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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1321/2004**of 12 July 2004****on the establishment of structures for the management of the European satellite radio-navigation programmes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

- (1) The European satellite radio-navigation policy is presently implemented through the EGNOS and Galileo programmes.
- (2) Galileo is the first European space programme to be financed and managed by the European Union in association with the European Space Agency (ESA). It is expected to contribute to the development of numerous applications in areas that are associated, directly or indirectly, with Community policies, such as transport (positioning and measurement of the speed of moving bodies), insurance, motorway tolls, law enforcement (surveillance of suspects, measures to combat crime), customs and excise operations (investigations on the ground, etc.), agriculture (grain or pesticide dose adjustments depending on the terrain, etc.), fisheries (monitoring of boat movements).
- (3) EGNOS is a tripartite programme between the European Community, the ESA and Eurocontrol aiming at augmenting the American GPS and Russian GLONASS signals for reliability purposes on a broad geographical area. It is independent from and complementary to Galileo.
- (4) The conclusions of the European Council in Cologne (3 and 4 June 1999), Feira (19 and 20 June 2000), Nice (7 to 11 December 2000), Stockholm (23 and 24 March 2001), Laeken (14 and 15 December 2001), Barcelona (15 and 16 March 2002) and Brussels (20 and 21 March 2003) have stressed the strategic nature of Galileo.
- (5) Given the strategic nature of the European satellite radio-navigation programmes and the need to ensure that essential public interests are adequately defended and represented, it is imperative to supervise the next phases of the system and the use of Community funds allocated to the programmes in accordance with the relevant political orientations of the Council and financial decisions of the budgetary authorities; a European Global Navigation Satellite System (GNSS) Supervisory Authority (hereinafter referred to as the Authority) should therefore be set up.
- (6) On a number of occasions, and particularly in its conclusions of 5 April 2001 and 26 March 2002, the Council underlined that substantial private sector participation is a fundamental element for the success of Galileo in its deployment and operational phases.
- (7) To this end, the Authority should conclude a concession contract with whichever consortium is selected on completion of the development phase of Galileo and take steps to ensure compliance by that consortium with the obligations — in particular the public service obligations — arising from the concession contract.
- (8) The Authority should be the concession holder's sole interlocutor on the matter of frequencies.
- (9) In parallel, Member States that have lodged files with the International Telecommunication Union on the use of the frequencies necessary to ensure the operation of the system should also allow the Authority to assign the right to use thereof to the concession holder for the duration of the concession, so as to enable the latter to provide the requisite services stipulated in the specifications.

⁽¹⁾ Opinion delivered on 31 March 2004 (not yet published in the Official Journal).

- (10) The Authority should be responsible for managing and controlling the use of the funds specifically allocated to it for the programmes.
- (11) The Authority should assist the Commission in matters involving satellite radio-navigation, particularly in cases where legislative and regulatory measures prove necessary.
- (12) The Authority should utilise ongoing research, development and technological assessment activities, in particular those carried out by ESA. Taking into account Council Resolution of 16 November 2000 on a European space strategy⁽¹⁾, cooperation with the ESA should exploit to the fullest the possibilities offered by the Framework Agreement between the European Community and the ESA, where relevant.
- (13) The Authority should protect and valorise Community investment already done on space technology and infrastructure.
- (14) Following its dissolution, the Galileo Joint Undertaking should transfer, according to the relevant rules of its Statutes, all property it has acquired to the Authority. All property developed by the concession holder during the deployment phase should be vested in the Authority unless otherwise agreed in advance, as the programme definition, development and validation phases have been financed almost entirely from public funds and all components thus developed should be put at the disposal of the concession holder.
- (15) The legal status of the Authority should be such as to enable it to act as a legal person in the discharge of its tasks.
- (16) In order to ensure effectively the accomplishment of the tasks of the Authority, the Member States and the Commission should be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedure for decision making by the Authority, approve its work programme and appoint the Executive Director.
- (17) The smooth functioning of the Authority requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Authority. The Executive Director should prepare and take all necessary steps to ensure the proper accomplishment of the working programme of the Authority, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up a draft statement of estimates of revenues and expenditure of the Authority and should implement the budget.
- (18) Procedures whereby office-holders are appointed should be transparent.
- (19) The Administrative Board should have the possibility to set up a Scientific and Technical Committee to assist the Authority in technical questions and in the modernisation of the system.
- (20) A System Safety and Security Committee should be established to assist the Authority on all aspects relating to the system's safety and security.
- (21) In order to guarantee the full autonomy and independence of the Authority, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community. The Community budgetary procedure remains applicable as far as any subsidies chargeable to the general budget of the European Union are concerned. Moreover, the Court of Auditors should undertake the auditing of accounts.
- (22) Within its scope, its objectives and in the performance of its tasks, the Authority should comply in particular with the provisions applicable to Community institutions.
- (23) The Authority should apply the relevant Community legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data, it should also comply with the security principles applicable to the Council and the Commission services.

⁽¹⁾ OJ C 371, 23.12.2000, p. 2.

- (24) It should be possible for third countries to participate in the Authority, provided they have concluded a prior agreement to this effect with the Community, particularly when these countries have been involved in the previous phases of the programme through their contribution to the Galileosat programme of the ESA.
- (25) The European GNSS should be regarded as a sensitive infrastructure in terms of safety and reliability.
- (26) Measures should be put in place to ensure the safety and reliability of the system against attacks (malicious or otherwise) and to prevent its use for purposes that could affect the security of the European Union or its Member States.
- (27) The procedure set out in Council Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union⁽¹⁾ should be applicable in cases where a Member State considers that its national security is under threat.
- (28) The Treaty provides for no powers, other than those in Article 308 thereof, for the adoption of this Regulation,
- (b) It shall manage the funds specifically allocated to it for the European GNSS programmes and monitor the overall financial management in order to advise on the public sector contributions.
- (c) It shall be entrusted with the responsibility — inherited from the Galileo Joint Undertaking — of managing the agreement with the economic operator charged with operating EGNOS and of presenting a framework on the future policy options concerning EGNOS, with due regard to the opinion of those parties who contributed to the funding of the development and deployment phases of EGNOS.
- (d) It shall coordinate Member States' actions in respect of the frequencies necessary to ensure the operation of the system; it shall hold the right to use all these frequencies wherever the system is located; it shall deal directly with the concession holder on matters relating to the use of these frequencies.
- (e) In order to assist the Commission in preparing proposals for the European GNSS programmes to be presented to the European Parliament and to the Council and in adopting the implementing rules, it shall prepare drafts thereof.

HAS ADOPTED THIS REGULATION:

Article 1

Aim and objective

This Regulation sets up a Community agency, called the European GNSS Supervisory Authority (hereinafter referred to as the Authority), to manage the public interests relating to, and to be the regulatory authority for the European GNSS programmes.

