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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 950/2001
of 14 May 2001**

**imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the
People's Republic of China and 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 9 thereof,

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

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 18 February 2000, the Commission announced by a notice ('Notice of Initiation') published in the *Official Journal of the European Communities* ⁽²⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of certain aluminium foil originating in the People's Republic of China (hereafter referred to as 'the PRC') and Russia.
- (2) The proceeding was initiated as a result of a complaint lodged in January 2000 by the European Association of Metals ('Eurometaux') on behalf of Alcan Europe, Elval, Eurofoil, Lawson Mardon Star Ltd, Pechiney Rhenalu and VAW Aluminium Business Unit Foil, together representing a major proportion, i.e. 71 %, of the Community production of certain aluminium foil. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

2. Investigation

- (3) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting countries concerned, the

complainants and other Community producers about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

- (4) A number of parties made their views known in writing. All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (5) Questionnaires were sent to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the Notice of Initiation. In order to allow exporting producers from China and Russia to submit a claim for market economy treatment ('MET') or individual treatment if they so wished, the Commission sent a market economy treatment and an individual treatment claim form to the Chinese and Russian companies known to be concerned. One Chinese company and one Russian company submitted a reply to the claim form.
- (6) Replies were received from the six complaining Community producers, two unrelated importers in the Community, six users, one exporting producer in China, one exporting producer in Russia and one producer in the analogue country. Information was also received from another Community producer and from three suppliers of raw material.
- (7) The Commission sought and verified all the information it deemed necessary for the purposes of a determination of dumping, injury and Community interest including the carrying out of verification visits at the following companies:

(a) *Exporting producer in the PRC*

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

⁽²⁾ OJ C 45, 18.2.2000, p. 2.

(b) *Exporting producer in Russia*

- Joint Stock Company United Company 'Siberian Aluminium', Moscow (including the related companies Metcare Management SA, registered in Panama City and Eximal Ltd, registered in Belize and the related selling company Sibirsky Aluminium Foil Corp. (ex Hover Commercial Corp.) registered in the British Virgin Islands).

(c) *Unrelated importer in the Community*

- Countinho Caro + Co International Trading GmbH, Hamburg, Germany

(d) *Analogue producer*

- Alcan, Cleveland, Ohio, United States of America

(e) *Complainant Community producers*

- Alcan Europe, Rogerstone, United Kingdom
- Elval, Inofita Viotia, Greece
- Eurofoil, Dudelange, Luxembourg
- Lawson Mardon Star Ltd, Bridgnorth, United Kingdom
- Pechiney Rhenalu, France
- VAW Aluminium Business Unit Foil, Bonn (D), on behalf of VAW Grevenbroich, Grevenbroich, Germany, VAW SLIM SpA, Cisterna di Latina, Italy and VAW INASA SA, Irurzun, Spain

(f) *Community users*

- Fora Folienfabrik GmbH, Radolfzell, Germany
- ITS Foil and Film Rewinding bv, Apeldoorn, The Netherlands.

- (8) The investigation of dumping and injury covered the period from 1 January 1999 to 31 December 1999 ('the investigation period' or IP). With respect to the trends relevant for the injury assessment, data covering the period from 1 January 1996 up to the end of the IP ('the period considered') was analysed.

3. Provisional measures

- (9) Given the need to further examine certain aspects of dumping as well as the impact on the Community industry of the imports concerned, no provisional anti-dumping measures were imposed, additional information was requested and the investigation was continued. An on-the-spot investigation was carried out at the premises of an unrelated importer of the Russian exporting producer in Hamburg and a supplementary questionnaire on the same general category of products was sent to the same Russian exporting producer.

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

- (10) The product under consideration is aluminium foil of a thickness of 0,009 mm or more up to not more than

0,018 mm, not backed, not further worked than rolled, presented in reels of a width not exceeding 650 mm, currently classifiable within CN code ex 7607 11 10. The product concerned is commonly known as aluminium household foil ('AHF').

- (11) AHF is manufactured by rolling aluminium ingots or foil-stock up to the desired thickness. Once rolled, the foil is annealed by a thermal process to make it pliable. Once rolled and annealed the AHF is presented on reels of a width not exceeding 650 mm. The dimension of the reel is determinant for its use, since the users of this product ('spoolers' or 'rewinders') will mount the AHF onto small end-rolls destined for retail sale. The AHF rewound onto smaller rolls, is then used for multi-purpose short-life wrapping (mostly in households, catering and food and floristry retail businesses).
- (12) The investigation has shown that a clear dividing line exists between AHF and aluminium converter foil ('ACF'), given the differences in the basic physical characteristics and basic use of the products.

- (13) Regarding the basic physical characteristics, it should be noted that AHF is generally produced in a thickness between 0,009 mm to 0,018 mm, whereas ACF is generally produced in thickness below 0,009 (standard 0,0065 mm) and above 0,018 mm (standard 0,020 mm to 0,040 mm), the thickness of the foil being a crucial element in the use of the product in terms of its convertibility. Furthermore, AHF is presented in reels of a width not exceeding 650 mm whereas ACF is presented in reels of 700-1200 mm. The information provided by the interested parties shows that the width of the reels cannot be altered once the foil has been annealed. In both cases it should be noted that the width of the reels is also a determinant element in the use of the product: AHF will be rewound onto smaller end-rolls of the same width as the reels, whereas ACF will be subsequently converted (i.e. printed, laminated, folded, etc.) and cut to the required size, in which case a larger size of the reel will allow a more efficient use of the product.

- (14) The aforementioned differences in thickness and width determine to a large extent the basic use of the product. Indeed, AHF is used in multi-purpose short-term wrapping, mostly in households, catering and food and floristry retail businesses. ACF will be further transformed (converted) and then cut into the desired sizes and shapes for use in long term conservation of liquid (milk, UHT, fruit juices) and long-term packing (food, cosmetics, chocolate, cigarettes, pharmaceuticals, etc.).

- (15) In conclusion, AHF and ACF are considered as two different products for the purpose of this investigation.
- (16) Furthermore, it was also found that all AHF share essentially the same basic physical, technical and chemical characteristics and is used for the same purpose. AHF therefore constitutes a single product.

2. Like product

- (17) The investigation has shown that the AHF produced in the PRC and in Russia and exported to the Community and that produced and sold in the Community by the Community industry share the same basic physical and chemical characteristics, i.e. a foil made of aluminium of a thickness between 0,009 mm and 0,018 mm and presented in reels of up to 650 mm in width. Furthermore, the end use is the same, i.e. it is used for multi-purpose short-life wrapping.
- (18) The same was found for the AHF produced and sold in the United States of America (USA), which served as analogue country. It should be noted that there were no domestic sales of AHF in Russia.
- (19) In view of the above, it is concluded that the aforementioned AHFs are alike within the meaning of Article 1(4) of Council Regulation (EC) No 384/96 (hereafter referred to as the 'basic Regulation').

C. DUMPING

1. Preliminary remarks

- (20) It was established that there was only one producer exporting to the Community in each of the countries concerned during the IP. They accounted for practically all exports to the Community from the countries concerned.

2. Market economy treatment ('MET')

- (21) Pursuant to Article 2(7)(b) of the basic Regulation, normal value in the PRC and Russia is determined on the basis of the prices or constructed value of those producers which can demonstrate that they meet the criteria laid down in the said Article 2(7)(c), i.e. that they operate under market economy conditions. The sole exporting producers in the PRC and in Russia requested MET and were required to complete a claim form detailing all the relevant information required. The results of these investigations were conveyed to the Advisory Committee and, after consultation, it was decided to grant MET to the exporting producer in Russia only.

(a) *The PRC*

- (22) The information submitted showed that the sole Chinese exporting producer was majority state-owned and that the chairman of the board of directors was appointed by a state-owned entity. It was therefore concluded that the absence of significant state interference in this case could

not be guaranteed and thus that the criteria of the first indent of Article 2(7)(c) of the basic Regulation were not met. For this reason, it was concluded that this company could not be granted market economy treatment.

- (23) The company concerned objected to the conclusion not to grant it market economy treatment mainly on the grounds that it was the USA partner in the joint venture that was solely responsible for the management of operations and, therefore, independence from state interference was guaranteed. However, in particular in view of the fact that the chairman of the board of directors was appointed by a state-owned entity this argument was not considered sufficient to invalidate the above findings.

(b) *Russia*

- (24) The investigation showed that the decisions regarding costs and inputs were made in response to market signals without significant state interference and the costs of major inputs reflected market values. The company had one clear set of basic accounting records which were independently audited in line with international accounting standards. The production costs and the financial situation of the company were not subject to significant distortions carried over from the former non-market-economy system and the company was subject to bankruptcy and property laws which guaranteed stability. Finally exchange-rate conversions were carried out at the market rate. On the basis of the foregoing it was concluded that the criteria in Article 2(7)(c) of the basic Regulation were met and that this company should therefore be granted market economy treatment.

3. Individual treatment

- (25) The sole Chinese exporting producer also claimed individual treatment, i.e. the determination of an individual dumping margin on the basis of the individual export prices of the company.
- (26) The company concerned was unable to demonstrate that it was sufficiently independent from the Chinese authorities and that it fulfilled all the criteria required. In particular, since the company was majority state-owned it could not guarantee the absence of interference by the State on its export prices, quantities and terms and conditions of sale. Consequently, it was decided not to grant individual treatment to that company.
- (27) In any case, since the investigation revealed that the export sales to the Community carried out by the cooperating Chinese exporting producer accounted for the totality of exports from the PRC to the Community during the IP, the question of individual treatment was of little relevance for this investigation since the country-wide duty was established on the basis of data relating to this sole exporting producer.

4. Analogue country

- (28) In accordance with Article 2(7) of the basic Regulation, in order to establish normal value for the Chinese company not fulfilling the requirements of MET, an analogue market economy country had to be selected for the establishment of normal value. An analogue country had also to be selected for the investigation carried out with regard to imports originating in Russia. This was necessary in order to have data available in case the Russian exporting producer would not furnish the relevant data.
- (29) For this purpose, the complainants had suggested Turkey. Turkey was also envisaged by the Commission as analogue country in the notice of initiation and interested parties were asked to provide comments.
- (30) Within the time limit specified in the notice of initiation, the Chinese and Russian exporting producers objected to this choice on a number of grounds. The Chinese company submitted that Turkey was not appropriate as the analogue country in terms of access to raw materials, energy resources, technology used, scale of production, representativity of domestic sales and competitive situation. It argued that only Russia would meet these criteria on comparability with the PRC as regards the product concerned. Alternatively, the Chinese exporting producer considered that Venezuela was a more appropriate choice of analogue country than Turkey in terms of energy cost, production equipment and capacity. The Russian company itself submitted that there were substantial differences between Turkey and Russia in terms of the production process, the level of competition and energy costs.
- (31) As far as Turkey is concerned, it was established that the cooperating producer did not have any domestic sales to unrelated customers. Therefore, in order to find a more appropriate analogue country, the Commission contacted certain known producers in a number of alternative analogue countries.
- (32) The request by the Chinese exporting producer to use Russia as the analogue country could not be granted on a number of grounds. There were no domestic sales of the product concerned and there was only one producer active in Russia. In addition and as explained below, to a considerable extent information available as well as data from an analogue country had to be used for Russia as well.
- (33) Producers in Venezuela and also in India were contacted, but they both failed to cooperate.
- (34) Two producers in the USA were also contacted. One refused to cooperate but the other agreed to cooperate. It was established that the prices charged by this company were in the ordinary course of trade and reasonably reflected the market price level in the USA.

Given that, in addition, the USA domestic market is the largest in the world, that it is open to imports due to a relatively low import duty and that there were several competing local producers, the USA was considered to be not an unreasonable choice of analogue country.

5. The PRC

(a) Normal value

- (35) Normal value was established on the basis of the domestic prices of the USA analogue producer, which were considered representative. Indeed it was found that the volume of its sales was greater than the volume exported from the PRC to the Community.
- (36) It was further established that USA sales of the like product had been made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation. Normal value was, therefore, established on the basis of the weighted average prices actually paid for all domestic sales to unrelated customers.

(b) Export price

- (37) The investigation showed that all export sales of the product concerned by the sole Chinese exporting producer were made to unrelated customers in the Community. The export prices were therefore calculated in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the prices actually paid or payable by these independent customers.

(c) Comparison

- (38) For the purposes of a fair comparison due allowance, in the form of adjustments, was made for differences under Article 2(10) of the basic Regulation which were demonstrated to affect price comparability. On this basis, adjustments were made with regard to transport, insurance, packing and credit.

(d) Dumping margin

- (39) In accordance with Article 2(10) and (11) of the basic Regulation the dumping margins was established on basis of a comparison between the weighted average normal value and the weighted average export price at ex-factory level and at the same level of trade.
- (40) The dumping margin, expressed as a percentage of the cif price at Community frontier level, is:

People's Republic of China: 26,8 %

6. Russia

(a) Normal value

- (41) Pursuant to Article 2(3) and (4) of the basic Regulation, in the absence of any domestic sales of the like product, normal value had to be established on the basis of a constructed value. Normal value was constructed on the basis of the costs of manufacturing incurred by the exporting producer concerned for the exported product in question plus a reasonable amount for selling, general and administrative costs ('SG&A') and profits in accordance with Article 2(3) and (6) of the basic Regulation.
- (42) In the absence of domestic sales by the exporting Russian producer in question or any other producer in Russia, the Commission envisaged establishing SG&A costs and profit on the basis of the production and sales of the same general category of products, i.e. plain foil and more specifically, ACF, for the company concerned in the domestic market, as required by Article 2(6)(b) of the basic Regulation.
- (43) The company was requested to provide this information, first during the on-spot investigation and subsequently through a supplementary questionnaire. The company, however, refused to provide this information on the grounds of the allegedly large amount of work involved in preparing the information. Moreover, the investigation revealed a number of irregularities (as explained in more detail below) including difficulties in establishing the price level of energy costs, one of the major costs elements and the valuation of assets of the company. In view of the outstanding deficiencies and the refusal to provide any information on the same general category of products, normal value was established on the basis of Article 18 of the basic Regulation, as set out below.
- (44) The constructed normal value was established using as much of the company's own information as possible. However, the following adjustments had to be made to the company's data for the reasons given below:
- (45) With regard to energy costs, it was found that the company was charged an unusually low price by the majority-state-owned electricity company and it could not be established that this price reasonably reflected the costs associated with the production of electricity. The company was not able to demonstrate that the electricity bills had been paid in full, owing to the use of an open-account payment system. It was therefore concluded that the energy cost was not reliable and thus it was decided to use the average power tariff used by aluminium producers world-wide as published in the industrial press.
- (46) With respect to depreciation, it was found that the majority of the assets was acquired at very low prices at auction following the bankruptcy of a previous legal entity in 1998. For the purposes of bringing the company's accounts into line with generally accepted

accounting practice ('GAAP'), the company's auditor requested an independent valuation of property, plant and equipment. This appraisal led to a revised value which is now in line with the actual situation of the company. The company's amount for depreciation was adjusted accordingly in order to bring it into line with GAAP.

- (47) Concerning SG&A costs and profit, it was decided, in the absence of any other Russian exporting producer or producer subject to investigation and of any reliable data concerning production and sales of the same general category of products in the domestic market, to establish them in accordance with Article 2(6)(c) of the basic Regulation. SG&A costs and profit were thus based on the representative domestic sales made in the ordinary course of trade by the analogue USA producer. The profit margin was based on data relating to the operations of the smelter and the foil mill in order to reflect the full profit realised on the production and sale of the product concerned.

(b) Export price

- (48) All sales of the product concerned by the Russian company on the Community market were made via a related trading company registered in the British Virgin Islands, which in turn resold the AHF to an unrelated importer in the Community. The export price was therefore established on the basis of the prices paid or payable by an independent customer in the Community to the British Virgin Islands company.

(c) Comparison

- (49) For the purposes of a fair comparison due allowance, in the form of adjustments, was made for differences under Article 2(10) of the basic Regulation which were demonstrated to affect price comparability. In this respect adjustments were made for transport, insurance, ancillary costs, credit, after-sales costs and commissions.

(d) Dumping margin

- (50) In accordance with Article 2(10) and (11) of the basic Regulation, the dumping margins were established on the basis of a comparison between the weighted average normal value and the weighted average export price at ex-factory level and at the same level of trade.
- (51) Since there was only one known producer of the product concerned in Russia, the Commission considered it appropriate to set the residual dumping margin at the level of the individual dumping margin established for the cooperating exporting producer in the country concerned.

- (52) The dumping margins, expressed as a percentage of the cif price at Community frontier level, are:
- Joint Stock Company United Company 'Siberian Aluminium' 14,9 %
 - All other companies 14,9 %.

D. COMMUNITY INDUSTRY

1. Definition of the Community production

- (53) For the purpose of establishing whether the Community industry had suffered injury and, in this context, for determining consumption and the various economic indicators related to the situation of the Community industry, it had to be examined whether injury and consumption should be assessed in relation to the total Community production or whether this analysis should focus on the production in the Community destined for the open market.
- (54) Part of the production in the Community is not offered for sale on the market but rather internally transformed by companies in their downstream facilities. This production is therefore considered to take place in a captive market. It was therefore examined whether a clear separation existed between the free and the captive market. It was found that the AHF that is transferred internally to the downstream integrated rewinders did not compete with AHF imported from the PRC and Russia or with that sold by the Community producers on the free market. On the basis of the above it was concluded that the examination of the impact of the dumped imports on the situation of the Community industry should focus on the free market. It should be noted that none of the complaining Community producers was found to be active in the captive market.
- (55) In the Community free market, AHF is manufactured by the following companies:
- The six Community producers on whose behalf the complaint was lodged and which cooperated in the investigation;
 - Two other producers who were not complainants, one of whom provided general information in support of the complaint and neither of whom opposed the proceeding (ILA Group (I) and Lamina-zione Sottile (I)).
- (56) All these producers constitute therefore the total Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

- (57) It was examined whether the cooperating complaining Community producers represented a major proportion of the total Community production of the product concerned. Since the complainant Community producers accounted for 82 % of the non-captive Community production of AHF during the IP it was concluded that they constituted the Community industry within the

meaning of Article 4(1) and Article 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'. It should be noted that the complainant Community producers would also account for a major proportion of the entire Community production, i.e. including AHF destined for captive use.

