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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 257/2005**of 4 February 2005**

laying down the weightings applicable from 1 July 2004 to the remuneration of officials, contract staff and temporary staff of the European Communities serving in third countries and of certain officials remaining in post in the 10 new Member States for a maximum period of 15 months after accession

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68⁽¹⁾, and in particular the first subparagraph of Article 13 of Annex X thereto,

Having regard to the 2003 Act of Accession, and in particular Article 33(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) It is necessary to take account of changes in the cost of living in third countries and to determine accordingly the weightings applicable from 1 July 2004 to remuneration payable in the currency of the country of employment to officials, contract staff and temporary staff of the European Communities serving in third countries and of certain officials remaining in post in the 10 new Member States for a maximum period of 15 months after 1 May 2004.
- (2) The weightings in respect of which payment has been made on the basis of Regulation (EC, Euratom) No 1785/2004⁽²⁾ may lead to retrospective upward or downward adjustments to remuneration.

(3) Provision should be made for back-payments in the event of an increase in remuneration as a result of the new weightings.

(4) Provision should be made for the recovery of sums overpaid in the event of a reduction in remuneration as a result of the new weightings for the period between 1 July 2004 and the date of entry into force of this Regulation.

(5) Provision should be made for any such recovery to be restricted to a period of no more than six months preceding the date of entry into force of this Regulation and for its effects to be spread over a period of no more than 12 months as from that date, as is the case with the weightings applicable within the Community to remuneration and pensions of officials and other servants of the European Communities,

HAS ADOPTED THIS REGULATION:

Article 1

With effect from 1 July 2004, the weightings applicable to the remuneration of officials, contract staff and temporary staff of the European Communities serving in third countries and of certain officials remaining in post in the 10 new Member States for a maximum period of 15 months after accession, payable in the currency of the country of employment, shall be as shown in the Annex hereto.

The exchange rates used to calculate this remuneration shall be established in accordance with the rules for the implementation of the Financial Regulation and shall correspond to the date referred to in the preceding subparagraph.

Article 2

1. The institutions shall make back-payments in the event of an increase in remuneration as a result of the weightings shown in the Annex.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Staff Regulations and conditions of employment as last amended by Regulation (EC, Euratom) No 857/2004 (OJ L 161, 30.4.2004, p. 11).

⁽²⁾ OJ L 317, 16.10.2004, p. 1.

2. The institutions shall make retrospective downward adjustments to remuneration in the event of a reduction as a result of the weightings shown in the Annex for the period between 1 July 2004 and the date of entry into force of this Regulation.

Retrospective adjustments involving the recovery of sums overpaid shall be restricted to a period of no more than six

months preceding the date of entry into force of this Regulation. Recovery shall be spread over no more than 12 months from that date.

Article 3

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, 4 February 2005.

For the Council
The President
J. ASSELBORN

ANNEX

Place of employment	Weightings July 2004
Afghanistan (*)	0,0
Albania	87,7
Algeria	83,4
Angola	111,4
Argentina	58,0
Armenia (*)	0,0
Australia	93,7
Bangladesh	53,0
Barbados	111,9
Benin	87,0
Bolivia	48,2
Bosnia and Herzegovina	72,2
Botswana	68,7
Brazil	55,1
Bulgaria	74,0
Burkina Faso	82,0
Burundi (*)	0,0
Cambodia	64,3
Cameroon	97,9
Canada	75,9
Cape Verde	74,0
Central African Republic	109,3
Chad	114,2
Chile	69,5
China	74,5
Colombia	57,5
Congo	128,5
Costa Rica	68,7
Côte d'Ivoire	108,1
Croatia	99,0
Cuba	88,5
Cyprus	100,1
Czech Republic	80,9
Democratic Republic of Congo	137,5
Djibouti	94,5
Dominican Republic	48,5
Ecuador	68,1
Egypt	45,6
El Salvador (*)	0,0