Article 2

Tasks

1. The Authority shall carry out the following tasks:

- (a) It shall be the licensing authority vis-à-vis the private concession holder responsible for implementing and managing the Galileo deployment and operating phases (hereinafter referred to as the concession holder); in this context, it shall conclude with the latter the concession contract; it shall ensure that the concession holder complies with the concession contract and the specifications annexed thereto and shall take all appropriate measures to ensure the continuity of services in case of default of the concession holder; it shall grant the concession holder the right to use the tangible and intangible assets referred to in Article 3(1) for the duration of the concession.
- (h) It shall ensure that the components of the system are duly certified; it shall empower the appropriate authorised certification bodies for issuing the relevant certificates and monitoring the respect of related standards and technical specifications.
- (i) It shall enforce and verify compliance by the concession holder with instructions issued pursuant to Joint Action 2004/552/CFSP.
- (j) Without prejudice to Article 22, it shall manage all aspects relating to the system's safety and security. In particular, it shall:

⁽¹⁾ See page 30 of this Official Journal.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

- (i) approve the security annexes of industrial contracts;
 - (ii) define the security specifications of the system and its components, and the standards of security for information techniques;
 - (iii) define the cryptography which requires governmental approval;
 - (iv) ensure that the European GNSS signals/services are controlled in compliance with security criteria, as specified in (i) and (ii);
 - (v) be the European GNSS security accreditation authority, initiate and monitor the implementation of security procedures and perform system security audits;
 - (vi) regarding the Public Regulated Service (PRS):
 - define the specifications and instructions for manufacturing PRS receivers, in accordance with the policy of access to PRS defined by the Council,
 - provide guidelines for the implementation of PRS management rules in the Member States;
 - (vii) enforce and verify compliance by the concession holder with international rules and agreements (Wassenaar, Missile Technology Control Regime, international agreements, ...);
 - (viii) implement the relevant provisions for the exchange, handling and storage of classified information;
 - (ix) develop coordination and consultation procedures on security-related matters with the Secretary-General of the Council of the European Union, High Representative for the Common Foreign and Security Policy (SG/HR);
 - (x) identify and inform the Council of possible measures that could be taken by the Council in the event of a threat to the security of the European Union or of a Member State arising from the operation or use of the system, or in the event of a threat to the operation of the system, in particular as the result of an international crisis;
 - (xi) give advice to the Council when invited to do so under Joint Action 2004/552/CFSP;
 - (xii) give advice on security policy issues in international agreements related to the European GNSS programmes.
2. The ESA shall be requested to provide the Authority with technical and scientific support.
- Article 3*
- Ownership**
1. The Authority shall be the owner of all the tangible and intangible assets which are transferred to it by the GALILEO Joint Undertaking on completion of the development phase and which may be created or developed by the concession holder during the deployment and operational phases.
2. The procedures governing ensuing transfers of property will, in the case of the Galileo Joint Undertaking, be set out in the course of the winding-up proceedings laid down in Article 21 of the statutes of the Galileo Joint Undertaking annexed to Regulation (EC) No 876/2002⁽¹⁾ and, in the case of the concession holder, in the concession contract.
3. The Authority shall be the owner of all the tangible and intangible EGNOS assets subject to agreement with the EGNOS investors on the terms and conditions on the transfer from ESA of ownership of all or part of the EGNOS facilities and equipment.
- Article 4*
- Legal status, local offices**
1. The Authority shall be a body of the Community. It shall have legal personality.
2. In each of the Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under their law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority may decide to establish local offices in Member States subject to their consent, or in other countries participating to the programme in accordance with Article 21.
4. The Authority shall be represented by its Executive Director.
- Article 5*
- Administrative Board**
1. An Administrative Board is hereby set up to carry out the tasks listed in Article 6.

⁽¹⁾ OJ L 138, 28.5.2002, p. 1.

2. The Administrative Board shall be composed of one representative appointed by each Member State and one representative appointed by the Commission. The duration of the term of office of the Board members shall be five years. The term of office may be renewed once.

3. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 21.

4. The Administrative Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson if he/she is prevented from attending to his/her duties. The term of office of the Chairperson and of the Deputy Chairperson shall be two and a half years and shall expire when they cease to be members of the Administrative Board. The terms of office may be renewed once.

5. The meetings of the Administrative Board shall be convened by its Chairperson.

The Executive Director of the Authority shall take part in the deliberations.

The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of its Chairperson or at the request of at least a third of its members.

The Administrative Board may invite any person whose opinion can be of interest to attend its meetings as an observer. Where security issues are being discussed, a representative of the SG/HR and the Chairperson of the System Safety and Security Committee shall attend as observers. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

The secretariat of the Administrative Board shall be provided by the Authority.

6. Unless otherwise provided in this Regulation, the Administrative Board shall take its decisions by a two-thirds majority of its members.

7. Each member shall have one vote. The Executive Director of the Authority shall not vote.

The rules of procedure shall establish the more detailed voting arrangements, in particular the conditions for a member to act on behalf of another member.

Article 6

Tasks of the Administrative Board

The Administrative Board shall:

- (a) appoint the Executive Director pursuant to Article 7(2);
- (b) adopt, by 30 November each year and after receiving the Commission's opinion, the work programme of the Authority for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. This work programme shall be adopted without prejudice to the annual Community budgetary procedure;
- (c) perform its duties in relation to the Authority's budget pursuant to Articles 11 and 12;
- (d) be responsible for all decisions related to the tasks set out in Article 2(j) which, in all cases, will be taken following consultation with, or on the basis of proposals from, the System Security and Safety Committee;
- (e) exercise disciplinary authority over the Executive Director;
- (f) adopt the special provisions necessary for the implementation of the right of access to the documents of the Authority, in accordance with Article 19;
- (g) adopt the annual report on the activities and prospects of the Authority and forward it, by 15 June, to the Member States, the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors; the Authority shall forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;
- (h) adopt its rules of procedure.

Article 7

Executive Director

1. The Authority shall be managed by its Executive Director, who shall be completely independent in the exercise of his/her duties, without prejudice to the respective competencies of the Commission and the Administrative Board.

2. The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of at least three candidates proposed by the Commission. The Administrative Board shall take its decision by a three-quarters majority of its members.

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

The term of office of the Executive Director shall be five years. This term of office may be renewed once.

3. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his duties.

Article 8

Tasks of the Executive Director

The Executive Director:

- (a) shall be responsible for representing the Authority and be in charge of its management;
- (b) shall prepare the work of the Administrative Board. He/she shall participate, without having the right to vote, in the work of the Board;
- (c) shall be responsible for implementing the annual work programme of the Authority under the control of the Administrative Board;
- (d) shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority in accordance with this Regulation;
- (e) shall draw up estimates of the Authority's revenue and expenditure in accordance with Article 11, and shall implement the budget in accordance with Article 12;
- (f) shall prepare a draft general report each year and submit it to the Administrative Board;
- (g) shall define the organisational structure of the Authority and submit it for approval to the Administrative Board. He/she shall establish a suitable permanent structure for the implementation of security-related decisions and the necessary security-related operational contacts;
- (h) shall exercise, in respect of the staff, the powers laid down in Article 16;
- (i) may adopt, after approval of the Administrative Board, the necessary measures to establish local offices in Member States in accordance with Article 4.

Article 9

Scientific and Technical Committee

1. Without prejudice to Article 2, the Administrative Board may set up a Scientific and Technical Committee and appoint its members and chairman from among acknowledged experts from Member States and the Commission. The Member States and the Commission shall propose candidates to that effect. When appropriate, the participation of representatives of third countries in the Committee and the conditions thereof shall be established in the arrangements referred to in Article 21.

2. The Scientific and Technical Committee may be given responsibility for:

- (a) delivering opinions on technical questions or on proposals involving major changes in the design of the European GNSS system;
- (b) making recommendations on the modernisation of the system;
- (c) carrying out any other task necessary for the development of expertise in the area of satellite radio-navigation.

3. Subject to approval by the Administrative Board, the Scientific and Technical Committee shall draw up its rules of procedure.

Article 10

System Safety and Security Committee

1. The Administrative Board shall establish a System Safety and Security Committee. It shall be composed of one representative per Member State and one for the Commission from among acknowledged security experts. A representative of the SG/HR shall attend the Committee meetings as an observer.

2. The Committee shall be consulted on and may initiate proposals on the safety and security questions referred to in Article 2(j).

