase exports to the Community, all the more so because the Community market used to be Poland's major export market for UAN before the imposition of anti-dumping duties.
- (37) The Polish exporting producer's current apparent dumping practices on the North American market, the price level prevailing on the Polish market and the price level prevailing on the Community market indicate that, should Polish exports resume, there is a strong likelihood that imports in the Community would also be dumped.
- (38) It is therefore concluded that there is a likelihood of recurrence of dumping, should the measures be repealed.

F. DEFINITION OF THE COMMUNITY INDUSTRY

- (39) The Community producers which replied to the questionnaire represented more than 85 % of the Community production of UAN during the IP and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

G. THE SITUATION OF THE COMMUNITY MARKET

1. Community consumption

- (40) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the information contained in the complaint concerning the remaining Community producers, the information provided by the cooperating Polish exporting producer and Eurostat figures. Volumes have been, where appropriate, adapted so as to correspond to UAN solutions with a nitrogen content of 32 %.
- (41) On this basis, Community consumption decreased between 1995 and 1997, from 3 155 000 to 2 882 000 tonnes. Afterwards, it significantly increased and reached the level of 3 413 000 tonnes during the IP. This increase was especially marked between 1998 and the IP (+15 %). Over the whole period under review, the Community consumption increased by 8,2 %.

2. Evolution of imports

(a) Import volumes

- (42) Total imports of UAN in the Community followed a downward trend during the first three years of the period under review, from 1 565 000 tonnes in 1995 to 990 000 tonnes in 1997, and then increased to

1 482 000 tonnes during the IP. Over the whole period under review, total imports decreased by around 5 %.

- (43) With respect to the volume of the Polish imports, it drastically decreased over the period under review, in particular as from 1997, from 360 000 tonnes in 1995 to nil during the IP. The investigation established that the trend of the Polish imports was the result of the combination of the anti-dumping measures imposed at the end of 1994 and of the evolution of the average Community market price of UAN, as explained below. It should be recalled that before the imposition of the measures, the Polish imports of UAN reached the level of around 520 000 tonnes in 1992 and around 405 000 tonnes in 1993, representing at that time around 50 % of all imports.
- (44) In this context, as confirmed by Regulation (EC) No 1995/2000, certain third countries have benefited from the imposition of anti-dumping duties on Polish imports. Their export volume to the Community increased from 869 000 tonnes in 1995 to 1 393 000 tonnes during the IP.
- (45) As to the other third countries' import volumes, they strongly decreased over the period under review, representing around 21 % of total imports in 1995, compared to 6 % during the IP.

(b) Price evolution of the imports

- (46) After the imposition of anti-dumping measures against imports of UAN originating in Poland and Bulgaria, prices recovered until 1996. Thereafter, imports from the five countries concerned by Regulation (EC) No 1995/2000 exerted a downward price pressure on the Community market. In order to face this situation the Community industry had no choice but follow the decreasing prices in order to keep its market share. The Polish exporting producers were not in a position to follow the Community market price as soon as it fell below the level of the minimum import price to which their imports had been subject since the imposition of the anti-dumping measures. As a consequence, Polish producers have withdrawn from the Community market since 1998.

3. Economic situation of the Community industry

(a) Production

- (47) The Community industry's production of UAN increased by 10,4 % between 1995 and the IP, i.e. from 1 484 000 tonnes to 1 639 000 tonnes. The most significant increase took place between 1996 and 1997, after the introduction of anti-dumping measures on imports of UAN originating in Poland and Bulgaria.

(b) Capacity and capacity utilisation rates

- (48) The total production capacity of the Community industry was relatively stable over the period under review. Capacity utilisation increased from 38 % in 1995 to 43 % in 1997 and subsequently fell back to 41 % during the IP.
- (49) It should however be noted that the production capacity installed can be used for the production of different fertilisers which can be sold either individually or mixed together, as is the case for the production of UAN. The absolute level of capacity utilisation rate as well as its development is accordingly also affected by the development of other fertilisers.

(c) Sales in the Community

- (50) During the period under review, the sales volume of the Community industry followed an increasing trend, which was however temporarily interrupted between 1997 and 1998. This trend should be analysed in the light of the overall market development. As a matter of fact, the decrease of the Community industry's sales volume between 1997 and 1998 took place when the overall market was stable, thus resulting in loss of market shares. The increasing volume between 1998 and the IP, however, followed the market trend. Despite the increasing trend of the sales volume, the position of the Community industry in the market has overall deteriorated since 1997. The Community industry was not able to take advantage of the increase in consumption because of the pressure of the five countries concerned by Regulation (EC) No 1995/2000.

(d) Stocks

- (51) The level of stocks is not considered to be a valid injury indicator owing to the seasonal nature of the sales and the fact that UAN is partly stored by the producers themselves and partly by the cooperatives of farmers, i.e. the users of the product into consideration.

(e) Market share

- (52) After a gain of 15 percentage points between 1995 and 1997, from 45,8 % to 60,7 %, when the measures were taking effect, the Community industry's market share fell, between 1997 and the IP, by 8,4 percentage points.

(f) Sales prices of the Community industry

- (53) The Community producers' average net sales price decreased from EUR 111,3 in 1995 to EUR 78,3 during the IP. As explained in recital (46), the fall was particularly marked between 1996 and the IP, i.e. - 32,2 %.

(g) Profitability

- (54) The weighted average profitability of the Community industry deteriorated by 15,2 percentage points between 1995 and the IP from + 4,9 % to - 10,3 %. After having reached a peak in 1996 (+ 6,2 %), it deteriorated by 16,5 percentage points between that year and the IP. This evolution should be seen in the light of the price development experienced by the Community industry during the same period. The investigation showed that the Community industry's sales price increased between 1995 and 1996, whilst it afterwards started to decrease mainly because of the price pressure exerted by imports from the five countries concerned by Regulation (EC) No 1995/2000. It should be recalled that, during the IP of the initial investigation (i.e. April 1992 to March 1993), the Community industry incurred losses of more than 5 %.

- (55) The return on investments broadly followed the profitability curve during the period under review. The decreasing trend was even more marked due to the joint effect of the decreasing profitability and increasing net investments resulting from new acquisitions, as described below. It should be noted that both direct investments and a portion of investments indirectly related to the production of the product concerned have been considered.

(h) Cash flow

- (56) The cash flow generated by the Community industry in relation to sales of UAN also followed the profitability curve.

(i) Ability to raise capital

- (57) Due to the structure of the complainant companies, i.e. the fact that the fertiliser producers are a part of large chemical groups also dealing with other products, it was not possible to establish the ability to raise capital for the product under consideration only, and it was therefore considered as not being a meaningful indicator to measure any injury.

(j) Employment and wages

- (58) Employment in the Community industry, while increasing between 1995 and 1996, from 330 to 339 employees, decreased thereafter and reached the level of 322 employees in the IP, a decrease of 5 %.
- (59) With respect to overall wages, they followed a similar decline as compared to the decrease of the number of persons employed.

(k) *Upstream investment*

- (60) The most important investments of the Community industry during the period under review took place during the years 1996 to 1998, and were related to the production facilities for urea and nitric acid, which are both raw materials used for the production of UAN solutions, but are also used for other purposes such as the production of solid ammonium nitrate and solid urea, for which a more positive outlook existed as compared to UAN. Direct investments related only to the last step of the production process, i.e. the mixing of ammonium nitrate and urea, represent a minor fraction of the figures shown above. Those direct investments remained at a relatively stable level during the period under review.

4. Conclusion on the analysis of the situation of the Community market

- (61) The introduction of the minimum import price on Polish imports had in a first stage a positive impact on the Community industry, which could recover from its weakened economic situation. However, starting from the year 1997, and as confirmed by Regulation (EC) No 1995/2000, Algeria, Belarus, Lithuania, Russia and Ukraine largely contributed to a general price depression on the Community market by decreasing their average sales price by around 35 % between 1996 and 1997. By doing so, they were able to expand their export volume to the Community, were rapidly in a position to take over the Polish market shares, and consequently caused a significant deterioration of the economic situation of the Community industry.

H. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

- (62) In order to assess the likely effect of the expiry of the measures in force, the following elements were considered:

- (a) As explained under recitals 23 to 31:
- there are clear indications that the Polish producers have the potential to raise their production and export volumes,
 - should the measures lapse, it is likely that these additional volumes will be shipped to the Community market,
 - on the basis of the export prices established in respect of exports to North America, it is likely that, in the absence of measures, the Polish exporting producers would adopt a policy of dumped prices. These low prices, which would be charged also in order to regain their lost market shares, are likely to further injure the Community industry. The possibility for the Polish exporting producers to lower their prices

is confirmed by their export price behaviour on third countries markets, namely North America.

- (b) Such a price behaviour of Polish exporting producers, coupled with their ability to deliver significant quantities of UAN, would in all likelihood have a general price-depressing impact on what is a very price-sensitive commodity market. This in turn would lead to a recurrence of injury in terms of decreasing sales prices of the Community industry, its sales volumes and market shares as well as the consequent impact in terms of profitability. In this context, it is recalled that imports from Algeria, Belarus, Lithuania, Russia and Ukraine recently followed the very same pricing and volume patterns and these imports had similar effects on the Community industry as those outlined above.
- (c) The Community industry is still in a difficult situation having regard in particular to its profitability. Indeed, although the situation of the Community industry, following the imposition of the measures under consideration, markedly improved in the first two years of application of the measures, it deteriorated again, in particular as from 1997, due to the injurious dumping from other countries' imports, as established in Regulation (EC) No 1995/2000. In this regard, should the measures against Poland be repealed, not only would the situation of the Community industry again be put at a risk, but also the benefit which the Community industry should derive from the measures imposed against these other countries could be weakened or even nullified.

- (63) On the basis of the above, it is concluded that, should the measures be repealed, there is a likelihood of recurrence of injury.

I. COMMUNITY INTEREST

1. Preliminary remark

- (64) In accordance with Article 21 of the basic Regulation, it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users of the product under consideration.
- (65) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, would allow the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

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

2. Interest of the Community industry

- (67) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This was confirmed in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in Poland and Bulgaria and by the industry's investment in state of the art production capacity. These positive effects however lasted only for a short period since, as from 1997, dumped imports originating in certain third countries, other than Poland caused a strong price pressure on the Community market resulting in a new degradation of the economic situation of the Community industry. This degradation was such that the Community industry had to restructure its activity and close down significant nitrate capacity during the year 2000, thus reducing jobs.
- (68) It can reasonably be expected that the Community industry will benefit from the measures imposed by Regulation (EC) No 1995/2000 provided that no other source of injurious dumping would undermine them. As outlined above, since there is a likelihood of a recurrence of injurious dumping from Poland, it would be in the interest of the Community industry to maintain the anti-dumping measures on imports of UAN originating in Poland

3. Interest of unrelated importers/traders

- (69) The Commission sent out questionnaires to 20 unrelated importers/traders and to one association of importers. Nine answers were received including that from the association.
- (70) The investigation established that none of these importers/traders had imported any UAN from Poland during the IP. They claimed this was due to the fact that, during this period, the average Community sales price for UAN was below the minimum import price applicable to imports of Polish UAN. It should, however, be noted that the anti-dumping measures imposed in 1994 on the imports of UAN originating in Poland had in fact no

significant impact on importers/traders. As shown by both the current and the previous investigations, firstly, importers/traders do in general not only deal with UAN but also with other fertilisers and, secondly, UAN was available from numerous different countries of origin. This is due to the characteristics of the product under consideration, which is, as explained above, a commodity product and identical whatever the country of origin.

4. Interest of users

- (71) The users of the product under consideration are farmers. The Commission sent out questionnaires to European associations of users. No replies were received.
- (72) It is to be noted that fertilisers represent a small part of total production costs of farmers, as set out in Regulation (EC) No 1995/2000. Moreover, the lack of cooperation in itself appears to confirm that this sector did not suffer any substantial negative effect on its economic situation as a result of the measures currently in force.
- (73) In conclusion, it is unlikely that the possible impact on farmers would offset the positive effect on the Community industry of the measures against recurrent injurious dumping.

5. Conclusion on Community interest

- (74) Given the above reasons, it is concluded that there are no compelling reasons against the prolongation of the anti-dumping measures.

J. FORM OF THE MEASURES

- (75) As stated in the notice of initiation, the interim review was initiated by the Commission in order to allow a possible adaptation of the form of measures for Poland, taking into account the treatment of exports of UAN from certain third countries to the Community which were then subject to another anti-dumping proceeding.
- (76) Regulation (EC) No 1995/2000 concluded that it was appropriate to impose definitive duties in the form of a specific amount per tonne. The basis for imposing such a form of measures was to ensure the efficiency of the measures and to discourage the price manipulation which has been observed in some previous proceedings involving the same general category of product, i. e. fertilisers.

(77) Like the producers in those other cases, the Polish UAN producers are integrated, producing a variety of different fertilisers. In addition, different fertilisers are sold to a considerable degree via identical distributors. This opens possibilities through which prices for different products can be compensated without this being easy to detect for customs authorities. For these reasons, it is considered that the form of measures applicable to imports of UAN originating in Poland should be changed to a specific amount per tonne, in line with the measures imposed on other countries by virtue of Regulation (EC) No 1995/2000.

(78) One Polish exporting producer contested the proposed change of the form of measures arguing that there was no legal basis for this change and that the minimum import price was effective in restoring fair conditions of competition on the Community market.

(79) In this respect it should be recalled that the interim review regarding the form of the measures has been initiated *ex officio* by the Commission, after consultation of the Advisory Committee, pursuant to Article 11(3) of the basic Regulation. As explained above, the Commission initiated the review in order to allow for the possibility of changing the form of the measures applicable to Poland to take account of any measures subsequently

imposed on other countries concerning the same product.

(80) In addition to the possibility of compensation referred to in recital 77, the investigation showed that the minimum import price proved ineffective, as the product concerned may be subject to price fluctuations. Depending on the average Community market price, the minimum import price could either be inefficient or have the effect of excluding Polish exports from the Community market. The imposition of anti-dumping duties in the form of a specific duty in this instance, should therefore ensure that the measures are both effective and efficient in eliminating the effects of injurious dumping. Moreover, in other recent fertilisers proceedings it was found that the most appropriate form of measures for this kind of product is a specific amount per tonne.

(81) The amount of duty in EUR per tonne, as established by the previous investigation, is given below:

	Amount of duty (EUR per tonne)
Zakłady Azotowe Pulawy SA	19
All other companies	22,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of urea ammonium nitrate solution originating in Poland and falling within CN code 3102 80 00.

2. The amount of the applicable duty per tonne of product shall be as shown below for the products manufactured by the following companies:

Country	Company	Amount of duty (EUR per tonne)	TARIC additional code
Poland	Zakłady Azotowe Pulawy SA Al. Tysiąclecia P.P. 13, 24-110 Pulawy Poland	19	8795
	Other companies	22	8900

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

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

Article 3

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

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2787/2000 (OJ L 330, 27.12.2000, p. 1).

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

Done at Brussels, 7 May 2001.

