

# Official Journal

of the European Union

ISSN 1725-2555

L 66

Volume 47

4 March 2004

English edition

## Legislation

Contents

### I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan** 1
- ★ **Council Regulation (EC) No 398/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China** ..... 15
- Commission Regulation (EC) No 399/2004 of 3 March 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables ..... 31
- Commission Regulation (EC) No 400/2004 of 3 March 2004 fixing the import duties in the rice sector ..... 33

### II Acts whose publication is not obligatory

#### Commission

2004/209/EC:

- ★ **Commission Decision of 28 January 2004 on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2004 pursuant to Regulation (EC) No 2037/2000 of the European Parliament and of the Council (notified under document number C(2004) 103)** ..... 36

2004/210/EC:

- ★ **Commission Decision of 3 March 2004 setting up Scientific Committees in the field of consumer safety, public health and the environment <sup>(1)</sup>** ..... 45

2

<sup>(1)</sup> Text with EEA relevance

EN

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.

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 397/2004**

**of 2 March 2004**

**imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan**

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<sup>(1)</sup> ('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. Initiation**

- (1) On 18 December 2002 the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* the initiation of an anti-dumping proceeding with regard to imports into the Community of bed linen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed ('cotton-type bed linen' or 'bed linen') originating in Pakistan<sup>(2)</sup>.
- (2) The proceeding was initiated following a complaint lodged in November 2002 by the Committee of the Cotton and Allied Textile Industries of the European Communities ('Eurocotton' or 'the complainant') on behalf of producers representing a major proportion of the total Community production of cotton-type bed linen. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

- (3) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country concerned, the complainant Community producers, known associations of producers, as well as known users, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation.
- (4) A number of exporting producers in the country concerned, as well as Community producers, Community users and importers made their views known in writing. All parties who so requested within the above time limits and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (5) It was submitted that more than 45 days have lapsed between the lodging date and the initiation date. Pursuant to the Article 5(1) of the basic Regulation, a complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission. The issuing of the acknowledgement of receipt took place on Thursday, 31 October 2002. Considering that Friday, 1 November was a public holiday, the first working day following the issuing of the acknowledgement of receipt by the Commission was Monday, 4 November 2002. Therefore, 4 November 2002 must be considered as the lodging date of the complaint.
- (6) The notice of initiation has been published on 18 December 2002, which is clearly within 45 days of the lodging of the complaint. Consequently, the notice of initiation was published within the deadline specified in Article 5(9) of the basic Regulation.

**2. Sampling**

Exporters/producers

- (7) In view of the large number of exporting producers involved in this proceeding, the Commission decided that it could be necessary to apply sampling techniques in accordance with Article 17 of the basic Regulation.

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ C 316, 18.12.2002, p. 6.

- (8) In order to allow for the selection of a sample, exporting producers were requested to make themselves known within 15 days of the initiation of the proceeding and to provide basic information for the selection of the sample.
- (9) A total of 178 companies provided the requested information, but only 156 companies reported production and sales of the product concerned to the Community during the period between 1 October 2001 and 30 September 2002 ('investigation period' or 'IP') and expressed a wish to participate in the sample. These were initially considered as cooperating companies.
- (10) As none of these companies reported representative domestic sales of the like product, which could be used to determine normal value in accordance with Article 2(1), (3) or (6) of the basic Regulation, the Commission invited the Pakistani authorities to contact any known producers of bed linen with domestic sales to grant them an additional opportunity to submit information on those sales within a new time limit. However, no replies showing companies with representative domestic sales were received.
- (11) According to Article 17(1) of the basic Regulation, the Commission has selected a sample based on the largest representative volume of exports, which could reasonably be investigated within the time available, in consultation with the exporting producers, the national authorities and known associations of producers/exporters. The Commission initially proposed to select a sample of five companies representing 29,5 % of Pakistan's exports to the Community and informed the Pakistani authorities and the associations of producers/exporters accordingly. The national authorities of Pakistan, the legal representative of some of the companies and one association of exporters proposed to replace certain of the companies proposed by others, arguing that this would ensure a larger coverage, a better geographical spread and include companies selected for the sample in a previous anti-dumping proceeding. The concerns of these parties were met to the extent that they were in line with the criteria of Article 17(1) of the basic Regulation, i.e. the provision that a sample should cover the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. In the light of this, the sample was extended by including the sixth biggest Pakistani exporter.
- (12) The six selected companies, which represented more than 32 % of Pakistan's volume of exports of bed linen to the Community during the IP, were requested to submit a reply to the anti-dumping questionnaire as determined by the notice of initiation.
- (13) Requests for individual examination have been submitted by three companies not selected in the sample. In view of the size of the sample and the complexity of the case (such as the large number of product types), the Commission informed the companies concerned that a final decision on individual examination would only be taken after the verification visits of the companies selected in the sample had taken place and due regard being given to the time available. For the reasons explained in recital 35 below, the necessary conditions to carry-out on-spot investigations in Pakistan were not met and, therefore, it was not possible to accept any request for individual examination.
- Community producers
- (14) In view of the large number of Community producers supporting the complaint, and in conformity with Article 17 of the basic Regulation, the Commission announced in the notice of initiation of the proceeding its intention to select a sample of Community producers based on the largest representative volume of production and sales of the Community industry which could be reasonably investigated within the time available. For these purposes, the Commission requested companies to provide information concerning production and sales for the product concerned.
- (15) On the basis of the replies received, the Commission selected five companies in three Member States. In the selection, the production and sales volume were considered aiming at covering the most representative market size.
- (16) The Commission sent questionnaires to the sampled companies. Two out of these five companies were not able to submit a complete list of all transactions to unrelated customers during the investigation period and were therefore considered to be only partially cooperating.
- 3. Investigation**
- (17) Questionnaire replies were received from the five sampled complainant Community producers, from the six sampled exporting producers in Pakistan, three exporting producers requesting individual examination and two unrelated importers in the Community.
- (18) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury, causality and Community interest. Verification visits were carried out at the premises of the following companies:

*Community producers:*

- Bierbaum Unternehmensgruppe GmbH & Co.KG, Germany,
- Descamps S.A., France,
- Gabel Industria Tessile S.p.A., Italy,
- Vanderschooten S.A., France,
- Vincenzo Zucchi S.p.A., Italy;

*Unrelated importers in the Community:*

- Blanche Porte S.A., France,
- Richard Haworth, United Kingdom;

*Exporters/producers in Pakistan:*

- Gul Ahmed Textile Mills Ltd, Karachi,
- Al-Abid Silk Mills, Karachi (partial verification).

- (19) The investigation period for dumping and injury covered the period from 1 October 2001 to 30 September 2002. The examination of trends relevant for the assessment of injury covered the period from 1999 to the end of the IP ('period considered').
- (20) Given the need to further examine certain aspects of dumping, injury, causality and Community interest, no provisional anti-dumping measures were imposed.

(24) It was claimed that bleached bed linen sold to institutions should be excluded from the scope of the investigation on the grounds that it should not be treated as a product concerned. It was submitted that bleached bed linen (i) is technically different from printed and/or dyed bed linen; (ii) is not substitutable by Community production which is based on printed and/or dyed bed linen; and (iii) has different end users (hospitals and hotels).

(25) The investigation revealed that although there are different processes for finishing the fabrics (bleaching, dyeing, printing), products of all finishes are substitutable and compete on the Community market. Furthermore, it was found that there is production of bleached bed linen in the Community and that this type of the product concerned is not used exclusively by any particular category of users.

(26) Notwithstanding the different possible product types due to different weaving construction, finish of the fabric, presentation and size, packing, etc., all of them constitute one product for the purpose of this proceeding because they have the same physical characteristics and essentially the same use.

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

- (21) The product concerned is bed linen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed originating in Pakistan, currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00\*81, 6302 21 00\*89), ex 6302 22 90 (TARIC code 6302 22 90\*19), ex 6302 31 10 (TARIC code 6302 31 10\*90), ex 6302 31 90 (TARIC code 6302 31 90\*90) and ex 6302 32 90 (TARIC code 6302 32 90\*19). Bed linen includes bed sheets (fitted or flat), duvet covers and pillow covers, packaged for sale either separately or in sets.
- (22) The fabrics made of cotton-type fibres used to produce bed linen are identified by two pairs of numbers. The first one indicates the count (or weight) of yarns employed respectively for the warp and for the weft. The second one indicates the number of threads per centimetre or per inch respectively of the warp and of the weft.
- (23) The fabrics are bleached, dyed or printed. Then they are cut and stitched into different size flat sheets, fitted sheets, duvet covers and pillow cases. The final product is packed for sale either separately or in sets.

**2. Like product**

- (27) It was examined whether cotton-type bed linen produced by the Community industry and sold on the Community market, as well as cotton-type bed linen produced in Pakistan and sold on the Community market and on the domestic market were alike to the product concerned.
- (28) The investigation revealed that although there are different processes in finishing the fabrics (bleaching, dyeing, printing), products of all finishes share the same physical characteristics and essentially the same use.
- (29) It was therefore concluded that although there were in some instances differences between product types produced in the Community and those sold for export to the Community, there were no differences in the basic characteristics and uses of the different product types and qualities of bed linen of cotton-type fibres. Therefore, the product manufactured and sold in the domestic market of Pakistan and the one exported to the Community from Pakistan as well as the product manufactured and sold in the Community by the Community producers are considered as like products within the meaning of Article 1(4) of the basic Regulation.

### C. DUMPING

#### *Pre-verification analysis of the information submitted by the sampled exporters*

- (30) All six companies selected to be part of the sample have replied to the questionnaire. The pre-verification analysis of the replies submitted by these exporting producers showed that all of the selected exporting producers reported underestimated costs which resulted in unrealistic and abnormally high profits for sales of the product concerned to the Community. By comparing the export prices with the costs of production reported by each company, profits on sales of the product concerned to the Community ranged from more than 20 % to almost 40 % per company, expressed as a percentage of turnover, on average more than 30 %. These margins were furthermore in sharp contrast with the average negative profit margins (-9,4 % on turnover) reported by the same companies for sales of the product concerned to other countries, and they were also in contrast to the 1,6 % profit margin on turnover reported on average for exports of other textile products including very similar products (processed fabric, table linen, curtains) with similar cost structures, sold also to the same type of clients, or even to the same clients. It should also be noted that the audited accounts, for the IP or for a period covering most of the IP, of the companies concerned which are producers and sellers of almost exclusively textile products, showed on average an overall profit margin on turnover of approximately 5 %.
- (31) Besides their conspicuous commercial unreasonableness, the reported profit rates for exports of the product concerned to the Community were furthermore strongly contradicted by all other information available on profit rates for the product concerned exported from Pakistan to the Community, including information made available by the sampled exporting producers themselves.
- (32) In their injury submission, the exporting producers stated that the low profitability of bed linen is inherent to this industry, which is characterised by large volumes of production and very high competition. It was also specified that a profit margin of 2 % to 3 % should be considered as reasonable. Another exporting producer not selected in the sample submitted that a normal profit margin would be 2 % to 5 %. After disclosure, all exporting producers contested that such statements were made with regard to the profitability of their export sales of bed linen to the Community. They stated that these statements related to profit margins considered acceptable for sales by the Community industry. In this respect, it is noted that these statements (i) were made during a hearing; (ii) referred to the bed linen industry in general; and (iii) were furthermore confirmed by answers to specific questions on profitability of bed linen exports by Pakistani producers to the Community. Moreover, similar information was submitted by an independent agent acting for importers. It is furthermore a commonly known fact that the Community market of bed linen is indeed highly competitive and that as a result of the

numerous players and the open market, profit margins reported by the Pakistani exporting producers could not be regarded as credible.

- (33) All information available indicated that the reported profit figures were overestimated and given the fact that export prices were in line with Eurostat, there was a reasonable presumption that this was a consequence of an underestimation of the reported costs of production for the product concerned. This is all the more important in view of the fact that in the absence of representative sales on the domestic market, it was clear that normal value had to be constructed on the basis of costs of production.

#### *Disruption of on-spot verifications*

- (34) The Commission has sought to verify the highly implausible figures reported in the replies to the anti-dumping questionnaire submitted by the six companies selected in the sample, in line with Article 16 of the basic Regulation.
- (35) During the verification of the second company, the Commission has received an anonymous life threatening letter addressed personally to the officials carrying out the verifications. With regard to the specific, personal nature of the life threatening letter received by the Commission officials, the Commission considered that the necessary conditions to carry out the verifications were not met and that these circumstances significantly impeded the investigation. Consequently, the verification visits had to be interrupted.
- (36) For these reasons, it was only possible to carry out a full verification at the premises of one exporting producer, while a partial verification was carried out at the premises of another exporting producer. The exports of these two companies represent more than 50 % of the total cif export value to the Community of the sampled exporting producers.

#### *Results of the partial on-spot verifications*

- (37) The verification of the first company confirmed that misleading information was submitted regarding the company's costs and pricing policy. Despite submission by the company that detailed cost accounts for the product concerned were kept, it was alleged on spot that no such accounts or supporting documentation were available. Thus, no substantiating evidence, as normally kept in the companies' records, was provided which could have shown that the reported costs of the product concerned were indeed accurate and that such costs reasonably reflected the costs associated with the production and sale of the product concerned. Even when it was shown to the company that, on the basis of the information provided by the company itself, such evidence should exist, access to this evidence was denied. Moreover, information on costs of the like product exported to other countries was requested but not provided.