3. The Committee shall elect a Chairperson and a Deputy Chairperson from among its members and draw up its rules of procedure.

Article 11

Budget

1. Without prejudice to other resources and dues yet to be defined, revenue of the Authority shall include a Community subsidy entered in the general budget of the European Union in order to ensure a balance between revenue and expenditure.

2. The expenditure of the Authority shall cover staff, administrative and infrastructure expenditure, operating costs and expenditure associated with the functioning of the Scientific and Technical Committee, the System Safety and Security Committee and the contracts and agreements concluded by the Authority with a view to implementing the European GNSS programmes.

3. The Executive Director shall draw up a draft statement of estimates of the revenue and expenditure of the Authority for the following year and shall forward it to the Administrative Board, together with a draft establishment plan.

4. Revenue and expenditure shall be in balance.

5. Each year the Administrative Board, on the basis of the draft statement of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the Authority for the following financial year.

6. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall, by 31 March, be forwarded by the Administrative Board to the Commission and to the States with which the Community has concluded agreements in accordance with Article 21.

7. The statement of estimates shall be forwarded by the Commission to the European Parliament and to the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

9. The budgetary authority shall authorise the appropriations for the subsidy to the Authority and shall adopt the establishment plan for the Authority.

10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which shall have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

12. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of six weeks after the date of notification of the project.

Article 12

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Authority.

2. By 1 March following each financial year, the accounting officer of the Authority shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002.

3. By 31 March following each financial year, the Commission's accounting officer shall forward the provisional accounts of the Authority to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the provisional accounts of the Authority, under Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the final accounts of the Authority under his/her own responsibility and submit them to the Administrative Board for an opinion.

5. The Administrative Board shall deliver an opinion on the final accounts of the Authority.

6. The Executive Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

7. The final accounts shall be published.

8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. He/she shall also send this reply to the Administrative Board.

9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10. The European Parliament, on a recommendation from the Council acting on a qualified majority, shall, before 30 April of the year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 13***Financial provisions**

The financial rules applicable to the Authority shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾ unless such departure is specifically required for the operation of the Authority and the Commission has given its prior consent.

*Article 14***Anti-fraud measures**

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽²⁾ shall apply without restriction.

2. The Authority shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti Fraud Office (OLAF)⁽³⁾ and shall issue, without delay, appropriate provisions applicable to all staff of the Authority.

3. The decisions concerning funding, and the implementing agreements and instruments resulting therefrom, shall explicitly stipulate that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of funding of the Authority and the agents responsible for allocating it.

*Article 15***Privileges and immunities**

The Protocol on Privileges and Immunities of the European Communities shall apply to the Authority.

*Article 16***Staff**

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations and Conditions of employment shall apply to the staff of the Authority. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.

2. Without prejudice to Article 8, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Authority with respect to its own staff.

3. The staff of the Authority shall consist of servants recruited by the Authority as necessary to perform its tasks, but may also include officials assigned or seconded by the Commission or the Member States on a temporary basis.

*Article 17***Liability**

1. The contractual liability of the Authority shall be governed by the law applicable to the contract in question. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Authority.

2. In the event of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

3. The Court of Justice shall have jurisdiction in any dispute relating to compensation for damage referred to in paragraph 2.

4. The personal liability of its servants towards the Authority shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

*Article 18***Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community⁽⁴⁾ shall apply to the Authority.

2. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the bodies of the European Union.

*Article 19***Access to documents and protection of data of a personal character**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽⁵⁾ shall apply to documents held by the Authority.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

⁽²⁾ OJ L 136, 31.5.1999, p. 1.

⁽³⁾ OJ L 136, 31.5.1999, p. 15.

⁽⁴⁾ OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 2003 Act of Accession.

⁽⁵⁾ OJ L 145, 31.5.2001, p. 43.

2. The Administrative Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months after the entry into force of this Regulation.

3. Decisions taken by the Authority in pursuance of Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

4. When processing data relating to individuals, the Authority shall be subject to the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁾.

Article 20

Security rules

The Authority shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure⁽²⁾. This shall cover, *inter alia*, provisions for the exchange, handling and storage of classified information.

Article 21

Participation of third countries

1. The Authority shall be open to the participation of third countries, which have entered into agreements with the European Community to this effect.

2. Under the relevant provisions of these agreements, arrangements shall be developed specifying, in particular, the nature, extent and manner in which these countries will participate in the work of the Authority, including provisions relating to participation in the initiatives undertaken by the Authority, financial contributions and staff.

3. The participation of any third country in the Authority shall be submitted for approval to the Council.

Article 22

Aspects relating to the security of the European Union or its Member States

In cases where the operation of the system affects the security of the Union or its Member States, the responsibilities and competence of the European Union, including in exceptional cases where the urgency of the situation is such that it requires immediate action, are set out in Joint Action 2004/552/CFSP.

Article 23

Entry into force

This Regulation shall enter into force on the 10th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 12 July 2004.

For the Council

The President

B. BOT

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ L 317, 3.12.2001, p. 1.

COUNCIL REGULATION (EC) No 1322/2004**of 16 July 2004****amending Regulation (EC) No 2320/97 imposing definitive antidumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in, *inter alia*, Russia and Romania**

THE COUNCIL OF THE EUROPEAN UNION,

Member States were automatically extended to be applied also by the new Member States to imports from third countries. Measures against the new Member States automatically lapsed on the same date.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), in particular Articles 9, 11(2) and (3) thereof,

- (3) The measures currently in force apply to imports originating in Russia (anti-dumping duty of 26,8 % and three price undertakings) and in Romania (anti-dumping duties ranging from 9,8 to 38,2 % and four price undertakings).

Having regard to the proposal from the Commission, submitted following consultation with the Advisory Committee provided for by the basic Regulation,

Whereas:

2. Interim and expiry reviews

- (4) On 23 November 2002, the Commission published a notice of initiation of an expiry and an interim review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes, of iron or non-alloy steel originating in Poland, Russia, the Czech Republic, Romania and the Slovak Republic⁽⁵⁾.

A. PROCEDURE**1. Measures in force**

- (1) By Regulation (EC) No 2320/97⁽²⁾, the Council imposed definitive antidumping duties on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic. Undertakings offered by exporting producers in Hungary, Poland, the Czech Republic, Romania and the Slovak Republic were accepted by Decision 97/790/EC⁽³⁾ and undertakings offered by exporting producers in Russia were accepted by Commission Decision 2000/70/EC⁽⁴⁾.

- (2) On 1 Mai 2004 the European Union enlarged to include 10 new Member States. As from that date, the anti-dumping measures in force in the Community of 15

- (5) The review was requested by the Defence Committee of the seamless steel tube industry of the European Union on behalf of producers representing a major proportion of the total Community production of certain seamless pipes and tubes, of iron or non-alloy steel.

- (6) The request for the expiry review is based on the allegation of continuation or recurrence of dumping and injury to the Community industry. The request for the interim review is based on the grounds that the form and level of the measures are inappropriate to counteract the dumping which is causing the injury.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 322, 25.11.1997, p. 1. Regulation as last amended by Regulation (EC) No 235/2004 (OJ L 40, 12.2.2004, p. 11).

⁽³⁾ OJ L 322, 25.11.1997, p. 63.

⁽⁴⁾ OJ L 23, 28.1.2000, p. 78.

⁽⁵⁾ OJ C 288, 23.11.2002, p. 2.

- (7) The review investigations are still ongoing in respect of Russia and Romania.

3. Product concerned

- (8) The categories of products covered by the expiry and interim reviews (Article 11(2) and (3) of the basic Regulation) (the product concerned), are the same as the ones in Regulation (EC) No 2320/97, i.e.