E. INJURY

1. Community consumption

- (58) Community consumption was determined on the basis of the information provided by the Community industry on the volume of its sales in the Community market, the information provided by another cooperating producer and estimates given in the complaint for the sales of a another Community producer on the Community market; the information provided by the cooperating exporting producers relating to their volume of exports to the Community, Eurostat information and information provided by importers and users of AHF in the Community.
- (59) Consumption increased from 71 300 tonnes in 1996 to 80 742 in 1997 and to 88 032 tonnes in 1998. Consumption then decreased to 86 117 tonnes in the IP. Over the period considered consumption increased by 21 %.

2. Imports into the Community from the countries concerned

- (a) *Cumulative assessment of the effects of the imports concerned*
- (60) It was examined whether the effects of the imports concerned should be cumulatively assessed, taking account of the conditions set out in Article 3(4) of the basic Regulation.
- (61) It was found that the dumping margins for both countries were more than *de minimis* as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these two countries was not negligible. Furthermore a cumulative assessment was also found to be appropriate in light of the conditions of competition between the imports concerned and the conditions of competition between the imports concerned and the like Community product. Indeed, the investigation showed that AHF imported from the two countries concerned was found to be alike in all respects, and also to AHF manufactured and sold in the Community. The volume of imports from the two countries concerned were substantial and increased, for both countries, between 1996 and the IP. During the same period, their corresponding market shares also increased. Moreover, the prices of both Chinese and Russian imports were found to be below those of the Community industry during the period considered, while being sold via the same or similar channels of trade and under similar commercial conditions.

- (62) For these reasons, it is concluded that the effects of the imports concerned should be cumulatively assessed.

(b) Volume and market share of the dumped imports

- (63) The volume of imports of AHF from the countries concerned rose continuously from 622 tonnes in 1996 to 9 149 tonnes in 1997, 16 922 tonnes in 1998 and 16 387 tonnes in the IP.
- (64) The share of the Community market held by the imports from the countries concerned increased from 0,9 % in 1996, to 11,3 % in 1997, to 19,2 % in 1998 and decreasing slightly to 19,0 % in the IP.

(c) Prices of dumped imports

(i) Price evolution

- (65) Between 1996 and 1997 the average unit prices of AHF imported from the countries concerned, at a customer-delivered level, increased from EUR 1,83/kg to EUR 2,02/kg, i.e. an increase of 10 %. Between 1997 and 1998, prices further increased by 31 % to EUR 2,57/kg. Between 1998 and the IP prices decreased by 17 % to EUR 2,14/kg. It should be noted that the prices of the imports concerned have remained below those of the Community industry throughout the period.

(ii) Price undercutting

- (66) For the purpose of analysing price undercutting, the prices of AHF sold by the Community industry were compared to the prices of Chinese and Russian imports on the Community market in the IP.
- (67) The prices of Chinese and Russian imports are those reported by the cooperating exporting producers in their response to the questionnaire duly adjusted, were appropriate, for customs duties and post-importation costs, at the level of the first unrelated customer, on a delivered basis. The prices of the Community industry are those reported in the responses to the questionnaires on their sales in the Community to their first unrelated customer on a delivered basis.
- (68) The Russian exporting producer argued that an adjustment should be made to Russian prices to take account of the lower quality of the Russian AHF exported to the Community. It was alleged that Russian AHF was produced with a lower quality alloy (alloy 8011) whereas the Community produced AHF would be of a higher quality alloy (alloy 8006). The investigation showed that all except one Community producer used alloy 8011 in the production of AHF. However, on the basis of the information received from users it was

found that the type of alloy does not determine the choice of AHF for users. Furthermore, it could not be ascertained that a difference in quality existed between AHF produced using the different alloys which commanded a price differential. In view of the above the adjustment could not be granted.

- (69) On this basis, the price undercutting margins found per country, expressed as a percentage of the Community industry's prices amount to 1 % for the PRC and to 6 % for Russia. The aforementioned undercutting margins should, however, be seen in the light of the significant price depression suffered by the Community industry in the IP, as evidenced by the losses incurred by the Community industry.

3. Situation of the Community industry

(a) Production, capacity and utilisation of capacity

- (70) Between 1996 and 1997 production remained at around 59 000 tonnes, despite the increase in consumption of 13 %. Between 1997 and 1998 production decreased by 9 % to around 54 000 tonnes, while consumption increased by a further 9 % over the same period. Between 1998 and the IP production remained stable.
- (71) Between 1996 and the IP production capacity of the Community industry remained relatively stable at around 70 500 tonnes, with the exception of 1997 when production capacity amounted to 72 000. Production capacity has been calculated by taking account of the dedicated equipment for use in the production of AHF. Even though the same production facilities can technically be used to produce both AHF and ACF, due to the costs incurred when switching from one product to another, in practice Community producers dedicate equipment to the production of one or the other product.
- (72) The capacity utilisation decreased as from 1997 as the result of a decrease in production. It should be noted that given the fixed costs involved in the production of AHF, a decrease in the rate of capacity utilisation has a significant impact on the production costs.

(b) Inventories

- (73) When analysing inventories, it should be noted that AHF is produced to order. Any inventories are in fact dedicated quantities awaiting delivery to the customer. In this context, therefore, the evaluation of stocks does not appear to be relevant for the examination of the economic situation of the Community industry.

(c) Volume of sales, market share and growth

- (74) Between 1996 and 1997, despite an increase in consumption of 13 %, sales decreased from 49 386 tonnes to 48 700 tonnes. Between 1997 and 1998 sales decreased by 7 % to 45 402 tonnes, against a further increase of consumption of 9 %. Between 1998 and the IP sales decreased slightly to 45 241 tonnes, whereas consumption decreased by 2 %.
- (75) The market share of the Community industry decreased from 69,3 % in 1996, to 60,3 % in 1997 then decreased further to 51,6 % in 1998 and increased slightly to 52,5 % in the IP.

(d) Prices and factors affecting prices

- (76) From 1996 to 1997 prices increased by 8 % from EUR 2,25/kg to EUR 2,44/kg while the Community industry's unit full costs increased by 7 %. Between 1997 and 1998 prices increased by a further 8 % to EUR 2,64/kg whereas the unit full costs only increased by 4 %. Between 1998 and the IP prices decreased by 14 % to EUR 2,28/kg whereas unit full costs only decreased by 5 %.
- (77) In particular, between 1996 and 1997 the increase in the full cost of production is mostly due to an increase in the costs of raw materials, which represents around 55 % of the full costs of production. Since the increase in sales prices was greater than the increase in the full cost of production, the Community industry reduced its losses.
- (78) Between 1997 and 1998, however, despite a decrease in the cost of raw materials (- 2 %), the full costs of production increased by 4 %, due to an increase in fixed unit production costs resulting from a decrease in production (- 9 %). However, sales prices of the Community industry increased by 8 %, therefore the Community industry improved its profitability.
- (79) Between 1998 and the IP, the full unit cost of production of the Community industry decreased by 5 %, mainly due to a decrease in the raw material costs (- 9 %). In the same period the Community industry suffered a significant price depression, since its prices decreased well above the decrease in its full costs.
- (80) It should be noted that the costs of the raw materials is in line with the prices of raw aluminium as quoted in the London Metal Exchange ('LME').

(e) Profitability, cash flow, return on investment and ability to raise capital

- (81) Between 1996 and 1997 the profitability of the Community industry in terms of return on net sales in the Community market, improved slightly from - 2,2 % to - 1,3 % expressed on turnover. This slight improvement was due to an increase in the sales prices by the

Community industry above the increase in unit full costs. Between 1997 and 1998 the Community industry further improved profitability to 3 % by raising its prices above its full costs. Between 1998 and the IP the Community industry suffered losses of - 7,3 % due to a severe price depression.

- (82) Regarding cash flow and return on investments, these indicators could only be provided for the total of each of the companies concerned. Since the product concerned represents only one part of the overall activities of the companies, these indicators could not provide decisive guidance as to the situation prevailing in the AHF sector.
- (83) None of the Community producers indicated that they had experienced any difficulties in their ability to raise capital. This appears to be related to the fact that most Community producers belong to globally organised groups of companies. However, it should be noted that the biggest Community producer of AHF has announced the planned closure of its manufacturing facility in the Community due, *inter alia*, to the deterioration of its financial situation.

(f) Investments

- (84) Investments made throughout the period considered increased from around EUR 3 million in 1996 and in 1997 to around EUR 17 million in 1998 and around EUR 10 million in the IP. Investments represented around 2,5 % of the Community industry's turnover in 1996, 14,5 % in 1998 and 9,9 % in the IP. This shows the continuous efforts of the Community industry to modernise their equipment and to improve their competitiveness. Investments were made mostly in replacement of machinery in order to optimise productivity. Since the investments in this sector are depreciated over a long period of time (over 20 years), the level of the investments made in 1998 and the IP cannot be considered to have had the effect of depressing the profitability in the same period.

(g) Employment, productivity and wages

- (85) The number of employees remained stable between 1996 and 1997 at 435, but dropped to 388 in 1998 and remained at that level in the IP. It should be noted that since employees work both in the production of AHF and other foil products, employment has been allocated on the basis of production volume.
- (86) Productivity of the Community industry measures in terms of tons produced per employee increased by 3 % over the period considered. The figures on productivity largely reflect the allocations made to determine the level of employment.
- (87) Regarding wages, between 1996 and the IP the total amount of wages increased by 7 %.

(h) *Magnitude of dumping margin*

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

4. Conclusion on injury

- (89) Between 1996 and the IP, the volume of imports of AHF originating in the countries concerned increased by 2,600 % from around 600 tonnes to over 16 000 tonnes. This resulted in an overall increase of market share by the imports concerned of 18 percentage points in a period where the consumption increased by 21 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered.
- (90) Between 1996 and the IP the situation of the Community industry deteriorated in terms of production (– 8 %) and sales volume (– 8 %), despite an increase in Community consumption, i.e. by 21 %. As a consequence, the Community industry's market share decreased sharply, from 69 % to 52 %, i.e. by 17 percentage points.
- (91) In particular, between 1996 and 1997 the Community industry improved its profitability since its sales prices increased above the increase in full unit costs. During the same period the Community industry lost sales volume and market share. Between 1997 and 1998 the Community industry further improved its profitability by raising its prices above the increase in its full unit costs. This resulted in an improved profitability but at the expense of a further loss of volume of sales and market share. Between 1998 and the IP the Community industry decreased its sales prices well above the decrease in its full unit costs. This price suppression resulted in severe losses to the Community industry which reached – 7 % during the IP.
- (92) After the IP one of the biggest Community producers announced the planned closure of its AHF production facilities in the Community since it could not sustain the losses it was suffering in this sector.
- (93) In view of the above, as evidenced by the decrease in production and sales, loss of market share and price suppression leading to severe losses, it is concluded that in the IP the Community industry suffered material injury within the meaning of Article 3(1) of the basic Regulation.

F. CAUSATION

- (94) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports of AHF originating in the countries concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known

factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

1. Effect of the dumped imports from the countries concerned

- (95) The substantial increase in the volume of imports originating in the countries concerned and their gain of market share over the period considered, at prices which remained below those of the Community industry coincided with a deterioration of the situation of the Community industry in terms of production, sales volume, market share and price depression leading to significant losses during the IP.
- (96) In particular, the volume of imports increased significantly from around 600 tonnes in 1996 to around 16 000 tonnes during the IP. The largest increase took place between 1997 and 1998, coinciding with the decrease in production and sales by the Community industry. The share of the Community market gained by the imports was matched by the loss of market share by the Community industry, whose sales volume decreased by 8 % over the period.
- (97) Between 1996 and 1998 the Community industry increased sales prices, to match the increase in costs, with the resulting loss of volume of production, sales and market share but with a certain improvement in profitability. This improvement in profitability was more marked in 1998, the year when the average price differential between the prices of the imports concerned and those of the Community industry was at its lowest level.
- (98) However, between 1998 and the IP the Community industry had to reduce its prices to match those of the imports concerned, in order to maintain volume of sales, with the resulting deterioration of profitability. It should be noted that the market for AHF is mature and price sensitive and that import prices from the countries concerned had decreased substantially between 1998 and the IP and undercut those of the Community industry during the IP.
- (99) It is, therefore, considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share at low prices caused a price depression for the Community industry resulting in a deterioration of its financial situation.

- (100) In view of the above it is concluded that the dumped imports of AHF originating in the countries concerned have had a material impact on the injury suffered by the Community industry during the IP, within the meaning of Article 3(6) of the basic Regulation.

2. Effect of other factors

- (101) In accordance with Article 3(7) of the basic Regulation, it was examined whether factors other than the dumped imports from the countries concerned might have contributed to the material injury suffered by the Community industry to an extent, that this injury could not be attributed to the dumped imports from the countries concerned. In this context, the following factors were examined: the volume and prices of imports originating in other third countries, the evolution of prices of raw materials and whether the Community industry might have suffered self-inflicted injury through a switch to ACF production.

(a) Imports originating in other third countries

- (102) The volume of imports of AHF originating in other third countries remained stable at around 11 000 tonnes over the period concerned, with the exception of 1998 when imports from such countries amounted to 14 000 tons. These imports did not, therefore, benefit from the increase in consumption over the period considered and lost 3 percentage points of their share of the Community market.
- (103) In particular, during the investigation period, imports originating in only three countries other than the countries concerned, i.e. Croatia, Turkey and Venezuela, had a share of the Community market above 2 %.

(i) Croatia

- (104) Imports of AHF originating in Croatia on the basis of the information reported by Eurostat imports statistics, went from 1 758 tonnes in 1996 to 737 tonnes in 1997, to 1 478 tonnes in 1998 and to 1 778 tons in the IP. Their share of the Community market decreased by 0,4 percentage points over the period considered. The prices of those imports, at customer-delivered level, remained above those of the PRC, Russia and the Community industry throughout the period, although it cannot be excluded that products other than AHF (i.e. ACF) are also included.
- (105) In view of the decreasing share of the Community market and the level of its prices it is concluded that imports originating in Croatia did not contribute to the material injury suffered by the Community industry.

(ii) Turkey

- (106) Imports originating in Turkey increased from 4 935 tonnes in 1996 to 7 777 tonnes in 1998 and then decreased to 2 446 tonnes in the IP. Their share of the Community market increased from 6,9 % in 1996 to 8,8 % in 1998 and then decreased to 2,8 % in the IP.

Information provided by cooperating users representing over 80 % of total imports of AHF originating in Turkey in the IP shows that between 1997 and the IP prices of Turkish imports were well above those of the countries concerned and in line with those of the Community industry.

- (107) In view of the decrease in the volume and market share of the Turkish imports in the IP and the level of its prices it can be concluded that imports originating in Turkey did not break the causal link between the dumped imports and the material injury suffered by the Community industry.

(iii) Venezuela

- (108) Imports originating in Venezuela went from 2 210 tonnes in 1996 to 1 533 tonnes in 1997, to 2 779 tonnes in 1998 and to 3 843 tonnes in the IP. Their share of the Community market increased from 3,1 % to 4,5 % over the same period. The prices of these imports as reported by Eurostat remained above those of the countries concerned and those of the Community industry, with the exception of 1998. It should be noted that the information reported by Eurostat was in line with that provided by a cooperating unrelated importer representing around 15 % of the total volume of imports into the Community from Venezuela in the IP.

- (109) In view of the level of the prices of imports from Venezuela, imports of AHF from Venezuela did not break the causal link between the dumped imports and the material injury suffered by the Community industry in the IP.

(b) Evolution of raw material prices

- (110) It has also been considered whether the injury suffered by the Community industry could be attributed to the evolution in the prices of primary aluminium, main raw material representing around 55 % of the full cost of production of the Community industry.
- (111) Between 1996 and 1998 the prices of the Community industry could reflect the evolution in the prices of raw materials. However, between 1998 and the IP the Community industry's prices decreased by more than the decrease in its full costs, including the decrease in the prices of raw materials, thus incurring losses of 7,3 %. Consequently, it is considered that the evolution in the prices of the raw materials did not contribute to the material injury suffered by the Community industry in the IP.

(c) *Self-inflicted injury through a preference to produce ACF*

G. COMMUNITY INTEREST

- (112) It has been argued that the decrease in the production and sales volume of AHF has been self inflicted by the Community industry's preference to produce ACF which was alleged to generate higher profits than AHF. It was alleged that since equipment can be used to produce either AHF or ACF, the Community industry preferred to produce the higher value added ACF.
- (113) The production of AHF by the Community industry decreased by 8 % between 1996 and the IP. In the same period, the production of ACF increased by 18 %. Between 1996 and the IP the share of the production of AHF in the total production of foils decreased from 25 % to 21 %.
- (114) Firstly, although generally both AHF and ACF can technically be manufactured on the same equipment, in practice producers dedicate equipment to one or another foil product in order to gain efficiency and minimise the costs of changing set-up of the equipment. Secondly, the production of ACF has not increased in the same proportion as the decrease in the production of AHF but has followed the increase in consumption of ACF. Thirdly, the significant investments made by the Community industry in 1998 and in the IP indicate a commitment on the part of the Community industry to continue producing AHF. Finally, the Community industry had sufficient spare capacity to increase its production of AHF but it was prevented from using its spare capacity due to the significant increase in dumped imports.
- (115) In view of the above it was concluded that the injury suffered by the Community industry was not self-inflicted by a switch to ACF products.

(d) *Conclusion on causation*

- (116) The substantial increase in terms of volume and market share of imports from the countries concerned, the considerable decrease in their prices and the level of price undercutting and price depression found in the IP had material negative consequences on the volumes and prices of the Community industry's sales which in turn adversely affected a number of economic indicators, notably profitability. In addition, no other factors were found which could have contributed to the injury suffered by the Community industry.
- (117) It is therefore concluded that the material injury suffered by the Community industry has been caused by imports of AHF originating in the PRC and Russia within the meaning of Article 3(6) of the basic Regulation.