- (38) Evidence was also found that the company's accounting records were not in line with the Generally Accepted Accounting Principles (GAAP) of Pakistan, in particular regarding inventory valuation. Furthermore, the company acknowledged on spot, and in line with other information available (see recital 32), that there was considerable competition on the Community market amongst different exporting countries, which further indicated that the high profit figures reported for sales of the product concerned by this company were indeed unreasonable.
- (39) With regard to the partial verification visit carried out at the premises of the second company, it was found that the pricing policy for sales of bed linen to the Community and to other markets did not differ significantly, and could not result in such strongly different profit margins, as reported by the company. The profit margins reported for sales of the product concerned to the Community were by far exceeding the margins used in internal price settings and negotiations with customers. No evidence was provided which could have shown that sales of bed linen to the Community would generate profits so substantially different from the profits generated by sales to third countries. Moreover, information concerning the cost of production and stock valuation of the product concerned, which should have been available, could not be verified.
- (40) In light of the events described in recital 35, the Commission was forced to conclude that the information provided by the remaining sampled exporting producers could not be verified, as the verification visits had to be interrupted.
- (41) Article 18(1) of the basic Regulation stipulates that where it is found that an interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. The verification visits have not lifted the reasonable presumption that the information submitted by each of the other companies selected in the sample was false. Information regarding costs and profits of the product concerned could therefore not be accepted as reported, in so far as it could not be verified and the information available clearly indicated that these data were false. It had therefore to be concluded that there was non-cooperation in the sense of Article 18(1) of the basic Regulation by all companies selected in the sample.
- (42) According to Article 17(4) of the basic Regulation, if there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, it should be noted that the threat received by the Commission officials has not been removed and that nothing indicated that this threat was restricted to the verification visits of the Commission officials to the sampled companies. It was therefore impossible for the Commission to select a new sample and to carry out verification visits. Consequently, a determination had to be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.
- (43) The exporting producers were informed of the finding that they had supplied false or misleading information, the reason for rejecting such false or misleading information and that best facts available would be used in accordance with Article 18 of the basic Regulation. They were granted an opportunity to provide further explanations within the time limit specified, as determined by Article 18(4) of the basic Regulation.
- (44) According to Article 18(1) of the basic Regulation, false or misleading information shall be disregarded and use may be made of facts available. The Commission examined the information available that would allow to calculate the margin of dumping, i.e. the complaint, the questionnaire replies by the sampled exporting producers and three other exporting producers that had requested individual examination in line with Article 17(3) of the basic Regulation, information submitted by several interested parties and official import statistics from Eurostat.
- (45) With regard the complaint lodged by the Community industry, which contained prima-facie evidence of a dumping margin of 45,1 %, it was found that the data used to calculate this dumping margin was less representative than the information supplied by the exporting producers, in particular regarding the multiple types of the product concerned exported from Pakistan.
- (46) The replies to the anti-dumping questionnaire by the three companies requesting individual examination were also examined and it was found that they were significantly deficient and incorrect to such an extent that this would cause undue difficulty in arriving at a reasonably accurate finding.
- (47) Consequently, it was considered that, on balance, despite containing some false information, the replies of the exporting producers initially collected in order to constitute a sample could, to a certain extent, be used as the best facts available. Obviously, this had to be corrected where contradicted by the findings of the on-spot verifications and the information provided by these parties in their further submissions.
- (48) It should be noted that Article 18 of the basic Regulation provides that the result of the application of facts available may be less favourable to the party than if it had cooperated. However, given the fact that the dumping margin determined would apply to all Pakistani exporting producers of the product concerned, the Commission has taken utmost care to eliminate the punitive element for non-cooperation.

*Need to calculate a global dumping margin*

- (49) The information submitted by interested parties, and used to correct the reported costs for each of the six initially sampled companies, contained references to an average profit margin on exports of the product concerned of 2 % to 5 %. This range was also confirmed by the exporting producers themselves, and was considered reasonable as described in recital 32. It was considered, however, that this profit margin, although valid on average for all the exporting producers, would not necessarily reflect the profit margin of each of the companies individually. In the light of the fact that the information available allowed the Commission only to calculate an average profit margin on exports of the product concerned it was considered appropriate to calculate one overall dumping margin applicable to all the exporting producers.
- (50) The exporting producers claimed that an individual dumping margin should have been established for each company individually. It was stated that the calculations showed that the Commission was able to calculate an individual dumping margin.
- (51) The need to calculate a global dumping margin is the result of the following considerations: The profit margins on export sales submitted by the exporting producers in their replies to the questionnaires could not be used and had therefore to be corrected. This correction was done by using for all exporting producers a profit margin on export sales of 3,5 % (the issue is explained in full in recital 56). This also meant that the allocations of cost of manufacturing of the product concerned as presented in the questionnaire replies were not correct and therefore had to be adjusted accordingly pursuant to Article 18 of the basic Regulation. Thus, the wrong reporting of the profit on export sales had important knock on effects on the cost allocations for each exporting producer. More importantly, the fact that an average profit margin had to be used as facts available for all exporting producers was a major reason for arriving at the conclusion that it would be inappropriate to specify individual duty rates for each individual exporting producer. Indeed, the very nature of an average profit margin entails that the corresponding individual profit margins will to some degree vary. In this case, the variation was important as the range of possible profit margins quoted differed from 2 % to 5 %. In other words, while the Institutions are reasonably satisfied that the average profit margin used is appropriate, this average profit margin is — given the important knock-on effects for the other elements of the constructed normal value and thus for the dumping calculations in general — clearly not a basis in order to specify an individual duty rate. This is so because it would lead to unjustifiably high dumping margins for some exporting producers and to unjustifiably low

dumping margins for some other exporting producers as compared to a situation where the real individual profit figures, i.e. those established in the case of full cooperation, had been used. Thus, the fact that an average profit figure for export sales of the product concerned had to be used linked intrinsically the determinations of each separate producer.

- (52) The exporting producers claimed that the fact that they have received disclosure with individual calculations and individual dumping amounts shows that the Institutions could also have specified individual duty rates for them. However, the issue that an individual duty rate is not appropriate for the reasons outlined above should not be confused with the information which was provided to each individual exporting producer in the framework of disclosure. Indeed, in order to ensure transparency and to enable each individual exporting producer to cross-check the calculations of the Commission, they all received the full calculation which reflected the above-mentioned profit margin of 3,5 %. But this does not put into question the reasons for a country wide dumping margin/duty rate as outlined in the preceding paragraph.

*Normal value*

- (53) As the companies selected in the sample had no domestic sales of the like product representing at least 5 % of export sales of the product concerned to the Community, as required by Article 2(2) of the basic Regulation, the domestic sales of the like product by the companies concerned could not be used as a valid basis to determine normal value.
- (54) In the absence of representative domestic sales made by other producers, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation, by adding to the manufacturing cost of the exported types of the product concerned a reasonable amount for selling, general and administrative costs ('SG&A') and for profit, determined according to Article 2(6) of the basic Regulation.
- (55) As concluded in recital 41, it was found that the reported costs of production and, as a consequence, the reported profit margins for exports of the product concerned were false.
- (56) Of the reported costs of production, only the costs of manufacturing were corrected, as the reported SG&A expenses were found to be in line with the companies' audited accounts. The profit on exports of the product concerned for each company initially selected for the sample was corrected to 3,5 % of turnover, an average of the profit margins submitted to be the normal profit margin for these sales. The amount of profit reduction on exports of the product concerned was allocated on the basis of turnover to export sales of other products

and to domestic sales, in order to keep the overall profit in line with the companies' audited accounts.

(57) It was argued by the exporting producers and by two associations that it was unreasonable to consider such profit as a reasonable profit for Pakistani exports to the Community market, while at the same time considering a profit margin of 6,5 % as an appropriate minimum for the Community industry.

(58) As stated in recital 105, the investigation revealed that exports from Pakistan were strong on the low price segment, while Community industry sales covered mainly branded products. It was therefore considered that on the basis of these factors such difference in profitability was not unreasonable.

(59) A number of corrections had to be introduced to the cost allocation methods which the companies had elaborated exclusively for the purpose of the present investigation, including the allocation of duty drawback and packing expenses, on the basis of the findings of the on spot verifications and the analysis of the replies.

(60) For the company which was fully verified, a correction to the reported profit on domestic sales was also necessary in order to bring it into line with GAAP applied in Pakistan.

(61) Since no actual data for SG&A and profit pertaining to production and sales of the like product were available for any of the exporting producers under investigation or for any other known exporters or producers, and since no such information was available for the same general category of products, there was no other option but to use any other reasonable method according to Article 2(6)(c) of the basic Regulation to establish an amount for SG&A and for profits.

(62) In order to determine an amount for SG&A expenses and for profit, the average of the amounts reported by all six companies originally selected in the sample for SG&A expenses and for profit on domestic sales to unrelated customers, after the corrections as explained in recitals 56 and 60, were used. These data were considered an appropriate basis since they related to domestic sales to unrelated customers of textile products (including yarn, grey fabric, processed fabrics and apparel) and they were the only data available for domestic sales in Pakistan. No information is available which would allow to conclude that the profit so determined exceeds the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of Pakistan, as required by Article 2(6)(c) of the basic Regulation.

#### *Export price*

(63) The appropriateness of the export prices as reported by the exporting producers was examined. All the information available, including the partial verification carried out in Pakistan, verifications of importers and Eurostat statistics indicated that these were accurately reported.

(64) All companies made their export sales to the Community directly to independent importers. In accordance with Article 2(8) of the basic Regulation, their export prices were therefore established on the basis of the prices actually paid or payable by these independent importers.

(65) As requested by the companies concerned, export sales made from outdated stocks and sales delivered by air mail were excluded from the dumping calculations, as these sales were allegedly not made in the ordinary course of trade. These sales represented a negligible proportion of all export sales reported.

#### *Comparison*

(66) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for import charges and indirect taxes, discounts and rebates, transport, insurance, handling, loading and ancillary costs, packing, credit, commissions and currency conversions, affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(67) All companies have claimed an adjustment for duty drawback under Article 2(10)(b) of the basic Regulation. However, the amounts refunded by the Pakistani government exceeded by far the amounts of import charges or indirect taxes paid on materials incorporated in the product concerned. Consequently, the Commission accepted the adjustment in so far as the amounts claimed were actually borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country, and refunded in respect of the product exported to the Community.

(68) The exporting producers argued that the duty drawback allowance should be granted for the full amount refunded by the Government of Pakistan independently of whether duties had been paid by the exporting producers or by their local suppliers of materials. However, no evidence was available that the materials bought from local suppliers did bear any import charges or indirect taxes. The argument was therefore rejected.

*Dumping margin*

- (69) According to Article 2(11) of the basic Regulation, the amount of dumping was established on the basis of the comparison of the weighted average normal value of each product type with the weighted average export price of the same product type.
- (70) On this basis, the overall average dumping margin applicable to all Pakistani exporting producers is 13,1 %, expressed as a percentage of the cif net free-at-Community-frontier price, before duty.

**D. COMMUNITY INDUSTRY**

- (71) Within the Community, the product concerned is manufactured by:
- producers on behalf of which the complaint was lodged; all producers which were selected in the sample ('the sampled Community producers') were also complainants,
  - other Community producers which were not complainants and did not cooperate.
- (72) The Commission has assessed whether all the above companies could be considered as Community producers within the meaning of Article 4(1) of the basic Regulation. The output of all the above companies constitutes the Community production.
- (73) The Community industry is composed of 29 Community producers which cooperated with the Commission, among which are also the five sampled Community producers. These producers account for 45 % of the Community production of cotton-type bed linen. They are therefore deemed to constitute 'the Community industry' within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

**E. INJURY****1. Preliminary remarks**

- (74) In view of the fact that sampling had been used with regard to the Community industry, injury has been assessed on the one hand on the basis of information collected at the level of the entire Community industry, for trends concerning production, productivity, sales, market share, employment and growth. On the other hand, information collected at the level of the sampled Community producers was analysed, as regards trends concerning prices and profitability, cash flow, ability to raise capital and investments, stocks, capacity and utilisation of capacity, return on investment and wages.

**2. Community consumption**

- (75) Community consumption was established on the basis of production volumes of the Community producers according to Eurocoton minus exports based on Eurostat

data, plus imports from Pakistan and the other third countries, also based on Eurostat. Between 1999 and the IP, the apparent Community consumption increased steadily from 173 651 tonnes to 199 881 tonnes, i.e. by 15 %.

**3. Imports from the country concerned***(a) Volume and market share*

- (76) Imports of cotton-type bed linen from Pakistan into the Community increased in volume from 36 000 tonnes in 1999 to 49 300 tonnes in the IP, i.e. by 37 % over the period considered. After a drop to 31 800 tonnes in 2000 imports bounced back to 35 500 tonnes in 2001. Between 2001 and the investigation period they rose sharply by almost 14 000 tonnes; i.e. by more than one third.
- (77) The corresponding market share decreased from 20,7 % in 1999 to 17,2 % in 2000. Subsequently, it rose to 18,9 % in 2001 and 24,7 % during the IP.

*(b) Prices*

- (78) Average prices from Pakistan increased from 5,95 EUR/kg in 1999 to 6,81 EUR/kg in 2000. In the following years they were reduced gradually to 6,34 EUR/kg in 2001 and to 5,93 EUR/kg during the IP.

*(c) Price undercutting*

- (79) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market were compared to the corresponding weighted average export prices of the imports concerned. The comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a cif basis with an appropriate adjustment for the customs duties and post importation costs.
- (80) This comparison showed that during the IP the products concerned originating in Pakistan were sold in the Community at prices which undercut the Community industry's prices by more than 50 %, when expressed as a percentage of the latter.