(a) seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm;

(b) seamless tubes of circular cross section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes;

(c) other tubes of circular cross section, of iron or nonalloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm

currently classifiable within CN codes ex 7304 10 10, ex 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93. These CN codes are given only for information.

B. ASSESSMENT OF THE RELATION BETWEEN DECISION 2003/382/EC AND REGULATION (EC) No 2320/97

1. Proceeding on anti-competitive conduct under Article 81 of the EC Treaty

- (9) In Commission Decision 2003/382/EC (the competition Decision)⁽¹⁾, several Community producers were fined for involvement in two cases of infringement of Article 81(1) of the EC Treaty.

- (10) Following the adoption of the competition Decision, it was initially considered that the potential link with Regulation (EC) No 2320/97, if any, was not such as to require a re-examination of the findings of that Regulation. However, following the publication of the competition Decision, one of the interested parties has raised the issue of a possible impact of the anti-competitive conduct on the anti-dumping measures in force, and has provided further information regarding issues related to the injury and causation findings of Regulation (EC) No 2320/97. This Regulation aims at examining whether the competition Decision should have any consequences for the anti-dumping measures currently in force.

2. Product concerned by the competition Decision

- (11) The products concerned by the competition Decision are seamless carbon-steel pipes and tubes, in particular those used by the oil and gas industry. They include two major categories, i.e. project line pipes for carrying oil and gas over medium and short distances (LP) on the one hand and borehole pipes and tubes, commonly called oil country tubular goods (OCTG pipes and tubes) on the other hand. Whereas LP are classifiable within CN code ex 7304 10 the OCTG pipes and tubes are classifiable within CN code 7304 21.

- (12) The product scope of the anti-dumping investigation is wider than the products concerned by the competition Decision. However, a comparison shows that product categories falling under CN code ex 7304 10 10 and CN code ex 7304 10 30, i.e. line pipe of a kind used for oil or gas pipelines of an external diameter not exceeding 406,4 mm, appear to be affected by both the anti-dumping investigation and the competition infringement, even if this is only for a limited part of the Community market of the product concerned.

3. Producers concerned

- (13) In the anti-dumping investigation 10 Community producers cooperated, representing more than 90 % of the total Community production of the product subject to investigation. Three out of the 10 companies were also involved in the infringement of Article 81(1) of the EC Treaty.

⁽¹⁾ OJ L 140, 6.6.2003, p. 1.

4. Infringement during investigation period and period considered

(14) The period for the examination of dumping and injury lasted from 1 September 1995 to 31 August 1996 (investigation period) whereas the examination of trends relevant for the injury assessment in the anti-dumping investigation covered the period from January 1992 to the end of the investigation period, i.e. 31 August 1996 (period considered).

(15) Two infringements have taken place within the investigation period and the period considered:

(a) in the EU-Japan cartel, the producers concerned have infringed Article 81(1) of the EC Treaty by participating, together with other producers, in an agreement providing, *inter alia*, for the observance of their respective domestic markets for seamless standard threaded OCTG pipes and tubes and LP. The infringement lasted from 1990 to 1995, although it could not be clearly proven when in 1995 the operations actually stopped;

b) in a parallel European cartel the producers infringed Article 81(1) of the EC Treaty by concluding, in the context of the anti-competitive conduct mentioned under (a), contracts which resulted in a sharing of the supplies of plain end OCTG pipes and tubes. The infringement lasted from 1991 to 1999 and from 1993 to 1997 for one of the producers concerned in the anti-dumping investigation.

(16) The infringement mentioned under recital 15(b) does not directly affect the anti-dumping investigation since the product concerned falls under CN code 7304 21, i.e. outside the scope of the anti-dumping investigation.

(17) With regard to the infringement mentioned under recital 15(a) the overlap in time between the investigation period of the anti-dumping proceeding and the operation of the EU-Japan cartel runs from 1 September 1995 until 31 December 1995. With regard to the period considered, the overlap is from January 1992 to 31 December 1995.

5. Analysis

(18) As stated above, there is a partial overlap between the anti-dumping proceeding and the occurrence of the anti-competitive conduct. The product subject to the anti-competitive conduct falls partially within the product scope of the anti-dumping investigation (recital 12). The investigation period and the period considered of the anti-dumping proceeding and the period for which the infringement of the competition rules was found, overlap partly (recital 17). Finally, a part of the Community producers involved in the anti-competitive conduct were also part of the Community industry as defined in the anti-dumping proceeding (recital 13).

(19) Given that the overlap in the product scope, the companies involved and the time period of the two proceedings is only partial, it has been found that the impact of this anti-competitive conduct has affected, to a limited extent, the anti-dumping investigation on which the definitive duties imposed in 1997 were based. In addition, when excluding the data of the companies found to have infringed Article 81(1) of the EC Treaty, the results appear to remain comparable to those calculated on the basis of the data of the ten cooperating Community producers, including those participating in the abovementioned anti-competitive conduct, i.e. injurious dumping would still exist. Thus, it is highly unlikely that the anti-competitive behaviour of the Community producers has had a material impact on the original findings of the anti-dumping investigation. However, it cannot be confirmed with certainty that the overall market conditions would have been the same in the absence of this anti-competitive conduct.

6. Conclusion

(20) In view of the above, it is considered appropriate to no longer apply the measures established by Regulation (EC) No 2320/97. This is in line with the principles of sound administration and good administrative practice. Furthermore, it is to be noted that in the context of the ongoing interim and expiry reviews new findings should be available within the near future to permit an assessment for the future on the basis of data clearly not affected by the anti-competitive conduct. Until the ongoing reviews are concluded, the duties should no longer be collected. It also follows from the above that undertakings currently in force are no longer applied pending the outcome of the ongoing reviews.

- (21) Interested parties have been informed of the intention to no longer apply the measures established by Regulation (EC) No 2320/97. They were also granted a period within which they could make representations subsequent to this disclosure.

Article 1

In Regulation (EC) No 2320/97, the following Article shall be added:

‘Article 8

- (22) The oral and written arguments submitted by the parties were considered and, where appropriate, were taken into account,

Articles 1, 2 and 3 shall not be applied as from 21 July 2004’

Article 2

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

HAS ADOPTED THIS REGULATION:

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

Done at Brussels, 16 July 2004.

For the Council

The President

A. NICOLAI

COUNCIL REGULATION (EC) No 1323/2004**of 19 July 2004****amending Regulation (EC) No 1601/1999 imposing a definitive countervailing duty on imports of stainless steel wire with a diameter of less than 1 mm originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation'), and in particular Article 20 thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

- (1) The Council, by Regulation (EC) No 1601/1999⁽²⁾, imposed a definitive countervailing duty on imports of stainless steel wire having a diameter of less than 1 mm ('the product concerned'), falling within CN code ex 7223 00 19 and originating in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 42,9 % for individual exporters, with a rate of 44,4 % for non-cooperating exporters.

B. CURRENT PROCEDURE**1. Request for review**

- (2) Subsequent to the imposition of definitive measures, the Commission received a request for the initiation of an accelerated review of Regulation (EC) No 1601/1999, pursuant to Article 20 of the basic Regulation, from one Indian producer, VSL Wires Limited ('the applicant'). The applicant claimed that it was not related to any other exporters of the product concerned in India. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (i.e. from 1 April 1997 to 31 March 1998), but had exported the product concerned to the Community after that period. On the basis of the above, it requested that an individual duty rate be established for it.

2. Initiation of an accelerated review

- (3) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 20 of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by a notice in the *Official Journal of the European Union*⁽³⁾, an accelerated review of Regulation (EC) No 1601/1999 with regard to the company concerned and commenced its investigation.

