

Official Journal

of the European Communities

ISSN 0378-6978

L 87

Volume 45

4 April 2002

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 570/2002 of 18 February 2002 concerning the export of certain ECSC steel products from Poland to the Community for the period from 1 January to 31 December 2002 (extension of the double-checking system)** 1
- Commission Regulation (EC) No 571/2002 of 3 April 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables 2
- Commission Regulation (EC) No 572/2002 of 3 April 2002 providing for a further allocation of import rights under Regulation (EC) No 1081/1999 for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds 4
- ★ **Commission Regulation (EC) No 573/2002 of 3 April 2002 imposing a provisional countervailing duty on imports of sulphanilic acid originating in India** 5
- ★ **Commission Regulation (EC) No 574/2002 of 3 April 2002 amending Regulation (EC) No 416/2002 adopting exceptional support measures for the pigmeat market in Spain** 26
- ★ **Commission Regulation (EC) No 575/2002 of 3 March 2002 imposing a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and in India** 28
- Commission Regulation (EC) No 576/2002 of 3 April 2002 fixing, for March 2002, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector 45
- Commission Regulation (EC) No 577/2002 of 3 April 2002 on the issue of system B export licences in the fruit and vegetables sector 47

Court of Justice

Court of First Instance

★ Practice Directions	48
------------------------------------	----

II *Acts whose publication is not obligatory*

Council

2002/254/EC:

★ Decision No 2/2002 of the EU-Poland Association Council of 7 March 2002 extending the double-checking system established by Decision No 2/1999 of the Association Council for the period from 1 January to 31 December 2002	52
--	----

Commission

2002/255/EC:

★ Commission Decision of 25 March 2002 establishing the ecological criteria for the award of the Community eco-label to televisions ⁽¹⁾ (notified under document number C(2002) 1142)	53
---	----

2002/256/EC:

★ Commission Decision of 25 March 2002 rectifying Decision 2000/275/EC on equivalences between certain categories of driving licences ⁽¹⁾ (notified under document number C(2002) 1175)	57
---	----

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 570/2002**of 18 February 2002****concerning the export of certain ECSC steel products from Poland to the Community for the period from 1 January to 31 December 2002 (extension of the double-checking system)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part ⁽¹⁾, entered into force on 1 February 1994.
- (2) The Parties decided by Decision No 2/2002 ⁽²⁾ of the Association Council to extend the double-checking system introduced by Decision No 2/1999 ⁽³⁾ of the Association Council for the period from 1 January to 31 December 2002.
- (3) It is consequently necessary to extend the Community implementing legislation introduced by Council Regulation (EC) No 1093/1999 of 30 March 1999 establishing a double-checking system for exports of certain ECSC steel products from the Republic of Poland to the European Community for the period from 1 April to 31 December 2001 ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1093/1999 shall continue to apply for the period from 1 January to 31 December 2002, in accordance with the provisions of Decision No 2/2002 of the Association Council between the European Communities and their Member States, of the one part, and Poland, of the other part.

Article 2

Regulation (EC) No 1093/1999 shall in consequence be amended as follows:

In the title, preamble and Article 1(1) and (3), references to the period '1 January to 31 December 2001' shall be replaced by references to '1 January to 31 December 2002'.

Article 3

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

It shall apply with effect from 1 January 2002.

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

Done at Brussels, 18 February 2002.

For the Council

The President

J. PIQUÉ I CAMPS

⁽¹⁾ OJ L 348, 31.12.1993, p. 2.

⁽²⁾ See page 52 of this Official Journal.

⁽³⁾ OJ L 133, 28.5.1999, p. 44.

⁽⁴⁾ OJ L 133, 28.5.1999, p. 6. Regulation as last amended by Regulation (EC) No 335/2001 (OJ L 49, 20.2.2001, p. 1).

COMMISSION REGULATION (EC) No 571/2002
of 3 April 2002
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 4 April 2002.

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

Done at Brussels, 3 April 2002.

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 3 April 2002 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	196,5
	204	123,3
	212	133,5
	220	149,1
	624	230,6
	999	166,6
0707 00 05	052	136,4
	628	178,7
	999	157,6
0709 90 70	052	122,5
	204	32,0
	999	77,3
0805 10 10, 0805 10 30, 0805 10 50	052	68,8
	204	50,9
	212	46,9
	220	43,3
	624	67,2
	999	55,4
0805 50 10	052	45,3
	999	45,3
0808 10 20, 0808 10 50, 0808 10 90	039	109,2
	060	39,1
	204	97,4
	388	90,9
	400	136,4
	404	107,3
	508	83,6
	512	88,8
	528	81,7
	720	125,0
	804	113,9
	999	97,6
0808 20 50	388	93,3
	400	78,8
	512	75,8
	528	77,1
	999	81,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 572/2002**of 3 April 2002****providing for a further allocation of import rights under Regulation (EC) No 1081/1999 for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1081/1999 of 26 May 1999 opening and providing for the administration of tariff quotas for imports of bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds, repealing Regulation (EC) No 1012/98 and amending Regulation (EC) No 1143/98 ⁽¹⁾, as amended by Regulation (EC) No 1096/2001 ⁽²⁾, and in particular Article 9(3) thereof,

Whereas:

Article 1 of Regulation (EC) No 1081/1999 provides for the opening, for the period 1 July 2001 to 30 June 2002, of two tariff quotas each of 5 000 head for bulls, cows and heifers other than for slaughter of certain Alpine and mountain breeds.

Article 9 of that Regulation provides for a further allocation, for both quotas, of quantities not covered by import licence applications at 15 March 2002,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities referred to in Article 9(1) of Regulation (EC) No 1081/1999 shall be:

- 724 head for serial number 09.0001,
- 589 head for serial number 09.0003.

Article 2

This Regulation shall enter into force on 4 April 2002.

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

Done at Brussels, 3 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 131, 27.5.1999, p. 15.

⁽²⁾ OJ L 150, 6.6.2001, p. 33.

COMMISSION REGULATION (EC) No 573/2002**of 3 April 2002****imposing a provisional countervailing duty on imports of sulphanilic acid originating in India**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 6 July 2001, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Communities* ⁽²⁾, the initiation of an anti-subsidy proceeding concerning imports into the Community of sulphanilic acid originating in India.
- (2) The proceeding was initiated as a result of a complaint lodged in May 2001 by Sorochimie Chimie Fine, representing a major proportion, in the current case more than 65 %, of the Community production of sulphanilic acid. The complaint contained evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in the People's Republic of China and India was announced by a notice published in the *Official Journal of the European Communities* ⁽³⁾ on the same date.
- (4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 ('basic Regulation'), the Commission notified the Government of India ('GOI') that it had received a properly documented complaint alleging that subsidised imports of sulphanilic acid originating in India are causing material injury to the Community industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no

conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. However, due note was taken of the comments made by the GOI in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

- (5) The Commission officially advised the exporting producers and importers/traders known to be concerned, the representatives of the exporting country, users, suppliers and Community producers of sulphanilic acid of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (6) The GOI and the exporting producers, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (7) In view of the apparent large number of exporting producers of the product concerned in India, known from the complaint, the application of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation.
- (8) However, only a limited number of exporting producers made themselves known and provided the information requested in the notice of initiation. Therefore, the use of sampling techniques was not considered necessary.
- (9) The Commission sent questionnaires to all parties known to be concerned and to all other companies who made themselves known within the deadlines set in the notice of initiation. Replies were received from two Community producers, the GOI and one Indian exporting producer and its related importer in the Community. The Commission also received replies from seven users, one supplier and one distributor providing information which was sufficiently complete and representative to use in the assessment of Community interest. Several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ C 190, 6.7.2001, p. 5.

⁽³⁾ OJ C 190, 6.7.2001, p. 2.

- (10) The Commission sought and verified all information it deemed necessary for the purpose of a determination of subsidisation, injury and Community interest. Verification visits were carried out at the premises of the GOI and the following companies:

(a) *Community producers*

- Sorochimie Chimie Fine, Givet, France,
- Quimigal SA, Estarreja, Portugal;

(b) *Exporting producer in India*

- Kokan Synthetics and Chemical Private Ltd, Dapoli, Ratnagiri, Maharashtra;

(c) *Users*

- Bayer AG, Leverkusen, Germany.

- (11) The investigation of subsidisation and injury covered the period from 1 July 2000 to 30 June 2001 ('IP'). The examination of trends relevant for the assessment of injury covered the period from January 1997 to the end of the IP ('analysis period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (12) The product under consideration is sulphanilic acid. There are basically two grades of sulphanilic acid which are determined according to their purity: a technical grade and a purified grade. In addition, the purified grade is sometimes commercialised as a salt of sulphanilic acid. Technical and purified acid share the same basic chemical characteristics in terms of chemical formula ($C_6H_7NO_3S$) and molecular structure although they differ slightly in terms of purity (the range of purity may start from 96 % for the technical grade and from 99 % for the purified grade and for the acid content of its salt; the major impurities being residual aniline and alkali insoluble materials ranging from 2 % to less than 0,1 %). Technical and purified grades of sulphanilic acid are available as dry free flowing powders. The salt of purified sulphanilic acid is sold in powder or solution form according to customer requirements. Sulphanilic acid is used as raw material in the production of optical brighteners, concrete additives, food colorants and speciality dyes. Although there are different uses of sulphanilic acid, all grades and forms are perceived by users to be reasonably substitutable, are used interchangeably in most applications and should be, therefore, treated for the purpose of the present proceeding as one single product.

2. Like product

- (13) The product sold in the domestic market of India and the one exported to the Community from India as well as the product manufactured and sold in the Community by the Community producers were found to have basically the same chemical characteristics as well

as the same uses and are therefore considered as like products within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

1. Introduction

- (14) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following four schemes, which allegedly involve the granting of export subsidies, were investigated:

(i) Export Processing Zones/Export Oriented Units (EPZ/EOU);

(ii) Duty Entitlement Passbook Scheme (DEPB);

(iii) Export Promotion Capital Goods Scheme (EPCG);

(iv) Income Tax Exemption Scheme.

- (15) Moreover, two other schemes which were not initially alleged in the complaint, were discovered during the verification visit and appeared to have conferred countervailable benefits to the cooperating exporting producer. The schemes in question are the:

(v) Advance Licence — Advance Release Orders scheme;

(vi) Package Scheme of Incentives of the Government of Maharashtra.

On the basis of these findings the GOI was offered consultations which took place on 22 January 2002. Following these consultations, the Commission included these schemes in the investigation concerning subsidisation.

- (16) The schemes (i), (ii), (iii) specified in recital 14 and (v) of recital 15 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India ('GOI') to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One Export and Import Policy document is relevant to the investigation period of this case, i.e. the five-year plan relating to the period 1.4.1997 to 31.3.2002. In addition, the GOI also set out the procedures governing India's foreign trade in the 'Handbook of Procedures for Exports and Imports — 1.4.1997 — 31.3.2002' (Volume 1).

The Income Tax Exemption Scheme (iv) specified in recital 14, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act. Scheme (vi) mentioned in recital 15, is based on the Government of Maharashtra's Package of Incentives to new/expansion units set up in developing regions of the State which was first introduced in 1964.

- (17) It is to be noted that at least two companies are producing and exporting the product concerned. Only one of those companies, Kokan Synthetics & Chemicals Pvt. Ltd. cooperated with the Commission services in this proceeding. However, this company represents more than 80 % of imports of the product concerned from India.

2. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

(a) Legal basis

- (18) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export-related incentives. During the IP the scheme was regulated by Customs Notification No 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 9 of the 1997/2002 'Export and Import Policy' document, as well as the relevant Handbook of Procedures.

(b) Eligibility

- (19) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. The cooperating exporting producer has been granted the status of EOU for two of its three production units. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) Practical implementation

- (20) Companies requesting treatment as EOUs or located in an EPZ must apply to the relevant authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements and

indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement to be recognised as a company in an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

- (21) EPZ/EOU units are entitled to the following benefits:

- (i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith, provided they are not prohibited items in the Negative List of Imports;
- (ii) exemption from excise duty on goods procured from indigenous sources;
- (iii) exemption from income tax normally due on profits realised on export sales in accordance with Section 10A or 10B of the Income Tax Act, up to 2010;
- (iv) reimbursement of central sales tax paid on goods procured locally;
- (v) 100 % foreign equity ownership;
- (vi) facility to sell a part of production on the domestic market.

- (22) EOUs or companies located in an EPZ should maintain, in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of all exports made. These should be submitted periodically, as may be required, to the Development Commissioner.

- (23) They must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the Policy. The entire operations of an EOU/EPZ must take place in customs bonded premises.

(d) Conclusions on EPZ/EOU

- (24) In the present proceeding, the EPZ/EOU scheme was used for the import of raw materials and for the procurement of goods on the domestic market. The Commission found that only concessions related to the exemption from customs duties on raw materials, the

exemption from excise duty on goods procured from indigenous sources and the reimbursement of central sales tax paid on goods procured locally were used by the exporting producer. Therefore, the Commission only examined the countervailability of these concessions. In this regard, the exemption from customs duties on raw materials and the reimbursement of central sales tax involves the granting of subsidies as these concessions constitute financial contributions by the GOI, since government revenues otherwise due are forgone and a benefit is conferred on the recipient. In the case of the excise duty exemption, it was found that the duty paid on purchases by a non-EOU unit is credited as a drawback (CENVAT/MODVAT) and is utilised towards payment of excise duty on domestic sales. Thus, by exempting excise duty on purchases by an EOU unit, no additional government revenue is forgone and consequently no additional benefit accrues to the EOU.

- (25) This subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without the company accepting an export obligation, and it is therefore deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

Exemption from import duties on raw materials

- (26) During the verification visit, the nature and quantities of these imported materials were verified. The company was able, for all raw materials which were imported during the IP and were exempted from import duties, to demonstrate that they were used in the production of exported goods. Moreover, the company demonstrated that no imports in excess of imported quantities of inputs actually used in the exported products had taken place.
- (27) In view of the above, it was concluded that the exemption from import duties on raw materials was granted to the company concerned in accordance with the provisions of Annexes I to III of the basic Regulation since all the raw materials which were imported free of duty were incorporated into the exported product and no excess remissions of import duty have occurred.

Reimbursement of central sales tax paid on goods procured locally

- (28) The benefit was calculated on the basis of the amount of central sales tax refundable for purchases during the IP. The amount of subsidy has been allocated over total exports during the IP. The company obtained a benefit of 1,4 %.

3. Duty Entitlement Passbook Scheme (DEPB)

(a) *Legal basis*

- (29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.14 to 7.17 of the 'Export and Import Policy' document and paragraphs 7.32 to 7.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme (PBS) which was terminated on 31 March 1997. There are two types of the DEPB:

- DEPB on pre-export basis,
- DEPB on post-export basis.

DEPB on pre-export basis

- (30) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not applicable during the period of investigation. It was established that the company did not avail of any benefit under DEPB on pre-export scheme. Therefore, it is not necessary to establish the countervailability of this scheme.

DEPB on post-export basis

(b) *Eligibility*

- (31) The DEPB on post-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(c) *Practical implementation of DEPB post-export basis*

- (32) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the Standard Input-Output Norms (SION). A licence stating the amount of credit granted is issued automatically.
- (33) DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) except for those goods whose importation is restricted or prohibited. Goods which are imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

- (34) DEPB licences are freely transferable and, as a consequence, are frequently sold. A DEPB licence is valid for a period of 12 months from the date on which it is granted. The company has to pay a fee equivalent to 0,5 % of the DEPB credit received to the relevant authority.

(d) *Conclusions on DEPB on post-export basis*

- (35) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods) or can just be sold.
- (36) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can apply for a licence irrespective of whether it makes any imports or purchases imported goods from other sources.
- (37) DEPB on post-export basis is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. It appears therefore that an excess remission is involved, in accordance with the meaning in Article 2(1)(a)(ii) of the basic Regulation. In fact, the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product.
- (38) In this case, the company concerned did not use the licences to import duty-free goods but obtained benefits by selling the licences.

- (39) On the basis of the above, the scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the DEPB holder who can import goods duty free using credits earned on exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount for DEPB post-export basis*

- (40) The benefit for the company was calculated on the basis of the amount of credit granted in the licence regardless of the sales price of the licence, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit received from the scheme.

The amount of subsidy has been allocated over total exports during the IP. The company obtained a subsidy of 1,7 %. In calculating the benefit, the necessary fees incurred to obtain the subsidy were deducted.

4. Export Promotion Capital Goods Scheme (EPCGS)

(a) *Legal basis*

- (41) The EPCG scheme was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notifications No 28/1997, 29/1997 and 49/2000. Details of the schemes are contained in Chapter 6 of the 1997/2002 'Export and Import Policy' documents, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

- (42) The EPCGS is available to manufacturers/exporters (i.e. every manufacturer in India who exports) or merchants/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchants/exporters can also avail themselves of the scheme.

(c) *Findings*

- (43) It was established that the cooperating exporting producer of the product concerned did not avail itself of this scheme. Therefore, this scheme was not considered further in the context of this investigation.