**4. Situation of the Community industry**

- (81) In accordance with Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

- (82) It was analysed whether the Community industry is still in the process of recovering from the effects of past subsidisation or dumping, but no evidence was found that this should be the case.
- (83) It was submitted that the Community industry did not suffer material injury as it was protected by the presence of quotas. It is indeed true that during the IP there were quotas in force. Under international law, these quotas have their legal basis in the WTO Agreement on Textiles and Clothing. They will be phased out by 31 December 2004. The quantities which can be imported under the quotas correspond to substantial shares of the Community market. Indeed, on the basis of consumption figures in the IP the annual 2002 quota corresponds in the case of Pakistan to a market share of around 25 %. It should also be noted that the determination of the level of these textile quotas is the result of straightforward negotiations which are outside the analytical framework foreseen under the basic Regulation. Whilst it cannot be excluded that quotas might have an effect on the situation of the Community industry, the mere presence of quotas does not prevent the Community industry to suffer injury. The analysis of the figures in the present case shows that the Community industry suffered material injury during the IP despite the presence of the quotas. The submission is therefore rejected.
- (a) *Data relating to the Community industry as a whole*
- Production, employment and productivity
- (84) The production volume of the Community industry increased slightly between 1999 and the IP, from 37 700 tonnes to 39 500 tonnes, i.e. by 5 %.
- (85) Employment remained basically stable around 5 500 employees. Therefore, productivity increased from 6,8 tonnes/employee in 1999 to 7,2 tonnes/employee during the IP, i.e. by 6 % over the period considered.
- Sales volume and market share
- (86) Over the period considered, the sales volume of the Community industry rose by 4 %, from 36 200 tonnes in 1999 to 37 800 tonnes during the IP. It had increased to 38 300 tonnes in 2001, but decreased in the IP. The turnover generated by these sales increased from EUR 410 Mio in 1999 to EUR 441 Mio in 2001, but subsequently decreased by 5 percentage points to EUR 420 Mio during the IP.
- (87) Despite the fact that consumption in the Community market increased by 15 % during the same period, the Community industry's market share declined from 20,8 % to 18,9 % during the IP. The market share fluctuated around 20 % between 1999 and 2001 and decreased by 1,5 percentage points between 2001 and the IP.
- Growth
- (88) While Community consumption grew by 15 % between 1999 and the IP, the sales volume of the Community industry rose by only 4 %. On the other hand, the volume of total imports rose by 35 % over the same period, with the most significant increase from 120 000 tonnes in 2001 to 139 000 tonnes during the IP. While the market share of all imports increased by more than 10 percentage points, the market share of the Community industry dropped from 20,8 % to 18,9 %. This means that the Community industry could not participate adequately in the growth of the market between 1999 and the IP.
- (b) *Data relating to the sampled Community producers*
- Stocks, capacity and capacity utilisation
- (89) As far as stocks are concerned, they fluctuate considerably because most of the production is made in response to orders thus reducing the possibility to produce purely for stocks. Whilst an increase in stocks was observed at the sampled Community producers, it is considered that in this case stocks were not a relevant indicator of injury due to the industry specific high fluctuations of stocks.
- (90) The production capacity was difficult to establish in nearly all sampled Community producers because the production process of the like product is individualised requiring different combinations of machinery usage. Therefore, it is impossible to draw an overall conclusion from the capacity of individual machines concerning the production capacity. In addition, part of the production process is sub-contracted in some of the sampled Community producers.
- (91) However, for those products that go through a printing process, the printing department was considered to be the factor determining the capacity relating to production of the printed bed linen in all sampled Community producers. It was found that the capacity utilisation in the printing department decreased steadily from 90 % to 82 %.
- Prices
- (92) Average prices per kg of the sampled Community producers increased gradually from EUR 13,3 to EUR 14,2 over the period considered. This should be seen in the light of the fact that this average price covers both high value and low value items of the product concerned and that the Community industry has been forced to shift to more sales of higher value niche products as their sales in the high volume, mass market were taken over by imports from low price countries. On the other hand, average sales prices per kg of the Community industry overall went up marginally from EUR 11,3 in 1999 to EUR 11,5 in 2001, but dropped subsequently to EUR 11,1 during the IP.

— Investments and ability to raise capital

(93) Between 1999 and 2001, investments were reduced significantly from EUR 7 Mio to EUR 2,5 Mio. Between 2001 and the IP, investments remained rather stable and accounted during the IP for only 41 % of the amount invested in 1999.

(94) There was no claim from the Community industry nor indication that the Community industry encountered problems to raise capital for its activity.

(95) It was submitted that the decrease in investments does not point to injury as the Community industry did not claim to encounter problems in raising capital. This argument had to be rejected as the decline in new investments is not linked to difficulties in raising capital, but it was caused by the loss in market share of the Community industry and by the fierce price pressure in the Community market.

— Profitability, return on investment and cash flow

(96) Over the period considered, the profitability of the sampled Community producers dropped significantly from 7,7 % in 1999 to 4,4 % in the IP, i.e. by 42 %. The return on investment followed the same trend, falling from 10,5 % in 1999 to 5,9 % during the IP, a reduction by 44 %.

(97) It was submitted by the Pakistani exporting producers that the decline in profitability in the five sampled producers corresponds to the increase in wages. As outlined below, the average labour costs of the sampled companies have decreased in real terms by around 3,6 %. In addition, wages are only one out of several cost items in the manufacturing process and therefore, an increase in wages does not constitute automatically a decrease in the profitability of a company. Therefore, this argument had to be rejected.

(98) The cash flow generated by the like product diminished considerably from EUR 16,8 Mio in 1999 to EUR 11,3 Mio during the IP. The most significant reduction occurred in 2000, when the cash flow decreased by 27 %. Between 2000 and the IP, it fell by another 5 %. As the cash flow was influenced by stock variations, cash flow is an indicator with a limited relevance. Nevertheless, it should be noted that the negative development of cash flow over the period considered is in line with other economic indicators, confirming the negative evolution of the Community industry, and should not be qualified as insignificant.

— Wages

(99) Labour costs increased by 3,3 % over the period considered, from EUR 35,2 Mio in 1999 to EUR 36,3 Mio during the IP. As the number of employees remained

basically stable, average labour costs also increased from EUR 29 100 (rounded figures) to EUR 30 300, i.e. by 4,2 %. These increases are nominal increases and are considerably below the increase in consumer prices of more than 7,8 % over the period considered, which means that real wages have decreased by 3,6 %.

— Magnitude of the amount of dumping

(100) Given the volume and the price of the dumped imports, the impact of the actual margin of dumping, which is also significant, cannot be considered negligible.

## 5. Conclusion on injury

(101) The examination of the abovementioned factors shows that between 1999 and the IP, the situation of the Community industry deteriorated. The profitability fell significantly over the period considered and the Community industry's market share decreased by 9,1 %. For the sampled Community producers, investments were significantly reduced, profitability, return on investment as well as cash flow decreased considerably. Employment remained basically stable. Some indicators showed a positive trend: over the period considered, turnover and sales volumes of the Community industry increased slightly. Productivity and wages increased marginally. As regards average sales prices of the sampled producers, they showed an upward trend over the period considered, which is, however, partly a result of a shift to more sales of higher value niche products. However, it should be noted that during the same period the Community consumption grew by 15 % whilst the Community industry's market share declined by 9,1 %. Moreover, the average sales prices of the Community industry decreased over the period considered.

(102) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Article 3(6) of the basic Regulation.

## F. CAUSATION

### 1. Introduction

(103) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports originating in Pakistan 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 have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

## 2. Effect of the dumped imports

- (104) Imports of cotton-type bed linen from Pakistan into the Community increased in volume from 36 000 tonnes in 1999 to 49 300 tonnes in the IP, i.e. by 37 %. After a slight decrease between 1999 and 2000, imports recovered in 2001 and rose by 13 900 tonnes between 2001 and the IP. The corresponding market share fell initially from 20,7 % in 1999 to 17,2 % in 2000. Subsequently, it went up considerably amounting to 24,7 % during the IP.
- (105) In the analysis of the effect of the dumped imports, it was found that price is the main element of competition. Indeed, it is the buyers who determine themselves the quality and design of the product which they intend to order. It appears from the analysis of the selling-buying process in this case that the importers and traders, before passing an order to an exporting producer in Pakistan, specify all the characteristics of the product (design, colour, quality, sizes...) to be delivered, and thus compare the different producers' offers mainly on the basis of price as all other differentiating elements are predetermined in the call for offers, or subsequently result from the importer's own efforts in respect of similar goods (e.g. branding). With respect to prices, it was found that the prices of dumped imports were considerably below those of the Community industry as well as below those of other third country exporters. Moreover, it was also found that the Community industry had to withdraw largely from the low priced market segments, where imports from Pakistan are strong, this also underlining the causal link between the dumped imports and injury suffered by the Community industry.
- (106) Average prices of imports from Pakistan exerted a pressure on the Community industry and forced it on the one hand to decrease prices and on the other hand to shift to more sales of higher value niche products.
- (107) Given the impact of the imports from Pakistan in the Community market, both in terms of volume and in terms of prices, these imports exerted a significant downward pressure on the Community industry in terms of its sales volumes and prices. The lack of sales volume in the low priced market segments for the Community industry could not be compensated by sales of high profit niche products, this resulting in reducing notably market share, investments, profitability and return on investment of the Community industry. It was also found that there was a coincidence in time between these imports and the injury suffered by the Community industry.

## 3. Effects of other factors

### (a) Subsidised imports originating in India

- (108) In the parallel anti-subsidy investigation, it was established that subsidised imports originating in India caused material injury to the Community industry. Although

subsidised imports originating in India are, therefore, considered as having contributed to the injury suffered by the Community industry, it should be noted that, given the substantial and increasing volumes and low prices of imports originating in Pakistan, it cannot be denied that dumped imports from Pakistan equally caused material injury by themselves.

### (b) Imports originating in third countries other than India and Pakistan

- (109) Imports originating in third countries other than India and Pakistan increased from 51 400 tonnes in 1999 to 75 300 tonnes during the IP. Their market share increased from 29,6 % in 1999 to 37,7 %. The largest part of imports in that group of countries originated in Turkey. Given the corporate links between Turkish and Community companies, there is a certain market integration in the form of inter-company trade between Turkish exporting producers and Community operators that suggests that the decision to import from that country is not only linked to the price. This is confirmed by the average prices of imports of bed linen originating in Turkey during the IP, which were higher by almost 45 % to those of India and by 34 % to those of Pakistan. It is therefore unlikely that imports originating in Turkey broke the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.
- (110) The market shares of the remaining countries (e.g. Romania, Bangladesh and Egypt) individually are significantly lower and do not exceed 3,9 %, and it is thus unlikely that any material injury is to be attributed to the imports from those countries.
- (111) The average price of imports originating in countries other than India and Pakistan increased from 7,18 EUR/kg in 1999 to 7,47 EUR/kg in 2001 and decreased slightly to 7,40 EUR/kg during the IP. Nevertheless, during the IP, these prices were around 25 % higher than the prices of imports from Pakistan. Consequently, imports from other third countries did not exert a price pressure on the Community industry to the extent that imports from Pakistan did. Also the market share of any individual country in that group was below 4 %. It is therefore concluded that imports from other third countries did not break the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.

### (c) Contraction of demand

- (112) It was claimed that the demand for bed linen produced by the Community industry has diminished in volume terms as the Community industry focused on the upper end of the market, where less sales volume is made. However, as pointed out above, the total EU consumption of bed linen did not decrease, but rather increased over the period considered. Most of the Community producers have different product lines for different

market segments. The up-market brands generate high margins but are only sold in very small quantities. In order to maximise the capacity utilisation and to cover the fixed costs of production, the Community industry would need sales of lower priced market segment in big volumes as well. There is no indication that demand has decreased in that market segment. This segment is on the other hand increasingly taken over by low priced imports, which cause injury to the Community industry. Given the overall increase in consumption, which is not limited to a particular market segment, the demand situation in the Community can therefore not be seen to break the causal link between the dumped imports from Pakistan and the injury suffered by the Community industry.

*(d) Imports by the Community industry*

- (113) It was submitted that the Community industry imported cotton-type bed linen from Pakistan and thereby contributed to the injury suffered. However, only one of the sampled Community producers actually imported bed linen from Pakistan during the IP and the sales of these imports generated only a small part of total turnover by this producer (around 2 %). Therefore, imports by the Community industry of the product concerned from Pakistan cannot be seen to break the causal link between the dumped imports from Pakistan and the material injury suffered by the Community industry as a whole.

*(e) Export performance by the Community industry*

- (114) Exports of the sampled Community producers represented only around 0,5 % of their total sales. Given the negligible part of exports in total activity, this factor cannot have contributed to the injury suffered.

*(f) Productivity of the Community industry*

- (115) The development in productivity has been identified in the injury part of this document. Since productivity increased from 6,8 tonnes/employee in 1999 to 7,2 tonnes/employee in the IP, i.e. by around 6 %, this factor cannot have contributed to the injury suffered.

#### 4. Conclusion

- (116) The substantial increase in volume and market share of the imports originating in Pakistan, especially between 2001 and the IP, as well as the considerable decrease in their sales prices and the level of price undercutting found during the IP coincided in time with the material injury suffered by the Community industry.

- (117) In the parallel anti-subsidy investigation, it was established that subsidised imports originating in India contributed to the injury suffered by the Community industry. However, the effect of these imports was not such as to reverse the conclusion of causation as regards the dumped imports originating in Pakistan. The remaining possible other injury causes, i.e. imports from countries other than India and Pakistan, the demand situation, imports made by the Community industry as well as the export and productivity performance were analysed, but found not to break the causal link between the Pakistani imports and the injury suffered by the Community industry.

- (118) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is concluded that the imports from Pakistan have caused material injury to the Community within the meaning of Article 3(6) of the basic Regulation.

## G. COMMUNITY INTEREST

### 1. General remarks

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

### 2. Community industry

- (120) The Community industry suffered material injury. It proved to be a viable industry that was able to compete at fair market conditions. The injurious situation of the Community industry resulted from its difficulty to compete with the low-priced, dumped imports. The pressure of the dumped imports has also forced a number of Community producers to cease production of cotton-type bed linen.

- (121) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then be able to increase the volume and prices of its sales, thereby generating the necessary profit level to justify continued investment in its production facilities.

- (122) Should measures not be imposed, the deterioration of the situation of the Community industry would continue. It would not be able to invest in new production capacity and to compete effectively with imports from third countries. Some companies would have to cease production and lay off their employees.
- (123) It is therefore concluded that the imposition of anti-dumping measures is in the interest of the Community industry.

### 3. Importers and users

- (124) Questionnaires were sent to 17 importers and two associations of importers. Only two questionnaire replies were received from unrelated importers in the Community.
- (125) For both importers the sales of the product concerned constituted less than 5 % of the total turnover. The total profitability of the importers was between 2 % and 10 %. Taking into account that only a small share of the turnover of the two importers is generated by sales of the product concerned imported from Pakistan and that many countries are not concerned by either anti-dumping duties or countervailing duties, the impact of the imposition of anti-dumping duties on these importers can be considered as minor.
- (126) Questionnaires were sent to six users and one users' association. No information from users was received, but some arguments were raised in a submission by Ikea and by the Foreign Trade Association.
- (127) It was submitted that the Community industry is not in a position to satisfy the whole demand for bed linen in the Community. It has to be recalled that measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious dumped prices. Imports from various origins will continue to satisfy a significant part of the Community demand. As many countries are not concerned by anti-dumping duties or countervailing duties, no shortage of supply is expected.
- (128) It was claimed that cheap imports of bed linen are necessary for the final consumer as well as 'institutional' users such as hotels, hospitals etc. as products of the cheaper end of the range are not produced by the Community producers. The investigation showed that the five sampled Community producers still produce these products. There was no technical reason why the production of these products in the Community could not be increased. The fact that many other countries are not concerned by anti-dumping duties or countervailing duties means that alternative sources of supply will still be available.

## 4. Conclusion on Community interest

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

## H. ANTI-DUMPING MEASURES

### 1. Definitive measures

- (130) In order to prevent further injury being caused by the dumped imports, it is considered appropriate to adopt anti-dumping measures.
- (131) For the purpose of determining the level of these duties, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (132) Taking into account the level of profitability obtained by the Community industry in the years 1999 and 2000, it was found that a profit margin of 6,5 % of turnover could be regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping. The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss/profit made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.
- (133) It was submitted by the Pakistani exporting producers that the profit margin of 6,5 % of turnover was higher than appropriate minimum profit established in other investigations concerning the same product. This argument had to be rejected as the appropriate minimum profit which the Community industry could have expected to obtain in the absence of injurious dumping is established anew on the basis of the specific circumstances of each proceeding, taking into account the market conditions and the past performance of the Community industry in that proceeding. In this case, it was found that a profit margin of 6,5 % could be regarded as an appropriate minimum, calculated as an average of the level of profitability obtained by the Community industry in the years 1999 and 2000.
- (134) As the injury elimination level was higher than the dumping margin established, the definitive measures should be based on the latter.

