Official Journal

of the European Union

ISSN 1725-2555

L 72

Volume 47

11 March 2004

English edition

Legislation

Contents

Price: EUR 18

(Continued overleaf)

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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Corrigenda

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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 435/2004

of 8 March 2004

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

(1) On 18 September 2003, the Commission imposed, by Regulation (EC) No 1627/2003 [2], a provisional anti-dumping duty on the imports into the Community of sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia (the 'provisional Regulation').

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (the 'period considered').

B. **SUBSEQUENT PROCEDURE**

(3) Following the imposition of a provisional anti-dumping duty on imports of sodium cyclamate originating in the PRC and Indonesia, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) As explained under recital 5 of the provisional Regulation, the dumping verification visits to the PRC and Indonesia which normally take place before provisional findings are made, were cancelled due to the introduction of travel restrictions because of SARS. A notice concerning the consequences of SARS on anti-dumping and anti-subsidy investigations has been published in the *Official Journal of the European Union* [3].

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the travel restrictions relating to SARS were lifted, verification visits were carried out at the premises of the following companies:

(a) *Exporting producers and their related companies in PRC and Hong Kong,*

— Zhong Hua Fang Da (H.K.) Limited, Hong Kong,

— Fang Da Food Additive (Shen Zhen) Limited, Shenzhen, PRC,

— Shanghai Shumi Co. Ltd., Shanghai, PRC,

— Rainbow Rich Industrial Ltd., Hong Kong,

— Golden Time Enterprise (Shenzhen) Co. Ltd., Shenzhen, PRC;

(b) *Exporting producer in Indonesia*

— PT. Golden Sari (Chemical Industry), Bandar Lampung, Indonesia.

(6) Following the expiry of the deadline for comments on the provisional findings and well after the verification visits, another Indonesian company made itself known and requested the exporting producers' questionnaire in order to reply. The company was informed that it should have made itself known and request the questionnaire at the time of initiation of the investigation. It was further informed that at such advanced stage of the investigation no new information could be considered and that findings would be based for it on facts available. It was, nevertheless, given an opportunity to comment and its comments were considered, but they have not changed the above conclusion.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 232, 18.9.2003, p. 12.
[3] OJ C 191, 13.8.2003, p. 2.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, taken into account for the definitive findings.

C. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

(8) No comments regarding the product concerned and like product were received and, therefore, the conclusions set out in recitals 7 to 13 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. GENERAL METHODOLOGY

(9) This section explains the general methodology used to establish whether the imports into the Community of the product concerned have been dumped. Specific issues raised by the investigation for each country concerned are described in recitals 23 to 49.

1.1. **Normal value**

For cooperating exporting producers in Indonesia and exporting producers in the PRC for which market economy treatment ('MET') has been granted

1.1.1. Overall representativity of domestic sales

(10) In accordance with Article 2(2) of the basic Regulation, it was first examined whether the domestic sales of sodium cyclamate to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was at least 5 % of the total volume of its corresponding export sales to the Community.

1.1.2. Product type specific representativity

(11) Subsequently, it was examined whether the domestic sales of the exported product types could be considered as representative. For this purpose, the comparable types sold on the domestic market had to be identified first. The investigation considered those product types of sodium cyclamate sold domestically as being identical or directly comparable with the types sold for export to the Community when they were of the same form as defined in recital 8 of the provisional Regulation.

(12) Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type sold to independent customers during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

1.1.3. Ordinary course of trade test

(13) It was examined whether the domestic sales of each exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(14) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the IP:

(a) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where 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 during the IP, paid or payable by independent customers, of the type in question irrespective of whether these sales were profitable or not.

(b) For those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question.

1.1.4. Normal value based on actual domestic price

(15) When the requirements set out in recitals 10 to 14(b) were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country during the IP, as provided for in Article 2(1) of the basic Regulation.

For exporting producers in the PRC without MET

(16) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that are not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country) for the like product.

1.2. **Export price**

(17) According to Article 2(8) of the basic Regulation, the export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

1.3. **Comparison**

(18) In order to ensure a fair comparison between the normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs, commissions, discounts and bank charges have been granted where applicable and justified.

(19) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade.

1.4. **Dumping margin**

For cooperating exporting producers in Indonesia and exporting producers in the PRC granted MET

(20) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type, as determined under recitals 10 to 15, was compared with the adjusted weighted average export price, as determined under recital 17.

For non-cooperating companies

(21) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. The above approach was also considered necessary in respect of non-cooperating exporting producers, in order to prevent such non-cooperating exporting producers benefiting from their non-cooperation.

(22) Where the overall level of cooperation found was low, it was considered appropriate to set a country wide dumping margin for the non-cooperating companies at a higher level than the highest dumping margin established for a cooperating company. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the country concerned generally having dumped at a higher level than any cooperating exporting producer in the same country.

2. SPECIFIC ISSUES RAISED BY THE INVESTIGATION WITH REGARD TO THE ESTABLISHMENT OF THE DUMPING MARGIN FOR EACH OF THE COUNTRIES CONCERNED

2.1. **Indonesia**

(23) In total, one exporting producer cooperated in the investigation.

2.1.1. Normal value

(24) It was first established that the domestic sales of sodium cyclamate of the sole cooperating exporting producer were representative during the IP (see recital 10 above). It was further established that the sole product type of sodium cyclamate sold on the domestic market by the cooperating exporting producer was identical to the sole type sold for export to the Community.

(25) For this product type, since more than 80 % by volume was not sold at a loss on the domestic market and its weighted average sales price was higher than its weighted average production cost, the normal value was calculated as the weighted average price of all domestic sales made during the IP, paid or payable by independent customers, of the type in question, as set out in Article 2(1) of the basic Regulation.

2.1.2. Export price

(26) Exports were made only to unrelated customers in the Community and, therefore, 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 during the IP.

2.1.3. Comparison

(27) In order to ensure a fair comparison, allowances were made for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs and commissions, where applicable and justified.

(28) The exporting producer claimed an adjustment to the normal value for an amount corresponding to import charges, indirect taxes and income taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in Indonesia and not collected or refunded in respect of the product exported to the Community. However, the company concerned could neither demonstrate that those taxes were actually not paid or refunded in respect of the export sales to the Community nor that any such taxes not paid or refunded were included in the domestic prices. Therefore, the claim was rejected.

(29) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the exporting producer concerned claimed an adjustment for certain advertising expenses and an adjustment for the expenses of certain representative offices involved in some domestic sales. However, it was established that the exporting producer had already included these expenses in the quantification of the level of trade adjustment it had claimed earlier. Furthermore, the level of trade adjustment granted covered any price difference between sales through different channels due to different functions, including those concerning advertising and the sales representative offices. Consequently, and in order to avoid duplication when making adjustments as provided for in Article 2(10) of the basic Regulation, it was not considered appropriate to grant any further adjustment for such expenses. Therefore, the claim was rejected.

2.1.4. Dumping margin

(30) The definitive dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for PT. Golden Sari (Chemical Industry) 16,3 %.

(31) The residual definitive dumping margin for Indonesia was set at a higher level than the dumping margin established for the cooperating company as the overall level of cooperation in Indonesia was low. In order to establish the overall level of non-cooperation, the volume of exports to the Community reported by the cooperating exporting producer was compared with the equivalent Eurostat import statistics. This showed a level of non-cooperation of around 40 % of the total volume of imports.

(32) In order to calculate the residual definitive dumping margin, and since the cooperating company only exported one product type, the average import price into the Community for Indonesia, as reported in the Eurostat statistics, adjusted for ocean freight and insurance costs was compared to the normal value, as established for the cooperating exporting producer, adjusted for freight and packing costs. The residual definitive dumping margin thus established is 18,1 %.

2.2. **The People's Republic of China**

(33) In total, three exporting producers cooperated in the investigation.

2.2.1. Market Economy Treatment (MET)

(34) As set out in recitals 21 to 25 of the provisional Regulation, MET was granted to all three exporting producers in the PRC who applied for it.

2.2.2. Normal value for exporting producers granted MET

(35) During the verification visit to Rainbow Rich Industrial Ltd., the mother company of Golden Time Enterprise (Shenzhen) Co. Ltd., it was found out that the production and sales of sodium cyclamate during the IP of another related producing company in the PRC, San Lian Industrial, situated in Nanjing [1], had neither been reported in the questionnaire responses nor subsequently during the course of the investigation. Neither was MET requested in respect of this related company. Therefore, domestic sales information and cost of production of this company could not be verified during the on-spot verification. It was found that these non-reported domestic sales were significant, i.e. around 45 % of the total domestic sales of the related companies in question.

[1] As of October 2002, the company is called Jintian Enterprises Nanjing Co. Ltd.

(36) According to Article 18 of the basic Regulation, provisional or final findings may be made on the basis of facts available when an interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in the basic Regulation. It is noted that the production costs and the domestic sales information of San Lian Industrial are necessary information in order to establish the normal value to be compared with the export price established for Golden Time Enterprise (Shenzhen) Co. Ltd. Since neither MET was granted to San Lian Industrial, nor information concerning its domestic sales and cost of production was provided and verified during the investigation, the determination of the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. shall be based on facts available. The party concerned was informed accordingly of the consequences of this partial non-cooperation and given an opportunity to comment. The comments confirmed that San Lian Industrial produced and sold in the domestic market during the IP sodium cyclamate on behalf of its mother company Rainbow Rich Industrial Ltd. and that the details have never been reported. Therefore, the conclusion to establish normal value on the basis of the facts available is hereby confirmed.

(37) Since the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. would normally include all domestic sales of the related companies and one related company is considered as not having cooperated and MET was not granted to it, an analogue country was selected as the best facts available for the establishment of normal value. In this respect, it is noted that following the imposition of provisional measures no comments were received concerning the selection of Indonesia as an analogue country as set out in recital 28 of the provisional Regulation. Therefore, prices in Indonesia were considered a reasonable surrogate for prices in the PRC. The average domestic prices of the cooperating Indonesian exporting producer, as verified during the on-spot verification visit, have therefore been used to establish normal value for the Chinese exporting producer Golden Time Enterprise (Shenzhen) Co. Ltd.

(38) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the cooperating Indonesian exporting producer and the Indonesian Government argued that normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. and for any other non-cooperating Chinese exporting producer (see recital 49) should not be based on data from the sole cooperating Indonesian exporting producer, but on data from the complaint. They further argued that it would be discriminatory to use the data of the cooperating Indonesian exporting producer to calculate normal value for non-cooperating Chinese exporting producers, because the dumping margin established for one Chinese exporting producer, which has partially cooperated during the investigation, was found lower than that for the cooperating Indonesian exporting producer. Firstly, it is noted that the dumping margin is the result of the comparison of a normal value with an export price. Therefore, the level of the dumping margin depends on two parameters (normal value and export price) and conclusions, including the abovementioned discrimination, cannot be drawn by comparing only one of these parameters, i.e. the normal value. Furthermore, in accordance with the provisions of Article 18(5) of the basic Regulation, if determinations, including those regarding normal value, are based on the facts available, any such facts, including the information supplied in the complaint, shall be checked by reference to official import statistics or information obtained from other interested parties during the investigation. Therefore, since there was on the record verified information concerning normal value obtained from the sole cooperating Indonesian exporting producer, it was not considered appropriate to disregard this information and use instead as facts available information supplied in the complaint.

(39) As regards the exporting producer Fang Da Food Additives situated in both Shenzhen and Yang Quan, when examining whether the domestic sales were made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, the selling, general and administrative expenses as reported by Fang Da Food Additives and its related companies for their domestic sales were adjusted in order to take into account expenses which were recorded in the accounting of the related company, Zhong Hua Fang Da Ltd. in Hong Kong. The verification confirmed that these expenses were closely linked to the operations in the domestic market and not to the export activities as initially claimed by the company.

(40) The examination whether the domestic sales were made in the ordinary course of trade was then carried out 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.

(41) For those product types where more than 80 %, by volume, of sales were 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.

(42) For those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs, of the type in question.

2.2.3. Export prices for exporting producers granted MET

(43) All export sales to the Community by all cooperating exporting producers in the PRC were made to independent customers in the Community via related companies in Hong Kong. The investigation established that in all cases the functions relating to export sales of the exporting producers in the PRC were carried out by their related companies in Hong Kong. Therefore, the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable to the related companies in Hong Kong.

2.2.4. Comparison for exporting producers granted MET

(44) In order to ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary costs, credit, packing, discounts and bank charges where applicable and justified.

(45) Since for all cooperating exporting producers in the PRC sales to the Community were made via related companies in Hong Kong, the export prices were adjusted as indicated in recital 44 in order to bring them at ex-factory level in the PRC.

(46) The cooperating exporting producers and their related domestic sales companies claimed an adjustment to the domestic sales prices (normal value) for credit costs. The claim was rejected because the companies could not show any written evidence about agreed terms of payment at the date of sale, i.e. in their domestic sales invoices or other correspondence.

2.2.5. Dumping margin for exporting producers granted MET

(47) The comparison of normal value and export price as indicated in recital 19 showed no dumping for the two companies of Fang Da Food Additive situated in Shenzhen and Yang Quan. The investigation should therefore be terminated for these companies without imposition of measures.

(48) As explained in recital 37, normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. was established using prices in an analogue country, Indonesia. The comparison of normal value and export price as indicated in recital 19 showed a dumping margin of 6,9 %.

2.2.6. Dumping margin for exporting producers without MET

(49) As set out in recital 34 of the provisional Regulation, there was significant non-cooperation from the PRC (around 47 % of total imports as reported in Eurostat). Following the imposition of provisional measures no comments were received concerning this finding. Furthermore, given that the PRC is an economy in transition, prices of an analogue country have been used in establishing a normal value for the calculation of the country wide dumping margin. For the reasons set out in recital 37, Indonesia has been used as an appropriate analogue country for this purpose.

(50) The definitive country wide dumping margin applicable to all companies without MET in the PRC was set at 17,6 %, corresponding to the difference between the export price calculated on the basis of facts available; i.e. average import price in the Community, as reported in the Eurostat statistics adjusted for ocean freight and insurance costs, and the normal value as established for Indonesia in recital 32.

(51) The definitive dumping margins for the PRC expressed as a percentage of the cif Community frontier price duty unpaid are summarised as follows:

Exporting producers in the PRC	(%)
Fang Da Food Additive (Shen Zhen) Limited	0 %
Fang Da Food Additive (Yang Quan) Limited.	0 %
Golden Time Enterprise (Shenzhen) Co. Ltd.	6,9 %
All other companies	17,6 %

E. **COMMUNITY INDUSTRY**

(52) No comments were received following the imposition of provisional measures concerning the composition of the Community industry. Therefore, the findings as set out in recital 37 of the provisional Regulation are hereby confirmed.

F. **INJURY**

(53) Following the imposition of provisional measures, no comments were received concerning the analysis of Community consumption and, therefore, the findings set out in recitals 38 and 39 of the provisional Regulation are hereby confirmed.

(54) No comments were also received following the imposition of provisional measures concerning the cumulative assessment of the effects of the imports concerned. Furthermore, the changes in the definitive dumping margins do not affect the findings set out in recitals 40 to 44 of the provisional Regulation. However, following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the Indonesian Government claimed that there was no justification to cumulate exports from Indonesia with those form the PRC, because Indonesian exports declined substantially during the IP whilst Chinese imports increased substantially. In this respect, the investigation established that, although dumped imports from Indonesia decreased slightly between 2001 and the IP, overall they increased during the period considered. The fact that Chinese dumped imports increased faster than Indonesian dumped imports during the period considered does not justify the non-cumulative assessment of the effects of the dumped imports from the two countries under investigation in accordance with the provisions of Article 3(4) of the basic Regulation. Therefore, since no other comment was raised concerning the findings as set out in recitals 40 to 44 of the provisional Regulation, the claim is rejected and these findings are hereby confirmed.

(55) However, given the no dumping finding for two related Chinese exporting producers (see recital 47), the volume and the market share of the dumped imports have been reassessed. Indeed, non-dumped imports have been deducted from the imports as established in recitals 45 and 46 of the provisional Regulation. The evolution of the volume of the dumped imports from the PRC and Indonesia and their market share during the period considered is therefore as follows:

Total dumped imports (tonnes)	1999	2000	2001	IP
Index	100	65	147	315

Market share of dumped imports	1999	2000	2001	IP
Index	100	62	125	210

(56) Dumped imports increased during the period considered by 215 %. A higher increase was noticed after the year 2000. Between 2001 and the IP dumped imports increased by 114 %.

(57) The market share of the dumped imports also increased during the period considered by 110 %. Again, the increase was higher after the year 2000. A 68 % increase was noticed between 2001 and the IP. It should be noted that the market share of dumped imports during the IP was very substantial. For reasons of confidentiality the precise figures, however, cannot be given.

(58) Given that the export prices as reported by the cooperating exporting producers were overall in line with Eurostat import prices and no comment was received following the imposition of provisional measures, the findings as set out in recital 47 of the provisional Regulation are hereby confirmed.

(59) For the determination of price undercutting during the IP the methodology set out in recital 48 of the provisional Regulation was followed. However, the average import price of the cooperating Indonesian exporting producer has now been used in the calculation. For the non-cooperating exporting producers in the PRC and Indonesia the undercutting was calculated using the Eurostat import prices for these countries. These prices were at cif level and an appropriate adjustment was made to include any customs duty normally paid on importation.

(60) On that basis, the existence of price undercutting was established for dumped imports from the PRC and Indonesia. The level of undercutting, expressed as a percentage of the Community industry's average selling price ranged from 11 % to 15 % for the PRC and it was found to be at around 20 % for Indonesia.

(61) Following the imposition of provisional measures no written comments were received concerning the situation of the Community industry and the conclusion on injury. However, one Chinese exporting producer argued in the course of a hearing that the Community industry has not suffered material injury because during the period considered its production and prices remained relatively stable and its sales in the Community and the employment increased.

(62) It is noted that this exporting producer has not provided any evidence indicating that the relevant findings as set out in the provisional Regulation were not accurate. According to these verified findings, the production and the prices of the Community industry decreased during the period considered by 10 % and 3 % respectively. Moreover, this has to be put into context with the development of consumption. Indeed, during the same period, despite the consumption in the Community increasing by 50 %, the sales of the Community industry increased by only 1 %. Thus, the Community industry could clearly not benefit from the expanding market, and on the contrary lost market share. As regards employment, it is noted that it has increased by 7 % between 1999 and 2000, but then remained stable until and during the IP. Consequently, there was no increase in the number of employees which could have affected the situation of the Community industry during the IP. Furthermore, the employment cost per employee has increased overall in line with inflation during the period considered. It is, therefore, concluded that these arguments do not show that the Community industry has not suffered material injury during the IP.

(63) Accordingly, the findings set out in recital 50 to 69 of the provisional Regulation that the Community industry suffered material injury mainly in the form of financial losses are hereby confirmed.

G. **CAUSATION OF INJURY**

(64) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports of sodium cyclamate originating in the PRC and Indonesia 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.

(65) No written comments concerning the causation of injury were received following the imposition of provisional measures. However, one Chinese exporting producer argued during the course of a hearing that imports from the PRC are not a cause of injury, because the Community industry enjoyed a near-monopoly situation before sodium cyclamate was exported from the PRC and Indonesia, the prices from the PRC increased during the period considered, the sales of the Community industry have not decreased during the same period and the Community industry maintained its dominant market share.

(66) These arguments have no factual basis. The investigation has shown that at the beginning of the period considered, i.e. 1999, imports into the Community held a market share of more than 35 %. Therefore, the Community industry was not enjoying a near-monopoly situation. Furthermore, as set out in recital 47 of the provisional Regulation, the prices of the dumped imports decreased by 8 % during the period considered. As regards the evolution of the sales of the Community industry, recital 62 explained that they increased by only 1 % during a period when consumption increased by 50 %. As set out in recitals 55 and 56 above, dumped imports increased during the same period by 215 %. Finally, the market share of dumped imports during the IP was found to be higher than the market share of the Community industry. Consequently, the arguments cannot be accepted and the conclusions set out in recitals 71 and 72 of the provisional Regulation are hereby confirmed.

(67) The same exporting producer further argued that any injury was caused by other factors, i.e. the Community industry was insufficiently prepared to compete on its domestic and foreign markets, its profitability has been affected by its own business decisions on investments in order to maintain state of the art facilities and comply with its legal environment (strict environmental regulations), the Community industry is present only in a high-end segment which only indirectly competes with the low-end segment satisfied by imports from the PRC and certain Chinese producers enjoy comparative advantages that allow them to be more competitive than the Community industry.

(68) It is noted that no evidence was provided to support the argument that the Community industry was not prepared to compete on its domestic and foreign markets. Moreover, the investigation did not show any such reason. Recital 73 of the provisional Regulation set out the reasons why the export performance of the Community industry could not have contributed significantly to the injury suffered. To the contrary, the significant price undercutting by the dumped imports (see recital 60) clearly shows that the imports under investigation were the main cause of injury to the Community industry and, therefore, the claim cannot be accepted.

(69) As to the investments, it is noted that the Community industry invested when its profitability was positive. During the IP, when it realised losses, investments fell sharply by 13 times in comparison with the previous profitable year (see recital 57 of the provisional Regulation). There is therefore no indication that investments, including any for environmental purposes, have contributed to the injury suffered during the IP and the claim is rejected.