For the Council

The President

B. RINGHOLM

COUNCIL REGULATION (EC) No 901/2001

of 7 May 2001

imposing a definitive anti-dumping duty on imports of urea originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Previous investigations

- (1) In 1987, the Commission imposed a provisional anti-dumping duty ⁽²⁾ on imports of urea originating, amongst others, in the former Soviet Union. By Regulation (EEC) No 3339/87 ⁽³⁾, the Council accepted undertakings in respect of imports of urea from, amongst others, the former Soviet Union. By Commission Decision 89/143/EEC ⁽⁴⁾, these undertakings were confirmed. In March 1993 the Commission initiated a review of the decision accepting undertakings for imports of urea originating in, *inter alia*, the former Soviet Union ⁽⁵⁾. This resulted in the imposition of a definitive anti-dumping duty by Council Regulation (EC) No 477/95 ⁽⁶⁾ on urea, originating in the Russian Federation ('Russia'). The amount of the duty imposed was the difference between ECU 115 per tonne and the net, free-at-Community frontier price, before customs clearance, if this price was lower.

2. Investigations concerning other countries

- (2) In October 2000 an anti-dumping investigation was initiated concerning imports of urea originating in Belarus, Bulgaria, Croatia, Egypt, Estonia, Lithuania, Libya, Poland, Romania and Ukraine ⁽⁷⁾. The investigation is currently underway.

3. Present investigation

3.1. Request for review

- (3) In September 1999, the Commission published a notice of impending expiry ⁽⁸⁾ of the anti-dumping measures in force on imports of urea originating in Russia. The Commission subsequently received a request to review these measures pursuant to Article 11(2) of Regulation (EC) No 384/96 ⁽⁹⁾ (the 'basic Regulation'). The request was lodged on 3 December 1999 by the European Fertilizer Manufacturers Association (EFMA) on behalf of producers representing a major proportion of Community production of urea (the 'product concerned'). The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry.

3.2. Notice of initiation

- (4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation pursuant to Article 11(2) of the basic Regulation in March 2000 ⁽⁹⁾.

3.3. Period of investigation

- (5) The investigation period for the examination of continuation or recurrence of dumping and injury covered the period from 1 January 1999 to 31 December 1999 (the 'IP'). The examination of trends relevant for the assessment of continuation or recurrence of injury (the 'period under review') covered the period from 1 January 1996 up to the end of the IP.

3.4. Parties concerned by the investigation

- (6) The Commission officially advised the applicant Community producers, the exporting producers in Russia, the importers, users and associations known to be concerned, and the representatives of the exporting country concerned of the initiation of the review. The Commission sent questionnaires to exporting producers, Community producers, importers, users and associations known to be concerned and to those who made themselves known within the time limit set in the notice of initiation. In addition, the sole producer in the Slovak Republic, which was considered as a suitable analogue country, was advised and sent a questionnaire.

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

⁽²⁾ OJ L 121, 9.5.1987, p. 11.

⁽³⁾ OJ L 317, 7.11.1987, p. 1.

⁽⁴⁾ OJ L 52, 24.2.1989, p. 37.

⁽⁵⁾ OJ C 87, 27.3.1993, p. 7.

⁽⁶⁾ OJ L 49, 4.3.1995, p. 1.

⁽⁷⁾ OJ C 301, 21.10.2000, p. 2.

⁽⁸⁾ OJ C 252, 3.9.1999, p. 2.

⁽⁹⁾ OJ C 62, 4.3.2000, p. 19.

- (7) Eleven Community producers, one analogue country producer, one importer, one users' association and one user replied to the questionnaires. With respect to the exporting country concerned, no replies to the questionnaires were received.

3.5. Verification of information received

- (8) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

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

Community producers:

Hydro Agri Brunsbüttel, Germany

Hydro Agri Italia SpA, Italy

Irish Fertilizer Industries Ltd., Ireland

Analogue country producer:

Duslo, as, Šal'a, Slovakia

Unrelated importer:

Cargill BV, Amsterdam, Netherlands

Users/Users' association:

Sadepan Chimica SRL, Viadana, Italy

Svenska Lantmännen, Stockholm, Sweden.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (10) The product concerned by this proceeding is the same as in the previous investigation, i.e. urea. It is produced mainly from ammonia which is itself produced from natural gas. It may take a liquid or a solid form. Solid urea can be used for agricultural and industrial purposes. Agricultural grade urea can be used either as a fertiliser, which is spread onto the soil, or as an animal feed additive. Industrial grade urea is a raw material for certain glues and plastics. Liquid urea can be used both as a fertiliser and for industrial purposes. All kinds of urea have the same basic physical and chemical characteristics and may be regarded for the purposes of the present review as a single product.
- (11) The product concerned falls within CN codes 3102 10 10 and 3102 10 90. One importers' association claimed that urea imported under CN code 3102 10 90 should be excluded from the present review, as there have been no such imports for a number of years.
- (12) In relation to this claim, it is to be noted that, even if there were no imports for a number of years under CN code 3102 10 90, the product classifiable under this CN code clearly belongs to the single category of product forming the 'product concerned' and moreover it cannot

be excluded that such imports will be carried out in the future.

2. Like product

- (13) The investigation has shown that the product produced and sold by the Community producers on the Community market is alike in all respects to the urea produced in Russia and exported to the Community. It is therefore considered to be a like product within the meaning of Article 1(4) of the basic Regulation. It was also found that urea exported from Russia to the Community and urea produced and sold on the domestic market of Slovakia, which served as an analogue country, were alike.

C. RECURRENCE OR CONTINUATION OF DUMPING

- (14) In accordance with Article 11(2) of the basic Regulation, it was examined whether or not the expiry of measures would lead to a continuation and/or recurrence of dumping.
- (15) During the IP, 25 Ktonnes of urea were imported from Russia (as compared to 117 Ktonnes imported during the previous IP (1992) and 271 Ktonnes in 1986). This represents a market share of 0,4 %.

1. Likelihood of a continuation of dumping

1.1. Analogue country

- (16) Normal value was based, in accordance with Article 2(7) of the basic Regulation, on information obtained in a market economy third country where the product concerned was produced and sold. In the Notice of Initiation the Commission suggested the Slovak Republic as an appropriate analogue country due to the fact that it was used as an analogue country in the last investigation and that production processes and access to raw materials in the Slovak Republic are comparable to those prevailing in Russia.
- (17) An importers' association objected to the choice of the Slovak Republic as analogue country for the following reasons: the Slovak Republic, unlike Russia, has no natural gas production. Since gas is the basic raw material for the production of urea, it is the main element in the cost of the final product. Moreover, it was claimed that the Slovak Republic is totally dependent on Russian gas and pays a very high price for it. It was therefore claimed that the use of the Slovak Republic as analogue country would artificially inflate normal value and thus result in an artificially high dumping margin.
- (18) Secondly, the importers' association submitted that, given the importance of gas in the production of urea, any analogue country in this case should be a gas-producing country. The importers' association proposed Norway, Canada or Saudi Arabia as alternative analogue countries.

(19) With regard to the first allegation, it should be pointed out that Russian gas prices are heavily discounted on the Russian market and are not determined by market forces. In addition, no evidence was provided that gas prices in the Slovak market were higher than gas prices in other market economies. Nor did the Commission find any indication that this was the case when comparing gas prices in Slovakia during the IP to gas prices in other market economies. It cannot therefore be accepted that the choice of the Slovak Republic as analogue country serves to artificially inflate normal value. With regard to the second argument, the Commission analysed whether any of the countries proposed were more appropriate. Norway would obviously not have been a suitable choice due to the fact that it does not produce urea. Saudi Arabia was considered inappropriate because this country's legislation allows for artificially low raw material prices for the national industry using natural gas and provides investment incentives for its fertiliser industry. As regards Canada, no cooperation could be obtained from the Canadian urea industry.

(20) The choice of the Slovak Republic as analogue country was therefore upheld on the following grounds: it was used as an analogue country in the previous investigation; production processes and access to raw materials in the Slovak Republic are comparable to those prevailing in Russia; prices of natural gas in the Slovak Republic were competitive and not higher than gas prices in other market economies; a high level of cooperation from that country could be obtained. The sole Slovak producer agreed to cooperate in the investigation and it was also established that domestic sales made by the latter producer were representative in comparison with the volume of exports to the Community from Russia.

(21) On this basis, it was concluded that the Slovak Republic was an appropriate and not unreasonable choice of analogue country in order to establish normal value for imports of urea originating in Russia.

1.2. Normal value

(22) Firstly, it was examined whether the domestic sales made by the cooperating Slovak producer were representative when compared to the imports into the Community concerned by the investigation. In this context and, it was considered appropriate to exclude sales to related parties, as not having been made in the ordinary course of trade. After exclusion of the latter sales, it was established that direct sales by the cooperating Slovak producer were sufficiently representative as they were made in significant quantities, measured against the average volume of exports recorded as sold into the

Community by the exporting producers in Russia during the IP.

(23) It was then established that these direct sales to unrelated customers could be considered as having been made in the ordinary course of trade, comparing domestic prices and costs of production.

(24) Normal value was therefore established as the weighted average of the actual prices of all direct sales to unrelated customers on the Slovak market.

1.3. Export price

(25) As no exporting producers cooperated, the export price was determined on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. In this case this was by reference to the average import price reported by Eurostat.

1.4. Comparison

(26) As urea is a bulk product with transport costs representing a large proportion of the selling price, it was considered appropriate that the comparison should be carried out on an ex-works basis. Due allowance in the form of adjustments was made for differences affecting price comparability, in accordance with Article 2(10) of the basic Regulation. In particular, an adjustment to the normal value was made for packing costs while the export price was adjusted for transport costs incurred in Russia and freight from Russia to the Community on the basis of the information contained in the complaint and other available information.

1.5. Dumping margin

(27) In accordance with Article 2(11) of the basic Regulation, the dumping margin was determined by comparing the weighted average normal value in the analogue country with the average export price per tonne based on Eurostat data.

(28) The comparison showed the existence of significant dumping (above 35 %). The level of dumping is thus higher than in the previous investigation (28,2 %).

1.6. Conclusion

(29) Nothing found during the investigation suggests that the level of dumping found would disappear or even decrease should the anti-dumping measures be repealed. It was therefore concluded that, should the measures be repealed, there is a likelihood that imports from Russia will continue at dumped prices. However, in view of the limited export volume during the IP, it was considered appropriate also to examine whether there was a likelihood of recurrence of dumping in increased export volumes should the existing measures be repealed.

2. Likelihood of recurrence of dumping

2.1. Analysis of the situation of the country concerned

- (30) As outlined above, imports into the Community were found to be made at dumped prices. However, the import volumes during the IP were low (0,4 % of Community consumption). Therefore it was further examined whether other circumstances might indicate the likelihood of a recurrence of further dumped imports, should the measures be repealed.

2.1.1. Production capacity and capacity utilisation

- (31) In the absence of cooperation from the Russian exporters, the Commission, in accordance with Article 18(1) of the basic Regulation, based its analysis on information provided in the review request as well as on information obtained from an independent specialised market study submitted by the complainant in the course of the investigation.
- (32) According to the abovementioned sources, Russian production capacity for urea in recent years is estimated at around 5 300 Ktonnes p.a.. The same sources rate actual Russian production at about 3 700 Ktonnes p.a.. Consequently, the Russian producers would be in a position to produce an additional 1 600 Ktonnes p.a., representing 26,5 % of Community consumption in 1999.

2.1.2. Russian exports to Brazil, Mexico and Turkey

- (33) As concerns the possibility of increased Russian sales in third country markets, the Commission found that exports of Russian urea to third countries are already taking place. Large volumes of exports to Brazil, Mexico and Turkey were registered in 1999 and there is no indication that domestic consumption in these countries will increase significantly in the coming years. These markets are therefore unlikely to fully absorb any additional quantities that the Russian producers have the capacity to produce.
- (34) Concerning the export prices, it was found that the price of the Russian material sold on the Brazilian, Mexican and Turkish markets was substantially below the price level for Russian deliveries to the Community.
- (35) Imports into Brazil, Mexico and Turkey therefore appear to be made at prices that are dumped to a larger degree than Russian imports into the Community.
- (36) Given the proximity of the Russian producers to the European market and the higher possible margin on the export prices there, it is likely that at least part of Russian exports to Brazil, Mexico and Turkey would be

redirected to the Community should measures be repealed.

2.2. Conclusion

- (37) The large unused Russian production capacity, the substantial Russian export volumes to Brazil, Mexico and Turkey and the low price level of these exports (even lower than the Russian export prices to the Community, which are already dumped to a significant extent and which are generally lower than the prices of the Community industry) indicate that there is a likelihood that the expiry of the current anti-dumping measures against imports of the product concerned from Russia would lead to a recurrence of significant volumes of dumped exports on to the Community market.
- (38) Without measures, Russian export volumes could indeed easily reach the level of the previous IP, 117 Ktonnes, or even 1994 levels, 300 Ktonnes. This is all the more likely given the proximity of Russia to the Community market. Russian export prices charged to Brazil, Mexico and Turkey during the IP can serve as an indication of the price level of possible future exports to the Community. Consequently, there is a likelihood of a recurrence of high dumping in significant volumes.

D. DEFINITION OF THE COMMUNITY INDUSTRY

- (39) The investigation established that, during the IP, the 11 applicant Community producers represented more than 85 % of Community production of urea. Therefore, they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

E. ANALYSIS OF THE SITUATION IN THE COMMUNITY MARKET

1. Consumption

- (40) The apparent Community consumption of urea was established on the basis of the sales volumes of the Community industry on the Community market, the sales volume of other Community producers as well as imports into the Community of urea from the country concerned and all other third countries. Production for captive use was not taken into consideration when establishing Community consumption since this production is not sold on the free market but further processed into different end-products, for which the product under consideration is only one of the components. The Community industry did not import or otherwise purchase urea for captive use. Therefore sales of urea produced for and used in the captive market were not in competition with sales of urea produced for and sold in the non-captive market and were thus not likely to be subject to the effects of the dumped imports.

- (41) On this basis, consumption increased steadily by 25,8 % during the period under review, from around 4,8 million tonnes in 1996 to around 6 million tonnes in the IP.

2. Imports from the country concerned

2.1. Volume and market share

- (42) It should be noted that import volumes from Russia were still significant between 1990 and 1994, reaching a level of 300 Ktonnes in 1994. During this time anti-dumping measures were in place in the form of an undertaking. On the basis of Eurostat figures, after the form of the measure had been changed into a duty in 1995, there was a sharp drop between 1995 and 1996. A reason for this decline was the change in the form of the measure. Import volumes then remained stable between 1996 and 1998 and dropped significantly again in the IP. It cannot be excluded that the significant increase in exports to the Community from other third countries contributed to this decline.
- (43) The market share of the imports from the country concerned in the Community decreased from 0,9 % in 1996 to 0,4 % in the IP.

2.2. Prices

- (44) The average cif import prices of the imports concerned increased substantially following the imposition of the anti-dumping duty, based on a minimum import price, in 1995. As from 1998, a significant decline in import prices was found to have occurred. However, since 1997, and even more markedly since 1998, the Russian prices of urea were at the high end of the range of prices charged in the Community by exporting producers of other third countries, which partly explains why imports originating in Russia could not gain market shares.
- (45) An importers' association claimed that the Commission should, for the purpose of price comparisons, take into account the quality differences between Russian urea and urea produced by the Community industry. In this respect, the measures currently in place incorporate a 10 % quality adjustment. Moreover, the scope of an expiry review, unlike the scope of certain interim reviews, does not require new calculations of injury margins based on price comparisons.