## 2. Undertaking

- (135) The Pakistani exporting producers have presented a proposal for a price undertaking. However, there were more than 170 exporters involved in this proceeding and bed linen is characterised by hundreds of different product types, with some characteristics not easily discernible upon importation. This makes it virtually impossible to establish meaningful minimum prices for each product type which could be properly monitored by the Commission. The large number of exporters would also render the monitoring of a price undertaking impracticable.
- (136) It was also found that the proposed categories of the product concerned in respect of which an undertaking was offered were inappropriate since there would be a significant price variation within each of them. Furthermore, the proposed prices did not eliminate the injurious dumping.
- (137) Under these circumstances, it was considered that a price undertaking was impracticable and could not be accepted,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of bed linen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed originating in Pakistan currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00\*81 and 6302 21 00\*89), ex 6302 22 90 (TARIC code 6302 22 90\*19), ex 6302 31 10 (TARIC code 6302 31 10\*90), ex 6302 31 90 (TARIC code 6302 31 90\*90) and ex 6302 32 90 (TARIC code 6302 32 90\*19).

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by all companies shall be 13,1 %.

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

### *Article 2*

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

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

Done at Brussels, 2 March 2004.

*For the Council*  
*The President*  
M. CULLEN

---

**COUNCIL REGULATION (EC) No 398/2004  
of 2 March 2004**

**imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China**

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 <sup>(1)</sup> (basic Regulation), and in particular Article 11(2) thereof,

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

Whereas:

**PROCEDURE**

**Measures in force**

- (1) By Regulation (EC) No 2496/97 <sup>(2)</sup>, the Council imposed a definitive *ad valorem* anti-dumping duty on imports of silicon originating in the People's Republic of China (PRC or China). The rate of the definitive duty applicable to the net free-at-Community frontier price, before duty, was 49 %. It should be noted that the original measures were imposed by Regulation (EC) No 2200/90 <sup>(3)</sup>, and that Regulation (EC) No 2496/97 concluded an expiry review.

**Request for a review**

- (2) Following the publication, in March 2002, of a notice <sup>(4)</sup> of the impending expiry of the anti-dumping measures in force on imports of silicon originating in the People's Republic of China, the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation. The request was lodged on 9 September 2002 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the applicant) on behalf of producers representing 100 % of the Community production of silicon metal. The request alleged that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

- (3) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission announced the initiation of an expiry review <sup>(5)</sup>, pursuant to Article 11(2) of the Basic Regulation and commenced an investigation.

**Investigation**

*Procedure*

- (4) The Commission officially advised the complainant Community producers, exporting producers in the PRC, importers/traders, user industries, and associations of users known to be concerned, as well as the representatives of the Chinese Government of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (5) Questionnaires were sent to all the parties that were officially advised on the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.
- (6) Replies to the questionnaire were received from the three applicant Community producers, one exporting producer, one importer and two producers in the analogue country.

*Interested parties and verification visits*

- (7) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:
- (a) Exporting producer  
Dalian DC Silicon Co., Ltd — Dalian, PRC
  - (b) Related Importer  
Dow Corning Ltd, Barry, Wales, United Kingdom
  - (c) Producers in the analogue country  
Fesil ASA, Trondheim, Norway  
Elkem ASA, Oslo, Norway
  - (d) Community producers  
Invensil, Pechiney Group, Paris, France  
Ferroatlantica, Madrid, Spain  
R W Silicium, Pocking, Germany

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ L 345, 16.12.1997, p. 1.

<sup>(3)</sup> OJ L 198, 28.7.1990, p. 57. Regulation amended by Regulation (EC) No 1607/92 (OJ L 170, 25.6.1992, p. 1).

<sup>(4)</sup> OJ C 67, 16.3.2002, p. 34.

<sup>(5)</sup> OJ C 246, 12.10.2002, p. 9.

*Investigation period*

- (8) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 1998 up to the end of the IP (period under consideration).

*Proceeding concerning other countries*

- (9) In October 2002 an anti-dumping proceeding with regard to imports into the Community of silicon originating in Russia was initiated. On 10 July 2003, by Council Regulation (EC) No 2229/2003<sup>(1)</sup>, a provisional anti-dumping duty of between 22,7 % and 23,6 % was imposed.

*Product under consideration and like product*

- (10) The product under consideration is the same as in the original investigation, i.e. silicon metal originating in the PRC, classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight). Purely by reason of the current classification set out in the Customs nomenclature, it should read 'silicon'. Silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semiconductor industry, falls under a different CN code and is not covered by this proceeding.
- (11) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants. It is marketed in the form of lumps, grains, granules or powder according to internationally accepted technical specifications as regards its purity. Silicon is used primarily by two industries, the chemical industry for the production of methylchlorosilanes or trichlorosilanes and tetrachlorosilicon, and the aluminium industry for the production of aluminium alloys, primary and secondary smelters, intended for the production of casting alloys for different industries, in particular the automotive industry.
- (12) As in the previous expiry review, the investigation has shown that the silicon, produced in the PRC and sold domestically, as well as that exported to the Community, the silicon produced and sold on the domestic market of the analogue country (Norway) and that manufactured and sold in the Community by the applicant Community producers have the same basic physical and chemical characteristics, and the same basic uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

- (13) Comments regarding the different grades of the product under consideration and the like product were made, one by the Government of China and the other by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters. However, these submissions were not accompanied by any supporting evidence. Furthermore, they were only made at a very late stage of the proceeding. For these reasons the comments received regarding the product under consideration were rejected.

**LIKELIHOOD OF A CONTINUATION OF DUMPING**

- (14) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

**Preliminary remarks**

- (15) Of the six Chinese exporting producers named in the complaint, only one cooperated. Based on Eurostat data, its volume of exports represented more than 80 % of total Chinese exports to the EU. No information was submitted by any other Chinese exporting producer and therefore the findings relating to their situation had to be established on the basis of the facts available, in accordance with Article 18 of the basic Regulation.
- (16) During the IP of the previous expiry review, the volume of silicon imports from the PRC to the Community was 10 199 tonnes. After the imposition of the anti-dumping measures the imports concerned decreased to 4 168 tonnes in 1998, but they had increased again to 14 454 tonnes by the end of the IP.
- (17) In the original investigation, Chinese imports had a market share of 9,3 % in the IP. The market share of the imports concerned accounted for 3,8 % of total Community consumption during the IP of the previous expiry review. In the period following the imposition of the anti-dumping measures, this market share decreased to 1,4 % in 1998, but during the IP it increased again and accounted for 3,9 % of total Community consumption of the product under consideration.

**Dumping during the IP**

- (18) In accordance with Article 11(9) of the basic Regulation the Commission used the same methodology as in the original investigation.

<sup>(1)</sup> OJ L 339, 24.12.2003, p. 3.

*Analogue country*

- (19) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third-country in accordance with Article 2(7) of the basic Regulation.
- (20) As in the previous expiry review, in the notice of initiation of this expiry review, Norway was proposed as analogue country for the purposes of establishing normal value.
- (21) The Chinese exporting producer opposed this proposal and argued that Brazil or South Africa would be more appropriate choices, mainly because competition and market conditions in these countries were more comparable with the situation in the PRC. The Community industry objected to Brazil and South Africa on the grounds of the strong devaluation of the local currency in Brazil and the lack of competition in South Africa, since there was only one company producing the product under consideration. Moreover, none of the known producers in these two countries agreed to cooperate in the proceeding, although they had been invited by the Commission to do so. Consequently, Brazil and South Africa could not be retained as analogue countries.
- (22) With respect to Norway, it was found that it was one of the largest producers of silicon in the world, with two competing local producers. It was also established that Norway was an open market without import duties for silicon and that there were sizeable imports from Brazil and the PRC. It should also be noted that Norway has a natural advantage in terms of access to cheap energy, whereas no submission was made to suggest that the PRC enjoyed a similar advantage.
- (23) It is therefore concluded that Norway constituted an appropriate analogue country. The Commission contacted the two known producers of silicon in Norway and both agreed to cooperate.

*Normal value*

- (24) As far as the determination of the normal value is concerned, it was first established that the volume of the Norwegian producers' domestic sales compared with the exported volume from the PRC was representative. Normal value was established either on the basis of the weighted average price paid in the ordinary course of trade by independent customers or on the basis of constructed normal value where these domestic sales were not profitable. In this respect, it should be noted that constructed normal value had to be used only for a minor proportion of the exports. In cases where normal

value was constructed, this was done by adding a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit to the cost of production in Norway. In all cases SG&A and profit were established pursuant to the first method set out in Article 2(6) of the Basic Regulation.

*Export price*

- (25) As regards the exports to the Community, most sales by the cooperating exporting producer in the PRC were sales to a related company in the Community which further processed the imported silicon into silicones. These export prices would not normally be used for the establishment of the export price because they might be influenced by the relationship. However, since it was found that the prices charged were in line with market prices as reported in specialised magazines, as well as with the prices charged by another Chinese exporting producer that did not cooperate but exported to the same company in the EU during the IP, it was decided to use these prices for the calculation of the export price. The export price was thus established on the basis of the data from the cooperating exporting producer, the non-cooperating exporting producer and the remaining Eurostat data. It should be noted that the volume of the exports by the cooperating exporter constituted 80 % of the imports registered by Eurostat and was higher than the total volume of the product under consideration imported from the PRC during the IP of the previous expiry review.

*Comparison*

- (26) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made in respect of transport, insurance, handling and credit costs.

*Dumping margin*

- (27) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The dumping margin, expressed as a percentage of the cif Community frontier price duty unpaid, was significant, i.e. 12,5 %, although well below the level found in the previous investigations.

*Conclusion*

- (28) The investigation has revealed that the import volume of the product under consideration from China was higher than in the IP of the previous expiry review and that it had clearly remained at dumped levels. The investigation did not reveal any reason why the level of dumping would disappear or decrease if the measures were to be repealed. It was therefore concluded that there was a likelihood of continuation of dumping.

**Development of imports should measures be repealed**

- (29) It was also considered appropriate to examine whether there would be an increase in Chinese import volumes should the existing measures be repealed. For this purpose the following factors were assessed: the evolution of export and/or production capacity and export behaviour of Chinese exporting producers on third country markets.

*Export sales and spare capacity of cooperating exporter*

- (30) The investigation showed that the cooperating company exported 100 % of its production of the product under consideration, mainly to the EU. It also became apparent that this company had considerable excess production capacity which had recently been doubled. It should also be noted that the vast majority of exports to the EU were made under inward processing relief to a related company which used the product under consideration for further processing. In other words, these exports never entered into free circulation on the Community market but they competed with silicon sold by other operators on the Community market. The repeal of the measures would thus be an additional incentive for this exporter to ship further quantities of the product under consideration to the Community market either for free circulation or for inward processing.

*Chinese production and capacity utilisation*

- (31) According to the application for the expiry review, which in this respect was based on information in the Metal Bulletin of August 2001, the total Chinese production capacity for the product under consideration is around 1 203 000 tonnes per year. The application for the expiry review also referred to information from a

leading independent research group, which estimated the production capacity at around 600 000 tonnes in 2002. The Chinese production volume was estimated at around 400 000 tonnes in that year. On this basis, the Chinese capacity utilisation rate is between 33 % and 66 % and on the best case scenario their spare capacity is at least half of the total Community consumption. It also appeared that Chinese production capacity could be rapidly increased further if warranted by market conditions.

- (32) Consequently, the large production capacity available in the PRC demonstrates that producers are able to quickly increase production and direct it to any export market, including, if the measures are repealed, the Community market.

- (33) Since no information was provided by Chinese sources and given that little public information is available about the Chinese silicon industry, it should be noted that according to the Basic Regulation, and in particular Article 18 thereof, the above conclusions rely mainly on the best information available, namely the information contained in the complaint.

*Exports to third countries*

- (34) On the basis of Chinese export trade data it was established that total worldwide exports of Chinese silicon increased by 43 %, from 271 626 tonnes in 1998 to 387 444 tonnes in 2002 <sup>(1)</sup>. Export prices to the world market are 30 % below the export prices to the Community, so that exporters would have an incentive to increase exports to the Community rather than to third countries should the measures be repealed.

- (35) Moreover, a fall of almost 4 % in the Chinese export prices of the product under consideration was observed, i.e. from USD 829 per tonne in 1998 to USD 799 per tonne in 2002 <sup>(1)</sup>.

- (36) This clearly shows that, if the measures were repealed, the Chinese exporters would have an incentive to target the Community market in the light of the anti-dumping measures just imposed on the US market and the recent increase from 5 to 20 % in the customs duty imposed by Russia on Chinese imports of the product under consideration.

<sup>(1)</sup> In the absence of the monthly breakdown for the IP, annual data has been used.

*Export prices to the Community*

- (37) It should also be noted that the generally prevailing price level for the product under consideration in the Community makes the Community market a very attractive one. This is a further incentive for increasing exports to the Community either by increasing production or by diverting to the Community those sales which are currently exported to third countries. Moreover, export prices to third countries were found to be lower than those to the Community. However, the attractive, relatively high prices on the Community market are not likely to be maintained in the long term since, if measures were lifted, the numerous Chinese exporters would compete with each other in order to increase their shares on the Community market. Consequently it is very likely that all operators present on the Community market would have to reduce their prices accordingly.

*Trade defence measures applied by third countries*

- (38) The export behaviour of Chinese producers on other significant markets for the product under consideration was also investigated. In this respect the United States of America initiated a review of the anti-dumping duty on silicon from the PRC in 1999. The investigation established very high margins of dumping (up to 139 %). Therefore, in February 2003, anti-dumping measures were renewed against imports of the product under consideration with the conclusion that the removal of the measures would lead to continuation of injurious dumping <sup>(1)</sup>.
- (39) Furthermore, in 2002 the Russian administration completed an anti-dumping investigation with regard to imports of silicon from the PRC with a recommendation that an anti-dumping duty of 25 % be imposed. However, following consultations with the Chinese authorities, the import duty of 5 % has been increased to 20 %. This is a clear indication that the Chinese exporters would have to find other markets to sell the product under consideration.
- (40) In the light of the above, it may be concluded that there is pressure on Chinese exporting producers to find alternative export markets.