- (118) In order to determine whether the Community interest called for intervention, an investigation was carried out into the likely effects of the imposition/non-imposition of anti-dumping measures on the economic operators concerned. For this purpose, information was requested from all interested parties, including the Community producers, raw material suppliers, importers/traders and users concerned.

1. The Community industry

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

- (119) The Community industry is composed of six companies producing aluminium foils, of which AHF represented around 21 % of their total output in the IP. The production of the different types of foils is interdependent in that it broadens the basis for allocation of fixed costs and overheads of the total foil sector. Four out of the six Community producers are backwards integrated, i.e. they source aluminium foil stock from companies which belong to the same group.
- (120) Production of AHF is capital intensive and highly automated. It was found that the Community industry dedicates equipment to the production of AHF in order to increase efficiency and minimise cost incurred in changes of set-up of machinery. The Community industry's workforce directly related to AHF amounted to around 388 employees during the IP. The total employment by these companies amounted to around 4 400 employees.

(b) *Viability of the Community industry*

- (121) The Community industry appears to be viable and competitive. This is apparent, firstly, from its position in the Community market where it is a firmly established player and partner of the user industry; secondly, from the degree of investments and machinery replacement; thirdly, from its recent restructuring and efficiency gains through rationalisation of its production and modernisation of its machinery, and finally from its export performance, given that its exports of AHF accounted for between 13 % and 15 % of the total sales made by the Community industry over the period considered.
- (122) In conclusion, the Community industry has proven to be a structurally viable industry, having restructured its manufacturing activities for the product concerned in order to retain productivity and efficiency.

(c) *Possible effects of taking measures or of not taking measures*

- (123) Should anti-dumping measures not be imposed, the Community industry would continue to face price pressure of the dumped imports and the consequent price depression which led to the deterioration of its profitability. In the event that such a situation would continue, the Community producers could be forced to close down certain production lines or even entire plants devoted to the production of AHF.
- (124) As already mentioned above, given the importance of AHF production to spread fixed costs and overheads of the entire aluminium foil production, the closure of AHF production lines could even lead to the closure of the total aluminium foil activity of the companies. This is illustrated by the announcement made by one Community producers in December 2000 of its plans to close down its manufacturing facilities in the UK.
- (125) On the other hand, should anti-dumping measures be imposed, two effects could be expected. Firstly, the Community industry could increase its volume of sales, leading to a better utilisation of the capacity and an increase in market share. Secondly, prices might also increase moderately, although most likely not by the level of the anti-dumping duty since competition would still remain amongst Community producers, imports originating in the countries concerned and imports originating in other third countries.
- (126) It is therefore expected that the decrease in unit costs as a result of the increased utilisation rate, combined with a modest price increase, will allow the Community industry to regain profitability and market share.

2. Suppliers of raw material to the Community industry

- (127) As already mentioned above, four out of the six Community producers are backwards integrated, i.e. they source the raw materials (aluminium foil stock) from companies belonging to the same group.
- (128) Three raw material suppliers provided information on the effects from the imposition/non-imposition of anti-dumping measures:
- Alcan Rolled Products UK, Newport, United Kingdom,
 - Lawson Mardon Star Ltd, Bridgnorth, United Kingdom,
 - Pechiney Rhenalu Neuf Brisach, Biesheim, France.
- (129) On the basis of the information provided by these companies, it was found that sales of foil-stock to Community producers of AHF represented around 20 % of their total sales in the Community. Total sales of foil-stock to Community AHF producers decreased by

2 % between 1997 and the IP, whereas profits decreased by 5 %. The employment attributable to the production of foil-stock concerned amounted to around 380 in the IP.

- (130) The raw material suppliers indicated that, should the Community producers cease producing AHF, it would be unlikely that they could find alternative customers. One of the raw material supplier also indicated that the closure of the Community industry could endanger its recycling line, since this line is dependent on the scraps generated in the production of AHF.
- (131) Given the share of the suppliers overall activities represented by foil-stock intended for the Community AHF producers, it is likely that the decrease in the volume of sales or even closure of the latter would have a non-negligible impact on the economic activities of suppliers. On the other hand, the improvement in the situation of Community AHF producers is likely to be beneficial to Community suppliers in terms of increased sales of foil-stock, thus contributing to their overall employment.

3. Unrelated importers/traders in the Community

- (132) In this respect, two out of three unrelated importers/traders responded to the questionnaire. Only one of them provided information relevant for the assessment of likely effects of imposing/non-imposing anti-dumping measures. However, this company did not import AHF from the countries concerned but only from another third country. Furthermore, imports of AHF represented a negligible proportion of its overall activities, i.e. less than 3 % of its total turnover. In view of the above it is concluded the imposition of anti-dumping measures would not affect the situation of Community importers/traders.

4. Users of AHF in the Community

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

- (133) Community users ('rewinders' or 'spoolers') purchase AHF in reels and rewind them into rolls in finished format for domestic consumption. The rewinding of AHF is an unsophisticated operation, where the value added to the AHF is low. No significant barriers to entry were found to exist in this sector.
- (134) Seven out of 15 Community known users responded to the questionnaire. Two more users made themselves known but did not provide the necessary information. They were therefore not considered in the context of the analysis of the impact of any anti-dumping measure on users.

(135) The users responding to the questionnaire were:

- CeDo Household Products Ltd. Telford, United Kingdom, also on behalf on Poly-lina and Paclan,
- Childwood Ltd, Ashton-in-Makerfield, United Kingdom,
- Comital Cofresco SpA, Volpiano, Italy,
- Ecopla France, Saint Vincent de Mercuze, France,
- Fora Folienfabrik GmbH, Radolfzell, Germany,
- ITS Foil and Film Rewinding bv, Apeldoorn, The Netherlands,
- Vita Emballage A/S, Rødovre, Denmark.

(136) In terms of size, one of the cooperating rewinders is a large company which produces all types of disposable household products, such as aluminium foil, plastic foil, oven paper, freezer bags and bin liners. Another cooperating rewriter is backwards integrated with a AHF producer supplying captively to its downstream rewinding operation. The other five users are small and medium rewinders active in different wrapping products for domestic use.

(b) Data gathered from the cooperating users

(137) AHF was found to represent around 33 % on average of the total turnover of the cooperating users. The turnover reported by the cooperating users on the aluminium foil sector increased by 8 % between 1997 and 1998 and further increased by 3 % between 1998 and the IP. These users employed a total of around 2 300 in the IP out of which around 470 were directly or indirectly employed in the sector of aluminium foil.

(138) Cooperating users increased their purchases of AHF by 57 % between 1997 and the IP, from 23 000 tons in 1997 to 35 500 tons in the IP. In the IP their purchases represented 40 % of total sales made by Community producers, 64 % of total imports originating in the PRC and 72 % of total imports originating in Russia.

(139) As regards profitability on the sales of products incorporating AHF in the Community, it ranged between 0,1 % and 6 %, with a weighted average profit of around 3 % in the IP. Average profitability of rewinders went from 3,5 % in 1997 to 3,3 % in 1998 to 2,9 % in the IP. It should be noted that this weighted average profit reflects the situation of some users in a market where a certain over-capacity has been reported to exist.

(140) The investigation showed that AHF represented between 72 % and 85 % of the total cost of production of the end-products, representing on average 80 % of the total costs.

(c) Effect of imposition/non-imposition of measures

(141) If anti-dumping measures were imposed, since AHF was found to represent 80 % of rewinders' total cost of production, the proposed anti-dumping duties would be likely to result in a moderate increase in the costs of users.

(142) In this respect, it should be noted that even if the exporting producers concerned increased their prices by the full amount of the duty, prices of these imports would still remain below those practised by these countries in 1998, when prices of these imports were at their highest level.

(143) Should measures not be imposed, the eventual disappearance of the Community industry's manufacturing activities for AHF could create supply constraints which would have negative effects for users.

(d) Arguments raised by cooperating users on the effects of the imposition of anti-dumping measures

(i) Impossibility to pass on to customers any increase in costs

(144) Some users argued that increases in costs resulting from the imposition of anti-dumping measures could not be passed on to customers, mostly large retail stores which dictate prices given their large purchasing power.

(145) On the basis of the information provided by cooperating users it was found that sales prices of users fluctuate, largely following the evolution of the prices of aluminium as quoted on the LME and the prices of AHF. In this respect the prices of aluminium as quoted on the LME have fluctuated considerably in the period considered, with a maximum annual increase of 11 % and a maximum annual decrease of 9 %. Whilst the prices of users evolved from an index 100 in 1997 to an index 107 in 1999 and then to an index 96 in the IP. Fluctuations in the costs of users could therefore be reflected in their sales prices.

(146) Thus, it cannot be excluded that users can pass on to their customers the moderate price increases resulting from the imposition of anti-dumping measures.

(ii) Shortage of supply

(147) It was alleged that the Community industry is unwilling to supply AHF to users and prefers to concentrate its production on higher value-added products such as ACF. It was also argued that the Community industry's high utilisation of capacity prevents it from increasing its production as a result of the imposition of any anti-dumping measure. It was argued that this, together with the imposition of anti-dumping measures would lead to a shortage of supply of AHF in the Community market.

- (148) As already mentioned in recital 114, the Community industry is committed to the production of AHF. Furthermore, the information provided by the cooperating users showed that their purchases of AHF from the Community industry increased by 62 % between 1997 and the IP. Furthermore, the Community industry was found to have sufficient spare capacity in its equipment dedicated to the production of AHF so as to increase its output of this product.
- (149) Moreover, even if anti-dumping measures were imposed, it is likely that the exporting producers concerned would continue to export AHF to the Community, albeit at non-dumped or non-injurious prices respectively. In addition, a number of alternative sources of supply were found to exist, not subject to anti-dumping measures representing a share of around 13 % of the Community market in the IP.
- (150) In view of the above, it is unlikely that the imposition of anti-dumping measures would lead to a shortage of supply in the Community market.

(iii) Product substitution

- (151) It was argued that the imposition of anti-dumping measures would result in an increase in the price of the end-product, which in its turn would lead consumers to switch to other domestic wrapping products such as plastic foil and/or paper foil.
- (152) The investigation showed that demand for AHF is largely inelastic to price variations, in view of the specific properties of AHF for packaging and wrapping. Indeed, AHF retains its characteristics at all temperatures; it acts as an impermeable barrier preventing food from absorbing or losing moisture, odour and flavour; it is highly hygienic and does not support micro-organisms; it is easily formable and it is particularly suited for food use given its general properties of lightness and strength.
- (153) This was also illustrated by the fact that prices of aluminium, the raw material for the production of AHF fluctuated widely over the period but nevertheless consumption of AHF has increased by 21 % over the period considered.
- (154) In conclusion, it is unlikely that the imposition of anti-dumping measures would lead to a significant switch from aluminium foil to other household wrapping products.

5. Competition and trade distorting effects

- (155) With respect to the effects of possible measures on competition in the Community, some interested parties argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition and increasing the already dominant position of Community rewinders backwards integrated with Community AHF suppliers.

- (156) However, the exporting producers concerned would most likely continue to export AHF to the Community, albeit at non-injurious prices, as they have acquired a strong market position in the Community and since the Community industry does not have the necessary capacity to supply the entirety of the Community market. On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would considerably reduce or cease its AHF manufacturing activities in the Community, thus reinforcing the position of exporting producers of AHF and considerably weakening competition on the Community market.
- (157) Furthermore, a number of alternative sources of supply of AHF were found to exist to non-integrated rewinders, other than the countries concerned. In the IP, imports from these other third countries represented around 13 % of total consumption.
- (158) Finally, as concerns the argument on the potential dominant position of the integrated Community rewinders, the investigation showed a limited consumer brand fidelity as well as the absence of significant barriers to entry specially of a technological nature. Therefore, it is unlikely that any rewinder will be allowed to behave in a manner significantly independent of customers and competitors.
- (159) Given that the Community industry was not found to have the capacity to supply the entire Community market and that, as mentioned above, imports originating in the countries concerned would most likely continue to take place, competition would still remain strong after the imposition of any anti-dumping measures. Thus, the imposition of anti-dumping duties, if any, would not limit the choice of the user industries or weaken competition.

6. Conclusion on Community interest

- (160) Given the above reasons, it is concluded that no compelling reasons exist on grounds of Community interest not to adopt anti-dumping measures in the present case.

H. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (161) For the purpose of establishing the level of duty to be definitively imposed, account was taken of the dumping margins found and of the amount of the duty necessary to eliminate the injury sustained by the Community industry.
- (162) In order to establish the level of duty adequate to remove injury caused by dumping, it was first necessary to establish a reasonable minimum pre-tax profit margin that the Community industry could have achieved in the absence of dumped imports. It was found that a profit margin of 5 % constitutes an appropriate minimum, account being taken of the profitability achieved in ACF, a neighbouring product not subject to injurious dumping, and the need for long-term investments by the Community industry.

- (163) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the AHF sold by the Community industry on the Community market in the IP. The non-injurious price has been obtained by adding to the sales price of the Community industry an amount equivalent to its average actual loss in the IP as well as the abovementioned profit margin of 5 %. The difference resulting from this comparison was then expressed as a percentage of the total cif import value, i.e. injury margin.

2. Definitive duties

- (164) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, it is considered that definitive anti-dumping duties should be imposed at the level of the dumping margins found, unless the injury margins were found to be lower, in which case the latter will be applied.
- (165) In the case of imports of the product concerned from Russia, the residual duty should be fixed on the basis of duty rate established for the sole cooperating exporting producer.
- (166) On the basis of the above, the proposed definitive duties are as follows:

Country	Company	Rate of the AD duty
The PRC	All exporting producers	15,0 %
Russia	Joint Stock Company 'United Company Siberian Aluminium'	14,9 %
	All other exporting producers	14,9 %

- (167) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced

by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (168) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission will, if appropriate, and after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

3. Undertakings

- (169) The exporting producer in both China and in Russia offered an undertaking within the meaning of Article 8(1) of the basic Regulation. Regarding the Chinese exporting producer, given that MES was not granted, this undertaking could not be accepted as it did not contain the necessary guarantees on the part of the Chinese authorities to allow for adequate monitoring. In these circumstances, an anti-dumping duty should be imposed at the level of the definitive dumping margin established.
- (170) The Russian exporting producer agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of this company is such that the Commission considers that the risk of circumvention is limited.
- (171) To further enable the Commission to effectively monitor the compliance of the company with an undertaking, when the request for release into free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements in the Annex. This level of information is also necessary to enable customs authorities to determine with sufficient precision that shipments correspond to the commercial documents, and that they are covered by the undertaking. Where no such invoice is presented, or where it does not correspond to the product concerned as presented to customs, the appropriate rate of anti-dumping duty will instead be payable.
- (172) It should be noted that in the event of breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed pursuant to Article 8(9) and (10) of the basic Regulation,

⁽¹⁾ European Commission, Directorate-General Trade, Directorate C, Terv 0/13, Rue de la Loi/Wetstraat 200, B-1049 Brussels

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,009 mm and not more than 0,018 mm, not backed, not further worked than rolled, in reels of a width not exceeding 650 mm, falling under CN code ex 7607 11 10 (TARIC code 7607 11 10 10) and originating in the People's Republic of China and Russia.
2. The rate of definitive anti-dumping duty applicable to the net, free-at-Community-frontier price before duty, shall be as follows for the products manufactured by:

Country	Company	Rate of the AD duty %	TARIC additional code
The PRC	All exporting producers	15,0 %	—
Russia	Joint Stock Company 'United Company Siberian Aluminium', Studencheskaya Street, 33/4, Moscow, Russia	14,9 %	A255
	All other exporting producers	14,9 %	A999

3. Notwithstanding Article 1(1), the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2.
4. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

Article 2

1. Imports declared for release into free circulation under TARIC additional code A256 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and shipped by Siberian Aluminium (Sayan Foil, Sayanagorsk), and invoiced directly by Rual Trade Limited, Suites 7B & 8B, 50 Town Range, Gibraltar to Sibirsky Aluminium GmbH, Graf-Adolf-Platz 1-2, D-40213, Düsseldorf, and provided that such imports are accompanied by a commercial invoice containing at least the elements listed in the Annex.
2. Exemption from the duty shall be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice.

Article 3

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

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

Done at Brussels, 14 May 2001.

For the Council
The President
A. LINDH

ANNEX

Necessary information for commercial invoices accompanying sales made subject to an undertaking

1. The invoice number
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at the Community frontier
3. The exact description of the goods, including:
 - the product code number (PCN) (as established in the undertaking offered by the producing exporter in question),
 - CN code,
 - quantity (to be given in kg).
4. The description of the terms of the sale, including:
 - price per kg,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2001/381/EC. I declare that the information provided in this invoice is complete and correct.'

**COUNCIL REGULATION (EC) No 951/2001
of 14 May 2001**

amending the Annex to Regulation (EC) No 2042/2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan

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⁾,

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

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EC) No 1015/94 ⁽²⁾ the Council imposed a definitive anti-dumping duty on imports of television camera systems ('TCS') originating in Japan.
- (2) In Article 1(3)(e) of Regulation (EC) No 1015/94 the Council specifically excluded from the scope of the anti-dumping duty professional camera systems listed in the Annex to that Regulation ('the Annex'), representing high-end professional cameras systems technically falling within the product definition under Article 1(2) of that Regulation, but which cannot be regarded as television camera systems.
- (3) In October 1995 the Council amended Regulation (EC) No 1015/94 by Regulation (EC) No 2474/95 ⁽³⁾, in particular as regards the like product definition and as regards certain models of professional camera systems which were explicitly exempted from the definitive anti-dumping duty.
- (4) In October 1997 the Council by Regulation (EC) No 1952/97 ⁽⁴⁾ amended the rates of the definitive anti-dumping duty for two companies concerned, namely for Sony Corporation and Ikegami Tsushinki in accordance with Article 12 of Regulation (EC) No 384/96 (hereafter referred to as the 'basic Regulation'). Furthermore, the Council specifically excluded from the scope of the anti-dumping duty certain new models of professional camera systems by adding them to the Annex.
- (5) In September 2000 the Council by Regulation (EC) No 2042/2000 ⁽⁵⁾ confirmed the definitive anti-dumping

duties imposed by Regulation (EC) No 1015/94 in accordance with Article 11(2) of the basic Regulation.