3. Economic situation of the Community industry

3.1. Production

- (46) The total production of urea by the Community industry for sale on the Community market, i.e. excluding production for captive use which represented around 25 % of total production, has increased by 7,5 % between 1996 and the IP. A significant increase took

place between 1996 and 1997, while production fell slightly between 1998 and the IP.

3.2. Capacity and capacity utilisation

- (47) The capacity utilisation rate was relatively stable at around 86 % in 1996 and 1997. Afterwards it decreased to 84,7 % in 1998 and to 82,5 % during the IP.
- (48) However, the ammonium used for the production of urea can also be used for the production of other fertilisers. The capacity utilisation rate for urea production as well as its development is accordingly also affected by the development of other fertilisers.

3.3. Sales in the Community

- (49) The total sales volume of the Community industry on the Community market went up from around 3,2 million tonnes in 1996 to around 3,8 million tonnes in the IP, which represents an increase of 17 %. The sales increase was most notable between 1997 and 1998.

3.4. Stocks

- (50) The level of stocks is not considered a valid injury indicator due to the seasonality of the sales, to the fact that urea used for captive use is stored together with the urea sold as such on the market and to the fact that urea is partly stored by the producers themselves and partly by cooperatives of farmers.

3.5. Market share

- (51) In an overall expanding market, despite the increase in sales volumes, the Community industry's market share in the Community market decreased from around 67 % in 1996 to around 63 % in the IP, thus not benefiting from the expansion of the market.

3.6. Prices

- (52) The average sales price of the Community industry fell in each year from 1996 until the IP, leading to an overall decrease of almost 40 % between 1996 and the IP, in line with the general price trend in the market. The factors influencing this trend appear to be the presence of imports from other third countries on the Community market and the dumping found concerning other fertilisers such as ammonium nitrate and urea ammonium nitrate solutions, which had a price depressive effect on all nitrogen fertilisers. Moreover it should

be noted that in April 1997 the People's Republic of China imposed an import ban on urea. The Chinese market is roughly four times larger than the Community market and was, prior to that decision, mainly supplied by imports. The import ban therefore had an impact on the urea prices in the Community, since many third countries used to deliver a sizeable portion of their exports to the People's Republic of China. The declining energy prices (natural gas being the main raw material for the production of urea) may also have had an influence on the sales prices.

3.7. Profitability and return on investment

- (53) The profitability of the Community industry, expressed as a percentage of net sales value, decreased steadily between 1996 and the IP. This trend has to be seen in the light of the price evolution, which showed indeed a similar pattern. Profitability became negative in 1998 and the level of losses increased significantly in the IP.
- (54) The return on investments followed the decreasing trend in profitability during the period under review. This negative trend is even more marked due to the joint effect of the decrease in profitability and the increase in investments.

3.8. Cash flow

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

3.9. Ability to raise capital

- (56) Companies manufacturing urea form a part of larger groups. No difficulties have been reported.

3.10. Employment, productivity and wages

- (57) Employment decreased from 1 638 employees in 1996 to 1 469 employees in the IP, a decrease of about 10 %. Productivity steadily increased during the period under review. With respect to wages, they dropped in 1997, but then followed the trend in productivity.

3.11. Investments

- (58) The Community industry carried out considerable investments between 1996 and the IP. It should be noted that investments made in ammonium plants, which is an upstream investment, are also partly included. Investments were mainly related to direct investments in plant and machinery of the urea and ammonium production processes.

4. Imports from other third countries

- (59) The import volume of urea from third countries other than Russia increased between 1996 and the IP by around 665 Ktonnes, from 1 187 Ktonnes to 1 852 Ktonnes, on the basis of Eurostat.
- (60) It seems that this increase should be seen in the light of the ban of urea imports in the People's Republic of China in April 1997, which led some countries to redirect their exports to other countries. These other third countries increased their market share in the Community by 6 percentage points between 1996 and the IP. The corresponding average cif import prices, based on Eurostat, decreased significantly between 1996 and the IP.

5. Conclusion

- (61) While consumption on the Community market increased, in 1996, i.e. immediately after the imposition of the duty in 1995, the market share of Russia had already fallen below 1 %. The average price of these imports, as declared at customs, decreased and, in the IP, were below the minimum import price of 115 ECU/tonne. Russian imports were not able to gain market shares, which was also due to the increasing presence of other third countries on the Community market, the prices of which were lower than the Russian ones as from 1997.
- (62) The expected improvement of the situation of the Community industry did not materialise, in principle due to the increased presence of other third country suppliers on the market. While production and sales volumes increased, other economic indicators deteriorated significantly, i.e. capacity utilisation, market shares, prices, profitability, return on investment, cash flow, employment. In particular the sharp decrease in the sales prices of the Community industry had a negative effect on its profitability. This situation should be seen in the light of the increased presence in the Community market of imports from other third countries, which have gained significant market shares after the imposition of the measures. It is to be noted that an anti-dumping investigation has been initiated in October 2000 concerning imports of urea originating in a number of other third countries (Belarus, Bulgaria, Croatia, Egypt, Estonia, Lithuania, Libya, Poland, Romania and Ukraine). The Community industry, therefore, is still in a difficult situation.

F. LIKELIHOOD OF A RECURRENCE OF INJURY

- (63) With regard to the likely effect on the Community industry of the expiry of the measures in force the following factors were considered, in line with the elements summarised in recitals 37 and 38.

- (64) There are clear indications that imports originating in Russia will continue at dumped prices. Moreover, there is a likelihood that import volumes would increase significantly given that the Russian exporting producers have the potential to raise their production and export volume in view of their large unused production capacity. In addition, domestic consumption in Russia is likely to stay at relatively low levels in the near future.
- (65) Having regard to the Russian exporters' export price behaviour on third country markets, namely Brazil, Turkey and Mexico, it is likely that the Russian exporting producers will adopt an aggressive price behaviour in the Community in order to regain their lost market shares. Indeed, as established in earlier proceedings concerning fertilisers, even small volumes at low price can have significant distorting and injurious effects on this commodity market.
- (66) The Community industry is still in a difficult situation having regard in particular to its profitability, which markedly improved just after the imposition of the measures under consideration, but significantly deteriorated again thereafter. Given the precarious situation of the Community industry, the likely volumes and prices of imports from Russia subsequent to any repeal of measures would put the Community industry at further risk. Their impact on the Community industry would be in all likelihood material.
- (67) On the basis of the above, it is concluded that, should the measures be repealed, there is a likelihood of a recurrence of injury from imports of urea from Russia.

G. COMMUNITY INTEREST

1. Introduction

- (68) Pursuant to Article 21 of the basic Regulation, it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and traders as well as the users of the product concerned. In order to assess the likely impact of a continuation or non-continuation of the measures, the Commission requested information from all interested parties mentioned above.
- (69) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, it should be noted that the present investigation is a review, thus analysing a situation in which anti-dumping

measures have already been in place. The present review therefore took into consideration any undue negative impact on interested parties during the period following the imposition of the measures.

- (70) The Commission sent questionnaires to 44 importers, one importers association, five users associations and one user of the product concerned and received replies from one importer, one user, one users association and from the importers association.
- (71) On this basis it was examined, whether, despite the conclusions on dumping, on the situation of the Community industry and on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Community industry

- (72) It is considered that without maintaining the anti-dumping measures imposed in the previous investigation, injurious dumping is likely to recur and that the situation of the Community industry, which worsened during the period under review, will further deteriorate.
- (73) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This has been shown in particular by the industry's profits achieved until 1997 and its investment in state of the art production capacity. The success of these efforts strongly depends on existence of fair competition on the Community market. In this respect, it should be pointed out that in October 2000 an anti-dumping investigation was initiated concerning imports of urea originating in Belarus, Bulgaria, Croatia, Egypt, Estonia, Lithuania, Libya, Poland, Romania and Ukraine. On the other hand, the deterioration in employment, profitability and sales prices was such that the Community industry recently closed down significant nitrogen fertiliser capacities.

3. Importers

- (74) Of the 44 importers who received questionnaires, only one replied. As a matter of principle, it claimed to be against the continuation of the measures. However, given the negligible importance of urea for its business, it was concluded that that importer would not be seriously affected by a continuation of the measures.

- (75) In view of the low level of cooperation, the fact that importers generally deal with a wide range of fertilisers, of which urea is only one, and the fact that urea was available from numerous other sources not presently subject to anti-dumping measures, it was concluded that any negative impact of the continuation of measures on importers would not be a compelling reason against the continuation of measures.

4. Users

- (76) The users of the product concerned are mainly farmers and companies manufacturing glues and plastics. The Commission sent questionnaires to several users' associations at the European and national levels. One users' association representing 11 cooperatives of farmers, and one user replied to the questionnaire. Both are, as a matter of principle, against the continuation of the measures. However, neither used urea originating in Russia during the IP. The members of the users' association purchased very small quantities of urea originating from other sources throughout the period under review. The individual user has encountered no problems in sourcing urea from other third countries whilst the measures have been in force.
- (77) It is to be noted that, as also established in previous investigations, fertilisers represent only a small part of total production costs of farmers. With regard to the above and to the low level of cooperation, it was concluded that the measures currently in force did not have a significant negative impact on the users of urea. In this respect it should be noted that none of the users claimed that there had been a general price increase of urea and/or reduction of their profitability since the current measures had been imposed. In view of the above and having regard to the low level of cooperation, it was concluded that any negative impact of the continuation of measures on users would not be a compelling reason against the continuation of measures.

5. Conclusion

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

H. ANTI-DUMPING MEASURES

- (79) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing anti-dumping duty in respect of imports of urea originating in Russia. They were also granted a period within which to make representations subsequent to this disclosure. No comments were received which were of a nature to change the above conclusions.
- (80) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures currently in force with regard to imports of urea originating in Russia should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of urea falling within CN codes 3102 10 10 and 3102 10 90 originating in Russia.
2. The amount of the definitive anti-dumping duty shall be the difference between the minimum import price of EUR 115 per tonne and the net, free-at-Community-frontier price, before duty, in all cases where the latter is less than the minimum import price.
3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community-frontier price, before customs clearance.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2787/2000 (OJ L 330, 27.12.2000, p. 1).

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

Done at Brussels, 7 May 2001.

For the Council

The President

B. RINGHOLM

COUNCIL REGULATION (EC) No 902/2001**of 7 May 2001****amending Regulation (EC) No 978/2000 imposing a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 15 thereof,

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

Whereas:

- (1) Regulation (EC) No 978/2000 ⁽²⁾ imposed a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan.
- (2) Further to two applications to the Court of First Instance brought against the Council by Taiwanese exporting producers seeking annulment of Regulation (EC) No 978/2000 in accordance with Article 230 of the Treaty, it has become apparent that part of the methodology applied in determining the level of subsidisation for Taiwan in Regulation (EC) No 978/2000 is inconsistent with the Community institutions' consideration and treatment of virtually identical data in subsequent proceedings. For one particular subsidy scheme, the 'tax credit for the purchase of automation and pollution control equipment' granted for locally purchased equipment, was found to be countervailable according to the Regulation the subject of challenge. However, the calculations concerning the amount of countervailable subsidy derived from a methodology that was revised in subsequent proceedings concerning imports of certain polyethylene terephthalate originating in Taiwan. Reference is made to Commission Regulation (EC) No 1741/2000 ⁽³⁾, Council Regulation (EC) No 2603/2000 ⁽⁴⁾, *inter alia* terminating the antisubsidy proceeding concerning imports of certain polyethylene terephthalate originating in Taiwan. In these circumstances, it was decided to re-examine the calculations concerning the

amount of subsidy for imports originating in Taiwan, in particular in order to establish whether the application of the revised methodology would materially impact on the findings for that country. This particular subsidy scheme was only found to exist in Taiwan and was not therefore considered as part of the investigation into subsidisation in respect of imports originating in Australia and Indonesia.

- (3) The re-examination for Taiwan showed that the revised methodology led to a *de minimis* finding of subsidisation, i.e. a countrywide subsidy level of less than 1 %. Therefore, the countervailing measures concerning imports of synthetic fibres of polyester from Taiwan should be repealed with retroactive effect.
- (4) As regards the potential impact of the repeal of measures for Taiwan on the original findings concerning imports of synthetic fibres of polyester from Australia and Indonesia, it was examined whether the finding of *de minimis* subsidisation for Taiwan adversely affected the conclusions in relation to injury, causation and Community interest. It was concluded that, in particular given the significant increase in the volume of imports and market share, and the high levels of undercutting for imports originating in Australia and Indonesia, the original findings are not undermined insofar as they concern imports originating in those countries,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 978/2000 is hereby amended as follows:

1. Article 1(1) shall be replaced by the following:

'1. A definitive countervailing duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia and Indonesia.'

2. Article 1(2) shall be replaced by the following:

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 113, 12.5.2000, p. 1.

⁽³⁾ OJ L 199, 5.8.2000, p. 6.

⁽⁴⁾ OJ L 301, 30.11.2000, p. 1.

'2. The duty rate applicable to the net, free-at-Community-frontier, before duty, for products produced by the companies indicated shall be as follows for products originating in:

1. Australia

Company	Rate of duty (%)	TARIC additional code
Leading Synthetics Pty Ltd, Melbourne, Victoria	6,0	A059
All other Australian companies	6,0	A999

2. Indonesia

Company	Rate of duty (%)	TARIC additional code
PT. Indorama Synthetics Tbk Graha Irama, 17 th floor Jl. H. R. Rasuna Said Blok X-1 Kav. 1-2 PO Box 3375 Jakarta 12950	0	A051
PT. Panasia Indosyntec Tbk Jl. Garuda 153/74 Bandung 40184	0	A052
PT. Susilia Indah Synthetic Fiber Industries Jl. Kh. Zainul Arifin Kompleks Ketapang Indah Blok B 1 n. 23 Jakarta 11140	0	A054
PT. GT Petrochem Industries Tbk Exim Melati Building, 9 th floor Jl. M.H. Thamrin Kav. 8-9 Jakarta 10230	0	A053
PT. Teijin Indonesia Fiber Corporation Tbk 5 th floor Mid Plaza 1 Jl. Jend. Sudiman Kav. 10-11 Jakarta 10220	0	A055
All other companies	10	A999'

3. Article 2(1) shall be replaced by the following:

'The amounts secured by way of the provisional countervailing duty on imports originating in Australia under Regulation (EC) No 123/2000 shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive countervailing duty shall be released.'

Article 2

Any countervailing duties collected on imports originating in Taiwan under Regulation (EC) No 978/2000 shall be reimbursed to the importers concerned.

Article 3

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

Article 1 shall apply with effect from 13 May 2000.

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

Done at Brussels, 7 May 2001.

For the Council

The President

B. RINGHOLM

COMMISSION REGULATION (EC) No 903/2001**of 8 May 2001****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 May 2001.

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

Done at Brussels, 8 May 2001.

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 8 May 2001 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	83,2
	204	77,5
	999	80,3
0707 00 05	052	85,5
	628	135,4
	999	110,5
0709 10 00	052	205,7
	999	205,7
0709 90 70	052	90,2
	999	90,2
0805 10 10, 0805 10 30, 0805 10 50	052	55,4
	204	55,5
	212	59,6
	220	60,6
	600	80,7
	624	71,2
	999	63,8
0808 10 20, 0808 10 50, 0808 10 90	388	88,9
	400	106,8
	404	89,5
	508	77,6
	512	77,0
	528	78,6
	720	95,2
	804	111,8
	999	90,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 904/2001**of 8 May 2001****fixing the maximum export refund for white sugar for the 38th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1531/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1531/2000 of 13 July 2000 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1531/2000 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the 38th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 38th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1531/2000 the maximum amount of the export refund is fixed at 42,964 EUR/100 kg.