5. Income Tax Exemption Scheme (ITES)

(a) *Legal basis*

- (44) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as the various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

- (45) Exemption under Section 10A can be claimed by firms located in Free Trade Zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(c) Practical implementation

(46) To benefit from the abovementioned tax deductions/exemptions, a company must make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years following the submission of the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(47) Under Sections 10A, 10B and 80HHC companies can claim exemption from taxable income for profits realised on export sales.

(d) Conclusion on ITES

(48) Item (e) of the Illustrative List of export subsidies (Annex I to the basic Regulation) refers to the 'full or partial exemption ... related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.

(49) The subsidy is contingent in law upon export performance in the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

(e) Calculation of the subsidy amount

(50) Claims for benefit under sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it was considered appropriate to calculate the benefit under this scheme on the basis of the tax year 2000/2001 (i.e. 1 April 2000 to 31 March 2001) which covers 9 months of the IP. The benefit to the exporter has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. The rate of corporate tax applicable during this tax year was 39,55 %. The amount of subsidy has been allocated over total exports during the tax year 2000/2001.

(51) During the tax year 2000/2001 the company benefited under Section 80HHC of this scheme and obtained a benefit of 0,3 %.

6. Advance Licence — Advance Release Orders Scheme*(a) Legal basis*

(52) The scheme is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The scheme is specified in paragraphs 7.2 to 7.17 of the Export and Import Policy and paragraphs 7.2 to 7.32 and 7.54 of the Handbook of Procedures.

(b) Eligibility

(53) Advance licences are available to exporters (manufacturer-exporters or merchant-exporters) to enable them to import inputs used in the production of exports, duty-free.

(c) Practical implementation

(54) The amount of imports allowed under this scheme, is determined as a percentage of the amount of exported finished products. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the SION. The input items specified in the advance licences are items used in the production of the relevant exported finished product.

(55) The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against Advance Release Orders (ARO). In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the supplier to the benefits of deemed export such as deemed exports drawback and refund of terminal excise duty.

(d) Conclusions on the scheme

(56) The scheme is clearly contingent upon export performance. Only exporting companies are granted licences which can be used to offset amounts of customs duties due on imports or otherwise purchases of inputs on the basis of anticipated exportation.

(57) During the verification, it was established that the AROs were used during the IP for purchases of inputs that were not consumed in the production of sulphanilic acid (the relevant product for which they were issued). Instead, these inputs were sold on the domestic market.

- (58) Furthermore, it was established that there was no system or procedure in place to confirm whether and which inputs, sourced against AROs, are consumed in the production process of the exported product or whether an excess benefit of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation.
- (59) On the basis of these findings, the ARO element of the Advance Licence scheme is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the inputs sourced against AROs in the production process. Since the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product, the condition that only goods actually consumed in the production process of the exported product may benefit from such remission, is not fulfilled.
- (60) In this case, the cooperating company made very limited use of advance licences to import duty-free inputs. Instead, the company converted the licences into AROs and endorsed them to local suppliers obtaining commercial benefits. The commercial benefits of the AROs correspond to the amount of duties they enable the supplier to forgo under the deemed export drawback facility.
- (61) The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the ARO holder who can import goods duty free. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

- (62) The amount of subsidy was calculated on the basis of the import duties applicable to the inputs sourced, during the IP, against the AROs. This amount was then allocated over total exports during the IP. The company obtained a subsidy of 3,2 %.

7. Package Scheme of Incentives of the Government of Maharashtra

(a) *Legal basis*

- (63) In order to encourage the dispersal of industries to the less developed areas of the State, the Government of Maharashtra has been granting incentives to new-expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package

Scheme of Incentives'. The scheme has been amended several times since its introduction and the '1993 Scheme' was operative from 1 October 1993 to 31 March 2001 whereas the latest amended, the '2001 Scheme', was introduced on 31 March 2001 and will be operative up to 31 March 2006. The main component of the successive Package Schemes of Incentives (up to 31 March 2001) has been the granting of sales tax benefits to industries in developing and backward regions of the State.

(b) *Eligibility*

- (64) In order to be eligible, companies must invest in less developed areas either by setting up a new industrial establishment or by making a large scale capital investment in expansion or diversification of an existing industrial establishment. These areas, are classified according to their economic development into different categories (e.g. less developed area, lesser developed area, least developed area). The main criterion to establish the amount of incentives is the area in which the enterprise is or will be located and the size of investment.

(c) *Green-light test*

- (65) The GOI claimed that this scheme is a non-countervailable subsidy since it meets the criteria of Article 4(3) of the basic Regulation, and thus qualifies as a green-light regional subsidy granted within the State of Maharashtra.
- (66) Under this Article, in order not to be subject to countervailing measures, subsidies to disadvantaged regions within the territory of the country of origin and/or export would have to comply with certain criteria; most notably, they would have to be: (i) pursuant to a general framework of regional development, (ii) the regions concerned would have to be clearly designated contiguous geographical areas with a definable economic and administrative identity, and (iii) be regarded as disadvantaged on the basis of neutral and objective criteria which must be clearly spelled out by law or other official document. These criteria shall include a measurement of economic development which shall be based on at least one of the following factors: income per capita, or household income per capita, or GDP per capita (in each case, not above 85 % of the average for the territory of the country concerned), or unemployment rate as measured over a three-year period (at least 110 % of the average for the country concerned).

(67) It should be noted that the Indian authorities did not provide any meaningful information concerning the neutral and objective criteria used to determine the disadvantaged areas within the State in question. In the absence of such information, the Commission was obliged to make use of facts available and conclude that the green-light claim made by the GOI in respect to this regional scheme is not sufficiently supported. It was therefore provisionally concluded that this scheme does not meet the criteria of Article 4(3) of the basic Regulation.

(d) *Conclusions on the scheme*

(68) The scheme is only available to companies having invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. It is not available to companies located outside these areas. The level of the benefit is different according to the area concerned. The scheme is therefore specific in accordance with Article 3(2)(a) and Article 3(3) of the basic Regulation.

(69) Goods are normally subject to central sales tax (for inter-state sales) or state sales tax (for sales within the state) at varying levels depending upon the state/states in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates.

(70) According to the scheme, designated units are either exempted or can defer the payment of state sales tax on domestic transactions. Payment may be deferred up to a specified monetary limit or for a specified period, depending on which is reached earlier. Under the exemption scheme the unit was not required to collect and pay any sales tax, whereas under the deferral scheme the sales tax was collected and its payment was due after a period of 12 years from the day of collection and not on the regular monthly due dates.

(71) All three units of the investigated company were located in developing regions as notified under the 1993 Package Scheme of Incentives of the Government of Maharashtra. Under the scheme, the company was exempted from the sales tax for its domestic purchases and was allowed to defer the payment of State sales taxes collected on its domestic sales for a period of 12 years from the year of collection.

(e) *Calculation of the subsidy amount*

(72) The benefit to the exporting producer, under the sales tax exemption incentive, has been calculated on the basis of sales tax normally due during the IP, but which was forgone by the Government of Maharashtra. The amount of benefit was allocated over the total sales during the IP.

(73) The deferred amount of States sales taxes, under the deferral incentive, is considered equivalent to an interest-free loan of the same amount granted by the Government of Maharashtra. Thus, the benefit to the exporting producer has been calculated on the basis of the interest payable on a comparable commercial loan during the IP. The amount of benefit was allocated over the total domestic sales during the IP.

(74) On the basis of the above, the amount of subsidy that the company has obtained under this scheme is 2,6 %.

8. Amount of countervailable subsidies

(75) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is 9,2 %.

(76) The level of cooperation for India appeared to be high (above 80 %). In view of the high level of cooperation, it was decided to set the residual subsidy margin at the level of the subsidy found for the cooperating exporting producer, i.e. 9,2 %.

Type of subsidy	EOU	DEPB	EPCGS	ITES	Advance Licence /ARO	Maharashtra State scheme	TOTAL
		Post-export					
Kokan Synthetics and Chemicals Private Limited	1,4 %	1,7 %	0	0,3 %	3,2 %	2,6 %	9,2 %
All others							9,2 %

D. COMMUNITY INDUSTRY

- (77) Sulphanilic acid is manufactured in the Community by two companies: the complainant, Sorochimie Chimie Fine ('Sorochimie') and Quimigal S.A. ('Quimigal'). It should be noted that Sorochimie manufactured sulphanilic acid throughout the analysis period. Quimigal, however, only began to produce and sell sulphanilic acid in 1999. There were several other Community producers of sulphanilic acid active on the market at the start of the analysis period. However, all these other producers subsequently ceased production during the period either to focus on their other activities or to source sulphanilic acid from external sources. They have therefore not been taken into account when determining 'Community production.' It should be borne in mind that these important developments on the Community market allowed both Sorochimie and Quimigal to increase their production and sales.
- (78) Although Quimigal is not a party to the complaint, it has expressed its support for the proceeding and fully cooperated in the investigation. It is therefore considered that Quimigal and Sorochimie fulfil the requirements of Article 10(8) of the basic Regulation, since they accounted for 100 % of the Community production of sulphanilic acid on the date the proceeding was initiated. They are therefore provisionally deemed to constitute the 'Community industry' within the meaning of Article 9(1) of the same Regulation and will hereinafter be referred to as such.

E. INJURY

1. Community consumption

- (79) Apparent consumption of sulphanilic acid in the Community was established on the basis of:
- imports of the product concerned into the Community as established according to recital 81,
 - the total verified sales of the Community industry on the Community market,
 - the verified responses of former Community producers of the product concerned which co-operated in the investigation and
 - evidence contained in the complaint for other former producers which did not cooperate.
- (80) Community consumption of sulphanilic acid in the IP was approximately 11 000 tonnes. This figure is some 13 % higher than at the start of the analysis period. After two years of relative stability in 1997 and 1998, there was a slight decline in consumption in 1999 before a clear upturn in 2000 and the IP.

2. Imports into the Community from India

2.1. Import data

- (81) The CN heading, under which the product under investigation is currently classified covers a variety of other products. The Commission therefore made use of the best facts available and established figures for both the volumes and prices of imports of sulphanilic acid on the following basis. Data for imports from India were established on the basis of the reply of the cooperating exporting producer to the Commission's questionnaire. The volumes of imports from the People's Republic of China ('PRC') and the United States of America ('USA') were taken from information contained in the complaint given the low level of cooperation from producers in the PRC and the fact that the sole exporting producer in the USA gave an estimate in confidence of its exports to the Community for the analysis period. The prices of these imports were predominantly derived from Eurostat data with the response of the cooperating Chinese producer to the Commission's questionnaire also being taken into account for the IP only. Information concerning the volume and prices of imports originating in Hungary and Japan was derived by comparing Eurostat data to responses of users to the Commission's questionnaires. The investigation also established that the major part of imports originating in India was produced by the sole cooperating exporting producer. It has therefore been necessary to present data relating to such imports in an indexed form in order to protect the confidential nature of this information. With the exception of the countries noted above, the investigation established that there were no imports from other third countries during the analysis period.

3. Volume and prices of the imports concerned

- (82) The volume of the imports concerned almost doubled during the analysis period to reach a figure of more than 1 700 tonnes in the IP. Their market share grew by approximately 50 % over the same period to represent a figure of approximately 15 % of Community consumption.
- (83) The average price of the imports concerned increased by 7 % during the analysis period. They reached their lowest level in 1999.

	1997	1998	1999	2000	IP
Imports tonnes (indexed)	100	149	119	118	192
Market share (indexed)	100	143	124	113	171
Average cif price ECU/EUR per tonne (indexed)	100	92	88	91	107

3.1. Price undercutting

- (84) For the purposes of analysing price undercutting, the weighted average sales prices per grade of the Community industry to unrelated customers on the Community market were compared to the corresponding weighted average export prices of the imports concerned. The comparison was made after the deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a cif basis with an appropriate adjustment for customs duties and post importation costs.
- (85) In view of the high level of cooperation received from the exporting producer in India, the level of price undercutting for India as a whole has been established on the basis of this company's data. The level of price undercutting for Imports originating in India is therefore 13 %. It should be noted the imports concerned exerted a price depressive and suppressive effect on the prices of the Community industry which suffered losses throughout the analysis period.

4. Situation of the Community industry

4.1. Preliminary remarks

- (86) In order to respect confidential business information, it has been necessary to present information concerning the two companies forming the Community industry in an indexed form. In addition, as the second member of the Community industry began production only in 1999, i.e. midway through the analysis period, it has been decided to present its data separately from that of Sorochimie so as to allow a more meaningful analysis of trends. As a result, two indices, both starting at 100, are presented for each indicator with 1997 as the base year for Sorochimie and 1999 as the base year for Quimigal (except in the case of investments which started to be made earlier).
- (87) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry.

4.2. Production, production capacity and capacity utilisation

- (88) The Community industry's level of production in the IP was more than double the level recorded at the start of the analysis period. This reflected an increase of 51 % in Sorochimie's production over the analysis period and the entry of Quimigal onto the market in 1999. The Community industry's production capacity also increased over the analysis period but to a lesser degree than its actual production. The combination of these two factors led to an overall increase in the capacity utilisation rate of the Community industry during the period. Quimigal's capacity utilisation rate increased sharply as it came out of its start-up phase. Both companies achieved a satisfactory level of utilisation of their capacity in the IP.

Indexed		1997	1998	1999	2000	IP
Production (tonnes)	Sorochimie	100	126	125	142	151
	Quimigal	0	0	100	288	348
Capacity (tonnes)	Sorochimie	100	115	115	115	115
	Quimigal	0	0	100	133	133
Increase in capacity utilisation (%)	Sorochimie	100	110	109	124	132
	Quimigal	0	0	100	216	261

4.3. Stocks

- (89) Sorochimie's year-end stock levels were higher in absolute terms at the end of the IP than in 1997. However, when expressed as a percentage of production they decreased over the period (from 15 % to 11 %). Quimigal's stock levels decreased after its entry onto the market so that its stocks represented approximately 5 % of production in the IP. The Community industry's year-end stock levels are not considered to be abnormal for such an industry.

Indexed		1997	1998	1999	2000	IP
Stocks (tonnes)	Sorochimie	100	94	76	69	108
	Quimigal	0	0	100	73	59

4.4. Sales volume, market share and growth

- (90) The sales of the Community industry in the IP were more than 75 % higher than recorded in 1997. It should be borne in mind that part of the increase is due to the appearance of Quimigal on the market in 1999. Considered in isolation, Sorochimie increased its sales on the Community market by nearly 40 % during the analysis period.

- (91) The Community industry increased its share of the Community market by nearly 50 % during the analysis period. The highest market share was recorded in 2000. However, some market share was lost to the subsidised imports in the IP as their volume grew at a faster rate than the overall market. Most of the Community industry's increase in market share resulted from the effect of Quimigal's production coming on stream. However, Sorochimie was also able to increase its market share during the analysis period because a number of other producers in the Community withdrew from the market. Both companies, therefore, were able to experience a more rapid growth than consumption. This, however, was done by pushing capacity utilisation to high levels and developing sales of salts as the presence of subsidised imports prevented them from fully benefiting from the restructuring of the Community production of sulphanilic acid and implementing their planned capacity expansion (see recital 96).

Indexed		1997	1998	1999	2000	IP
Sales (tonnes)	Sorochimie	100	93	96	135	138
	Quimigal	0	0	100	243	238
Market share (%)	Sorochimie	100	92	103	132	126
	Quimigal	0	0	100	222	202

4.5. Sales prices and costs

- (92) Sorochimie's average selling price decreased by 9 % over the analysis period. There was a sharp decline between 1997 and 1998 before prices began to rise again, albeit very slowly. The development between 1997 and 1998 reflects both a slight fall in the price of aniline (the most important raw material in price terms) as well as the price pressure exerted on the Community market by the subsidised imports which increased by over 50 % in volume at this time. Sorochimie's average selling price increased marginally from 1999 onwards as the company was able to take advantage of both an increase in Community consumption and the exit of certain producers from the market. However, this increase was at a lower rate than the increase in the price of aniline, which is the most significant raw material for the production of sulphanilic acid in cost terms. In this way, the level of undercutting established for the imports concerned in the IP demonstrates the price depressing effect they had on the level of Sorochimie's own prices as it was unable to recover the full amount of the increase in its main raw material. Quimigal's average selling price increased at a faster rate than Sorochimie's but it should be borne in mind that the company had to start from a relatively low selling price in 1999 with relatively low sales volume as it attempted to establish itself in the market. In spite of its rising sales price, it was nonetheless unable to cover its full costs of production and remained loss making in the IP.

Indexed		1997	1998	1999	2000	IP
Average sales price (ECU/EUR per tonne)	Sorochimie	100	85	86	87	91
	Quimigal	0	0	100	103	119

4.6. Profitability

- (93) The Community industry was loss making throughout the analysis period, with the most important losses recorded in 2000. It is to be recalled that the imports concerned have been present on the Community market in significant volumes and at low prices since the beginning of the analysis period as demonstrated by their market share of approximately 10 % in 1997 and their prices some 13 % below those of the Community industry in the IP. Sorochimie's losses on net sales to unrelated customers in the Community during the IP, when expressed as a percentage of the same sales, were in single digits whilst Quimigal's losses were in double digits. Quimigal's net return on sales include a recalculation of their depreciation on a straight line over a period of 10 years in order not to take into account exceptional start-up costs in the form of accelerated amortisation. Furthermore, as capacity utilisation was fairly high in the IP, no impact of low start-up volumes on unit costs is included in the data examined.
- (94) It is clear that the viability of the Community industry depends on it being able to achieve higher selling prices for its production and thereby put an end to its prolonged loss making period.