(70) With regard to the lack of direct competition of the Community industry with imports from the PRC, the investigation established that both forms of sodium cyclamate were exported from the PRC to the Community and both forms were produced and sold in the Community market by the Community industry during the IP. Therefore, direct competition existed. Furthermore, given the existence of certain substitutability between the two forms, indirect competition also existed. Consequently, the claim cannot be accepted.

(71) As far as the allegation that certain Chinese producers enjoyed comparative advantages which allow them to be more competitive than the Community industry, it is noted that no details of these alleged advantages were provided. It is also considered that the exporting producer concerned can benefit from any comparative advantages it may be enjoying as long as it does not dump the product concerned within the meaning of the basic Regulation.

(72) The investigation has further established that the non-dumped imports from the PRC were not undercutting the prices of the Community industry during the IP and, therefore, could not have contributed significantly to the injury suffered by the Community industry.

(73) Consequently, the findings and conclusions set out in recitals 73 to 77 of the provisional Regulation that the material injury suffered by the Community industry was mainly caused by the dumped imports are hereby confirmed.

H. **COMMUNITY INTEREST**

1. GENERAL REMARKS

(74) No comments were received following the imposition of provisional measures concerning the findings on Community interest. However, shortly before the imposition of provisional measures one raw material supplier and two importers sent letters claiming that it would not be in the Community interest to impose measures against the cooperating Indonesian exporting producer. The Commission re-examined whether, despite the final conclusion on the existence of 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. INTERESTS OF COMMUNITY SUPPLIERS

(75) The supplier which made itself known shortly before the imposition of provisional measures, i.e. a supplier other than those mentioned in recitals 83 and 84 of the provisional Regulation, alleged that it is mainly selling cyclohexylamine (the basic raw material to produce sodium cyclamate) to the Far East and in particular to Indonesia. It further claimed that since the sole cooperating Indonesian exporting producer is its main client, there is a risk of losing significant sales volume if an anti-dumping duty is imposed. This would also have some knock-on effects on other parties in the downstream supply chain.

(76) It is noted that beyond a short letter which was submitted well outside the time limits set for that purpose in the notice of initiation, the supplier in question has not provided any actual evidence which could substantiate its claims as provided for in Article 21(7) of the basic Regulation. No further comments were submitted after the imposition of provisional measures and the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty. Furthermore, it was found that this supplier was also providing cyclohexylamine to the Community industry. It is therefore concluded that the imposition of definitive measures could not have a significantly negative effect on its business.

(77) No other comments concerning the interest of suppliers were received and, therefore, the conclusions set out in recital 83 and 84 of the provisional Regulation are hereby confirmed.

3. INTEREST OF IMPORTERS

(78) The two importers which made themselves known shortly before the imposition of provisional measures, alleged that the imposition of an anti-dumping duty on Indonesia is not justified as their supplier, the sole cooperating Indonesian exporting producer, has shown a strong commitment to 'hold the prices on a level economically justified'. Furthermore, they claimed that the 'pricing of the Indonesian producer have always been higher than the Chinese, resulting in reasonable market prices for the end-users'.

(79) However, these importers have not made themselves known and have not provided necessary information within the time limits set for that purpose in the notice of initiation. Their claims were not supported by any actual evidence that could substantiate them. Furthermore, no relevant information which could support such allegations existed on the record. On the contrary, the investigation established that the prices of the Indonesian exporting producer in question were lower than the Chinese prices (see recital 60). Thus, as the submissions were not supported by actual evidence, they shall not be taken into account in accordance with Article 21(7) of the basic Regulation.

(80) No further substantiated comments concerning the interest of importers were received and, consequently, the conclusions set out in recitals 85 to 87 of the provisional Regulation are hereby confirmed.

4. INTEREST OF USERS

(81) No comments concerning the interest of users were received following the imposition of provisional measures and, therefore, the conclusions set out in recitals 88 to 92 of the provisional Regulation are hereby confirmed.

5. INTEREST OF THE COMMUNITY INDUSTRY

(82) No comments concerning the interest of the Community industry were received following the imposition of provisional measures and, therefore, the conclusions set out in recitals 93 to 95 of the provisional Regulation are hereby confirmed.

6. COMPETITION AND TRADE DISTORTING EFFECTS

(83) No written comments concerning the competition and trade distorting effects were received following the imposition of provisional measures. However, although in accordance with Article 21 of the basic Regulation exporting producers are not considered interested parties in the framework of the Community interest analysis, one Chinese exporting producer argued in the course of a hearing that the Community interest does not warrant measures because the imposition of provisional measures restricted the number of players/exporters in the Community market without reducing supply from the countries concerned, the Community industry cannot satisfy the market demand and the imposition of definitive measures will reinforce the dominant position of the Community industry.

(84) It is noted that the aim of anti-dumping measures is not to eliminate exporters from the Community market, but to restore fair trading conditions. The fact that the Community industry's production cannot meet, at present, Community demand is not a reason to allow unfair trade practises to continue. It is further noted that the Community industry does not hold a dominant position since its market share was less than 50 % during the IP. Moreover, while it is true that the only countries which produce sodium cyclamate outside the Community are Indonesia and the PRC, there are also important PRC producers which were not found to be dumping and which can therefore supply the Community market as before. Therefore, the arguments cannot be accepted and the conclusions set out in recital 96 to 99 of the provisional Regulation are hereby confirmed.

7. CONCLUSION ON COMMUNITY INTEREST

(85) On the basis of the above, it is concluded that the imposition of definitive anti-dumping measures would not be against the Community interest.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

1. INJURY ELIMINATION LEVEL

(86) Based on the methodology explained in recitals 101 to 104 of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be definitively imposed. Since no comments on the methodology used for establishing the injury elimination level were received, this methodology is hereby confirmed. However, the average import prices used have been revised as for the final undercutting calculations in recital 59.

2. DEFINITIVE MEASURES

(87) As the injury elimination levels are higher than the dumping margins established for all parties concerned, the definitive measures should be based on the latter.

(88) It is noted that information on the record indicates that one of the cooperating exporting producers may intend to lower its prices in order to absorb the duty. The attention is drawn to Article 12 of the basic Regulation, which stipulates that the investigation can be reopened and the dumping margins recalculated in case there is sufficient evidence that the measures have not led to a sufficient movement in the prices in the Community. It is the intention of the investigating authority to swiftly proceed with a reinvestigation in cases where sufficient information on duty absorption is submitted to it. Additionally, in order to ensure the efficiency of the measures and to discourage price manipulation, it is appropriate to impose the duty in the form of a specific amount per kilo.

(89) It is further noted that according to Eurostat import statistics there are imports of the product concerned from countries (e.g. Hong Kong), where there is no production of sodium cyclamate. According to information available on the record, production of sodium cyclamate exists only in Spain, Indonesia and the PRC. Should sufficient information on circumvention of the measures be submitted, the investigating authority is prepared to swiftly initiate an investigation in accordance with Article 13 of the basic Regulation.

(90) On the basis of the above, the rate of the duty shall be equal to the fixed amount per kilo of sodium cyclamate as shown in the table below:

	Dumping margin	Rate of definitive duty (per kilo)
The PRC:		
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, PRC	0 %	EUR 0
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, PRC	0 %	EUR 0
Golden Time Enterprise (Shenzhen) Co. Ltd., Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, PRC	6,9 %	EUR 0,11
All other companies	17,6 %	EUR 0,26
Indonesia:		
PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1-D2, Jalan Pakin No. 1, Sunda Kelapa, Jakarta 14440, Indonesia.	16,3 %	EUR 0,24
All other companies	18,1 %	EUR 0,27

(91) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

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

3. COLLECTION OF THE PROVISIONAL DUTY

(93) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional duty imposed by Regulation (EC) No 1627/2003 be definitively collected to the extent of the amount of the duty definitively imposed by the present Regulation if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected. Amounts secured in excess of the amount of the definitive anti-dumping duty shall be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia.

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

	Rate of duty (EUR per kilo)	TARIC additional code
The People's Republic of China:		
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, PRC	0	A471
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, PRC	0	A472
Golden Time Enterprise (Shenzhen) Co. Ltd., Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, PRC	0,11	A473
All other companies	0,26	A999

[1] European Commission — Directorate General for Trade — Directorate B - J-79 5/17 — Rue de la Loi/Wetstraat 200 — B-1049 Brussels.

	Rate of duty (EUR per kilo)	TARIC additional code
Indonesia:		
PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1-D2, Jalan Pakin No. 1, Sunda Kelapa, Jakarta 14440, Indonesia.	0,24	A502
All other companies	0,27	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code [1], the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of provisional anti-dumping duty, pursuant to Regulation (EC) No 1627/2003, on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia shall be definitively collected in accordance with the rules set out below.

The amounts secured in excess of the amount of the definitive anti-dumping duty shall be released. Where the amounts of the definitive anti-dumping duty are higher than the provisional anti-dumping duty, only the amounts secured at the level of the provisional duty shall be definitively collected.

Article 3

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

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

Done at Brussels, 8 March 2004.

For the Council
The President
D. AHERN

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

COUNCIL REGULATION (EC) No 436/2004

of 8 March 2004

amending Regulation (EC) No 1784/2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1515/2001 of 23 July 2001, on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ([1]),

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 ('the Basic Regulation') ([2]),

Having regard to the proposal made by the Commission after consultation of the Advisory Committee,

Whereas:

A. **EXISTING MEASURES**

(1) The Council, by Regulation (EC) No 1784/2000 of 11 August 2000 imposed a definitive anti-dumping duty on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand (the 'Definitive Regulation') ([3]). The Definitive Regulation was preceded by Commission Regulation (EC) No 449/2000 of 28 February 2000 imposing a provisional anti-dumping duty on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand and accepting an undertaking offered by an exporting producer in the Czech Republic (the 'Provisional Regulation') ([4]).

B. **REPORTS ADOPTED BY THE DISPUTE SETTLEMENT BODY OF THE WTO**

(2) On 18 August 2003, the Dispute Settlement Body ('DSB') of the World Trade Organisation ('WTO') adopted an Appellate Body report ('ABR') and a Panel report ('PR') as modified by the ABR on the case 'European Communities (EC) — anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil' ([5]) (the ABR and PR are hereinafter referred to as the 'Reports').

(3) The Reports requested the European Communities to bring the measure into conformity with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('ADA') as regards the following aspects:

(i) Article 2.4.2 of the ADA: in 'zeroing' negative dumping margins in its dumping determination.

(ii) Articles 12.2 and 12.2.2 of the ADA: failure to make directly discernible, from the published provisional or definitive determinations, that the European Communities addressed, or explained the lack of significance, of the following injury factors listed in Article 3.4 of the ADA: wages, productivity, return on investments, cash flow, ability to raise capital and magnitude of the actual margin of dumping.

(iii) Article 6.2 and 6.4 of the ADA: failure to disclose to the interested parties during the anti-dumping investigation the information on injury factors listed above under point (ii).

(4) The Commission reassessed the findings by taking into account the recommendations set out in the Reports on the basis of information which was collected in the original investigation which took place in 1999/2000. Unless otherwise stated, the assessment made in the Definitive Regulation remains valid. The reassessment shows that injurious dumping still exists although at a slightly lower level.

C. **PROCEDURE**

(5) Following the adoption of the ABR by the DSB the interested parties in this proceeding, i.e. the Brazilian exporting producer and the Community industry ('CI'), received disclosure of the facts and considerations on the dumping calculation and the injury factors mentioned under recital 3(ii). All parties were informed of the essential facts and considerations on the basis of which it was intended to amend and confirm the Definitive Regulation. They were also granted a period within which to make representations subsequent to this disclosure. All interested parties were granted an opportunity to be heard by the Commission. However, no such hearing was requested by any interested party.

([1]) OJ L 201, 26.7.2001, p. 10.
([2]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
([3]) OJ L 208, 18.8.2000, p. 8.
([4]) OJ L 55, 29.2.2000, p. 3.
([5]) Document WT/DS219/10 of 27 August 2003.

(6) All comments submitted by the interested parties were considered and, where appropriate, reflected in the amended findings.

(7) It is recalled that the investigation of dumping covered the period from 1 April 1998 to 31 March 1999 (investigation period 'IP'). The investigation relating to the trends relevant in the context of the injury assessment covered the period from 1 January 1995 up to the end of the IP (i.e. 31 March 1999). This period will be referred to as 'the period considered'.

D. **AMENDED AND CONFIRMED FINDINGS**

1. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) The product concerned is threaded malleable cast iron tube or pipe fittings which are joined by a screwing joining system, falling within CN-code ex 7307 19 10 (TARIC code 7307 19 10 11 and 7307 19 10 19). The Reports do not affect the findings set out in the Definitive Regulation as regards the product under consideration and like product.

2. DUMPING

2.1. **Introduction**

(9) The following will detail the reassessed findings based on the recommendations in the Reports concerning the practice of 'zeroing' when establishing the weighted average dumping margin.

(10) All other calculation methods applied are those used in the original investigation. For further details, reference is made to the Provisional and Definitive Regulation.

2.2. **Brazil**

(11) It is recalled that during the original investigation Indústria de Fundição Tupy Ltda was the only known exporting producer of the product concerned in Brazil.

(12) As to the findings concerning normal value, the export price and adjustments made in accordance with Article 2(10) of the Basic Regulation, no changes have been necessary. For further details, reference is made to recitals 20 to 31 and 35 to 49 of the above mentioned Provisional and to recitals 24 to 27, 30, 31, 38 to 43, 46 to 48 and 51 to 54 of the Definitive Regulation.

(13) As in the Provisional and Definitive Regulations, the weighted average normal values of each type of the product concerned exported to the European Community were compared to the weighted average export price of each corresponding type of the product concerned. In compliance with the recommendations of the Report, no 'zeroing' was applied in calculating the overall dumping margin.

(14) The revised dumping margin expressed as a percentage of the cif import price at the Community frontier is:

Indústria de Fundição Tupy Ltda: 32 %.

(15) The level of cooperation was high. Consequently, the revised residual dumping margin is set at the same level as for Indústria de Fundição Tupy Ltda, i.e. 32 %.

2.3. **Disclosure**

(16) The above revised findings on dumping were disclosed to all interested parties subject to the present investigation which were granted the possibility to present their views and comments and to be heard by the Commission.

(17) None of the parties concerned objected to the Commission findings on dumping.

3. DEFINITION OF THE COMMUNITY INDUSTRY

(18) The findings concerning the definition of the CI, summarised in recitals 65 to 68 of the Definitive Regulation remain unaffected by the recommendations and conclusions set out in the Reports.

4. INJURY

4.1. **Imports from the countries concerned and price undercutting**

(19) The findings set out in recitals 69 to 94 of the Definitive Regulation remain unaffected by the recommendations in the Reports.

4.2. **Situation of the Community industry**

4.2.1. *Preliminary remark*

(20) This part sets out the reassessed findings based on the recommendations in the Reports concerning the injury analysis. The Reports conclude that the Community acted inconsistently with Articles 12.2 and 12.2.2 of the ADA by failing to make directly discernible from the published provisional or definitive determinations that the European Community addressed or explained the lack of significance of the following injury factors listed in Article 3.4 of the ADA: wages, productivity, return on investments, cash flow, ability to raise capital and magnitude of the actual margin of dumping. It is recalled that these injury factors have been examined during the original investigation. However, as they were at the time considered not to be significant, and were therefore not included in the analysis made available to the public, they were only laid down in an internal note to the file.

4.2.2. *Situation of the Community industry as set out in the Provisional and Definitive Regulations*

(21) It is recalled that in recitals 160 and 161 of the Provisional Regulation it was concluded that the CI suffered material injury within the meaning of Article 4(1) of the Basic Regulation. It was found that the situation of the CI deteriorated during the IP, in particular because of a decline in production, production capacity, sales and market share. Moreover, the CI suffered a significant loss of employment and a decline in investments, as well as an increase of stocks. As to the capacity utilisation, its increase is explained by the reduced production capacity.

4.2.3. *Re-examination of the injury findings in the light of the recommendations and ruling of the DSB*

(22) In addition to the injury factors as set out in recitals 150 to 159 of the Provisional Regulation, i.e. production, production capacity, capacity utilisation, sales volume, market share, sales prices, stocks, profitability, employment and investments, the following injury factors were analysed, and, following the Reports recommendations, are now set out in detail below.

4.2.3.1. Wages

(23) Wages, expressed as the total annual labour cost for the production of the product concerned developed as follows:

Table 1

Wages

	1995	1996	1997	1998	IP
Total annual labour costs (EUR '000)	44 730	48 479	48 375	46 995	47 132
Index	*100*	*108*	*108*	*105*	*105*

Source: Annual accounts of the CI.

(24) Wages increased by around 5 % between 1995 and the IP. When taking 1996 as a starting point, the wages decreased by around 3 %.

(25) This factor follows roughly the general development of wages in the sector and the movements in employment observed for the CI. Between 1996 and the IP this factor declined by 3 %, which was in line with the developments of employment mentioned at recital (158) of the Provisional Regulation (decrease of 6 % between 1995 and IP, slight decline of around 1 % between 1996 and IP).

4.2.3.2. Productivity

(26) Productivity, measured as the output of persons employed, developed as follows:

Table 2

Productivity

	1995	1996	1997	1998	IP
Production in tonnes per employee	21,58	19,47	19,76	20,84	20,82
Index	*100*	*90*	*92*	*97*	*96*

Source: Verified questionnaire replies of the CI.

(27) Productivity fluctuated over the period examined but an overall fall of 4 % was experienced over the period 1995 to the IP. Productivity increased by around 7 % between 1996 and the IP. This factor is in line with employment and production figures which were already mentioned at recitals 150 and 158 of the Provisional Regulation.

4.2.3.3. Return on investments ('ROI')

(28) ROI, which is calculated by dividing the CI financial result (profit or loss) by the amount of investments, developed as follows:

Table 3

ROI

	1995	1996	1997	1998	IP
ROI	– 6,55 %	3,72 %	– 2,78 %	– 0,70 %	– 2,72 %

Source: Verified questionnaire replies of the CI and their annual accounts.

(29) ROI developed from -6,55 % to -2,72 % between 1995 and the IP. However it is recalled, that, as explained at recital 157 of the Provisional Regulation, the financial result of the CI was negatively affected, in an exceptional way, by costs associated with a plant closure in 1995. Moreover, that year was also marked by restructuring efforts of two producers included in the definition of the CI, in particular with the aim of production rationalisation and of investments required to implement the Community's environmental legislation. This also had a negative impact on the financial result of the CI. On this basis, it is considered that the year 1995 was unrepresentative of the situation of the CI and cannot be considered as a meaningful basis for analysing trends on ROI.

(30) This remark also applies to other injury factors which include the financial results of the CI, e.g. cash flow as explained at recital 33 below.

(31) When comparing the year 1996 to the IP, ROI decreased by 6,4 percentage points, from 3,72 % to -2,72 %. The negative development of ROI was broadly in line with the negative development of profitability, which decreased by 2,3 percentage points during the same period.

4.2.3.4. Cash flow

(32) Cash flow developed as follows:

Table 4

Cash flow

	1995	1996	1997	1998	IP
Cash flow (EUR '000)	10 522	12 799	19 339	12 236	12 205
Index	*100*	*122*	*184*	*116*	*116*
Index		*100*	*151*	*96*	*96*

Source: Annual Accounts of the CI.

(33) It should be noted that the turnover of the product concerned has always represented over 50 % of the total turnover of all the activities of the CI, as reported in the audited accounts. The above table shows the cash flow for the product concerned calculated on the basis of a turnover allocation for the years from 1995 to 1998. Given that audited accounts were not available for the IP, cash flow was calculated on the basis of the total turnover and the turnover for the product concerned verified during the investigation. As explained in recital (29), the financial result achieved by the CI in 1995 was negatively affected in an exceptional way by costs associated with a plant closure and restructuring and therefore that year cannot be considered as a meaningful representative basis for analysing trends on cash flow. Between 1995 and 1998 cash flow increased by around 16 % and remained stable during the IP. When taking 1996 as a starting point cash flow decreased by around 4 % up to the end of the IP. It was found, that the negative development of cash flow was broadly in line with the negative development of profitability.

4.2.3.5. Ability to raise capital

(34) During the original investigation there was no claim from the CI (nor any indication), that it encountered problems to raise the capital needed for its activity. However, it is clear that the significant deterioration in the financial situation of the CI (see in particular profitability, cash flow and ROI), may negatively affect the ability to raise capital in the near future.

4.2.3.6. Magnitude of the actual margin of dumping

(35) As concerns the impact on the CI of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered negligible. This finding remains valid notwithstanding the reduction of the dumping margin for one of the exporters as explained in recital 14.

(36) The Brazilian exporting producer objected to the Commission's finding that the impact of the magnitude of the actual dumping margin on the Community industry was not negligible. According to the Brazilian producer, the difference of almost 50 % between the dumping margin and the underselling margin was evidence of a very large difference in the cost of production of the Community producers on the one hand and the Brazilian exporter on the other hand. Therefore, it was claimed that even if dumping were totally eliminated the imports from Brazil would still substantially undercut the non-injurious price of the Community industry. The Brazilian exporting producer argued finally that in the context of a highly sensitive price market, the impact of the actual margin of dumping would thus clearly be negligible, contrary to the Commission's findings.