**Conclusion**

- (41) The investigation has shown that the PRC has continued its dumping practices during the IP. Given the fact that the PRC has considerable spare production capacity, and that Chinese exports to third countries are made at even

lower prices than those to the Community, there is a strong likelihood that Chinese exporting producers would substantially increase their dumped exports of the product under consideration to the Community if existing measures were repealed. In addition, the exports of the product under consideration by Chinese exporters are limited by the new anti-dumping measures in force in both the United States of America and Russia. In summary, it is highly probable that imports to the Community from China will resume in significant quantities and at dumped prices, should the measures be repealed.

**DEFINITION OF THE COMMUNITY INDUSTRY**

- (42) The three complainant Community producers replied to the questionnaires and fully cooperated in the investigation. During the IP, they represented 100 % of the Community production. During the IP, one of the three Community producers imported the product under consideration from other third countries, principally from South Africa. However, it was found that these imports were essentially made to supplement products that it supplied to its Community customers. These imports decreased over the period under consideration, particularly between 1998 and 1999 when they dropped by half, following the installation of new Community production facilities by the producer under consideration, and its strategic commitment to produce and sell more silicon in the Community market. During the IP the volume of the product under consideration imported by the producer in question represented only 2,1 % of the Community industry's sales of silicon within the Community (3,5 % of the sales of the producer in question) and 1,9 % of the Community industry's production of the product under consideration (3,2 % of the production of the producer in question). In view of the above, it is concluded that the imports made this producer did not affect its status of Community producer.
- (43) On this basis, the three complainant Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

**SITUATION OF THE COMMUNITY MARKET****Community consumption**

- (44) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, and imports from China and other third countries (based on Eurostat).

<sup>(1)</sup> US Federal Register/Volume 68, No 25, 11 February 2003.

**Table 1****Community consumption (based on sales volumes)**

	1998	1999	2000	2001	IP
Tonnes	290 684	325 234	388 938	373 950	371 540
<i>Index</i>	100	112	134	129	128
<i>Y/Y trend</i>		+ 12 %	+ 20 %	- 4 %	- 1 %

Source: Verified questionnaire replies and Eurostat.

- (45) EU consumption of silicon peaked in the year 2000 at almost 390 000 tonnes before falling back again in both 2001 and the IP to end at 371 540 tonnes. In total there was a 28 % increase over the whole period under consideration, but a 4 % decline between 2000 and the IP.

**Imports from China**

*Volume, market share and prices*

- (46) Based on information from Eurostat, volumes imported from China during the period under consideration increased from 4 168 tonnes to 14 454 tonnes. The market share of the Chinese imports, which was around 4 % in the previous expiry review increased over the period under consideration from 1,4 % to 3,9 % during the IP. Prices first decreased by 8 percent from 1998 to 2000, and then increased again to finish at a higher level than in 1998 at the end of the IP.

**Table 2****Imports from China (based on Eurostat)**

Imports from China	1998	1999	2000	2001	IP
Volume, tonnes	4 168	3 560	5 969	9 709	14 454
<i>Indexed</i>	100	85	143	232	347
Market Share	1,4 %	1,1 %	1,5 %	2,6 %	3,9 %
Price, EUR/tonne	1 044	953	964	1 142	1 158
<i>Indexed</i>	100	91	92	109	110

Price evolution of the imports.

- (47) Following the imposition of an anti-dumping duty in 1997, prices of silicon originating in China remained lower than the Community industry's prices. The difference with Community industry's prices was 2 % during the IP. This differential was established on the basis of average sales prices (ex-works) of the Community industry with Chinese import prices derived from Eurostat, adjusted for post importation cost, customs, and anti-dumping duties. It should be noted that the sales prices indicated above were calculated on the basis of both the sales made to Community users on the Community market and the sales of Chinese silicon destined for inward processing. No anti-dumping duty was applied to the latter sales. Nevertheless, it should be noted that the average price of Chinese silicon released for free circulation on the Community market was found to be extremely low at around EUR 870 per tonne.

### Economic situation of the Community industry

#### Production, production capacity and capacity utilisation

**Table 3**

#### Production

	1998	1999	2000	2001	IP
Tonnes	107 303	129 285	143 268	147 811	143 818
Index	100	120	134	138	134
Y/Y trend		+ 20 %	+ 14 %	+ 3 %	- 3 %

Source: Verified questionnaire replies of Community industry.

- (48) Over the period under consideration, Community industry production increased by 34 %, but did fall by 3 % between 2001 and the IP. During the IP Community industry production of silicon represented 38,7 % of Community consumption.

**Table 4**

#### Production capacity

	1998	1999	2000	2001	IP
Tonnes	125 000	142 300	158 000	165 600	162 000
Index	100	114	126	132	130
Y/Y trend		+ 14 %	+ 12 %	+ 5 %	- 2 %

Source: Verified questionnaire replies of the Community industry.

- (49) Production capacity increased each year, except for the IP when there was a small fall. In all, capacity increased by a total of 30 % over the period under consideration as a result of investment decisions made in 1998.

**Table 5**

#### Capacity utilisation

	1998	1999	2000	2001	IP
Percentage utilised	85,8 %	90,9 %	90,7 %	89,3 %	88,8 %
Index	100	106	106	104	103

Source: Verified questionnaire replies of the Community industry.

- (50) The above table shows that during the period under consideration capacity utilisation increased by three percentage points. The main increase occurred between 1998 and 1999. Between 2000 and the IP capacity utilisation decreased by around two percentage points.

*Sales volume and sales prices***Table 6****Sales volume**

	1998	1999	2000	2001	IP
Tonnes	86 718	114 587	133 568	128 219	136 421
Index	100	132	154	148	157
Y/Y trend		+ 32 %	+ 17 %	- 7 %	+ 6 %

Source: Verified questionnaire replies of the Community industry.

- (51) The Community industry's sales to unrelated customers in the Community increased by 57 % between 1998 and the IP.
- (52) Sales to related companies remained stable and represented less than 6 % of all sales of silicon during the period under consideration.

**Table 7****Community industry sales prices of silicon**

	1998	1999	2000	2001	IP
EUR/tonne	1 415	1 184	1 231	1 271	1 185
Index	100	84	87	90	84
Y/Y trend		- 16 %	+ 4 %	+ 3 %	- 7 %

Source: Verified questionnaire replies of the Community industry.

- (53) In the period 1998 to the IP, the average sales prices of silicon charged by the Community industry on the Community market saw a significant fall of 16 %. Average prices fell sharply in 1999 to reach a low of EUR 1 184 per tonne, before recovering to EUR 1 271 per tonne by 2001. Prices then fell by 7 % during the IP, to finish at an equivalent level to that seen in 1999. The sharp decrease in sales prices and the increase in the cost of production played a significant role in the deterioration of the financial situation of the Community industry.

*Market share***Table 8****Market share**

	1998	1999	2000	2001	IP
Percentage of market	29,8 %	35,2 %	34,3 %	34,3 %	36,7 %
Index	100	118	115	115	123

Source: Verified questionnaire replies of the Community industry.

- (54) The market share held by the Community industry increased from 29,8 % in 1998 to 36,7 % in the IP in line with its increased production and sales volumes due to a new facility opened in the Community. A large increase took place between 1998 and 1999 (+5,4 % of the market) with the introduction of new EU manufacturing facilities. A smaller rise (+2,4 percentage points) took place between 2001 and the IP.

*Stocks*

**Table 9**

**Stocks**

	1998	1999	2000	2001	IP
Tonnes	32 768	33 140	27 803	33 186	23 118
Index	100	101	85	101	71
Y/Y trend		+ 1 %	- 16 %	+ 19 %	- 30 %

Source: Verified questionnaire replies of the Community industry.

- (55) The above table shows that during the period under consideration stocks were reduced by 29 %. Apart from the year 2000, stocks were at around 33 000 tonnes, until the IP when they fell to just over 23 000 tonnes.
- (56) Stocks, which had represented around 38 % of the Community industry's EU sales volume in 1998, fell to below 17 % of EU sales during the IP. This fall is mainly explained by the fact that stocks usually build up at the end of each calendar year to allow for reduced production volumes during the winter months when energy costs peak. The IP ended in September, i.e. before the full effect of stock build-up is felt.

*Profitability and cash flow*

- (57) During the period under consideration profitability expressed as a percentage of net sales value developed as follows:

**Table 10**

**Profitability**

	1998	1999	2000	2001	IP
Percentage profit	12,6 %	1,8 %	5,0 %	1,7 %	- 2,1 %
Y/Y trend		- 10,8 %	+ 3,2 %	- 3,3 %	- 3,8 %

Source: Verified questionnaire replies of the Community industry.

- (58) Save for the year 2000, profitability deteriorated continuously over the whole period from a profit of 12,6 % in 1998 to a loss of 2,1 % in the IP. In 2000, the 4 % sales price increase compared to 1999, plus lower production costs due to increased investments allowed for an improved return on sales. In 2001, profits fell due to rising production costs, particularly in energy and consumable prices, not being reflected by a comparable increase in sales prices. In fact, average costs rose by EUR 80 per tonne that year, whilst EUR 40 per tonne could be passed on to the customers. During the IP prices fell, sending the Community industry into a loss-making situation despite a decrease in average cost of production.

*Cash flow*

**Table 11**

**Cash flow**

	1998	1999	2000	2001	IP
EUR (in '000)	17 005	8 962	15 028	5 876	6 070
Index	100	53	88	35	36
Y/Y trend		- 47 %	+ 68 %	- 61 %	+ 3 %

Source: Verified questionnaire replies of the Community industry.

- (59) Cash flow deteriorated by 64 % during the period under consideration, and followed a similar trend as that for profitability.

*Investments, return on investments and ability to raise capital*

**Table 12**

**Investments**

	1998	1999	2000	2001	IP
EUR (in '000)	32 750	15 539	15 625	8 559	7 072
Index	100	47	48	26	22
Y/Y trend		- 53 %	+ 1 %	- 45 %	- 17 %

Source: Verified questionnaire replies of the Community industry.

- (60) The significant investments during the period 1998 to 2000 were primarily aimed at increasing EU production capacity on the back of the favourable conditions in 1998 and on a positive development of the Community silicon market which the Community industry had expected at that time. This increased capacity was also used to reduce the reliance of the Community industry on imported silicon. Indeed, these expected improvements can be seen in the trend for Community consumption which increased by 34 % in this period (1998 to 2000).
- (61) The investigation showed that the operating return on investments, including cumulated depreciation, during the period under consideration deteriorated in line with the development of profitability.

**Table 13****Return on investments and ability to raise capital**

	1998	1999	2000	2001	IP
Percentage return	39,1 %	14,7 %	20,4 %	9,1 %	- 5,7 %
Y/Y trend (percentage points)		- 24 %	+ 6 %	- 11 %	- 15 %

Source: Verified questionnaire replies of the Community industry.

- (62) The companies which make up the Community industry are all part of larger groups. As such, their ability to raise capital is determined by the financial situation of these groups as a whole. These larger groups reported no problems with raising capital during the period under consideration. However, problems were reported with receiving funding for new projects in the silicon sector in particular. This seems to be supported by the negative development of the financial situation of the Community industry and by data verified during the investigation. These data are summarised in Table 12 and show that investments in the IP were only 22 % of their level in 1998.

*Employment, productivity and wages***Table 14****Employment**

	1998	1999	2000	2001	IP
Employees	588	634	673	682	685
Index	100	108	114	116	116
Y/Y trend		+ 8 %	+ 6 %	+ 2 %	+ 0 %

Source: Verified questionnaire replies of the Community industry.

- (63) The above table shows that employment increased by 16 % during the period under consideration. The main increase occurred in the period from 1998 to 2000 due to the increased production capabilities, but it did not grow further significantly during the IP.
- (64) Given that production increased at a greater rate than employment, productivity increased by 15 % over the same period, as shown in the table below:

**Table 15****Productivity**

	1998	1999	2000	2001	IP
Tonnes	182	204	213	217	210
Index	100	112	117	119	115
Y/Y trend		+ 12 %	+ 5 %	+ 2 %	- 4 %

Source: Verified questionnaire replies of the Community industry.

- (65) During the period under consideration the average wages of the employees of the Community industry increased by less than 1 % per annum, i.e. by less than the rate of inflation.

**Table 16****Wages**

	1998	1999	2000	2001	IP
EUR/employee	32 537	30 610	33 162	35 048	33 740
Index	100	94	102	108	104
Y/Y trend		- 6 %	+ 8 %	+ 6 %	- 4 %

Source: Verified questionnaire replies of the Community industry.

**Magnitude of dumping margins**

- (66) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping found during the IP, it should be noted that the margin found for China is significant. Therefore, should measures be repealed, the impact of the dumping margin found in the current investigation would be significant as the duty is 49 % on the cif price of imports from China.

**Export activity of the Community industry**

- (67) The investigation showed that the export activity of the Community industry developed as follows:

**Table 17****Community industry exports**

	1998	1999	2000	2001	IP
Tonnes	6 446	6 776	5 803	6 285	3 209
Index	100	105	90	98	50
Y/Y trend		+ 5 %	- 14 %	+ 8 %	- 49 %

Source: Verified questionnaire replies of the Community industry.

- (68) Community industry exports of silicon fell by half over the period under consideration, mainly in the IP. Whilst in comparative terms, this fall might appear dramatic, in absolute terms it represents a fall from a small number of sales, namely less than 4,8 % of all sales in 2001 to even fewer sales of less than 2,4 % during the IP. Whilst the reduced exports may have had some impact on the economic situation of the Community industry, any such influence will be limited. Sales prices and profitability on the Community market were much more significant for the deterioration of the situation of the Community industry. A reduction in the export volumes, which were already marginal before the IP, will have had little or no influence on the situation of the Community industry.

### Import volumes and prices from other third countries

- (69) Import volumes of silicon into the Community from countries other than China, together with their average prices, developed as follows:

**Table 18**

#### Imports into the Community from other third countries (volume)

Tonnes	1998	1999	2000	2001	IP
Brazil	43 536	56 709	67 663	50 849	52 089
Russia	10 798	6 272	14 172	16 907	18 006
Norway	92 200	115 385	124 790	122 677	114 254
South Africa	12 234	6 225	5 539	6 203	2 674
Other third countries	41 029	22 495	37 236	39 385	33 643
Total	199 797	207 086	249 400	236 021	220 666

Source: Eurostat.