4.7. Investments and ability to raise capital

- (95) The table below indicates that the Community industry continued to make investments in its sulphanilic acid activities throughout the analysis period. In the case of Sorochimie, these investments were primarily related to the maintenance of existing capital assets. It should be noted that Quimigal made substantial investments in advance of its start-up in 1999. This company made the decision to enter the sulphanilic acid market several years earlier when prices on the Community market were higher.
- (96) Sorochimie's ability to raise capital has been affected by the subsidised imports as investment plans to increase capacity have been deferred since the necessary expenditure could not be justified in the current environment of insufficient returns on sulphanilic acid activities. Quimigal had also to delay its expansion plans because of the current market situation.

Indexed		1997	1998	1999	2000	IP
Investments (ECU / EUR)	Sorochimie	100	39	92	91	81
	Quimigal	100	826	291	100	99

4.8. Return on investments and cash flow

- (97) As the Community industry has been loss making throughout the analysis period, the figure for the return on investments, which expresses the after tax result as a percentage of the average opening and closing net book value of assets employed in the production of sulphanilic acid, has also remained negative.
- (98) Sorochimie was cash generative throughout the analysis period, although only marginally so in 1998, 1999 and 2000. Quimigal was cash generative in the year it commenced sales (1999) but then cash flow became negative in 2000 and the IP.

4.9. Employment, productivity and wages

- (99) The following table shows the development in the number of workers employed in the sulphanilic activities of both companies forming the Community industry and the average total employment cost per employee. The figure for productivity is calculated on the basis of tonnes produced per employee.
- (100) For the Community industry as a whole, employee numbers were the same in the IP as at the beginning of the analysis period. However, it should be noted that the two companies experienced divergent trends in that Sorochimie lost a number of jobs incidentally equal to that created by Quimigal when it came onto the market.

- (101) The Community industry considerably improved its productivity during the analysis period. This occurred as Quimigal reached its planned level of production in the IP and efforts were made overall to improve competitiveness.

Indexed		1997	1998	1999	2000	IP
Employees (number)	Sorochimie	100	96	89	86	86
	Quimigal	0	100	100	133	133
Average employment cost per employee (ECU / EUR per person)	Sorochimie	100	121	133	134	132
	Quimigal	0	100	278	208	208
Productivity (tonnes per person)	Sorochimie	100	131	140	166	177
	Quimigal	0	0	100	216	261

4.10. Magnitude of subsidisation

direct consequence of this situation, it was prevented from implementing its expansion plans.

- (102) Given the volume and the price of the subsidised imports, the impact of the actual margin of subsidy, which is significant, cannot be considered negligible.

- (107) On the basis of the foregoing, it is provisionally concluded that the Community industry has suffered material injury, characterised by price depression and suppression, a prolonged period of losses, insufficient returns on investment and the deferment of expansion plans, within the meaning of Article 8 of the basic Regulation.

4.11. Conclusion on injury

- (103) During the analysis period, the volume of imports from India increased by more than 90 %. Their market share increased by 50 % to reach a level of more than 15 % in the IP. They experienced a rapid growth in market share between 1997 and 1998. It was also at this time that Sorochimie suffered the sharpest drop in its average sales prices as it was forced to compete aggressively against the subsidised imports in an effort to maintain its position on the market.

- (104) Although Sorochimie was later able to raise its selling prices and also increase its sales volumes as other operators were forced out of the market, it remained loss making due to the low price levels prevailing on the market. This was in spite of the efforts made to improve efficiency as demonstrated by its increased productivity.

- (105) Quimigal was never able to cover its costs although the extent of its losses reduced somewhat due to an increase, albeit an insufficient one, in its selling price.

- (106) It is thus clear that the volume and prices of the subsidised imports prevented the Community industry from generating an adequate return on its sulphanilic acid activities. This is demonstrated by the fact that it suffered losses throughout the analysis period. As a

F. CAUSATION OF INJURY

1. Introduction

- (108) In accordance with Article 8(7) of the basic Regulation, the Commission examined whether the subsidised imports originating in India have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised 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 subsidised imports.

2. Effect of the subsidised imports

- (109) The volume of the subsidised imports increased by more than 90 % during the analysis period. They enjoyed a particularly rapid rate of growth between 1997 and 1998 when their prices decreased by 8 %. This increase was to cause a rapid drop in Sorochimie's selling price

as it tried to maintain its market share. Subsequently, the low price level of the subsidised imports and their increasing presence on the Community market had a price suppressing effect on the prices of the Community industry in that it was unable to reflect the full increase in its own cost of production in its selling price. Finally the Community industry could not increase its production capacity as should have been the case given the withdrawal of other Community producers from the market and the increase in demand observed over the analysis period as a whole.

3. Effects of other factors

3.1. Dumped imports originating in the PRC

- (110) In the parallel anti-dumping investigation, it was provisionally established that dumped imports originating in the PRC caused material injury to the Community industry.
- (111) Dumped imports originating in the PRC are therefore provisionally considered as having contributed to the injury suffered by the Community industry.

3.2. Imports originating in third countries other than India and the PRC

- (112) With the exception of 1999 when Community consumption fell to its lowest point in the analysis period, the volume of imports originating in other third countries remained relatively stable at approximately 2 000 tonnes. Overall, they therefore lost market share from approximately 21 % in 1997 to 18 % in the IP. On the basis of the facts available, only imports from the USA and Hungary were at levels above 1 % of Community consumption in the IP. It should be noted that the sole producer of sulphanilic acid in Japan ceased manufacturing the product during the analysis period. Imports from this country in the IP were not significant (less than 100 tonnes). Imports from Japan have therefore not been further considered in this investigation.
- (113) Imports originating in the USA increased significantly to reach a market share of around 10 % in the IP. This came about following the relocation of some production activities that had previously taken place in the Community. The prices of imports originating in the USA were significantly higher than those of the Community industry.
- (114) Imports originating in Hungary decreased by nearly half during the analysis period. Their average selling price was significantly higher than that of the subsidised imports and broadly similar to that of the Community industry.

- (115) On the basis of the above, it is provisionally concluded that imports originating in other third countries and in particular the USA and Hungary did not contribute to the material injury suffered by the Community industry.

3.3. Changes in the pattern of consumption

- (116) The apparent consumption of sulphanilic acid in the Community increased during the analysis period from approximately 10 000 tonnes in 1997 to around 11 000 tonnes in the IP. The Community industry was able to increase its market share over the same period as other Community producers left the market. The development of consumption did not, therefore, contribute to the injury suffered by the Community industry.

3.4. The export performance of the Community industry

- (117) Sorochimie's exports as percentage of total sales in the IP was similar to that recorded at the start of the analysis period at approximately one third. There was an increase in 1998 and 1999 due to certain one-off contracts. The level of Quimigal's exports expressed by the same measure was higher in the IP at approximately one half of total sales. The Community industry's price level for exports during the IP was similar to that experienced for sales on the Community market. It has therefore been provisionally concluded that the export performance of the Community industry did not contribute to the injury it suffered.

3.5. The entry of Quimigal onto the Community market

- (118) It is recalled that Quimigal, the second company forming part of the Community industry, began producing and selling sulphanilic acid in 1999 as a result of an earlier decision taken at a time when prices on the Community market for sulphanilic acid were higher. It has been alleged that at least part of the injury suffered by the Community industry should be attributed to Quimigal and not to the imports concerned in that Quimigal had relatively low sales prices and high unit costs in its first years of operation. This claim had to be rejected since it is the presence of the very low priced dumped imports, that forced the company to offer its production at fairly similar prices in order to gain market share in a reasonable length of time. Prices of Quimigal were afterwards able to slightly increase.
- (119) Furthermore, in order to ensure that the injury suffered by the Community industry was not incorrectly attributed to the dumped imports, the impact of any exceptional start-up costs from Quimigal's operating results were removed as explained at section 4.6 on profitability.

- (120) In view of the above, it is provisionally concluded that the entry of Quimigal onto the market did not contribute to the material injury suffered by the Community industry.

4. Conclusion on causation

- (121) The investigation has shown that the arrival of subsidised imports from India in large quantities on the Community market caused severe price depression of the Community industry's average selling prices. The Community industry was forced to considerably lower its prices in order to maintain its share of the market and ensure a satisfactory capacity utilisation. The fact that it was able to increase its market share can be attributed to the exit of a number of other Community producers from the sulphanilic acid market. Although the Community industry was able to raise its prices from 1998 onwards, these increases were not sufficient to return it to profitability as the dumped and subsidised imports had a price suppressing effect. Over the same period, the volume of subsidised imports from India continued to increase.
- (122) Notwithstanding the fact that imports from the PRC contributed to the material injury suffered by the Community industry in that their increasing presence on the Community market and low prices exerted a price suppressing effect, it is provisionally considered that the imports from India, considered in isolation, caused material injury to the Community industry. During the analysis period, imports from India increased significantly both in terms of volume and market share. It is also recalled that the average price of such imports in the IP was 13 % below that of the Community industry. It is therefore provisionally concluded that imports originating in India have caused material injury to the Community industry, which has been characterised by low selling prices, lack of profitability and negative returns on investments.
- (123) Furthermore, the changes in the pattern of consumption and the export performance of the Community industry did not contribute to the injury suffered by the Community industry.

G. COMMUNITY INTEREST

1. General remarks

- (124) The Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. The investigation

- (125) The Commission sent questionnaires to importers, suppliers of raw materials, industrial users of the product concerned as well as other interested parties who made themselves known within the time limit set in the notice of initiation.
- (126) In total, 27 questionnaires were sent out, but only 9 replies were received within the time limits set. As noted above in recital 9, several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.
- (127) Questionnaire responses were received within the time limits from seven users of the product concerned:
- Bayer AG, Leverkusen, Germany,
 - Ciba Spezialitätenchemie Grenzach GmbH, Grenzach Wyhlen, Germany,
 - Manuel Vilaseca SA, Barcelona, Spain,
 - SA Robama, Barcelona, Spain,
 - Sika Limited, Welwyn Garden City, United Kingdom,
 - SIPO srl, Milan, Italy,
 - SKW Polymers GmbH, Trostberg, Germany;
- one trader:
- Twinstar Chemicals Ltd., Harrow, United Kingdom;
- one supplier of raw materials to the sulphanilic acid industry:
- Quimigal SA, Estarreja, Portugal.

3. Likely effect of the imposition on the Community industry

- (128) It is recalled that the Community industry comprises two companies with production facilities in France and Portugal.
- (129) In spite of the material injury suffered by the Community industry during the IP, there is no reason to doubt its long-term viability and competitiveness in a market where normal conditions of fair trade exist. The Community industry has plans to increase its production capacity in the Community to be able to meet growing domestic demand. However, these plans have had to be deferred because of the low level of prices in the Community brought about by the presence of the subsidised imports.
- (130) It should be noted that the Community industry's loss-making situation has resulted from its difficulty to compete with the low-priced, subsidised imports, which have increased their market share considerably during the analysis period. The pressure of the subsidised imports has also forced a number of Community producers to cease production of sulphanilic acid.

- (131) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then be able to increase the volume and prices of its sales, thereby generating the necessary level of return to justify continued investment in its production facilities.
- (132) Should measures not be imposed, it is almost certain that the losses of the Community industry observed over the analysis period will continue. It will not be able to invest in new production capacity and compete effectively with imports from third countries. It is to be noted that Sorochimie has filed for protection from its creditors because of difficulties in its business and that its current trading activities are being overseen by an administrator appointed by the local Court of Commerce. It may be impossible for the company to continue if measures are not imposed.
- (133) In this context, it is noted that exports from India have been subject to anti-dumping and anti-subsidy measures in the USA since March 1993. With the exception of the Community market, there are considered to be limited additional third country markets for these exports.
- (134) It is therefore provisionally concluded that the imposition of countervailing measures is in the interest of the Community industry.

4. Likely effect of the imposition of measures on traders

- (135) The Commission received one reply from a company which imported the product concerned until recently and also traded sulphanilic acid produced by the Community industry. The company noted that the imposition of measures in the Community could lead some users to relocate their production facilities outside the Community or move away from certain end-product markets. It therefore feared that it would lose business in the Community. As concluded below with regard to users of the product concerned, such developments are unlikely to occur and therefore it was provisionally concluded that the imposition of measures would not have a serious impact on Community traders of sulphanilic acid.

5. Likely effect of the imposition of measures on suppliers of raw materials to the sulphanilic acid industry

- (136) The Commission received only one questionnaire reply from a supplier of raw material (aniline) to the sulphanilic acid industry. This reply was from Quimigal, which is also one of the two Community producers of sulphanilic acid. In the IP, its aniline sales to sulphanilic acid producers represented a very small percentage of its total aniline sales in the Community. In spite of this, the company stressed the importance of its sales (both internal and external) to the sulphanilic acid industry.

- (137) In view of the low level of cooperation from suppliers of raw materials to the sulphanilic acid industry and the situation of the one cooperating supplier, it is provisionally concluded that the imposition of countervailing measures would not have either major beneficial or prejudicial consequences for suppliers.

6. Likely effect of the imposition of measures on users

- (138) Sulphanilic acid has a wide range of applications. It is used in the manufacture of optical brighteners, additives for concrete and speciality dyes and colorants. An analysis of data provided by the Community industry, cooperating exporting producers and a former Community producer of sulphanilic acid, showed the optical brightener sector to be the most important user sector with approximately 65 % of estimated Community consumption. Concrete additives accounted for approximately 15 % of Community consumption and speciality dyes and colorants for 10 %. The intended application of the remainder, which also included sales to traders, was unknown.
- (139) The Commission sought to quantify the possible financial impact of measures on the operations of the cooperating users by taking into account both the origins of their sulphanilic acid purchases and its share in their overall manufacturing costs in the IP. For the purpose of this exercise, it was considered that the prices of imports from India would increase by the amount of the duty proposed in this investigation and in the parallel anti-dumping investigation, as indeed would imports from China.
- (140) As a number of users have made the same point opposing the imposition of measures on the grounds that production capacity in the Community is insufficient to meet domestic demand, it has been decided to address this concern for all user sectors in section 7.

6.1. Optical brighteners

- (141) Three questionnaire replies were received from Community companies producing optical brighteners and written comments from a fourth. Optical brighteners are general fluorescent whitening agents used by external customers primarily in the paper and detergent industries. Although one of the questionnaire respondents did not provide comprehensive information on its profitability during the analysis period, the trends observed for the other two companies are considered to be meaningful in that the two accounted for half of the sulphanilic acid used by all three respondents in the IP.
- (142) The cooperating producers of optical brighteners use either pure grade sulphanilic acid or pure grade in a salt solution. In the IP, approximately half of their purchases were sourced from the Community industry and half from other sources including the countries concerned.

- (143) Sulphanilic acid is only used in certain types of optical brighteners and in varying quantities. When the information provided by the three cooperating users was combined, it was found that sulphanilic acid accounted for in the region of 10 % of their manufacturing costs of those optical brighteners in which sulphanilic acid is a constituent. It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for optical brighteners containing sulphanilic acid by just over 1 % and that the increase in their full costs (i.e. after taking sales, general and administration expenses (SG&A) into account) would be somewhat less than 1 %.
- (144) The producers of optical brighteners argued that there is little differentiation between the types available on the market. As a result, optical brighteners are treated like a commodity and competition between producers is intense. This appeared to be supported by the profitability data provided by two of the respondents which showed that the returns on sales of optical brighteners containing sulphanilic acid had declined significantly over the analysis period in spite of the availability of sulphanilic acid at dumped prices and a more general decline in total manufacturing costs observed over the same period.
- (145) It was argued that if measures were imposed, producers of optical brighteners in third countries where there were no measures would gain a significant price advantage. One producer claimed that if the already low level of return from its optical brightener's business were further reduced by measures, it would have to reconsider its presence in the market.
- (146) It is not evident that producers of optical brighteners in countries outside the Community will derive a distinct competitive advantage against Community based competitors if measures are imposed. This is particularly true if one considers that the market for sulphanilic acid in one of the largest optical brightener producing countries, the USA, is already subject to a number of anti-dumping and anti-subsidy duties on imports of sulphanilic acid. It should also be noted that, taking into account the fact that the possible increase in the overall costs of Community based optical brightener producers would be somewhat less than 1 %, and that optical brighteners only account for a small part of the cost of paper production, it has not been demonstrated that continued production in the Community of these products would be endangered. In view of the substantial investments they have made in their Community production facilities in recent years, the size of the market and their customer base, it is evident that these producers will maintain a substantial presence in the Community.
- (147) It is therefore provisionally considered that the imposition of measures would not have a major adverse impact on this user group.
- 6.2. *Concrete additives*
- (148) The Commission received replies to its questionnaire from two companies producing concrete additives and written comments from a third. Concrete additives or admixtures are used to improve certain characteristics of concrete and thereby the way in which it performs under a variety of conditions.
- (149) The data of the cooperating users showed that sulphanilic acid was used in the production of all types of concrete additives. When the data of the two companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented roughly 15 % of their manufacturing costs. It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for concrete additives by just over 2 % and that the increase in their full costs (i.e. after taking SG&A into account) would be somewhat less than this figure.
- (150) Only one of the respondents provided data concerning the profitability of products sold containing sulphanilic acid. The Commission has therefore not been able to make a precise assessment of the financial impact of measures on this user group. Nevertheless, it is to be noted that the turnover of products containing sulphanilic acid represents a very small part (i.e. less than 5 %) of the total turnover of the two companies that replied to the Commission's questionnaire. Therefore, although it is acknowledged that measures would have some impact on their concrete admixture business, the companies' overall activities would not be endangered. This is supported by the fact that neither company submitted that it would be unable either to absorb the increase in its costs or to pass such an increase onto customers.
- (151) The same two cooperating users were very much against the imposition of measures. Apart from raising concerns about the adequate availability of sulphanilic acid in the Community which are addressed below in section 7, they alleged that they would lose competitiveness on world markets to producers of concrete admixtures in third countries where there was access to supplies of sulphanilic acid from India and China without duties.
- (152) This claim had to be rejected for a number of reasons. In the first instance, neither company provided any evidence, such as information relating to the degree of competitive threat posed by producers of concrete additives in other third countries, with which to substantiate their claim. In addition, having taken account of the anticipated increase in these companies' overall costs as noted in recital 149, it was not considered that measures would have such a prejudicial effect on their competitiveness.