(37) It has to be recalled that according to Article 3(5) of the Basic Regulation, the factor 'magnitude of the actual margin of dumping' is examined in the framework of the analysis of the state of the domestic industry. In this context, it is the Community's consistent practice to set the actual dumping margin in relation to the state of the domestic industry taking into account the volume and the prices of the imports from the country concerned. An analysis as the one proposed by the Brazilian exporter, i.e. a comparison of the dumping margin with the underselling margin leading to conclusions with respect to a difference in cost of production between exporting producers and the Community industry would by far exceed the framework set by Article 3(5) of the Basic Regulation and would bring in an element of causal link into such an analysis. This is clearly not required by Article 3(5) of the Basic Regulation and would wipe out the distinction between the analysis of the state of the Community industry on the one hand and the causal link between dumping and injury on the other hand, which is in any event considered separately. In this context it should be also noted that the underselling margin is calculated for the purpose of applying the 'lesser duty rule' according to which the anti-dumping duty is set at the level of either the dumping or the injury margin whichever is lower. It has to be underlined that the application of the 'lesser duty rule' and thus the calculation of the underselling margin is not a WTO obligation. Even assuming — for the sake of argument and without recognising the substance of the Brazilian exporter's claim — that a

comparison between the cost of production of the exporting producer and Community producers were warranted in this context, such an analysis could only be based on a comparison of the dumping margin with the undercutting (not the underselling) margin. The levels of both margins are however comparable. Therefore, without dumping, the price difference between imports from Brazil and the sales of the Community industry would be minimal.

(38) Therefore, the argument had to be rejected.

4.2.4. *Comments of the exporting producer on certain injury factors*

(39) The Brazilian exporting producer claimed that for certain injury factors (profitability, ROI, cash flow, ability to raise capital) the year 1995 had not been considered for the trend's analysis. It was claimed that 1995 was disregarded for those factors which otherwise would have demonstrated a positive development. According to the Brazilian exporting producer this constitutes an inconsistent and discriminatory approach and does not fulfil the requirement of an objective and unbiased examination contrary to Articles 3.1 and 17.6 (i) of the ADA.

(40) Firstly it should be noted, that with regard to profitability, no new determination has been made for the purpose of implementing the Reports. It has to be recalled that in the framework of the dispute settlement proceedings, Brazil put forward exactly the same arguments as the ones referred to above concerning profitability. The arguments were turned down by the Panel and no recommendation at all was made with regard to this factor. The factor 'profitability' has therefore not been reassessed.

(41) Secondly, it should be noted that — in line with the original investigation — the trends with regard to the injury indicators which had been analysed but which had not been made public during the original investigation, have been analysed as from 1995. This also relates to the factor 'ability to raise capital'. In particular for two injury factors (ROI and cash flow) it has been considered that the year 1995 was an exceptional year and could thus not be considered meaningful for the reasons set out in detail at recitals 29 and 33. In fact it is recognised by several Panel and AB reports that the assessment of the injury factors is not limited to a rigid comparison of the beginning and the end of the years of the period considered. It should also be noted that the Brazilian exporting producer has not contested the substance of the reasoning set out in recital 29.

(42) As to the alleged inconsistency of the approach, the following has to be noted. It is precisely for reasons of consistency with the analysis of the original investigation, that it is necessary — for the purpose of implementing the Reports — to analyse cash flow and ROI, which are directly derived from profitability, on the same basis as profitability in the original investigation for which 1995 could reasonably be excluded from the trend analysis according to the conclusions of the Reports. The approach chosen by the EC authorities was therefore consistent and objective.

(43) Therefore, the arguments had to be rejected.

4.2.5. *Conclusion on injury*

(44) Based on the above analysis, it is concluded that the findings in respect of wages, productivity, return on investments and cash flow were in line with certain other factors analysed and made public during the original investigation. As regards the ability to raise capital, there was no claim that the CI encountered any difficulty to raise the capital needed for its activity. This factor, however, should be seen in the light of the continuous degradation of the financial situation of the CI. As regards the margin of dumping, it is concluded that, given the volume and the prices of the imports from the countries concerned, its impact cannot be considered negligible.

(45) Based on the above, it is confirmed that the Community industry suffered material injury during the period considered.

5. CAUSATION

(46) The contents and conclusions reached in recitals 101 to 114 of the Definitive Regulation remain unaffected by the Reports and the re-examined injury analysis.

(47) The Brazilian exporter contended that the injury of the Community industry was not caused by dumped imports, but by the lack of productivity of the Community industry as evidenced by the almost 50 % difference between the dumping margin and the underselling margin and by the fact that the Community industry had undergone restructuring efforts in 1995 with the aim of rationalising production. The similarity of this argument with the one made with regard to the magnitude of the dumping margin referred to above at recital 36 is evident. The Brazilian exporter claimed in addition that while the Commission had analysed the difference in cost of production, it had however limited this analysis to differences regarding energy consumption linked to the difference of quality and production processes between black heart and white heart fittings.

(48) It has to be recalled that in the framework of the dispute settlement proceedings, Brazil put forward exactly the same arguments as the ones referred to above. The arguments were turned down by the Panel and the Appellate Body and no recommendation at all was made with regard to the causal link analysis.

(49) Therefore, the arguments mentioned in recital 47 had to be rejected.

6. COMMUNITY INTEREST

(50) The contents and conclusions reached in recitals 178 to 186 of the Provisional Regulation and 115 to 117 of the Definitive Regulation remain unaffected by the Reports and the re-examined injury analysis.

7. AMENDED MEASURES

(51) As shown above, a full examination of the facts established and the conclusions reached in the original investigation, taking account of the recommendations and rulings set out in the Reports, demonstrates that imports from Brazil were still injuriously dumped, although at a slightly lower level,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 1784/2000 is hereby amended as follows for products originating in Brazil:

Country	Definitive duty (%)	TARIC additional code
Brazil	32,0	—

Article 2

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

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

Done at Brussels, 8 March 2004.

For the Council
The President
D. AHERN

COUNCIL REGULATION (EC) No 437/2004

of 8 March 2004

imposing definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of large rainbow trout originating in Norway and the Faeroe Islands

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1628/2003 [2] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of large rainbow trout falling within CN codes 0302 11 20, 0303 21 20, 0304 10 15 and 0304 20 15, originating in Norway and the Faeroe Islands.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to 30 September 2002 (analysis period).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional duties on imports of large rainbow trout originating in Norway and the Faeroe Islands, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the definitive findings have been changed accordingly.

(6) The Commission continued to seek and verify all information it deemed necessary for the definitive findings. In addition to the verification visits undertaken at the companies mentioned in recital 6 of the provisional Regulation, it should be noted that after the imposition of provisional measures, on-spot verification visits were carried out at the premises of the following companies and Associations:

— Federation of European Aquaculture Producers (FEAP), Boncelles, Belgium,

— Syndicat national des industries du saumon et de la truite fumés, Paris, France,

— P/F PRG Export and its related producer P/F Luna, Gøta, Faeroe Islands,

— P/F Vestsalmon and its related producer P/F Vestlax, Kollafjørður, Faeroe Islands,

— P/F Bakkafrost, Glyvrar, Faeroe Islands,

— P/F Faeroe Salmon, Klaksvik, Faeroe Islands,

— P/F Faeroe Seafood, Torshavn, Faeroe Islands,

— P/F Landshandilin, Torshavn, Faeroe Islands,

— P/F Navir, Argir, Faeroe Islands,

— P/F Viking Seafood, Strendur, Faeroe Islands.

(7) Some parties argued that the selected IP was not appropriate as the prices were extremely low during that period and have since recovered. In this respect, it should be recalled that, as per Article 6(1) of the basic Regulation, for the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceeding. In other words, the IP is basically determined by the date of initiation. However, it is also recalled that in line with usual Community practice, the IP concerning dumping had a duration of one year. This period which is usually long enough to cover also

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 232, 18.9.2003, p. 29. Regulation as last amended by Regulation (EC) No 117/2004 (OJ L 17, 24.1.2004).

seasonal changes in demand and thus ensuring a representative finding, in particular by excluding that short-lived fluctuations on the Community market or on the home markets of the exporting country carry a disproportional overweight in the findings. Article 6(1) of the basic Regulation also sets the rules under which circumstances occurring after the IP can be taken into account. Accordingly, information relating to a period subsequent to the investigation period shall, normally, not be taken into account. In line with consistent Community practice, this has been interpreted as meaning that events relating to a period subsequent to the IP can only be taken into account if they are manifest, undisputed and lasting. Nothing found in this investigation suggests that the data relating to a period after the initiation are more representative than those relating to the IP. Events before the IP are in any event taken into account in the analysis period. The argument was therefore rejected.

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

(8) The Norwegian exporting producers and the Norwegian Ministry of Fisheries argued that fresh/chilled and frozen trout should not be considered as like products because they do not share the same physical characteristics since frozen trout is a processed product using fresh as its raw material. They further claimed that frozen trout competes only to a limited degree with fresh trout and is to a large extent intended for different markets than the fresh products. It was also noted that authorities in the USA have consistently not included frozen products in the context of antidumping proceedings concerning salmon originating in Norway. Similarly, they submitted that in the recent antidumping proceeding concerning salmon originating in Norway, the Faeroes Islands and Chile, the Community Institutions found that frozen fillets from Chile competed with fresh salmon products from the Community industry only to a limited degree. On the basis of these arguments they requested that frozen whole fish and fillets be excluded by the proceeding.

(9) In this respect it should be noted that in assessing whether the product concerned should be deemed to be alike to large rainbow trout produced in the Community, it was initially considered whether the various types of and presentations of large rainbow trout, i.e. fillets or whole fish, fresh or frozen, shared the same basic physical, technical and/or chemical characteristics. In this respect it was considered that, in contrast to procedures such as smoking or marinating, the freezing of large rainbow trout does not alter the basic characteristics of the product, but solely allows its storage for a deferred consumption. Moreover, the present investigation has established that fresh and frozen large rainbow trout are interchangeable. In addition, in the recent investigation ([1]) concerning salmon where a similar argument was made, it was determined that the product concerned included whole fish, gutted fish and various types of portion fillets, whether fresh, chilled or frozen and that such presentations of salmon constituted a single product which itself was deemed to be alike in all respects to that produced by the Community producers and sold in the Community market, and thus this case does not support the submission made. Finally, arguments concerning practice in the USA were not considered relevant in the context of this investigation, since the product scope of the anti-dumping investigations carried out by the USA authorities was different. On the basis of the above, the request that frozen whole fish and fillets should be excluded from the proceeding could not be accepted.

(10) The same parties also argued, that live trout should not be covered by the product concerned that producers of live trout should not be considered for the definition of the Community industry, and that producers of trout should be distinguished from companies involved in the slaughtering, packing, freezing and filleting of fish. In this respect it should be noted that live trout is not covered by the investigation and thus not accounted in for the total production of the product concerned in the Community. Furthermore, live trout is indeed neither the product concerned nor are producers of live trout included in the definition of the Community industry. However, in respect of the submission that the trout growers should be distinguished, it was established that all the sampled cooperating producers included in the definition of the Community industry grow the fish and then slaughter it and pack it, or fillet it. In some cases they further process it and/or freeze it. This distinction between producing companies and processing companies does therefore not exist in the Community industry and the argument was thus rejected.

(11) It was further argued that part of the production of large rainbow trout in the Community is destined for producing roe, and that fish grown to maturity to this end constitutes a product of a much inferior quality and therefore can not be considered as alike to the product concerned. It was also submitted in this regard that the basic physical characteristics change significantly because of lower fat content and the colour of flesh of the fish matured for producing roe. In this respect, it should be firstly noted that the alleged changes in fat content and the colour of flesh are only significant when the fish is fully matured, but not before. The fish is,

([1]) OJ L 133, 29.5.2003, p. 1.

however, slaughtered before the full maturity, and accordingly the quality of the fish is not affected to that extent that it cannot be sold on the market for human consumption. In this respect, it should be further noted that fully matured trout also produces lower quality roe. For that reason, there is no added value for growing trout to full maturity, even for producing roe. Accordingly, the fish grown to lesser than full maturity and producing roe as a by-product can therefore be sold on the market at prices equal or lower to non mature trout, depending on its stage of maturity and on the market conditions. Therefore, allowing fish mature does not alter its basic physical characteristics unless full maturity is reached. This latter event, is however, not in the interest of growers as explained above. As for the differences in quality these are duly taken into consideration in determining the different types of fish subject to the investigation and as such were accounted for in the dumping calculations and in the injury assessment. The argument was therefore rejected.

(12) In the absence of any other information submitted by interested parties, the conclusions drawn in recitals 9 and 10 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Claims made by parties in Norway and the Faeroe Islands**

(13) A number of parties in both Norway and the Faeroe Islands argued that, since their production of large rainbow trout was geared mainly towards the supply of the Japanese market, the dumping calculations did not take sufficient account of alleged physical differences between the quality types sold to that market and those sold to the European and domestic market. They questioned the appropriateness of allocating costs of production on the basis of turnover. Instead they claimed that the Commission should have accepted the calculations submitted in the questionnaires, whereby the cost of production for non-superior quality grades was reduced by the absolute difference in average sales prices, expressed in NOK/kg, between superior and non-superior quality grades.

(14) The cost of production calculations submitted by the companies in their questionnaire replies could not be accepted since, as mentioned in recital 46 of the provisional Regulation, the companies could not substantiate that all Japan quality trout were destined for the Japanese market, nor that the specific costs relating to such fish had not in fact been incurred by all fish during the production cycle. In addition, the methodology proposed by the companies had the effect of eliminating certain costs rather than reallocating them over all units of production and the sampled producers did not have an established system to identify costs on the basis of differences between the various quality grades of the product concerned and had never previously used the methodology proposed. Moreover, although it is acknowledged that the major part of both Norwegian and Faroese trout exports is destined for the Japanese market, it cannot be excluded that so-called Japan quality trout is sometimes exported to other markets. If one accepts the argument made by the parties that the primary production objective is to supply trout meeting Japanese standards, it is only correct to apportion costs, such as extra pigmentation in the feed, across all fish produced. The allocation of production costs on the basis of turnover, also foreseen in the absence of a more appropriate method by Article 2(5) of the basic Regulation, is indeed the best method to reflect differences in those cases where the same costs are incurred for all products but the quality finally obtained is different.

(15) In addition, the sampled producers in the Faeroe Islands argued that they considered the methodology they proposed of adjusting costs by the differences in resale values between the different categories of trout was in line with generally accepted accounting principles. As already referred to in recital 56 of the provisional Regulation, the methodology used by the sampled producers does not allocate costs to the products on the basis of how these costs are actually incurred, nor does it distribute production costs to the products in a manner that properly reflects their relative sales values. On the contrary, it has the effect of failing to recognise all production costs since it is based on simply reducing costs for lower quality products by an amount equal to the difference between their sales prices and those of higher quality product. Therefore, this methodology cannot be considered to be in line with generally accepted accounting principles.

(16) In conclusion, the use of turnover as the basis of production cost allocation, in accordance with Article 2(5) of the basic Regulation, means that any alleged physical differences in the quality types of the product concerned are appropriately reflected in the calculations since this method, by its nature, allocates more production cost to those fish having the greater sales value, such as superior quality trout. The arguments in recitals 11 and 12 above are therefore rejected and the approach set out in recital 46 of the provisional Regulation is hereby confirmed.

(17) A number of Norwegian parties argued that the cost of acquisition calculations in respect of each producer, which were based on sales destined for consumption on the domestic market (recital 30 of the provisional Regulation), only represented a small part of the total

domestic sales and would therefore not be representative. In considering this claim, the methodology used to determine the cost of acquisition, as set out in recitals 29 to 32 of the provisional Regulation was also re-examined. It was concluded that the exclusion of sales which were not made in the ordinary course of trade and the construction of the costs in the cases were sales by product types were not profitable could lead to the inclusion in the cost of acquisition of elements not only relating to costs, but also involving a notion of profit. It was therefore established that the carrying out of an ordinary course of trade exercise at the level of the producers would not be fully appropriate. Accordingly, it was decided to base the 'cost of acquisition' exclusively on the costs incurred by the sampled producers, these costs still being allocated to the products in the way described in the last sentence of recital 46 of the provisional Regulation. Moreover, in order to ensure a maximum of representativity, it was decided that the costs of acquisition so calculated for each sampled producer should be weighted by the quantities of all sales made domestically by those producers to independent domestic customers to give an overall cost of acquisition for each product type sold by the sampled producers.

(18) It was also submitted that the representativity of domestic sales by Norwegian exporters should have been assessed on the basis of the combined domestic sales of the three exporters for each product type rather than for each exporter separately (recital 34 of the provisional Regulation). However, the approach adopted of assessing the representativity of domestic sales for each exporter separately, is consistent with the established practice of considering the circumstances and determining the results of each exporter forming part of a sample separately before determining the overall result for the sample. This representativity test is in no way linked to the question of whether individual duties or a single country wide duty, as in this case, is being applied. Accordingly, the argument is rejected and the approach set out in recitals 26 to 28 of the provisional Regulation is confirmed.

(19) A number of Norwegian parties also argued, at a late stage of the investigation, that the calculation of the cost of acquisition for trout fillets is inaccurate as it is based on the cost of acquisition for 'superior' quality fish, as indicated in recital 33 of the provisional Regulation, and as the codes used for fillets include a range of different qualities. They maintained that 'superior' quality fish is not used for fillets, which are generally made from 'other' quality fish, or sometimes 'ordinary' quality fish, qualities as defined in recital 28 of the provisional Regulation. Nevertheless, they considered that even basing the calculation on 'other' quality fish would not be accurate since this category itself covered a range of different qualities. Although expressly requested during the verification visits, these parties did not supply information that would permit a more detailed calculation, nor otherwise substantiate the above claim. The approach adopted is considered the most reasonable since, by taking the cost of acquisition for fresh gutted head-on superior quality fish (the most commonly sold type) and adjusting this by the percentage difference between the selling prices for that product and for the fillets, quality differences involved are actually reflected in the calculation. It should be noted that companies were requested in the questionnaire to immediately contact the officials in charge, should they have any queries or request any clarification on the main aspects of the questionnaire itself, as for example the part concerning the product description, which they never did. At this stage of the investigation, the abovementioned remarks concerning the range of qualities within the product codes used can no longer be taken into consideration. The methodology set out in recital 33 of the provisional Regulation is therefore confirmed.

(20) A Norwegian party maintained that the profit margins used in constructing the costs of acquisition and normal values were unrealistically high (recitals 31 and 38 of the provisional Regulation). In this context, it is to be noted that in view of the revision of the methodology used to establish the cost of acquisition, no profit margin has now been used at the level of the sampled producers. The profit margins used at the level of the sampled exporters, in the limited number of cases where values were constructed, were in the range 12 % — 21 % with the average being close to 15 %. These figures came from the sampled companies' own verified data relating to their profitable sales and therefore cannot be considered to be excessive. The argument is therefore rejected. One Norwegian party argued that only considering profitable sales in constructing the cost of acquisition and normal value in the cases indicated in recitals 31 and 36 of the provisional Regulation would be against WTO rules. This argument cannot be accepted. Indeed, in view of the revision of the methodology used to establish the cost of acquisition, the question no longer arises for the cost of acquisition. The approach followed in testing the profitability of domestic sales of exporters for the determination of normal value, is consistent with the provisions contained in Article 2(4) of the basic Regulation, which are in conformity with WTO rules. The claim is therefore rejected.

(21) Parties in the Faeroe Islands claimed that, in the absence of domestic sales, normal values should be determined on the basis of information concerning export sales to third countries, which was requested as part of the questionnaire for the investigation (recitals 50 and 51 of the provisional Regulation). In this respect it should be

noted that the request for certain information in an investigation does not prejudge in any way the further analysis or restrict the choice of methodologies to those making use of that information only. The construction of normal values on the basis of the cost of production in the country of origin is the first alternative listed at Article 2(3) of the basic Regulation for cases where there are no domestic sales. The use of constructed normal value, instead of exported prices to third countries, as the basis for the determination of normal value is also the consistent practice of the Community in the absence of representative domestic sales. No arguments were presented nor any reasons found as to why the use of export prices to third countries would have been more appropriate in this case than a constructed normal value. The argument is therefore rejected and the approach set out in recitals 50 and 51 of the provisional Regulation is confirmed.

(22) A number of Norwegian parties identified certain sales to wholesalers and distributors as having being incorrectly excluded from the domestic sales. The calculations were amended in order to take account of these sales.

(23) Four Norwegian companies argued that the codes used in the investigation to identify the different types of the product concerned were not sufficiently detailed for the purpose. It should be noted that the product coding system is based on the widely accepted system of classification used in the industry, the purpose of which is to distinguish between the various qualities of product. It is therefore considered an appropriate basis to ensure a proper comparison between the normal value and export price for the same quality and presentation of the product concerned. The argument is therefore rejected for the same reasons mentioned in recital 17.

(24) One Norwegian exporter claimed an adjustment in respect of certain domestic sales to retailers on the basis that they were at a different level of trade than its sales to the Community. This argument was accepted and the normal value calculations were amended accordingly.

(25) A number of parties submitted comments regarding the inclusion of certain items in the cost of production data and the correct identification of domestic sales transactions where those to traders were being excluded. For those claims which were found to be justified the dumping calculations were amended accordingly. A clerical error found in the cost of acquisition calculation for one Norwegian producer, which had led to an understatement of the cost of acquisition, was also corrected.