- (6) In January 2001 the Council by Regulation (EC) No 198/2001 made the latest amendment to Regulation (EC) No 2042/2000 by adding certain successor models of professional camera systems to the Annex and thus excluding those from the application of the definitive anti-dumping duty.

B. INVESTIGATION CONCERNING NEW MODELS OF PROFESSIONAL CAMERA SYSTEMS

1. Request

- (7) A Japanese exporting producer, namely Sony Corporation ('Sony'), informed the Commission that it intended to introduce new models of professional camera systems into the Community market and requested that these new models of professional camera systems including their accessories be added to the Annex and thus exempt them from the scope of the anti-dumping duties.

2. Models under investigation

- (8) The application received concerned the following models, supplied with the relevant technical information:
 - camera head DXC-D35PH
 - camera head DXC-D35PL
 - camera head DXC-D35PK
 - camera head DXC-D35WSPL
 - camera head DSR-135PL
 - viewfinder DXF-801CE
 - camera control unit CCU-M5AP.

All the above models were presented as being part of professional camera systems dedicated to the professional video market.

3. Investigation and findings

- (9) The Commission informed the Community industry of the request introduced by Sony and invited them to comment.

⁽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 111, 30.4.1994, p. 106. Regulation as last amended by Regulation (EC) No 198/2001 (OJ L 30, 1.2.2001, p. 1).

⁽³⁾ OJ L 255, 25.10.1995, p. 11.

⁽⁴⁾ OJ L 276, 9.10.1997, p. 20.

⁽⁵⁾ OJ L 244, 29.9.2000, p. 38. Regulation as last amended by Regulation (EC) No 198/2001 (OJ L 30, 1.2.2001, p. 1).

- (10) The Community industry claimed that the above mentioned models should not be exempted from the anti-dumping measures in force. In this regard, it was argued that the models under consideration could easily be connected to a triax unit or system and as such be used as broadcast cameras.
- (11) The Commission's investigation revealed that the models under consideration could indeed be connected to a triax adaptor and could thus in principle be used for a number of broadcast applications. However, the supplementary information provided by Sony on the request of the Commission showed that the vast majority of the users of the models under investigation were in the professional sector and the main applications of these models were in the professional video sector.
- (12) The Commission's investigation also confirmed that the models concerned were in fact up-dated models of predecessor models already listed in the Annex and found that they were largely identical.
- (13) Given the above, the Commission established that on an overall basis, the above mentioned camera models should be excluded from the scope of the existing anti-dumping measures, except in those cases where the corresponding triax system or triax adaptor is sold on the Community market.
- (14) The Commission informed the Community producers and the exporter of the TCS of its findings and provided them with an opportunity to present their views. One Community producer continued to object to the exclusion of the camera models concerned from the application of the anti-dumping duty but provided no new evidence in support of its claim that the camera series in question was sold on the Community market as a broadcast camera.
- (15) On this basis, all models and related equipment listed in recital 8 should be exempted from the application of the anti-dumping duty imposed on TCS originating in Japan, and the Annex should be amended accordingly.
- (16) Given the complexity of this case, the evidence and information submitted and continuous consultations of the parties concerned, necessary due to the mainly technical aspects of the case, the Commission was not able to conclude the present investigation at an earlier stage. Under these circumstances, it was considered appropriate that this Regulation should apply to the camera models listed in recital 8 with retroactive effect irrespective of the date of their importation,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2042/2000 shall be replaced by the Annex hereto. The following camera models shall be added to the Annex to Regulation (EC) No 2042/2000:

- camera head DXC-D35PH
- camera head DXC-D35PL
- camera head DXC-D35PK
- camera head DXC-D35WSPL
- camera head DSR-135PL
- viewfinder DXF-801CE
- camera control unit CCU-M5AP.

Article 2

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

It shall apply to the camera models listed in Article 1 irrespective of the date of their importation.

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

Done at Brussels, 14 May 2001.

For the Council

The President

A. LINDH

ANNEX

‘ANNEX

List of professional camera systems not qualified as television camera systems (broadcast camera systems) which are exempted from the measures

Company name	Camera heads	Viewfinder	Camera control unit	Operational control unit	Master control unit (*)	Camera adapters
Sony	DXC-M7PK	DXF-3000CE	CCU-M3P	RM-M7G	—	CA-325P
	DXC-M7P	DXF-325CE	CCU-M5P			CA-325AP
	DXC-M7PH	DXF-501CE	CCU-M7P			CA-325B
	DXC-M7PK/1	DXF-M3CE	CCU-M5AP ⁽¹⁾			CA-327P
	DXC-M7P/1	DXF-M7CE				CA-537P
	DXC-M7PH/1	DXF-40CE				CA-511
	DXC-327PK	DXF-40ACE				CA-512P
	DXC-327PL	DXF-50CE				CA-513
	DXC-327PH	DXF-601CE				VCT-U14 ⁽¹⁾
	DXC-327APK	DXF-40BCE				
	DXC-327APL	DXF-50BCE				
	DXC-327AH	DXF-701CE				
	DXC-537PK	DXF-WSCE ⁽¹⁾				
	DXC-537PL	DXF-801CE ⁽¹⁾				
	DXC-537PH					
	DXC-537APK					
	DXC-537APL					
	DXC-537APH					
	EVW-537PK					
	EVW-327PK					
	DXC-637P					
	DXC-637PK					
	DXC-637PL					
	DXC-637PH					
	PVW-637PK					
	PVW-637PL					
	DXC-D30PF					
	DXC-D30PK					
	DXC-D30PL					
	DXC-D30PH					
	DSR-130PF					
	DSR-130PK					
	DSR-130PL					
	PVW-D30PF					
	PVW-D30PK					
	PVW-D30PL					
	DXC-327BPF					
	DXC-327BPK					
	DXC-327BPL					
	DXC-327BPH					
	DXC-D30WSP ⁽¹⁾					
	DXC-D35PH ⁽¹⁾					
	DXC-D35PL ⁽¹⁾					
	DXC-D35PK ⁽¹⁾					
	DXC-D35WSPL ⁽¹⁾					
	DSR-135PL ⁽¹⁾					

Company name	Camera heads	Viewfinder	Camera control unit	Operational control unit	Master control unit (*)	Camera adapters
Ikegami	HC-340	VF15-21/22	MA-200/230	RCU-240	—	CA-340
	HC-300	VF-4523	MA-200A ⁽¹⁾	RCU-390 ⁽¹⁾		CA-300
	HC-230	VF15-39				CA-230
	HC-240	VF15-46 ⁽¹⁾				CA-390
	HC-210	VF5040 ⁽¹⁾				CA-400 ⁽¹⁾
	HC-390	VF5040W ⁽¹⁾				
	LK-33					
	HDL-30MA					
	HDL-37					
	HC-400 ⁽¹⁾					
	HC-400W ⁽¹⁾					
Hitachi	SK-H5	GM-5 (A)	RU-C1 (B)	—	—	CA-Z1
	SK-H501	GM-5-R2 (A)	RU-C1 (D)			CA-Z2
	DK-7700	GM-5-R2	RU-C1			CA-Z1SJ
	DK-7700SX	GM-50	RU-C1-S5			CA-Z1SP
	HV-C10	GM-8A ⁽¹⁾	RU-C10 (B)			CA-Z1M
	HV-C11	GM-9 ⁽¹⁾	RU-C10 (C)			CA-Z1M2
	HV-C10F	GM-51 ⁽¹⁾	RC-C1			CA-Z1HB
	Z-ONE (L)		RC-C10			CA-C10
	Z-ONE (H)		RU-C10			CA-C10SP
	Z-ONE		RU-Z1 (B)			CA-C10SJA
	Z-ONE A (L)		RU-Z1 (C)			CA-C10M
	Z-ONE A (H)		RU-Z1			CA-C10B
	Z-ONE A (F)		RC-C11			CA-Z1A ⁽¹⁾
	Z-ONE A		RU-Z2			CA-Z31 ⁽¹⁾
	Z-ONE B (L)		RC-Z1			CA-Z32 ⁽¹⁾
	Z-ONE B (H)		RC-Z11			CA-ZD1 ⁽¹⁾
	Z-ONE B (F)		RC-Z2			
	Z-ONE B		RC-Z21			
	Z-ONE B (M)		RC-Z2A ⁽¹⁾			
	Z-ONE B (R)		RC-Z21A ⁽¹⁾			
	FP-C10 (B)		RU-Z3 ⁽¹⁾			
	FP-C10 (C)		RC-Z3 ⁽¹⁾			
	FP-C10 (D)					
	FP-C10 (G)					
	FP-C10 (L)					
	FP-C10 (R)					
	FP-C10 (S)					
	FP-C10 (V)					
	FP-C10 (F)					
	FP-C10					
	FP-C10 A					
	FP-C10 A (A)					
	FP-C10 A (B)					

Company name	Camera heads	Viewfinder	Camera control unit	Operational control unit	Master control unit (*)	Camera adapters
Hitachi (cont'd)	FP-C10 A (C) FP-C10 A (D) FP-C10 A (F) FP-C10 A (G) FP-C10 A (H) FP-C10 A (L) FP-C10 A (R) FP-C10 A (S) FP-C10 A (T) FP-C10 A (V) FP-C10 A (W) Z-ONE C (M) Z-ONE C (R) Z-ONE C (F) Z-ONE C HV-C20 HV-C20M Z-ONE-D Z-ONE-D (A) Z-ONE-D (B) Z-ONE-D (C) Z-ONE.DA (1) V-21 (1) V-21W (1)					
Matsushita	WV-F700 WV-F700A WV-F700SHE WV-F700ASHE WV-F700BHE WV-F700ABHE WV-F700MHE WV-F350 WV-F350HE WV-F350E WV-F350AE WV-F350DE WV-F350ADE WV-F500HE (*) WV-F-565HE AW-F575HE AW-E600 AW-E800 AW-E800A	WV-VF65BE WV-VF40E WV-VF39E WV-VF65BE (*) WV-VF40E (*) WV-VF42E WV-VF65B AW-VF80	WV-RC700/B WV-RC700/G WV-RC700A/B WV-RC700A/G WV-RC36/B WV-RC36/G WV-RC37/B WV-RC37/G WV-CB700E WV-CB700AE WV-CB700E (*) WV-CB700AE (*) WV-RC700/B (*) WV-RC700/G (*) WV-RC700A/B (*) WV-RC700A/G (*) WV-RC550/G WV-RC550/B WV-RC700A WV-CB700A WV-RC550 WV-CB550 AW-RP501 AW-RP505	—	—	WV-AD700SE WV-AD700ASE WV-AD700ME WV-AD250E WV-AD500E (*) AW-AD500AE AW-AD700BSE

Company name	Camera heads	Viewfinder	Camera control unit	Operational control unit	Master control unit (*)	Camera adapters
JVC	KY-35E KY-27ECH KY-19ECH KY-17FITECH KY-17BECH KY-F30FITE KY-F30BE KY-27CECH KH-100U KY-D29ECH KY-D29WECH ⁽¹⁾	VF-P315E VF-P550E VF-P10E VP-P115E VF-P400E VP-P550BE VF-P116 VF-P116WE ⁽¹⁾ VF-P550WE ⁽¹⁾	RM-P350EG RM-P200EG RM-P300EG RM-LP80E RM-LP821E RM-LP35U RM-LP37U RM-P270EG	—	—	KA-35E KA-B35U KA-M35U KA-P35U KA-27E KA-20E KA-P27U KA-P20U KA-B27E KA-B20E KA-M20E KA-M27E
Olympus	MAJ-387N MAJ-387I		OTV-SX2 OTV-S5 OTV-S6			
	Camera OTV-SX					

(*) Also called master set up unit (MSU) or master control panel (MCP).

⁽¹⁾ Models exempted under the condition that the corresponding triax system or triax-adaptor is not sold on the EC market.

COMMISSION REGULATION (EC) No 952/2001
of 16 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 17 May 2001.

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

Done at Brussels, 16 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 16 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	92,3
	064	92,7
	212	79,3
	999	88,1
0707 00 05	052	80,8
	600	142,5
	628	150,8
	999	124,7
0709 90 70	052	88,6
	999	88,6
0805 10 10, 0805 10 30, 0805 10 50	052	51,0
	204	53,6
	212	58,3
	220	61,5
	400	65,0
	600	61,6
	624	51,4
	999	57,5
0805 30 10	052	57,2
	999	57,2
0808 10 20, 0808 10 50, 0808 10 90	388	86,9
	400	84,2
	404	97,6
	508	78,8
	512	88,4
	524	75,0
	528	72,5
	720	132,0
	804	105,2
	999	91,2

⁽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 953/2001**of 16 May 2001****fixing the maximum export refund for white sugar for the 39th 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 39th 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 39th 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 42,019 EUR/100 kg.

Article 2

This Regulation shall enter into force on 17 May 2001.

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

Done at Brussels, 16 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 954/2001**of 16 May 2001****fixing the export refunds on white sugar and raw sugar exported in its unaltered 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 point (a) of the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Article 18 of Regulation (EC) No 2038/1999 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 2038/1999 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 19 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality; the latter is defined in Article 1 of Council Regulation (EC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar ⁽³⁾, as amended by Regulation (EC) No 3290/94 ⁽⁴⁾; furthermore, this refund should be fixed in accordance with Article 19(4) of Regulation (EC) No 2038/1999; candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995

laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽⁵⁾; the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.
- (5) In special cases, the amount of the refund may be fixed by other legal instruments.
- (6) The refund must be fixed every two weeks; whereas it may be altered in the intervening period.
- (7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.
- (8) 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 export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 2038/1999, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2001.

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

Done at Brussels, 16 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 89, 10.4.1968, p. 3.

⁽⁴⁾ OJ L 349, 31.12.1994, p. 105.

⁽⁵⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 16 May 2001 fixing 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	34,67 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	33,83 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	34,67 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	33,83 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,3769
1701 99 10 9100	A00	EUR/100 kg	37,69
1701 99 10 9910	A00	EUR/100 kg	37,69
1701 99 10 9950	A00	EUR/100 kg	37,69
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,3769

⁽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 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 955/2001**of 16 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 17 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, 16 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 16 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⁾	9,69	—	0
1703 90 00 ⁽¹⁾	12,43	—	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 956/2001**of 16 May 2001****on surveillance measures regarding imports of certain textile products originating in the Syrian Arab Republic**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules ⁽¹⁾, as last amended by Commission Regulation (EC) No 2878/2000 ⁽²⁾, and in particular Article 11(1)(b), thereof,

Whereas:

- (1) A surge of imports into the Community in cotton yarn (category 1) originating in Syrian Arab Republic at very low prices has taken place during the last three years. Such imports have risen from almost nil in 1996 to 10 % of Community imports in 2000.
- (2) Although Community consumption has remained the same during the last three years, the surge in Syrian imports at prices lower than the general market price causes or threatens to cause serious injury to the Community producers of cotton yarn by depressing normal market prices.
- (3) In order to monitor imports into the Community of cotton yarn (category 1) originating in the Syrian Arab Republic while an examination according to Article 7 of Regulation (EC) No 517/94 takes place, it is therefore appropriate to introduce for a period of 18 months a surveillance mechanism. Accordingly, the importation of products shipped from the Syrian Arab Republic and put into free circulation in the Community should enter

the Community under the surveillance mechanism and the requirements regarding production of an import document, as set out in Article 14(1)(a), (2), (3) and (4) of Regulation (EC) No 517/94 should apply.

- (4) In view of the urgency of the situation, it is desirable that this Regulation enter into force immediately.
- (5) These measures are in conformity with the opinion expressed by the committee established by Regulation (EC) No 517/94,

HAS ADOPTED THIS REGULATION:

Article 1

Imports into the Community of cotton yarn (category 1), originating in the Syrian Arab Republic and released for free circulation into the Community, shall be subject to prior Community surveillance.

Paragraph 1 shall not apply when the products referred to therein are shipped to a Community destination before the date of entry into force of this Regulation, provided that it can be shown to the satisfaction of the competent national authorities that these goods have been en route to Community territory on the date of entry into force of this Regulation.

Article 2

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

It shall apply for a period of 18 months.

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

Done at Brussels, 16 May 2001.

For the Commission

Pascal LAMY

Member of the Commission

⁽¹⁾ OJ L 67, 10.3.1994, p. 1.

⁽²⁾ OJ L 333, 29.12.2000, p. 60.

COMMISSION REGULATION (EC) No 957/2001

of 16 May 2001

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1706/98 of 20 July 1998 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 715/90 ⁽¹⁾, and in particular Article 30 thereof,

Having regard to Commission Regulation (EC) No 1918/98 of 9 September 1998 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 1706/98 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States and repealing Regulation (EC) No 589/96 ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.
- (2) The applications for import licences submitted between 1 and 10 May 2001, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.
- (3) The quantities in respect of which licences may be applied for from 1 June 2001 should be fixed within the scope of the total quantity of 52 100 tonnes.
- (4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine,

ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽³⁾, as last amended by Directive 97/79/CE ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 May 2001 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

United Kingdom:

- 2 700 tonnes originating in Botswana,
- 730 tonnes originating in Namibia,
- 250 tonnes originating in Zimbabwe;

Germany:

- 660 tonnes originating in Botswana,
- 230 tonnes originating in Namibia.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of June 2001 for the following quantities of boned beef and veal:

Botswana:	9 426 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	3 363 tonnes,
Zimbabwe:	4 600,050 tonnes,
Namibia:	9 124 tonnes.

Article 3

This Regulation shall enter into force on 21 May 2001.

⁽¹⁾ OJ L 215, 1.8.1998, p. 12.

⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.

⁽⁴⁾ OJ L 24, 30.1.1998, p. 31.

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

Done at Brussels, 16 May 2001.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 958/2001**of 16 May 2001****amending the export refunds on syrups and certain other sugar sector products 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 organization of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾, and in particular the third indent of Article 18(5) thereof,

Whereas:

- (1) The refunds on syrups and certain other sugar products were fixed by Commission Regulation (EC) No 844/2001 ⁽³⁾.
- (2) It follows from applying the rules, criteria and other provisions contained in Regulation (EC) No 844/2001 to the information at present available to the Commission

that the export refunds at present in force should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The refunds to be granted on the products listed in Article 1 (1) (d), (f) and (g) of Regulation (EC) No 2038/1999, exported in the natural state, as fixed in the Annex to Regulation (EC) No 844/2001 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2001.

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

Done at Brussels, 16 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 121, 1.5.2001, p. 5.

ANNEX

to the Commission Regulation of 16 May 2001 amending the export refunds on syrups and certain other sugar products exported in the natural state

Product code	Destination	Unit of measurement	Amount of refund
1702 40 10 9100	A00	EUR/100 kg dry matter	37,69 ⁽²⁾
1702 60 10 9000	A00	EUR/100 kg dry matter	37,69 ⁽²⁾
1702 60 80 9100	A00	EUR/100 kg dry matter	71,61 ⁽⁴⁾
1702 60 95 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,3769 ⁽¹⁾
1702 90 30 9000	A00	EUR/100 kg dry matter	37,69 ⁽²⁾
1702 90 60 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,3769 ⁽¹⁾
1702 90 71 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,3769 ⁽¹⁾
1702 90 99 9900	A00	EUR/1 % sucrose × net 100 kg of product	0,3769 ⁽¹⁾ ⁽³⁾
2106 90 30 9000	A00	EUR/100 kg dry matter	37,69 ⁽²⁾
2106 90 59 9000	A00	EUR/1 % sucrose × net 100 kg of product	0,3769 ⁽¹⁾

⁽¹⁾ The basic amount is not applicable to syrups which are less than 85 % pure (Regulation (EC) No 2135/95). Sucrose content is determined in accordance with Article 3 of Regulation (EC) No 2135/95.

⁽²⁾ Applicable only to products referred to in Article 5 of Regulation (EC) No 2135/95.

⁽³⁾ The basic amount is not applicable to the product defined under point 2 of the Annex to Regulation (EEC) No 3513/92 (OJ L 355, 5.12.1992, p. 12).

⁽⁴⁾ Applicable only to products defined under Article 6 of Regulation (EC) No 2135/95.

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 959/2001
of 16 May 2001
amending the import duties in the cereals sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 2235/2000 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 949/2001 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 949/2001,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 949/2001 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 17 May 2001.

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

Done at Brussels, 16 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 256, 10.10.2000, p. 13.

⁽⁵⁾ OJ L 133, 16.5.2001, p. 14.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00	0,00
	medium quality ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	0,00	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00	0,00
	medium quality	10,27	0,27
	low quality	54,12	44,12
1002 00 00	Rye	54,60	44,60
1003 00 10	Barley, seed	54,60	44,60
1003 00 90	Barley, other ⁽³⁾	54,60	44,60
1005 10 90	Maize seed other than hybrid	73,86	63,86
1005 90 00	Maize other than seed ⁽³⁾	73,86	63,86
1007 00 90	Grain sorghum other than hybrids for sowing	54,60	44,60

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 24 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(for 15 May 2001)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	135,20	141,43	112,24	90,66	197,70 (**)	187,70 (**)	105,88 (**)
Gulf premium (EUR/t)	—	18,65	4,83	6,67	—	—	—
Great Lakes premium (EUR/t)	25,38	—	—	—	—	—	—

(*) A discount of EUR 10/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: 21,38 EUR/t; Great Lakes — Rotterdam: 31,27 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 960/2001**of 16 May 2001****amending the rates of the refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty**

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 Article 18(5)(a) and (15) thereof,

Whereas:

- (1) The rates of the refunds applicable from 1 May 2001 to the products listed in the Annex, exported in the form of goods not covered by Annex I to the Treaty, were fixed by Commission Regulation (EC) No 850/2001 ⁽³⁾.

- (2) It follows from applying the rules and criteria contained in Regulation (EC) No 850/2001 to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of refund fixed by Regulation (EC) No 850/2001 are hereby altered as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 May 2001.

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

Done at Brussels, 16 May 2001.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

to the Commission Regulation of 16 May 2001 altering the rates of the refunds applicable to certain products in the sugar sector exported in the form of goods not covered by Annex I to the Treaty

Product	Rate of refund in EUR/100 kg	
	In case of advance fixing of refunds	Other
White sugar:	37,69	37,69

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 121, 1.5.2001, p. 17.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 4 April 2001

on the approval, on behalf of the European Community, of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals

(2001/379/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with Article 300(2), first sentence of the first subparagraph, and (3), first subparagraph, thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The Community signed in Aarhus on 24 June 1998 the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals (hereinafter 'the Protocol').
- (2) The Protocol aims at controlling emissions of heavy metals caused by anthropogenic activities that are subject to long-range transboundary atmospheric transport and that are likely to have significant adverse effects on human health or the environment.
- (3) The Protocol stipulates the reduction of total annual emissions into the atmosphere of cadmium, lead and mercury, and the application of product control measures.
- (4) The measures envisaged in the Protocol contribute to achieving objectives of the Community policy on environment.
- (5) The Community and the Member States cooperate, in the framework of their respective competences, with non-member countries and the competent international organisations.

(6) The Community should approve the Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals, signed on 24 June 1998, is hereby approved on behalf of the European Community.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit the instrument of approval with the Secretary-General of the United Nations, in accordance with Article 16 of the Protocol.

Article 3

This Decision will be published in the *Official Journal of the European Communities*.

Done at Luxembourg, 4 April 2001.

For the Council

The President

B. ROSENGREN

⁽¹⁾ OJ C 311 E, 31.10.2000, p. 136.

⁽²⁾ Opinion given on 24 October 2000 (not yet published in the Official Journal).

ANNEX

PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON HEAVY METALS

The Parties,

Determined to implement the Convention on Long-range Transboundary Air Pollution,

Concerned that emissions of certain heavy metals are transported across national boundaries and may cause damage to ecosystems of environmental and economic importance and may have harmful effects on human health,

Considering that combustion and industrial processes are the predominant anthropogenic sources of emissions of heavy metals into the atmosphere,

Acknowledging that heavy metals are natural constituents of the Earth's crust and that many heavy metals in certain forms and appropriate concentrations are essential to life,

Taking into consideration existing scientific and technical data on the emissions, geochemical processes, atmospheric transport and effects on human health and the environment of heavy metals, as well as on abatement techniques and costs,

Aware that techniques and management practices are available to reduce air pollution caused by the emissions of heavy metals,

Recognising that countries in the region of the United Nations Economic Commission for Europe (UN/ECE) have different economic conditions, and that in certain countries the economies are in transition,

Resolved to take measures to anticipate, prevent or minimise emissions of certain heavy metals and their related compounds, taking into account the application of the precautionary approach, as set forth in principle 15 of the Rio Declaration on Environment and Development,

Reaffirming that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Mindful that measures to control emissions of heavy metals would also contribute to the protection of the environment and human health in areas outside the UN/ECE region, including the Arctic and international waters,

Noting that abating the emissions of specific heavy metals may provide additional benefits for the abatement of emissions of other pollutants,

Aware that further and more effective action to control and reduce emissions of certain heavy metals may be needed and that, for example, effects-based studies may provide a basis for further action,

Noting the important contribution of the private and non-governmental sectors to knowledge of the effects associated with heavy metals, available alternatives and abatement techniques, and their role in assisting in the reduction of emissions of heavy metals,

Bearing in mind the activities related to the control of heavy metals at the national level and in international forums,

Have agreed as follows:

Article 1**Definitions**

For the purposes of the present Protocol,

1. 'Convention' means the Convention on Long-range Transboundary Air Pollution, adopted in Geneva on 13 November 1979
2. 'EMEP' means the Cooperative Programme for Monitoring and Evaluation of Long-range Transmission of Air Pollutants in Europe
3. 'Executive Body' means the Executive Body for the Convention constituted under Article 10(1) of the Convention
4. 'Commission' means the United Nations Economic Commission for Europe
5. 'Parties' means, unless the context otherwise requires, the Parties to the present Protocol
6. 'Geographical scope of EMEP' means the area defined in Article 1(4) of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), adopted in Geneva on 28 September 1984

7. 'Heavy metals' means those metals or, in some cases, metalloids which are stable and have a density greater than 4,5 g/cm³ and their compounds
 8. 'Emission' means a release from a point or diffuse source into the atmosphere
 9. 'Stationary source' means any fixed building, structure, facility, installation, or equipment that emits or may emit a heavy metal listed in Annex I directly or indirectly into the atmosphere
 10. 'New stationary source' means any stationary source of which the construction or substantial modification is commenced after the expiry of two years from the date of entry into force of: (i) this Protocol; or (ii) an amendment to Annex I or II, where the stationary source becomes subject to the provisions of this Protocol only by virtue of that amendment. It shall be a matter for the competent national authorities to decide whether a modification is substantial or not, taking into account such factors as the environmental benefits of the modification
 11. 'Major stationary source category' means any stationary source category that is listed in Annex II and that contributes at least 1 % to a Party's total emissions from stationary sources of a heavy metal listed in Annex I for the reference year specified in accordance with Annex I.
- (c) the best available techniques, taking into consideration Annex III, to each existing stationary source within a major stationary source category for which Annex III identifies best available techniques. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission reductions;
 - (d) the limit values specified in Annex V to each existing stationary source within a major stationary source category, in so far as this is technically and economically feasible. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission reductions.
3. Each Party shall apply product control measures in accordance with the conditions and timescales specified in Annex VI.
 4. Each Party should consider applying additional product management measures, taking into consideration Annex VII.
 5. Each Party shall develop and maintain emission inventories for the heavy metals listed in Annex I, for those Parties within the geographical scope of EMEP, using as a minimum the methodologies specified by the Steering Body of EMEP, and, for those Parties outside the geographical scope of EMEP, using as guidance the methodologies developed through the work plan of the Executive Body.

Article 2

Objective

The objective of the present Protocol is to control emissions of heavy metals caused by anthropogenic activities that are subject to long-range transboundary atmospheric transport and are likely to have significant adverse effects on human health or the environment, in accordance with the provisions of the following Articles.

Article 3

Basic obligations

1. Each Party shall reduce its total annual emissions into the atmosphere of each of the heavy metals listed in Annex I from the level of the emission in the reference year set in accordance with that Annex by taking effective measures, appropriate to its particular circumstances.
2. Each Party shall, no later than the timescales specified in Annex IV, apply:
 - (a) the best available techniques, taking into consideration Annex III, to each new stationary source within a major stationary source category for which Annex III identifies best available techniques;
 - (b) the limit values specified in Annex V to each new stationary source within a major stationary source category. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission levels;

6. A Party that, after applying paragraphs 2 and 3, cannot achieve the requirements of paragraph 1 for a heavy metal listed in Annex I, shall be exempted from its obligations in paragraph 1 for that heavy metal.

7. Any Party whose total land area is greater than 6 000 000 km² shall be exempted from its obligations in paragraphs 2(b), (c), and (d), if it can demonstrate that, no later than eight years after the date of entry into force of the present Protocol, it will have reduced its total annual emissions of each of the heavy metals listed in Annex I from the source categories specified in Annex II by at least 50 % from the level of emissions from these categories in the reference year specified in accordance with Annex I. A Party that intends to act in accordance with this paragraph shall so specify upon signature of, or accession to, the present Protocol.

Article 4

Exchange of information and technology

1. The Parties shall, in a manner consistent with their laws, regulations and practices, facilitate the exchange of technologies and techniques designed to reduce emissions of heavy metals, including but not limited to exchanges that encourage the development of product management measures and the application of best available techniques, in particular by promoting:
 - (a) the commercial exchange of available technology
 - (b) direct industrial contacts and cooperation, including joint ventures
 - (c) the exchange of information and experience and
 - (d) the provision of technical assistance.

2. In promoting the activities specified in paragraph 1, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organisations and individuals in the private and public sectors that are capable of providing technology, design and engineering services, equipment or finance.

Article 5

Strategies, policies, programmes and measures

1. Each Party shall develop, without undue delay, strategies, policies and programmes to discharge its obligations under the present Protocol.

2. A Party may, in addition:

- (a) apply economic instruments to encourage the adoption of cost-effective approaches to the reduction of heavy metal emissions
- (b) develop government/industry covenants and voluntary agreements
- (c) encourage the more efficient use of resources and raw materials
- (d) encourage the use of less polluting energy sources
- (e) take measures to develop and introduce less polluting transport systems
- (f) take measures to phase out certain heavy metal emitting processes where substitute processes are available on an industrial scale
- (g) take measures to develop and employ cleaner processes for the prevention and control of pollution.

3. The Parties may take more stringent measures than those required by the present Protocol.

Article 6

Research, development and monitoring

The Parties shall encourage research, development, monitoring and cooperation, primarily focusing on the heavy metals listed in Annex I, related, but not limited, to:

- (a) emissions, long-range transport and deposition levels and their modelling, existing levels in the biotic and abiotic environment, the formulation of procedures for harmonising relevant methodologies
- (b) pollutant pathways and inventories in representative ecosystems
- (c) relevant effects on human health and the environment, including quantification of those effects
- (d) best available techniques and practices and emission control techniques currently employed by the Parties or under development
- (e) collection, recycling and, if necessary, disposal of products or wastes containing one or more heavy metals

- (f) methodologies permitting consideration of socioeconomic factors in the evaluation of alternative control strategies
- (g) an effects-based approach which integrates appropriate information, including information obtained under subparagraphs (a) to (f), on measured or modelled environmental levels, pathways, and effects on human health and the environment, for the purpose of formulating future optimised control strategies which also take into account economic and technological factors
- (h) alternatives to the use of heavy metals in products listed in Annexes VI and VII
- (i) gathering information on levels of heavy metals in certain products, on the potential for emissions of those metals to occur during the manufacture, processing, distribution in commerce, use, and disposal of the product, and on techniques to reduce such emissions.

Article 7

Reporting

1. Subject to its laws governing the confidentiality of commercial information:

- (a) each Party shall report, through the Executive Secretary of the Commission, to the Executive Body, on a periodic basis as determined by the Parties meeting within the Executive Body, information on the measures that it has taken to implement the present Protocol
- (b) each Party within the geographical scope of EMEP shall report, through the Executive Secretary of the Commission, to EMEP, on a periodic basis to be determined by the Steering Body of EMEP and approved by the Parties at a session of the Executive Body, information on the levels of emissions of the heavy metals listed in Annex I, using as a minimum the methodologies and the temporal and spatial resolution specified by the Steering Body of EMEP. Parties in areas outside the geographical scope of EMEP shall make available similar information to the Executive Body if requested to do so. In addition, each Party shall, as appropriate, collect and report relevant information relating to its emissions of other heavy metals, taking into account the guidance on the methodologies and the temporal and spatial resolution of the Steering Body of EMEP and the Executive Body.

2. The information to be reported in accordance with paragraph 1(a) shall be in conformity with a decision regarding format and content to be adopted by the Parties at a session of the Executive Body. The terms of this decision shall be reviewed as necessary to identify any additional elements regarding the format or the content of the information that is to be included in the reports.

3. In good time before each annual session of the Executive Body, EMEP shall provide information on the long-range transport and deposition of heavy metals.

Article 8

Calculations

EMEP shall, using appropriate models and measurements and in good time before each annual session of the Executive Body, provide to the Executive Body calculations of transboundary fluxes and depositions of heavy metals within the geographical scope of EMEP. In areas outside the geographical scope of EMEP, models appropriate to the particular circumstances of Parties to the Convention shall be used.

Article 9

Compliance

Compliance by each Party with its obligations under the present Protocol shall be reviewed regularly. The Implementation Committee established by Decision 1997/2 of the Executive Body at its 15th session shall carry out such reviews and report to the Parties meeting within the Executive Body in accordance with the terms of the Annex to that Decision, including any amendments thereto.

Article 10

Reviews by the Parties at sessions of the Executive Body

1. The Parties shall, at sessions of the Executive Body, pursuant to Article 10(2)(a), of the Convention, review the information supplied by the Parties, EMEP and other subsidiary bodies and the reports of the Implementation Committee referred to in Article 9 of the present Protocol.

2. The Parties shall, at sessions of the Executive Body, keep under review the progress made towards meeting the obligations set out in the present Protocol.

3. The Parties shall, at sessions of the Executive Body, review the sufficiency and effectiveness of the obligations set out in the present Protocol.

(a) Such reviews will take into account the best available scientific information on the effects of the deposition of heavy metals, assessments of technological developments, and changing economic conditions.

(b) Such reviews will, in the light of the research, development, monitoring and cooperation undertaken under the present Protocol:

(i) evaluate progress towards meeting the objective of the present Protocol

(ii) evaluate whether additional emission reductions beyond the levels required by this Protocol are warranted to reduce further the adverse effects on human health or the environment and

(iii) take into account the extent to which a satisfactory basis exists for the application of an effects-based approach.

(c) The procedures, methods and timing for such reviews shall be specified by the Parties at a session of the Executive Body.

4. The Parties shall, based on the conclusion of the reviews referred to in paragraph 3 and as soon as practicable after completion of the review, develop a work plan on further steps to reduce emissions into the atmosphere of the heavy metals listed in Annex I.

Article 11

Settlement of disputes

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the present Protocol, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. The parties to the dispute shall inform the Executive Body of their dispute.

2. When ratifying, accepting, approving or acceding to the present Protocol, or at any time thereafter, a Party which is not a regional economic integration organisation may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Protocol, it recognises one or both of the following means of dispute settlement as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

(a) submission of the dispute to the International Court of Justice

(b) arbitration in accordance with procedures to be adopted by the Parties at a session of the Executive Body, as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organisation may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b).