- (153) The third producer was more equivocal in its stance. Whilst underlining that its competitiveness depended to a certain extent on the price at which it was able to purchase its raw materials, it recognised the importance of maintaining a competitive production base for sulphanilic acid in the Community which would guarantee the security of supply for this raw material.
- (154) In the light of the above, it is provisionally concluded that the imposition of measures would not have serious prejudicial effects on the activities of this user sector.

6.3. *Dyes and colorant producers*

- (155) The Commission received replies from three producers of dyes, one of which had also replied to the Commission in its capacity as a producer of optical brighteners. Written comments were also received from a fourth producer. They purchased relatively small quantities of sulphanilic acid in the IP. Approximately half of the purchases were of sulphanilic acid originating in the Community with the remainder coming from the countries concerned. When the data of the three companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented between 5 and 10 % of their manufacturing cost for dyes containing sulphanilic acid. The turnover of these products in turn accounted for approximately one third of the combined turnover of these companies.
- (156) It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for dyes and colours containing sulphanilic acid by just over 1 % and that the increase in full costs (i.e. after taking SG&A into account) would be somewhat less than this figure. However, as none of these companies provided the Commission with specific details on the profitability of their dye businesses, it was not possible to determine with any precision the possible effect of measures on their overall financial situation.
- (157) One respondent did however make written comments on the very competitive nature of the dye business and the low margin environment in which it had to do business. It was stated that there was strong price competition from dye products originating in India and China, possibly due to dumping and subsidisation, and that any increase in the price of sulphanilic acid could have serious consequences for continued dye production in the Community. However, the possible existence of dumping and subsidisation on a downstream market (no evidence to this effect having been provided) should not prevent the application of proper trade defence instruments to remedy the injurious effects of the dumped imports on the producers of sulphanilic acid forming the Community industry.

- (158) Due to the lack of information provided on profitability and the relatively low importance of the cost of sulphanilic acid in the overall manufacturing costs of all dyes, it is provisionally concluded that the imposition of countervailing duties would not have serious prejudicial consequences for this user sector.

6.4. *Conclusion*

- (159) Recalling the conclusions reached above in respect of the various users of sulphanilic acid in the present investigation, it is provisionally concluded that the imposition of measures would slightly affect their financial situation but would not endanger their continued activities or lead them to relocate their production outside the Community.

7. **Competition and trade distorting effects**

- (160) The Commission considered the possible competition and trade distorting effects of measures in the light of the findings of the investigation and comments made by interested parties. These comments primarily focused on the continued need for imports of the product concerned into the Community because of the inability of the Community industry to satisfy demand. One user also raised the fear that a reduction in supply from India and China would allow Sorochimie to fix prices on the Community market with its American competitor.
- (161) Measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious subsidised prices. It is accepted that imports from various origins will continue to satisfy a significant part of Community demand. It should also be noted that the Community industry has plans to increase its capacity if the return on its sulphanilic acid sales reaches an acceptable level. It is therefore most likely, provided that the injurious effects of the subsidised imports are removed by the imposition of measures, that the Community industry will be able to carry out these investment plans. It is important to note that sulphanilic acid production is already concentrated in relatively few countries around the world. According to the findings of the present investigation, production outside the Community is now restricted to India, China, the USA and Hungary. It is therefore in the interests of all users in the Community that the Community industry is allowed to operate under conditions of fair competition so that domestic supplies of the product continue to be available.
- (162) The second claim concerning price collusion had to be rejected as mere conjecture. No evidence was supplied to support the allegation. Moreover, were measures not to be imposed, the Community industry could be forced out of production. If this were to happen, the number of suppliers on the Community market would be further reduced and remaining suppliers could raise their prices to take advantage of this fact.

- (163) In view of the above, it is provisionally concluded that the imposition of provisional countervailing duties would help to protect the choice of user industries and maintain competition on the Community market.

8. Conclusion on Community interest

- (164) On the basis of the above, it is provisionally concluded that there are no compelling reasons on the grounds of Community interest why countervailing duties should not be imposed in the present case.

H. PROVISIONAL ANTI-SUBSIDY MEASURES

1. Injury elimination level

- (165) In order to prevent further injury being caused by the subsidised imports, it was considered appropriate to adopt countervailing measures in the form of provisional duties.
- (166) For the purpose of determining the level of these duties, the Commission took account of the subsidy margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (167) To this end, the Commission determined a non-injurious price based on production costs of the Community industry (without taking into account any exceptional costs linked to the Sorochimie's difficulties in its glue business or to the start-up costs of Quimigal), together with a profit margin of 6 %. This profit margin was considered reasonable and achievable for an industry of this type in the chemical sector. The non-injurious price was compared with the prices of the dumped and subsidised imports used to establish price undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury margin.

2. Provisional measures

- (168) As the injury elimination level is higher than the subsidy margin established, the provisional measures should be based on the latter. The following rate of duty therefore applies:

India (all companies): 9,2 %.

I. FINAL PROVISION

- (169) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of sulphanilic acid falling within CN code ex 2921 42 10 (TARIC code 2921 42 10 60) and originating in India.

2. The rate of the provisional countervailing duty applicable to the net-free-at-Community-frontier-price, before duty, shall be 9,2 %.

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

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

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 shall apply for a period of four months.

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

Done at Brussels, 3 April 2002.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 574/2002
of 3 April 2002
amending Regulation (EC) No 416/2002 adopting exceptional support measures for the pigmeat
market in Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, as last amended by Regulation (EC) No 1365/2000 ⁽²⁾, and in particular Article 20 thereof,

Whereas:

- (1) In response to the outbreak of classical swine fever in certain production regions in Spain, Commission Regulation (EC) No 416/2002 ⁽³⁾ adopted exceptional support measures for the pigmeat market in Spain.
- (2) Following the appearance of new cases of classical swine fever in Spain, the Spanish authorities established new protection and surveillance zones on 12 March 2002. The list of eligible zones given in Annex II to the Regulation concerned should therefore be updated in the

light of the current veterinary situation from 15 March 2002.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 416/2002 is replaced by the Annex hereto.

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 from 15 March 2002.

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

Done at Brussels, 3 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 1.

⁽²⁾ OJ L 156, 29.6.2000, p. 5.

⁽³⁾ OJ L 63, 6.3.2002, p. 19.

ANNEX

'ANNEX II

In the province of Barcelona, the protection and surveillance zones defined in Annexes I and II of the Ordre of the Generalitat de Catalunya of 8 March 2002, published in DOGC (*Diari Oficial de la Generalitat de Catalunya*) No 3593 of 12 March 2002, p. 4551.'

**COMMISSION REGULATION (EC) No 575/2002
of 3 March 2002**

imposing a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 2238/2000 ⁽²⁾ and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

why they should be heard were granted the opportunity to be heard.

(5) In view of the apparent large number of exporting producers of the product concerned in the countries subject to the investigation, known from the complaint, the application of sampling for the investigation of dumping was envisaged in the notice of initiation.

(6) However, only a limited number of exporting producers from the PRC and India made themselves known and provided the information requested in the notice of initiation. Therefore, sampling was not considered necessary for either of the countries concerned.

A. PROCEDURE

(1) On 6 July 2001, the Commission announced, by a notice ('notice of initiation') 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 sulphanilic acid originating in the People's Republic of China ('PRC') and India. A parallel anti-subsidy investigation concerning imports of the same product originating in India was initiated on the same date ⁽⁴⁾.

(2) The anti-dumping proceeding was initiated as a result of a complaint lodged in May 2001 by Sorochimie Chimie Fine, representing a major proportion, in the current case more than 65 %, of the Community production of sulphanilic acid. 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.

(3) The Commission officially advised the exporting producers and importers/traders known to be concerned as well their associations, the representatives of the exporting countries concerned, users, suppliers and Community producers. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) A number of exporting producers in the countries concerned, as well as Community producers, Community users and a trader made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons

(7) The Commission sent questionnaires to all parties known to be concerned and to all other companies who made themselves known within the deadlines set in the notice of initiation. Replies were received from two Community producers, one Indian exporting producer and its related importer in the Community, one Chinese exporting producer, one Chinese trading company and one producer in a market economy third country. The Commission also received replies from seven users, one supplier and one trader providing information which was sufficiently complete and representative to use in the assessment of Community interest. Several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.

(8) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment, if they so wished, the Commission sent to the Chinese companies known to be concerned a market economy status and an individual treatment claim form. One company requested MET pursuant to Article 2(7)(b) of Regulation (EC) No 384/96 ('the basic Regulation') or individual treatment should the investigation establish that it did not meet the conditions for MET.

(9) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) Community producers

— Sorochimie Chimie Fine, Givet, France,

— Quimigal SA, Estarreja, Portugal;

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ C 190, 6.7.2001, p. 2.

⁽⁴⁾ OJ C 190, 6.7.2001, p. 5.

(b) *Exporting producer in India*

- Kokan Synthetics and Chemical Private Ltd, Dapoli, Ratnagiri, Maharashtra;

(c) *Market economy third country producer*

- Nation Ford Chemical Company, South Carolina, USA;

(d) *Users*

- Bayer AG, Leverkusen, Germany.

- (10) The investigation of dumping and injury covered the period from 1 July 2000 to 30 June 2001 ('IP'). The examination of trends relevant for the assessment of injury covered the period from January 1997 to the end of the IP ('analysis period').

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

- (11) The product under consideration is sulphanilic acid. There are basically two grades of sulphanilic acid which are determined according to their purity: a technical grade and a purified grade. In addition, the purified grade is sometimes commercialised as a salt of sulphanilic acid. Technical and purified acid share the same basic chemical characteristics in terms of chemical formula ($C_6H_7NO_3S$) and molecular structure although they differ slightly in terms of purity (the range of purity may start from 96 % for the technical grade and from 99 % for the purified grade and for the acid content of its salt; the major impurities being residual aniline and alkali insoluble materials ranging from 2 % to less than 0,1 %). Technical and purified grades of sulphanilic acid are available as dry free flowing powders. The salt of purified sulphanilic acid is sold in powder or solution form according to customer requirements. Sulphanilic acid is used as raw material in the production of optical brighteners, concrete additives, food colorants and speciality dyes. Although there are different uses of sulphanilic acid, all grades and forms are perceived by users to be reasonably substitutable, are used interchangeably in most applications and should be, therefore, treated for the purpose of the present proceeding as one single product.

2. Like product

- (12) The product exported to the Community from the PRC and India, the product sold domestically in India as well as the one manufactured and sold in the Community by the Community producers were found to have basically the same chemical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING**1. India****1.1. Normal value**

- (13) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of sulphanilic acid were representative, i.e. whether the total volume of such sales was at least 5 % of the total export sales volume to the Community. The investigation showed that the domestic sales were representative.
- (14) The Commission subsequently identified those product types of sulphanilic acid sold domestically as being identical or directly comparable with the types sold for export to the Community when they were of the same grade and form.
- (15) For each product type sold by the exporting producer on its domestic market which was found to be directly comparable with the type sold for export to the Community it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community. The investigation showed that out of three exported types, two were sold in representative quantities on the domestic market.
- (16) The Commission subsequently examined whether the domestic sales of the company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (17) This was done by establishing the proportion of domestic sales to independent customers, of each of the two representative types, not sold at a loss on the domestic market during the IP. For these product types, since more than 80 % by volume was not sold at a loss on the domestic market, and the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices, paid or payable by independent customers, of the type in question, as set out in Article 2(1) of the basic Regulation.
- (18) For the product type which was not sold in representative quantities on the domestic market, normal value had to be constructed. In order to determine the constructed normal value, the cooperating exporting producer's own sales, general and administrative (SG&A) costs incurred and weighted average profit realised on domestic sales of the like product, in the ordinary course of trade, during the IP, were added to the average cost of manufacturing during the IP, pursuant to Article 2(6) of the basic Regulation.

1.2. *Export price*

- (19) The investigation showed that the exports of the Indian exporting producer were made both to unrelated and to related customers in the Community.
- (20) Therefore, for those sales made to unrelated customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.
- (21) For sales made via its related importer, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG&A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.3. *Comparison*

- (22) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.
- (23) Accordingly, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, commissions and discounts have been granted where applicable and justified.
- (24) The company claimed a duty drawback adjustment for notional duties that would have been paid for imports of the principle raw material (aniline) had the company used imported aniline for its entire production of sulphanilic acid sold on the domestic market. This claim was rejected because it was based on notional assumptions and, as such, no amounts of duty were borne by the material (aniline) incorporated in the like product, when intended for consumption in India.
- (25) The company also claimed notional quantity discounts with the argument that, had its domestic customers purchased the same quantities as the customers in the export market, then its domestic customers would qualify for a discount in-built in the price which is given to Community customers. This claim could not be accepted under the provisions of Article 2(10)(c) of the basic Regulation since quantity discounts can only be considered for an adjustment when they are actually given for differences in quantities and not on the basis of notional assumptions. It was, therefore, examined under the provisions of Article 2(10)(k) of the same

Regulation ('Other factors'), where it was found that the pattern claimed by the company regarding the in-built discounts was not consistently applied to its sales on the domestic market. Indeed, it was established that smaller quantities and/or orders were sold occasionally at lower prices than larger quantity/orders. On this basis, since it was not demonstrated that domestic customers pay consistently different prices because of different quantities purchased, this adjustment could not be accepted.

- (26) The company claimed credit costs for a number of its domestic sales transactions that were based on verbal agreements. However, these credit costs could not be accepted since the company was not able to provide proof of any agreements concerning the payment terms of these sales. Moreover, for the remaining domestic sales transactions for which written sales orders/contracts defined their payment terms, the credit costs that were accepted were adjusted downwards. This was because the company had calculated the credit costs on the total invoice value (including indirect taxes such as sales tax and excise duty) and not on the basis of the net invoice value. In this respect, it was found that the payment of the sales tax which the company collected from its customers was deferred, interest free, for a period of 12 years and, thus, the claim of credit costs associated with the sales tax was unfounded. Secondly, the amount of excise duties, which was a modified VAT system ('CENVAT'), paid to the tax authorities was calculated on the balance between the CENVAT on goods purchased and the same tax on sales to customers. Of this amount, the CENVAT paid for sales of the product under consideration could not be identified separately. It was therefore concluded that credit (finance) costs for CENVAT, if any, should be considered as normal operational overheads and that no adjustment should be made concerning such costs.

1.4. *Dumping margin*

- (27) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type was compared with the adjusted weighted average export price, as determined above.
- (28) On this basis, the provisional weighted average dumping margin expressed as a percentage to the cif Community frontier price duty unpaid is 24,6 %.
- (29) Since the level of cooperation was high, the residual provisional margin was set at the same level as the one established for the cooperating company, i.e. 24,6 %.

2. China

2.1. Normal value

2.1.1. Market economy treatment ('MET')

- (30) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value should be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c), i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the product concerned.
- (31) The sole Chinese cooperating producer requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim for exporting producers.
- (32) The claim was rejected because it was not submitted by the whole group involved in the production and sale of the product but only by one company within the group. Therefore, it was not possible to verify whether the group as a whole merited market economy status. Moreover, the claimant company was subject to restrictions in its buying and selling activities. In fact, the company was not licensed to import nor to export which meant that decisions regarding prices, costs and inputs were not taken in response to market signals reflecting supply and demand or without significant State interference (see also recital 37 below).
- (33) Consequently, after a specific consultation of the Advisory Committee, the applicant company was informed that its MET application could not be granted.

2.1.2. Analogue country

- (34) According to Article 2(7) of the basic Regulation, for companies to which MET could not be granted, normal value has to be established on the basis of the price or constructed value in an analogue country. In the notice of initiation, the Commission indicated the use of the United States of America ('USA'), which was also the proposal made in the complaint, as an appropriate analogue country for the purpose of establishing normal value for the PRC. However, after investigating this possibility the Commission decided that it was more appropriate to use India as an analogue country, due to the similarities in the market conditions of this country and those of the PRC. It also noted that this choice was suggested by the cooperating Chinese exporter who objected to the initial proposal indicated in the notice of initiation.