2. **Post IP events in the Faeroe Islands**

(26) Some parties in the Faeroe Islands argued that the level of production and exports from the Faeroe Islands had significantly decreased since the IP and that, as a consequence, Faroese exports to the EC will be *de minimis* in the future. On this basis, it was claimed that the proceeding should be terminated in respect of the Faeroe Islands. In this respect, it should be noted that, according to Article 6(1) of the basic Regulation, information relating to a period subsequent to the IP shall, normally, not be taken into account. Findings should therefore be limited to the IP except in cases where the effects of new circumstances can be proved to be manifest, undisputed, lasting, not open to manipulation and do not stem from deliberate action by interested parties. It was verified that the claimed reduction in production and exports had indeed taken place. However, even if the claimed decreases would bring Faroese exports to the EC below the de-minimis level in the near future, there are insufficient elements to conclude that such a decrease would be lasting. Moreover, even if a lasting decrease in production and exports in general would actually take place, it would not be possible to conclude from this fact that exports to the EC would also decrease in a lasting way given that EC exports only amount to around 11 % of the production and that therefore any slight change in the supply of, for example, the Japanese market may result in significant increases of the exports to the Community. This type of situations would only be verifiable over a more extended period of time. The claim is therefore rejected.

3. **Dumping calculations**

(27) Some claims having been accepted, and the calculations refined, the amount of dumping finally determined, expressed as a percentage of the CIF net at Community frontier price, is as follows:

Norway, country wide margin	24, 8 %
Faeroe Islands:	
P/F PRG Export (for goods produced by P/F Luna)	54,5 %
P/F Vestsalmon (for goods produced by P/F Vestlax)	30,0 %
Cooperating but non-sampled companies	42,6 %
All other companies	54,5 %

E. **COMMUNITY INDUSTRY**

(28) The Norwegian Ministry of Fisheries argued that the percentage of the Community industry's production in relation to the total Community production is below 25 %, and therefore the proceeding should be terminated due to the lack of support for the case. This submission was based firstly, on the argument that the production of the Community industry which should not include

the production of large rainbow trout used for captive transfers as further explained in recital 41, and secondly the argument that the total Community production figures for 2001 and 2002 reported by the Federation of European Aquaculture Producers (FEAP) are not reliable as there is no common method for collecting the data on production from the members of FEAP.

(29) In respect of the first aspect, it should be noted that, irrespective of the question how the presence of a captive market can be most appropriately taken into consideration in the injury determination, the investigation has in any event to cover the entire market for the reasons further explained in recitals 41, 42 and 43, and thus both the production used for sales on the free market and that used for captive transfers. Standing should therefore equally be determined for the entire market, and the argument made in this respect was therefore rejected.

(30) In respect of the second argument made, it is correct that at the provisional stage, the statistical information made available by FEAP contained a number of unconfirmed figures, but these figures were not replied upon exclusively. FEAP aggregates the production data which is provided by its members, the national associations, and/or national research institutions. These data are reviewed and reported to FEAP in the framework of its meetings twice per year. The production figures concerning the previous year are reviewed and approved. Following the General Assembly meeting of FEAP on October 2003, and the subsequent on-spot verification visit at the premises of FEAP, the production figures were accordingly reviewed. FEAP remains the sole source of information at Community level for total Community production. As for the reliability of these figures it should be noted that FEAP adjusts the production figures when appropriate in order to reduce any discrepancies in the methods used by its members or/and national research institutions in order to publish an aggregate data. On this basis, and in view of the figures of the Community industry production which were revised as explained in recital 44, it was confirmed that the Community industry does account for more than 25 % of Community production of the product concerned, and therefore the argument of the Norwegian Ministry of Fisheries was rejected.

(31) The Faeroes' exporting producers and the Faeroe Fish Farming Association argued that the complainant must be regarded as a regional industry because, almost all of its production is sold on the Finnish market, and the intra-Community trade with Finland is negligible, thus meeting the criteria set out in Article 4(1)(b) of the basic Regulation for establishing an isolated market. Whereas the Finnish producers have indeed sold a major proportion of their production of large rainbow trout on the Finnish market during the investigation period, the market share of other Community producers in that market represented more than 12 %. This percentage is considered substantial, in particular in view of the fact that the market for the product concerned is competitive, transparent and sensitive to price variations. The Finnish market cannot therefore be considered as an isolated market. In addition, the dumped imports from Norway and the Faeroe Islands are not concentrated in the Finnish market and do not cause injury solely to the producers of that country. The criteria set out in Article 4(1)(b)(i) of the basic Regulation for a regional case are therefore not met, and the argument was rejected.

F. **INJURY**

1. **Apparent Community consumption**

(32) Due to the revised figures of Community production as described in recital 44, the figures in recitals 67, 74 and 84 of the provisional Regulation regarding the Community consumption and subsequently the market shares of Community industry and of imports from Norway and the Faeroe Islands have been accordingly reviewed for the purpose of the definitive determination and presented below.

Apparent consumption in the Community

	1999	2000	2001	IP
Tonnes	43 831	49 970	54 250	55 565
Index 1999 = 100	*100*	*114*	*124*	*127*

(33) On the above basis, the apparent consumption of large rainbow trout on the Community market shows a slight increase in relation to the figures indicated in the provisional Regulation.

(34) One party argued that CN codes used by Eurostat during the IP covered also portion-sized trout not included in the product scope of this proceeding and therefore the export and import figures used in calculating the apparent Community consumption of large rainbow trout would be inaccurate.

(35) The methodology used to calculate the consumption takes indeed account of this element and makes the necessary appropriate adjustments as described in detail in recital 65 of the provisional Regulation.

(36) In the absence of any other information submitted, and account being taken of the revised figures of the Community consumption, the methodology explained in recital 65 of the provisional Regulation is hereby confirmed.

2. **Market share of the imports concerned**

(37) Due to the revised figures of Community consumption as described above, the figures regarding market share of the imports from Norway and the Faeroe Islands have been reviewed for the purpose of the definitive determination and are presented below:

	1999	2000	2001	IP
Market share	3,8 %	3,5 %	11,0 %	16,7 %

(38) The above shows the same sharp increase of the dumped imports from Norway and the Faeroe Islands as concluded in recital 74 of the provisional Regulation. Indeed, their market share moved up by approximately 13 % percentage points over the analysis period and absorbed the major part of the increase in consumption that occurred in the Community market over the same period.

3. **Effect of the dumped imports on prices in the Community market**

(39) Subsequent to the provisional measures, new calculations of the undercutting margins, due to some transactions found to have been wrongly recorded and the corrections made to take account of the free customs duty quota granted to the Faeroe Islands (recitals 92 and 93), showed that the products concerned originating in Norway and the Faeroe Islands were sold in the Community at prices which undercut the Community industry's prices, when expressed as percentage of the latter, as follows: Norway on average by 7,3 % and the Faeroe Islands in the range between 21,8 % and 28,4 %.

(40) The analysis of all the revised figures did not alter the methodology explained in recitals 76 and 77 of the provisional Regulation which is hereby confirmed.

4. **Economic situation of the Community industry**

(i) *Preliminary remarks*

(41) It was found in the investigation that two of the sampled cooperating Community industry producers used the like product for further processing to other products, mainly smoked and ground trout. Such internal captive transfers, i.e. those used by an integrated producer for further processing, transformation or assembly within an integrated process do not enter the open market and are thus not in direct competition with imports of the product concerned. In order to take this situation into account and to provide as complete a picture as possible of the situation of the Community industry, data have been obtained and analysed for the entire activity, and it was subsequently determined whether the production was destined for captive use or for the free market.

(42) For the following economic indicators the analysis focused on the situation prevailing on the free market: sales volume, sales prices, profitability, return on investments and cash flow. Where possible and justified, these findings were subsequently compared with the data for the captive market. Due to the use of sampling, these indicators were examined on the basis of the data obtained for the sampled companies. It should be noted that there were no indications of further processing by other companies belonging to the Community industry but outside the sample.

(43) As regards other economic indicators, it was found on the basis of the investigation, that they could reasonably be examined only by referring to the whole activity. Indeed, production (for both the captive and the free market), capacity, capacity utilisation, market share, investments, employment, productivity, wages, ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.

(ii) *Production capacity, production, capacity utilisation*

(44) Following provisional measures, the factors listed in the table below have been reexamined. Certain information regarding three cooperating Community producers could now be taken into account with the consequence that the figures in recital 81 of the provisional Regulation were slightly understated. These have been therefore adjusted for the purpose of the definitive determination and are presented below.

Production capacity, production, capacity utilisation

	1999	2000	2001	IP
Production capacity in tonnes of Whole Fish Equivalent	15 645	15 630	15 665	15 684
Index 1999 = 100	*100*	*100*	*100*	*100*
Production in tonnes of Whole Fish Equivalent	11 348	12 739	11 605	12 080
Index 1999 = 100	*100*	*112*	*102*	*106*
Production/Capacity utilisation rates	73 %	82 %	74 %	77 %

(45) The analysis of all the revised figures did not alter the conclusions drawn in recital 81 of the provisional Regulation which are hereby confirmed.

(iii) *Stocks*

(46) It was found in the investigation that one of the non-sampled cooperating Community producers had frozen a large part of its production in 2000 and 2001, which was subsequently sold in 2001 and during the IP. However, no other producers were found to freeze their production and therefore, the conclusions drawn in recital 82 of the provisional Regulation are hereby confirmed.

(iv) *Market share of Community industry*

(47) Furthermore, due to the revised figures for Community consumption and Community industry production, as explained in recital 32, the market share held by the Community industry during the analysis period is presented below:

Market share of Community industry

	1999	2000	2001	IP
Market share	25,9 %	25,5 %	21,4 %	21,7 %

(48) The above shows that the market share held by the Community industry decreased by four percentage points over the analysis period. Whilst the high increase of the Community consumption, i.e. 27 % over the analysis period, does not change the trend of the imports concerned showing a sharp increase, it results in a much lower market share held by the Community industry, which lost more than four percentage points over the same period. The conclusions drawn in recital 84 of the provisional Regulation are therefore hereby confirmed. It should be however noted that the Community industry's market share declined only in 2001 when the imports concerned increased sharply.

(v) *Employment, productivity, wages and ability to raise capital*

(49) For the same reasons as described in recital 44, the employment and productivity figures were accordingly revised, as follows:

Employment, productivity

	1999	2000	2001	IP
Number of employees	194	179	182	173
Index 1999 = 100	*100*	*92*	*94*	*89*
Productivity: production/employee	100	122	109	119

Source: Questionnaire replies of the Community industry.

(50) The analysis of all the revised figures did not alter the conclusions drawn in recital 86 of the provisional Regulation which are hereby confirmed.

(51) With regard to the ability to raise capital, it is confirmed that the Community industry did not encounter particular difficulties given its possibility to invest in new equipment, as explained in recital 91 of the provisional Regulation. However, this ability should be seen in the light of the Community industry's efforts to increase its productivity in order to cope with the increased competition due to low market prices.

(52) In the absence of any other information regarding wages, the conclusions drawn in recital 87 of the provisional Regulation are hereby confirmed.

(vi) *Sales*

(53) With regard to sales volumes, it should be firstly recalled that, as explained in recitals 65, 66 and 82 of the provisional Regulation, the production figures were considered equal to the sales of the product concerned on both the captive and the free market with the exception of one company's sales as explained in recital 46. The sales of the like product on the free market made by the Community industry and the production volumes used by two sampled companies for further processing the like product (captive use), are presented below:

	1999	2000	2001	IP
Free market sales in tonnes WFE	10 274	8 114	10 727	11 326
Index 1999 = 100	*100*	*79*	*104*	*110*
Captive use in tonnes WFE	872	2 053	1 559	2 795
Index 1999 = 100	*100*	*235*	*179*	*320*

Source: Questionnaire replies of the sampled Community industry producers.

(54) The above shows that whilst the sales on the free market increased by ten percentage points during the analysis period, the captive use increased three fold. It should however, be noted that the high increase in captive use is mainly due to the fact that one of the two integrated producers practically started its operations of further processing only in 2000. In any case, this evolution indicates that the Community industry was not able to benefit from the increase in consumption (+ 27 % over the analysis period), but instead was forced to increase its use of the like product.

(vii) *Profitability*

(55) In a review of the information submitted by the sampled cooperating Community producers, the profitability of these companies for their net sales on the free market has been revised for the purpose of the definitive determination and is presented below:

	1999	2000	2001	IP
Profitability of the sales on the free market	8,6 %	13,3 %	10,4 %	0,5 %
	100	155	122	5

Source: Questionnaire replies of the sampled Community industry producers.

(56) The above shows that while the profitability of the free market sales was relatively high in the period 1999 to 2001, during the IP, it marked a significant deterioration to practically break even point due the low prices prevailing on the market. As for the profitability including captive use, this could not be determined since the captive transfers of the like product were internal transfers of the integrated producers, for which no invoices were issued. However, there is no reason to believe that the profitability of these captive transfers within the two companies concerned did not follow the same trend as that of the sales on the free market.

(viii) *Return on investment, cash flow*

(57) The reviewed sampled Community industry's return on investment during the analysis period is presented below:

	1999	2000	2001	IP
Return on investments	43,7 %	57,2 %	58,3 %	2,3 %

Source: Questionnaire replies of the sampled Community industry producers.

(58) The above shows the same trend as provisionally established and therefore the conclusions drawn in recital 92 of the provisional Regulation are hereby confirmed. As for the return on investment concerning the captive transfers, for the same reasons as explained for the profitability, it could not be assessed. Nevertheless, given that the captive transfers are made by the integrated producers using the same production facilities and the same investments, it was considered that they follow the same trend as the sales on the free market.

(59) The sampled Community industry producers, recorded a net cash inflow from operating activities during the analysis period. However, this declined dramatically during the IP as shown below:

	1999	2000	2001	IP
Cash flow in EUR '000 without captive use	1 522	1 757	1 713	398
Index 1999 = 100	*100*	*115*	*113*	*26*
Cash flow expressed as percentage of turnover	12 %	18 %	13 %	4 %

Source: Questionnaire replies of the sampled Community industry producers.

(ix) *Comments received from interested parties*

(60) One party argued that the Community industry did not suffer material injury during the IP since performance indicators such as production, production capacity, productivity and the average wage per employee increased over the same period. Moreover, the industry was profitable, made a return on investment and had a positive cash flow. Regarding the production increase, it should be noted that the production of large rainbow trout follows a biological cycle of 2,5-3 years before it is harvested and sold on the market. A production increase during the IP is therefore due to a decision of farmers on the quantity of small fish put in the water in 1999 and 2000 reflecting the market conditions of these years which were not influenced by the dumped imports. With regard to the productivity increase, this is mainly attributable to the investment in new equipment reflecting the efforts of the Community industry to cope with low market prices and secondly to the decrease of employment, this indeed reflecting the severe situation facing the industry. As for the profitability and cash flow, both marked a sharp decline during the IP reflecting the low prices obtained on the market and the difficult financial situation of the Community industry.

(61) It was further argued that the Community industry's production did not manage to increase in order to meet the increase in demand because of the licensing policies pursued within the Community. It should be noted that the environmental licences affect the production capacity, which as described in recital 81 of the provisional Regulation remained stable during the analysis period. However, as the production capacity was not fully used, there was a free capacity which could have been used for meeting the increase in demand. This argument was therefore rejected.

(62) It was further argued that several Norwegian exporters also sell trout smaller than 1,2 kg, which might obtain lower prices affecting thus the injury assessment analysis. In this respect, it should be noted that the investigated sampled companies representing approximately 40 % of total Norwegian exports during the IP were not found to have had any sales of that kind of trout. Therefore, it can be assumed that the quantities concerned were, if any, negligible, and thus their impact on the analysis equally negligible. The argument was therefore rejected.

(63) In the absence of any other information submitted, and account being taken of all revised figures regarding the economic indicators, the conclusions drawn in recitals 80 to 98 of the provisional Regulation are hereby confirmed.

5. **Conclusion on injury**

(64) Captive use was limited to two sampled Community producers and there were no indications of further processing of the like product by other producers belonging to the Community industry. Furthermore, given the profits attained by the Community industry between 1999 and 2001, it is unlikely that the captive use could have a significant impact on the economic situation of the Community industry. Therefore, the conclusions drawn by the above analysis on the situation of the Community industry are not considered to change due to the captive use.

(65) During the analysis period the volume of low-prices imports from Norway and the Faeroe Islands increased significantly. Their market share increased from 3,8 % to 16,7 %. It is noteworthy that the increase of the imports from Norway and the Faeroe Islands and the decline of the sales price were particularly pronounced between 2001 and the IP. Import volumes during that period were multiplied by 4 to 6 and import prices decreased by 34 %, undercutting the Community industry's sales prices (which were close to break-even point) in the range between 7,3 % and 28,4 % during the IP. This should be further seen in conjunction with the evolution of profitability of the Community industry which after a first decline in 2001 decreased sharply to a nil level during the IP.

(66) Regarding the argument that some of the detailed injury indicators developed positively during the analysis period and accordingly did not point towards injury, it should firstly be noted that, as per Article 3(5) of the basic Regulation, none of the economic factors or indices listed in this article shall necessarily be decisive in the determination of material injury suffered by the Community industry. More importantly, while some economic indicators pertaining to the situation of the Community industry, such as production, production capacity installed and capacity utilisation, productivity, and investments showed positive developments over the analysis period, these had not the desired positive effect. Indeed, the Community industry suffered from eroding market shares in a growing market though demand and reduced prices resulting in a quasi loss-making situation during the IP which in fact more than offset the aforementioned positive developments.

(67) Taking into account all factors mentioned above, it is considered that the Community industry has suffered material injury.

G. **CAUSATION**

(68) It was argued that the price undercutting by Norwegian exports of large rainbow trout should not be considered significant and injurious to the Community industry. In this respect, it should be firstly noted that the undercutting found is significant taking into account the specific features of the product concerned: large rainbow trout is a commodity and sensitive to price fluctuations. In addition, the Community industry is very fragmented, and thus can not impose its prices on the market. These factors together explain the injurious impact that the level of price undercutting found had on the Community industry.

(69) It was further argued that the IP coincided with a temporary and cyclical mismatch of offer and demand in the world market for trout. As investments decisions are made two to three years before the product is brought to the market, the stability of prices will from time to time be disrupted. Temporary shortages in the market will lead to increased prices, while the effect is the opposite if demand does not keep pace with production.

(70) In this regard, it should indeed be noted that if the Community market had during the analysis period an excess demand resulting in a shortage, this would normally push the prices to a higher level, as consumers would bid up the price through that excess. However, instead a steep drop in prices occurred in 2001 and during the IP, which in the absence of other likely explanations must be attributed to the dumped imports from Norway and the Faeroe Islands.

(71) It was further argued that large rainbow trout is a commodity where the world prices are set in the dominant market of Japan, and that the Community prices followed these prices which dropped significantly during the same period. In this respect, it should be noted that on the basis of the information submitted by the Norwegian Seafood Federation on the Japanese wholesale price quotations for frozen Norwegian trout for the period 1997 up to 2003, the prices on the Japanese market dropped continuously throughout the analysis period, account being taken of the fluctuations in currency exchange rates. However, the argument that prices of large rainbow trout are set worldwide by the Japanese market, was not confirmed by the findings of the investigation. Whereas it is true that the prices in the Community also dropped sharply during the IP, as did prices on the Japanese market, they were maintained at a reasonable level in 1999 and even increased in 2000, contrary to those in Japan. During the same period, the imports from Norway and the Faeroe Islands followed the same trend as the Community prices, while in volume terms they were kept at a low level. It is only in 2001, when the prices in the Japanese market attained a very low level, that dumped imports into the Community from Norway and the Faeroe Islands increased dramatically, namely to three times the volume of 2000. This increase is thus directly attributable to the selling off on the Community market of a part of the production in excess due to the reduction of their exports on the collapsed market in Japan. On the above basis, the argument was therefore rejected.

(72) In the absence of any other new information submitted on the causation, the findings and the conclusion reached, as set out in recitals 109 to 120 of the provisional Regulation, are hereby confirmed.

H. **COMMUNITY INTEREST**

(73) Subsequent to the imposition of provisional measures, some Associations of fish processing industries submitted comments opposing to the measures. A questionnaire was therefore addressed to them, and they were invited to submit their responses, on the basis of which an assessment of the alleged economic effects of the anti-dumping measures to these parties was made. One party replied and submitted information regarding seven of its member companies. On the basis of this information, which was consolidated for the seven companies, it was concluded that the economical impact of the anti-dumping measures on the fish processing companies would be negligible. Their argument was therefore rejected.

(74) One party argued that the product concerned from Norway is of better quality and that the imposition of definitive measures would reduce supply of quality trout from Norway. This would be to the detriment of importers involved and also to consumers as prices will be likely increased due to reduced supply from Norway. The effect of lower supply from Norway is allegedly likely to be especially strong in particular during summer and early autumn when the supply from the Finnish industry is low. Furthermore, it was argued that the imposition of anti-dumping measures would result in a lasting re-direction of Norwegian exporters' sales activities from the Community to other markets, which in turn would be to the detriment of importers and consumers in the Community.

(75) Regarding the quality differences, it should be noted that they were considered in the different types of the product concerned and as such were examined in the dumping calculations and the injury assessment. As regards the increased prices in the Community due to the lower supply from Norway, it should be emphasised that the purpose of anti-dumping duties is to restore a 'level playing field', rather than to prevent access to Community markets. As for the effect of the measures on the Finnish market due to lower supply in particular during the summer, it should be noted that the Finnish market is not regarded as a separate market in accordance with Article 4(1)(b) of the basic Regulation. Therefore, the supply and demand conditions are determined at the level of the whole Community market in which the Norwegian imports compete with the Community producers. Regarding the possibility of Norwegian exporting producers to export during the summer when the supply in the Finnish market is low, this is a comparative advantage. Should this advantage exist, it remains unaffected by the imposition of anti-dumping measures, and thus Norwegian exporting producers will continue to benefit from it.