3. Product concerned

- (4) The product covered by the current review is the same product as that under consideration in Regulation (EC) No 1601/1999, namely stainless steel wire having a diameter of less than 1 mm, containing by weight 2,5 % or more of nickel, excluding wire containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but no more than 22 % of chromium.

4. Investigation Period

- (5) The investigation of subsidisation covered the period from 1 April 2002 to 31 March 2003 ('the review investigation period').

5. Parties concerned

- (6) The Commission officially advised the applicant and the Government of India ('GOI') of the initiation of the procedure. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such views or any request for a hearing was received by the Commission.
- (7) The Commission sent a questionnaire to the applicant and received a full reply within the required deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out a verification visit at the premises of the applicant.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 189, 22.7.1999, p. 26.

⁽³⁾ OJ C 161, 10.7.2003, p. 3.

C. SCOPE OF THE REVIEW

- (8) As no request for a review of the findings on injury was made by the applicant, the review was limited to subsidisation.
- (9) The Commission examined the same subsidy schemes which were analysed in the original investigation. It also examined whether the applicant had used any subsidy schemes which were alleged to confer benefits in the original complaint but not found to have been used during the original investigation.

It was finally examined whether the applicant had made use of any subsidy schemes which were established after the end of the original investigation period, or had received *ad hoc* subsidies after this date.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

- (10) The applicant was able to satisfactorily demonstrate that it was not related, directly or indirectly, to any of the Indian exporting producers subject to the countervailing measures in force with regard to the product concerned.
- (11) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period, i.e. from 1 April 1997 to 31 March 1998.
- (12) It was established that the applicant had only realised one sale to the Community which actually took place in August 2001, i.e. after the original investigation period but well before the review investigation period.
- (13) In reply to the questionnaire, the applicant identified only one contract that had been signed during the review investigation period, but the on-spot verification confirmed that the sale had never been materialized. Consequently, there was no irrevocable contractual obligation undertaken by the applicant to export to the Community.
- (14) However, it is noted that the company had significant export sales to other countries during the review investigation period which allowed for the calculation of the benefit accruing to export sales from subsidisation, since such benefits accrue regardless of the destination of these sales.

In this respect, the Commission decided to verify all information it deemed necessary for the purpose of the investigation of the accelerated review in order to calculate any amount of countervailable subsidy by allocating such amount over the level of the relevant total

turnover of the applicant during the review investigation period.

2. Subsidisation

- (15) On the basis of the information contained in the applicant's reply to the Commission's questionnaire, the following schemes were investigated:

- Duty Entitlement Passbook Scheme,
- Income Tax Exemption Scheme,
- Export Promotion Capital Goods Scheme,
- Export Processing Zones/Export Oriented Units.

3. Duty Entitlement Passbook Scheme ('DEPB')

General

- (16) It was established that the applicant received benefits under this scheme during the review investigation period. It made use of the DEPB on a post-export basis. The detailed description of the scheme is contained in paragraph 4(3) of the Export and Import Policy (Notification No 1/2002-07 of 31 March 2002 of the Ministry of Commerce and Industry of the Government of India).

Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the Standard Input/Output Norms (SION). A licence stating the amount of credit granted is issued automatically.

DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) except for goods the importation of which is restricted or prohibited. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.

DEPB credits are freely transferable. The DEPB license is valid for a period of 12 months from the date on which the licence is granted.

- (17) The characteristics of the DEPB have not changed since the original investigation. The scheme is a subsidy contingent in law upon export performance, and it was therefore determined during the original investigation that it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

Calculation of the subsidy amount

- (18) It was established that the applicant transferred all the DEPB credits to its related company Viraj Alloys Ltd. The same practice was also followed by three other related Indian companies of the applicant, i.e. Viraj Forgings Ltd, Viraj Impoexpo Ltd and Viraj Profiles Ltd. The investigation confirmed that Viraj Alloys Ltd is the provider of the raw materials of all the previous mentioned companies and used their transferred DEPB credits to make duty free imports.

Moreover, it was established that exports of the product concerned were made via several related companies. Taking into account that the owners of the applicant control all these related companies through an extensive shareholding system, and that the related companies are involved in certain aspects of the manufacture and distribution of the product concerned, it was considered appropriate to treat all these companies as a single recipient of the benefit.

Therefore, the subsidy amount under the DEPB scheme was based on the amount of the total credit in the licences granted to both the applicant and its related companies. Given that the subsidy was not granted by reference to the quantities exported, the subsidy amount has been allocated over the total export turnover of the applicant and its related companies in accordance with the provisions of Article 7(2) of the basic Regulation.

In conclusion, VSL Wires Limited benefited from this scheme during the review investigation period and obtained subsidies of 12,7 %.

4. Income Tax Exemption Scheme ('ITES')

General

- (19) It was established that the applicant received benefits under this scheme and in particular under Section 80HHC of the Indian Income Act.

The Indian Income Tax Act 1961 sets out the basis for exemptions that can be claimed by firms on the collection of taxes. Among the exemptions which can be claimed are those covered by Sections 10A (applicable for companies located in Free Trade Zones), 10B (applicable for companies being Export Oriented Units) and 80HHC (applicable for companies which export goods) of the Act. To benefit from the ITES, a firm has

to make the relevant claim when submitting its tax return to the Tax Authorities. The tax year runs from 1 April to 31 March and the tax return must be submitted by 30 November of the following year. In this case, the review investigation period coincided with the tax and the financial year 1 April 2002 to 31 March 2003.

- (20) The characteristics of the ITES have not changed since the original investigation. It was determined during the original investigation that the ITES is a countervailable subsidy, as the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes on profits from exports which would otherwise be due if the income tax exemptions were not claimed by the company. However, it was found that the ITES under Section 80HHC is gradually being phased out starting from the financial year 2000-2001 until the financial year 2004-2005 when no export profit would be exempted from income tax. During the review investigation period only 50 % of profits obtained from exports were exempted from income tax.
- (21) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

Calculation of the subsidy amount

- (22) The benefit to the applicant has been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption during the review investigation period. The rate of the income tax, including corporate tax plus surcharge, applicable during this period was 36,75 %. In order to establish the full benefit to the applicant and given that three companies related to the applicant have also exported the product concerned during the review investigation period (see recital (18) above), the amount of subsidy has been established taking into account the income tax exemptions under Section 80HHC of the applicant, Viraj Forgings Ltd, Viraj Impoexpo Ltd and Viraj Profiles Ltd. Given that the subsidy was not granted by reference to the quantities exported, the subsidy amount has been allocated over the total export turnover of the applicant and its related companies in accordance with the provisions of Article 7(2) of the basic Regulation. On this basis, it was established that VSL Wires Limited obtained under this scheme subsidies of 1,4 %.

5. Export Promotion Capital Goods Scheme ('EPCGS')

- (23) It was established that the applicant had not availed itself of the EPCGS.

6. Export Processing Zones ('EPZ')/Export Oriented Units ('EOU')

- (24) It was established that the applicant was not located in an EPZ and was not an EOU and, therefore, had not availed of the scheme.

7. Other schemes

- (25) It was established that the applicant had neither made use of new subsidy schemes which were established after the end of the original investigation period, nor had it received any *ad hoc* subsidies after this date.

8. Amount of countervailable subsidies

- (26) Taking account of the definitive findings relating to the various schemes as set out above, the amount of countervailable subsidies for the applicant is as follows:

	DEPB	ITES	Total
VSL Wires Limited	12,7 %	1,4 %	14,1 %

E. AMENDMENT OF THE MEASURES BEING REVIEWED

- (27) Based on the findings made during the investigation, it is considered that imports into the Community of stainless steel wire having a diameter of less than 1 mm produced and exported by VSL Wires Limited should be subject to a level of countervailing duty corresponding to individual amounts of subsidies established for this company during the review investigation period.
- (28) Regulation (EC) No 1601/1999 should therefore be amended accordingly.