Article 2

This Regulation shall enter into force on 9 May 2001.

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

Done at Brussels, 8 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 175, 14.7.2000, p. 69.

COMMISSION REGULATION (EC) No 905/2001**of 8 May 2001****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation 1527/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, and in particular Articles 1(2) and 3(1) thereof,

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 May 2001.

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 8 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 8 May 2001 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	9,60	—	0
1703 90 00 ⁽¹⁾	12,85	—	0

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 906/2001**of 8 May 2001****altering the export refunds on white sugar and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the third subparagraph of Article 18(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 859/2001 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 859/2001 to the information known to the Commission that the export refunds at present in

force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 2038/1999, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 859/2001 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 May 2001.

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

Done at Brussels, 8 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 122, 3.5.2001, p. 3.

ANNEX

to the Commission Regulation of 8 May 2001 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	37,92 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	34,64 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	37,92 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	34,64 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4122
1701 99 10 9100	A00	EUR/100 kg	41,22
1701 99 10 9910	A00	EUR/100 kg	39,90
1701 99 10 9950	A00	EUR/100 kg	39,90
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4122

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 19 (4) of Council Regulation (EC) No 2038/1999.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

COMMISSION REGULATION (EC) No 907/2001
of 8 May 2001
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 2831/98 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 9 May 2001.

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

Done at Brussels, 8 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	218,13	72,01	104,72	0,00	163,60
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	218,13	72,01	104,72	0,00	163,60
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	218,13	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	326,10	248,35	229,85	249,92	—
(b) fob price (EUR/tonne)	—	—	—	196,21	216,28	—
(c) Sea freight (EUR/tonne)	—	—	—	33,64	33,64	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 908/2001

of 8 May 2001

amending for the second time Regulation (EC) No 23/2001 laying down special measures for the beef sector that depart from the provisions of Regulation (EC) No 800/1999, Regulation (EEC) No 3719/88, Regulation (EC) No 1291/2000 and Regulation (EEC) No 1964/82

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 29(2)(a), Article 33(12) and Article 41 thereof,

Whereas:

- (1) The health protection measures adopted by the authorities of certain non-member countries regarding exports of bovine animals and the meat of those animals in response to bovine spongiform encephalopathy have had serious economic consequences for exporters.
- (2) Commission Regulation (EC) No 23/2001 ⁽²⁾, amended by Regulation (EC) No 652/2001 ⁽³⁾, introduced measures to mitigate certain of those serious consequences.
- (3) The cases of foot-and-mouth disease that have occurred in several Member States have led to adoption of protective measures under Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽⁴⁾, as last amended by Directive 92/118/EEC ⁽⁵⁾, and in particular Article 10 thereof, and under Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽⁶⁾, as last amended by Directive 92/118/EEC, and in particular Article 9 thereof.
- (4) The measures adopted by certain non-member countries are still in force and in certain cases have been strengthened.
- (5) To limit the damaging consequences for Community exporters, foot-and-mouth disease should be included within the scope of Regulation (EC) No 23/2001, and so the application of special derogating measures and the extension of certain time limits should be authorised.
- (6) In the light of the situation, this Regulation should enter into force immediately.

- (7) 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

Articles 1, 2, 3 and 4 of Regulation (EC) No 23/2001 are replaced by the following:

‘Article 1

1. This Regulation shall apply to the products listed in Article 1(1) of Regulation (EC) No 1254/1999.

2. It shall apply only in cases where the exporter shows to the satisfaction of the competent authority that he was unable to export owing to:

- (a) the introduction of health measures by the authorities of the countries of destination in response to the cases of bovine spongiform encephalopathy; or
- (b) the introduction, in response to detection of cases of foot-and-mouth disease in the Community, of measures adopted in line with Community legislation or of health measures by the authorities of the countries of destination.

Competent authorities shall base their assessment on the commercial documents referred to in Article 1(2) of Regulation (EEC) No 4045/89.

Article 2

1. At the holder's request export licences issued under Regulation (EC) No 1445/95 that were applied for by 30 March 2001 shall, if their validity did not expire before 1 November 2000, be cancelled and the security released.

2. On application by the exporter in the case of products for which by 30 March 2001:

- the customs export formalities had been completed or which had been placed under one of the customs control procedures referred to in Articles 4 and 5 of Regulation (EEC) No 565/80, the 60-day time limit for leaving the Community's customs territory referred to in Article 32(1)(b)(i) of Regulation (EC) No 1291/2000 and Article 7(1) and Article 34(1) of Regulation (EC) No 800/1999 is raised to 210 days but shall not extend beyond 31 December 2001,

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 3, 6.1.2001, p. 7.

⁽³⁾ OJ L 91, 31.3.2001, p. 60.

⁽⁴⁾ OJ L 224, 18.8.1990, p. 29.

⁽⁵⁾ OJ L 62, 15.3.1993, p. 49.

⁽⁶⁾ OJ L 395, 30.12.1989, p. 13.

- the customs export formalities had been completed but which had not yet left the Community's customs territory or which had been placed under one of the customs control procedures referred to in Articles 4 and 5 of Regulation (EEC) No 565/80, the exporter shall repay any refund paid in advance and the various securities pertaining to the operations shall be released,
- the customs formalities had been completed and which had left the Community's customs territory, they may be brought back and released for free circulation in the Community. The exporter shall repay any refund paid in advance and the various securities pertaining to the operations shall be released,
- the customs formalities had been completed and which had left the Community's customs territory, they may be brought back to be placed under a suspensive procedure in a free zone, free warehouse or customs warehouse for a maximum of 210 days before reaching their final destination; this shall not affect payment of the refund for the actual final destination or the security lodged in respect of the licence.

Article 3

Notwithstanding the first subparagraph of Article 6(1) of Regulation (EEC) No 1964/82, at the exporter's request he shall, if the customs export formalities or the formalities for placing goods under one of the customs control procedures

referred to in Articles 4 and 5 of Regulation (EEC) No 565/80 were not completed by 30 March 2001 for the total quantity of meat entered on a certificate as provided for in Article 4(1) of Regulation (EEC) No 1964/82 issued before 30 March 2001, retain the special refund on the quantities exported and released for consumption in a third country. The requirements of Article 6(5) of Regulation (EEC) No 1964/82 shall not apply in these cases.

The above provisions shall also apply if, as a result of application of the second or third indent of Article 2(2) of this Regulation, part of the total quantity entered on the certificate provided for in Article 4(1) of Regulation (EEC) No 1964/82 has not been released for consumption in a third country.

Article 4

1. In Article 18(3)(a), the 20 % reduction indicated in the second indent of Article 18(3)(b) and the 10 % and 15 % increases indicated in Article 25(1) and the second subparagraph of Article 35(1) of Regulation (EC) No 800/1999 respectively shall not apply to exports made under licences applied for by 30 March 2001.

2. If entitlement to the refund is lost, the penalty specified in Article 51(1) of Regulation (EC) No 800/1999 shall not apply.'

Article 2

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

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

Done at Brussels, 8 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 909/2001**of 8 May 2001****initiating an investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 368/98 on imports of glyphosate originating in the People's Republic of China by imports of glyphosate consigned from Malaysia or Taiwan, and making such imports subject to registration**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

D. GROUNDS

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 2238/2000 ⁽²⁾, and in particular Article 13(3) and Article 14(5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. REQUEST

- (1) The Commission has received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 ('the basic Regulation') to investigate the alleged circumvention of the anti-dumping measures imposed on imports of glyphosate originating in the People's Republic of China.
- (2) The request has been lodged on 26 March 2001 by the European Glyphosate Association (EGA) on behalf of a major proportion of Community producers of glyphosate.

B. PRODUCT

- (3) The product concerned by the allegation of circumvention is glyphosate, which can be produced in different grades or forms of concentration of which the main ones are the following: formulated (generally with 36 % glyphosate content), salt (with 62 %), cake (with 84 %) and acid (95 %), currently classifiable within CN codes ex 2931 00 95 (TARIC code 2931 00 95 80) and ex 3808 30 27 (TARIC code 3808 30 27 10). These codes are given for information only.

C. EXISTING MEASURES

- (4) The measures currently in force and allegedly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 368/98 ⁽³⁾, as last amended by Regulation (EC) No 1086/2000 ⁽⁴⁾. This latter Regulation increased the rate of duty applicable to 48 % pursuant to Article 12 of the basic Regulation.

- (5) The request contains sufficient evidence that the anti-dumping measures on imports of glyphosate originating in the People's Republic of China are being circumvented by means of either transshipment via Malaysia or Taiwan or formulation in Malaysia or Taiwan of glyphosate originating in the People's Republic of China for re-export to the Community, for which there appears to be insufficient due cause or economic justification.

- (6) The evidence submitted is as follows:

- (a) the request shows that a significant change in the pattern of trade involving exports from the People's Republic of China, Malaysia and Taiwan to the Community has taken place following imposition of measures. Imports from Malaysia and Taiwan have increased significantly while imports from the People's Republic of China have decreased substantially.

This change in the pattern of trade appears to stem from a transshipment of glyphosate originating in the People's Republic of China via Malaysia or Taiwan and also from the formulation in Malaysia or Taiwan of glyphosate originating in the People's Republic of China. The formulation is a relatively simple operation which consists of diluting glyphosate salt with water and blending it with surfactant. There seems to be insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duty on glyphosate originating in the People's Republic of China;

- (b) furthermore, the request contains sufficient evidence that the remedial effects of the existing anti-dumping duties on glyphosate are being undermined both in terms of quantities and price. Significant volumes of imports of glyphosate from Malaysia and Taiwan appear to have replaced imports from the People's Republic of China. In addition, there is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the original investigation;
- (c) finally, the request contains sufficient evidence which shows that dumping is taking place in relation to the normal value previously established, for imports consigned from Malaysia or Taiwan.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ L 47, 18.2.1998, p. 1.

⁽⁴⁾ OJ L 124, 25.5.2000, p. 1.

E. PROCEDURE

- (7) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, subject to registration in accordance with Article 14(5) of the basic Regulation.

(i) Questionnaires

- (8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to producers and exporters in Malaysia and Taiwan named in the request, to the importers in the Community and to the exporters in the People's Republic of China known to the Commission, to the authorities of the People's Republic of China, Malaysia and Taiwan. Information, as appropriate, may also be sought from the Community industry.
- (9) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.
- (10) The authorities of the People's Republic of China as well as of Malaysia and Taiwan will be notified of the initiation of the investigation and provided with a copy of the request.

(ii) Collection of information and holding of hearings

- (11) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(iii) Certificates of non-circumvention

- (12) In accordance with Article 13(4) of the basic Regulation, certificates exempting the imports of the product concerned from registration or measures may be issued by the customs authorities to importers if the importation does not constitute circumvention.
- (13) Since the issue of this certificate requires the prior authorisation of the Community institutions, requests for such authorisations should be addressed to the Commission as early as possible in the course of the investigation so that they may be considered on the basis of a thorough appraisal of their merits.

F. REGISTRATION

- (14) Pursuant to Article 14(5) of the basic Regulation, imports of the product concerned should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties can be levied retroactively from the date

of the initiation of this investigation on glyphosate consigned from Malaysia or Taiwan.

G. TIME LIMITS

- (15) In the interest of sound administration, time limits should be stated within which:
- interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,
 - interested parties may make a written request to be heard by the Commission.

H. NON-COOPERATION

- (16) In cases in which any interested party refuses access to or otherwise does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, concerning imports into the Community of glyphosate falling within CN codes ex 2931 00 95 (TARIC code 2931 00 95 80) and ex 3808 30 27 (TARIC code 3808 30 27 10), consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not.

Article 2

1. The Customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.
2. Registration shall expire nine months following the date of entry into force of this Regulation.
3. Imports shall not be subject to registration where they are accompanied by a Customs certificate issued in accordance with Article 13(4) of Regulation (EC) No 384/96.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Communities*.
2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Communities* unless otherwise specified.

3. Interested parties may also apply to be heard by the Commission within the same 40 day time limit.

4. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for authorisation of certificates of non-circumvention must be made in writing (not in electronic format, unless otherwise specified), must indicate the name, address, e-mail address, telephone, fax and/or telephone numbers and should be sent to the following address:

European Commission
Trade Directorate-General

Directorates B and C
TERV 0/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877.

Article 4

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

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

Done at Brussels, 8 May 2001.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION DIRECTIVE 2001/32/EC

of 8 May 2001

recognising protected zones exposed to particular plant health risks in the Community and repealing Directive 92/76/EEC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, and in particular the first subparagraph of Article 2(1)(h) thereof,

Having regard to the requests made by Denmark, Greece, Spain, France, Ireland, Italy, Austria, Portugal, Finland, Sweden and the United Kingdom,

Whereas:

- (1) Under the provisions of Directive 2000/29/EC, 'protected zones' exposed to particular plant health risks may be defined and therefore may be accorded special protection under conditions compatible with the internal market. Such zones were defined in Commission Directive 92/76/EEC of 6 October 1992, recognising protected zones exposed to particular plant health risks in the Community⁽²⁾ as last amended by Directive 2000/23/EC⁽³⁾.
- (2) Since then, there have been significant developments in the plant health status of some of these zones initially recognised as protected zones in respect of the relevant harmful organisms.
- (3) From information supplied by Denmark it appears that it is no longer appropriate to maintain the protected zone recognised for Denmark in respect of *Bemisia tabaci* Genn. (European populations) and tomato spotted wilt virus.
- (4) Certain provisions on protective measures in Portugal against *Gonipterus scutellatus* Gyll. and in the United Kingdom and in Ireland against *Pissodes* spp. (European) should be modified to take into account the present distribution of these organisms in the respective countries.
- (5) From information supplied by United Kingdom and Sweden it appears that following local government reorganisation, the current description of the respective protected zones in respect of *Dendroctonus micans* Kugelan and *Leptinotarsa decemlineata* Say should be modified.

- (6) Under Directive 92/76/EEC, Austria, Ireland and the regions of Apulia, Emilia-Romagna, Lombardia and Veneto in Italy were provisionally recognised as protected zone in respect of *Erwinia amylovora* (Burr.) Winsl. et al. for a period expiring on 31 March 2001.
- (7) From information supplied by Ireland it appears that the provisional recognition of the protected zones for Ireland in respect of *Erwinia amylovora* (Burr.) Winsl. et al. should be extended for a further limited period.
- (8) From information supplied by Austria and Italy it appears that some areas within Austria and Italy should not longer be recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al., whilst other areas should be recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al. for a further limited period.
- (9) From information supplied by France it appears that some areas within France should not longer be recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al.
- (10) From information supplied by United Kingdom it appears that the provisional recognition of the protected zone for United Kingdom in respect of beet necrotic yellow vein virus should be extended for a further limited period.
- (11) It is therefore necessary to modify the existing designation of protected zones. In the interest of clarity, a new list of such zones should be adopted. Directive 92/76/EEC should therefore be repealed. In view of the continuing plant health problems, this Directive should enter into force and be transposed as soon as possible.
- (12) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The zones in the Community listed in the Annex are hereby recognised as 'protected zones' referred to in the first subparagraph of Article 2(1)(h) of Directive 2000/29/EC, in respect of the harmful organism(s) listed against their names in the Annex.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ OJ L 305, 21.10.1992, p. 12.