(76) The same party argued that since the imposition of provisional measures, Norwegian exports of large rainbow trout to the Community have decreased by over 60 per cent compared with the same period in 2002. This decrease of supply appears set to increase in the future given the declining level of production of large rainbow trout in Norway, and to be detrimental to importers, the processing industry and consumers in the Community.

(77) In this respect, it should be firstly noted that anti-dumping measures aim at restoring a level playing field and not to prevent access into the Community market. In this connection, it is noteworthy that the imports continued at a level comparable to that of 1999 and 2000, before the steep increase in dumped imports in 2001. As for the decreasing level of production in Norway, no substantiated evidence was submitted indicating that such a situation would continue in a lasting manner. Additionally, any such decrease might, in any event, not actually affect the exports to the Community market if the supplying conditions in other export markets were even less favourable than those to the Community at the time of the exports. On this basis, the argument was rejected.

(78) Several associations of fish processing industries argued that not enough attention was paid to the existence of different market segments (whole, fillet, roe and smoked) and different pricing on these segments. Moreover, it was argued that large rainbow trout farmed in salty waters in Norway has a specific positioning on the market and that restricting the access to this specific origin of the product by imposing a heavy duty did not favour free competition.

(79) Firstly, it should be noted that smoked trout and roe are not subject to this investigation. Regarding the whole fish and fillets, they were considered as different types of the product concerned and as such were examined in the dumping calculations and the injury assessment. Therefore, the different pricing of different market segments has been indeed taken into account. Regarding the specific origin of product, the investigation has established that the products exported from Norway and the Faeroe Islands and the products sold by Community producers have been alike in all their essential physical characteristics and uses.

(80) Furthermore, it was argued that cheap large trout, mostly of Finnish production, has been sold mainly for the consumer market as whole fish or fillets, while processors do not use much of it. This argument was not substantiated. In contrast, on the basis of the information provided by the Finnish cooperating companies, it was not only found that their production had been sold also to processors, but a number of them further processed the product concerned themselves before they sold it on the market. Moreover, the significant undercutting established for imports from Norway and the Faeroe Islands rather indicates that cheap imports from Norway and the Faeroe Islands have been attractive to processors due to their low price. The argument was therefore rejected.

(81) It was further argued that the Community market registered higher prices after the IP ending thus a low price period for trout, and that it is highly probable that the prices will remain on a relatively high level in the short/medium term. First it should be noted that, in line with a consistent Community practice, events relating to a period subsequent to the investigation period can only be taken into account if they are manifest, undisputed and lasting. However, this price evolution was not substantiated and no elements demonstrating the likeliness of its lasting nature were provided. Although the prices after the IP were indeed found to have increased, this fact does not constitute evidence in itself for the future prices, which are determined on the basis of the balance between supply and demand. In this respect, it should be noted that, in contrast to a possible forecast of supply, the demand is very difficult to anticipate as there are many interacting factors in the market which may cause price fluctuations. In any case, no relevant information was provided to substantiate an estimate of these two factors. Therefore, the argument was rejected.

(82) It was further argued that the duty on imports will cause an increase of prices, the processors will turn to other types of fish such as salmon and the Community farmers will face difficulties regarding their trout sales. Therefore, it was claimed that the anti-dumping measures would not be in the interest of the producers.

(83) Regarding the increase of prices, the anti-dumping measures indeed aim at increasing the dumped prices, removing thus the injurious impact suffered by the Community industry. It cannot be excluded either that a substitution effect takes place, account being taken of the substitutability of large rainbow trout with salmon and the price differential between them. In general, whereas a price increase helps the Community industry recover profitability, other exporters not targeted by the measures as well as the Community industry via a higher use of production capacity might increase their supply, which in turn has to keep pace with demand and find a new balance at lower level of prices. In this respect, it should be noted that a substitution with salmon has the same effect on prices. In conclusion, whilst the anti-dumping duty aims at restoring a 'level playing field', the prevailing market forces determine the prices.

(84) One party argued that the absence of a reaction from its side representing the interests of consumer associations should not be interpreted as a lack of interest, and even more be used to conclude that the impact on consumers of any anti-dumping measures will be limited. It requested therefore that recital 117 of the provisional Regulation be accordingly amended. The Institutions have taken note of this claim. However, in the absence of any substantiated information, this claim does not affect the conclusions of the provisional Regulation concerning the Community interest.

(85) The Finnish Food and Drink Industries' Federation submitted comments which nevertheless could not be taken into account for the purpose of the definitive findings since it had failed to make itself known as an interested party either within the time limits set out in the notice initiating this proceeding, or within the time limit set out by Article 2 of the provisional Regulation. Furthermore, the allegations made by this federation were expressly rejected by its members having cooperated in the investigation.

(86) In the absence of any other new information submitted on the Community interest, the findings and the conclusion reached, as set out in recitals 109 to 120 of the provisional Regulation, are hereby confirmed.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

(87) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by dumped imports from Norway and the Faeroe Islands.

1. **Injury elimination level**

(88) Based on the methodology explained in recitals 121 to 125 of the provisional Regulation, an injury elimination level has been calculated for the purposes of establishing the level of measures to be definitively imposed.

(89) The Norwegian authorities argued that a normal profit margin considered of 12 % is too high. It was further submitted that the analysis period was not representative of a normal competitive situation, as prices and profit margins, according to the industry, were particularly high during these years compared with the average situation in the industry.

(90) Firstly, it should be noted that this argument was not substantiated. Secondly, the sharp decline of Norwegian trout prices in the Japanese market as explained in recital 71 might have had a significant impact on the profits realised by the Norwegian industry during the analysis period. This price fall did not however occur on the Community market before the surge of dumped imports, when a normal competitive situation prevailed. Therefore, the argument that the analysis period was not representative of a normal competitive situation was rejected.

(91) However, on the basis of the revised figures concerning the profitability of the Community industry as explained in recital 55, a profit level of 10 % was considered as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping.

(92) One party argued that different quality grades of the like product in the Community had not been appropriately considered resulting in a certain inconsistency with the target prices.

(93) It was indeed found that some transactions have been wrongly recorded in terms of quality due to the misinterpretation of some invoices. All the relevant transactions were therefore corrected and new calculations for determining undercutting and injury margins were made. Furthermore, corrections were made to take account of the free customs duty quota granted to the Faeroe Islands.

(94) On the basis of the above, the new injury elimination margins found are presented below:

	Injury elimination margins
Norway	19,9 %
Faeroe	
P/F Vestsalmon (for goods produced by P/F Vestlax)	43,8 %
P/F PRG Export (for goods produced by P/F Luna)	54,4 %
Other cooperating	49,3 %

(95) In the absence of any further comments made, the methodology used for establishing the injury elimination level as described in recitals 121 to 125 of the provisional Regulation is confirmed.

2. **Form and level of the duties**

(96) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in respect of imports originating in Norway and the Faeroe Islands. The measures should be imposed at the level of the injury margins or the dumping margins found, whichever are the lower. There are no reasons why these measures should not, as with provisional measures, take the form of an *ad valorem* duty.

(97) Following the imposition of any definitive measures, the Commission will examine the market developments, and in particular the effect of enlargement of the Community market, and propose changes to the application of measures, if warranted.

3. **Collection of provisional duties**

(98) In view of the magnitude of the dumping margins found and in the light of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

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

4. **Undertakings**

(100) The Commission by Regulation No 117/2004 of 23 January 2004 amending the provisional Regulation accepted the undertakings offered by two exporting producers in the Faeroe Islands. The reasons for accepting these undertaking are set out in this Regulation. The Council recognises that the undertakings eliminate the injurious effect of dumping. In addition, the companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. Under these circumstances, it is considered that the risk of circumvention of the agreed undertakings is limited.

(101) It is pointed out that, in the event of suspected breach, breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of large rainbow trout (Oncorhynchus mykiss) whether fresh, chilled or frozen, whether in the form of whole fish (with heads and gills on, gutted, weighing more than 1,2 kg each or with heads off, gilled and gutted, weighing more than 1 kg each) or in the form of fillets (weighing over 0,4 kg each), currently classifiable within CN codes 0302 11 20, 0303 21 20, 0304 10 15 and 0304 20 15, originating in Norway and the Faeroe Islands.

[1] European Commission — Directorate General for Trade — Directorate B — J-79 5/17 Rue de la Loi/Wetstraat 200 B 1049 Brussels.

2. The rate of the definitive antidumping duty applicable, before duty, to the net free-at-Community-frontier price for products described in paragraph 1 produced by all companies in Norway shall be 19,9 %. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price for products described in paragraph 1 produced by the companies listed below in the Faeroe Islands shall be as follows:

Producer	Definitive anti-dumping duty (%)	TARIC additional code
P/F PRG Export together with its related producer P/F Luna, FO-510 Gøta	54,4 %	A474
P/F Vestsalmon together with its related producer P/F Vestlax, P.O. Box 82, FO-410 Kollafjørður	30,0 %	A475
P/F Alistødin Á Bakka, Bakkavegur FO-625 Glyvrar	42,6 %	A476
P/F Atlantic Seafarm, FO-900 Vágur,	42,6 %	A477
East Salmon, Box 177, FO-700 Klaksvík	42,6 %	A478
Funningslaks PF, Miðrás 3, FO-100 Tórshavn	42,6 %	A479
Gulin PF, Miðrás 3, FO-100 Tórshavn	42,6 %	A480
P/F Hellisvað, FO-727 Árnafjørður	42,6 %	A481
Kalbaks Laksaaling PF, Í Brekkum 1, FO-530 Fuglafjørður	42,6 %	A482
Navir, P/F, Argjabodagøta 7, FO-160 Argir	42,6 %	A483
All other companies	54,4 %	A999

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

Article 2

Imports under one of the following TARIC additional codes which are produced and directly exported (i.e. shipped and invoiced) by a company named below to a company in the Community acting as an importer shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are imported in conformity with Article 2(2) of Regulation (EC) No 1628/2003.

	Manufacturer	TARIC additional code
Faeroe Islands	P/F PRG Export together with its related producer P/F Luna, FO-510 Gøta	A474
Faeroe Islands	P/F Vestsalmon together with its related producer P/F Vestlax, P.O. Box 82, FO-410 Kollafjørður	A475

Article 3

As regards imports of the product described in Article 1(1) originating in Norway and the Faeroe Islands, the amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1628/2003 shall be definitively collected in accordance with the rules set out below.

The amounts secured in excess of the definitive rates of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisionally duties shall be definitively collected.

Article 4

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

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

Done at Brussels, 8 March 2004.

For the Council
The President
D. AHERN

COUNCIL REGULATION (EC) No 438/2004

of 8 March 2004

extending the suspension of the extended anti-dumping duty imposed by Regulation (EC) No 1023/2003 on imports of certain malleable cast-iron tube or pipe fittings consigned from Argentina, whether declared as originating in Argentina or not

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], (the basic Regulation), and in particular Article 14(4) thereof,

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

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 1784/2000 [2], the Council imposed a definitive anti-dumping duty of 34,8 % on imports of threaded malleable cast-iron tube or pipe fittings (malleable fittings) originating in Brazil, falling within CN code 7307 19 10.

(2) By Regulation (EC) No 1023/2003 [3], the Council, following an investigation initiated pursuant to Article 13 of the basic Regulation, extended the definitive anti-dumping duty imposed by Regulation (EC) No 1784/2000 on imports of malleable fittings originating in Brazil to imports of malleable fittings consigned from Argentina, whether declared as originating in Argentina or not.

(3) By Decision 2003/434/EC [4] (the Decision), the Commission suspended the definitive anti-dumping duty extended by Article 1 of Regulation (EC) No 1023/2003 for a period of nine months, with effect from 18 June 2003.

B. GROUNDS FOR THE EXTENSION OF THE SUSPENSION

(4) Article 14(4) of the basic Regulation provides for the possibility of suspension of anti-dumping measures in the Community interest on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such a suspension. The anti-dumping measures may be suspended by a decision of the Commission for a period of nine months. Article 14(4) of the basic Regulation further specifies that the suspension may be extended for a further period, not exceeding one year, if the Council so decides on a proposal from the Commission.

(5) Following the suspension of the extended definitive anti-dumping duty by the Decision, the Commission has, in accordance with recital 12 of the Decision, continued to monitor the development of the imports of malleable fittings into the Community and the behaviour of individual exporters from Argentina. It is confirmed that since the extended duty was suspended, there have been no imports of malleable fittings from Argentina and that the imports of malleable fittings into the Community from Brazil have reverted to the trade pattern of imports from that country in the period before measures were imposed.

(6) Indeed, since 18 June 2003 there has been no resumption of any circumvention and consequently it is unlikely that the injury caused to the Community industry would resume under the present circumstances. Therefore, the conditions for the suspension are still fulfilled for the time being.

(7) It should be recalled that, as explained in recitals 6 to 9 of the Decision, the main reason why the Decision concluded that injury was unlikely to resume, was that the Argentinian authorities had taken measures against imports of malleable fittings from Brazil, which had a remedial effect. However, on 10 April 2003 the Argentinian authorities decided to confirm the provisional measures by imposing definitive measures on malleable fittings of Brazilian origin for only 15 months, i.e. until 11 July 2004. According to the information given by the Argentinian authorities, the measures may be subject to an expiry review, but no additional information has been submitted concerning such possible further action. In case the measures imposed by Argentina on malleable fittings of Brazilian origin are allowed to expire, there is a risk of resumption of circumvention, since the main guarantee for the elimination of circumvention would no longer exist. In that case, the conditions for a further suspension would no longer be met. Moreover, the anti-fraud investigation, which had been initiated by the Argentinian authorities in February 2002 concerning imports of malleable fittings from Brazil, was terminated without any measures.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 208, 18.8.2000, p. 8.
[3] OJ L 149, 17.6.2003, p. 1.
[4] OJ L 149, 17.6.2003, p. 30.

(8) Under these circumstances, it cannot be concluded that injury would be unlikely to resume in the period after 11 July 2004. It is therefore considered appropriate that the definitive anti-dumping duty extended by Article 1 of Regulation (EC) No 1023/2003 be suspended for a further period of four months, i.e. until 11 July 2004, when the measures imposed by Argentina on imports of malleable fittings originating in Brazil are due to expire.

(9) In accordance with Article 14(4) of the basic Regulation, the Community industry was given an opportunity to comment upon the above. The Community industry did not oppose the extension of the suspension of the measures until 11 July 2004.

C. **CONCLUSION**

(10) In conclusion, the Council considers that all requirements to extend the suspension of the anti-dumping duties concerned, pursuant to Article 14(4) of the basic Regulation, are met. Currently there are no exports of malleable fittings from Argentina to the Community due to, *inter alia*, the measures currently imposed by Argentina on imports of malleable fittings originating in Brazil. Injury linked to circumvention via Argentina is unlikely to resume as long as the measures imposed by Argentina are in place. For these reasons, it is considered appropriate that the extended anti-dumping duty imposed by Regulation (EC) No 1023/2003 should be further suspended until 11 July 2004.

(11) For the period of the suspension, the Commission shall continue to monitor the development of the imports of malleable fittings into the Community and the behaviour of individual exporters from Argentina. In particular, the Commission shall closely monitor the outcome of the ongoing proceeding in Argentina.

(12) The Argentinian authorities were informed of the essential facts and considerations on the basis of which the Council intended to extend the suspension of the extended definitive anti-dumping measures and were given the opportunity to comment. No comments which were of a nature to change the above conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

The suspension of the extended definitive anti-dumping duty imposed by Regulation (EC) No 1023/2003 is hereby extended until 11 July 2004.

Article 2

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

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

Done at Brussels, 8 March 2004.

For the Council
The President
D. AHERN

COMMISSION REGULATION (EC) No 439/2004

of 10 March 2004

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], 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 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 10 March 2004 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	98,5
	204	67,4
	212	120,5
	999	95,5
0707 00 05	052	125,1
	068	106,2
	204	29,8
	999	87,0
0709 10 00	220	80,1
	999	80,1
0709 90 70	052	114,4
	204	61,2
	628	136,0
	999	103,9
0805 10 10, 0805 10 30, 0805 10 50	052	49,9
	204	47,9
	212	59,5
	220	43,0
	400	45,5
	624	63,9
	999	51,6
0805 50 10	052	53,0
	999	53,0
0808 10 20, 0808 10 50, 0808 10 90	060	43,3
	388	113,2
	400	115,7
	404	93,1
	508	79,3
	512	78,9
	524	60,1
	528	93,9
	720	76,6
	800	99,6
	999	85,4
0808 20 50	060	66,7
	388	69,5
	512	60,2
	528	74,0
	720	70,3
	999	68,1

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 440/2004
of 10 March 2004
on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat [1],

Whereas:

(1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).

(2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 2003 to 30 June 2004 at 11 500 t.

(3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 March 2004 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of April 2004 for 8 663,455 t.

Article 2

This Regulation shall enter into force on 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 137, 28.5.1997, p. 10; Regulation as last amended by Regulation (EC) No 649/2003 (OJ L 95, 11.4.2003, p. 13).

COMMISSION REGULATION (EC) No 441/2004

of 9 March 2004

establishing unit values for the determination of the customs value of certain perishable goods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1],

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [2], and in particular Article 173(1) thereof,

Whereas:

(1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation.

(2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173(2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173(1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 March 2004.

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

Done at Brussels, 9 March 2004.

For the Commission
Erkki LIIKANEN
Member of the Commission

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).
[2] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p, 1).

ANNEX

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.10	New potatoes 0701 90 50	37,47	279,21	344,71	25,12
1.30	Onions (other than seed) 0703 10 19	37,51	279,53	345,10	25,15
1.40	Garlic 0703 20 00	145,92	1 087,37	1 342,45	97,82
1.50	Leeks ex 0703 90 00	61,98	461,87	570,22	41,55
1.80	White cabbages and red cabbages 0704 90 10	100,69	750,30	926,30	67,50
1.90	Sprouting broccoli or calabrese (*Brassica oleracea L. convar. botrytis (L.) Alef var. italica Plenck*) ex 0704 90 90	61,43	457,77	565,16	41,18
1.100	Chinese cabbage ex 0704 90 90	57,05	425,13	524,86	38,25
1.130	Carrots ex 0706 10 00	34,44	256,64	316,85	23,09
1.140	Radishes ex 0706 90 90	57,08	425,34	525,12	38,26
1.160	Peas (*Pisum sativum*) 0708 10 00	290,26	2 163,00	2 670,40	194,59
1.170	Beans:				
1.170.1	— Beans (*Vigna* spp., *Phaseolus* spp.) ex 0708 20 00	124,12	924,95	1 141,93	83,21
1.170.2	— Beans (*Phaseolus* ssp. *vulgaris* var. *Compressus Savi*) ex 0708 20 00	171,90	1 281,02	1 581,52	115,24
1.200	Asparagus:				
1.200.1	— green ex 0709 20 00	330,71	2 464,39	3 042,50	221,71
1.200.2	— other 0709 20 00	525,28	3 914,33	4 832,58	352,15
1.210	Aubergines (eggplants) 0709 30 00	143,82	1 071,72	1 323,13	96,42
1.220	Ribbed celery (*Apium graveolens L.*, var. *dulce (Mill.) Pers.*) ex 0709 40 00	53,58	399,25	492,91	35,92
1.230	Chantarelles 0709 59 10	994,91	7 413,97	9 153,17	666,99
1.240	Sweet peppers 0709 60 10	202,45	1 508,63	1 862,54	135,72
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	81,73	609,01	751,87	54,79
2.30	Pineapples, fresh ex 0804 30 00	105,83	788,60	973,59	70,95

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.40	Avocados, fresh ex 0804 40 00	152,71	1 137,95	1 404,90	102,37
2.50	Guavas and mangoes, fresh ex 0804 50 00	—	—	—	—
2.60	Sweet oranges, fresh:				
2.60.1	— Sanguines and semi-sanguines 0805 10 10	—	—	—	—
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	—	—	—	—
2.60.3	— Others 0805 10 50	—	—	—	—
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:				
2.70.1	— Clementines ex 0805 20 10	111,78	833,00	1 028,41	74,94
2.70.2	— Monreales and satsumas ex 0805 20 30	124,61	928,58	1 146,41	83,54
2.70.3	— Mandarines and wilkings ex 0805 20 50	99,93	744,63	919,31	66,99
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	58,97	439,48	542,57	39,54
2.85	Limes (*Citrus aurantifolia, Citrus latifolia*), fresh 0805 50 90	85,47	636,90	786,31	57,30
2.90	Grapefruit, fresh:				
2.90.1	— white ex 0805 40 00	47,53	354,17	437,25	31,86
2.90.2	— pink ex 0805 40 00	55,90	416,56	514,28	37,48
2.100	Table grapes 0806 10 10	142,30	1 060,39	1 309,14	95,40
2.110	Water melons 0807 11 00	67,22	500,92	618,42	45,06
2.120	Melons (other than water melons):				
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	60,12	448,04	553,14	40,31
2.120.2	— Other ex 0807 19 00	99,81	743,76	918,24	66,91
2.140	Pears				
2.140.1	— Pears — nashi (*Pyrus pyrifolia*), Pears — Ya (*Pyrus bretscheideri*) ex 0808 20 50	—	—	—	—
2.140.2	— Other ex 0808 20 50	—	—	—	—
2.150	Apricots 0809 10 00	608,11	4 531,59	5 594,64	407,68
2.160	Cherries 0809 20 95 0809 20 05	338,62	2 523,36	3 115,30	227,01

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.170	Peaches 0809 30 90	138,34	1 030,91	1 272,74	92,74
2.180	Nectarines ex 0809 30 10	119,98	894,09	1 103,83	80,44
2.190	Plums 0809 40 05	103,08	768,12	948,31	69,10
2.200	Strawberries 0810 10 00	164,03	1 222,34	1 509,08	109,97
2.205	Raspberries 0810 20 10	304,95	2 272,46	2 805,54	204,44
2.210	Fruit of the species *Vaccinium myrtillus* 0810 40 30	1 064,68	7 933,91	9 795,09	713,76
2.220	Kiwi fruit (*Actinidia chinensis Planch.*) 0810 50 00	145,75	1 086,11	1 340,90	97,71
2.230	Pomegranates ex 0810 90 95	156,93	1 169,43	1 443,76	105,21
2.240	Khakis (including sharon fruit) ex 0810 90 95	208,15	1 551,10	1 914,96	139,54
2.250	Lychees ex 0810 90 30	—	—	—	—

COMMISSION REGULATION (EC) No 442/2004

of 10 March 2004

fixing the unit amounts in respect of the production levies in the sugar sector for the 2002/2003 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], as last amended by Commission Regulation (EC) No 39/2004 [2], and in particular Article 15(8) thereof,

Whereas:

(1) Article 6 of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector [3], as last amended by Regulation (EC) No 38/2004 [4], provides for the fixing before 1 April of the unit amounts to be paid by sugar, isoglucose and inulin syrup producers as advance payments of the production levies for the current marketing year.