2.1.3. Determination of normal value in the analogue country

- (35) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the cooperating exporting producer in China was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of the prices paid or payable on the domestic market of India for products comparable to those sold by the Chinese exporting producer to the Community.

2.2. Export price

2.2.1. Individual treatment

- (36) The company that was not granted MET applied for individual treatment, i.e. the determination of an individual dumping margin on the basis of its individual export prices. The Commission verified whether this company enjoyed, both in fact and in law, the necessary degree of independence from the State.
- (37) In this respect, it was established that the company was not licensed to export and that all its exports were made via a trading company controlled by state authorities. It was, therefore, concluded that the applicant company did not meet the necessary requirements for individual treatment.

2.2.2. Determination of export price

- (38) All export sales of the cooperating Chinese producer to the Community, which were made via the trading company, were made directly to independent customers in the Community and the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices paid or payable.
- (39) The comparison of the data concerning exports to the Community provided by the cooperating Chinese exporter and the import volume as determined in recital 47 below, indicated that these exports represented less than 20 % of total Chinese imports into the Community during the IP. Thus, the export price for non-cooperating exporting producers had to be based on facts available in accordance with Article 18 of the basic Regulation. In this respect, in order not to reward non-cooperation, it was considered appropriate to use the lowest export prices established for certain representative transactions of the cooperating exporter.

2.3. Comparison

- (40) For the purposes of a fair comparison by product type between the normal value at fob Indian frontier level and the export price at fob Chinese frontier level, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport and insurance costs in accordance with Article 2(10) of the basic Regulation.

2.4. Dumping margin

- (41) In the absence of individual treatment being granted to the sole cooperating exporter, an overall dumping margin was calculated for the whole of the PRC. The comparison of normal value and export price revealed the existence of dumping with regard to imports of the product concerned originating in the PRC, the dumping margin being equal to the amount by which the normal value exceeded the export price to the Community.
- (42) The provisional dumping margin for imports originating in the PRC expressed as a percentage of the cif price at Community frontier level, duty unpaid, is 21,0 %.

- the total verified sales of the Community industry on the Community market,
- the verified responses of former Community producers of the product concerned which cooperated in the investigation and
- evidence contained in the complaint for other former producers which did not cooperate.

- (46) Community consumption of sulphanilic acid in the IP was approximately 11 000 tonnes. This figure is some 13 % higher than at the start of the analysis period. After two years of relative stability in 1997 and 1998, there was a slight decline in consumption in 1999 before a clear upturn in 2000 and the IP.

D. COMMUNITY INDUSTRY

- (43) Sulphanilic acid is manufactured in the Community by two companies: the complainant, Sorochimie Chimie Fine ('Sorochimie') and Quimigal S.A. ('Quimigal'). It should be noted that Sorochimie manufactured sulphanilic acid throughout the analysis period. Quimigal, however, only began to produce and sell sulphanilic acid in 1999. There were several other Community producers of sulphanilic acid active on the market at the start of the analysis period. However, all these other producers ceased production during the period either to focus on their other activities or to source sulphanilic acid from external sources. They have therefore not been taken into account when determining 'Community production'. It should be borne in mind that these important developments on the Community market allowed both Sorochimie and Quimigal to increase their production and sales.
- (44) Although Quimigal is not a party to the complaint, it has expressed its support for the proceeding and fully cooperated in the investigation. It is therefore considered that Quimigal and Sorochimie fulfil the requirements of Article 5(4) of the basic Regulation, since they accounted for 100 % of the Community production of sulphanilic acid on the date the proceeding was initiated. They are therefore provisionally deemed to constitute the 'Community industry' within the meaning of Article 4(1) of the same Regulation and will hereinafter be referred to as such.

E. INJURY

1. Community consumption

- (45) Apparent consumption of sulphanilic acid in the Community was established on the basis of:
- imports of the product concerned into the Community as established according to recital 47 below,

2. Imports into the Community from the countries concerned

2.1. Import data

- (47) The CN heading, under which the product under investigation is currently classified covers a variety of other products. The Commission therefore made use of the best facts available and established figures for both the volumes and prices of imports of sulphanilic acid on the following basis. Data for imports from India were established on the basis of the reply of the cooperating exporting producer to the Commission's questionnaire. The volumes of imports from the PRC and the USA were taken from information contained in the complaint given the low level of cooperation from producers in the PRC and the fact that the sole exporting producer in the USA gave an estimate in confidence of its exports to the Community for the analysis period. The prices of these imports were predominantly derived from Eurostat data with the response of the cooperating Chinese producer to the Commission's questionnaire also being taken into account for the IP only. Information concerning the volume and prices of imports originating in Hungary and Japan was derived by comparing Eurostat data to responses of users to the Commission's questionnaires. With the exception of the countries noted above, the investigation established that there were no imports from other third countries during the analysis period.

2.2. Cumulative assessment of the effects of the imports concerned

- (48) In accordance with Article 3(4) of the basic Regulation, it was examined whether imports from the countries concerned should be assessed cumulatively for the purposes of the determination of injury.

- (49) It was established (see recitals 29 and 42) that the margin of dumping for imports from each country subject to the current investigation was more than *de minimis* as defined in Article 9(3) of the basic Regulation. It was also established that the volume of such imports from each country was not negligible. Imports from India and China had a combined market share of more than 40 % in the IP with imports from China accounting for approximately two-thirds of this figure. The volume of imports from each of the countries concerned increased during the analysis period and their price levels on the Community market during the IP were fairly similar. In addition, the imports concerned competed on the same market as the like product produced by the Community industry and many users in the Community purchased from all three sources in the analysis period.
- (50) For the reasons noted above, it was provisionally concluded that imports originating in India and China should be assessed cumulatively.

3. Volume and prices of the dumped imports

- (51) The volume of the imports concerned increased by more than 150 % during the analysis period from a figure of approximately 1 800 tonnes in 1997 to 4 600 in the IP. They more than doubled their market share during the analysis period from a level of approximately 18 % to more than 40 %.
- (52) The average price of the imports concerned increased by 9 % during the analysis period. They reached their lowest level in 1999.

	1997	1998	1999	2000	IP
Import (tonnes)	1 821	2 856	3 262	3 556	4 662
(indexed)	100	157	179	195	256
Market share (indexed)	100	151	187	186	227
Average cif price ECU/EUR per tonne (indexed)	100	91	86	90	109

3.1. Price undercutting

- (53) For the purposes of analysing price undercutting, the weighted average sales prices per grade of the Community industry to unrelated customers on the Community market were compared to the corresponding weighted average export prices of the imports concerned. The comparison was made after the deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a cif basis with an appropriate adjustment for customs duties and post importation costs.
- (54) On this basis, the level of price undercutting for imports from the PRC was approximately 7 %. In view of the high level of cooperation received from the exporting producer in India, as noted above in recital 29, the level of price undercutting for India as a whole was established on the basis of this company's data at a figure of 13 %. It should be noted the imports concerned exerted a price depressive and suppressive effect on the prices of the Community industry which suffered losses throughout the analysis period.

4. Situation of the Community industry

4.1. Preliminary remarks

- (55) In order to respect confidential business information, it has been necessary to present information concerning the two companies forming the Community industry in an indexed form. In addition, as the second member of the Community industry began production only in 1999, i.e. midway through the analysis period, it has been decided to present its data separately from that of Sorochimie so as to allow a more meaningful analysis of trends. As a result, two indices, both starting at 100, are presented for each indicator with 1997 as the base year for Sorochimie and 1999 as the base year for Quimigal (except in the case of investments which started to be made earlier).
- (56) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry.

4.2. Production, production capacity and capacity utilisation

- (57) The Community industry's level of production in the IP was more than double the level recorded at the start of the analysis period. This reflected an increase of 51 % in Sorochimie's production over the analysis period and the entry of Quimigal onto the market in 1999. The Community industry's production capacity also increased over the analysis period but to a lesser degree than its actual production. The combination of these two factors led to an overall increase in the capacity utilisation rate of the Community industry during the period. Quimigal's capacity utilisation rate increased sharply as it came out of its start-up phase. Both companies achieved a satisfactory level of utilisation of their capacity in the IP.

Indexed		1997	1998	1999	2000	IP
Production (tonnes)	Sorochimie	100	126	125	142	151
	Quimigal	0	0	100	288	348
Capacity (tonnes)	Sorochimie	100	115	115	115	115
	Quimigal	0	0	100	133	133
Increase in capacity utilisation (%)	Sorochimie	100	110	109	124	132
	Quimigal	0	0	100	216	261

4.3. Stocks

- (58) Sorochimie's year-end stock levels were higher in absolute terms at the end of the IP than in 1997. However, when expressed as a percentage of production they decreased over the period (from 15 % to 11 %). Quimigal's stock levels decreased after its entry onto the market so that its stocks represented approximately 5 % of production in the IP. The Community industry's year-end stock levels are not considered to be abnormal for such an industry.

Indexed		1997	1998	1999	2000	IP
Stocks (tonnes)	Sorochimie	100	94	76	69	108
	Quimigal	0	0	100	73	59

4.4. Sales volume, market share and growth

- (59) The sales of the Community industry in the IP were more than 75 % higher than recorded in 1997. It should be borne in mind that part of the increase is due to the appearance of Quimigal on the market in 1999. Considered in isolation, Sorochimie increased its sales on the Community market by nearly 40 % during the analysis period.
- (60) The Community industry increased its share of the Community market by nearly 50 % during the analysis period. The highest market share was recorded in 2000. However, some market share was lost to the dumped imports in the IP as their volume grew at a faster rate than the overall market. Most of the Community industry's increase in market share resulted from the effect of Quimigal's production coming on stream. However, Sorochimie was also able to increase its market share during the analysis period because a number of other producers in the Community withdrew from the market. Both companies, therefore, were able to experience a more rapid growth than consumption. This, however, was done by pushing capacity utilisation to high levels and developing sales of salts as the presence of dumped imports prevented them from fully benefiting from the restructuring of the Community production of sulphanilic acid and implementing their planned capacity expansion (see recital 65).

Indexed		1997	1998	1999	2000	IP
Sales (tonnes)	Sorochimie	100	93	96	135	138
	Quimigal	0	0	100	243	238
Market share (%)	Sorochimie	100	92	103	132	126
	Quimigal	0	0	100	222	202

4.5. Sales prices and costs

- (61) Sorochimie's average selling price decreased by 9 % over the analysis period. There was a sharp decline between 1997 and 1998 before prices began to rise again, albeit very slowly. The development between 1997 and 1998 reflects both a slight fall in the price of aniline (the most important raw material in price terms) as well as the price pressure exerted on the Community market by the dumped imports which increased by over 50 % in volume at this time. Sorochimie's average selling price increased marginally from 1999 onwards as the company was able to take advantage of both an increase in Community consumption and the exit of certain producers from the market. However, this increase was at a lower rate than the increase in the price of aniline, which is the most significant raw material for the production of sulphanilic acid in cost terms. In this way, the level of undercutting established for the imports concerned in the IP demonstrates the price depressing effect they had on the level of Sorochimie's own prices as it was unable to recover the full amount of the increase in its main raw material. Quimigal's average selling price increased at a faster rate than Sorochimie's but it should be borne in mind that the company had to start from a relatively low selling price in 1999 with relatively low sales volume as it attempted to establish itself in the market. In spite of its rising sales price, it was nonetheless unable to cover its full costs of production and remained loss making in the IP.

Indexed		1997	1998	1999	2000	IP
Average sales price (ECU/EUR per tonne)	Sorochimie	100	85	86	87	91
	Quimigal	0	0	100	103	119

4.6. Profitability

- (62) The Community industry was loss making throughout the analysis period, with the most important losses recorded in 2000. It is to be recalled that the imports concerned have been present on the Community market in significant volumes and at low prices since the beginning of the analysis period as demonstrated by their market share of approximately 18 % in 1997 and their prices being between 7 % and 13 % below the prices of the Community industry's prices in the IP. Sorochimie's losses on net sales to unrelated customers in the Community during the IP, when expressed as a percentage of the same sales, were in single digits whilst Quimigal's losses were in double digits. Quimigal's net return on sales include a recalculation of their depreciation on a straight line over a period of 10 years in order not to take into account exceptional start-up costs in the form of accelerated amortisation. Furthermore, as capacity utilisation was fairly high in the IP, no impact of low start-up volumes on unit costs is included in the data examined.
- (63) It is clear that the viability of the Community industry depends on it being able to achieve higher selling prices for its production and thereby put an end to its prolonged loss making period.

4.7. Investments and ability to raise capital

- (64) The table below indicates that the Community industry continued to make investments in its sulphanilic acid activities throughout the analysis period. In the case of Sorochimie, these investments were primarily related to the maintenance of existing capital assets. It should be noted that Quimigal made substantial investments in advance of its start-up in 1999. This company made the decision to enter the sulphanilic acid market several years earlier when prices on the Community market were higher.
- (65) Sorochimie's ability to raise capital has been affected by the dumped imports as investment plans to increase capacity have been deferred since the necessary expenditure could not be justified in the current environment of insufficient returns on sulphanilic acid activities. Quimigal also had to delay its expansion plans because of the current market situation.

Indexed		1997	1998	1999	2000	IP
Investments (ECU/EUR)	Sorochimie	100	39	92	91	81
	Quimigal	100	826	291	100	99

4.8. Return on investments and cash flow

- (66) As the Community industry has been loss making throughout the analysis period, the figure for the return on investments, which expresses the after tax result as a percentage of the average opening and closing net book value of assets employed in the production of sulphanilic acid, has also remained negative.
- (67) Sorochimie was cash generative throughout the analysis period, although only marginally so in 1998, 1999 and 2000. Quimigal was cash generative in the year it commenced sales (1999) but then cash flow became negative in 2000 and the IP.

4.9. Employment, productivity and wages

- (68) The following table shows the development in the number of workers employed in the sulphanilic activities of both companies forming the Community industry and the average total employment cost per employee. The figure for productivity is calculated on the basis of tonnes produced per employee.
- (69) For the Community industry as a whole, employee numbers were the same in the IP as at the beginning of the analysis period. However, it should be noted that the two companies experienced divergent trends in that Sorochimie lost a number of jobs incidentally equal to that created by Quimigal when it came onto the market.

- (70) The Community industry considerably improved its productivity during the analysis period. This occurred as Quimigal reached its planned level of production in the IP and efforts were made overall to improve competitiveness.

Indexed		1997	1998	1999	2000	IP
Employees (number)	Sorochimie	100	96	89	86	86
	Quimigal	0	100	100	133	133
Average employment cost per employee (ECU/EUR per person)	Sorochimie	100	121	133	134	132
	Quimigal	0	100	278	208	208
Productivity (tonnes per person)	Sorochimie	100	131	140	166	177
	Quimigal	0	0	100	216	261

4.10. Magnitude of dumping

- (71) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping, which are significant, cannot be considered negligible.

- (76) On the basis of the foregoing, it is provisionally concluded that the Community industry has suffered material injury, characterised by price depression and suppression, a prolonged period of losses, insufficient returns on investment and the deferment of expansion plans, within the meaning of Article 3 of the basic Regulation.

4.11. Conclusion on injury

- (72) The imports from the countries concerned had a significant presence on the market even at the beginning of the analysis period. During the IP itself, the volume of such imports was over 150 % the level recorded in 1997. They have doubled their market share during the analysis period to reach a level of more than 40 % in the IP. The imports concerned undercut the prices of the Community industry significantly. The most rapid growth in market share occurred between 1997 and 1998. It was also at this time that Sorochimie suffered the sharpest drop in its average sales prices as it was forced to compete aggressively against the dumped imports in an effort to maintain its position on the market.

- (73) Although Sorochimie was later able to raise its selling prices and also increase its sales volumes as other operators were forced out of the market, it remained loss making due to the low price levels prevailing on the market. This was in spite of its improved efficiency as demonstrated by the increase in productivity.

- (74) Quimigal was never able to cover its costs although the extent of its losses reduced somewhat due to an increase, albeit an insufficient one, in its selling price.

- (75) The dumping margins found were of a significant magnitude. It is also recalled that as a direct consequence of the prolonged loss making situation that the Community industry had difficulties in raising capital and had to defer investment plans. The losses were also reflected in the development of Community industry's return on investment.

F. CAUSATION OF INJURY

1. Introduction

- (77) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports 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.

2. Effect of the dumped imports

- (78) The volume of the dumped imports increased by more than 150 % during the analysis period. In addition to a price depression effect, the low price level of the dumped imports and their increasing presence on the Community market had a price suppressing effect on the prices of both companies constituting the Community industry in that they were unable to reflect the full increase in their cost of production in their selling price. Finally the Community industry could not increase its production capacity as should have been the case given the withdrawal of other Community producers from the market and the increase in demand observed over the analysis period as a whole.