⁽³⁾ OJ L 103, 28.4.2000, p. 72.

In the case of point 2 of (b), for Ireland, for Italy (Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Lombardia; Trentino-Alto Adige: autonomous province of Bolzano; Veneto), and for Austria (Burgenland, Kärnten, Niederösterreich, Osttirol, Steiermark, Wien), the said zones are recognised until 31 March 2002.

In the case of point 1 of (d), the said zone in United Kingdom is recognised until 31 March 2002.

Article 2

The extension of the recognition beyond the dates referred to in Article 1, and any amendment to the list of protected zones referred to in Article 1, shall be made in accordance with the procedure laid down in Article 18 of Directive 2000/29/EC, taking into account the results of appropriate surveys based on Community conditions and monitored by Commission experts.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 May 2001 at the latest. They shall apply them from 22 May 2001. They shall forthwith inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publica-

tion. The procedure for such a reference shall be adopted by Member States.

2. Member States shall immediately communicate to the Commission the essential provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 4

Directive 92/76/EEC is hereby repealed with effect from 22 May 2001.

Article 5

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

It shall apply from 22 May 2001.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 8 May 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX

ZONES IN THE COMMUNITY RECOGNISED AS 'PROTECTED ZONES', IN RESPECT OF HARMFUL ORGANISM(S) LISTED AGAINST THEIR NAMES

Harmful organisms	Protected zones: territory of
(a) Insects, mites and nematodes, at all stages of their development	
1. <i>Anthonomus grandis</i> (Boh.)	Greece, Spain (Andalusia, Catalonia, Extremadura, Murcia, Valencia)
2. <i>Bemisia tabaci</i> Genn. (European populations)	Ireland, Portugal (Alentejo, Azores, Beira Interior, Beira Litoral, Entre Douro e Minho, Madeira, Ribatejo e Oeste and Trás-os-Montes), Finland, Sweden, United Kingdom
3. <i>Cephalcia lariciphila</i> (Klug.)	Ireland, United Kingdom (Northern Ireland, Isle of Man and Jersey)
4. <i>Dendroctonus micans</i> Kugelan	Greece, Ireland, United Kingdom (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston Upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council, Middlesbrough, Milton Keynes, Newbury, Newcastle Upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rochdale, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly, and the following parts of counties districts and unitary authorities: Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the A6(T) road; Derbyshire: that part of the county which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road; Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Wiltshire: that part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road)
5. <i>Gilpinia hercyniae</i> (Hartig)	Greece, Ireland, United Kingdom (Northern Ireland, Isle of Man and Jersey)
6. <i>Globodera pallida</i> (Stone) Behrens	Finland
7. <i>Gonipterus scutellatus</i> Gyll	Greece, Portugal (Azores; district of Beja: all concelhos; district of Lastelo Branco: concelhos de Lastelo Branco, Fundação and Penamacôr, Idanha-a-Nova; district of Évora with the exception of concelhos de Montemor-O-Novo, Mora and Vendas Novas; district of Faro: all concelhos; district of Portalegre: concelhos de Arronches, Campo Maior, Elvas, Fronteira, Monforte and Sousel)
8. <i>Ips amitinus</i> Eichhof	Greece, France (Corsica), Ireland, United Kingdom
9. <i>Ips cembrae</i> Heer	Greece, Ireland, United Kingdom (Northern Ireland and Isle of Man)
10. <i>Ips duplicatus</i> Sahlberg	Greece, Ireland, United Kingdom
11. <i>Ips sexdentatus</i> Boerner	Ireland, United Kingdom (Northern Ireland and Isle of Man)

Harmful organisms	Protected zones: territory of
12. <i>Ips typographus</i> Heer	Ireland, United Kingdom
13. <i>Leptinotarsa decemlineata</i> Say	Spain (Ibiza and Menorca), Ireland, Portugal (Azores and Madeira), Finland (districts of Åland, Häme, Kymi, Pirkanmaa, Satakunta, Turku, Uusimaa), Sweden (counties of Blekroge, Gotlands, Halland, Kalmar and Skåne), United Kingdom
14. <i>Matsuccocus feytaudi</i> Duc.	France (Corsica)
15. <i>Sternochetus mangiferae</i> Fabricius	Spain (Granada and Malaga), Portugal (Alentejo, Algarve and Madeira)
16. <i>Thaumetopoea pityocampa</i> (Den. and Schiff.)	Spain (Ibiza)
(b) Bacteria	
1. <i>Curtobacterium flaccumfaciens</i> pv. <i>flaccumfaciens</i> (Hedges) Col.	Greece, Spain, Portugal
2. <i>Erwinia amylovora</i> (Burr.) Wirisl. et al.	Spain, France (Corsica), Ireland, Italy (Abruzzi; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Apulia; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto), Austria (Burgenland, Carinthia, Lower Austria, East Tyrol, Styria, Vienna), Portugal, Finland, United Kingdom (Northern Ireland, Isle of Man and Channel Islands)
(c) Fungi	
1. <i>Glomerella gossypii</i> Edgerton	Greece
2. <i>Gremmeniella abietina</i> Morelet	Ireland, United Kingdom (Northern Ireland)
3. <i>Hypoxyylon mammatum</i> (Wahl.) J. Miller	Ireland, United Kingdom (Northern Ireland)
(d) Viruses and virus-like organisms	
1. Beet necrotic yellow vein virus	Denmark, France (Brittany), Ireland, Portugal (Azores), Finland, Sweden, United Kingdom
2. Tomato spotted wilt virus	Finland, Sweden
3. Citrus tristeza virus (European strains) harmful to fruit of <i>Citrus</i> L., <i>Fortunella</i> Swingle, <i>Poncirus</i> Raf., and their hybrids, with leaves and peduncles	Greece, France (Corsica), Italy, Portugal

COMMISSION DIRECTIVE 2001/33/EC**of 8 May 2001****amending certain annexes to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular Article 14(c) thereof,

Having regard to the requests made by Denmark, France, Ireland, Italy, Austria, Portugal and the United Kingdom,

Whereas:

- (1) From information supplied by United Kingdom and Sweden it appears that following local government reorganisation, the current description of the respective protected zones in respect of *Dendroctonus micans* Kugelan and *Leptinotarsa decemlineata* Say should be modified.
- (2) Certain provisions on protective measures in Denmark against *Bemisia tabaci* Genn. (European populations) and tomato spotted wilt virus, in Portugal against *Gonipterus scutellatus* Gyll., in the United Kingdom and in Ireland against *Pissodes* spp. (European), and in France, Italy and Austria against *Erwinia amylovora* (Burr.) Winsl. et al. should be modified to take into account the present distribution of these organisms in the respective countries.
- (3) The amendments are in agreement with the requests of the Member States concerned.
- (4) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health,

Article 1

Annexes I to IV to Directive 2000/29/EC shall be amended in accordance with the Annex to this Directive.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 May 2001. They shall apply them from 22 May 2001. They shall immediately inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The procedure for such a reference shall be adopted by Member States.

Member States shall immediately communicate to the Commission the essential provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 3

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

It shall apply from 22 May 2001.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 May 2001.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

ANNEX

1. In Annex I, Part B(a), point 1, in the right hand column 'DK' is deleted.
2. In Annex I, Part B(a), point 3, the text in the right-hand column is replaced by the following:
'E (Ibiza and Menorca) IRL, P (Azores and Madeira), FI (the districts of Åland, Häme, Kymi, Pirkanmaa, Satakunta, Turku, Uusimaa), S (countries of Blekinge, Gotlands, Halland, Kalmar and Skåne), UK'
3. In Annex I, Part B(b), point 2, in the right hand column 'DK' is deleted.
4. In Annex II, Part B(a) point 3, the text in the right-hand column is replaced by the following:
'EL, IRL, UK (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston Upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council, Middlesbrough, Milton Keynes, Newbury, Newcastle Upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rochdale, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly, and the following parts of counties districts and unitary authorities: Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the A6(T) road; Derbyshire: that part of the county which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road, Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way road; Wiltshire: the part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road).'
5. In Annex II, Part B(a), point 5, the text in the right-hand column is replaced by the following:
'EL, P (Azores; district of Beja: all concelhos; district of Castelo Branco: concelhos de Castelo Branco, Fundão and Penamacôr, Idanha-a-Nova; district of Évora with the exception of concelhos de Montemor-O-Novo, Mora and Vendas Novas; district of Faro: all concelhos; district of Portalegre: concelhos de Arronches, Campo Maior, Elvas, Fronteira, Monforte and Sousel).'
6. In Annex II, Part B(a), point 8 is deleted.
7. In Annex II, Part (B)(b), point 2, the text in the right-hand column is replaced by the following:
'E, F (Corsica), IRL, I (Abruzzi; Basilicata; Calabria; Campania; Emilia-Romagna; provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Apulia, Sardinia, Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto), A (Burgenland, Corinthia, Lower Austria, East Tyrol, Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands).'
8. In Annex III, Part B, point 1, the text in the right-hand column is replaced by the following:
'E, F (Corsica), IRL, I (Abruzzi; Basilicata; Calabria; Campania; Emilia-Romagna; provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Apulia, Sardinia, Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto), A (Burgenland, Corinthia, Lower Austria, East Tyrol, Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands).'
9. In Annex IV, Part B, points 1, 7 and 14.1, the next in the right-hand column is replaced by the following:
'EL, IRL, UK (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston Upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council, Middlesbrough, Milton Keynes, Newbury, Newcastle Upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rochdale, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly and the following parts of counties districts and unitary authorities: Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the road together with that part of the unitary authority

which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road; Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Wiltshire: that part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road)

10. In Annex IV, Part B, points 6.1, 13 and 14.8 are deleted.

11. In Annex IV, Part B, point 19, the text in the right-hand column is replaced by the following:

'EL, P (Azores; district of Beja: all concelhos; district of Castelo Branco: concelhos de Castelo Branco, Fundão and Penamacôr, Idanha-a-Nova; district of Évora with the exception of concelhos de Montemor-o-Novo, Mora and Vendas Novas; district of Faro: all concelhos; district of Portalegre: concelhos de Arronches, Campo Maior, Elvas, Fronteira, Monforte and Sousel)'

12. In Annex IV, Part B, point 21, the text in the right-hand column is replaced by the following:

'E, F (Corsica), IRL, I (Abruzzi; Basilicata; Calabria; Campania; Emilia-Romagna; provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Apulia; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto), A (Burgenland), Carinthia, Lower Austria, East Tyrol, Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)'

13. In Annex IV, Part B, point 24, in the right hand column 'DK' is deleted.

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 3/2001 OF THE EU-ROMANIA ASSOCIATION COUNCIL

of 23 March 2001

adopting the terms and conditions for the participation of Romania in the financial instrument for the environment (LIFE)

(2001/358/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 Romania, of the other part ⁽¹⁾, signed in Brussels on 1 February 1993, and, in particular, Articles 1 and 2 of the Additional Protocol thereto ⁽²⁾,

Whereas:

- (1) According to Article 1 of the said Additional Protocol, Romania may participate in Community framework programmes, specific programmes, projects or other actions notably in the field of environment.
- (2) According to Article 2 thereof, the terms and conditions for the participation of Romania in these activities are to be decided by the Association Council.
- (3) Following Decision No 1/98 ⁽³⁾ of the EU-Romania Association Council, Romania has been participating in the financial instrument for the environment (LIFE) since 1 January 1999,

HAS DECIDED AS FOLLOWS:

Article 1

As from 1 January 2001, Romania shall participate in the financial instrument for the environment (hereinafter called

LIFE) according to the terms and conditions set out in Annexes I and II which shall form an integral part of this Decision.

Article 2

This Decision shall apply for the duration of the LIFE third phase, starting from 1 January 2001.

Article 3

Proposals submitted to the Commission by Romania before 31 October 2000 for LIFE-Nature and before 30 November 2000 for LIFE-Environment shall be eligible for evaluation.

Article 4

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

Done at Brussels, 23 March 2001.

For the Association Council

The President

A. LINDH

⁽¹⁾ OJ L 357, 31.12.1994, p. 2.

⁽²⁾ OJ L 317, 30.12.1995, p. 40.

⁽³⁾ OJ L 35, 9.2.1999, p. 1.

ANNEX I

Terms and conditions for the participation of Romania in the financial instrument for the environment (LIFE)

1. Romania will participate in all actions of LIFE in accordance with the objectives, criteria, procedures and deadlines laid down in Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the financial instrument for the environment (LIFE) ⁽¹⁾.
2. To participate in the programme, Romania will pay each year a contribution to the general budget of the European Union according to the procedures outlined in Annex II.

If necessary in order to take into account LIFE developments, or the evolution of Romania's absorption capacity, the Association Committee is entitled to adapt this contribution, so as to avoid budgetary imbalance in the implementation of LIFE.
3. The terms and conditions for the submission, assessment and selection of applications related to eligible institutions, organisations and individuals of Romania will be the same as those applicable to eligible institutions, organisations and individuals of the Community.

The Commission may take Romanian experts into consideration when appointing independent experts according to the relevant provisions of the Decision establishing the programme to assist it in the project evaluation.
4. To reflect the Community dimension of LIFE, transnational projects and activities proposed by Romania should, whenever relevant, include at least a partner from one of the Member States of the Community.
5. The Member States of the Community and Romania will make every effort, within the framework of existing provisions, to facilitate the free movement and residence of experts and other eligible persons moving between Romania and the Member States of the Community for the purpose of participating in activities covered by this Decision.
6. Activities covered by this Decision shall be exempt from imposition by Romania of indirect taxes, customs duties, prohibitions and restrictions on imports and exports in respect of goods and services intended for use under such activities.
7. Without prejudice to the responsibilities of the Commission of the European Communities and the Court of Auditors of the European Communities in relation to the monitoring and evaluation of the programme pursuant to Article 9 of Regulation (EC) No 1655/2000, the participation of Romania in the programme will be continuously monitored on a partnership basis involving the Commission and Romania. Romania will take part in any other specific activities set out by the Community in that context.
8. In conformity with the Community's Financial Regulations, contractual arrangements concluded with entities of Romania shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors. Financial audits may be carried out with the purpose of controlling such entities' income and expenditure, related to the contractual obligations towards the Community. In a spirit of cooperation and mutual interest, the relevant authorities of Romania shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.
9. Without prejudice to the procedures referred to in Article 3(7) and in Article 11 of Regulation (EC) No 1655/2000, representatives of Romania will, for the points which concern them, participate as observers in the relevant committees. These committees shall meet without the presence of representatives of Romania for the rest of the points, as well as when voting takes place.
10. The language to be used in all contacts with the Commission, as regards the application process, contracts, reports to be submitted and other administrative arrangements for the programmes, will be one of the official languages of the Community.
11. The Community and Romania may terminate activities under this Decision at any time upon twelve months' notice in writing. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in the appropriate agreements.

⁽¹⁾ OJ L 192, 28.7.2000, p. 1.