3. A declaration made under paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute agree otherwise.

5. Except in a case where the parties to a dispute have accepted the same means of dispute settlement under paragraph 2, if after 12 months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. For the purpose of paragraph 5, a conciliation commission shall be created. The commission shall be composed of equal numbers of members appointed by each Party concerned or, where the Parties in conciliation share the same interest, by the group sharing that interest, and a chairman chosen jointly by the members so appointed. The commission shall render a recommendatory award, which the Parties shall consider in good faith.

*Article 12***Annexes**

The Annexes to the present Protocol shall form an integral part of the Protocol. Annexes III and VII are recommendatory in character.

*Article 13***Amendments to the Protocol**

1. Any Party may propose amendments to the present Protocol.

2. Proposed amendments shall be submitted in writing to the Executive Secretary of the Commission, who shall communicate them to all Parties. The Parties meeting within the Executive Body shall discuss the proposed amendments at its next session, provided that the proposals have been circulated by the Executive Secretary to the Parties at least 90 days in advance.

3. Amendments to the present Protocol and to Annexes I, II, IV, V and VI shall be adopted by consensus of the Parties present at a session of the Executive Body, and shall enter into force for the Parties which have accepted them on the 90th day after the date on which two thirds of the Parties have deposited with the Depositary their instruments of acceptance thereof. Amendments shall enter into force for any other Party on the 90th day after the date on which that Party has deposited its instrument of acceptance thereof.

4. Amendments to Annexes III and VII shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of 90 days from the date of its communication to all Parties by the Executive Secretary of the Commission, an amendment to any such Annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of paragraph 5, provided that at least 16 Parties have not submitted such a notification.

5. Any Party that is unable to approve an amendment to Annex III or VII shall so notify the Depositary in writing within 90 days of the date of the communication of its adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, on deposit of an instrument of acceptance with the Depositary, the amendment to such an Annex shall become effective for that Party.

6. In the case of a proposal to amend Annex I, VI or VII by adding a heavy metal, a product control measure or a product or product group to the present Protocol:

(a) the proposer shall provide the Executive Body with the information specified in Executive Body Decision 1998/1, including any amendments thereto and

(b) the Parties shall evaluate the proposal in accordance with the procedures set forth in Executive Body Decision 1998/1, including any amendments thereto.

7. Any decision to amend Executive Body Decision 1998/1 shall be taken by consensus of the Parties meeting within the Executive Body and shall take effect 60 days after the date of adoption.

*Article 14***Signature**

1. The present Protocol shall be open for signature at Aarhus (Denmark) from 24 to 25 June 1998, then at United Nations Headquarters in New York until 21 December 1998 by States members of the Commission as well as States having consultative status with the Commission pursuant to paragraph 8 of Economic and Social Council Resolution 36 (IV) of 28 March 1947, and by regional economic integration organisations, constituted by sovereign States members of the Commission, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Protocol, provided that the States and organisations concerned are Parties to the Convention.

2. In matters within their competence, such regional economic integration organisations shall, on their own behalf, exercise the rights and fulfil the responsibilities which the present Protocol attributes to their member States. In such cases, the member States of these organisations shall not be entitled to exercise such rights individually.

*Article 15***Ratification, acceptance, approval and accession**

1. The present Protocol shall be subject to ratification, acceptance or approval by Signatories.

2. The present Protocol shall be open for accession as from 21 December 1998 by the States and organisations that meet the requirements of Article 14(1).

*Article 16***Depositary**

The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations, who will perform the functions of Depositary.

*Article 17***Entry into force**

1. The present Protocol shall enter into force on the 90th day following the date on which the 16th instrument of ratification, acceptance, approval or accession has been deposited with the Depositary.

2. For each State and organisation referred to in Article 14(1), which ratifies, accepts or approves the present Protocol or accedes thereto after the deposit of the 16th instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the 90th day following the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

Article 18

Withdrawal

At any time after five years from the date on which the present Protocol has come into force with respect to a Party, that Party may withdraw from it by giving written notification to the Depositary. Any such withdrawal shall take effect on the 90th day following the date of its receipt by the Depositary, or on

such later date as may be specified in the notification of the withdrawal.

Article 19

Authentic texts

The original of the present Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Protocol.

Done at Aarhus (Denmark), this twenty-fourth day of June, one thousand nine hundred and ninety-eight.

ANNEX I

Heavy metals referred to in Article 3(1) and the reference year for the obligation

Heavy metal	Reference year
Cadmium (Cd)	1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party on ratification, acceptance, approval or accession
Lead (Pb)	1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party on ratification, acceptance, approval or accession
Mercury (Hg)	1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party on ratification, acceptance, approval or accession.

ANNEX II

Stationary source categories

I. INTRODUCTION

1. Installations or parts of installations for research, development and the testing of new products and processes are not covered by this Annex.
2. The threshold values given below generally refer to production capacities or output. Where one operator carries out several activities falling under the same subheading at the same installation or the same site, the capacities of such activities are added together.

II. LIST OF CATEGORIES

Category	Description of the category
1	Combustion installations with a net rated thermal input exceeding 50 MW
2	Metal ore (including sulphide ore) or concentrate roasting or sintering installations with a capacity exceeding 150 tonnes of sinter per day for ferrous ore or concentrate, and 30 tonnes of sinter per day for the roasting of copper, lead or zinc, or any gold and mercury ore treatment
3	Installations for the production of pig-iron or steel (primary or secondary fusion, including electric arc furnaces) including continuous casting, with a capacity exceeding 2,5 tonnes per hour
4	Ferrous metal foundries with a production capacity exceeding 20 tonnes per day
5	Installations for the production of copper, lead and zinc from ore, concentrates or secondary raw materials by metallurgical processes with a capacity exceeding 30 tonnes of metal per day for primary installations and 15 tonnes of metal per day for secondary installations, or for any primary production of mercury
6	Installations for the smelting (refining, foundry casting, etc.), including the alloying, of copper, lead and zinc, including recovered products, with a melting capacity exceeding 4 tonnes per day for lead or 20 tonnes per day for copper and zinc
7	Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day
8	Installations for the manufacture of glass using lead in the process with a melting capacity exceeding 20 tonnes per day
9	Installations for chlor-alkali production by electrolysis using the mercury cell process
10	Installations for the incineration of hazardous or medical waste with a capacity exceeding 1 tonne per hour, or for the coincineration of hazardous or medical waste specified in accordance with national legislation
11	Installations for the incineration of municipal waste with a capacity exceeding 3 tonnes per hour, or for the coincineration of municipal waste specified in accordance with national legislation

ANNEX III

Best available techniques for controlling emissions of heavy metals and their compounds from the source categories listed in Annex II

I. INTRODUCTION

1. This Annex aims to provide Parties with guidance on identifying best available techniques for stationary sources to enable them to meet the obligations of the Protocol.
2. 'Best available techniques' (BAT) means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and their impact on the environment as a whole:
 - 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned,
 - 'available' techniques means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the territory of the Party in question, as long as they are reasonably accessible to the operator,
 - 'best' means most effective in achieving a high general level of protection of the environment as a whole.

In determining the best available techniques, special consideration should be given, generally or in specific cases, to the factors below, bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention:

- the use of low-waste technology,
- the use of less hazardous substances,
- the furthering of recovery and recycling of substances generated and used in the process and of waste,
- comparable processes, facilities or methods of operation which have been tried with success on an industrial scale,
- technological advances and changes in scientific knowledge and understanding,
- the nature, effects and volume of the emissions concerned,
- the commissioning dates for new or existing installations,
- the time needed to introduce the best available technique,
- the consumption and nature of raw materials (including water) used in the process and its energy efficiency,
- the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it,
- the need to prevent accidents and to minimise their consequences for the environment.

The concept of best available techniques is not aimed at the prescription of any specific technique or technology, but at taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

3. The information regarding emission control performance and costs is based on official documentation of the Executive Body and its subsidiary bodies, in particular documents received and reviewed by the Task Force on Heavy Metal Emissions and the Ad Hoc Preparatory Working Group on Heavy Metals. Furthermore, other international information on best available techniques for emission control has been taken into consideration (e.g. the European Community's technical notes on BAT, the Parcom recommendations for BAT, and information provided directly by experts).
4. Experience with new products and new plants incorporating low-emission techniques, as well as with the retro-fitting of existing plants, is growing continuously; this Annex may, therefore, need amending and updating.
5. The Annex lists a number of measures spanning a range of costs and efficiencies. The choice of measures for any particular case will depend on, and may be limited by, a number of factors, such as economic circumstances, technological infrastructure, any existing emission control device, safety, energy consumption and whether the source is a new or existing one.

6. This Annex takes into account the emissions of cadmium, lead and mercury and their compounds, in solid (particle-bound) and/or gaseous form. Specification of these compounds is, in general, not considered here. Nevertheless, the efficiency of emission control devices with regard to the physical properties of the heavy metal, especially in the case of mercury, has been taken into account.
7. Emission values expressed as mg/m³ refer to standard conditions (volume at 273,15 K, 101,3 kPa, dry gas) not corrected for oxygen content unless otherwise specified, and are calculated in accordance with draft CEN (Comité européen de normalisation) and, in some cases, national sampling and monitoring techniques.

II. GENERAL OPTIONS FOR REDUCING EMISSIONS OF HEAVY METALS AND THEIR COMPOUNDS

8. There are several possibilities for controlling or preventing heavy metal emissions. Emission reduction measures focus on add-on technologies and process modifications (including maintenance and operating control). The following measures, which may be implemented depending on the wider technical and/or economic conditions, are available:
 - (a) application of low-emission process technologies, in particular in new installations
 - (b) off-gas cleaning (secondary reduction measures) with filters, scrubbers, absorbers, etc.
 - (c) change or preparation of raw materials, fuels and/or other feed materials (e.g. use of raw materials with low heavy metal content)
 - (d) best management practices such as good housekeeping, preventive maintenance programmes, or primary measures such as the enclosure of dust-creating units
 - (e) appropriate environmental management techniques for the use and disposal of certain products containing Cd, Pb, and/or Hg.
9. It is necessary to monitor abatement procedures to ensure that appropriate control measures and practices are properly implemented and achieve an effective emission reduction. Monitoring abatement procedures will include:
 - (a) developing an inventory of those reduction measures identified above that have already been implemented
 - (b) comparing actual reductions in Cd, Pb and Hg emissions with the objectives of the Protocol
 - (c) characterising quantified emissions of Cd, Pb and Hg from relevant sources with appropriate techniques
 - (d) regulatory authorities periodically auditing abatement measures to ensure their continued efficient operation.
10. Emission reduction measures should be cost-efficient. Cost-efficient strategy considerations should be based on total costs per year per unit abated (including capital and operating costs). Emission reduction costs should also be considered with respect to the overall process.

III. CONTROL TECHNIQUES

11. The major categories of available control techniques for Cd, Pb and Hg emission abatement are primary measures such as raw material and/or fuel substitution and low-emission process technologies, and secondary measures such as fugitive emission control and off-gas cleaning. Sector-specific techniques are specified in Chapter IV.
12. The data on efficiency are derived from operating experience and are considered to reflect the capabilities of current installations. The overall efficiency of flue gas and fugitive emission reductions depends to a great extent on the evacuation performance of the gas and dust collectors (e.g. suction hoods). Capture/collection efficiencies of over 99 % have been demonstrated. In particular cases experience has shown that control measures are able to reduce overall emissions by 90 % or more.
13. In the case of particle-bound emissions of Cd, Pb and Hg, the metals can be captured by dust-cleaning devices. Typical dust concentrations after gas cleaning with selected techniques are given in Table 1. Most of these measures have generally been applied across sectors. The minimum expected performance of selected techniques for capturing gaseous mercury is outlined in Table 2. The application of these measures depends on the specific processes and is most relevant if concentrations of mercury in the flue gas are high

Table 1: Performance of dust-cleaning devices expressed as hourly average dust concentrations

	Dust concentrations after cleaning (mg/m ³)
Fabric filters	< 10
Fabric filters, membrane type	< 1
Dry electrostatic precipitators	< 50
Wet electrostatic precipitators	< 50
High-efficiency scrubbers	< 50

Note: Medium- and low-pressure scrubbers and cyclones generally show lower dust removal efficiencies.

Table 2: Minimum expected performance of mercury separators expressed as hourly average mercury concentrations

	Mercury content after cleaning (mg/m ³)
Selenium filter	< 0,01
Selenium scrubber	< 0,2
Carbon filter	< 0,01
Carbon injection + dust separator	< 0,05
Odda Norzink chloride process	< 0,1
Lead sulphide process	< 0,05
Bolkem (Thiosulphate) process	< 0,1

14. Care should be taken to ensure that these control techniques do not create other environmental problems. The choice of a specific process because of its low emission into the air should be avoided if it worsens the total environmental impact of the heavy metals' discharge, for example due to more water pollution from liquid effluents. The fate of captured dust resulting from improved gas cleaning must also be taken into consideration. A negative environmental impact from the handling of such wastes will reduce the gain from lower process dust and fume emissions into the air.
15. Emission reduction measures can focus on process techniques as well as on off-gas cleaning. The two are not independent of each other; the choice of a specific process might exclude some gas-cleaning methods.
16. The choice of a control technique will depend on such parameters as the pollutant concentration and/or specification in the raw gas, the gas volume flow, the gas temperature, and others. Therefore, the fields of application may overlap; in that case, the most appropriate technique must be selected according to case-specific conditions.
17. Adequate measures to reduce stack gas emissions in various sectors are described below. Fugitive emissions have to be taken into account. Dust emission control associated with the discharging, handling, and stockpiling of raw materials or by-products, although not relevant to long-range transport, may be important for the local environment. The emissions can be reduced by moving these activities to completely enclosed buildings, which may be equipped with ventilation and dedusting facilities, spray systems or other suitable controls. When stockpiling in unroofed areas, the material surface should be otherwise protected against wind entrainment. Stockpiling areas and roads should be kept clean.
18. The investment/cost figures listed in the tables have been collected from various sources and are highly case-specific. They are expressed in 1990 USD (USD 1 (1990) = ECU 0,8 (1990)). They depend on such factors as plant capacity, removal efficiency and raw gas concentration, type of technology, and the choice of new installations as opposed to retro-fitting.

IV. SECTORS

19. This chapter contains a table per relevant sector with the main emission sources, control measures based on the best available techniques, their specific reduction efficiency and the related costs, where available. Unless stated otherwise, the reduction efficiencies in the tables refer to direct stack gas emissions.

Combustion of fossil fuels in utility and industrial boilers
(Annex II, category 1)

20. The combustion of coal in utility and industrial boilers is a major source of anthropogenic mercury emissions. The heavy metal content is normally several orders of magnitude higher in coal than in oil or natural gas.
21. Improved energy conversion efficiency and energy conservation measures will result in a decline in the emissions of heavy metals because of reduced fuel requirements. Combusting natural gas or alternative fuels with a low heavy metal content instead of coal would also result in a significant reduction in heavy metal emissions such as mercury. Integrated gasification combined-cycle (IGCC) power plant technology is a new plant technology with a low-emission potential.
22. With the exception of mercury, heavy metals are emitted in solid form in association with fly-ash particles. Different coal combustion technologies show different magnitudes of fly-ash generation: grate-firing boilers 20 to 40 %; fluidised-bed combustion 15 %; dry bottom boilers (pulverised coal combustion) 70 to 100 % of total ash. The heavy metal content in the small particle size fraction of the fly-ash has been found to be higher.
23. Beneficiation, for example 'washing' or 'bio-treatment', of coal reduces the heavy metal content associated with the inorganic matter in the coal. However, the degree of heavy metal removal with this technology varies widely.
24. A total dust removal of more than 99,5 % can be obtained with electrostatic precipitators (ESP) or fabric filters (FF), achieving dust concentrations of about 20 mg/m³ in many cases. With the exception of mercury, heavy metal emissions can be reduced by at least 90 to 99 %, the lower figure for the more easily volatilised elements. Low filter temperature helps to reduce the gaseous mercury off-gas content.
25. The application of techniques to reduce emissions of nitrogen oxides, sulphur dioxide and particulates from the flue gas can also remove heavy metals. Possible cross media impact should be avoided by appropriate waste water treatment.
26. Using the techniques mentioned above, mercury removal efficiencies vary extensively from plant to plant, as seen in Table 3. Research is ongoing to develop mercury removal techniques, but until such techniques are available on an industrial scale, no best available technique is identified for the specific purpose of removing mercury.

Table 3: Control measures, reduction efficiencies and costs for fossil-fuel combustion emissions

Emission source	Control measure(s)	Reduction efficiency (%)	Abatement costs
Combustion of fuel oil	Switch fuel oil to gas	Cd, Pb Hg: 70-80	Highly case-specific
Combustion of coal	Switch from coal to fuels with lower heavy metals emissions	Dust 70-100	Highly case-specific
	ESP (cold-side)	Cd, Pb: > 90 Hg: 10-40	Specific investment USD 5-10/m ³ waste gas per hour (> 200 000 m ³ /h)
	Wet fuel-gas desulphurisation (FGD)(a)	Cd, Pb: > 90 Hg: 10-90 (b)	15-30/Mg waste
	Fabric filters (FF)	Cd: > 95 Pb: > 99 Hg: 10-60	Specific investment USD 8-15 USD/m ³ waste gas per hour (> 200 000 m ³ /h)

(a) Hg removal efficiencies increase with the proportion of ionic mercury. High-dust selective catalytic reduction (SCR) installations facilitate Hg(II) formation.