3. Effects of other factors

3.1. Imports originating in other third countries

- (79) With the exception of 1999 when Community consumption fell to its lowest level in the analysis period, the volume of imports originating in other third countries remained relatively stable at approximately 2 000 tonnes. Overall, they therefore lost market share from approximately 21 % in 1997 to 18 % in the IP. Only imports from the USA and Hungary were at levels above 1 % of Community consumption in the IP. It should be noted that the sole producer of sulphanilic acid in Japan ceased manufacturing the product during the analysis period. Imports from this country in the IP were not significant (less than 100 tonnes). Imports from Japan have therefore not been further considered in this investigation.
- (80) Imports originating in the USA appeared on the Community market for the first time in 1999 and increased significantly thereafter to reach a market share of around 10 % in the IP. This came about following the relocation of some production activities that had previously taken place in the Community. The prices of imports originating in the USA were significantly higher than those of the Community industry.
- (81) Imports originating in Hungary decreased by nearly half during the analysis period. Their average selling price was significantly higher than that of the dumped imports and broadly similar to those of the Community industry.
- (82) On the basis of the above, it is provisionally concluded that imports originating in other third countries and in particular the USA and Hungary did not contribute to the material injury suffered by the Community industry.

3.2. Changes in the pattern of consumption

- (83) The apparent consumption of sulphanilic acid in the Community increased during the analysis period from approximately 10 000 tonnes in 1997 to around 11 000 tonnes in the IP. The Community industry was able to increase its market share over the same period as other Community producers left the market. The development of consumption did not, therefore, contribute to the injury suffered by the Community industry.

3.3. The export performance of the Community industry

- (84) Sorochimie's exports as percentage of total sales in the IP was similar to that recorded at the start of the analysis period at approximately one third. There was an increase in 1998 and 1999 due to certain one-off contracts. The level of Quimigal's exports expressed by the same measure was higher in the IP at approximately one half of total sales. The Community industry's price level for exports during the IP was similar to that experienced for sales on the Community market. It has therefore been provisionally concluded that the export performance of the Community industry did not contribute to the injury it suffered.

3.4. The entry of Quimigal onto the Community market

- (85) It is recalled that Quimigal, the second company forming part of the Community industry, began producing and selling sulphanilic acid in 1999 as a result of an earlier decision taken at a time when prices on the Community market for sulphanilic acid were higher. It has been alleged that at least part of the injury suffered by the Community industry should be attributed to Quimigal and not to the imports concerned in that Quimigal had relatively low sales prices and high unit costs in its first years of operation. This claim had to be rejected since it is the presence of the very low priced dumped imports, that forced the company to offer its production at fairly similar prices in order to gain market share in a reasonable length of time. Prices of Quimigal were afterwards able to slightly increase.
- (86) Furthermore, in order to ensure that the injury suffered by the Community industry was not incorrectly attributed to the dumped imports, the impact of any exceptional start-up costs from Quimigal's operating results were removed as explained at section 4.6 on profitability.
- (87) In view of the above, it is provisionally concluded that the entry of Quimigal onto the market did not contribute to the material injury suffered by the Community industry.

4. Conclusion on causation

- (88) The investigation has shown that the dumped imports in large quantities on the Community market caused severe price depression of the Community industry's average selling prices. The Community industry was forced to considerably lower its prices in order to maintain its share of the market and ensure a satisfactory capacity utilisation. Moreover, there was price suppression as

price increases did not occur which would have taken place in the absence of the dumped imports. The fact that it was able to increase its market share can be attributed to the exit of a number of other Community producers from the sulphanilic acid market. Although the Community industry was able to raise its prices from 1998 onwards, these increases were not sufficient to return it to profitability. Over the same period, the volume of imports from the countries concerned and their market share continued to increase.

- (89) In view of the above and in the absence of any other factors which could have injured the Community industry, it was provisionally concluded that the material injury suffered by the Community industry, as evidenced by its prolonged loss making situation, negative returns on sales and investments and difficulties in raising capital and carrying out expansion plans, was caused by the dumped imports.

G. COMMUNITY INTEREST

1. General remarks

- (90) The Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. The investigation

- (91) The Commission sent questionnaires to importers, suppliers of raw materials, industrial users of the product concerned as well as other interested parties who made themselves known within the time limit set in the notice of initiation.
- (92) In total, 27 questionnaires were sent out, but only 9 replies were received within the time limits set. As noted above in recital 7, several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.
- (93) Questionnaire responses were received within the time limits from seven users of the product concerned:

- Bayer AG, Leverkusen, Germany,
- Ciba Spezialitätenchemie Grenzach GmbH, Grenzach Wyhlen, Germany,
- Manuel Vilaseca SA, Barcelona, Spain,
- SA Robama, Barcelona, Spain,
- Sika Limited, Welwyn Garden City, United Kingdom,
- SIPO srl, Milan, Italy,
- SKW Polymers GmbH, Trostberg, Germany;

one trader:

- Twinstar Chemicals Ltd., Harrow, United Kingdom;

one supplier of raw materials to the sulphanilic acid industry:

- Quimigal SA, Estarreja, Portugal.

3. Likely effect of the imposition on the Community industry

- (94) It is recalled that the Community industry comprises two companies with production facilities in France and Portugal.
- (95) In spite of the material injury suffered by the Community industry during the IP, there is no reason to doubt its long-term viability and competitiveness in a market where normal conditions of fair trade exist. The Community industry has plans to increase its production capacity in the Community to be able to meet growing domestic demand. However, these plans have had to be deferred because of the low level of prices in the Community brought about by the presence of the dumped imports.
- (96) It should be noted that the Community industry's loss making situation has resulted from its difficulty to compete with the low-priced dumped imports, which already held a significant market share at the beginning of the analysis period and which have increased their market share considerably during the analysis period. The pressure of the dumped imports has also forced a number of Community producers to cease production of sulphanilic acid.
- (97) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then be able to increase the volume and prices of its sales, thereby generating the necessary level of return to justify continued investment in its production facilities.

- (98) Should measures not be imposed, it is almost certain that the losses of the Community industry observed over the analysis period will continue. It will not be able to invest in new production capacity and compete effectively with imports from third countries. It is to be noted that Sorochimie has filed for protection from its creditors because of difficulties in its business and that its current trading activities are being overseen by an administrator appointed by the local Court of Commerce. It may be impossible for the company to continue if measures are not imposed.
- (99) In this context, it is noted that exports from the countries concerned have been subject to anti-dumping measures in the USA since August 1992 (PRC) and March 1993 (India). With the exception of the Community market, there are considered to be limited additional third country markets for these exports.
- (100) It is therefore provisionally concluded that the imposition of anti-dumping measures is in the interest of the Community industry.

4. Likely effect of the imposition of measures on traders

- (101) The Commission received one reply from a company which imported the product concerned until recently and also traded sulphanilic acid produced by the Community industry. The company noted that the imposition of measures in the Community could lead some users to relocate their production facilities outside the Community or move away from certain end-product markets. It therefore feared that it would lose business in the Community. As concluded below with regard to users of the product concerned, such developments are unlikely to occur and therefore it was provisionally concluded that the imposition of measures would not have a serious impact on Community traders of sulphanilic acid.

5. Likely effect of the imposition of measures on suppliers of raw materials to the sulphanilic acid industry

- (102) The Commission received only one questionnaire reply from a supplier of raw material (aniline) to the sulphanilic acid industry. This reply was from Quimigal, which is also one of the two Community producers of sulphanilic acid. In the IP, its aniline sales to sulphanilic acid producers represented a very small percentage of its total aniline sales in the Community. In spite of this, the company stressed the importance of its sales (both internal and external) to the sulphanilic acid industry.
- (103) In view of the low level of cooperation from suppliers of raw materials to the sulphanilic acid industry and the particular situation of the one cooperating supplier, it is provisionally concluded that the imposition of anti-

dumping measures would not have either major beneficial or prejudicial consequences for suppliers.

6. Likely effect of the imposition of measures on users

- (104) Sulphanilic acid has a wide range of applications. It is used in the manufacture of optical brighteners, additives for concrete and speciality dyes and colorants. An analysis of data provided by the Community industry, cooperating exporting producers and a former Community producer of sulphanilic acid, showed the optical brightener sector to be the most important user sector with approximately 65 % of estimated Community consumption. Concrete additives accounted for approximately 15 % of Community consumption and speciality dyes and colorants for 10 %. The intended application of the remainder, which also included sales to traders, was unknown.
- (105) The Commission sought to quantify the possible financial impact of measures on the operations of the cooperating users by taking into account both the origins of their sulphanilic acid purchases and its share in their overall manufacturing costs in the IP. As the proposed measures are based on the dumping margins found, it was considered for the purposes of this exercise that the prices of imports from the countries concerned would increase by the proposed duties.
- (106) As a number of users have made the same point opposing the imposition of measures on the grounds that production capacity in the Community is insufficient to meet domestic demand, it has been decided to address this concern for all user sectors in section 7.

6.1. Optical brighteners

- (107) Three questionnaire replies were received from Community companies producing optical brighteners and written comments from a fourth. Optical brighteners are general fluorescent whitening agents used by external customers primarily in the paper and detergent industries. Although one of the questionnaire respondents did not provide comprehensive information on its profitability during the analysis period, the trends observed for the other two companies are considered to be meaningful in that the two accounted for half of the sulphanilic acid used by all three companies in the IP.
- (108) The cooperating producers of optical brighteners use either pure grade sulphanilic acid or pure grade in a salt solution. In the IP, approximately half of their purchases were sourced from the Community industry and half from other sources including the countries concerned.

- (109) Sulphanilic acid is only used in certain types of optical brighteners and in varying quantities. When the information provided by the three cooperating users was combined, it was found that sulphanilic acid accounted for in the region of 10 % of their manufacturing costs of those optical brighteners in which sulphanilic acid is a constituent. It was consequently established using the methodology detailed above in recital 105 that measures would increase the manufacturing costs for optical brighteners containing sulphanilic acid by just over 1 % and that the increase in their full costs (i.e. after taking SG&A costs into account) would be somewhat less than 1 %.
- (110) The producers of optical brighteners argued that there is little differentiation between the types available on the market. As a result, optical brighteners are treated like a commodity and competition between producers is intense. This appeared to be supported by the profitability data provided by two of the respondents which showed that the returns on sales of optical brighteners containing sulphanilic acid had declined significantly over the analysis period in spite of the availability of sulphanilic acid at dumped prices and a more general decline in total manufacturing costs observed over the same period.
- (111) It was argued that if measures were imposed, producers of optical brighteners in third countries where there were no measures would gain a significant price advantage. One producer claimed that if the already low level of return from its optical brighteners' business were further reduced by measures, it would have to reconsider its presence in the market.
- (112) It is not evident that producers of optical brighteners in countries outside the Community will derive a distinct competitive advantage against Community based competitors if measures are imposed. This is particularly true if one considers that the market for sulphanilic acid in one of the largest optical brightener producing countries, the USA, is already subject to a number of anti-dumping duties on imports of sulphanilic acid. It should also be noted that, taking into account the fact that the possible increase in the overall costs of Community based optical brightener producers would be somewhat less than 1 %, and that optical brighteners only account for a small part of the cost of paper production, it has not been demonstrated that continued production in the Community of these products would be endangered. In view of the substantial investments they have made in their Community production facilities in recent years, the size of the market and their customer base, it is evident that these producers will maintain a substantial presence in the Community.
- (113) It is therefore provisionally considered that the imposition of measures would not have a major adverse impact on this user group.

6.2. Concrete additives

- (114) The Commission received replies to its questionnaire from two companies producing concrete additives and written comments from a third. Concrete additives or admixtures are used to improve certain characteristics of concrete and thereby the way in which it performs under a variety of conditions.
- (115) The data of the cooperating users showed that sulphanilic acid was used in the production of all types of concrete additives. When the data of the two companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented roughly 15 % of their manufacturing costs. It was consequently established using the methodology detailed above in recital 105 that measures would increase the manufacturing costs for concrete additives by just over 2 % and that the increase in their full costs (i.e. after taking SG&A into account) would be less than this figure.
- (116) Only one of the respondents provided data concerning the profitability of products sold containing sulphanilic acid. The Commission has therefore not been able to make a precise assessment of the financial impact of measures on this user group. Nevertheless, it is to be noted that the turnover of products containing sulphanilic acid represents a very small part (i.e. less than 5 %) of the total turnover of the two companies that replied to the Commission's questionnaire. Therefore, although it is acknowledged that measures would have some impact on their concrete admixture business, the companies' overall activities would not be endangered. This is supported by the fact that neither company submitted that it would be unable either to absorb the increase in its costs or to pass such an increase onto customers.
- (117) The same two cooperating users were very much against the imposition of measures. Apart from raising concerns about the adequate availability of sulphanilic acid in the Community which are addressed below in section 7, they alleged that they would lose competitiveness on world markets to producers of concrete admixtures in third countries where there was access to supplies of sulphanilic acid from India and China without anti-dumping duties.
- (118) This claim had to be rejected for a number of reasons. In the first instance, neither company provided any evidence, such as information relating to the degree of competitive threat posed by producers of concrete additives in other third countries, with which to substantiate their claim. In addition, having taken account the anticipated increase in these companies' overall costs as noted above in recital 115, it was not considered that measures would have such a prejudicial effect on their competitiveness.

- (119) The third producer was more equivocal in its stance. Whilst underlining that its competitiveness depended to a certain extent on the price at which it was able to purchase its raw materials, it recognised the importance of maintaining a competitive production base for sulphanilic acid in the Community which would guarantee the security of supply for this raw material.
- (120) In the light of the above, it is provisionally concluded that the imposition of measures would not have serious prejudicial effects on the activities of this user sector.

6.3. *Dyes and colorant producers*

- (121) The Commission received questionnaire replies from three producers of dyes, one of which had also replied to the Commission in its capacity as a producer of optical brighteners. Written comments were also received from a fourth producer. They purchased relatively small quantities of sulphanilic acid in the IP. Approximately half of the purchases were of sulphanilic acid originating in the Community with the remainder coming from the countries concerned. When the data of the three companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented between 5 and 10 % of their manufacturing cost for dyes containing sulphanilic acid. The turnover of these products in turn accounted for approximately one third of the combined turnover of these companies.
- (122) It was consequently established using the methodology detailed above in recital 105 that measures would increase the manufacturing costs for dyes and colours containing sulphanilic acid by just over 1 % and that the increase in full costs (i.e. after taking SG&A into account) would be somewhat less than this figure. However, as none of these companies provided the Commission with specific details on the profitability of their dye businesses, it was not possible to determine with any precision the possible effect of measures on their overall financial situation.
- (123) One respondent did however make written comments on the very competitive nature of the dye business and the low margin environment in which it had to do business. It was stated that there was strong price competition from dye products originating in India and China, possibly due to dumping, and that any increase in the price of sulphanilic acid could have serious consequences for continued dye production in the Community. However, the possible existence of dumping on a downstream market (no evidence to this effect having been provided) should not prevent the application of proper trade defence instruments to remedy the injurious effects of the dumped imports on

the producers of sulphanilic acid forming the Community industry.

- (124) Due to the lack of information provided on profitability and the relatively low importance of the cost of sulphanilic acid in the overall manufacturing costs of all dyes, it is provisionally concluded that the imposition of anti-dumping duties would not have serious prejudicial consequences for this user sector.

6.4. *Conclusion*

- (125) Recalling the conclusions reached above in respect of the various users of sulphanilic acid in the present investigation, it is provisionally concluded that the imposition of measures would slightly affect their financial situation but would not endanger their continued activities or lead them to relocate their production outside the Community.

7. **Competition and trade distorting effects**

- (126) The Commission considered the possible competition and trade distorting effects of measures in the light of the findings of the investigation and comments made by interested parties. These comments primarily focused on the continued need for imports of the product concerned into the Community because of the inability of the Community industry to satisfy demand. One user also raised the fear that a reduction in supply from India and China would allow Sorochimie to fix prices on the Community market with its American competitor.
- (127) Measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious dumped prices. It is accepted that imports from various origins will continue to satisfy a significant part of Community demand. It should also be noted that the Community industry has plans to increase its capacity if the return on its sulphanilic acid sales reaches an acceptable level. It is therefore most likely, provided that the injurious effects of the dumped imports are removed by the imposition of measures, that the Community industry will be able to carry out these investment plans. It is important to note that sulphanilic acid production is already concentrated in relatively few countries around the world. According to the findings of the present investigation, production outside the Community is now restricted to India, China, the USA and Hungary. It is therefore in the interests of all users in the Community that the Community industry is allowed to operate under conditions of fair competition so that domestic supplies of the product continue to be available.

- (128) The second claim concerning price collusion had to be rejected as mere conjecture. No evidence was supplied to support the allegation. Moreover, were measures not to be imposed, the Community industry could be forced out of production. If this were to happen, the number of suppliers on the Community market would be further reduced and remaining suppliers could raise their prices to take advantage of this fact.
- (129) In view of the above, it is provisionally concluded that the imposition of provisional anti-dumping duties would help to protect the choice of user industries and maintain competition on the Community market.

8. Conclusion on Community interest

- (130) On the basis of the above, it is provisionally concluded that there are no compelling reasons on the grounds of Community interest why anti-dumping measures should not be imposed in the present case.

H. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (131) In order to prevent further injury being caused by the dumped imports, it was considered appropriate to adopt anti-dumping measures in the form of provisional duties.
- (132) For the purpose of determining the level of these duties, the Commission took account of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (133) To this end, the Commission determined a non-injurious price based on production costs of the Community industry (without taking into account any exceptional costs linked to the Sorochimie's difficulties in its glue business or to the start-up costs of Quimigal), together with a profit margin of 6 %. This profit margin was considered reasonable and achievable for an industry of this type in the chemical sector. The non-injurious price was compared with the prices of the dumped imports used to establish price undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury margin.