ANNEX II

Financial contribution of Romania to LIFE

1. The financial contribution to be paid by Romania to the general budget of the European Union to participate in LIFE will be EUR 2 280 000 for each of the first two budgetary years. Supplementary costs of administrative nature are included in the abovementioned amount.

The contribution to be paid by Romania for the following period will be decided by the Association Council in the course of the year 2002.

2. Romania will pay the contribution mentioned in point 1, partly from the Romanian national budget and partly from Romania's PHARE national programme. Subject to a separate PHARE programming procedure, the requested PHARE funds will be transferred to Romania by means of a separate financing memorandum. Together with the part coming from Romania's State budget, these funds will constitute Romania's national contribution, out of which it will make payments in response to annual calls for funds from the Commission.
3. PHARE funds will be requested according to the following schedule:
 - EUR 1 093 000 for the contribution to LIFE for the first year 2001,
 - EUR 1 093 000 for the second year.

The remaining part of the contribution of Romania will be covered from the Romanian State budget.

4. The Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾ will apply, notably to the management of the contribution of Romania.

Travel costs and subsistence costs incurred by representatives and experts of Romania for the purposes of taking part as observers in the work of the relevant committees referred to in point 9 of Annex I or other meetings related to the implementation of LIFE shall be reimbursed by the Commission on the same basis as, and in accordance with, the procedures currently in force for non-governmental experts of the Member States of the European Union.

5. After the entry into force of this Decision and at the beginning of each following year, the Commission will send to Romania a call for funds corresponding to its contribution to LIFE under this Decision.

This contribution shall be expressed in euro and paid into a euro bank account of the Commission.

Romania will pay its contribution according to the call for funds:

- by 1 April for the part financed from its national budget, provided that the call for funds is sent by the Commission before 1 March, or at the latest one month after the call for funds is sent if later,
- by 1 April for the part financed from PHARE, provided that the corresponding amounts have been sent to Romania by this time, or at the latest in a period of 30 days after these funds have been sent to Romania.

Any delay in the payment of the contribution shall give rise to the payment of interest by Romania on the outstanding amount from the due date. The interest rate corresponds to the rate applied by the European Central Bank, on the due date, for its operations in euro, increased by 1,5 percentage points.

⁽¹⁾ OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC) No 2673/1999 (OJ L 326, 18.12.1999, p. 1.)

DECISION No 1/2001 OF THE EU-BULGARIA ASSOCIATION COUNCIL
of 26 March 2001
amending Protocol 4 to the Europe Agreement with Bulgaria concerning the definition of the
concept of 'originating products' and methods of administrative cooperation

(2001/359/EC)

THE ASSOCIATION COUNCIL,

HAS DECIDED AS FOLLOWS:

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 Bulgaria, of the other part ⁽¹⁾, signed in Brussels on 8 March 1993, and in particular Article 38 of Protocol 4 thereto,

Article 1

Protocol 4 concerning the definition of originating products and methods of administrative cooperation is hereby amended as follows:

Whereas:

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

(1) Some technical amendments are in order to correct anomalies between the different language versions of the text.

'(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 countries referred to in Articles 3 and 4 or, where the customs value is not known or cannot be ascertained, the first verifiable price paid for the materials in the Community or Bulgaria;'

(2) The list of insufficient working and processing needs to be amended to ensure proper interpretation and to take account of the need to include some operations not covered previously by this list.

2. Article 7 shall be replaced by the following:

'Article 7

Insufficient working or processing

(3) The provisions for the temporary use of flat rates in cases where drawback is prohibited or exemptions from customs duties are granted need to be prolonged until 31 December 2001.

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 6 are satisfied:

(4) The need has arisen to provide for a system of accounting segregation of originating and non-originating materials, subject to authorisation by customs authorities.

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(5) The provisions concerning the amounts expressed in euro need to be revised in order to clarify the procedure and to provide greater stability for the level of the amounts in national currencies.

(b) breaking-up and assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(6) To take account of the lack of production of a certain material within the countries concerned, a correction should be made to the list of working and processing requirements which non-originating materials have to fulfil to qualify for originating status,

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

(f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(g) operations to colour sugar or form sugar lumps;

(h) peeling, stoning and shelling, of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);

⁽¹⁾ OJ L 358, 31.12.1994, p. 3.

- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) a combination of two or more operations specified in subparagraphs (a) to (n);
- (p) slaughter of animals.

2. All operations carried out either in the Community or in Bulgaria on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.;

3. the last sentence of Article 15(6), shall be replaced by the following:

'The provisions of this paragraph shall apply until 31 December 2001.;

4. the following Article shall be inserted:

'Article 20a

Accounting segregation

1. Where considerable cost or material difficulties arise in keeping separate stocks of originating and non-originating materials which are identical and interchangeable, the customs authorities may, at the written request of those concerned, authorise the so-called "accounting segregation" method to be used for managing such stocks.

2. This method must be able to ensure that, for a specific reference period, the number of products obtained which could be considered as "originating" is the same as that which would have been obtained if there had been physical segregation of the stocks.

3. The customs authorities may grant such authorisation, subject to any conditions deemed appropriate.

4. This method is recorded and applied on the basis of the general accounting principles applicable in the country where the product was manufactured.

5. The beneficiary of this facilitation may issue or apply for proofs of origin, as the case may be, for the quantity of products which may be considered as originating. At the request of the customs authorities, the beneficiary shall provide a statement of how the quantities have been managed.

6. The customs authorities shall monitor the use made of the authorisation and may withdraw it at any time whenever the beneficiary makes improper use of the authorisation in any manner whatsoever or fails to fulfil any of the other conditions laid down in this Protocol.;

5. in the first sentence of Article 22(1), the following shall be inserted after the term 'exporter':

'hereinafter referred to as "approved exporter"';

6. Article 30 shall be replaced by the following:

'Article 30

Amounts expressed in euro

1. For the application of the provisions of Article 21(1)(b) and Article 26(3) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the countries referred to in Articles 3 and 4 equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned.

2. A consignment shall benefit from the provisions of Article 21(1)(b) or Article 26(3) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the country concerned.

3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be communicated to the European Commission by 15 October and shall apply from 1 January the following year. The European Commission shall notify all countries concerned of the relevant amounts.

4. A country may round up or down the amount resulting from the conversion into its national currency of an amount expressed in euro. The rounded-off amount may not differ from the amount resulting from the conversion by more than five per cent. A country may retain unchanged its national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15 per cent in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion were to result in a decrease in that equivalent value.

5. The amounts expressed in euro shall be reviewed by the Association Committee at the request of the Community or Bulgaria. When carrying out this review, the Association Committee shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.;

7. Annex II shall be amended as follows:

The entry for HS heading 5309 to 5311 shall be replaced by:

'5309 to 5311	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn: — Incorporating rubber thread — Other	Manufacture from single yarn ⁽¹⁾ Manufacture from ⁽¹⁾: — coir yarn, — jute yarn, — natural fibres, — man-made staple fibres not carded or combed or otherwise prepared for spinning, — chemical materials or textile pulp, or — paper or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatising, impregnating, mending and burling) where the value of the unprinted fabric does not exceed 47,5 % of the ex-works price of the product	
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⁽¹⁾ For special conditions relating to products made of a mixture of textile materials, see Introductory Note 5.'

Article 2

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

It is applicable from 1 January 2001.

Done at Brussels, 26 March 2001.

For the Association Council

The President

A. LINDH

**DECISION No 1/2001 OF THE EC-CYPRUS ASSOCIATION COUNCIL
of 30 March 2001**

**derogating from the provisions concerning the definition of the concept of originating products
laid down in the Agreement establishing an association between the European Economic
Community and the Republic of Cyprus**

(2001/360/EC)

THE EC-CYPRUS ASSOCIATION COUNCIL,

HAS DECIDED AS FOLLOWS:

Having regard to the Agreement establishing an association between the European Economic Community and the Republic of Cyprus ⁽¹⁾, signed at Brussels on 19 December 1972, herein-after referred to as 'the Agreement',

Having regard to the Protocol concerning the definition of the concept of originating products and methods of administrative cooperation ⁽²⁾ annexed to the Additional Protocol to the Agreement, and in particular Article 25 thereof,

Whereas:

(1) It was agreed, in the joint Declaration by the Contracting Parties concerning the rules of origin, attached to the Final Act of the Protocol laying down the conditions and procedures for the implementation of the second stage of the Agreement establishing an association between the European Economic Community and the Republic of Cyprus and adapting certain provisions of the Agreement ⁽³⁾, which was signed at Luxembourg on 19 October 1987 and entered into force on 1 January 1988, that the Community and the Association Council would, once the said Protocol had entered into force, take a decision on additional Cypriot requests for derogations from the rules of origin applicable to products under heading Nos 6102 and 6103 of the Common Customs Tariff, included as from 1 January 1988 in headings Nos 6204, 6205 and 6206 of the Combined Nomenclature (CN).

(2) A derogation from the relevant provisions concerning the definition of the concept of originating products for the goods in question was granted to Cyprus in 1989 for a period of two years by Decision No 1/89 of the Association Council of 28 July 1989 ⁽⁴⁾, as extended for four other two-year periods.

(3) On 19 July 2000, Cyprus submitted a request for a prolongation of the derogation.

(4) The need for a derogation remains. It is consequently desirable to prolong the said derogation for a period of two years,

Article 1

By way of derogation from Article 3(1) of the Protocol concerning the definition of the concept of originating products and methods of administrative cooperation, products listed in Annex I to this Decision and manufactured in Cyprus shall, within the limits of the quantities indicated and under the conditions set out below, be considered as originating products for the purposes of the Agreement.

Article 2

1. For the purposes of Article 1, products listed in Annex I shall be considered as originating in Cyprus provided that, as a result of working or processing carried out in Cyprus, the products obtained are classified under a tariff heading other than that covering each of the materials worked or processed.

2. Notwithstanding paragraph 1, the manufacture of garments from parts of garments falling within CN code 6217 90 00 shall not be considered as sufficient working or processing, unless the parts have been obtained in the Community from fabric cut to size and are covered by a supplier's declaration made out on an invoice or other accompanying document, of which a specimen is given in Annex III.

Article 3

Materials not originating in Cyprus or in the Community and used for the manufacture of the products referred to in Article 1 shall not be eligible for any form of drawback, exemption from customs duties or charges having equivalent effect to customs duties, with the exception of any amounts exceeding the corresponding duties of the Common Customs Tariff.

Article 4

The quantities referred to in Annex I shall be managed by the Commission, which shall take all administrative action it deems advisable for their efficient management.

Where an importer presents, in a Member State, a declaration of entry for free circulation, including an application for the benefit of this Decision, the Member State shall, if the declaration has been accepted by the customs authorities, notify the Commission of its wish to draw the amount corresponding to its requirements.

⁽¹⁾ OJ L 133, 21.5.1973, p. 2.

⁽²⁾ OJ L 339, 28.12.1977, p. 2.

⁽³⁾ OJ L 393, 31.12.1987, p. 2.

⁽⁴⁾ OJ L 230, 8.8.1989, p. 3. Decision as last extended by Association Council Decision No 1/97 of 24 July 1997 (OJ L 215, 7.8.1997, p. 36).

Applications to draw, showing the date of acceptance of declarations, shall be transmitted to the Commission without delay.

Withdrawals shall be granted by the Commission in order of date of acceptance of declarations of entry for free circulation by the Member States' customs authorities, provided that the available balance permits.

If a Member State fails to use a withdrawal it shall return it, as soon as possible, to the appropriate quota.

If requests exceed the available balance of a given quota, quantities shall be allocated on a pro rata basis. The Commission shall inform the Member States of withdrawal on the quotas.

Each Member State shall ensure that importers have continuous and equal access to the amounts available as long as the balance permits.

Article 5

The customs authorities of Cyprus shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1. To that end, all the certificates they issue pursuant to this Decision shall bear a reference to it. The competent authorities of Cyprus shall forward to the Commission every three months a statement of the quantities in respect of which EUR. 1 movement certificates have been issued pursuant to this Decision and the serial numbers of those certificates. They shall also send the Commission monthly statements of Cypriot imports and exports of fabrics listed in Annex II.

Article 6

EUR. 1 movement certificates issued pursuant to this Decision shall be endorsed:

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DEDUCTION COMMUNITY QUOTA'

in the 'remarks' box, in one of the languages in which the Agreement is drawn up.

Article 7

The Republic of Cyprus, the Member States and the Community shall take the measures necessary on their part to implement this Decision.

Article 8

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

This Decision shall apply for a period of two years, starting on the day of its adoption.

Done at Brussels, 30 March 2001.

For the Association Council

The President

A. LINDH

ANNEX I

List referred to in Article 1*(products benefiting from the derogation)*

Order No	CN code	Description	Annual quantities (pieces)
09.1441	6204 43 00	Dresses of synthetic fibres	13 000
09.1443	6204 53 00 6204 59 10	Skirts and divided skirts of synthetic or artificial fibres	8 000
09.1447	6205 30 00	Men's or boys' shirts, of man-made fibres	105 000
09.1445	6206 40 00	Women's or girls' blouses, shirts and shirt-blouses, of man-made fibres	155 000

ANNEX II

List referred to in Article 5*(products subject to statistical notification)*

CN code	Description
5407 5408	Woven fabrics of synthetic or artificial filament yarn
5512 to 5516	Woven fabrics of synthetic or artificial staple fibres

ANNEX III

Declaration for products not having preferential origin status

I, the undersigned, declare that the goods listed on this invoice ⁽¹⁾		
were produced in ⁽²⁾		
and incorporate the following components or materials which do not have Community origin for preferential trade:		
..... ⁽³⁾	 ⁽⁴⁾	 ⁽⁵⁾
.....		
.....		
..... ⁽⁶⁾ .		
I undertake to make available to the customs authorities any additional evidence they may require.		
..... ⁽⁷⁾	 ⁽⁸⁾	
	 ⁽⁹⁾	

Note: The text inside the box suitably completed in conformity with the footnotes below, constitutes a supplier's declaration. The footnotes do not have to be reproduced.

- (¹) If only some of the goods listed in the invoice are concerned, they should be clearly indicated or marked and this mark entered on the declaration as follows: 'Listed on this invoice and marked, were produced'.
If a document other than the invoice or an Annex to the invoice is used, the name of the document concerned shall be mentioned instead of the word 'invoice'.
- (²) The Community or Member State.
- (³) Description is to be given in all cases. The description must be adequate and should be sufficiently detailed to allow the tariff classification of the goods concerned to be determined.
- (⁴) Customs values to be given only if required.
- (⁵) Country of origin to be given only if required. The origin to be given must be a preferential origin, all other origins to be given as 'non-member' country.
- (⁶) 'And have undergone the following processing in (the Community) (Member State) ' to be added with a description of the processing carried out if this information is required.
- (⁷) Place and date.
- (⁸) Name and function in company.
- (⁹) Signature.

COMMISSION

COMMISSION DECISION of 21 December 2000 on German aid to the coal industry for 2000 and 2001

(notified under document number C(2000) 4407)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/361/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry⁽¹⁾, and in particular Article 2(1) and Article 9 thereof,

Having regard to Commission Decision 1999/270/ECSC of 2 December 1998 authorising Germany to grant aid to the coal industry for 1998 and also giving a favourable opinion on the compatibility with Decision No 3632/93/ECSC of the new guidelines for coal policy up to the year 2002⁽²⁾,

Whereas:

I

(1) By letter of 28 September 1999, Germany notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 2000. By letters of 21 December 1999, 18 February 2000, 13 April 2000, 15 May 2000, 14 July 2000 and 22 November, Germany submitted the additional information requested by the Commission.