Place of employment	Weightings July 2004
Eritrea	39,0
Estonia	75,2
Ethiopia	68,1
Fiji	70,3
Former Yugoslav Republic of Macedonia	73,5
Gabon	112,8
Gambia	36,8
Georgia	88,2
Ghana	67,2
Guatemala	71,6
Guinea	76,6
Guinea-Bissau	137,0
Guyana	57,3
Haiti	101,4
Honduras (*)	0,0
Hong Kong	84,2
Hungary	74,4
India	47,6
Indonesia	74,7
Israel	88,5
Jamaica	82,7
Japan (Naka)	125,6
Japan (Tokyo)	133,9
Jordan	73,2
Kazakhstan	96,1
Kenya	72,5
Kyrgyzstan (*)	0,0
Laos	67,4
Latvia	72,4
Lebanon	88,9
Lesotho	72,6
Liberia (*)	0,0
Lithuania	73,7
Madagascar	56,8
Malawi	72,4
Malaysia	71,4
Mali	89,0
Malta	97,5
Mauritania	58,2
Mauritius	73,2
Mexico	71,1

Place of employment	Weightings July 2004
Morocco	82,7
Mozambique	75,5
Namibia	83,4
Nepal	65,3
New Caledonia	119,8
New Zealand (*)	0,0
Nicaragua	64,7
Niger	87,6
Nigeria	69,0
Norway	125,1
Pakistan	50,1
Papua New Guinea	76,5
Paraguay	62,8
Peru	78,8
Philippines	47,2
Poland	69,2
Romania	49,8
Russia	102,5
Rwanda	77,6
Saudi Arabia	86,0
Senegal	78,7
Serbia and Montenegro	61,8
Sierra Leone	70,4
Singapore	93,6
Slovakia	84,9
Slovenia	82,3
Solomon Islands	80,8
Somalia (*)	0,0
South Africa	69,2
South Korea	90,2
Sri Lanka	53,6
Sudan	38,6
Suriname	53,1
Swaziland	70,0
Switzerland	117,3
Syria	64,3
Taiwan	86,1
Tajikistan (*)	0,0
Tanzania	57,9
Thailand	57,9
Togo	96,9

Place of employment	Weightings July 2004
Trinidad and Tobago	69,3
Tunisia	73,8
Turkey	78,5
Uganda	71,9
Ukraine	92,0
United States (New York)	103,5
United States (Washington)	99,5
Uruguay	58,5
Vanuatu	114,7
Venezuela	63,1
Vietnam	51,0
West Bank/Gaza Strip	86,0
Yemen (*)	0,0
Zambia	47,1
Zimbabwe	51,9
(*) Not available.	

COUNCIL REGULATION (EC) No 258/2005**of 14 February 2005****amending the anti-dumping measures imposed by Regulation (EC) No 348/2000 on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the 'basic Regulation') and in particular Articles 11(3) and 11(7) thereof,

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

Whereas:

A. PROCEDURE**1. Previous investigation and existing measures**

- (1) The measures currently in force on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine are definitive anti-dumping duties imposed by Council Regulation (EC) No 348/2000⁽²⁾ and one undertaking accepted from an exporter in Croatia by Commission Decision 2000/137/EC⁽³⁾. The rate of duty applicable to imports from Croatia is 23 %, while the duty rate applicable to imports from Ukraine is 38,5 %.

2. Initiation

- (2) On 23 November 2002, the Commission announced by a notice of initiation published in the *Official Journal of the European Communities*⁽⁴⁾, the initiation of 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 Croatia and Ukraine and commenced an investigation.
- (3) The investigation was initiated at the request lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union on behalf of producers representing more than 75 % of the total Community production.
- (4) It is to be noted that on the same date, 23 November 2002, another review was initiated concerning the measures in force on imports of the same product, i.e. certain seamless pipes and tubes of iron or non-alloy steel, originating in Poland, Russia, the Czech Republic, Romania and the Slovak Republic⁽⁵⁾. The measures against Poland, the Czech Republic and the Slovak Republic have lapsed as a result of the enlargement of the European Union on 1 May 2004. Further to Regulation (EC) No 1322/2004⁽⁶⁾, the existing measures on imports of certain seamless pipes and tubes originating in Russia and Romania are temporarily not applied as from 21 July 2004. The review on these measures is still ongoing.

⁽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 45, 17.2.2000, p. 1. Regulation as amended by Regulation (EC) No 1515/2002 (OJ L 228, 24.8.2002, p. 8).