**Table 19**

#### Imports into the Community from other third countries (average price)

EUR/tonne	1998	1999	2000	2001	IP
Brazil	1 173	1 040	1 158	1 231	1 098
Russia	1 048	963	1 131	999	929
Norway	1 341	1 207	1 197	1 201	1 199
South Africa	1 198	1 161	1 241	1 149	1 149
Other third countries	1 273	1 205	1 165	1 210	1 156
Total	1 266	1 152	1 179	1 193	1 146

Source: Eurostat.

- (70) Whilst the total import volumes of silicon from third countries other than China increased during the analysis period from about 200 000 tonnes in 1998 to 221 000 tonnes in the IP, the market share of these imports fell from around 69 % to 59 % over this period. The major exporters to the Community have been Norway, Brazil, South Africa, and Russia. Only imports from Russia had average import prices significantly lower than those of the Community industry during the IP. As indicated in recital 47, the price of Chinese silicon released for free circulation on the Community market was significantly lower than the import prices from other third countries, referred to in Table 19.

### Conclusion

- (71) As explained and shown above, from 1998 to 2000 the Community industry was able to benefit from a 34 % market growth and significant increase in its sales volume and market share. Thereafter however, sales volume and market share stagnated and the financial situation of the Community industry (prices, profitability, and cash flow) deteriorated.

- (72) On closer examination it can be seen that the main positive developments for the Community industry took place between 1998 and 2000. From 2000 onwards, no real improvements were noticeable
- (73) The improvements seen between 1998 and 2000 can be directly attributed to decisions taken by the Community industry in 1998 to invest in additional Community production facilities. Between 1998 and 2000 EU production capacity increased by 26 % from (125 000 tonnes to 158 000 tonnes). These decisions were taken in response to the anti-dumping measures on imports of silicon from China which, as outlined in recital 1, had been extended in 1997. The Community industry was also making good profits on its EU sales of silicon in 1998 (see recital 58). Therefore, it can be seen that the Community industry was able to benefit from the anti-dumping measures on imports silicon from China. From 2000 to the IP, the situation of the Community industry deteriorated, in particular with prices which fell EUR 46 per tonne, profitability which fell 7,1 percentage points, cash flow which fell by 59 %, and investments which declined by 55 %. By the IP the Community industry found itself in a loss-making situation. For these reasons, it is considered that during the IP, the Community industry found itself in a very fragile and vulnerable position.

#### LIKELIHOOD OF RECURRENCE OF INJURY

- (74) The volume of dumped imports from China considerably increased during the period under consideration and it is likely that without anti-dumping measures in place considerable increased volumes of the product concerned would be shipped to the Community market at very low prices, undercutting the Community industry prices. In view of the level of the anti-dumping duty in force, the price differential between the imported product and the one produced by the Community industry could be more than 35 % if the measure were allowed to expire.
- (75) As outlined in recital 31, it is estimated that latent capacity in China is sufficient to supply 50 % of Community demand for silicon. Were the current measures to lapse, there is a threat that a significant proportion of unused production capability would be used to flood the Community market with silicon from the PRC. The information from Eurostat suggests that, where imports are made with suspension of duties, Chinese silicon was entered into the Community at an average price of EUR 870 per tonne. There is no reason to believe that future prices would be higher than this if the measure lapsed. When examining the impact of such additional low-priced imports on the situation of the Community industry, the following should be borne in mind: This industry is already in a fragile position due to the presence of dumped imports from both Russia and China. The arrival of such a quantity of dumped imports from China would immediately cause a further severe price depression on the EU market as the Community industry would first try to maintain its market share rather than reduce its production. This would in turn further erode the Community industry's profitability, which would experience even greater losses than the 2,1 % loss seen during the IP. Even in the short term the Community industry could be forced out of the market in view of its untenable financial situation reflected in, amongst others, the decrease in profitability (- 14,7 percentage points) during the period under consideration.
- (76) It is recalled that at recital 28 it was concluded that Chinese silicon continued to be dumped on the EU market, at recital 41 that these imports would be likely to increase substantially were the measures to lapse, and at recital 73 that the Community industry found itself in a fragile position. Whilst the current measures are sufficient to remove any injury to the Community industry from Chinese imports, it is concluded that, a repeal of measures would lead to a recurrence of injury resulting from the dumped imports from the PRC.

**COMMUNITY INTEREST****Preliminary remark**

- (77) In accordance with Article 21 of the Basic Regulation it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product under consideration.
- (78) It should be recalled that, in the previous review, the adoption of measures was considered not to be against the interest of the Community. Furthermore, as the present investigation is an expiry review, it allows analysis of a situation in which anti-dumping measures have already been in place and to assess any undue negative impact on the parties concerned by the current anti-dumping measures.
- (79) On this basis it was examined whether, despite the conclusion on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

**Interests of the Community industry**

- (80) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This was confirmed in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in China and by the industry's investment in additional production capacity in 1998. However, it can be concluded that, without the continuation of anti-dumping measures, its situation will in all likelihood deteriorate severely.

**Interests of unrelated importers/traders**

- (81) The Commission services sent out questionnaires to nine unrelated importers/traders, and associations. No answers were received to these questionnaires, nor did any other importers/traders make themselves known.
- (82) In these circumstances, it was concluded that the measures in force did not manifestly affect importers or traders and therefore the continuation of measures would not affect these parties.

**Interests of users**

- (83) The Commission services sent out questionnaires to 15 users and users' associations. Only two incomplete answers were received from users, and one general submission from a users' associations. From these replies, it emerged that silicon accounted for about 10 % of the users' cost of production. They also showed that both user companies were profitable even with the current anti-dumping duties on silicon from China. These submissions did not contain comments on the possible impact of removing the measures. Moreover, the submission did not contain any information on what impact the existence of measures had on these two users. Furthermore, no information was received as to whether any duty could have been passed on to the users' customers.

- (84) The reply from the users association stated that it would be in the Community interest to have as many different sources of silicon as possible. They also stated that they assumed that the expiry of measures would not lead to a recurrence of injurious dumping of silicon from China. However, no evidence to support this assumption was provided.
- (85) In light of (i) the low response rate to the questionnaires sent, (ii) the incomplete nature of those submissions received, (iii) the lack of verifiable data in support of an expiry of the measures in force, it is concluded that the continuation of the duties would not have a significant effect on users.

#### Conclusion

- (86) Given the above, it is concluded that there are no compelling reasons, on the grounds of Community interest, against the maintenance of the anti-dumping measures.

#### ANTI-DUMPING MEASURES

- (87) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of silicon originating in China, imposed by Regulation (EC) No 2496/97, should be maintained,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon falling within CN code 2804 69 00 originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be 49 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

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

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

Done at Brussels, 2 March 2004.

*For the Council*  
*The President*  
M. CULLEN

**COMMISSION REGULATION (EC) No 399/2004**  
**of 3 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 <sup>(1)</sup>, and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 4 March 2004.

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

Done at Brussels, 3 March 2004.

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

---

<sup>(1)</sup> 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 3 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 <sup>(1)</sup>	Standard import value
0702 00 00	052	102,2
	204	51,7
	212	115,9
	999	89,9
0707 00 05	052	130,7
	068	51,0
	204	39,0
	999	73,6
0709 90 70	052	112,8
	204	54,3
	999	83,6
0805 10 10, 0805 10 30, 0805 10 50	052	39,0
	204	46,1
	212	56,1
	220	42,8
	400	66,4
	624	61,7
	999	52,0
0805 50 10	052	50,0
	400	36,4
	600	57,6
	999	48,0
0808 10 20, 0808 10 50, 0808 10 90	052	60,0
	060	38,2
	388	113,5
	400	99,9
	404	92,2
	508	72,7
	512	90,9
	524	81,7
	528	84,1
	720	76,4
	999	81,0
0808 20 50	060	66,1
	388	78,1
	400	84,3
	508	69,3
	512	62,6
	528	73,2
	720	46,4
999	68,6	

<sup>(1)</sup> 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 400/2004**  
**of 3 March 2004**  
**fixing the import duties in the rice sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector <sup>(2)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.
- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 <sup>(3)</sup> as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and fixed in Annex I to this Regulation on the basis of the information given in Annex II.

*Article 2*

This Regulation shall enter into force on 4 March 2004.

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

Done at Brussels, 3 March 2004.

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

<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

<sup>(2)</sup> OJ L 189, 30.7.1996, p. 71. Regulation as last amended by Regulation (EC) No 2294/2003 (OJ L 340, 24.12.2003, p. 12).

<sup>(3)</sup> OJ L 120, 15.5.2003, p. 15.

## ANNEX I

## Import duties on rice and broken rice

(EUR/t)

CN code	Duties <sup>(5)</sup>				
	Third countries (except ACP and Bangla- desh) <sup>(7)</sup>	ACP <sup>(1)</sup> <sup>(2)</sup> <sup>(3)</sup>	Bangladesh <sup>(4)</sup>	Basmati India and Pakistan <sup>(6)</sup>	Egypt <sup>(8)</sup>
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	194,02	63,57	92,67		145,52
1006 20 13	194,02	63,57	92,67		145,52
1006 20 15	194,02	63,57	92,67		145,52
1006 20 17	244,48	81,23	117,90	0,00	183,36
1006 20 92	194,02	63,57	92,67		145,52
1006 20 94	194,02	63,57	92,67		145,52
1006 20 96	194,02	63,57	92,67		145,52
1006 20 98	244,48	81,23	117,90	0,00	183,36
1006 30 21	361,18	114,02	165,68		270,89
1006 30 23	361,18	114,02	165,68		270,89
1006 30 25	361,18	114,02	165,68		270,89
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	361,18	114,02	165,68		270,89
1006 30 44	361,18	114,02	165,68		270,89
1006 30 46	361,18	114,02	165,68		270,89
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	361,18	114,02	165,68		270,89
1006 30 63	361,18	114,02	165,68		270,89
1006 30 65	361,18	114,02	165,68		270,89
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	361,18	114,02	165,68		270,89
1006 30 94	361,18	114,02	165,68		270,89
1006 30 96	361,18	114,02	165,68		270,89
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

<sup>(1)</sup> The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 348, 21.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 10.4.2003, p. 3).

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

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

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

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

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

<sup>(7)</sup> Duties fixed in the Common Customs Tariff.

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

## ANNEX II

**Calculation of import duties for rice**

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	( <sup>1</sup> )	244,48	416,00	194,02	361,18	( <sup>1</sup> )
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	292,55	210,40	366,88	435,41	—
(b) fob price (EUR/tonne)	—	—	—	342,69	411,22	—
(c) Sea freight (EUR/tonne)	—	—	—	24,19	24,19	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(<sup>1</sup>) Duties fixed in the Common Customs Tariff.

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 28 January 2004

**on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2004 pursuant to Regulation (EC) No 2037/2000 of the European Parliament and of the Council**

(notified under document number C(2004) 103)

(Only the Spanish, Danish, German, English, French, Italian, Dutch, Portuguese and Finnish texts are authentic)

(2004/209/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer<sup>(1)</sup>, and in particular Article 3(1) thereof,

Whereas:

- (1) The Community has already phased out the production and consumption of chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons and bromochloromethane.
- (2) Each year the Commission has to determine essential uses for these controlled substances, the quantities that may be used and the companies that may use them.
- (3) Decision IV/25 of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (hereinafter 'the Montreal Protocol'), sets out the criteria used by the Commission for determining any essential uses and authorises the production and consumption necessary to satisfy essential uses of controlled substances.
- (4) Decision XV/8 of the Parties to the Montreal Protocol authorises the production and consumption necessary to satisfy essential uses of controlled substances listed in

Annexes A, B and C (groups II and III substances) to the Montreal Protocol for laboratory and analytical uses as listed in Annex IV to the report of the seventh meeting of the Parties, subject to the conditions set out in Annex II to the report of the sixth meeting of the Parties, Decision VII/11 and Decision XI/15 of the Parties to the Montreal Protocol.

- (5) Pursuant to paragraph 3 of Decision XII/2 of the twelfth meeting of the Parties to the Montreal Protocol on measures to facilitate the transition to chlorofluorocarbon-free metered-dose inhalers (MDIs), Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Norway, Portugal, the Netherlands and the United Kingdom have recently determined that chlorofluorocarbons (CFCs) are no longer essential for the manufacture of specific short-acting beta agonist CFC-MDIs<sup>(2)</sup>. Article 4(4)(i)(b) of Regulation (EC) No 2037/2000 in effect prevents CFCs from being used and placed on the market unless they are considered essential under the conditions described in Article 3(1) of that Regulation. These non-essentiality determinations have reduced the demand for CFCs in the Community. In addition, Article 4(6) of Regulation (EC) No 2037/2000 prevents CFC-MDI products being imported and placed on the market unless the CFCs in these products are considered essential under the conditions described in Article 3(1).

<sup>(1)</sup> OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 1804/2003 (OJ L 265, 16.10.2003, p. 1).

<sup>(2)</sup> [www.unep.org/ozone/dec12-2-3.shtml](http://www.unep.org/ozone/dec12-2-3.shtml)

- (6) The Commission has published a Notice<sup>(1)</sup> to those companies in the Community that request consideration by the Commission for the use of controlled substances for essential uses in the Community in 2004, and has received declarations on intended essential uses of controlled substances in 2004.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Management Committee established pursuant to Article 18 of Regulation (EC) No 2037/2000,

HAS ADOPTED THIS DECISION:

#### Article 1

1. The quantity of controlled substances of group I (chlorofluorocarbons 11, 12, 113, 114 and 115) subject to Regulation (EC) No 2037/2000 which may be used for essential medical uses in the Community in 2004 shall be 1 428 553,000 ODP (ozone depletion potential) kilograms.
2. The quantity of controlled substances of group I (chlorofluorocarbons 11, 12, 113, 114 and 115) and group II (other fully halogenated chlorofluorocarbons) subject to Regulation (EC) No 2037/2000 which may be used for essential laboratory uses in the Community in 2004 shall be 63 198,365 ODP kilograms.
3. The quantity of controlled substances of group III (halons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory use in the Community in 2004 shall be 19 268,700 ODP kilograms.
4. The quantity of controlled substances of group IV (carbon tetrachloride) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2004 shall be 141 694,630 ODP kilograms.
5. The quantity of controlled substances of group V (1,1,1-trichloroethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2004 shall be 525,800 ODP kilograms.
6. The quantity of controlled substances of group VII (hydrobromofluorocarbons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2004 shall be 3,070 ODP kilograms.
7. The quantity of controlled substances of group IX (bromochloromethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2004 shall be 13 248 ODP kilograms.