F. DISCLOSURE AND DURATION OF THE MEASURES

- (29) The Commission informed the applicant and the GOI of the essential facts and considerations on the basis of which it was intended to propose that Council Regu-

lation (EC) No 1601/1999 be amended. They were also given a reasonable period of time to comment.

- (30) In its response to the disclosure, the applicant claimed that the post-export DEPB is a substitution remission/drawback scheme which was wrongly assessed by the Commission in terms of extent of subsidy and amount of countervailable benefit. It argued that the Commission's assessment of the benefits under this scheme was incorrect since only the excess duty drawback could be considered a subsidy and that the practical operations of the system have not been investigated by the Commission.

The Commission has repeatedly concluded (see for example Council Regulation (EC) No 1338/2002⁽¹⁾ and in particular recitals (14) to (20)) that post-export DEPB is not a drawback or a substitution drawback scheme as it does not conform to any of the provisions of Annexes I to III of the basic Regulation linked to its Article 2(1)(ii). The scheme lacks a built-in obligation to import only goods that are consumed in the production of the exported goods (Annex II of the basic Regulation) which would ensure that the requirements of Annex I(i) were met. Furthermore, there is no verification system in place to check whether the imports are actually consumed in the production process. It is also not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production (Annex III of the basic Regulation). Lastly, exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all.

In the case of the applicant, the investigation confirmed that the raw materials were imported duty-free by one of its related companies with the use of the transferred DEPB credits of all related companies obtained from exports of different products. However, no link could be established between each company's credits and the actual imported goods from the sole related company assigned with the task of raw material imports. Furthermore, there was no verification system in place by the GOI to control what imports were actually consumed into what product and by which company. Since the above exception to the subsidy definition does not therefore apply, the countervailable benefit is the amount of the total credit granted under the scheme. For these reasons the claim cannot be accepted.

⁽¹⁾ OJ L 196, 25.7.2002, p. 1.

The applicant further claimed that 'the Commission's services failed to offset import duties from the costs, thus, rendering the subsidy calculations incorrect and exaggerated'. In this respect, it should be noted that the applicant was requested in advance and based on the situation described in recital (18) above to submit post-export DEPB credits listings for all its exports made during the review investigation period. The applicant was also requested to submit the same information for all exports made by its related companies for the same period, along with details of any application fees or other costs incurred in order to obtain the credits. However, the applicant has not reported any such details and was not in a position to provide such information during the on-spot verification. Therefore, due to the lack of any relevant information, no adjustment for such costs could be made on the amount of subsidy as established in recital (18) above.

- (31) This review does not affect the date on which Council Regulation (EC) No 1601/1999 will expire pursuant to Article 18(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Council Regulation (EC) No 1601/1999 is hereby amended by adding the following:

VSL Wires Limited, G-1/3 MIDC, Tarapur Industrial Area, Boisar District, Thane, Maharashtra, India	14,1	A444
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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, 19 July 2004.

For the Council
The President
C. VEERMAN

COMMISSION REGULATION (EC) No 1324/2004**of 19 July 2004****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 20 July 2004.

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

Done at Brussels, 19 July 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

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

ANNEX

to Commission Regulation of 19 July 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	39,9
	999	39,9
0707 00 05	052	61,4
	999	61,4
0709 90 70	052	77,9
	999	77,9
0805 50 10	052	65,1
	388	62,8
	524	57,1
	528	49,8
	999	58,7
0808 10 20, 0808 10 50, 0808 10 90	388	81,5
	400	110,2
	404	86,6
	508	78,3
	512	91,6
	524	83,4
	528	79,7
	720	71,5
	804	92,2
	999	86,1
0808 20 50	052	120,3
	388	88,2
	512	87,2
	528	80,3
	999	94,0
0809 10 00	052	187,8
	094	69,5
	999	128,7
0809 20 95	052	287,4
	400	299,0
	404	303,6
	999	296,7
0809 30 10, 0809 30 90	052	161,0
	999	161,0
0809 40 05	512	91,6
	624	171,0
	999	131,3

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

COMMISSION REGULATION (EC) No 1325/2004**of 19 July 2004****amending Regulation (EEC) No 2921/90 as regards the amount of the aid for the production of casein and caseinates from skimmed milk**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 15(b) thereof,

Whereas:

- (1) Article 2(1) of Commission Regulation (EEC) No 2921/90 of 10 October 1990, on aid for the production of casein and caseinates from skimmed milk ⁽²⁾ sets the amount of aid for the production of casein and caseinates from skimmed milk. In view of the development in the price of casein and caseinates on the Community and world markets, the amount of the aid should be reduced.

- (2) Regulation (EEC) No 2921/90 should be amended accordingly.

- (3) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

In Article (2)1 of Regulation (EEC) No 2921/90, 'EUR 6,00' is hereby replaced by 'EUR 4,80'.

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, 19 July 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 279, 11.10.1990, p. 22. Regulation as last amended by Regulation (EC) No 590/2004 (OJ L 94, 31.3.2004, p. 5).

COMMISSION REGULATION (EC) No 1326/2004**of 19 July 2004****fixing the final amount of aid for dried fodder for the 2003/2004 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder⁽¹⁾, and in particular Article 18 thereof,

Whereas:

- (1) Article 3(2) and (3) of Regulation (EC) No 603/95 fix the amounts of aid to be paid to processors for dehydrated fodder and sun-dried fodder produced during the 2003/2004 marketing year up to the maximum guaranteed quantities laid down in Article 4(1) and (3) of that Regulation.
- (2) The information forwarded to the Commission by the Member States under the second indent of Article 15(a) of Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Council Regulation (EC) No 603/95 on the common organisation of the market in dried fodder⁽²⁾ indicates that the maximum guaranteed quantity for dried fodder has been exceeded, and that the maximum guaranteed quantity for sun-dried fodder has not been exceeded.

- (3) It should therefore be laid down that the aid provided for in Regulation (EC) No 603/95 for dried fodder should be reduced in accordance with Article 5 of that Regulation. The aid for sun-dried fodder should be paid to recipients in full.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Dried Fodder,

HAS ADOPTED THIS REGULATION:

Article 1

The aid for dehydrated fodder and sun-dried fodder provided for in Article 3(2) and (3) respectively of Regulation (EC) No 603/95 shall be paid as follows for the 2003/2004 marketing year:

- a) the amount of aid for dried fodder shall be reduced to 66,45 EUR per tonne in all the Member States;
- b) the aid for sun-dried fodder shall be paid in full.

Article 2

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

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

Done at Brussels, 19 July 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 63, 21.3.1995, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 79, 7.4.1995, p. 5. Regulation as last amended by Regulation (EC) No 1413/2001 (OJ L 191, 13.7.2001, p. 8).

COMMISSION REGULATION (EC) No 1327/2004**of 19 July 2004****on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2004/2005 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽¹⁾, and in particular Articles 22(2), 27(5) and (15) and 33(3) thereof,

Whereas:

- (1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 2004/2005 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds.
- (2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 28 of Regulation (EC) No 1260/2001 should be applied.
- (3) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector⁽²⁾. However, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽³⁾, and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products⁽⁴⁾, must continue to apply.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A standing invitation to tender shall be issued in order to determine export levies and/or export refunds on white sugar covered by CN code 1701 99 10 for all destinations excluding Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro⁽⁵⁾, and the former Yugoslav Republic of Macedonia. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

2. The standing invitation to tender shall be open until 28 July 2005.

Article 2

The standing invitation to tender and the partial invitations shall be conducted in accordance with Article 28 of Regulation (EC) No 1260/2001 and with this Regulation.