(2) The estimate of the basic levy gives an amount which is more than 60 % of the maximum indicated in Article 15(3) of Regulation (EC) No 1260/2001 while the estimate of the B levy gives an amount below 60 % of the maximum indicated in Article 15(5) of that Regulation. In accordance with Article 7 of Regulation (EC) No 314/2002, the unit amounts for sugar and inulin syrup should therefore be fixed at 50 % of the maximum amounts concerned, while the unit amount of the advance payments for the B levy should be fixed at 80 % of the estimated B levy for sugar and inulin syrup. The advance payment for isoglucose is fixed at 40 % of the unit amount of the basic production levy estimated for sugar, in accordance with Article 7(3) of that Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

The unit amounts referred to in Article 6(1)(b) of Regulation (EC) No 314/2002 in respect of the 2002/2003 marketing year are hereby fixed as follows:

(a) the advance payment on the production levy for A sugar and B sugar shall be EUR 6,32 per tonne of white sugar;

(b) the advance payment on the B levy for B sugar shall be EUR 86,50 per tonne of white sugar;

(c) the advance payment on the basic production levy for A isoglucose and B isoglucose shall be EUR 5,06 per tonne of dry matter;

(d) the advance payment on the basic production levy for A inulin syrup and B inulin syrup shall be EUR 6,32 per tonne of dry matter sugar/isoglucose equivalent;

(e) the advance payment on the B levy for B inulin syrup shall be EUR 86,50 per tonne of dry matter sugar/isoglucose equivalent.

Article 2

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

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

Done at Brussels, 10 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 6, 10.1.2004, p. 16.
[3] OJ L 50, 21.2.2002, p. 40.
[4] OJ L 6, 10.1.2004, p. 13.

COMMISSION REGULATION (EC) No 443/2004

of 10 March 2004

setting delivery obligations for cane sugar to be imported under the ACP Protocol and the Agreement with India for the 2003/2004 delivery period

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1],

Having regard to Commission Regulation (EC) No 1159/2003 of 30 June 2003 laying down detailed rules of application for the 2003/2004, 2004/2005 and 2005/2006 marketing years for the import of cane sugar under certain tariff quotas and preferential agreements and amending Regulations (EC) No 1464/95 and (EC) No 779/96 [2], and in particular Article 9(1) thereof,

Whereas:

(1) Article 9 of Regulation (EC) No 1159/2003 sets out the detailed rules for setting delivery obligations at zero duty in respect of products falling within CN code 1701, expressed in white-sugar equivalent, for imports originating in the countries that are signatories to the ACP Protocol and in India.

(2) Application of Articles 3 and 7 of the ACP Protocol, Articles 3 and 7 of the Agreement with India and Articles 11 and 12 of Regulation (EC) No 1159/2003 has resulted in the Commission setting delivery obligations for 2003/2004, by calculating in particular the difference for each country between the amount of such delivery obligations and the quantities actually imported during past delivery periods,

HAS ADOPTED THIS REGULATION:

Article 1

The delivery obligations for imports originating in the countries that are signatories to the ACP Protocol and in India in respect of products falling within CN code 1701, expressed in white-sugar equivalent, in the 2003/2004 delivery period for each exporting country concerned, are hereby fixed as shown in the Annex hereto.

Article 2

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

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

Done at Brussels, 10 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 178, 30.6.2001, p. 1. Regulation last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

[2] OJ L 162, 1.7.2003, p. 25.

ANNEX

The quantities of the delivery obligations for imports of preferential sugar originating in the countries that are signatories of the ACP Protocol and in India for the 2003/2004 delivery period, expressed in tonnes of white-sugar equivalent, shall be:

ACP Protocol/India Agreement signatory country	Delivery obligations 2003/2004
Barbados	50 641,21
Belize	38 977,79
Congo	10 186,10
Fiji	161 123,25
Guyana	153 799,11
India	10 000,00
Côte d'Ivoire	10 186,10
Jamaica	118 695,13
Kenya	0,00
Madagascar	18 815,50
Malawi	20 564,84
Mauritius	484 278,72
St Kitts and Nevis	8 804,51
Surinam	0,00
Swaziland	111 298,16
Tanzania	10 189,35
Trinidad and Tobago	42 054,47
Uganda	0,00
Zambia	0,00
Zimbabwe	29 799,89
Total	1 279 414,12

COMMISSION REGULATION (EC) No 444/2004

of 10 March 2004

amending Regulation (EC) No 1535/2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products [1], and in particular Articles 6, 25 and 27(1) thereof,

Whereas:

(1) Since publication of Commission Regulation (EC) No 1535/2003 [2], the Member States and the Commission have identified a number of ways of improving the provisions on the management of contracts between producers and processors.

(2) Checks should be made more operational, in particular as regards the checks to be carried out to verify the yield of raw materials processed into the finished product obtained.

(3) The conditions governing interest rates for the reduction of the aid in case of discrepancy between the aid applied for and the amount due should be brought into line with Article 49(3) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 [3].

(4) To ensure the smooth operation of the system, the disposal of the production of producers participating in the system should be ensured in cases where processors are not in a position to comply with their contractual obligations.

(5) Notification procedures should be improved in the case of processing in another Member State, to make them more flexible and adapt them to the specific circumstances, without compromising checking requirements under any circumstances.

(6) In order to comply with the principle of proportionality, the provisions on the penalties to be applied to processors who do not pay the contract price to producers of raw materials should be clarified.

(7) Regulation (EC) No 1535/2003 should therefore be amended accordingly.

(8) In order to respect the legitimate expectations of the operators concerned, this Regulation should apply from the 2004/05 marketing year.

(9) However, since contracts between tomato producers and processors for the 2004/05 marketing year have already been signed, the application of certain provisions on contracts should be postponed until the 2005/06 marketing year in the case of tomatoes.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1535/2003 is amended as follows:

1. Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Contracts must specify, in particular:

(a) the name and address of the signatory producer organisation;

(b) the name and address of the processor;

(c) the quantities of raw materials to be delivered for processing;

(d) the period covered and the provisional schedule of deliveries to processors;

(e) an undertaking by the processors to process the quantities delivered under the contract in question;

(f) the price to be paid to the producer organisation for the raw materials, which may vary by variety and/or quality and/or delivery period and shall be paid only by bank or post office transfer;

(g) the compensation payable should either party fail to fulfil its contractual obligations, in particular as regards the payment in full of the price specified in the contract, the respect of time limits for payment, and the obligation to deliver and accept the quantities covered by the contract.

[1] OJ L 297, 21.11.1996, p. 29. Regulation last amended by Commission Regulation (EC) No 453/2002 (OJ L 72, 14.3.2002, p. 9).
[2] OJ L 218, 30.8.2003, p. 14.
[3] OJ L 327, 12.12.2001, p. 11. Regulation last amended by Regulation (EC) No 118/2004 (OJ L 17, 24.1.2004, p. 7).

The contract shall also indicate the delivery stage to which the price referred to in point (f) applies and the payment terms. The time limit for payment may not exceed two months from the end of the month of delivery of each consignment.'

(b) in paragraph 2, the phrase 'the price referred to in paragraph 1(e) of this Article' is replaced by 'the price referred to in point (f) of the first subparagraph of paragraph 1 of this Article';

2. Article 9(3) is replaced by the following:

'3. The price of the additional quantity laid down in the amendment may differ from the price referred to in point (f) of the first subparagraph of Article 7(1).';

3. Article 11(4) is replaced by the following:

'4. In exceptional and duly justified cases, Member States may accept contracts and amendments thereto that reach their competent authorities after the time limit laid down in paragraph 3, provided that such late arrival does not hinder their checks.

In the case of amendments to contracts for tomatoes, Member States may authorise, for duly justified reasons, a time limit shorter than the five days laid down in paragraph 3, provided that this does not hinder effective checks on the production aid scheme.';

4. the first subparagraph of Article 21(2) is replaced by the following:

'2. On the basis of a risk analysis, carried out by the Member State where processing takes place or by the Member State in which the producer organisation has its head office, of the producer organisations and processors involved, the Member States may, as far as they are directly concerned, decide to exempt producer organisations from the obligations laid down in paragraph 1.';

5. Article 31(2)(b) is replaced by the following:

'(b) physical and/or accounting checks on at least 5 % of finished products to verify the yield of raw materials processed into the finished product obtained under contract and otherwise than under contract;'

6. Article 33(1) is replaced by the following:

'1. Where it is ascertained, for a given product, that the aid applied for in respect of any marketing year exceeds the amount due, then that amount shall be reduced, unless the difference is clearly due to error. The reduction shall be equal to the difference. If the aid has already been paid, the beneficiary shall pay back double the difference, plus interest calculated in accordance with Article 35a(2).';

7. the following Article 33a is inserted:

'Article 33a

Cancellation of a contract due to the fault of the other party

Where one of the parties to the contracts referred to in Articles 3 and 6a of Regulation (EC) No 2201/96 is not in a position to comply with its contractual obligations due to the fault of the other party, the party concerned may be authorised by the competent authorities of the Member State concerned, in accordance with national law, to cancel such contracts or to transfer them, unchanged, to another approved processor in the case of producer organisations or to another producer organisation in the case of processors.';

8. Article 35 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

'1. Except in cases of *force majeure*, where it is found that the full quantity of tomatoes, peaches or pears accepted for processing under contract has not been processed into one of the products listed in Article 6a(1) of, and Annex I to, Regulation (EC) No 2201/96, the processor shall pay the competent authorities an amount equal to twice the unit amount of the aid multiplied by the quantity of the raw material concerned which has not been processed, plus interest calculated in accordance with Article 35a(2).';

(b) paragraph 2 is replaced by the following:

'2. The Member States shall exclude the processor from the aid scheme provided for in Regulation (EC) No 2201/96 where:

(a) the producer organisation makes false declarations with the collaboration of the processor,

(b) the processor repeatedly fails to pay the price referred to in point (f) of the first subparagraph of Article 7(1) of this Regulation,

(c) the processor repeatedly fails to meet the payment deadline referred to in the second subparagraph of Article 7(1) of this Regulation,

(d) where the processor fails to pay the penalties provided for in paragraph 1 of this Article,

(e) the processor fails to comply with the obligations referred to in Article 30(1), (2), (3), (4) or (5) of this Regulation.

The duration of the exclusion of the processor from the aid scheme shall be not less than one marketing year and shall be determined by the Member States having regard to the seriousness of the failure.';

(c) paragraph 3 is deleted;

9. the following Article 35a is added:

'Article 35a

Payment of the amount recovered

1. Amounts recovered and interest due pursuant to this Chapter shall be paid to the competent paying agency and deducted from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

2. The interest rate to be applied shall be calculated in accordance with national law, and shall not be lower than the interest rate generally applicable to recovery under the national rules.';

10. Article 39 is amended as follows:

(a) in paragraph 2, points (c) and (d) are replaced by the following:

'(c) the quantity of raw materials used to manufacture each of the products referred to in (b);

(d) the quantity of products as referred to in (b) in stock at the end of the previous marketing year in the case of products processed from tomatoes, peaches and pears, broken down, in the case of tomatoes, into products sold and products unsold;'

(b) paragraph 3 is replaced by the following:

'3. No later than 30 September, each Member State shall send the Commission a report on the checks made during the previous marketing year, specifying the number of checks and the results, broken down by type of finding.';

(c) the following paragraph 5 is added:

'5. Member States shall adopt the necessary provisions to ensure that all data contained in the notifications and reports to the Commission referred to in paragraphs 1, 2, 3 and 4 are correct, complete, definitive and have been duly verified by the competent authorities prior to being communicated to the Commission.';

11. the second paragraph of Article 41 is replaced by the following:

'References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex hereto.';

12. the text in the Annex to this Regulation is added as an Annex to Regulation (EC) No 1535/2003.

Article 2

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

It shall apply from the 2004/05 marketing year. However, Article 1(1)(a) shall apply from the 2005/06 marketing year in the case of tomatoes.

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

Done at Brussels, 10 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'ANNEX

CORRELATION TABLE

Regulation (EC) No 449/2001	Present Regulation
Article 1(1)	Article 1
Article 1(2)	Article 2
Article 2(1)	Article 3(1)
Article 2(2)	Article 3(2)
Article 2(3)	Article 3(3)
Article 3(1)	Article 4(1)
Article 3(1), second subparagraph	Article 5(2)
Article 3(1), third subparagraph	Article 5(3)
Article 3(2), first and second subparagraphs	Article 4(2)
Article 3(2), third subparagraph	Article 5(1)
Article 3(3), first subparagraph	Article 6(1)
Article 3(3), second subparagraph	Article 6(2)
Article 3(3), third subparagraph	Article 6(3)
Article 3(4)	Article 7(1)
Article 3(5)	Article 8
Article 3(6), first subparagraph	Article 9(1)
Article 3(6), second subparagraph	Article 9(2)
Article 3(6), third subparagraph	Article 9(3)
Article 3(7)	Article 7(2)
Article 4	Article 10
Article 5(1)	Article 11(1)
Article 5(2)	Article 11(2)
Article 5(3)	Article 11(3)
Article 5(4)	Article 11(4)
Article 5(5)	Article 12(1)
Article 5(6)	Article 12(3)
Article 5(7)	Article 12(4)
Article 6	Article 13
Article 7(1)	Article 22(1)
Article 7(2)	Article 22(2)
Article 8(1)	Article 14
Article 8(2)	Article 15(1)
Article 8(3)	Article 15(2)
Article 8(4)	Article 16
Article 9, point (1)(i), and point 9(1)(ii), first subparagraph	Article 17(1)
Article 9, point (1)(ii), second subparagraph	Article 17(2)
Article 9, point (1), second subparagraph	Article 17(3)
Article 9, point (2)	Article 18

Regulation (EC) No 449/2001	Present Regulation
Article 10(1)	Article 19
Article 10(2)	—
Article 11(1) first and second subparagraphs	Article 20(1)
Article 11(1), third subparagraph	Article 20(2)
Article 11(1), fourth subparagraph	Article 20(3)
Article 11(2)	Article 20(4)
Article 12(1)	Article 23(1)
Article 12(2)	Article 23(2), first subparagraph
Article 12(3)	Article 25(1)
Article 12(4)	Article 23(3)
Article 12(5)	Article 23(4)
Article 12(6)	Article 23(6)
Article 12(7)	Article 23(5)
Article 13(1)	Article 24
Article 13(2)	Article 26
Article 13(3), first subparagraph	Article 25(2)
Article 13(3), second subparagraph	Article 25(3)
Article 13(3) third, fourth and fifth indents	Article 25(4)
Article 13(3), sixth subparagraph	Article 25(5)
Article 14(1)	Article 27(1)
Article 14(2)	Article 27(2)
Article 14(3)	Article 27(3)
Article 14(4)	Article 27(4)
Article 15(1)	Article 28(1)
Article 15(2)	Article 28(2)
Article 15(3)	Article 28(3)
Article 16(1)	Article 29(1)
Article 16(2)	Article 29(2)
Article 16(3)	Article 29(3)
Article 16(4)	Article 29(4)
Article 17(1)	Article 30(1)
Article 17(2)	Article 30(2)
Article 17(3)	Article 30(3)
Article 17(4)	Article 30(4)
Article 17(5)	Article 30(5)
Article 17(6)	Article 30(6)
Article 17(7)	Article 30(7)
Article 18(1)	Article 31(1)
Article 18(2)	Article 31(2)
Article 19(1)	Article 32(1)
Article 19(2)	Article 32(2)

Regulation (EC) No 449/2001	Present Regulation
Article 20(1)	Article 33(1)
Article 20(2)	Article 33(2)
Article 20(3)	Article 33(3)
Article 20(4)	Article 37
Article 20(5)	Article 34(1)
Article 20(6)	Article 34(3)
Article 21(1)	Article 35(1)
Article 21(2)	Article 35(2)
Article 21(3)	Article 35a
Article 22(1)	Article 36
Article 22(2)	Article 38
Article 23	Article 39
Article 24	Article 40
Article 25	Article 41
Article 26	Article 42’

COMMISSION REGULATION (EC) No 445/2004

of 10 March 2004

amending Annex I to Council Directive 92/118/EEC as regards animal casings, lard and rendered fats and rabbit meat and farmed game meat

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC [1], as last amended by Commission Decision 2003/42/EC [2], and in particular the second paragraph of Article 15 thereof,

Whereas:

(1) Directive 92/118/EEC sets out Community rules concerning animal and public health requirements governing trade in and importation into the Community of products of animal origin.

(2) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption [3], as last amended by Commission Regulation (EC) No 808/2003 [4], sets out Community rules on animal products not intended for human consumption.

(3) Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EC as regards health requirements for animal by-products [5], significantly amended Directive 92/118/EEC, in particular in order to reduce its scope so that it only covered animal products intended for human consumption and pathogens.

(4) In the interests of clarity of Community legislation, it is appropriate to further clarify the scope of Directive 92/118/EEC.

(5) Directive 92/118/EEC should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Directive 92/118/EEC

1. The title of Chapter 2 of Annex I to Directive 92/118/EEC is replaced by the following:

'Animal casings intended for human consumption'.

2. The title of Chapter 9 of Annex I to Directive 92/118/EEC is replaced by the following:

'Lard and rendered fats intended for human consumption'.

3. The title of Chapter 11 of Annex I to Directive 92/118/EEC is replaced by the following:

'Rabbit meat and farmed game meat intended for human consumption'.

Article 2

Entry into force and applicability

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

It shall apply from 1 May 2004.

[1] OJ L 62, 15.3.1993, p. 49.
[2] OJ L 13, 18.1.2003, p. 24.
[3] OJ L 273, 10.10.2002, p. 1.
[4] OJ L 117, 13.5.2003, p. 1.
[5] OJ L 315, 19.11.2002, p. 14.

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

Done at Brussels, 10 March 2004.

For the Commission
David BYRNE
Member of the Commission

COMMISSION REGULATION (EC) No 446/2004
of 10 March 2004
repealing a number of Decisions concerning animal by-products
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], as last amended by Directive 2002/33/EC of the European Parliament and of the Council [2], and in particular Article 10(4) thereof,

Having regard to Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal-by-products not intended for human consumption [3], as last amended by Commission Regulation (EC) No 808/2003 [4], and in particular Article 32(1) thereof,

Whereas:

(1) Council Directive 90/425/EEC lays down rules on animal health and public health in relation to certain animal by-products. That Directive provides the legal basis for Commission Decision 97/735/EC of 21 October 1997 concerning certain protection measures with regard to trade in certain types of mammalian waste [5], as last amended by Council Decision 1999/534/EC [6], and Commission Decision 2001/25/EC of 27 December 2000 prohibiting the use of certain animal by-products in animal feed [7].

(2) Regulation (EC) No 1774/2002 provides the legal basis for Commission Decision 92/562/EEC of 17 November 1992 on the approval of alternative heat treatment systems for processing high-risk material [8], as last amended by the Act of Accession of Austria, Finland and Sweden.

(3) Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EEC as regards health requirements for animal by-products significantly amended those Directives, in particular in order to reduce their scope so that it only covered animal products intended for human consumption and pathogens.

(4) All the Community rules on animal by-products not intended for human consumption are now provided for in Regulation (EC) No 1774/2002.

(5) Accordingly, in the interests of consistency and clarity of Community legislation, Decisions 92/562/EEC, 97/735/EC and 2001/25/EC should therefore be repealed.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Repealed Decisions

Decisions 92/562/EEC, 97/735/EC and 2001/25/EC are repealed.

Article 2

Entry into force and applicability

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

It shall apply from 1 May 2004.

[1] OJ L 224, 18.8.1990, p. 29.
[2] OJ L 315, 19.11.2002, p. 14.
[3] OJ L 273, 10.10.2002, p. 1.
[4] OJ L 117, 13.5.2003, p. 1.
[5] OJ L 294, 28.10.1997, p. 7.
[6] OJ L 204, 4.8.1999, p. 37.
[7] OJ L 6, 11.1.2001, p. 16.
[8] OJ L 359, 9.12.1992, p. 23.