#### Article 2

The chlorofluorocarbon metered-dose inhalers (CFC-MDIs) listed in Annex I shall not be placed on markets that have determined CFCs for these products to be non-essential.

<sup>(1)</sup> OJ C 162, 11.7.2003, p. 19.

#### Article 3

During the period 1 January to 31 December 2004 the following rules shall apply:

1. The allocation of essential medical use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 shall be to the companies indicated in Annex II.
2. The allocation of essential laboratory use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 and other fully halogenated chlorofluorocarbons shall be to the companies indicated in Annex III.
3. The allocation of essential laboratory use quotas for halons shall be to the companies indicated in Annex IV.
4. The allocation of essential laboratory use quotas for carbon tetrachloride shall be to the companies indicated in Annex V.
5. The allocation of essential laboratory use quotas for 1,1,1-trichloroethane shall be to the companies indicated in Annex VI.
6. The allocation of essential laboratory use quotas for hydrobromofluorocarbons shall be to the companies indicated in Annex VII.
7. The allocation of essential laboratory use quotas for bromochloromethane shall be to the companies indicated in Annex VIII.
8. The essential use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115, other fully halogenated chlorofluorocarbons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons and bromochloromethane shall be as set out in Annex IX.

#### Article 4

This Decision is addressed to:

3M Health Care Ltd  
3M House Morley Street  
Loughborough  
Leicestershire LE11 1EP  
United Kingdom

Bespak PLC  
North Lynn Industrial Estate  
King's Lynn  
Norfolk PE30 2JJ  
United Kingdom

Chiesi Farmaceutici SpA  
Via Palermo 26/A  
I-43100 Parma

IG Sprühtechnik GmbH  
Im Hemmet 1  
D-79664 Wehr

Jaba Farmaceutica SA  
Rua da Tapada Grande n.º 2  
P-2710-089 Abrunheira, Sintra

Inyx Pharmaceuticals Ltd  
Astmoor Industrial Estate  
9 Arkwright Road  
Runcorn  
Cheshire WA7 1NU  
United Kingdom

Schering-Plough Labo NV  
Industriepark 30  
B-2220 Heist Op Den Berg

Valeas SpA Pharmaceuticals  
Via Vallisneri, 10  
I-20133 Milano

Valvole Aerosol Research Italiana (VARI)  
SpA — LINDAL Group Italia  
Via del Pino, 10  
I-23854 Olginate (LC)

Acros Organics bvba  
Janssen Pharmaceuticaaan 3a  
B-2440 Geel

Biosolove BV  
Waalreneweg 17  
5554 HA Valkenswaard  
Nederland

Carl Roth GmbH  
Schoemperlenstr. 1-5  
D-76185 Karlsruhe

Fisher Scientific  
Bishop Meadow Road  
LE11 5RG Loughborough  
United Kingdom

Honeywell Specialty Chemicals  
Wunstorfer Straße 40  
Postfach 100262  
D-30918 Seelze

Katholieke Universiteit Leuven  
Krakenstraat 3  
B-3000 Leuven

LGC Promochem GmbH  
Mercatorstr. 51  
D-46485 Wesel

Panreac Quimica SA  
Riera de Sant Cugat 1  
E-08110 Montcada I Reixac (Barcelona)

Rohs Chemie GmbH  
Berliner Str. 54  
D-53819 Neunkirchen-Seelsheid

Sigma Aldrich Chemie GmbH  
Riedstraße 2  
D-89555 Steinheim

Sigma Aldrich Company Ltd  
The Old Brickyard  
New Road  
Gillingham SP8 4XT  
United Kingdom

VWR ISAS  
201 rue Carnot  
F-94126 Fontenay-sous-Bois

Airbus France  
route de Bayonne 316  
F-31300 Toulouse

University of Technology Vienna  
Institute of Industrial Electronics and Material Science  
Gusshausstraße 27-29  
A-1040 Wien

Aventis  
London Road, Holmes Chapel  
Cheshire CW4 8BE  
United Kingdom

Boehringer Ingelheim GmbH  
Binger Straße 173  
D-55216 Ingelheim am Rhein

GlaxoSmithKline  
Speke Boulevard  
Speke  
Liverpool L24 9JD  
United Kingdom

IVAX Ltd  
Unit 301 Industrial Park  
Waterford  
Ireland

Laboratorio Aldo Unión SA  
Baronesa de Maldá 73  
Espluges de Llobregat  
E-08950 Barcelona

Otsuka Pharmaceuticals(E)  
Provenca, 388  
E-08025 Barcelona

SICOR SpA  
Via Terrazzano, 77  
I-20017 RHO Milano

Valois SA  
50, avenue de l'Europe  
F-78160 Marly Le Roi

Mallinckrodt Baker BV  
Teugseweg 20  
7418 AM Deventer  
Nederland

Agfa-Gevaert NV  
Septestraat 27  
B-2640 Mortsel

Bie & Berntsen  
Sandbækvej 7  
DK-2610 Rødovre

Butterworth Laboratories Ltd  
54 Waldegrave Road,  
Teddington  
Middlesex TW11 8NY  
United Kingdom

Environnement SA  
111 Bd Robespierre, BP 4513  
F-78304 Poissy

Ineos Fluor Ltd  
PO Box 13, The Heath  
Runcorn  
Cheshire WA7 4QF  
United Kingdom

Laboratoires Sérobiologiques  
3 rue de Seichamps  
F-54425 Pulnoy

Merck KgaA  
Frankfurter Straße 250  
D-64271 Darmstadt

Institut Scientifique de Service Public (ISSeP)  
Rue du Chéra 200  
B-4000 Liège

SDS Solvants, Documentation, Synthèses SA  
ZI de Valdonne, BP 4  
F-13124 Peypin

Sigma Aldrich Chimie SARL  
80 rue de Luzais  
L'isle d'abeau Chesnes  
F-38297 St Quentin Fallavier

Sigma Aldrich Laborchemikalien  
Wunstorfer Straße 40  
Postfach 100262  
D-30918 Seelze

YA-Kemia Oy — Sigma Aldrich Finland  
Teerisuonkuja 4  
FIN-00700 Helsinki

Institut E. Malvoz (B)  
Quai du Barbou, 4  
B-4000 Liège

Done at Brussels, 28 January 2004.

*For the Commission*  
Margot WALLSTRÖM  
*Member of the Commission*

## ANNEX I

Pursuant to paragraph 3 of Decision XII/2 of the twelfth meeting of the Parties to the Montreal Protocol on measures to facilitate the transition to chlorofluorocarbon-free metered-dose inhalers (MDIs), the following Parties have determined in December 2002 that, due to the presence of suitable non-CFC MDIs, CFCs no longer qualify as 'essential' according to the Protocol when combined with following products:

**List of non-essential substances**

Country	Product	Salbutamol	Terbutaline	Fenoterol	Orciprenaline	Reproterol	Carbuterol	Hexoprenaline	Pirbuterol	Clenbuterol	Bitolterol	Procaterol
Austria		x	x	x	x	x	x	x	x	x	x	x
Belgium		x	x	x	x	x	x	x	x	x	x	x
Denmark		x		x	x	x	x	x	x	x	x	x
Finland		x										
France		x										
Germany		x	x	x	x	x	x	x	x	x	x	x
Greece		x	x	x	x	x	x	x	x	x	x	x
Ireland		x										
Luxembourg		x										
Norway		x	x	x	x	x	x	x	x	x	x	x
Portugal		x	x	x	x	x	x	x	x	x	x	x
The Netherlands		x	x	x	x	x	x	x	x	x	x	x
United Kingdom		x										

Source: [www.unep.org/ozone/dec12-2-3.pdf](http://www.unep.org/ozone/dec12-2-3.pdf)

## ANNEX II

**ESSENTIAL MEDICAL USES**

Quota of controlled substances of group I that may be used in the production of metered-dose inhalers (MDIs) for the treatment of asthma and other chronic obstructive pulmonary diseases (COPDs) are allocated to:

3M (UK)  
Aventis (UK)  
Bespak (UK)  
Boehringer Ingelheim (D)  
Chiesi (I)  
Glaxo Smith Kline (UK)  
IG Sprühtechnik (D)  
IVAX (IRL)  
Jaba Farmaceutica (P)  
Lab. Aldo-Union (E)  
Inyx Pharmaceuticals (UK)  
Otsuka Pharmaceuticals (E)  
Schering-Plough (B)  
Sicor (I)  
Valeas (I)  
Valois (F)  
VARI (I)

## ANNEX III

**ESSENTIAL LABORATORY USES**

Quota of controlled substances of groups I and II that may be used for laboratory and analytical uses, are allocated to:

Agfa-Gevaert (B)
Bie & Berntsen (DK)
Biosolve (NL)
Butterworth Laboratories (UK)
Carl Roth (D)
Environnement SA (F)
Honeywell Specialty Chemicals (D)
Ineos Fluor (UK)
Katholieke Universiteit Leuven (B)
LGC Promochem (D)
Merck KGaA (D)
Mallinckrodt Baker (NL)
Panreac Quimica (E)
SDS Solvants (F)
Sigma Aldrich Chemie (D)
Sigma Aldrich Chimie (F)
Sigma Aldrich Company (UK)
University of Technology Vienna (AUT)
Ya Kemia Oy — Sigma Aldrich (FIN)

## ANNEX IV

**ESSENTIAL LABORATORY USES**

Quota of controlled substances of group III that may be used for laboratory and analytical uses are allocated to:

Airbus France (FR)
Butterworth Laboratories (UK)
Ineos Fluor (UK)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Company (UK)

## ANNEX V

**ESSENTIAL LABORATORY USES**

Quota of controlled substances of group IV that may be used for laboratory and analytical uses, are allocated to:

Acros Organics (B)
Agfa-Gevaert (B)
Bie & Berntsen (DK)
Biosolve (NL)
Butterworth Laboratories (UK)
Fisher Scientific (UK)
Institut E. Malvoz (B)
Institut Scientifique de Service Public (ISSeP) (B)
Katholieke Universiteit Leuven (B)
Laboratoires Sérologiques (F)
Mallinckrodt Baker (NL)
Merck KGaA (D)
Panreac Quimica (E)
Rohs Chemie (D)
SDS Solvants (F)
Sigma Aldrich Chemie (D)
Sigma Aldrich Chimie (F)
Sigma Aldrich Company (UK)
Sigma Aldrich Laborchemikalien (D)
VWR ISAS (F)
YA-Kemia Oy (FIN)

## ANNEX VI

**ESSENTIAL LABORATORY USES**

Quota of controlled substances of group V that may be used for laboratory and analytical uses are allocated to:

Acros Organics (B)
Agfa-Gevaert (B)
Bie & Berntsen (DK)
Katholieke Universiteit Leuven (B)
Mallinckrodt Baker (NL)
Panreac Quimica (E)
Sigma Aldrich Chemie (D)
Sigma Aldrich Chimie (F)
Sigma Aldrich Company (UK)

## ANNEX VII

**ESSENTIAL LABORATORY USES**

Quota of controlled substances of group VII that may be used for laboratory and analytical uses are allocated to:

Acros Organics (B) Ineos Fluor (UK) Sigma Aldrich Chimie (F) Sigma Aldrich Company (UK)
--

## ANNEX VIII

**ESSENTIAL LABORATORY USES**

Quota for bromochloromethane that may be used for laboratory and analytical uses are allocated to:

Ineos Fluor (UK) Sigma Aldrich Chemie (D) Sigma Aldrich Chimie (F)
--

## ANNEX IX

[This Annex is not published because it contains confidential commercial information.]

---

## COMMISSION DECISION

of 3 March 2004

## setting up Scientific Committees in the field of consumer safety, public health and the environment

(Text with EEA relevance)

(2004/210/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 152 and 153 thereof,

Whereas:

- (1) The Scientific Committees were established by Commission Decision 97/404/EC of 10 June 1997 setting up a Scientific Steering Committee <sup>(1)</sup> and by Commission Decision 97/579/EC of 23 July 1997 setting up Scientific Committees in the field of consumer health and food safety <sup>(2)</sup>.
- (2) The responsibilities of the Scientific Steering Committee (SSC) in relation to scientific advice on bovine spongiform encephalopathy and transmissible spongiform encephalopathies have been transferred to the European Food Safety Authority (EFSA) established by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down the procedures in matters of food safety <sup>(3)</sup>.
- (3) Also the responsibilities of five of the eight Scientific Committees established by Decision 97/579/EC have been transferred to EFSA namely the responsibilities of the Scientific Committee on Food, the Scientific Committee on Animal Nutrition, the Scientific Committee on Animal Health and Animal Welfare the Scientific Committee on Veterinary Measures relating to Public Health, and of the Scientific Committee on Plants.
- (4) The terms of office of the members of the remaining three Scientific Committees established by Commission Decision 97/579/EC, namely the Scientific Committees on Cosmetic Products and Non-food Products intended for Consumers, the Scientific Committee on Medicinal Products and Medical Devices and the Scientific Committee on Toxicity, Ecotoxicity and the Environment

have come to an end. Members of those committees remain in office until they are replaced or their appointments are renewed.

- (5) It is therefore necessary to replace Decision 97/404/EC and Decision 97/579/EC and to repeal these acts.
- (6) Sound and timely scientific advice is an essential requirement for Commission proposals, decisions and policy relating to consumer safety, public health and the environment.
- (7) The advice of the Scientific Committees on matters relating to consumer safety, public health and the environment must be based on the principles of excellence, independence and impartiality, and transparency, as developed in the Commission Communication on 'The collection and use of expertise by the Commission: principles and guidelines. Improving the knowledge for better policies' <sup>(4)</sup>.
- (8) It is essential that the Scientific Committees make best use of external expertise in the EU and beyond as may be necessary for a specific question.
- (9) It is timely to reorganise the Scientific Committee advisory structure in the light of operational experience, the establishment of the EFSA and the Commission's future needs for independent scientific advice. Such a structure must provide the flexibility to allow it to advise the Commission on matters falling under established areas of competence as well as on emerging and newly identified health risks and matters not within the competence of other Community risk assessment bodies.
- (10) The need for independent scientific advice both in established and new areas of Community responsibilities falling within the competence of the Scientific Committee on Cosmetic Products and Non-food Products intended for Consumers and the Scientific Committee on Toxicity, Ecotoxicity and the Environment is likely to continue to increase.

<sup>(1)</sup> OJ L 169, 27.6.1997, p. 85; Decision as amended by Decision 2000/443/EC (OJ L 179, 18.7.2000, p. 13).

<sup>(2)</sup> OJ L 237, 28.8.1997, p. 18; Decision as amended by Decision 2000/443/EC.