(2) By letter of 29 September 2000, moreover, Germany notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 2001. By letter of 22 November 2000, Germany submitted the additional information requested by the Commission.

(3) In its letters of 21 December 1999 and 22 November 2000, Germany more specifically notified the Commission, in accordance with Article 8(4) of Decision No 3632/93/ECSC, of certain changes to the plan for the modernisation, rationalisation and restructuring of activity in the coal industry approved by the Commission by Decision 1999/270/ECSC.

(4) In accordance with Decision No 3632/93/ECSC, the Commission first gives an opinion on the compatibility of the proposed changes to the plan referred to in recital 3 with the general and particular objectives of the Decision. Secondly, it gives its opinion, in accordance with the abovementioned Decision, on the following financial measures:

(a) for 2000:

- operating aid within the meaning of Article 3 of the Decision totalling DEM 3 847 million,
- aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 3 138 million,
- aid within the meaning of Article 3 of the Decision totalling DEM 71 million to maintain an underground labour force ('Bergmannsprämie'),
- aid to cover exceptional costs within the meaning of Article 5 of the Decision totalling DEM 2 124 million;

(b) for 2001:

- operating aid within the meaning of Article 3 of the Decision totalling DEM 3 433 million,
- aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 1 889 million,

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 109, 27.4.1999, p. 14.

- aid within the meaning of Article 3 of the Decision totalling DEM 67 million to maintain an underground labour force ('Bergmannsprämie'),
- aid to cover exceptional costs within the meaning of Article 5 of the Decision totalling DEM 2 740 million.

(5) The financial measures proposed by Germany for the coal industry comply with the provisions of Article 1(1) of Decision No 3632/93/ECSC. In accordance with Article 9(4), the Commission is therefore required to give an opinion on these measures. For this purpose, it checks whether they conform to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3, 4 and 5 of the Decision and whether they are compatible with the functioning of the common market. Furthermore, in accordance with Article 9(6) of the Decision, the Commission has to decide whether the notified measures are compatible with the plan for modernisation, rationalisation, restructuring and the reduction of activity, as modified by Germany.

II

(6) On 13 March 1997, agreement was reached on the new guidelines for the German coal industry for the period 1998 to 2005 (hereinafter called the agreement on coal) between the Federal Government, the Federal State Governments of North Rhine-Westphalia and Saarland, the coal undertakings and the trade union federations for mining and electricity production. Although the planning was for the period up to 2005, the Commission, by Decision 1999/270, approved the various modernisation, rationalisation, restructuring and reduction of activity measures only up to 2002, more specifically the date of expiry (23 July 2002) of the ECSC Treaty and of Decision No 3632/93/ECSC.

(7) This agreement provided for a continuing reduction in production, from 47 million tce⁽¹⁾ in 1997 to 37 million tce in 2002. This plan involved a reduction of 30 000 in the workforce to a total of 56 000 in 2002, including subsidiary activities. The agreement also provided for a gradual reduction in the total amount of aid linked to the new plan for the restructuring of the German coal industry, the ceiling being fixed at DEM 6,9 billion for 2002.

(8) Only 12 production sites were to remain operational after 2002. Apart from the merger of several sites and the concentration of activity on the most productive deposits, the agreement also provided for the closure of three mines. The 'Westfalen' and 'Göttelborn/Reden' mines were due thus due to cease production in 2000, while the closure of the 'Ewald/Hugo' mine was planned for 2002.

(9) In view of the difficult conditions on the international markets, due in particular to the rapid fall in coal prices since 1997, and given the fact that the aid provided for in the coal agreement could not exceed a certain ceiling established in the framework of multiannual planning, Germany decided to bring forward the closure of the 'Ewald/Hugo' mine to 30 April 2000. The year 2000 thus sees the closure of three production units.

(10) The plan for the modernisation, rationalisation, restructuring and reduction of activity in the coal industry for the period 1998 to 2002 is based on two fundamental objectives, namely optimum use of the lower financial resources and reduction of production and productions costs.

(11) Under the plan, moreover, restructuring measures must be implemented in a way which ensures that the workforce is reduced in a socially acceptable manner, avoiding economic redundancies, and secondly that the regional impact of the measures adopted is taken into account.

(12) In order to achieve these objectives, the situation of the production sites must be assessed on the basis of the following criteria: extent of the deposit, coal quality, costs. These standard criteria should make it possible to provide an objective assessment of the current situation and the future development of the production units.

(13) Commission Decision 1999/270/ECSC of 2 December 1998 also stated that 'it can be concluded that a substantial reduction in aid can largely be achieved by means of measures to reduce mining activity'. Indeed, 'even if the average production costs in the German coal industry have fallen slightly, taking account of Article 3(3) of Decision No 3632/93/ECSC, the production costs, expressed at 1992 constant prices, are still too high as they should be DEM 242 per tce in 2002 as compared with DEM 288 per tce in 1992'.

III

(14) In the light of the above, the German Government notified the Commission on 14 December 1999 of its decision to close a further two production sites in 2001 and 2002. Under the coal agreement, these measures were not due to be taken until after 2002.

(15) Several factors account for the early closure of these two production units, particularly the fall in coal prices on international markets to an historically low level and the sharp decline in demand for coal from the steel industry which has led to a substantial reduction in revenue.

(16) The first measure planned for 2001 is the amalgamation of the 'Auguste Victoria' and 'Blumenthal/Haard' mines. Of the 'Blumenthal/Haard' mine, only the Haltern coal-field will be maintained with access from the 'Auguste Victoria' mine. The latter features a compact well structured field allowing optimum working.

⁽¹⁾ Tonnes of coal equivalent.

- (17) The 'Auguste Victoria' mine should produce 3,160 million tce in 2000 and has 3 600 registered underground workers. As regards the 'Blumenthal/Haard' mine, the German authorities consider that it should produce 2,124 million tce in 2000, with 3 370 registered underground workers.
- (18) The amalgamation of the two mines in 2001 will bring production down to some 3,5 million tce, a reduction estimated at between 1,5 and 2 million tce compared with 2000. The number of underground workers should not exceed 4 000, a reduction of around 3 000 compared with the year 2000.
- (19) The second measure planned for 2002 is the amalgamation of the 'Friedrich Heinrich/Rheinland' and 'Niederberg' mines. Production at the 'Niederberg' site will be finally closed down, the two deposits maintained being attached to the 'Friedrich Heinrich/Rheinland' mine.
- (20) The 'Friedrich Heinrich/Rheinland' mine should produce 3,298 million tce in 2000 and has 3 090 registered underground workers. The 'Niederberg' line should produce 2,132 million tce in 2000, with 1 720 underground workers.
- (21) After amalgamation in 2002, the production capacity of the mine should be reduced to some 3,5 million tonnes, a reduction estimated at 2 million tonnes compared with 2000. The amalgamated mine should employ 3 800 underground workers, a reduction of around 1 000 posts compared with 2000.
- (22) Although the coal agreement provided for an output of 37 million tce in 2002, the additional measures concerning reduction of activity — including the closures of two mines referred to above ('Blumenthal/Haard' and 'Niederberg') — will cut production in 2002 to less than 29 million tce.
- (23) At 35 million tce, estimated production for 2000 is therefore lower than had been foreseen by the coal agreement for 2002.
- (24) In its notification of 22 November 2000, Germany stated that new reductions of activity inevitably leading to additional closures of production sites had to be considered.
- (25) According to the notifications of 28 September and 14 December 1999 concerning the year 2000, Germany was proposing to grant aid under Article 3 of Decision No 3632/93/ECSC totalling DEM 5 047 million and aid under Article 4 of that Decision totalling DEM 2 024 million. According to the German Government, new measures relating to reduction of activity will entail a revision of the aid granted under Decision No 3632/93/ECSC. According to the notification of 22 November 2000, aid proposed for 2000 under Article 3 of Decision No 3632/93/ECSC now amounts to DEM 3 847 million and aid under Article 4 of that Decision to DEM 3 138 million. In other words, this corresponds to a reduction of DEM 1 200 million in aid under Article 3 of Decision No 3632/93/ECSC.
- (26) According to the German Government, these new measures to reduce activity will have very serious social and regional consequences if they are not planned in an optimum manner. It should be emphasised in this connection that the unemployment rate recorded in coalmining areas is already significantly higher than that in regions without coal. Germany estimates that the unemployment rate in the Ruhr coalfield was 14 % in 1999 and 12 % in Saarland, although these figures are even higher if the spotlight is placed in particular on the situation in locations affected by the decline in coal production. The major reductions in activity carried out in recent years, which will have resulted in a 25 % reduction in coal production between 1997 and 2000, have contributed to this difficult social situation.
- (27) The closure of three mines in 2000 alone and the cutbacks in production already planned for 2001 and 2002 will considerably worsen the social situations in the regions concerned. The total workforce in the coal industry was expected to fall from 66 000 in 1999 to 57 000 in 2000. Germany expected the restructuring of the coal industry to cut the workforce by a further 21 000 between 2000 and 2005, an average rate of 350 to 400 job losses per month.
- (28) Germany considers that the very difficult social situation described in recitals 26 and 27 cannot be allowed under any circumstances to be aggravated further by new measures relating to reduction of activity to be implemented immediately. The current programme of accompanying social measures is based very largely on the effective redeployment of the workforce outside the coal industry. If the workforce in the coal industry were to be cut at a faster rate, this would seriously compromise this programme.
- (29) Consequently, in order to alleviate as far as possible the social and regional problems which will inevitably result from the new reductions in activity notified by Germany in its letter of 22 November 2000, the German authorities consider that it will be possible to carry out the latter measures only after 2002.
- (30) The German Government undertakes however to implement these closure measures as soon as possible after 2002, in a manner which is compatible with the undertakings entered into by the various interested parties in Germany, particularly under the agreement on coal. It should be pointed out in this connection that the agreement on coal is based not only on criteria for the optimum use of financial resources, and a reduction in output and costs but also on the principle of a restructuring of the coal industry which takes account of the social and regional impact of measures to reduce activity. It should moreover be noted that several measures, including those referred to in recitals 14 and to 23 above, already result in reductions in production and the workforce which are significantly greater than those provided for in the coal agreement concluded in 1997.

- (31) In any event, all the closure measures referred to in recitals 24 and 25 will be implemented in an effective and tangible way at the latest immediately after the expiry of the coal agreement.

IV

- (32) According to the 20th recital of Decision No 3632/93/ECSC, the principle of reducing the coal industry's production costs and capacity is necessary in order to achieve degression of aids. The 21st recital lays down moreover that 'a policy of rational distribution of production requires reductions of costs and of capacity to be concentrated primarily on those areas of production receiving the highest level of aid'.
- (33) In this connection, Article 2(1) of the abovementioned Decision lays down that aid granted to the coal industry must help to achieve at least one of the three objectives mentioned, including the following:
- to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids,
 - to solve the social and regional problems created by total or partial reductions in the activity of production units.
- (34) The closure measures which will be carried out by means of mergers of mines in 2001 and 2002, and the new measures to reduce activity to be implemented by Germany after 2002, must help to achieve the objectives set out in recital 33. They must bring about a concentration of production at those sites offering, in terms of production costs, the best prospects of improving economic viability.
- (35) Coal production which cannot help to achieve this objective will be phased out and will be eligible only for aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC.
- (36) The German authorities have scheduled certain closure measures to take effect after the expiry of Decision No 3632/93/ECSC. As stated in recitals 26 to 29 above, and in accordance with the provisions of Article 4(2) of Decision No 3632/93/ECSC, these measures cannot be implemented more quickly because of their exceptional social and regional consequences. It should be pointed out in this connection that major reductions of activity will be carried out in 2001 and 2002, while 2000 has already seen the closure of three mines.
- (37) In accordance with Article 2(2) of Decision No 3632/93/ECSC, the measures which will be carried out after 2002 form part of a plan for a gradual and continuous reduction of activity providing for a significant reduction before the expiry of Decision No 3632/93/ECSC.

Production of coal in Germany, estimated at 35 million tce for 2000 will have to be cut to 30,5 million tce in 2001 and 28,5 million tce in 2002, which is a reduction in capacity of almost 20 % in the space of two years.

- (38) The German Government undertakes to ensure that the reductions in production referred to in recitals 36 and 37 above are carried out in strict compliance with the provisions of Decision No 3632/93/ECSC by the sole coalmining undertaking in Germany, Deutsche Steinkohle AG, which forms part of the RAG Aktiengesellschaft Group. In particular, Deutsche Steinkohle AG will carry out all necessary measures to achieve the reductions in production among the production sites in the undertaking, for which there will be an additional DEM 1 200 million of aid for reduction of activity.
- (39) All these reductions of activity will also enable Germany to achieve degression of aid. The agreement on coal concluded in 1997 provides for a ceiling on such aid, which is fixed at DEM 6 900 million for 2002. Having regard to production conditions and price trends on international markets, such a reduction in the amount of aid requires the gradual closure of the least profitable production capacities.
- (40) The Commission notes that these reductions of capacity form part of the sequence of the major measures for restructuring, rationalisation, modernisation and reduction of activity which have already been carried out since the 1997 coal agreement came into force.
- (41) These measures which resulted in a reduction in production from 47 million tce to 35 million tce between 1997 and 2000, have produced a significant reduction in production costs. (Thus, the production costs linked to production sites receiving aid under article 3 of Decision No 3632/93/ECSC were reduced — at constant 1992 prices — by around 10 % between 1994 and 1997 and should fall by 6 % between 1997 and 2000).⁽¹⁾ The new rationalisation measures should moreover allow further reductions in production costs (of up to 6 % between 2000 and 2001 and 4 % between 2001 and 2002).
- (42) The successive plans implemented by Germany should therefore allow a significant reduction in production costs expressed at constant prices of the order of DEM 62 per tce over the period covered by Decision No 3632/93/ECSC. This must be regarded as being in line with the provisions of Article 3 of Decision No 3632/93/ECSC.
- (43) Having regard to the above, the Commission considers that the modifications to the plan for modernisation, rationalisation, restructuring and reduction of activity which was approved by the Commission in its Decision 1999/270/ECSC of 2 December 1998, are compatible with the objectives and criteria laid down in Decision No 3632/93/ECSC, and in particular Articles 2, 3 and 4 thereof. The gradual reductions in production capacity will have to help to achieve the objectives laid down in Article 2(1), first and second indents. Firstly, in accordance with Article 3 of Decision No 3632/93/ECSC, further progress towards economic viability will have to

⁽¹⁾ The decision adopted by the Commission contains information on the production costs of Deutsche Steinkohle AG which must be treated as confidential. Solely for the purposes of this publication, it has been replaced by figures expressed as percentages.

be made with the aim of achieving degression of aids. Secondly, in accordance with Article 4 of Decision No 3632/93/ECSC, these measures have been designed to solve the social and regional problems created by reductions in activity.

(44) Germany will give reasons for any deviation from the plan for modernisation, rationalisation, restructuring and reduction of activity in coalmining which is the subject of this Commission Decision.