Article 3

1. The Member States shall establish a notice of invitation to tender. The notice of invitation to tender shall be published in the *Official Journal of the European Union*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate, in particular, the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation to tender:

- (a) shall begin on 23 July 2004;
- (b) shall end on Thursday 29 July 2004 at 10.00, Brussels local time.

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

⁽²⁾ OJ L 144, 28.6.1995, p. 14. Regulation as last amended by Regulation (EC) No 96/2004 (OJ L 15, 22.1.2004, p. 4).

⁽³⁾ OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Commission Regulation (EC) 636/2004 (OJ L 100, 6.4.2004, p. 25).

⁽⁴⁾ OJ L 16, 20.1.1989, p. 19. Regulation as last amended by Commission Regulation (EC) No 910/2004 (OJ L 163, 30.4.2004, p. 63).

⁽⁵⁾ Including Kosovo as defined in United Nations Security Council Resolution 1244 of 10 June 1999.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations:

(a) shall begin on the first working day following the end of the preceding period;

(b) shall end at 10.00, Brussels local time:

- 12 and 26 August 2004,
- 9, 16, 23 and 30 September 2004,
- 7, 14, 21 and 28 October 2004,
- 4, 11 and 25 November 2004,
- 9 and 23 December 2004,
- 6 and 20 January 2005,
- 3 and 17 February 2005,
- 3, 17 and 31 March 2005,
- 14 and 28 April 2005,
- 12 et 26 May 2005,
- 2, 9, 16, 23 and 30 June 2005,
- 14 and 28 July 2005.

Article 5

1. Tenders in connection with this tendering procedure:

- (a) must be in writing and must be delivered by hand to the competent authority in a Member State, against a receipt; or
- (b) must be addressed to that authority either by registered letter or telegram;
- (c) must be addressed to that authority by telex, fax or electronic mail, where the authority accepts such forms of communication.

2. Tenders shall be valid only if the following conditions are met:

(a) tenders shall contain:

- (i) the procedure to which the tender relates;
- (ii) the name and address of the tenderer;
- (iii) the quantity of white sugar to be exported;
- (iv) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(v) the amount of the security to be lodged covering the quantity of sugar indicated in (iii), expressed in the currency of the Member State in which the tender is submitted.

(b) the quantity to be exported is not less than 250 tonnes of white sugar;

(c) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

(d) tenders include a declaration by the tenderer that if their tender is successful they will, within the period laid down in the second subparagraph of Article 12(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

(e) tenders include a declaration by the tenderer that if their tender is successful they will:

(i) where the obligation to export resulting from the export licence referred to in Article 12(2) is not fulfilled, supplement the security by payment of the amount referred to in Article 13(4);

(ii) within 30 days following the expiry of the export licence in question, notify the authority which issued the licence of the quantity or quantities in respect of which the licence was not used.

3. A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

(a) the minimum export levy or, where applicable, the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;

(b) the tender, if successful, relates to all or a specified part of the tendered quantity.

4. A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

5. Once submitted, a tender may not be withdrawn.

Article 6

1. A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 13(4), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 12(2).

2. The security referred to in paragraph 1 may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure*, the security referred to in paragraph 1 shall be released:

- (a) to unsuccessful tenderers in respect of the quantity for which no award has been made;
- (b) to successful tenderers who have not applied for the relevant export licence within the period referred to in the second subparagraph of Article 12(2), to the extent of EUR 10 per 100 kilograms of white sugar;
- (c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000 the export obligation resulting from the licence referred to under Article 12(2) in accordance with the terms of Article 35 of that Regulation.

In the case referred to under (b) of the first subparagraph, the releasable part of the security shall be reduced, as applicable, by:

- (a) the difference between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former;
- (b) the difference between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation, when the latter amount is lower than the former.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In cases of *force majeure*, the competent authority of the Member State concerned shall take such action for the release of the security as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders submitted shall be communicated to the Commission by the Member States without the tenderers being mentioned by name and must be received by the Commission within one hour and thirty minutes of the expiry of the deadline for the weekly submission of tenders stipulated in the notice of invitation to tender.

Where no tenders are submitted, the Member States shall notify the Commission of this within the same time limit.

Article 8

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. In the light of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either:

(a) a minimum export levy, or

(b) a maximum export refund.

2. Without prejudice to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

3. Without prejudice to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender and if a minimum export levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest export levy; if the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of export levies quoted until the entire maximum quantity has been accounted for.

Where a maximum quantity has been fixed for a partial invitation to tender and if a maximum export refund is fixed, contracts shall be awarded in accordance with the first subparagraph; if after such awards a quantity is still outstanding, or if there are no tenders quoting an export levy, awards shall be made to tenderers quoting an export refund in ascending order of export refunds quoted until the entire maximum quantity has been accounted for.

2. Where an award to a particular tenderer in accordance with paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where offers quote the same export levy or refund and would, if accepted for the full quantity in respect of which they have been submitted, cause the maximum quantity to be exceeded, awards will be made:

- (a) by division among the tenderers concerned in proportion to the total quantities in each of their tenders, or
- (b) by apportionment among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or
- (c) by drawing lots.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. It shall also send statements of award to the successful tenderers.

2. Statements of award shall indicate at least:

- (a) the procedure to which the tender relates,
- (b) the quantity of white sugar to be exported;
- (c) the amount, expressed in euro, of the export levy to be charged, or where applicable of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

1. Every successful tenderer shall have the right to receive, in the circumstances referred to in paragraph 2, an export licence covering the quantity awarded, indicating the export levy or refund quoted in the tender, as the case may be.

2. Every successful tenderer shall be obliged to lodge, in accordance with the relevant provisions of Regulation (EC) No 1291/2000, an application for an export licence in respect of the quantity that has been awarded to him, the application not being revocable in derogation from Article 12 of Regulation (EEC) No 120/89.

The application shall be lodged not later than:

- (a) the last working day preceding the date of the partial invitation to tender to be held the following week;
 - (b) if no partial invitation to tender is due to be held that week, the last working day of the following week.
3. Every successful tenderer shall be obliged to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13(4).

4. The rights and obligations referred to in paragraphs 1, 2 and 3 shall not be transferable.

Article 13

1. The period for the issue of export licences referred to in Article 9(1) of Regulation (EC) No 1464/95 shall not apply to the white sugar to be exported under this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held after 1 May 2005 will be valid only until 30 September 2005.

Should technical difficulties arise which prevent export being carried out by the expiry date referred to in the second subparagraph above, the competent authorities in the Member State which issued the export licence may, at the written request of the holder of that licence, extend its validity to 15 October 2005 at the latest, provided that export is not subject to the rules laid down in Articles 4 or 5 of Council Regulation (EEC) No 565/80⁽¹⁾.

⁽¹⁾ OJ L 62, 7.3.1980, p. 5.

3. The export licences issued in respect of the partial invitations held between 29 July and 30 September 2004 will be usable only from 1 October 2004.