2. Provisional measures

- (134) Since for both India and the PRC the dumping margin has been found to be lower than the injury elimination level, the provisional duties to be imposed should correspond to the dumping margins established, in accordance with Article 7(2) of the basic Regulation.

- (135) However, with regard to the parallel anti-subsidy proceeding in respect of India, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 ⁽¹⁾ ('the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It is therefore necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.

- (136) With regard to India, a provisional countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 12(1) of the basic anti-subsidy Regulation. Certain of the subsidy schemes investigated which were found to be countervailable in India constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies could only affect the export price of the Indian exporting producer, thus leading to an increased margin of dumping. In other words, the provisional dumping margin established for the sole cooperating Indian producer is partly due to the existence of export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant export subsidy amount and dumping margin provisionally established. Therefore, the provisional anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the provisional countervailing duty offsetting the effect of the export subsidies. Consequently, the anti-dumping duty rate for India has been set at the level of the dumping margin (24,6 %) minus the rate of countervailing duty of the export subsidies (6,6 %).

- (137) For the PRC, the anti-dumping duty rate has been set at the level of the dumping margin.

I. FINAL PROVISIONS

- (138) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of sulphanilic acid falling within CN code ex 2921 42 10 (TARIC code 2921 42 10 60) originating in the People's Republic of China and India.

2. The rate of the provisional anti-dumping duty applicable to the net-free-at-Community-frontier-price, before duty, shall be as follows:

Country	Provisional duties (%)
People's Republic of China	21,0
India	20,1

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the

provision of a security equivalent to the amount of provisional duty.

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 3 March 2002.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 576/2002**of 3 April 2002****fixing, for March 2002, the specific exchange rate for the amount of the reimbursement of storage costs 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 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽²⁾, as last amended by Regulation (EC) No 1509/2001 ⁽³⁾, and in particular Article 1(3) thereof,

Whereas:

- (1) Article 1 of Commission Regulation (EC) No 1878/2001 of 26 September 2001 laying down transitional measures in connection with the compensation system for storage costs for sugar ⁽⁴⁾, lays down that Article 8 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽⁵⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽⁶⁾, will continue to apply to sugars carried forward from the 2000/01 marketing year to the 2001/02 marketing year.
- (2) Article 1(2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion

rates applicable during the month of storage. That specific rate must be fixed each month for the previous month. However, in the case of the reimbursable amounts applying from 1 January 1999, as a result of the introduction of the agrimonetary arrangements for the euro from that date, the fixing of the conversion rate should be limited to the specific exchange rates prevailing between the euro and the national currencies of the Member States that have not adopted the single currency.

- (3) Application of these provisions will lead to the fixing, for March 2002, of the specific exchange rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific exchange rate to be used for converting the amount of the reimbursement of the storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 into national currency for March 2002 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 4 April 2002.

It shall apply with effect from 1 March 2002.

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

Done at Brussels, 3 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 349, 24.12.1998, p. 1.

⁽²⁾ OJ L 159, 1.7.1993, p. 94.

⁽³⁾ OJ L 200, 25.7.2001, p. 19.

⁽⁴⁾ OJ L 258, 27.9.2001, p. 9.

⁽⁵⁾ OJ L 252, 25.9.1999, p. 1.

⁽⁶⁾ OJ L 175, 14.7.2000, p. 59.

ANNEX

to the Commission Regulation of 3 April 2002 fixing, for March 2002, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector

Specific exchange rate		
EUR 1 =	7,43251	Danish kroner
	9,06212	Swedish kroner
	0,615524	Pound sterling

COMMISSION REGULATION (EC) No 577/2002**of 3 April 2002****on the issue of system B export licences in the fruit and vegetables sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, and in particular Article 6(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 226/2002 ⁽²⁾ fixes the indicative quantities for system B export licences other than those sought in the context of food aid.
- (2) In the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for oranges will shortly be exceeded. This overrun will prejudice the

proper working of the export refund scheme in the fruit and vegetables sector.

- (3) To avoid this situation, applications for system B licences for oranges exported after 3 April 2002 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for oranges submitted pursuant to Article 1 of Regulation (EC) No 226/2002, export declarations for which are accepted after 3 April 2002 and before 15 May 2002, are hereby rejected.

Article 2

This Regulation shall enter into force on 4 April 2002.

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

Done at Brussels, 3 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 268, 9.10.2001, p. 8.

⁽²⁾ OJ L 38, 8.2.2002, p. 8.

COURT OF JUSTICE

COURT OF FIRST INSTANCE

PRACTICE DIRECTIONS

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES,

Pursuant to Article 136a of its Rules of Procedure,

Whereas:

- (1) It is in the interests of the efficient conduct of proceedings before the Court of First Instance (hereinafter 'the Court') and the expeditious processing of cases that practice directions should be issued to the lawyers and agents of parties, dealing with the manner in which pleadings and other procedural documents relating to the written procedure are to be submitted.
- (2) The present directions reflect, explain and complement provisions in the Court's Rules of Procedure and are designed to enable lawyers and agents to allow for the constraints under which the Court operates, and particularly those attributable to translation requirements and the electronic processing of procedural documentation.
- (3) The Instructions to the Registrar dated 3 March 1994 (OJ L 78 of 22 March 1994, p. 32), as amended on 29 March 2001 (OJ L 119 of 27 April 2001, p. 2), require the Registrar to ensure that documents placed on a case-file comply with the provisions of the Statutes of the Court of Justice, the Rules of Procedure and any practice directions of the Court, together with the Instructions to the Registrar, and, in particular, oblige him to require that any irregularities of form in documents lodged be made good and, in default of such regularisation, that he refuse, where appropriate, to accept them if they do not comply with the provisions of the Statutes of the Court of Justice or the Rules of Procedure.
- (4) Compliance with these practice directions will assure lawyers and agents that the pleadings and documents lodged by them may properly be processed by the Court and will not, with respect to the matters dealt with in these practice directions, entail the application of Article 90(a) of the Rules of Procedure.

- (5) These practice directions have been drawn up following consultations with the agents of the Member States and the institutions acting in proceedings before the Court, and with the Council of the Bars and Law Societies of the European Community (CCBE), and take account of the observations made by them.
- (6) In addition, lawyers and agents are strongly advised to have regard to the Notes for the Guidance of Counsel for the written procedure and for the oral procedure, as issued by the Registrar,

HEREBY ADOPTS THE FOLLOWING PRACTICE DIRECTIONS:

I. USE OF TECHNICAL MEANS OF COMMUNICATION

1. A copy of the signed original of a procedural document may be transmitted to the Registry in accordance with Article 43(6) of the Rules of Procedure either:
 - by telefax (to fax number: (352) 43 03 21 00), or
 - by electronic mail (electronic mail address: cfi.registry@curia.eu.int).
2. In the case of transmission by electronic mail, only a scanned copy of the signed original will be accepted. A document despatched in the form of an ordinary electronic file which is unsigned or bears an electronic signature or a facsimile signature generated by computer will not be treated as complying with Article 43(6) of the Rules of Procedure. No correspondence relating to a case which is received by the Court in the form of an ordinary electronic mail message will be taken into consideration.

In order to enable scanned documents to be uploaded to the Court's electronic archives, such documents should be scanned at a resolution of 300 DPI and in PDF format (images plus text), using Acrobat or Readiris 7 Pro software.
3. The lodgment of a document by telefax or electronic mail will be treated as complying with the relevant time limit only if the signed original thereof reaches the Registry prior to the expiry of the period of 10 days following

such lodgment, as specified in Article 43(6) of the Rules of Procedure. The signed original must be sent without delay, immediately after the despatch of the copy, without any corrections or amendments, even of a minor nature, being made thereto. In the event of any divergence between the signed original and the copy previously lodged, only the date of lodgment of the signed original will be taken into consideration.

4. Where, in accordance with Article 44(2) of the Rules of Procedure, a party consents to be served by telefax or other technical means of communication, the statement to that effect must specify the telefax number and/or the electronic mail address to which the Registry may send that party documents to be served. The recipient's computer must be equipped with suitable software (for example, Acrobat or Readiris 7 Pro) enabling communications from the Registry, which will be transmitted in PDF format, to be read.

II. LODGING OF PLEADINGS

1. Pleadings and other procedural documents lodged by the parties must be submitted in such a way as to enable them to be processed electronically by the Court, in particular by means of document scanning and character recognition.

In order to permit the use of such technology, the following requirements must be complied with:

1. the paper must be white, unlined and A4 size, with the text appearing on one side of the page only;
 2. pages of pleadings and annexes, if any, must be placed together in such a way as to enable them to be easily undone. They must not be bound together or fixed to each other by any other means (e.g. glued or stapled);
 3. the text must appear in characters of a current type (such as Times New Roman, Courier or Arial), in at least 12 pt in the body of the text and at least 10 pt in the footnotes, with one-and-a-half line spacing and upper, lower, left and right margins of at least 2,5 cm;
 4. the pages of the pleading must be numbered consecutively in the top right-hand corner. Such consecutive page numbering must also cover all the pages of the annexes to the pleading, so as to make it possible to ensure, by means of a page count, that all the pages of the annexes have been duly scanned.
2. The following information must appear on the first page of the pleading:
 1. the title of the pleading (application, defence, reply, rejoinder, application for leave to intervene, statement in intervention, objection of inadmissibility, observations on ..., replies to questions, etc.);

2. the case number (T-.../...), where it has already been notified by the Registry;
3. the names of the applicant and of the defendant;
4. the name of the party on whose behalf the pleading is lodged.

3. Each paragraph of the pleading must be numbered.

4. The signature of the lawyer or agent acting for the party concerned must appear at the end of the pleading.

III. THE FORM AND CONTENT OF THE APPLICATION AND OF THE DEFENCE

1. All applications initiating proceedings must contain the statements prescribed by Article 44(1) and (2) of the Rules of Procedure.
2. The following must appear at the beginning of each application:
 1. the name and address of the applicant;
 2. the name and capacity of the applicant's lawyer or agent;
 3. the identity of the party against whom the application is made;
 4. the statements referred to in Article 44(2) of the Rules of Procedure (statement of an address for service or agreement to service by technical means of communication).
3. The application must contain, either at the beginning or at the end, the precise wording of the form of order sought in the decision of the Court (such as an order annulling an identified measure or awarding a sum by way of damages).
4. In the case of an application for annulment, a copy of the contested measure must be annexed to the application and identified as such.
5. Each application must be accompanied by a summary of the pleas in law and main arguments relied on, designed to facilitate publication of the notice prescribed by Article 24 of the Rules of Procedure, which will be prepared by the Registry. The summary in question must not be more than two pages long.
6. Together with the application, but separately from the documents annexed in support thereof, the documents referred to in Article 44(3) and (5)(a) and (b) of the Rules of Procedure must be produced.
7. The introductory part of the application must be followed by a brief account of the facts giving rise to the dispute.
8. Legal arguments must be set forth and grouped by reference to the particular pleas in law to which they relate, and ideally each argument or group of arguments should be preceded by a summary statement of the relevant plea.

9. All evidence offered in support must be expressly and accurately indicated, in such a way as to show clearly the facts to be proved:
 - documentary evidence offered in support must refer to the relevant document number in a schedule of annexed documents. Alternatively, if a document is not in the possession of the party concerned, the pleading must clearly indicate where and how the document may be obtained,
 - where oral testimony is sought to be given, each proposed witness or person from whom information is to be obtained must be clearly identified.
10. Each defence must contain the statements prescribed by Article 46(1) of the Rules of Procedure.
11. In addition to the case-number and a statement of the name of the applicant, the following must appear at the start of each defence:
 1. the name and address of the defendant;
 2. the name and capacity of the defendant's lawyer or agent;
 3. the statements referred to in Article 44(2) of the Rules of Procedure (specification of an address for service or to which documents to be served by technical means of communication may be sent).
12. The precise wording of the form of order sought by the defendant in the decision of the Court must be specified either at the beginning or at the end of the defence.
13. Points 6, 8 and 9 above shall apply to the defence.
14. Any fact alleged by the other party which is contested must be accurately indicated and the basis on which it is contested must be stated explicitly.

IV. ANNEXES TO PLEADINGS

1. Only those documents mentioned in the actual text of a pleading and which are necessary in order to prove or illustrate its contents may be submitted as annexes.
2. Annexes will be accepted only if they are accompanied by a schedule indicating, for each document annexed:
 1. the number of the annex,
 2. a short description of the document (e.g. 'letter'), followed by its date, author and addressee and its number of pages,
 3. the page reference and paragraph number in the pleading where the document is mentioned and its relevance is described.

An annex should also be numbered in such a way as to identify the pleading in which it is produced (thus, for example, Annex A.1, A.2, etc. in an application; Annex B.1, B.2, etc. in a defence; Annex C.1, C.2, etc. in a reply; Annex D.1, D.2, etc. in a rejoinder).

3. Where a pleading contains more than 10 annexes, the schedule of annexes must be accompanied by an appendix identifying and setting out the relevant passages in each annex on which the party wishes to rely, save in the case of documents not exceeding three pages in length.
4. The actual annexes, as such, should follow the appendix in order, as per the numbering of the schedule.
5. Where, for the convenience of the Court, copies of judgments, legal writings or legislation are annexed to a pleading, they must be appended separately from the other annexes and must not be listed in the appendix of annexes.
6. Where annexes are documents which themselves contain annexes, they must be arranged and numbered in such a way as to avoid all possibility of confusion and should where necessary be separated by dividers.
7. Each reference in the text of the pleading to a document lodged must state the relevant annex number as given in the schedule of annexes and indicate the pleading with which the annex has been lodged, in the manner described at point IV.2 above.

V. LENGTH OF PLEADINGS

1. In the interests both of the parties themselves and of the proper administration of justice, pleadings must concentrate on essential matters and be as brief as possible. Excessively lengthy pleadings complicate consideration of the case-file and are a prime cause of delay in the disposal of cases.
2. Depending on the nature of the issues and the circumstances of the case, the maximum number of pages should not in principle exceed:
 - 20-50 pages for the application and the defence,
 - 10-25 pages for the reply and the rejoinder,
 - 10-20 pages for an objection of inadmissibility and for observations thereon,
 - 10-20 pages for statements in intervention.

Pleadings should wherever possible be shorter than the maxima indicated above. In cases involving particularly complex legal or factual issues, those maxima may be exceeded.

VI. APPLICATIONS FOR EXPEDITED PROCEDURE

1. A party applying by separate document under Article 76a of the Rules of Procedure for a case to be decided by expedited procedure must briefly state the reasons for the special urgency of the case.
2. As the expedited procedure is largely oral, such an application will be granted only if the pleading (application or defence) of the party requesting expedition is confined to a summary of the pleas relied upon and where its annexes are limited in number.
3. An application in respect of which expedited procedure is requested must not in principle (depending on the nature of the issues and the circumstances of the case) exceed a maximum of 10 to 25 pages.

VII. APPLICATIONS FOR SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

1. The application must be made by a separate document. It must be intelligible in itself, without necessitating reference to the application lodged in the main proceedings.
2. An application for suspension of operation or enforcement or for other interim measures must state, with the utmost concision, the subject-matter of the proceedings, the pleas of fact and law on which the main action is based (establishing a prima facie case on the merits in that action) and the circumstances giving rise to urgency. It must specify the measure(s) applied for. Sections III and IV above shall apply.
3. Because an application for interim measures requires the existence of a prima facie case to be assessed for the purposes of a summary procedure, it must not, under any circumstances, set out in full the text of the application in the main proceedings.
4. In order that an application for interim measures may be dealt with urgently, the number of pages it contains must not in principle (depending on the nature of the issues and

the circumstances of the case) exceed a maximum of between 10 and 25.

VIII. APPLICATIONS FOR CONFIDENTIAL TREATMENT

1. An application pursuant to Article 116(2) of the Rules of Procedure for the exclusion on grounds of confidentiality of any part of the contents of the case-file from the documents to be furnished to an intervener shall be made by a separate document.
2. Such an application must be strictly limited to material which is genuinely confidential. It may not in any event cover the entirety of a pleading and may only exceptionally extend to the entirety of an annexed document. It should usually be feasible to furnish a non-confidential version in which passages, words or figures have been deleted without harming the interest sought to be protected. An application which is inadequately detailed will not be considered.
3. An application must accurately identify the particulars or passages to be excluded and briefly state the reasons for which each of those particulars or passages is regarded as confidential.
4. The application must be accompanied by a non-confidential version of each pleading or document concerned with the confidential material deleted.
5. Where a party, despite a request in that regard from the Registrar, fails to put an application for confidential treatment into proper form to enable it to be considered, all the procedural documents concerned will be furnished to the intervener in accordance with Article 116(2) of the Rules of Procedure.

Done at Luxembourg, 14 March 2002.