<sup>(3)</sup> OJ L 31, 1.2.2002, p. 1; Regulation as amended by Regulation (EC) No 1642/2003 (OJ L 245, 29.9.2003, p. 4).

<sup>(4)</sup> COM (2002) 713 final of 11 December 2002 on 'The collection and use of expertise by the Commission: principles and guidelines. Improving the knowledge for better policies'.

- (11) The number of requests for scientific advice from the Scientific Committee on Medicinal Products and Medical Devices are too few to justify its continuation as a separate Committee. However, in view of the potential importance of this area and in particular of medical devices, it is necessary to retain the capacity to provide scientific advice through an appropriate Scientific Committee.
- (12) In order to strengthen their scientific coherence, synergisms and a multi-disciplinary approach and at the same time minimise overlapping responsibility, it is necessary to redefine the fields of competence of the Scientific Committees and to ensure systematic and structured coordination.
- (13) It is important that the Commission can take a proactive approach to the early assessment of emerging and other newly identified risks,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

#### **Scientific Committee advisory structure and fields of competence**

1. The following Scientific Committees are hereby established:
- (a) the Scientific Committee on Consumer Products (hereinafter SCCP).
- (b) the Scientific Committee on Health and Environmental Risks (hereinafter SCHER).
- (c) the Scientific Committee on Emerging and Newly Identified Health Risks (hereinafter SCENIHR).
2. The fields of competence of the Scientific Committees shall be as set out in Annex I, without prejudice to the competence conferred by Community legislation to other Community bodies undertaking risk assessment, such as the European Food Safety Authority and the European Agency for the Evaluation of Medicinal Products.

#### *Article 2*

#### **Mission**

1. The Commission shall request a scientific opinion from the Scientific Committees in the cases laid down by Community law. The Commission may also request an opinion from the Committees on questions:
- (a) of particular relevance to consumer safety, public health and the environment; and
- (b) not falling within the mandate of other Community bodies.

2. Requests for a scientific opinion on questions which do not fall within the fields of competence of a single scientific committee or which need to be considered by more than one Committee, shall be addressed in accordance with the rules of procedures set out in Article 10(2)(c). The same shall apply to needs for clarification of requests for scientific opinions in accordance with the rules of procedure set out in Article 10(2)(b).

3. The Commission may require the adoption of a scientific opinion from a Scientific Committee within a specified period.

4. The Scientific Committees shall draw the Commission's attention to a specific or emerging problem falling within their remit, which they consider may pose an actual or potential risk to consumer safety, public health or the environment. The Commission shall determine the action to be taken including, if appropriate, a request for a scientific opinion on the matter.

5. Subject to paragraph 3, a Scientific Committee may require additional information from stakeholders for the completion of a scientific opinion.

A Scientific Committee may give a deadline for submitting the required information to it. If the required information has not been submitted within that deadline, the Committee may adopt its opinion on the basis of the available information.

#### *Article 3*

#### **Appointment of the members of the Scientific Committees and associated members**

1. The SCCP and the SCHER shall each consist of a maximum of 19 members. They shall be appointed on the basis of their expertise and consistent with this a geographical distribution that reflects the diversity of scientific problems and approaches in the Community. The Commission shall determine the number of members in each committee in accordance with the requisite needs.

2. The SCENIHR shall be composed of 13 members. They shall be appointed on the basis of their broad expertise in the application of risk assessment and, consistent with this, a geographical distribution that reflects the diversity of scientific problems and approaches in the Community.

For any specific question, the SCENIHR may enlist the support of up to six associated members selected on the basis of their expertise. Associated members shall have the same rights to participate in the discussions and responsibilities as members.

3. The members of each Scientific Committee shall be scientific experts in one or more of the fields of competence of that Committee and shall collectively cover the widest possible range of disciplines.

4. The Commission shall appoint the members of the Scientific Committees from a list of suitable candidates established following publication in the *Official Journal of the European Union* and on the Commission website of a call for expressions of interest.

5. No member of a Scientific Committee may be appointed to more than one of the Committees set out in Article 1(1).

#### Article 4

##### Constitution of a reserve list

1. Candidates found suitable for the position in a Scientific Committee but not appointed shall be invited to be included on a reserve list. The reserve list may be used by:

- (a) the Commission to identify suitable candidates to replace members in accordance with Article 7(2);
- (b) the SCENIHR to identify associated members having the required expertise for specific questions;
- (c) the Scientific Committees to identify external experts in working groups;

2. Associated members shall be selected from the reserve list or from lists established by other Community bodies following open selection procedures designed to fulfil the requirements for excellence and independence.

#### Article 5

##### Election of the Chairs and Vice-chairs

1. Each Scientific Committee shall elect a Chair and two Vice-Chairs from among their members. The election shall take place by simple majority of the members which make up the Committee. The term of office of the Chair and Vice-Chair shall be three years, renewable.

2. The procedure for the election of the Chair and Vice-Chairs of the Scientific Committees shall be laid down in the rules of procedures.

#### Article 6

##### Coordination of the Scientific Committees

The Chairs shall assist the Commission on matters relating to the coordination of the three Scientific Committees in accordance with the rules of procedures referred to in Article 10(2)(d).

#### Article 7

##### Terms of office

1. Members shall be appointed to the Scientific Committees for a term of three years, and may not serve for more than three consecutive terms. They shall remain in office until they are replaced or their appointments are renewed.

Members who have just completed three consecutive terms of office in a Scientific Committee shall be eligible for membership of another Scientific Committee.

2. When it is found that a member does not participate to the work of a Scientific Committees or wishes to resign, the Commission may terminate the member's membership and appoint a replacement from the reserve list provided for in Article 4.

#### Article 8

##### Working groups and participation of external experts

1. In agreement with the Commission, the Scientific Committees may invite specialised external experts that they consider to have the relevant scientific knowledge and expertise to contribute to their work.

2. The Scientific Committees may create specific working groups with clearly defined tasks. These working groups shall be established in particular when there is a need for external expertise to fulfil the mandate of the Committee. In such cases, it shall draw on the expertise of those working groups when adopting scientific opinions.

3. The working groups shall be chaired by a member of the Scientific Committee that convened them and shall report to it.

4. When a question is common to more than one Scientific Committee, a common working group including members from the Committees, associated members concerned and external experts as necessary shall be set up.

#### Article 9

##### Reimbursements and indemnities

Members of the Scientific Committees, Associated Members and the external experts shall be entitled to an indemnity for their participation in the meetings of the Committees and for serving as Rapporteur on a specific question, as provided for in Annex II.

Reimbursement of travel and subsistence costs shall be paid by the Commission.

#### Article 10

##### Rules of procedures

1. The Scientific Committees shall adopt common rules of procedure in consultation with the Commission. The rules of procedure shall ensure that the Scientific Committees perform their tasks in compliance with the principles of excellence, independence and transparency, whilst having regard to legitimate requests for commercial confidentiality.

2. The rules of procedure shall cover in particular:

- (a) the election of the Chair and Vice-Chairs of the Scientific Committee;
- (b) the procedures for:
  - (i) the coordination and allocation of questions,
  - (ii) the adoption of opinions under normal conditions, and
  - (iii) the adoption of opinions under an accelerated, written procedure if the urgency of the matter requires such a procedure;

- (c) the designation of the Scientific Committee responsible for dealing with questions common to more than one Scientific Committee;
- (d) the procedures for ensuring coordination between the Scientific Committees including matters relating to harmonisation of risk assessment;
- (e) the creation and organisation of the working groups of the Scientific Committees;
- (f) the involvement of external experts and, for the SCENIHR, of associated members;
- (g) the appointment of Rapporteurs and the description of their tasks in relation to the preparation of draft opinions for the Scientific Committees;
- (h) the format and content of scientific opinions and procedures for ensuring and improving their coherence;
- (i) procedures for identifying, resolving or clarifying diverging opinions with Community and international bodies carrying out similar tasks, including information exchange and the organisation of joint meetings;
- (j) the organisation of hearings with industry or other special interest groups;
- (k) the responsibilities and obligations of members, associated members and external experts in relation to their contacts with petitioners, special interest groups and other stakeholders;
- (l) representation of a Scientific Committee in external activities, notably in relation to other Community or international bodies engaged in overlapping activities.

#### Article 11

##### Voting rules

Each Scientific Committees shall act by a majority of its members.

#### Article 12

##### Adoption of scientific opinions

The Scientific Committees shall adopt their opinions by a majority of the Members which make up the Committee.

#### Article 13

##### Diverging opinions

1. The Scientific Committees shall assist the Commission in identifying at an early stage potential or actual divergence between their scientific opinions and the scientific opinions of Community and International bodies carrying out similar tasks. They shall assist the Commission in avoiding, resolving or clarifying divergent opinions.

2. Where a substantive divergence over scientific issues has been identified and the body in question is a Community body, the Scientific Committee concerned shall, on the request of the Commission, cooperate with the body concerned with a view to either resolving the divergence or presenting a joint document to the Commission clarifying the contentious scientific issues and identifying the relevant uncertainties in the data. This document shall be made public.

#### Article 14

##### Independence

1. The Members of the Scientific Committees and associated members shall be nominated in a personal capacity. They shall not delegate their responsibilities to another member or to a third person.

2. Members of the Scientific Committees and associated members shall undertake to act independently of any external influence.

For that purpose they shall make a declaration of commitment to act in the public interest and a declaration of interests indicating either the absence or existence of any interest which might be considered prejudicial to their independence.

These declarations shall be made in writing and be publicly available. Members of the Scientific Committees shall make annual declarations.

3. Members of the Scientific Committees, associated members and the external experts participating in working groups shall declare at each meeting any specific interest which might be considered as prejudicial to their independence in relation to the items on the agenda.

#### Article 15

##### Transparency

1. Request for opinions, agendas, minutes and opinions of the Scientific Committees shall be published without undue delay and with regard to the need for commercial confidentiality.

2. Minority opinions shall always be included in the opinions of the Scientific Committees and shall be attributed to the members or associated members concerned.

3. The rules of procedures shall be published on the Commission's website.

4. The names of the members of the Scientific Committees shall be published in the *Official Journal of the European Union*. They shall also be made available on the Commission's website together with a brief Curriculum vitae of each member.

The names of participants in the working groups shall be given with the opinion to which they have contributed.

5. The reserve list resulting from the call for expressions of interest shall be published in the *Official Journal of the European Union*. It shall also be made available on the Commission's website.

#### Article 16

##### Confidentiality

The members of the Scientific Committees, associated members and external experts shall not divulge information acquired as a result of the work of the Scientific Committees, or one of the working groups, when they are informed that it is confidential.

*Article 17***Secretariat of the Commission's Scientific Committees**

1. The Scientific Committees and their working groups shall be convened by the Commission.
2. The Commission shall provide the scientific and administrative secretariat of the Scientific Committees and their working groups.
3. The secretariat shall be responsible for providing scientific and administrative support necessary to facilitate the efficient functioning of the Scientific Committees in compliance with the rules of procedure, particularly in relation to the requirements for excellence, independence and transparency.
4. The secretariat shall ensure the scientific and technical coordination of the activities of the Scientific Committees and where necessary coordination of their activities with those of other Community and international bodies.

*Article 18***Replacement of the Scientific Committees**

The Scientific Committees established by Article 1(1) of this Decision shall replace the existing Scientific Committees established by Decision 97/579/EC as follows:

- (a) the Scientific Committee on Consumer Products shall replace the Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers;

- (b) the Scientific Committee on the Health and Environmental Risks shall replace the Scientific Committee on Toxicity, Ecotoxicity and the Environment;
- (c) the Scientific Committee on Emerging and Newly Identified Health Risks shall replace the Scientific Committee on Medicinal Products and Medical Devices.

*Article 19***Repeals**

1. Decisions 97/404/EC and 97/579/EC are repealed.

However, the three Committees established by those decisions shall remain in office until the Scientific Committees established by this Decision take office.

2. References to the repealed decisions shall be understood as applicable to this Decision; references to the Committees and sections established by the repealed decisions shall be understood as applicable to the Committees established by this Decision.

Done at Brussels, 3 March 2004.

*For the Commission*

David BYRNE

*Member of the Commission*

## ANNEX I

## FIELD OF COMPETENCE

**1. Scientific Committee on Consumer Products**

It shall provide opinions on questions concerning the safety of consumer products (non-food products intended for the consumer). In particular, it shall address questions in relation to the safety and allergenic properties of cosmetic products and ingredients with respect to their impact on consumer health, toys, textiles, clothing, personal care products, domestic products such as detergents and consumer services such as tattooing.

**2. Scientific Committee on Health and Environmental Risks**

It shall provide opinions on questions relating to examinations of the toxicity and ecotoxicity of chemical, biochemical and biological compounds whose use may have a harmful consequences for human health and the environment. In particular, it shall address questions in relation to new and existing chemicals, the restriction and marketing of dangerous substances, biocides, waste, environmental contaminants, plastic and other materials used for water pipe-work (e.g. new organics substances), drinking water, indoor and ambient air quality.

It shall address questions relating to human exposure to mixtures of chemicals, sensitisation and identification of endocrine disrupters.

**3. The Scientific Committee on Emerging and Newly Identified Health Risks**

It shall provide opinions on questions concerning emerging or newly identified risks and on broad, complex or multidisciplinary issues requiring a comprehensive assessment of risks to consumer safety or public health and related issues not covered by other Community risk assessment bodies.

Examples of potential areas of activity include potential risks associated with interaction of risk factors, synergic effects, cumulative effects, antimicrobial resistance, new technologies such as nanotechnologies, medical devices including those incorporating substances of animal and/or human origin, tissue engineering, blood products, fertility reduction, cancer of endocrine organs, physical hazards such as noise and electromagnetic fields (from mobile phones, transmitters and electronically controlled home environments), and methodologies for assessing new risks.

## ANNEX II

## INDEMNITIES

Members of the Scientific Committees, Associated Members and the external experts shall be entitled to indemnities related to their participation in the activities of the scientific committees as follows:

For participation at meetings:

- EUR 300 for each full day participation or EUR 150 for participation in a morning or afternoon meeting of a Scientific Committee, a working group or at an external meeting attended in connection with the work of a Scientific Committee.

For acting as Rapporteur for a question requiring not less than one day of preparation of a draft opinion and with the prior written agreement of the Commission:

- EUR 300.
- Where fully justified and subject to budget availability, this sum may be exceptionally increased to EUR 600 for questions which are particularly demanding in terms of work load.

For particularly complex questions of a multidisciplinary nature, more than one Rapporteur may be appointed.