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

Done at Brussels, 10 March 2004.

For the Commission
David BYRNE
Member of the Commission

COMMISSION REGULATION (EC) No 447/2004

of 10 March 2004

laying down rules to facilitate the transition from support under Regulation (EC) No 1268/1999 to that provided for by Regulations (EC) Nos 1257/1999 and 1260/1999 for the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 2(3) thereof,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Articles 32(5) and 33(5) thereof,

Whereas:

(1) Council Regulation (EC) No 1268/1999 [1] introduced Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period (Sapard programme). That programme comprises a series of measures to be supported after accession by Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [2] or Council Regulation (EC) No 1260/1999 laying down general provisions on the Structural Funds [3]. To facilitate the transition between these two types of support, the period during which commitments can be made to beneficiaries under the Sapard programme should be specified.

(2) The conditions under which projects approved under Regulation (EC) No 1268/1999 but which can no longer be financed under that Regulation can be transferred to rural development programming should be specified.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Agricultural Structures and Rural Development,

HAS ADOPTED THIS REGULATION:

Article 1

Definition

For the purposes of this Regulation 'new Member States' means the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia.

Article 2

End of contracting period under Regulation (EC) No 1268/1999

1. As regards measures which may be financed after accession by the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section under Article 47a of Regulation (EC) No 1257/1999, the new Member States may continue to contract or enter into commitments under Regulation (EC) No 1268/1999 until the date of submission to the Commission of the rural development plan.

2. As regards measures or submeasures referred to in Article 2 of Regulation (EC) No 1268/1999 which may be financed after accession by the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section under Article 2(2)a of Regulation (EC) No 1260/1999, the new Member States may continue to contract or enter into commitments under Regulation (EC) No 1268/1999 up to the date when they start to contract or to enter into commitments for measures under Regulation (EC) No 1260/1999.

Article 3

Financing of Sapard projects where appropriations have been exhausted

1. For projects contracted from 2002 under the measures referred to in the fourth, seventh and 14th indents of Article 2 of Regulation (EC) No 1268/1999, expenditure incurred beyond 31 December 2006 may be included in the rural development programming for the period 2004 to 2006 under Regulation (EC) No 1257/1999 and financed by the EAGGF Guarantee Section.

[1] OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 696/2003 (OJ L 99, 17.4.2003, p. 24).
[2] OJ L 160, 26.6.1999, p. 80. Regulation as last amended by the Act of Accession of 2003.
[3] OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1105/2003 (OJ L 158, 27.6.2003, p. 3).

2. Payments for projects for which appropriations under Regulation (EC) No 1268/1999 are exhausted or insufficient may be included in rural development programming for the period 2004 to 2006 under Regulation (EC) No 1257/1999 and financed by the EAGGF Guarantee Section.

3. Where the new Member States apply paragraphs 1 and 2, they shall indicate the amounts corresponding to appropriations committed in the financing table set out in Annex II to Regulation (EC) No 141/2004 [1].

4. The rules on eligibility of and checks on assistance under Regulation (EC) No 1268/1999 shall continue to apply.

5. The list of projects selected shall be drawn up by the new Member State concerned.

Article 4

This Regulation shall enter into force subject to and on the date of entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 10 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 24, 29.1.2004, p. 25.

COMMISSION REGULATION (EC) No 448/2004

of 10 March 2004

amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds and withdrawing Regulation (EC) No 1145/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [1], and in particular Articles 30(3) and 53(2) thereof,

After consulting the Committee set up pursuant to Article 147 of the Treaty, the Committee on Agricultural Structures and Rural Development, and the Committee on Structures for Fisheries and Aquaculture,

Whereas:

(1) A common set of rules on eligibility is set out in the Annex to Commission Regulation (EC) No 1685/2000 [2]. That Regulation entered into force on 5 August 2000.

(2) However, experience has shown that the eligibility rules need to be amended in several regards.

(3) In particular, it is appropriate to recognise the eligibility of charges for transnational financial transactions in the context of assistance under Peace II and the Community initiatives, subject to deduction of interest received on payments on account.

(4) It should also be made clear that payments into venture capital, loan and guarantee funds constitute expenditure actually paid out.

(5) It should be made more explicit that the eligibility of VAT for co-financing does not depend on whether the final beneficiary is public or private.

(6) As regards rural development, it should be made clear that the rule whereby proof of expenditure may take the form of receipted invoices should apply, but without prejudice to specific rules established in Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [3], where standard unit costs for certain investments in the forestry sector have to be determined.

(7) For the sake of clarity and convenience, the Annex to Regulation (EC) No 1685/2000 should be replaced in its entirety.

(8) The regulatory provisions governing payments in venture capital, loan and guarantee funds, and the eligibility of VAT have raised difficulties of interpretation.

(9) Having due regard to the principle of equal treatment, and for the purpose of taking into account the costs attributable to transnational financial charges, the relevant rules should apply retroactively.

(10) Regulation (EC) No 1685/2000 was amended accordingly by Regulation (EC) No 1145/2003. In adopting that Regulation, however, requirements with regard to the committee procedure were not fully respected and in consequence Regulation (EC) No 1145/2003 should therefore be withdrawn. The present Regulation should therefore apply from the entry into force of Regulation (EC) No 1145/2003.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Development and Conversion of the Regions,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1145/2003 is withdrawn.

Article 2

The Annex to Regulation (EC) No 1685/2000 is replaced by the Annex to this Regulation.

Article 3

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

It shall apply from 5 July 2003.

The following points in the Annex shall apply from 5 August 2000:

(a) in Rule 1, points 1.3, 2.1, 2.2, and 2.3;

(b) in Rule 3, point 1;

(c) in Rule 7, points 1 to 5.

[1] OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1105/2003 (OJ L 158, 27.6.2003, p. 3).
[2] OJ L 193, 29.7.2000. p. 39. Regulation as amended by Regulation (EC) No 1145/2003 (OJ L 160, 28.6.2003, p. 48).
[3] OJ L 74, 15.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32).

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

Done at Brussels, 10 March 2004.

For the Commission
Michel BARNIER
Member of the Commission

ANNEX

ELIGIBILITY RULES

Rule No 1: Expenditure actually paid out

1. PAYMENTS BY FINAL BENEFICIARIES

1.1. Payments effected by final beneficiaries within the meaning of the third subparagraph of Article 32(1) of Regulation (EC) No 1260/1999 (hereinafter the general Regulation) shall be in the form of cash subject to the exceptions indicated in point 1.5.

1.2. In the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by the Member States, 'payments effected by final beneficiaries' means aid paid to individual recipients by the bodies which grant the aid. Payments of aid by final beneficiaries must be justified by reference to the conditions and objectives of the aid.

1.3. Payments into venture capital, loan and guarantee funds (including venture capital holding funds) are treated as 'expenditure actually paid out' within the meaning of the third subparagraph of Article 32(1) of the general Regulation provided that the funds meet the requirements of Rules 8 and 9 respectively.

1.4. In cases other than those referred to in point 1.2, 'payments effected by final beneficiaries' means payments effected by the bodies or public or private firms of the type defined in the programme complement in accordance with Article 18(3)(b) of the general Regulation having direct responsibility for commissioning the specific operation.

1.5. Under the conditions set out in points 1. 6, 1.7 and 1.8, depreciation, contributions in kind and overheads can also form part of the payments referred to in point 1.1. However, the Structural Funds' co-financing of an operation shall not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation.

1.6. The cost of depreciation of real estate or equipment for which there is a direct link with the objectives of the operation is eligible expenditure, provided that:

(a) national or Community grants have not contributed towards the purchase of such real estate or equipment;

(b) the depreciation cost is calculated in accordance with the relevant accountancy rules; and

(c) the cost relates exclusively to the period of co-financing of the operation in question.

1.7. In kind, contributions are eligible expenditure provided that:

(a) they consist in the provision of land or real estate, equipment or materials, research or professional activity, or unpaid voluntary work;

(b) they are not made in respect of financial engineering measures referred to in Rules 8, 9 and 10;

(c) their value can be independently assessed and audited;

(d) in the case of the provision of land or real estate, the value is certified by an independent qualified valuer or duly authorised official body;

(e) in the case of unpaid voluntary work, the value of that work is determined taking into account the amount of time spent and the normal hourly and daily rate for the work carried out; and

(f) the provisions of Rules 4, 5 and 6 are complied with where applicable.

1.8. Overheads are eligible expenditure provided that they are based on real costs which relate to the implementation of the operation co-financed by the Structural Funds and are allocated pro rata to the operation, according to a duly justified fair and equitable method.

1.9. The provisions of points 1.5 to 1.8 are applicable to individual recipients referred to in point 1.2 in the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by Member States.

1.10. Member States may apply stricter national rules for determining eligible expenditure under points 1.6, 1.7 and 1.8.

2. PROOF OF EXPENDITURE

2.1. As a general rule, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equivalent probative value.

2.2. As regards rural development, the provision specified in point 2.1 applies without prejudice to specific rules established in Commission Regulation (EC) No 445/2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) for the case of the determination of standard unit costs for certain investments in the forestry sector.

2.3. In addition, where operations are executed in the framework of public procurement procedures payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices issued in accordance with the provisions of the signed contracts. In all other cases, including the award of public grants, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be justified by expenditure actually paid (including expenditure referred to in point 1.5) by the bodies or public or private firms concerned in implementing the operation.

3. SUBCONTRACTING

3.1. Without prejudice to the application of stricter national rules, expenditure relating to the following subcontracts is ineligible for co-financing by the Structural Funds:

(a) subcontracting which adds to the cost of execution of the operation, without adding proportionate value to it;

(b) subcontracts with intermediaries or consultants in which the payment is defined as a percentage of the total cost of the operation unless such payment is justified by the final beneficiary by reference to the actual value of the work or services provided.

3.2. For all subcontracts, subcontractors shall undertake to provide the audit and control bodies with all necessary information relating to the subcontracted activities.

Rule No 2: Accounting treatment of receipts

1. 'Receipts' for the purposes of this rule covers revenue received by an operation during the period of its co-financing or during such longer period up to the closure of the assistance as may be fixed by the Member State, from sales, rentals, services, enrolment/fees or other equivalent receipts with the exception of:

(a) receipts generated throughout the economic lifetime of the co-financed investments and subject to the specific provisions of Article 29(4) of the general Regulation;

(b) receipts generated within the framework of financial engineering measures referred to in Rules 8, 9 and 10;

(c) contributions from the private sector to the co-financing of operations, which appear alongside public contributions in the financing tables of the relevant assistance.

2. Receipts under point 1 represent income which reduces the amount of co-financing under the Structural Funds that is required for the operation in question. Before the Structural Funds' participation is calculated and no later than at the time of the closure of the assistance, they are deducted from the operation's eligible expenditure in their entirety or pro rata, depending on whether they were generated entirely or only in part by the co-financed operation.

Rule No 3: Financial and other charges and legal expenses

1. FINANCIAL CHARGES

Debit interest (other than expenditure on interest subsidies to reduce the cost of borrowing for businesses under an approved State aid scheme), charges for financial transactions, foreign exchange commissions and losses, and other purely financial expenses are not eligible for co-financing by the Structural Funds. However, charges for transnational financial transactions within assistance under Peace II and the Community Initiatives (Interreg III, Leader+, Equal and Urban II) are eligible for cofinancing by the Structural Funds after deduction of interest received on payment on account. Furthermore, in the case of global grants, debit interest charges paid by the designated intermediary prior to payment of the final balance of the assistance are eligible, after deduction of interest received on payment on account.

2. BANK CHARGES ON ACCOUNTS

Where co-financing by the Structural Funds requires the opening of a separate account or accounts for implementing an operation, the bank charges for opening and administering the accounts, are eligible.

3. LEGAL FEES FOR ADVICE, NOTARY FEES, THE COSTS OF TECHNICAL OR FINANCIAL EXPERTISE, AND ACCOUNTANCY OR AUDIT COSTS

These costs are eligible if they are directly linked to the operation and are necessary for its preparation or implementation or, in the case of accounting or audit costs, if they relate to requirements by the managing authority.

4. COSTS OF GUARANTEES PROVIDED BY A BANK OR OTHER FINANCIAL INSTITUTION

These costs are eligible to the extent that the guarantees are required by national or Community legislation or in the Commission Decision approving the assistance.

5. FINES, FINANCIAL PENALTIES AND EXPENSES OF LITIGATION

These expenses are not eligible.

Rule No 4: Purchase of second-hand equipment

The purchase costs of second-hand equipment are eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

(a) the seller of the equipment shall provide a declaration stating its origin, and confirm that at no point during the previous seven years has it been purchased with the aid of national or Community grants;

(b) the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment; and

(c) the equipment shall have the technical characteristics necessary for the operation and comply with applicable norms and standards.

Rule No 5: Purchase of land

1. GENERAL RULE

1.1. The cost of purchase of land not built on shall be eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

(a) there shall be a direct link between the land purchase and the objectives of the operation co-financed;

(b) except in the cases described in point 2, the land purchase may not represent more than 10 % of the total eligible expenditure of the operation, unless a higher percentage is fixed in the assistance approved by the Commission;

(c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body confirming that the purchase price does not exceed the market value.

1.2. In the case of aid schemes under Article 87 of the Treaty, the eligibility of land purchase shall be assessed in terms of the aid scheme in its entirety.

2. ENVIRONMENTAL CONSERVATION OPERATIONS

For environmental conservation operations, all the conditions indicated below shall be met for the expenditure to be eligible:

— the purchase is the subject of a positive decision by the managing authority,

— the land is devoted to the intended use for a period determined in that decision,

— the land is not for agricultural purposes save in duly justified cases accepted by the managing authority,

— the purchase is made by or on behalf of a public institution or a body governed by public law.

Rule No 6: Purchase of real estate

1. GENERAL RULE

The cost of purchase of real estate, i.e. buildings already constructed and the land on which they are built, is eligible for co-financing by the Structural Funds if there is a direct link between the purchase and the objectives of the operation concerned under the conditions set out in point 2 without prejudice to the application of stricter national rules.

2. TERMS OF ELIGIBILITY

2.1. A certificate shall be obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, and either attesting that the building is in conformity with national regulations or specifying the points which are not in conformity where their rectification by the final beneficiary is foreseen under the operation.

2.2. The building shall not have received, within the previous 10 years, a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the purchase by the Structural Funds.

2.3. The real estate shall be used for the purpose and for the period decided by the managing authority.

2.4. The building may only be used in conformity with the objectives of the operation. In particular, the building may be used to accommodate public administration services only where such use is in conformity with eligible activities of the Structural Fund concerned.

Rule No 7: VAT and other taxes and charges

1. VAT does not constitute eligible expenditure except where it is genuinely and definitively borne by the final beneficiary, or individual recipient within the aid schemes pursuant to Article 87 of the Treaty and in the case of aid granted by the bodies designated by the Member States. VAT which is recoverable, by whatever means, cannot be considered eligible, even if it is not actually recovered by the final beneficiary or individual recipient. The public or private status of the final beneficiary or the individual recipient is not taken into account for the determination whether VAT constitutes eligible expenditure in application of the provisions of this rule.

2. VAT which is not recoverable by the final beneficiary or individual recipient by virtue of the application of specific national rules shall only constitute eligible expenditure where such rules are in full compliance with the Sixth Council Directive 77/388/EEC on VAT ([1]).

3. Where the final beneficiary or individual recipient is subject to a flat-rate scheme under Title XIV of the Sixth Council Directive 77/388/EEC on VAT, VAT paid is considered recoverable for the purposes of point 1.

4. Community co-financing may not exceed total eligible expenditure excluding VAT, without prejudice to the provisions of Article 29(6) of the general Regulation.

5. Other taxes and charges (in particular direct taxes and social security contributions on wages and salaries) which arise from co-financing by the Structural Funds do not constitute eligible expenditure except where they are genuinely and definitively borne by the final beneficiary or individual recipient.

Rule No 8: Venture capital and loan funds

1. GENERAL RULE

The Structural Funds may co-finance the capital of venture capital and/or loan funds or of venture capital holding funds (hereinafter funds) under the conditions set out in point 2. For the purposes of this Rules, 'Venture capital funds and loan funds' means investment vehicles established specifically to provide equity or other forms of risk capital, including loans, to small and medium-sized enterprises as defined in Commission Recommendation 96/280/EC ([2]) as last amended by Recommendation of 6 May 2003. 'Venture capital holding funds' means funds set up to invest in several venture capital and loan funds. The Structural Funds' participation in funds may be accompanied by co-investments or guarantees from other Community financing instruments.

([1]) OJ L 145, 13.6.1977, p. 1.
([2]) OJ L 107, 30.4.1996, p. 4.

2. CONDITIONS

2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund specifying, *inter alia*, the targeted market, the criteria, terms and conditions of financing, the operational budget of the fund, the ownership and co-financing partners, the professionalism, competence and independence of the management, the fund's by-laws, the justification and intended utilisation of the Structural Funds' contribution, the investment exit policy, and the winding-up provisions of the fund, including the reutilisation of returns attributable to the contribution from the Structural Funds. The business plan shall be carefully appraised and its implementation monitored by or under the responsibility of the managing authority.

2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the fund shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution. All participants in the fund shall make their contributions in cash.

2.3. The Commission cannot become a partner or shareholder in the fund.

2.4. The contribution from the Structural Funds shall be subject to the limits laid down in Article 29(3) and (4) of the general Regulation.

2.5. Funds may invest only in SMEs at their establishment, early stages (including seed capital) or expansion and only in activities which the fund managers judge potentially economically viable. The assessment of the viability should take into account all sources of income of the enterprises in question. Funds shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([1]).

2.6. Precautions should be taken to minimise distortion of competition in the venture capital or lending market. In particular returns from equity investments and loans (less pro rata share of the management costs) may be preferentially allocated to the private sector shareholders up to the level of remuneration laid down in the shareholder agreement, and after that, they shall be allocated proportionally between all shareholders and the Structural Funds. Returns to the fund attributable to the Structural Funds' contributions shall be reused for SME development activities in the same eligible area.

2.7. Management costs may not exceed 5 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.

2.8. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the capital of the fund that has been invested in or loaned out to SMEs, including the management costs incurred.

2.9. Contributions to funds from the Structural Funds and other public sources, as well as the investments made by funds in individual SMEs, are subject to the rules on State aid.

3. RECOMMENDATIONS

3.1. The Commission recommends the standards of good practice set out in points 3.2 to 3.6 for funds to which the Structural Funds contribute. The Commission will regard compliance with these recommendations as a positive element when it examines the fund's compatibility with State aid rules. The recommendations are not binding for the purposes of the eligibility of expenditure.

3.2. The financial contribution of the private sector should be substantial, and above 30 %.

3.3. Funds should be large enough and cover a wide enough target population to ensure that their operations are potentially economically viable, with a time scale for investments compatible with the period of the Structural Funds' participation, and focusing on areas of market failure.

3.4. The timing of payments of capital into the fund should be the same for the Structural Funds and the shareholders, and pro rata to the stakes subscribed.

3.5. Funds should be managed by independent professional teams with sufficient business experience to demonstrate the necessary capability and credibility to manage a venture capital fund. Management teams should be chosen on the basis of a competitive selection process, taking into account the level of fees envisaged.

3.6. Funds should not normally acquire majority stakes in firms and should pursue the objective of realising all investments within the life of the fund.

([1]) OJ C 288, 9.10.1999, p. 2.

Rule No 9: Guarantee funds

1. GENERAL RULE

The Structural Funds may co-finance the capital of guarantee funds under the conditions set out in point 2. For the purposes of this Rule, 'Guarantee funds' mean financing instruments that guarantee venture capital and loan funds within the meaning of Rule No 8 and other SME risk financing schemes (including loans) against losses arising from their investments in small and medium-sized enterprises as defined in recommendation 96/280/EC as last amended by Commission Recommendation of 6 May 2003. The funds may be publicly-supported mutual funds subscribed by SMEs, commercially-run funds with private-sector partners, or wholly publicly-financed funds. The Structural Funds' participation in funds may be accompanied by part-guarantees provided by other Community financing instruments.

2. CONDITIONS

2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund in the same way as for venture capital funds (Rule No 8), *mutatis mutandis*, and specifying the target guarantee portfolio. The business plan shall be carefully appraised and its implementation monitored by or under the responsibility of the managing authority.

2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the 'fund' shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution.

2.3. The Commission cannot become a partner or shareholder in the fund.

2.4. Funds may only guarantee investments in activities that are judged potentially economically viable. Funds shall not provide guarantees for firms in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

2.5. Any part of the Structural Funds' contribution left over after the guarantees have been honoured shall be reused for SME development activities in the same eligible area.

2.6. Management costs may not exceed 2 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.

2.7. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the amount of the paid-up capital of the fund necessary, on the basis of an independent audit, to cover the guarantees provided including the management costs incurred.

2.8. Contributions to guarantee funds from the Structural Funds and other public sources, as well as the guarantees provided by such funds to individual SMEs are subject to the rules on State aid.

Rule No 10: Leasing

1. GENERAL RULE

Expenditure incurred in relation to leasing operations is eligible for co-financing under the Structural Funds subject to the rules set out in points 2 to 4.