(b) This is primarily for SO₂. Reduction in heavy metal emissions is a side benefit. (Specific investment USD 60-250 USD/kW_e)

Primary iron and steel industry
(Annex II, category 2)

27. This section deals with emissions from sinter plants, pellet plants, blast furnaces, and steelworks with a basic oxygen furnace (BOF). Emissions of Cd, Pb and Hg occur in association with particulates. The content of the heavy metals of concern in the emitted dust depends on the composition of the raw materials and the types of alloying metals added in steelmaking. The most relevant emission reduction measures are outlined in Table 4. Fabric filters should be used whenever possible; if conditions make this impossible, electrostatic precipitators and/or high-efficiency scrubbers may be used.
28. When using BAT in the primary iron and steel industry, the total specific emission of dust directly related to the process can be reduced to the following levels:
- | | |
|---------------|----------------|
| Sinter plants | 40 to 120 g/Mg |
| Pellet plants | 40 g/Mg |
| Blast furnace | 35-50 g/Mg |
| BOF | 35-70 g/Mg. |
29. Purification of gases using fabric filters will reduce the dust content to less than 20 mg/m³, whereas electrostatic precipitators and scrubbers will reduce the dust content to 50 mg/m³ (as an hourly average). However, there are many applications of fabric filters in the primary iron and steel industry that can achieve much lower values.

Table 4: Emission sources, control measures, dust reduction efficiencies and costs for the primary iron and steel industry

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs USD)
Sinter plants	Emission optimised sintering	ca. 50	—
	Scrubbers and ESP	> 90	—
	Fabric filters	> 99	—
Pellet plants	ESP + lime reactor + fabric filters	> 99	—
	Scrubbers	> 95	—
Blast furnaces	FF/ESP	> 99	ESP: 0,24-l/Mg pig-iron
Blast furnace gas cleaning	Wet scrubbers	> 99	—
	Wet ESP	> 99	—
BOF	Primary dedusting: wet separator ESP/FF	> 99	Dry ESP: 2,25/Mg steel
	Secondary dedusting: dry ESP/FF	> 97	FT: 0,26/Mg steel
Fugitive emissions	Closed conveyor belts, enclosure, wetting stored feedstock, cleaning of roads	80-99	—

30. Direct reduction and direct smelting are under development and may reduce the need for sinter plants and blast furnaces in the future. The application of these technologies depends on the ore characteristics and requires the resulting product to be processed in an electric arc furnace, which should be equipped with appropriate controls.

Secondary iron and steel industry
(Annex II, category 3)

31. It is very important to capture all the emissions efficiently. That is possible by installing doghouses or movable hoods or by total building evacuation. The captured emissions must be cleaned. For all dust-emitting processes in the secondary iron and steel industry, dedusting in fabric filters, which reduces the dust content to less than 20 mg/m³, shall be considered as BAT. When BAT is used also for minimising fugitive emissions, the specific dust emission (including fugitive emission directly related to the process) will not exceed the range of 0,1 to 0,35 kg/Mg steel. There are many examples of clean gas dust content below 10 mg/m³ when fabric filters are used. The specific dust emission in such cases is normally below 0,1 kg/Mg.
32. For the melting of scrap, two different types of furnace are in use: open-hearth furnaces and electric arc furnaces (EAF) where open-hearth furnaces are about to be phased out.
33. The content of the heavy metals of concern in the emitted dust depends on the composition of the iron and steel scrap and the types of alloying metals added in steelmaking. Measurements at EAF have shown that 95 % of emitted mercury and 25 % of cadmium emissions occur as vapour. The most relevant dust emission reduction measures are outlined in Table 5.

Table 5: Emission sources, control measures, dust reduction efficiencies and costs for the secondary iron and steel industry

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs USD)
EAF	ESP	> 99	—
	FF	> 99,5	FF: 24/Mg steel

Iron foundries
(Annex II, category 4)

34. It is very important to capture all the emissions efficiently. That is possible by installing doghouses or movable hoods or by total building evacuation. The captured emissions must be cleaned. In iron foundries, cupola furnaces, electric arc furnaces and induction furnaces are operated. Direct particulate and gaseous heavy metal emissions are especially associated with melting and sometimes, to a small extent, with pouring. Fugitive emissions arise from raw material handling, melting, pouring and fettling. The most relevant emission reduction measures are outlined in table 6 with their achievable reduction efficiencies and costs, where available. These measures can reduce dust concentrations to 20 mg/m³, or less.

Table 6: Emission sources, control measures, dust reduction efficiencies and costs for iron foundries

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs USD)
EAF	ESP	> 99	—
	FF	> 99,5	FF: 24/Mg iron
Induction furnace	FF/dry absorption + FT	> 99	—
Cold blast cupola	Below-the-door take-off: FF	> 98	—
	Above-the-door take-off		
	FF + pre-dedusting	> 97	8-12/Mg iron
	FT + chemisorption	> 99	45/Mg iron
Hot blast cupola	FF + pre-dedusting	> 99	23/Mg iron
	Disintegrator/venturi scrubber	> 97	

35. The iron foundry industry comprises a very wide range of process sites. For existing smaller installations, the measures listed may not be BAT if they are not economically viable.

Primary and secondary non-ferrous metal industry
(annex II, categories 5 and 6)

36. This section deals with emissions and emission control of Cd, Pb and Hg in the primary and secondary production of non-ferrous metals like lead, copper, zinc, tin and nickel. Due to the large number of different raw materials used and the various processes applied, nearly all kinds of heavy metals and heavy metal compounds might be emitted from this sector. Given the heavy metals of concern in this Annex, the production of copper, lead and zinc are particularly relevant.

37. Mercury ores and concentrates are initially processed by crushing, and sometimes screening. Ore beneficiation techniques are not used extensively, although flotation has been used at some facilities processing low-grade ore. The crushed ore is then heated in either retorts, at small operations, or furnaces, at large operations, to the temperatures at which mercuric sulphide sublimates. The resulting mercury vapour is condensed in a cooling system and collected as mercury metal. Soot from the condensers and settling tanks should be removed, treated with lime and returned to the retort or furnace.

38. For efficient recovery of mercury the following techniques can be used:

- measures to reduce dust generation during mining and stockpiling, including minimising the size of stockpiles,
- indirect heating of the furnace,
- keeping the ore as dry as possible,
- Bringing the gas temperature entering the condenser to only 10 to 20 °C above the dew point,
- keeping the outlet temperature as low as possible and
- passing reaction gases through a post-condensation scrubber and/or a selenium filter.

Dust formation can be kept down by indirect heating, separate processing of fine grain classes of ore, and control of ore water content. Dust should be removed from the hot reaction gas before it enters the mercury condensation unit with cyclones and/or electrostatic precipitators.

39. For gold production by amalgamation, similar strategies as for mercury can be applied. Gold is also produced using techniques other than amalgamation, and these are considered to be the preferred option for new plants.

40. Non-ferrous metals are mainly produced from sulphitic ores. For technical and product quality reasons, the off-gas must go through a thorough dedusting ($< 3 \text{ mg/m}^3$) and could also require additional mercury removal before being fed to an SO_3 contact plant, thereby also minimising heavy metal emissions.

41. Fabric filters should be used when appropriate. A dust content of less than 10 mg/m^3 can be obtained. The dust of all pyrometallurgical production should be recycled in-plant or off-site, while protecting occupational health.

42. For primary lead production, first experiences indicate that there are interesting new direct smelting reduction technologies without sintering of the concentrates. These processes are examples of a new generation of direct autogenous lead smelting technologies which pollute less and consume less energy.

43. Secondary lead is mainly produced from used car and truck batteries, which are dismantled before being charged to the smelting furnace. This BAT should include one melting operation in a short rotary furnace or shaft furnace. Oxy-fuel burners can reduce waste gas volume and flue dust production by 60 %. Cleaning the flue-gas with fabric filters makes it possible to achieve dust concentration levels of 5 mg/m^3 .

44. Primary zinc production is carried out by means of roast-leach electrowin technology. Pressure leaching may be an alternative to roasting and may be considered as a BAT for new plants depending on the concentrate characteristics. Emissions from pyrometallurgical zinc production in Imperial Smelting (IS) furnaces can be minimised by using a double bell furnace top and cleaning with high-efficiency scrubbers, efficient evacuation and cleaning of gases from slag and lead casting, and thorough cleaning ($< 10 \text{ mg/m}^3$) of the CO-rich furnace off-gases.

45. To recover zinc from oxidised residues these are processed in an IS furnace. Very low-grade residues and flue dust (e.g. from the steel industry) are first treated in rotary furnaces (Waelz-furnaces) in which a high-content zinc oxide is manufactured. Metallic materials are recycled through melting in either induction furnaces or furnaces with direct or indirect heating by natural gas or liquid fuels or in vertical New Jersey retorts, in which a large variety of oxidic and metallic secondary material can be recycled. Zinc can also be recovered from lead furnace slags by a slag fuming process.

46. In general, processes should be combined with an effective dust collecting device for both primary gases and fugitive emissions. The most relevant emission reduction measures are outlined in tables 7(a) and (b). Dust concentrations below 5 mg/m³ have been achieved in some cases using fabric filters.

Table 7(a): Emission sources, control measures, dust reduction efficiencies and costs for the primary non-ferrous metal industry

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs USD)
Fugitive emissions	Suction hoods, enclosure, etc. off-gas cleaning by FF	> 99	—
Roasting/sintering	Updraught sintering: ESP + scrubbers (prior to double contact sulphuric acid plant) + FF for tail gases	—	7-10/Mg H ₂ SO ₄
Conventional smelting (blast furnace reduction)	Shaft furnace: closed top/efficient evacuation of tap holes + FF, covered launders, double bell furnace top	—	—
Imperial smelting	High-efficiency scrubbing	> 95	—
	Venturi scrubbers	—	—
	Double bell furnace top	—	4/Mg metal produced
Pressure leaching	Application depends on leaching characteristics of concentrates	> 99	site-specific
Direct smelting reduction processes	Flash smelting, e.g. Kivcet, Outokumpu and Mitsubishi process	—	—
	Bath smelting, e.g. top blown rotary converter, Ausmelt, Isasmelt, QSL and Noranda processes	Ausmelt: Pb 77, Cd 97 QSL: Pb 92, Cd 93	QSL: operating costs 60/Mg Pb

Table 7(b): Emission sources, control measures, dust reduction efficiencies and costs for the secondary non-ferrous metal industry

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs, USD)
Lead production	Short rotary furnace: suction hoods for tap holes + FF; tube condenser, oxy-fuel burner	99,9	45/Mg Pb
Zinc production	Imperial Smelting	> 95	14/Mg Zn

Cement industry
(Annex II, category 7)

47. Cement kilns may use secondary fuels such as waste oil or waste tyres. Where waste is used, emission requirements for waste incineration processes may apply, and where hazardous waste is used, depending on the amount used in the plant, emission requirements for hazardous waste incineration processes may apply. However, this section refers to fossil fuel fired kilns.
48. Particulates are emitted at all stages of the cement production process, consisting of material handling, raw material preparation (crushers, dryers), clinker production and cement preparation. Heavy metals are brought into the cement kiln with the raw materials, fossil and waste fuels.
49. For clinker production the following kiln types are available: long wet rotary kiln, long dry rotary kiln, rotary kiln with cyclone preheater, rotary kiln with grate preheater, shaft furnace. In terms of energy demand and emission control opportunities, rotary kilns with cyclone preheaters are preferable.
50. For heat recovery purposes, rotary kiln off-gases are conducted through the preheating system and the mill dryers (where installed) before being dedusted. The collected dust is returned to the feed material.
51. Less than 0,5 % of lead and cadmium entering the kiln is released in exhaust gases. The high alkali content and the scrubbing action in the kiln favour metal retention in the clinker or kiln dust.
52. The emissions of heavy metals into the air can be reduced by, for instance, taking off a bleed stream and stockpiling the collected dust instead of returning it to the raw feed. However, in each case these considerations should be weighed against the consequences of releasing the heavy metals into the waste stockpile. Another possibility is the hot-meal bypass, where calcined hot-meal is in part discharged right in front of the kiln entrance and fed to the cement preparation plant. Alternatively, the dust can be added to the clinker. Another important measure is a very well controlled steady operation of the kiln in order to avoid emergency shut-offs of the electrostatic precipitators. These may be caused by excessive CO concentrations. It is important to avoid high peaks of heavy metal emissions in the event of such an emergency shut-off.
53. The most relevant emission reduction measures are outlined in Table 8. To reduce direct dust emissions from crushers, mills, and dryers, fabric filters are mainly used, whereas kiln and clinker cooler waste gases are controlled by electrostatic precipitators. With ESP, dust can be reduced to concentrations below 50 mg/m³. When FF are used, the clean gas dust content can be reduced to 10 mg/m³.

Table 8: Emission sources, control measures, reduction efficiencies and costs for the cement industry

Emission source	Control measure(s)	Reduction efficiency (%)	Abatement costs
Direct emissions from crushers, mills, dryers	FF	Cd, Pb: > 95	—
Direct emissions from rotary kilns, clinker coolers	ESP	Cd, Pb: > 95	—
Direct emissions from rotary kilns	Carbon adsorption	Hg: > 95	—

Glass industry
(Annex II, category 8)

54. In the glass industry, lead emissions are particularly relevant given the various types of glass in which lead is introduced as raw material (e.g. crystal glass, cathode ray tubes). In the case of soda-lime container glass, lead emissions depend on the quality of the recycled glass used in the process. The lead content in dusts from crystal glass melting is usually about 20 to 60 %.

55. Dust emissions stem mainly from batch mixing, furnaces, diffuse leakages from furnace openings, and finishing and blasting of glass products. They depend notably on the type of fuel used, the furnace type and the type of glass produced. Oxy-fuel burners can reduce waste gas volume and flue dust production by 60 %. The lead emissions from electrical heating are considerably lower than from oil/gas-firing.
56. The batch is melted in continuous tanks, day tanks or crucibles. During the melting cycle using discontinuous furnaces, the dust emission varies greatly. The dust emissions from crystal glass tanks (<5 kg/Mg melted glass) are higher than from other tanks (< 1 kg/Mg melted soda and potash glass).
57. Some measures to reduce direct metal-containing dust emissions are: pelleting the glass batch, changing the heating system from oil/gas-firing to electrical heating, charging a larger share of glass returns in the batch, and applying a better selection of raw materials (size distribution) and recycled glass (avoiding lead-containing fractions). Exhaust gases can be cleaned in fabric filters, reducing the emissions below 10 mg/m³. With electrostatic precipitators 30 mg/m³ is achieved. The corresponding emission reduction efficiencies are given in Table 9.
58. The development of crystal glass without lead compounds is in progress.

Table 9: Emission sources, control measures, dust reduction efficiencies and costs for the glass industry

Emission source	Control measure(s)	Dust reduction efficiency (%)	Abatement costs (total costs)
Direct emissions	FF	> 98	—
	ESP	> 90	—

Chlor-alkali industry (Annex II, category 9)

59. In the chlor-alkali industry, Cl₂, alkali hydroxides and hydrogen are produced through electrolysis of a salt solution. Commonly used in existing plants are the mercury process and the diaphragm process, both of which need the introduction of good practices to avoid environmental problems. The membrane process results in no direct mercury emissions. Moreover, it shows a lower electrolytic energy and higher heat demand for alkali hydroxide concentration (the global energy balance resulting in a slight advantage for membrane cell technology in the range of 10 to 15 %) and a more compact cell operation. It is, therefore, considered as the preferred option for new plants. Decision 90/3 of 14 June 1990 of the Commission for the Prevention of Marine Pollution from Land-based Sources (Parcom) recommends that existing mercury cell chlor-alkali plants should be phased out as soon as practicable with the objective of phasing them out completely by 2010.
60. The specific investment for replacing mercury cells by the membrane process is reported to be in the region of USD 700 to 1 000/Mg Cl₂ capacity. Although additional costs may result from, *inter alia*, higher utility costs and brine purification cost, the operating cost will in most cases decrease. This is due to savings mainly from lower energy consumption, and lower waste-water treatment and waste-disposal costs.
61. The sources of mercury emissions into the environment in the mercury process are: cell room ventilation; process exhausts; products, particularly hydrogen; and wastewater. With regard to emissions into air, Hg diffusely emitted from the cells to the cell room are particularly relevant. Preventive measures and control are of great importance and should be prioritised according to the relative importance of each source at a particular installation. In any case specific control measures are required when mercury is recovered from sludges resulting from the process.
62. The following measures can be taken to reduce emissions from existing mercury process plants:
- process control and technical measures to optimise cell operation, maintenance and more efficient working methods
 - coverings, sealings and controlled bleeding-off by suction
 - cleaning of cell rooms and measures that make it easier to keep them clean and
 - cleaning of limited gas streams (certain contaminated air streams and hydrogen gas).

63. These measures can cut mercury emissions to values well below 2,0 g/Mg of Cl_2 production capacity, expressed as an annual average. There are examples of plants that achieve emissions well below 1,0 g/Mg of Cl_2 production capacity. As a result of Parcom Decision 90/3, existing mercury-based chlor-alkali plants were required to meet the level of 2 g of Hg/Mg of Cl_2 by 31 December 1996 for emissions covered by the Convention for the Prevention of Marine Pollution from Land-based Sources. Since emissions depend to a large extent on good operating practices, the average should depend on and include maintenance periods of one year or less.

Municipal, medical and hazardous waste incineration
(Annex II, categories 10 and 11)

64. Emissions of cadmium, lead and mercury result from the incineration of municipal, medical and hazardous waste. Mercury, a substantial part of cadmium and minor parts of lead are volatilised in the process. Particular actions should be taken both before and after incineration to reduce these emissions.
65. The best available technology for dedusting is considered to be fabric filters in combination with dry or wet methods for controlling volatiles. Electrostatic precipitators in combination with wet systems can also be designed to reach low dust emissions, but they offer fewer opportunities than fabric filters especially with pre-coating for adsorption of volatile pollutants.
66. When BAT is used for cleaning the flue gases, the concentration of dust will be reduced to a range of 10 to 20 mg/m^3 , in practice lower concentrations are reached, and in some cases concentrations of less than 1 mg/m^3 have been reported. The concentration of mercury can be reduced to a range of 0,05 to 0,10 mg/m_3 (normalised to 11 % O_2).
67. The most relevant secondary emission reduction measures are outlined in Table 10. It is difficult to provide generally valid data because the relative costs in USD/tonne depend on a particularly wide range of site-specific variables, such as waste composition.
68. Heavy metals are found in all fractions of the municipal waste stream (e.g. products, paper, organic materials). Therefore, by reducing the quantity of municipal waste that is incinerated, heavy metal emissions can be reduced. This can be accomplished through various waste management strategies, including recycling programmes and the composting of organic materials. In addition, some UN/ECE countries allow municipal waste to be landfilled. In a properly managed landfill, emissions of cadmium and lead are eliminated and mercury emissions may be lower than with incineration. Research on emissions of mercury from landfills is taking place in several UN/ECE countries.