(45) If it becomes apparent, in particular, that the conditions and criteria laid down in Article 3 of Decision No 3632/93/ECSC cannot be met, Germany will propose to the Commission on its own initiative the necessary corrective measures. These measures include a possible review of the classification of production capacities in accordance with Articles 3 and 4 of Decision No 3632/93/ECSC.

V

(46) The amounts of DEM 3 847 and 3 433 million that Germany is proposing to grant to the coal industry under Article 3 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the difference between production costs and the selling price for coal freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of similar quality from non-member countries.

(47) This aid is granted only to cover operating losses linked to production capacities meeting the conditions laid down in Article 2(1), first indent and Article 3 of Decision No 3632/93/ECSC.

(48) The measures relating to restructuring, rationalisation, modernisation and reduction of activity in the coal industry taken since 1994 have enabled significant progress to be made in terms of a reduction of production costs for coal. For production capacities receiving aid under Article 3 of Decision No 3632/93/ECSC, production costs, expressed at constant 1992 prices, (went down by 12 % between 1994 and 1999). In 2000, production costs (will record a further reduction of around 3 % compared with 1997).

(49) The year 2001 will see a further significant reduction in production costs (of 6 %) in the space of a year.

(50) These reductions in production costs are the result of the major restructuring of the coal industry, and in particular the gradual closure of the least profitable production units which do not meet the criteria laid down by Article 3 of Decision No 3632/93/ECSC.

(51) It should be noted that the annual reductions in production costs of the German coal industry have, to some extent, been offset by the costs connected with the workforce of the undertaking. There has been some delay in following up the reductions in production with the necessary cutbacks in the workforce, in order to attenuate as far as possible the social consequences of the measures to reduce activity. Costs in 2000 have therefore been influenced by the excessive size of the workforce compared with the level of activity.

(52) The reductions in production costs in 2000 and 2001 helped to improve the economic viability of the German coal industry. Although the level of costs remains high, the sustained efforts which have led to the significant ongoing reduction in production costs mean that coalmining is less unprofitable and uncompetitive.

(53) The level of coal prices on the international market has, to a certain degree, limited the impact of the reductions in production costs on improved viability of the coal industry. The measures to reduce certain production capacities and the already apparent recovery in coal prices on the world market should however help to increase the impact on reductions in production costs on the viability of the sector.

(54) The Commission has carried out a detailed analysis of the operating conditions and economic situations specific to each production unit. Although there are certain variations between the production costs of the various production sites, the situation for each site considered individually does not differ significantly from the situation and development of the coal industry as a whole. The terms and conclusions of the analysis of the data relating to the whole of the German coal industry therefore apply *mutatis mutandis* at the level of the various production units.

(55) The restructuring measures have moreover helped, in accordance with Article 2(1), first indent of Decision No 3632/93/ECSC, to achieve degression of aid. Operating aid, not including the amount for the 'Bergmannsprämie' went down from DEM 6 357 million in 1997 to DEM 5 141 million in 1999. It will be DEM 3 847 million for 2000 and DEM 3 433 million for 2001.

(56) The reduction in the amount of operating aid between 2000 and 2001 is moreover directly linked to a reduction in aid per tonne. The efforts to reduce production costs therefore reduced the need for State aid for production covered by measures under Article 3 of Decision No 3632/93/ECSC.

- (57) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany is taking the necessary measures to ensure that the amount of aid per tonne does not exceed for each production unit the difference between the production cost and foreseeable revenue in 2000 and 2001 respectively. Germany undertakes moreover to ensure, in accordance with Article 3(1) third indent of the abovementioned Decision, that the amount of operating aid per tonne does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from non-member countries.
- (58) Should it transpire that certain production capacities could not meet the conditions laid down in Article 3 of Decision No 3632/93/ECSC, Germany will give the reasons for any deviations from the forecasts given in the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry and compared with the economic and financial forecasts submitted to the Commission in connection with the notification of aid relating to 2000 and 2001. Germany will propose to the Commission, on its own initiative, where appropriate, the necessary corrective measures, including measures to reduce production capacity in addition to those mentioned in recitals 14 to 31.
- (59) On the basis of the information provided by Germany, and having regard to the obligations on the German Government set out in recitals 82 to 90 of this Decision, the operating aid planned for 2000 and 2001 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof. These aid amounts, DEM 3 847 million for 2000 and DEM 3 433 million for 2001, are moreover in line with the provisions of the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry, and in particular the new guidelines for this plan as set out in recitals 14 to 31.
- (60) The sums of DEM 3 138 million and DEM 1 889 million that Germany is proposing to grant to the coal industry under Article 4 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the difference between production costs and the selling price for coal freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of a similar quality from non-member countries.
- (61) In accordance with Article 4(1) of the abovementioned Decision, this aid is granted only for the purpose of covering the operating losses linked to production capacities which are unable to meet the conditions laid down in Article 3(2) of the said Decision.
- (62) The considerable amount of aid notified under Article 4 of Decision No 3632/93/ECSC for 2000 reflects the major reduction of activity measures carried out during that year, as well as those planned for subsequent years. As stated in recitals 14 to 45, this reduction in capacity must result in a concentration of production at those sites offering the best prospects of improving economic viability in terms of production costs.
- (63) The aid planned for 2000 is intended firstly to cover losses on current production at the 'Westfalen' and 'Göttelborn/Reden' mines whose closure in 2000 was planned in the agreement on coal, as well as operating losses at the 'Ewald/Hugo' mine whose closure, originally planned for 2002, has been brought forward to 2000. This aid must also cover the operating losses at production sites which will be closed as a consequence of the amalgamation of mines, namely 'Auguste Victoria' and 'Blumenthal/Haard' in 2001 and 'Friedrich Heinrich/Rheinland' and 'Niederberg' in 2002 (see recitals 16 to 21). Finally, the aid proposed under Article 4 of Decision No 3632/93/ECSC covers operating losses at production capacities which will have to close after the expiry of Decision No 3632/93/ECSC and which were notified to the Commission on 22 November 2000 (see recitals 24 and 25).
- (64) The final closure of the production units in 2000 has resulted in a significant reduction — from DEM 3 138 million to DEM 1 889 million — in the amount of aid notified under Article 4 of Decision No 3632/93/ECSC for 2001.
- (65) In accordance with Article 4(2) of Decision No 3632/93/ECSC, exceptional social and regional grounds justify the postponement of the closure of certain production capacities beyond the date of expiry of the ECSC Treaty. These measures form part of a plan for the gradual and continuing reduction of activity providing for a significant reduction in production before the expiry of the abovementioned Decision (see recitals 36 and 37).
- (66) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany is taking the necessary measures to ensure that the amounts of aid per tonne do not exceed for each production unit the difference between production costs and foreseeable revenue for 2000 and 2001 respectively. Moreover, Germany undertakes to ensure, in accordance with Article 3(1), third indent, of the abovementioned Decision, that the amount of aid for reduction of activity per tonne does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(67) On the basis of the information provided by Germany, and having regard to the obligations on the German Government set out in recitals 82 to 90 of this Decision, the aid for reduction of activity planned for 2000 and 2001 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 4 thereof. These aid amounts, DEM 3 138 million for 2000 and DEM 1 889 million for 2001, are moreover in line with the provisions of the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry, and in particular the new guidelines for this plan as set out in recitals 14 to 31.

VII

(68) The aid measures totalling DEM 71 million and DEM 67 million are intended to fund the payments to miners in the German coal industry ('Bergmannsprämie'), for 2000 and 2001 respectively. This is an incentive scheme, corresponding to a sum of DEM 10 per underground job, aimed at encouraging skilled workers to work underground and help to rationalise production. According to the notifications submitted by Germany, this aid covers a cash benefit for miners. Although this payment to miners is not involved directly in the calculation of the production costs of the undertaking, the aid intended to cover this payment constitutes a reduction of the wage burden borne by that undertaking. It therefore constitutes aid within the meaning of Article 1(2) which has to be examined in accordance with the provisions of Article 3 of Decision No 3632/93/ECSC.

(69) The proposed aid facilitates the restructuring and rationalisation of the coal industry by allowing productivity levels to be raised as far as possible. This aid therefore helps to achieve the objective referred to in Article 2(1), first indent, of Decision No 3632/93/ECSC, namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids.

(70) This aid will help to some extent, in accordance with the provisions of Article 3 of Decision No 3632/93/ECSC, to make the coal industry less uncompetitive by helping to reduce the costs of coalmining, thanks to increased productivity achieved by maintaining a skilled labour force underground.

(71) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany undertakes to ensure that the combination of the 'Bergmannsprämie' with other aid for current production does not exceed, for each

production unit and for each year, the difference between production costs and foreseeable revenue.

(72) Having regard to the above and on the basis of the information provided by Germany, the aid proposed for 2000 and 2001, amounting to DEM 71 million and DEM 67 million respectively for the 'Bergmannsprämie', is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof.

VIII

(73) The amounts of DEM 2 124 and DEM 2 740 million that Germany is proposing to grant to the coal industry under Article 5 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the costs arising from or having arisen from the modernisation, rationalisation or restructuring of the coal industry which are not related to current production (inherited liabilities).

(74) Some of this aid, namely DEM 609 million for 2000 and DEM 562 million for 2001, is the result of decisions taken by the mining undertakings, the Federal Government, the State Governments of North Rhine-Westphalia and Saarland and the trade unions representing the mining industry and the electricity producers during the negotiations (Kohlerunde) on 11 November 1991.

(75) The remainder of the aid, DEM 1 515 million for 2000 and DEM 2 178 million for 2001, is intended to cover the costs arising from further closures scheduled under the agreement on coal of 13 March 1997. This amount covers in particular the costs resulting from reductions in capacity connected with the amalgamations in 1998 of the production units 'Haus Aden/Monopol' and 'Heinrich Robert' on the one hand and the units 'Fürst Leopold/Wulfen' and 'Westerholt' on the other.

(76) The increase in the amount of aid notified for 2000 under Article 5 of Decision No 3632/93/ECSC, as compared with the amount authorised by the Commission for 1999 ⁽¹⁾, is justified by the closure in 2000 of three production units, namely 'Westfalen', 'Göttelborn/Reden' and 'Ewald/Hugo'.

(77) The impact of these closure measures is reflected moreover in the considerable amount of aid notified under Article 5 of Decision No 3632/93/ECSC for 2001. The amalgamation in 2001 of the 'Auguste Victoria' and 'Blumenthal/Haard' mines is also a factor in increased exceptional costs.

⁽¹⁾ See Commission Decision 1999/299/ECSC of 22 December 1998, OJ L 117, 5.5.1999, p. 44.

- (78) These aids are intended to cover the following, with the exception of the costs of social benefits borne by the State by way of the special contribution referred to in Article 56 of the ECSC Treaty: the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age; other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation; the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such payments before the restructuring; the supply of free coal to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring. On the technical and financial levels, the aid is intended to cover additional underground safety work resulting from restructuring and exceptional intrinsic depreciation provided that it results from the restructuring of the industry.
- (79) The costs described in recital 78 correspond to the categories of costs defined in the Annex to Decision No 3632/93/ECSC, and more specifically the costs mentioned in point I(a), (b), (c), (d), (f) and (k). In accordance with Article 5(1) of the abovementioned Decision, the amounts of aid proposed by Germany for 2000 and 2001 do not exceed the costs incurred.
- (80) The reduction in pressure on the undertaking receiving aid made possible by the covering of these costs will reduce its financial imbalance and enable it to continue its activities. The aid therefore complies with the objectives of Article 2(1) of Decision No 3632/93/ECSC.
- (81) Having regard to the above, and on the basis of the information communicated by Germany, the aid to cover exceptional costs for 2000 and 2001, amounting to DEM 2 124 and DEM 2 740 millions respectively, is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 5 thereof.
- (82) Given that the aim is to minimise aid, and pursuing the principle applied by Germany that aid is only to be paid for production which is supplied for electricity generation and to the Community iron and steel industry, Germany undertakes to sell the production intended for use by industry and as domestic coal at prices (net prices without discounts) which cover the production costs.
- (83) In accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid must be entered by Germany in the national, regional or local public budgets or channelled through strictly equivalent mechanisms.
- (84) The Commission would remind Germany that an essential feature of the aid rules is that the aid must be in the Community interest and must not disturb the proper functioning of the common market. Germany will also take care to ensure that the aid does not distort competition or produce discrimination between coal producers or between coal buyers and users in the Community.
- (85) It also gives it assurance, pursuant to the provisions of Article 86 of the ECSC Treaty, that the aid will be limited to what is absolutely essential taking account of the economic considerations linked to the necessary restructuring of the coal industry on the one hand and the social and regional considerations relating to the decline of coalmining in the Community on the other.
- (86) It must not provide an economic advantage, either directly or indirectly, for production for which aid is not authorised or for any activity other than coalmining, for example industrial activities relating to the mining or processing of coal from the Community.
- (87) To enable the Commission to examine whether the production units which receive operating aid pursuant to Article 3 of Decision No 3632/93/ECSC actually generate a trend towards a reduction in production costs at world prices, Germany undertakes to notify the Commission no later than 30 September of each year of the production costs of each production unit during the previous year and of all the information pursuant to Article 9 of Decision No 3632/93/ECSC.
- (88) If, in particular, the conditions laid down in Article 3(2) of the abovementioned Decision cannot be met, Germany will propose the necessary corrective action to the Commission such as a review of the classification of production capacities pursuant to Articles 3 and 4 of the Decision.
- (89) The Commission is required, in accordance with the second indent of Article 3(1) and Article 9(2) and (3) of Decision No 3632/93/ECSC, to verify whether the aid granted for current production achieves only the objectives set out in Articles 3 and 4 of the Decision. Germany will provide notification no later than 30 September 2001 of the level of aid actually paid in 2000 and no later than 30 September 2002, the level of aid actually paid in 2001. It will give notification of any changes to the sums originally notified. In this annual list, it will provide, in accordance with recital 88, all information required for verifying compliance with the criteria laid down in the abovementioned Articles.
- (90) In approving the aid, the Commission has taken account of the need to minimise the social and regional impact of restructuring.

HAS ADOPTED THIS DECISION:

Article 1

The changes to the plan for the modernisation, rationalisation and reduction of activity in the coal industry, as approved by the Commission in Decision 1999/270/ECSC of 2 December 1998, are compatible with the objectives and criteria laid down in Decision No 3632/93/ECSC.

Article 2

Germany is hereby authorised to take the following measures to assist the coal industry for 2000:

- (a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 3 847 million;
- (b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 3 138 million;
- (c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 71 million to maintain an underground labour force ('Bergmannsprämie');
- (d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 2 124 million to cover exceptional costs.

Article 3

Germany is hereby authorised to take the following measures to assist the coal industry for 2001:

- (a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 3 433 million;
- (b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 1 889 million;
- (c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 67 million to maintain an underground labour force ('Bergmannsprämie');

- (d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 2 740 million to cover exceptional costs.

Article 4

In accordance with Article 86 of the ECSC Treaty, Germany undertakes to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this Decision.

It shall ensure that aid granted is used only for the specified purposes and that any unused, overestimated or misused expenditure in relation to any items referred to in this Decision repaid to Germany.

Article 5

Germany shall provide information no later than 30 September 2001 about payments actually made during the 2000 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 6

Germany shall provide information no later than 30 September 2002 about payments actually made during the 2001 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 December 2000.

For the Commission

Loyola DE PALACIO

Vice-President