2. AID VIA LESSOR

2.1. The lessor is the direct recipient of the Community co-financing, which is used for the reduction of the lease rental payments made by the lessee in respect of assets covered by the leasing contract.

2.2. Leasing contracts for which Community aid is paid shall include an option to purchase or provide for a minimum leasing period equal to that of the useful life of the asset to which the contract relates.

2.3. Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the appropriate fund) that part of the Community aid corresponding to the remainder of the leasing period.

2.4. The purchase of the asset by the lessor, supported by a receipted invoice or an accounting document of equal probative value, constitutes the expenditure eligible for co-financing. The maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased.

2.5. Costs connected with the leasing contract (notably tax, lessor's margin, interest refinancing costs, overheads, insurance charges), other than the expenditure referred to in point 2.4, are not eligible expenditure.

2.6. Community aid paid to the lessor shall be used in its entirety for the benefit of the lessee by means of a uniform reduction in all the leasing rentals for the duration of the leasing period.

2.7. The lessor shall demonstrate that the benefit of the Community aid will be transferred fully to the lessee by establishing a breakdown of the rental payments or by an alternative method giving equivalent assurance.

2.8. The costs referred to in point 2.5, the use of any fiscal benefits arising from the leasing operation, and other conditions of the contract shall be equivalent to those applicable in the absence of any Community financial intervention.

3. AID TO LESSEE

3.1. The lessee is the direct recipient of the Community co-financing.

3.2. The leasing rentals paid to the lessor by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for co-financing.

3.3. In the case of leasing contracts which include an option to purchase or which provide for a minimum leasing period equal to the useful life of the asset to which the contract relates, the maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased. Other costs connected with the leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure.

3.4. The Community aid in respect of leasing contracts referred to under point 3.3 is paid to the lessee in one or more tranches in respect of leasing rentals effectively paid. Where the term of the leasing contract exceeds the final date for taking account of payments under the Community assistance, only expenditure in relation to leasing rentals falling due and paid by the lessee up to the final date for payment under the assistance can be considered eligible.

3.5. In the case of leasing contracts which do not contain an option to purchase and whose duration is less than the period of the useful life of the asset to which the leasing contract relates, the leasing rentals are eligible for co-financing by the Community in proportion to the period of the eligible operation. However, the lessee must be able to demonstrate that leasing was the most cost-effective method for obtaining the use of the equipment. Where the costs would have been lower if an alternative method (for example hiring of the equipment) had been used, the additional costs shall be deducted from the eligible expenditure.

3.6. Member States may apply stricter national rules for determining eligible expenditure under points 3.1 to 3.5.

4. SALE AND LEASE-BACK

Leasing rentals paid by a lessee under a sale and lease-back scheme may be eligible expenditure under the rules set out in point 3. The acquisition costs of the asset are not eligible for Community co-financing.

Rule No 11: Costs incurred in managing and implementing the Structural Funds

1. GENERAL RULE

Costs incurred by Member States in the management, implementation, monitoring and control of the Structural Funds are ineligible for co-financing except as provided for in point 2 and falling within the categories set out in point 2.1.

2. CATEGORIES OF MANAGEMENT, IMPLEMENTATION, MONITORING AND CONTROL EXPENDITURE ELIGIBLE FOR CO-FINANCING

2.1. The following categories of expenditure are eligible for co-financing under assistance under the conditions set out in points 2.2 to 2.7:

— expenditure relating to the preparation, selection, appraisal and monitoring of the assistance and of operations (but excluding expenditure on the acquisition and installation of computerised systems for management, monitoring and evaluation),

— expenditure on meetings of monitoring committees and sub-committees relating to the implementation of assistance. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance,

— expenditure relating to audits and on-the-spot checks of operations.

2.2. Expenditure on salaries including social security contributions is eligible only in the following cases:

(a) civil servants or other public officials seconded by duly documented decision of the competent authority to carry out tasks referred to in point 2.1;

(b) other staff employed to carry out tasks referred to in point 2.1.

The period of secondment or employment may not exceed the final date for the eligibility of expenditure laid down in the decision approving the assistance.

2.3. The Structural Funds' contribution to the expenditure under point 2.1 shall be limited to a maximum amount which will be fixed in the assistance approved by the Commission and shall not exceed the limits set out in points 2.4 and 2.5.

2.4. For all assistance, except Community Initiatives, the Peace II special programme and innovative actions, the limit shall be the sum of the following amounts:

— 2,5 % of that part of the total Structural Funds' contribution less than or equal to EUR 100 million,

— 2 % of that part of the total Structural Funds' contribution which exceeds EUR 100 million but is less than or equal to EUR 500 million,

— 1 % of that part of the total Structural Funds' contribution which exceeds EUR 500 million but is less than or equal to EUR 1 000 million,

— 0,5 % of that part of the total Structural Funds' contribution which exceeds EUR 1 000 million.

2.5. For Community Initiatives, innovative actions and the Peace II special programme, the limit shall be 5 % of the Structural Funds' total contribution. Where such assistance involves the participation of more than one Member State this limit may be increased to take account of higher costs of management and implementation and will be fixed in the Commission's decision.

2.6. For the purposes of calculating the amount of the limits in points 2.4 and 2.5, the Structural Funds' total contribution shall be the total fixed in each assistance approved by the Commission.

2.7. The implementation of points 2.1 to 2.6 of this Rule shall be agreed between the Commission and the Member States and laid down in the assistance. The rate of the contribution will be fixed in accordance with Article 29(7) of the General Regulation. For the purposes of monitoring, the costs referred to in 2.1 will be the subject of a separate measure or submeasure within technical assistance.

3. OTHER EXPENDITURE UNDER TECHNICAL ASSISTANCE

Actions which can be co-financed under technical assistance, other than those set out in point 2 (such as studies, seminars, information actions, evaluation, and the acquisition and installation of computerised systems for management, monitoring and evaluation), are not subject to the conditions set out in points 2.4 to 2.6. Expenditure on the salaries of civil servants or other public officials in carrying out such actions is not eligible.

4. EXPENDITURE BY PUBLIC ADMINISTRATIONS RELATING TO THE EXECUTION OF OPERATIONS

The following expenditure of public administrations is eligible for co-financing outside technical assistance if it relates to the execution of an operation provided that it does not arise from the statutory responsibilities of the public authority or the authority's day-to-day management, monitoring and control tasks:

(a) costs of professional services rendered by a public service in the implementation of an operation. The costs must be either invoiced to a final beneficiary (public or private) or certified on the basis of documents of equivalent probative value which permit the identification of real costs paid by the public service concerned in relation to that operation;

(b) costs of the implementation of an operation, including the expenditure related to the provision of services, borne by a public authority that is itself the final beneficiary and which is executing an operation on its own account without recourse to outside engineers or other firms. The expenditure concerned must relate to expenditure actually and directly paid on the co-financed operation and must be certified on the basis of documents which permit the identification of real costs paid by the public service concerned in relation to that operation.

Rule No 12: Eligibility of operations depending on the location

1. GENERAL RULE

As a general rule, operations co-financed by the Structural Funds shall be located in the region to which the assistance relates.

2. EXCEPTION

2.1. Where the region to which the assistance relates will benefit wholly or partly from an operation located outside that region, the operation may be accepted by the managing authority for co-financing provided that all the conditions set out in points 2.2 to 2.4 are satisfied. In other cases on operation may be accepted as eligible for co-financing under the procedure in point 3. For operations financed under the Financial Instrument for Fisheries Guidance (FIFG), the procedure under point 3 must always be followed.

2.2. The operation must be located in a NUTS III area of the Member State immediately adjacent to the region to which the assistance relates.

2.3. The maximum eligible expenditure of the operation is determined pro rata to the proportion of the benefits from the operation which it is foreseen will accrue to the region and shall be based on an evaluation by a body independent of the managing authority. The benefits shall be assessed taking account of the specific targets of the assistance and its expected impact. The operation cannot be accepted for co-financing where the proportion of benefits is less than 50 %.

2.4. For each measure of the assistance, the eligible expenditure of the operations accepted under point 2.1 should not exceed 10 % of the total eligible expenditure of the measure. In addition, the eligible expenditure of all operations in the assistance accepted under point 2.1 should not exceed 5 % of the total eligible expenditure of the assistance.

2.5. Operations accepted by the managing authority under point 2.1 shall be indicated in the annual and final implementation reports of the assistance.

3. OTHER CASES

In the case of operations located outside the region to which the assistance relates but which do not fulfil the conditions of point 2, and of operations financed under the FIFG, the acceptance of the operation for co-financing shall be subject to prior approval by the Commission on a case-by-case basis following a request submitted by the Member State, taking into account in particular the proximity of the operation to the region, the level of benefit to the region which can be foreseen, and the amount of the expenditure in proportion to the total expenditure under the measure and under the assistance. In the case of assistance relating to the outermost regions, the procedure in this point will be applicable.

ANNEX II

Correlation table

Regulation (EC) No 1685/2000	Amending Regulation
Article 1	Article,1 modified
Article 2	Article 2, modified
Annex	Annex I
Rule 1	Rule 1, modified
Point 1.1	Point 1.1, modified
	Point 1.3, new
Point 1.3	Point 1.4
Point 1.4	Point 1.5
Point 1.5	Point 1.6
Point 1.6	Point 1.7
Point 1.7	Point 1.8
Point 1.8	Point 1.9
Point 1.9	Point 1.10
Point 2	Point 2, modified
Point 3	Point 3, unchanged
Rule 2	Rule 2, unchanged
Rule 3	Rule 3, modified
Point 1	Point 1, modified
Points 2 to 5	Points 2 to 5, unchanged
Rule 4	Rule 4, unchanged
Rule 5	Rule 5, unchanged
Rule 6	Rule 6, unchanged
Rule 7	Rule 7, modified
Point 1	Point 1, modified
	Point 2, new
Point 2	Point 3, modified
Point 3	Point 4, modified
Point 4	Point 5, modified
Rule 8	Rule 8, unchanged
Rule 9	Rule 9, unchanged
Rule 10	Rule 10, unchanged
Rule 11	Rule 11, unchanged
Rule 12	Rule 12, unchanged
	Annex II, new

COMMISSION REGULATION (EC) No 449/2004

of 10 March 2004

on granting of import licences for cane sugar for the purposes of certain tariff quotas and preferential agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1],

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations [2],

Having regard to Commission Regulation (EC) No 1159/2003 of 30 June 2003 laying down detailed rules of application for the 2003/04, 2004/05 and 2005/06 marketing years for the import of cane sugar under certain tariff quotas and preferential agreements and amending Regulations (EC) No 1464/95 and (EC) No 779/96 [3], and in particular Article 5(3) thereof,

Whereas:

(1) Article 9 of Regulation (EC) No 1159/2003 stipulates how the delivery obligations at zero duty of products of CN code 1701, expressed in white sugar equivalent, are to be determined for imports originating in signatory countries to the ACP Protocol and the Agreement with India.

(2) Commission Regulation (EC) No 443/2004 of 10 March 2004 fixing the quantities of the delivery obligations for sugar cane to be imported under the ACP Protocol and the India Agreement for the 2003/04 delivery period [4] fixed a delivery obligation for Tanzania higher than all the import licence applications submitted to date for the 2003/04 delivery period.

(3) In these circumstances, in the interests of clarity, it should be indicated that the maximum quantity of the delivery obligation for Tanzania for the delivery period concerned has not been reached,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of import licence applications presented from 1 to 5 March 2004 in line with Article 5(1) of Regulation (EC) No 1159/2003 licences shall be issued for the quantities indicated in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 2).
[2] OJ L 146, 20.6.1996, p. 1.
[3] OJ L 162, 1.7.2003, p. 25.
[4] See page 52 of this Official Journal.

ANNEX

ACP-India Preferential Sugar

Title II of Regulation (EC) No 1159/2003

2003/04 marketing year

Country	Week of 1 to 5 March 2004: percentage of requested quantity to be granted	Limit
Barbados	100	
Belize	0	reached
Congo	0	reached
Fiji	100	
Guyana	100	
India	0	reached
Côte d'Ivoire	100	
Jamaica	100	
Kenya	100	
Madagascar	100	
Malawi	100	
Mauritius	100	
Saint Kitts and Nevis	100	
Swaziland	100	
Tanzania	100	
Trinidad and Tobago	100	
Zambia	100	
Zimbabwe	0	reached

Special Preferential Sugar

Title III of Regulation (EC) No 1159/2003

2003/04 marketing year

Quota opened for the Member States referred to in Article 39 of Regulation (EC) No 1260/2001, except Slovenia

Country	Week of 1 to 5 March 2004: percentage of requested quantity to be granted	Limit
India	100	
Other countries	100	

Special Preferential Sugar

Title III of Regulation (EC) No 1159/2003

2003/04 marketing year

Quota opened for Slovenia

Country	Week of 1 to 5 March 2004: percentage of requested quantity to be granted	Limit
ACP	100	

CXL concessions sugar

Title IV of Regulation (EC) No 1159/2003

2003/04 marketing year

Country	Week of 1 to 5 March 2004: percentage of requested quantity to be granted	Limit
Brazil	100	
Cuba	100	
Other third countries	100	

COMMISSION REGULATION (EC) No 450/2004
of 10 March 2004
on the issuing of system A3 export licences in the fruit and vegetables sector (lemons)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], and in particular the third subparagraph of Article 35(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 305/2004 [2] opens an invitation to tender setting the indicative refund rates and indicative quantities for system A3 export licences, which may be issued, other than those tendered for as part of food aid.

(2) In the light of the tenders submitted, the maximum refund rates and the percentages of quantities to be awarded for tenders quoting those maximum rates should be set.

(3) In the case of lemons, the maximum rate necessary to award licences for the indicative quantity up to the quantities tendered for is not more than one-and-a-half times the indicative refund rate,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of lemons, the maximum refund rates and the percentages for reducing the quantities awarded under the invitation to tender opened by Regulation (EC) No 305/2004 shall be fixed in the Annex.

Article 2

This Regulation shall enter into force on 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 268, 9.10.2001, p. 8. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).
[2] OJ L 52, 21.2.2004, p. 3.

ANNEX

Issuing of system A3 export licences in the fruit and vegetable sector (lemons)

Product	Maximum refund rate (EUR/t net)	Percentage awarded of quantities tendered for quoting the maximum refund rate
Lemons	45	44 %

COMMISSION REGULATION (EC) No 451/2004

of 10 March 2004

on the issuing of system A3 export licences in the fruit and vegetables sector (tomatoes, oranges and apples)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ([1]), and in particular the third subparagraph of Article 35(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 305/2004 ([2]) opens a tendering procedure setting the indicative refund rates and indicative quantities for which system A3 export licences may be issued.

(2) In the light of the tenders submitted, the maximum refund rates and the percentages of quantities to be awarded for tenders quoting those maximum rates should be set.

(3) In the case of tomatoes, oranges and apples, the maximum rate necessary to award licences for the indicative quantity up to the quantities tendered for is more than one-and-a-half times the indicative refund rate. The rate must therefore be set in accordance with Article 4(4) of Commission Regulation (EC) No 1961/2001 of 8 October 2001 laying down detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ([3]).

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of tomatoes, oranges and apples, the maximum refund rate and the percentage of quantities to be awarded under the tendering procedure opened by Regulation (EC) No 305/2004 shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

([1]) OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).
([2]) OJ L 52, 21.2.2004, p. 3.
([3]) OJ L 268, 9.10.2001, p. 8. Regulation as last amended by Regulation (EC) No 1176/2002 (OJ L 170, 29.6.2002, p. 69).

ANNEX

Issuing of system A3 export licences in the fruit and vegetables sector (tomatoes, oranges and apples)

Product	Maximum refund rate (EUR/tonne net)	Percentage awarded of quantities tendered for quoting the maximum refund rate
Tomatoes	40	100 %
Oranges	35	100 %
Apples	39	82 %

COMMISSION REGULATION (EC) No 452/2004
of 10 March 2004
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 29,002/100 kg.

Article 2

This Regulation shall enter into force on 11 March 2004.

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

Done at Brussels, 10 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 March 2004

establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens

(notified under document number C(2004) 582)

(Text with EEA relevance)

(2004/235/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs [1], and in particular Article 9b(2) thereof,

Whereas:

(1) Commission Decision 95/161/EC of 21 April 1995 establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens [2] has been substantially amended [3]. In the interests of clarity and rationality the said Decision should be codified.

(2) The Commission has approved the operational programmes submitted by Finland and Sweden regarding salmonella controls. Those programmes include specific measures for laying hens, namely productive poultry reared with a view to producing eggs for consumption.

(3) Guarantees should be established equivalent to those implemented by Finland and Sweden under their operational programmes.

(4) Those additional guarantees are to be based in particular on a microbiological examination of the poultry to be sent to Finland and Sweden.

(5) Rules should be established for this microbiological examination of samples by laying down the sampling method, the number of samples to be taken and the microbiological methods for examining the samples.

(6) Those guarantees should not be applicable to any flock that is subject to a programme recognized as equivalent to that implemented by Finland and Sweden.

(7) Finland and Sweden should apply to consignments originating from third countries import requirements at least as stringent as those laid down in this Decision.

(8) The methods described in this Decision take into account the opinion of the European Food Safety Authority.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Laying hens, namely productive poultry reared with a view to producing eggs for consumption, to be sent to Finland and Sweden shall be subject to a microbiological test, effected by sampling in the flock of origin.

Article 2

The microbiological test referred to in Article 1 shall be carried out as laid down in Annex I.

[1] OJ L 303, 31. 10. 1990, p. 6. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[2] OJ L 105, 9.5.1995, p. 44. Decision as amended by Decision 97/278/EC (OJ L 110, 26.4.1997, p. 77)
[3] See Annex III.

Article 3

1. Laying hens to be sent to Finland and Sweden shall be accompanied by the certificate shown in Annex II.

2. The certificate provided for in paragraph 1 may:

— either be accompanied by model 3 certificate of Annex IV to Directive 90/539/EEC,

— or be incorporated in the certificate referred to in the first indent.

Article 4

The additional guarantees provided for in this Decision shall not be applicable to flocks subject to a programme recognised, according to the procedure laid down in Article 32 of Directive 90/539/EEC, as equivalent to that implemented by Finland and Sweden.

Article 5

Decision 95/161/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex IV.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 1 March 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

1. **General rules**

The flock of origin must be isolated for 15 days.

The microbiological test must be carried out during the 10 days before forwarding of the consignment.

The microbiological test must include the following invasive serotypes:

— *Salmonella gallinarum*,

— *Salmonella pullorum*,

— *Salmonella enteritidis*,

— *Salmonella berta*,

— *Salmonella typhimurium*,

— *Salmonella thompson*,

— *Salmonella infantis*.

2. **Sampling method**

Composite faeces samples, each sample being composed of separate samples of fresh faeces, each weighing at least one gram, must be taken randomly at a certain number of points in the building in which the birds are being kept or, when the birds have free access to more than one building on a holding, taken in each group of buildings on the holding in which the birds are kept.

3. **Number of samples to be taken**

The number of samples must make it possible to detect with 95 % reliability a 5 % presence of salmonella.

4. **Microbiological methods for examination of the samples**

— Microbiological testing of the samples for salmonella should be carried out to the latest edition of the standard of the International Organisation for Standardisation ISO 6579, or by the latest edition of the method described by the Nordic Committee on Food Analysis (NMKL method No 71).

— Where the results of analysis are contested between Member States the latest edition of the standard of the International Organisation for Standardisation ISO 6579 should be regarded as the reference method.

ANNEX II

CERTIFICATION

I, the undersigned, official veterinarian, certify that the laying hens (productive poultry reared with a view to producing eggs for consumption) have been tested with negative results according to the rules laid down in Commission Decision 2004/235/EC of 9 March 2004 establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens [1] (productive poultry reared with a view to producing eggs for consumption).

Done at ..... Date .....

Stamp

.....
Signature

.....
Name (in capitals)

.....
Qualification

[1] OJ L 72, 11.3.2004, p. 86

ANNEX III

Repealed Decision with its amendment

Commission Decision 95/161/EC	(OJ L 105, 9.5.1995, p. 44)
Commission Decision 97/278/EC (Article 2 only)	(OJ L 110, 26.4.1997, p. 77)

ANNEX IV

Correlation table

Decision 95/161/EC	This Decision
Articles 1—4	Articles 1—4
Article 5	—
—	Article 5
Article 6	Article 6
Annexes I—II	Annexes I—II
—	Annex III
—	Annex IV

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2295/2003 of 23 December 2003 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs

(Official Journal of the European Union L 340 of 24 December 2003)

— On page 21, Article 10 should read as follows:

'Article 10

Indication of the packing date

The indication of the packing date referred to in Article 10(1)(f) of Regulation (EEC) No 1907/90 shall comprise one or more of the terms set out in point 2 of Annex I to this Regulation, followed by the two sets of numbers or letters referred to in the second subparagraph of Article 9(1) of this Regulation.';

— on page 25, paragraphs 2 and 3 become 2, 3 and 4 and read as follows:

'2. Where the date of laying is indicated, the information referred to in paragraph 1(a) shall be recorded separately.

3. Where several different rearing methods are used in a single establishment, the information referred to in paragraph 1(a) and (b) shall be broken down by hen house, in accordance with Directive 2002/4/EC.

4. Producers shall keep the information listed in paragraph 1(a) and (b) for at least six months after ceasing their activity or after the flock has been destroyed.';

— on page 26, Article 29(2), first line:

for: '2. Before 1 January 2004, …,

read: '2. Before 1 July 2004, ….