Table 10: Emission sources, control measures, reduction efficiencies and costs for municipal, medical and hazardous waste incineration

Emission source	Control measure(s)	Reduction efficiency (%)	Abatement costs (total costs USD)
Stack gases	High-efficiency scrubbers	Pb, Cd: > 98 Hg: ca. 50	—
	ESP (3 fields)	Pb, Cd: 80-90	10-20/Mg waste
	Wet ESP (1 field)	Pb, Cd: 95-99	—
	Fabric filters	Pb, Cd: 95-99	15-30/Mg waste
	Carbon injection + FF	Hg: > 85	operating costs: ca. 2-3/Mg waste
	Carbon bed filtration	Hg: > 99	operating costs: ca. 50/Mg waste

ANNEX IV

Timescales for the application of limit values and best available techniques to new and existing stationary sources

The timescales for the application of limit values and best available techniques are:

- (a) for new stationary sources: two years after the date of entry into force of the present Protocol
- (b) for existing stationary sources: eight years after the date of entry into force of the present Protocol. If necessary, this period may be extended for specific existing stationary sources in accordance with the amortisation period provided for by national legislation.

ANNEX V

Limit values for controlling emissions from major stationary sources**I. INTRODUCTION**

1. Two types of limit value are important for heavy metal emission control:
 - values for specific heavy metals or groups of heavy metals and
 - values for emissions of particulate matter in general.
2. In principle, limit values for particulate matter cannot replace specific limit values for cadmium, lead and mercury, because the quantity of metals associated with particulate emissions differs from one process to another. However, compliance with these limits contributes significantly to reducing heavy metal emissions in general. Moreover, monitoring particulate emissions is generally less expensive than monitoring individual species and continuous monitoring of individual heavy metals is in general not feasible. Therefore, particulate limit values are of great practical importance and are also laid down in this Annex in most cases to complement or replace specific limit values for cadmium or lead or mercury.
3. Limit values, expressed as mg/m^3 , refer to standard conditions (volume at 273,15 K, 101,3 kPa, dry gas) and are calculated as an average value of one-hour measurements, covering several hours of operation, as a rule 24 hours. Periods of start-up and shutdown should be excluded. The averaging time may be extended when required to achieve sufficiently precise monitoring results. With regard to the oxygen content of the waste gas, the values given for selected major stationary sources shall apply. Any dilution for the purpose of lowering concentrations of pollutants in waste gases is forbidden. Limit values for heavy metals include the solid, gaseous and vapour form of the metal and its compounds, expressed as the metal. Whenever limit values for total emissions are given, expressed as g/unit of production or capacity respectively, they refer to the sum of stack and fugitive emissions, calculated as an annual value.
4. In cases in which an exceeding of given limit values cannot be excluded, either emissions or a performance parameter that indicates whether a control device is being properly operated and maintained shall be monitored. Monitoring of either emissions or performance indicators should take place continuously if the emitted mass flow of particulates is above 10 kg/h. If emissions are monitored, the concentrations of air pollutants in gas-carrying ducts have to be measured in a representative fashion. If particulate matter is monitored discontinuously, the concentrations should be measured at regular intervals, taking at least three independent readings per check. Sampling and analysis of all pollutants as well as reference measurement methods to calibrate automated measurement systems shall be carried out according to the standards laid down by the Comité européen de normalisation (CEN) or the International Organisation for Standardization (ISO). While awaiting the development of the CEN or ISO standards, national standards shall apply. National standards can also be used if they provide equivalent results to CEN or ISO standards.
5. In the case of continuous monitoring, compliance with the limit values is achieved if none of the calculated average 24-hour emission concentrations exceed the limit value or if the 24-hour average of the monitored parameter does not exceed the correlated value of the parameter that was established during a performance test when the control device was being properly operated and maintained. In the case of discontinuous emission monitoring, compliance is achieved if the average reading per check does not exceed the value of the limit. Compliance with each of the limit values expressed as total emissions per unit of production or total annual emissions is achieved if the monitored value is not exceeded, as described above.

II. SPECIFIC LIMIT VALUES FOR SELECTED MAJOR STATIONARY SOURCES**Combustion of fossil fuels**
(Annex II, category 1)

6. Limit values refer to 6 % O_2 in flue gas for solid fuels and to 3 % O_2 for liquid fuels.
7. Limit value for particulate emissions for solid and liquid fuels: 50 mg/m^3 .

Sinter plants
(Annex II, category 2)

8. Limit value for particulate emissions: 50 mg/m^3 .

Pellet plants

(Annex II, category 2)

9. Limit value for particulate emissions:

- (a) grinding, drying: 25 mg/m³, and
- (b) pelletising: 25 mg/m³, or

10. Limit value for total particulate emissions: 40 g/Mg of pellets produced.

Blast furnaces

(Annex II, category 3)

11. Limit value for particulate emissions: 50 mg/m³.

Electric arc furnaces

(Annex II, category 3)

12. Limit value for particulate emissions: 20 mg/m³.

Production of copper and zinc, including Imperial Smelting furnaces

(Annex II, categories 5 and 6)

13. Limit value for particulate emissions: 20 mg/m³.

Production of lead

(Annex II, categories 5 and 6)

14. Limit value for particulate emissions: 10 mg/m³.

Cement industry

(Annex II, category 7)

15. Limit value for particulate emissions: 50 mg/m³.

Glass industry

(Annex II, category 8)

16. Limit values refer to different O₂ concentrations in flue gas depending on furnace type: tank furnaces: 8 %; pot furnaces and day tanks: 13 %.17. Limit value for lead emissions: 5 mg/m³.

Chlor-alkali industry

(Annex II, category 9)

18. Limit values refer to the total quantity of mercury released by a plant into the air, regardless of the emission source and expressed as an annual mean value.

19. Limit values for existing chlor-alkali plants shall be evaluated by the Parties meeting within the Executive Body no later than two years after the date of entry into force of the present Protocol.

20. Limit value for new chlor-alkali plants: 0,01 g Hg/Mg Cl₂ production capacity.

Municipal, medical and hazardous waste incineration

(Annex II, categories 10 and 11)

21. Limit values refer to 11 % O₂ concentration in flue gas.

22. Limit value for particulate emissions:

- (a) 10 mg/m³ for hazardous and medical waste incineration
- (b) 25 mg/m³ for municipal waste incineration.

23. Limit value for mercury emissions:

- (a) 0,05 mg/m³ for hazardous waste incineration
 - (b) 0,08 mg/m³ for municipal waste incineration
 - (c) limit values for mercury-containing emissions from medical waste incineration shall be evaluated by the Parties meeting within the Executive Body no later than two years after the date of entry into force of the present Protocol.
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ANNEX VI

Product control measures

1. Except as otherwise provided in this Annex, no later than six months after the date of entry into force of the present Protocol, the lead content of marketed petrol intended for on-road vehicles shall not exceed 0,013 g/l. Parties marketing unleaded petrol with a lead content lower than 0,013 g/l shall endeavour to maintain or lower that level.
2. Each Party shall endeavour to ensure that the change to fuels with a lead content as specified in paragraph 1 results in an overall reduction in the harmful effects on human health and the environment.
3. Where a State determines that limiting the lead content of marketed petrol in accordance with paragraph 1 would result in severe socioeconomic or technical problems for it, or would not lead to overall environmental or health benefits because of, *inter alia*, its climate, it may extend the time period given in that paragraph to a period of up to 10 years, during which it may market leaded petrol with a lead content not exceeding 0,15 g/l. In such a case, the State shall specify, in a declaration to be deposited together with its instrument of ratification, acceptance, approval or accession, that it intends to extend the time period and present to the Executive Body in writing information on the reasons for this.
4. A Party is permitted to market small quantities, up to 0,5 % of its total petrol sales, of leaded petrol with a lead content not exceeding 0,15 g/l to be used by old on-road vehicles.
5. Each Party shall, no later than five years, or 10 years for countries with economies in transition that state their intention to adopt a 10-year period in a declaration to be deposited with their instrument of ratification, acceptance, approval or accession, after the date of entry into force of this Protocol, achieve concentration levels which do not exceed:
 - (a) 0,05 % of mercury by weight in alkaline manganese batteries for prolonged use in extreme conditions (e.g. temperature below 0 °C or above 50 °C, exposed to shocks), and
 - (b) 0,025 % of mercury by weight in all other alkaline manganese batteries.

The above limits may be exceeded for a new application of a battery technology, or use of a battery in a new product, if reasonable safeguards are taken to ensure that the resulting battery or product without an easily removable battery will be disposed of in an environmentally sound manner. Alkaline manganese button cells and batteries composed of button cells shall also be exempted from this obligation.

ANNEX VII

Product management measures

1. This Annex aims to provide guidance to Parties on product management measures.
 2. The Parties may consider appropriate product management measures such as those listed below, where warranted as a result of the potential risk of adverse effects on human health or the environment from emissions of one or more of the heavy metals listed in Annex I, taking into account all relevant risks and benefits of such measures, with a view to ensuring that any changes to products result in an overall reduction of harmful effects on human health and the environment:
 - (a) the substitution of products containing one or more intentionally added heavy metals listed in Annex I, if a suitable alternative exists
 - (b) the minimisation or substitution in products of one or more intentionally added heavy metals listed in Annex I
 - (c) the provision of product information including labelling to ensure that users are informed of the content of one or more intentionally added heavy metals listed in Annex I and of the need for safe use and waste-handling
 - (d) the use of economic incentives or voluntary agreements to reduce or eliminate the content in products of the heavy metals listed in Annex I and
 - (e) the development and implementation of programmes for the collection, recycling or disposal of products containing one of the heavy metals in Annex I in an environmentally sound manner.
 3. Each product or product group listed below contains one or more of the heavy metals listed in Annex I and is the subject of regulatory or voluntary action by at least one Party to the Convention based for a significant part on the contribution of that product to emissions of one or more of the heavy metals in Annex I. However, sufficient information is not yet available to confirm that they are a significant source for all Parties, thereby warranting inclusion in Annex VI. Each Party is encouraged to consider available information and, where satisfied of the need to take precautionary measures, to apply product management measures such as those listed in paragraph 2 to one or more of the products listed below:
 - (a) mercury-containing electrical components, i.e. devices that contain one or several contacts/sensors for the transfer of electrical current such as relays, thermostats, level switches, pressure switches and other switches (actions taken include a ban on most mercury-containing electrical components; voluntary programmes to replace some mercury switches with electronic or special switches; voluntary recycling programmes for switches; and voluntary recycling programmes for thermostats)
 - (b) mercury-containing measuring devices such as thermometers, manometers, barometers, pressure gauges, pressure switches and pressure transmitters (actions taken include a ban on mercury-containing thermometers and ban on measuring instruments)
 - (c) mercury-containing fluorescent lamps (actions taken include reductions in mercury content per lamp through both voluntary and regulatory programmes and voluntary recycling programmes)
 - (d) mercury-containing dental amalgam (actions taken include voluntary measures and a ban with exemptions on the use of dental amalgams and voluntary programmes to promote capture of dental amalgam before release to water treatment plants from dental surgeries)
 - (e) mercury-containing pesticides including seed dressing (actions taken include bans on all mercury pesticides including seed treatments and a ban on mercury use as a disinfectant)
 - (f) mercury-containing paint (actions taken include bans on all such paints, bans on such paints for interior use and use on children's toys; and bans on use in antifouling paints) and
 - (g) mercury-containing batteries other than those covered in Annex VI (actions taken include reductions in mercury content through both voluntary and regulatory programmes and environmental charges and voluntary recycling programmes).
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COMMISSION

COMMISSION DECISION

of 14 May 2001

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

(notified under document number C(2001) 1428)

(2001/380/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) In accordance with Article 4(5) of Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period ⁽³⁾, a Programme for Agriculture and Rural Development was approved by Commission Decision C(2000)3058 final on 20 October 2000 for the Republic of Bulgaria.
- (2) The Government of the Republic of Bulgaria and the Commission, acting on behalf of the European Community, have signed on 18 December 2000 the Multiannual Financing Agreement laying down the technical, legal and administrative framework for the execution of the Sapard Programme.
- (3) Regulation (EC) No 1266/1999 provides that the *ex-ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 may be waived on the basis of a case-by-case analysis of national and sectorial

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

- (4) The Competent authority of the Republic of Bulgaria has appointed, on the one hand, the State Agriculture Fund for the implementation of measures 'Investments in agricultural holdings', 'Improving the processing and marketing of agricultural and fishery products' and 'Development and diversification of economic activities, provision for multiple activities and alternative income' as defined in the Programme for Agriculture and Rural Development that was approved by Decision C(2000)3058 final for the Republic of Bulgaria and, on the other, the Ministry of Finance, Directorate National Fund, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme.

- (5) Pursuant to Regulation (EC) No 1266/1999 and Regulation (EC) No 2222/2000, the Commission has analysed the national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance and has established that, for the implementation of the aforementioned measures, the Republic of Bulgaria complies with the provisions of Articles 4 to 6 and of the Annex to Regulation (EC) No 2222/2000, with the minimum conditions set out in the Annex to Regulation (EC) No 1266/1999. In particular, the State Agriculture Fund has implemented the following key accreditation criteria satisfactorily: written procedures, segregation of duties, pre-project and pre-payment checks, commitment and payment procedures, accounting procedures, computer systems security and internal audit; the Ministry of Finance, Directorate National Fund has implemented the following key accreditation criteria satisfactorily: audit trail, treasury management, receipt of funds, disbursement to the State Agriculture Fund, computer security and internal audit.

⁽¹⁾ OJ L 161, 26.6.1999, p. 68.

⁽²⁾ OJ L 253, 7.10.2000, p. 5.

⁽³⁾ OJ L 161, 26.6.1999, p. 87.

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

Article 2

Management of the Sapard Programme is conferred on a provisional basis to the State Agriculture Fund, 55 Hristo Botev Boulevard, 1040 Sofia, Bulgaria for the implementation of the measures 'Investments in agricultural holding', 'Improving the processing and marketing of agricultural and fishery products' and 'Development of and diversification of economic activities, provision for multiple activities and alternative income', as defined in the Programme for Agriculture and Rural Development that was approved by Decision C(2000)3058 final and to the Ministry of Finance, Directorate National Fund, 102 Radkovski Street, 1040 Sofia, Bulgaria, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Republic of Bulgaria. Upon a request of the Competent authority, the Commission may decide to extend the conferral of management to other measures identified in the Programme for Agriculture and Rural Development, once it establishes that there is compliance with the relevant conditions.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 14 May 2001.

Article 1

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

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION**of 16 May 2001****accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating in the People's Republic of China and Russia***(notified under document number C(2001) 1446)**(2001/381/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), as last amended by Regulation (EC) No 2238/2000 ⁽²⁾, and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 18 February 2000, the Commission announced by a notice published in the *Official Journal of the European Communities* ⁽³⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of certain aluminium foil originating in the People's Republic of China ('the PRC') and Russia.
- (2) Given the need to further examine certain aspects of dumping as well as the impact on the Community industry of the imports concerned, no provisional anti-dumping measures were imposed, additional information was requested and the investigation was continued.
- (3) The definitive findings and conclusions of the investigation are set out in Council Regulation (EC) No 950/2001 ⁽⁴⁾ imposing definitive anti-dumping duties on imports of certain aluminium foil originating in the PRC and Russia.

B. UNDERTAKING

- (4) The sole exporting producer in Russia and its related companies involved in the production, trade and importation into the Community of the product concerned offered an undertaking. According to this undertaking, these companies have offered to sell the product concerned to their unrelated customers in the Community at a minimum price.
- (5) The Commission considers that the undertaking offered by the Russian company, Joint Stock Company 'United Company Siberian Aluminium', Studencheskaya Street, 33/4, Moscow, Russia, and its related companies, namely the production company Sayan Foil, Sayanagorsk, Russia, the export sales company Rual Trade Limited, Suites 7B & 8B, 50 Town Range, Gibraltar and the importing company Sibirsky Aluminium GmbH, Graf-Adolf-Platz 1-2, D-40213, Düsseldorf, can be accepted since it eliminates the injurious effects of dumping. Moreover, the regular and detailed reports which these companies undertook to provide to the Commission and the structure of their sales of the product concerned will allow effective monitoring such that the Commission considers that the risk of circumvention of the undertaking will be limited.
- (6) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented to the relevant customs authority, exemption from the duty should be conditional upon presentation of a commercial invoice containing the information listed in the Annex to Regulation (EC) No 950/2001 which is necessary for customs to ascertain that shipments correspond to the commercial documents at the required level of detail. Where no such invoice is presented, or when it does not correspond to the product concerned presented to customs, the appropriate rate of anti-dumping duty should instead be payable.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.⁽²⁾ OJ L 257, 11.10.2000, p. 2.⁽³⁾ OJ C 45, 18.2.2000, p. 2.⁽⁴⁾ See page 1 of this Official Journal.

- (7) In the event of a suspected breach, breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The undertaking offered by Joint Stock Company 'United Company Siberian Aluminium', Studencheskaya Street, 33/4, Moscow, Russia, Sayan Foil, Sayanagorsk, Russia, Rual Trade Limited, Suites 7B & 8B, 50 Town Range, Gibraltar, and Sibirsky Aluminium GmbH, Graf-Adolf-Platz 1-2, D-40213, Düsseldorf, in the framework of the anti-dumping proceedings concerning imports of certain aluminium foil originating in the PRC and Russia is hereby accepted.

Article 2

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

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

Done at Brussels, 16 May 2001.

For the Commission

Pascal LAMY

Member of the Commission