Registrar
H. JUNG

President
B. VESTERDORF

II

(Acts whose publication is not obligatory)

COUNCIL

**DECISION No 2/2002 OF THE EU-POLAND ASSOCIATION COUNCIL
of 7 March 2002**

extending the double-checking system established by Decision No 2/1999 of the Association Council for the period from 1 January to 31 December 2002

(2002/254/EC)

THE ASSOCIATION COUNCIL,

Whereas:

- (1) The Contact Group referred to in Article 10 of Protocol 2 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part ⁽¹⁾, which entered into force on 1 February 1994, met on 8 October 2001 and agreed to recommend to the Association Council established under Article 102 of the Agreement that the double-checking system introduced in 1999 by Decision No 2/1999 of the Association Council should be extended for the period from 1 January to 31 December 2002.
- (2) The Association Council, having been supplied with all relevant information, has agreed with this recommendation,

HAS DECIDED AS FOLLOWS:

Article 1

The double-checking system established by Decision No 2/1999 of the Association Council shall continue to apply for the period from 1 January to 31 December 2002. In the preamble and Article 1(1) and (3) of the Decision, references to the period '1 January to 31 December 2001' shall be replaced by references to '1 January to 31 December 2002'.

Article 2

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

It shall apply with effect from 1 January 2002.

Done at Brussels, 7 March 2002.

For the Association Council

The President

J. PIQUÉ I CAMPS

⁽¹⁾ OJ L 348, 31.12.1993, p. 2.

COMMISSION

COMMISSION DECISION

of 25 March 2002

establishing the ecological criteria for the award of the Community eco-label to televisions

(notified under document number C(2002) 1142)

(Text with EEA relevance)

(2002/255/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme ⁽¹⁾, and in particular Article 4 and Article 6(1) thereof,

Whereas:

- (1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.
- (2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria shall be established according to product groups.
- (3) The measures provided for in this Decision are based on the draft criteria developed by the European Union Eco-Labeling Board established under Article 13 of Regulation (EC) No 1980/2000.
- (4) The measures provided for in this Decision are in accordance with the opinion of the committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

Article 1

In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000, a television must fall within the

product group as defined in Article 2 of this Decision and must comply with the criteria set out in the Annex.

Article 2

The product group 'televisions' shall comprise:

'Mains powered electronic equipment which is designed to receive, decode and display TV transmission signals, whether analogue or digital, broadcast via satellite, cable or antenna signals and has a screen size of ten inches (25 cm) or more.'

Article 3

For administrative purposes the code number assigned to televisions shall be '022'.

Article 4

This Decision shall apply from 1 April 2002 until 31 March 2005. If on 31 March 2005 revised criteria have not been adopted, this Decision shall apply until 31 March 2006.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 25 March 2002.

For the Commission

Margot WALLSTRÖM

Member of the Commission

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

ANNEX

FRAMEWORK

The aims of the criteria

These criteria aim in particular at promoting:

- the reduction of environmental damage or risks related to the use of energy (global warming, acidification, depletion of non-renewable resources) by reducing energy consumption,
- the reduction of environmental damage related to the use of natural resources by encouraging the reuse, recyclability and maintainability of a television,
- the reduction of environmental damage or risks related to the use of hazardous substances by reducing the use of such substances.

The criteria encourage the implementation of best practice (optimal environmental use) and enhance consumers' environmental awareness. Furthermore, the marking of plastic components encourages recycling.

The criteria are set at levels that promote the labelling of televisions that are produced with low environmental impact.

Assessment and verification requirements

The specific assessment and verification requirements are indicated within each criterion.

Where appropriate, test methods other than those indicated for each criterion may be used if their equivalence is accepted by the competent body assessing the application.

Where possible, testing should be performed by appropriately accredited laboratories or laboratories that meet the requirements expressed in standard EN ISO 17025 and are competent to perform the relevant tests.

Where appropriate, competent bodies may require supporting documentation and may carry out independent verifications.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or ISO 14001, when assessing applications and monitoring compliance with the criteria (note: it is not required to implement such management schemes).

CRITERIA

1. Energy savings

- (a) The television (hereinafter also referred to as 'the product') shall have an off-switch which is placed at the front of the television and is clearly visible.
- (b) The passive ⁽¹⁾ stand-by consumption of the television shall be $\leq 1,0$ watt.
- (c) For televisions which have an integrated digital receiver/decoder (IRD), the active stand-by consumption ⁽²⁾ of the television shall be $\leq 9,0$ watts.
- (d) The television shall have an on-mode energy efficiency index (EEL_{on}) which is lower than 65 % of the base-case consumption for a television of that format. The on-mode energy efficiency index EEL_{on} shall be derived from the equation:

$$EEL_{on} = P_{on}/P_{on,bc}$$

where:

P_{on} is the measured energy consumption of the television in the on mode;

$P_{on,bc}$ is the base-case energy consumption of the television in the on mode. This is calculated using the following formula:

$$P_{on,bc} = 16 + 16 \times idd + \frac{0,75 \times format \times scrnsz + digit \times 33 + 0,38 \times scrnarea}{0,825}$$

where:

- *digit* is equal to 1 if the television has digital processing for picture scanning, 0 if it does not have such processing,
- *format* is equal to 0,80 for a standard screen (4:3 aspect ratio), and 0,87 for a wide screen (16:9 aspect ratio),

⁽¹⁾ Passive stand-by: the TV is connected to a power source, produces neither sound nor vision, and is waiting to be switched into the modes 'off', 'active stand-by' or 'on' on receipt of a direct or indirect signal, e.g. from the remote control.

⁽²⁾ Active stand-by: the TV is connected to a power source, produces neither sound nor vision, and is exchanging/receiving data with/from an external source.

- *scnsize* is the screen diagonal in cm,
- *scnarea* is the area of the screen in dm², i.e. it is equal to $scnsize \times scnsize \times 0,48/100$ for a standard screen (4:3 aspect ratio), and $scnsize \times scnsize \times 0,427/100$ for a wide screen (16:9 aspect ratio),
- *idd* is equal to 1 if the TV has an integrated digital decoder for digital broadcast signals, otherwise it is equal to 0.

Assessment and verification: the applicant shall provide a test report stating that the level of power consumption in each of these modes has been measured using the procedures shown in EN 50301 (methods of measurement on receivers for TV broadcast transmission). The report shall state the measured power consumption in each mode, the calculated base-case on-mode consumption, and the calculated percentage of base-case consumption in the on-mode.

2. Life-time extension

The manufacturer shall offer a commercial guarantee to ensure that the television will function for at least two years. This guarantee shall be valid from the date of delivery to the customer.

The availability of compatible electronic replacement parts shall be guaranteed for 7 years from the time that production ceases.

Assessment and verification: the applicant shall declare the compliance of the product with these requirements.

3. Take-back and recycling

The manufacturer shall offer, free of charge, the take-back for recycling of the product, and for any component being replaced, except for items contaminated by users.

In addition, the product shall meet the following criteria:

- (a) the manufacturer shall check the disassembly of the system unit and provide a disassembly report that shall be made available to third parties on request. Amongst others, the report shall confirm that connections are:
 - easy to find and accessible,
 - as standardised as possible,
 - accessible with commonly available tools;
- (b) incompatible and hazardous materials shall be separable;
- (c) 90 % (by volume) of plastic and metal materials in the housing and chassis shall be technically recyclable;
- (d) 90 % (by weight) of the glass used in a cathode ray tube shall be technically recyclable;
- (e) if labels are required, they shall be easily separable or inherent;
- (f) plastic parts shall:
 - have no lead or cadmium intentionally added;
 - be of one polymer or compatible polymers, except for the cover, which shall consist of no more than two types of polymers which are separable;
 - contain no metal inlays that cannot be separated;
- (g) plastic parts heavier than 25 grams shall:
 - not contain the following flame retardants:

Name	CAS No
decabromodiphenyl	13654-09-6
monobromodiphenyl ether	101-55-3
dibromodiphenyl ether	2050-47-7
tribromodiphenyl ether	49690-94-0
tetrabromodiphenyl ether	40088-47-9
pentabromodiphenyl ether	32534-81-9
hexybromodiphenyl ether	36483-60-0
heptabromodiphenyl ether	68928-80-3
octabromodiphenyl ether	32536-52-0
nonabromodiphenyl ether	63936-56-1
decabromodiphenyl ether	1163-19-5
chloroparaffins with chain length 10-13 C atoms, chlorine content > 50 % by weight,	85535-84-8

- not contain flame retardant substances or preparations containing substances, that are assigned or may be assigned, at the time of application, any of the risk phrases R45 (may cause cancer), R46 (may cause heritable genetic damage), R50 (very toxic to aquatic organisms), R51 (toxic to aquatic organisms), R52 (harmful to aquatic organisms), R53 (may cause long-term adverse effects in the aquatic environment), R60 (may impair fertility) or R61 (may cause harm to the unborn child), as defined in Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾ and its subsequent amendments,
- have a permanent marking identifying the material, in conformity with ISO 11469. Excluded from this criterion are extruded plastic materials and the light-guide of flat panel displays.

Assessment and verification: the applicant and/or his supplier(s) shall declare the compliance of the product with these requirements. The applicant shall provide to the competent body assessing the application a copy of the disassembly report.

4. User instructions

The product shall be sold with relevant user information, which provides advice on its proper environmental use and, in particular:

- (a) information that the television should be switched off using the off-switch on the television if it will not be watched for some time, as this will reduce energy consumption;
- (b) information that the product consumes electricity during stand-by, and how this could be minimised;
- (c) information that the energy consumed during use can be significantly reduced if the level of brightness of the picture is reduced, and that this will reduce the overall running cost;
- (d) information on the guarantee and the availability of spare parts;
- (e) information about the fact that the product has been designed to enable proper recycling and should not be thrown away;
- (f) advice on how the consumer can make use of the manufacturer's take-back offer;
- (g) information that the product has been awarded the flower (the EU eco-label) with a brief explanation as to what this means together with an indication that more information on the ecolabel can be found at the web-site address: <http://europa.eu.int/comm/environment/ecolabel>.

Assessment and verification: the applicant shall declare the compliance of the product with these requirements, and shall provide a copy of the instruction manual to the competent body assessing the application.

5. Environmental declaration

An environmental declaration shall accompany the product and shall be available to the user. This document shall be in conformity with the recommendations of ECMA's Technical Report 70 'Product-related environmental attributes'.

Assessment and verification: the applicant shall declare the compliance of the product with this requirement, and shall provide a copy of the environmental declaration to the competent body assessing the application.

6. Information appearing on the eco-label

Box 2 of the eco-label shall include the following text:

- High energy efficiency
- Designed to facilitate recycling

Assessment and verification: the applicant shall declare the compliance of the product with this requirement, and shall provide a copy of the eco-label as it appears on the packaging and/or product and/or accompanying documentation.

⁽¹⁾ OJ L 196, 16.8.1967, p. 1.

COMMISSION DECISION
of 25 March 2002
rectifying Decision 2000/275/EC on equivalences between certain categories of driving licences

(notified under document number C(2002) 1175)

(Text with EEA relevance)

(2002/256/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/439/EEC of 29 July 1991 on driving licences ⁽¹⁾, as last amended by Commission Directive 2000/56/EC ⁽²⁾, and in particular Article 1(2) and the first paragraph of Article 10 thereof,

Whereas:

Errors were made in the Annex to Commission Decision 2000/275/EC ⁽³⁾. That Decision ought therefore to be amended,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2000/275/EC is hereby rectified as follows, on the pages indicated in brackets:

1. in the Description of Model Belgium 1 (p. 3), the words 'Generally it is a pink' are replaced by the word 'Pink';
2. in the Table of equivalences for Model Germany 2 (p. 8), 'Corresponding categories' column, third line, the words 'less than 25 passenger seats' are replaced by the words '25 passenger seats or fewer';
3. in the Table of equivalences for Model Greece 1 (p. 14), 'Corresponding categories' column, third line, 'B*' is replaced by 'B for professional use';
4. in the Table of equivalences for Model Spain 1 (p. 15), 'Corresponding categories' column, sixth and seventh lines, 'C1' and 'C1E' are replaced by 'C1 (see: 1)' and 'C1E (see: 1)' respectively; in the eighth line, 'C, CE (see: 1)' is replaced by 'C, CE (see: 2)';
5. the 'Additional information' section of Model Spain 1 (p. 15) is replaced by the following:

'Additional information:

1. if no restriction to a maximum authorised mass of 7 500 kg appears on page 6 of the licence, category C1 includes the right to drive C vehicles. If no such restriction is indicated and the holder is entitled to drive C1E or C2E vehicles, those categories include the right to drive CE vehicles;
2. the holder of a C2 licence is additionally entitled to drive DE vehicles if he also holds a D licence;
6. only concerns the French version;
7. in the Table of equivalences for Model Austria 3 (p. 29), 'Corresponding categories' column, fifth line, '(see: 1)' is replaced by '(see: 2)';
8. in the Table of equivalences for Model Austria 4 (p. 30), 'Corresponding categories' column, second line, 'A1, B' is replaced by 'B';
9. the section entitled 'Models issued in Norway' (pp. 47-50) is replaced by the text appearing in the Annex to this Decision;
10. the figure '1.' is inserted after 'Additional information' for each of the following models:
France 1 (OJ L 91, 12.4.2000, p. 16), France 2 (p. 17), France 4 (p. 18), France 5 (p. 19), Portugal 1 (p. 31), Sweden 2 (p. 37), United Kingdom 3 (p. 39), Iceland 1 (p. 44), Iceland 2 (p. 44), Iceland 3 (p. 45), Iceland 4 (p. 45) and Liechtenstein 2 (p. 47).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 March 2002.

For the Commission

Loyola DE PALACIO

Vice-President

⁽¹⁾ OJ L 237, 24.8.1991, p. 1.

⁽²⁾ OJ L 237, 21.9.2000, p. 45.

⁽³⁾ OJ L 91, 12.4.2000, p. 1.

ANNEX

MODELS ISSUED IN NORWAY

General remark for all models: all Norwegian driving licences have preprinted text in 'bokmål' or 'nynorsk'. The two forms of language have equal status. The words 'førerkort' and 'Norge' show the text is in 'bokmål'; 'førarkort' and 'Noreg' indicate the 'nynorsk' form.

Model Norway 1 (N1)

Issued in Norway from 23.4.1967 to 31.3.1979

Description: dark green cover, model folded in format A7, six pages. The word 'Fører kort' or 'Førarkort' is printed on the front cover.

Table of equivalences

Categories of model N1	Corresponding categories
Class 1	A1, BE
Class 2	A1, BE
Class 3	A
(Class 4)	—

Additional information:

this model is valid until the holder's 100th birthday, provided the licence had a period of validity of ten years and was valid on 2 April 1982. National law requires holders driving abroad with this model to carry with them in addition a certified translation or an international permit in accordance with the Vienna Convention on Road Traffic.

Model Norway 2 (N2)

Issued in Norway from 1.4.1979 to 1.3.1989

Description: bright pink paper model encased in clear plastic, two pages. Licences issued after July 1985 carry the date of first issue of any driving licence to the holder ('Første førerkort').

Table of equivalences

Categories of model N2	Corresponding categories
A	A
A + 'Klasse A gjelder bare lett motorsykkkel'	A1 (see: 1)
B	B
BE	BE (see: 2)
C	C
CE	CE
D	C1, D (see: 3)
DE	C1E, DE (see: 3)
(A + 'Klasse A gjelder bare beltemotorsykkkel')	—
(T)	—

Additional information:

1. the stamp is on the reverse of the driving licence;
2. holders of driving licences of category BE issued prior to 1 April 1979 and subsequently exchanged for an N2 model are additionally entitled to drive vehicles in category A1;
3. to maintain the C1 or C1E entitlement, the holder has to exchange his licence for an N4 model when renewing his D or DE entitlement.

Model Norway 3 (N3)

Issued in Norway from 1.3.1989 to 31.12.1997

Description: bright pink and grey paper model encased in clear plastic, two pages.

Table of equivalences

Categories of model N3	Corresponding categories
A	A
A + 'Klasse A gjelder bare lett motorsykkel'	A1 (see: 1)
A1	A1
B	B
BE	BE (see: 2)
B1	B1
C	C
CE	CE
C1	C1 (see: 3)
C1E	C1E (see: 3)
D	D
DE	C1E, DE (see: 4)
D1	D1 (see: 5)
D1E	D1E (see: 5)
D2	C1, D1 (see: 4)
D2E	C1E, D1E (see: 4)
(A + 'Gjelder beltemotorsykkel')	—
(S)	—
(T)	—

Additional information:

1. the stamp is on the reverse of the driving licence;
2. driving licences of category BE first issued prior to 1 April 1979 and since exchanged for an N3 model entitle the holder to drive category A1 in addition;
3. categories C1 and C1E were introduced on 1 January 1997;
4. the entitlement to drive C1 and C1E may only be maintained if the holder exchanges his licence for an N4 model when renewing his DE, D2 or D2E entitlement;
5. categories D1 and D1E were introduced on 1 January 1997 and replaced categories D2 and D2E.

Model Norway 4 (N4)**Issued in Norway since 1.1.1998**

Description: Plastic card model in accordance with Annex Ia to Directive 91/439/EEC.

Table of equivalences

Categories of model N4	Corresponding categories
A1	A1
A	A
B1	B1
B	B
BE	BE
C1	C1
C1E	C1E
C	C
CE	CE
D1	D1
D1E	D1E
D	D
DE	DE
(S, T)	—