4. Except in cases of *force majeure*, the holder of the licence shall pay the competent authority a specific amount in respect of the quantity for which the obligation to export resulting from the export licence referred to in Article 12(2) has not been fulfilled, if the security referred to in Article 6 is less than:

- (a) the export levy indicated on the licence, less the levy referred to in the second subparagraph of Article 33(1) of Regulation (EC) No 1260/2001 in force on the last day of validity of the said licence;
- (b) the sum of the export levy indicated on the licence and the refund referred to in Article 28(2) of Regulation (EC) No

1260/2001 in force on the last day of validity of the said licence;

- (c) the export refund referred to in Article 28(2) of Regulation (EC) No 1260/2001 in force on the last day of validity of the licence, less the refund indicated on the said licence,

The amount to be paid referred to in the first paragraph shall be equal to the difference between the result of the valuation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6(1).

Article 14

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

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

Done at Brussels, 19 July 2004.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1328/2004

of 19 July 2004

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan,

Morocco and the West Bank and the Gaza Strip ⁽²⁾, those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 20 July 2004.

It shall apply from 21 July 2004 to 3 August 2004.

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

Done at Brussels, 19 July 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 382, 31.12.1987, p. 22. Regulation as last amended by Regulation (EC) No 1300/97 (OJ L 177, 5.7.1997, p. 1).

⁽²⁾ OJ L 72, 18.3.1988, p. 16. Regulation as last amended by Regulation (EC) No 2062/97 (OJ L 289, 22.10.1997, p. 1).

ANNEX

to the Commission Regulation of 19 July 2004 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 21 July 2004 to 3 August 2004

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	16,11	14,65	21,40	11,51
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	—	—	—	—
Morocco	—	—	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL JOINT ACTION 2004/552/CFSP
of 12 July 2004
on aspects of the operation of the European satellite radio-navigation system affecting the security
of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Article 1

Whereas:

Without prejudice to Regulation (EC) No 1321/2004, this Joint Action sets out the responsibilities to be exercised by the Council in cases where the security of the European Union or its Member States may be affected by the operation of the European satellite radio-navigation system (hereinafter the system).

(1) Council Regulation (EC) No 1321/2004 of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programme ⁽¹⁾ has set up a Community agency, called the European GNSS Supervisory Authority (SA).

Article 2

(2) That Regulation provides that the SA will, *inter alia*, manage all aspects relating to the radio-navigation system's safety and security, without prejudice to aspects relating to the security of the European Union and its Member States.

1. In the event of a threat to the security of the European Union or of a Member State arising from the operation or use of the system, or in the event of a threat to the operation of the system, in particular as a result of an international crisis, the Council, acting unanimously, shall decide on the necessary instructions to the European GNSS Supervisory Authority (SA) and the concession holder of the system. Any Member of the Council, the SG/HR or the Commission may request a Council discussion to agree such instructions.

(3) It also provides that the SA will be the licensing authority *vis-à-vis* the private concession holder, who will be responsible for implementing and managing the operation of the system, and will, through the concession agreement with the SA, be obliged to carry out any instructions from the Council pursuant to this Joint Action.

2. The Council shall, if practicable, invite advice from the SA on the likely wider impact on the Galileo system of any instructions it intends to decide on.

(4) In situations where the operation of the system may affect the security of the European Union or its Member States, the Council should decide on the necessary measures to be taken.

3. The Political and Security Committee shall provide an opinion to the Council as appropriate.

(5) The Secretary-General of the Council, High Representative for the Common Foreign and Security Policy (SG/HR), should, for the purposes of this Joint Action, be empowered to take the necessary measures in cases of urgency, and should be in a position to ensure permanent surveillance of the operation of the system,

Article 3

1. In exceptional cases, where the urgency of the situation is such that it requires immediate action, the SG/HR is authorised to issue the necessary instructions referred to in Article 2(1). The SG/HR shall immediately inform the Council and the Commission of any instructions issued pursuant to this Article.

⁽¹⁾ See page 1 of this Official Journal.

2. The Council may decide to modify the instructions as necessary.

Article 4

The Council, acting unanimously, will as necessary review and refine the rules and procedures set out in Articles 2 and 3 of this Joint Action in the light of the development of the European satellite radio-navigation system. In that context, the Council will, in particular, specify the measures to be taken in the event of a threat to the security of the European Union or a Member State, notably where PRS receivers are lost, misused or compromised; it will also specify how it can provide the SA with the necessary instructions for all matters that could have an impact on the security of the European Union or its Member States.

Article 5

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

Article 6

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 12 July 2004.

For the Council

The President

B. BOT

COUNCIL COMMON POSITION 2004/553/CFSP
of 19 July 2004
amending Common Position 2003/495/CFSP on Iraq

THE COUNCIL OF THE EUROPEAN UNION,

- (4) Action by the Community is needed in order to implement certain measures.

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

- (5) Council Common Position 2003/495/CFSP should therefore be amended,

Whereas:

HAS ADOPTED THIS COMMON POSITION:

- (1) On 7 July 2003 the Council adopted Common Position 2003/495/CFSP⁽¹⁾ on Iraq in implementation of the United Nations Security Council Resolution (UNSCR) 1483 (2003).

Article 1

Article 1 of Common Position 2003/495/CFSP shall be replaced by the following:

- (2) On 8 June 2004, the United Nations Security Council adopted UNSCR 1546 (2004) welcoming the formation of a sovereign Interim Government of Iraq which would assume full responsibility and authority by 30 June 2004 for governing Iraq, by 30 June 2004 the occupation of Iraq would end, the Coalition Provisional Authority would cease to exist and Iraq would reassert its full sovereignty, but stressing the importance for all States to abide by the prohibitions related to the sale or supply to Iraq of arms and related material established by UNSCR 661 (1990) and subsequent relevant Resolutions including UNSCR 1483 (2003), other than those arms and related material required by the Government of Iraq or the multinational force established under UNSCR 1511 (2003), and recalling the continuing obligations of Member States to freeze and transfer certain funds, assets, and economic resources under UNSCR 1483 (2003), as well as the continuing prohibitions on or obligations of States related to items specified in paragraphs 8 and 12 of UNSCR 687 (1991) or activities described in paragraph 3(f) of UNSCR 707 (1991).

'Article 1

1. The sale, supply, transfer or export of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to Iraq by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. Without prejudice to the prohibitions on or obligations of Member States related to items specified in paragraphs 8 and 12 of UNSCR 687 (1991) of 3 April 1991 or activities described in paragraph 3(f) of UNSCR 707 (1991) of 15 August 1991, paragraph 1 of this Article shall not apply to the sale, supply, transfer or export of arms and related material required by the Government of Iraq or the multinational force established under UNSCR 1511 (2003) to serve the purposes of UNSCR 1546 (2004).

- (3) On 28 June 2004 the Coalition Provisional Authority ceased to exist and Iraq reasserted its full sovereignty.

3. The sale, supply, transfer or export of arms and related material referred to in paragraph 2 shall be subject to an authorisation granted by the competent authorities of the Member States.'

⁽¹⁾ OJ L 169, 8.7.2003, p. 72. Commission Position amended by Commission Position 2003/735/CFSP (OJ L 264, 15.10.2003, p. 40).

Article 2

The provisions in Article 5 of Common Position 2003/495/CFSP shall continue to apply, except that the privileges and immunities provided for in Article 5(1), 5(2)(a) and 5(2)(b) shall not apply with respect to any final judgement arising out of a contractual obligation entered into by Iraq after 30 June 2004.

Article 3

This Common Position shall take effect on the date of its adoption. It shall apply from 28 June 2004.

Article 4

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 19 July 2004.

For the Council

The President

P. H. DONNER

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1301/2004 of 15 July 2004 laying down the reduction coefficient to be applied under the tariff quota for corn opened by Regulation (EC) No 958/2003**

(Official Journal of the European Union L 244 of 16 July 2004)

In the contents, and on page 21, in the title, in the first recital and in Article 1:

for: '...corn ...',

read: '... wheat ...'.