⁽³⁾ OJ L 46, 18.2.2000, p. 34. Decision as amended by Decision 2002/669/EC (OJ L 228, 24.8.2002, p. 20.)

⁽⁴⁾ OJ C 288, 23.11.2002, p. 11.

⁽⁵⁾ OJ C 288, 23.11.2002, p. 2.

⁽⁶⁾ OJ L 246, 20.7.2004, p. 10.

3. Parties concerned by the proceeding

- (5) The Commission officially advised the exporting producers in Croatia and Ukraine, the producers, importers, suppliers and users in the Community known to be concerned and the authorities of Croatia and Ukraine of the opening of the investigation. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (6) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from five Community producers, one importer, one exporting producer in Croatia, three exporting producers in Ukraine and three traders related to the Ukrainian producers.
- (7) The Commission sought and verified all the information deemed necessary for a determination of dumping and resulting injury and carried out verifications at the premises of the following companies:
 - (a) Community producers:
 - Dalmine Spa, Italy,
 - Productos Tubulares SA, Spain,
 - Tubos Reunidos SA, Spain,
 - Vallourec & Mannesmann, Germany,
 - Vallourec & Mannesmann, France;
 - (b) Unrelated importers in the Community:
 - Comercial de Tubos SA, Spain;
 - (c) Exporting producer in Croatia:
 - Mechel Željezara Ltd, Sisak;
 - (d) Exporting producers in Ukraine:
 - CJSC Nikopolsky seamless tubes plant Nikotube, Nikopol,
 - Dnipropetrovsk Tube Works (DTW), Dnipropetrovsk,
 - OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP), Dnipropetrovsk;
 - (e) Related traders in Ukraine:
 - Time Ltd, Dnipropetrovsk,
 - SGIP Interpipe, Dnipropetrovsk;
 - (f) Related trader in Switzerland:
 - SEPCO, Lugano.

4. Investigation period

- (8) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period (the period considered).

5. Product concerned and like product

5.1. *Product concerned*

- (9) The products under review are:
- (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 non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm, originating in Croatia and Ukraine (the product concerned), falling within CN codes ex 7304 10 10, ex 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93.
- (10) The investigation has shown that all these categories were sufficiently similar for them to constitute a single product, as in the original investigation. Therefore, and for the purpose of the present anti-dumping investigation, all types of the product concerned are regarded as one product.

5.2. *Like product*

- (11) As in the previous investigation, no differences were found between the product concerned and the seamless pipes and tubes produced and sold on the domestic market in Croatia.
- (12) Likewise, no differences were found between the product concerned and the seamless pipes and tubes produced by the Community producers and sold on the Community market. They both share the same physical and chemical characteristics and uses. Furthermore, they both conform to industry standards such as DIN, API or ASTM. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

1. Croatia

1.1. *Cooperation*

- (13) As concerns Croatia, one exporting producer, Mechel Željezara Ltd, accounted for all exports of the product concerned to the Community. Mechel Željezara Ltd is the new name of the company which cooperated with the original investigation under the name Željezara Sisak d.d., but which had officially changed its name twice since the imposition of the existing measures, due to subsequent changes in ownership⁽¹⁾.
- (14) During the original investigation, an undertaking had been accepted from Mechel Željezara Ltd under its original name⁽²⁾. As the investigation was initiated to review the level and form of the measures, the undertaking was also subject to this review investigation (see recitals 135 to 137).

⁽¹⁾ Notice 246/02 (OJ C 246, 12.10.2002, p. 2) and Notice 68/06 (OJ C 68, 18.3.2004, p. 8).

⁽²⁾ Commission Decision 2000/137/EC (OJ L 46, 18.2.2000, p. 34).

1.2. *Normal value*

- (15) It was first established whether Mechel Željezara Ltd's total domestic sales of the like product were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative since the total domestic sales volume represented at least 5 % of its total export sales volume to the Community.
- (16) Subsequently, by defining the product types in accordance with the CN codes under which the product is classified, it was examined whether the domestic sales of each product type were representative. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community. It was found that all product types sold by the company for export to the Community had representative domestic sales.
- (17) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of a product type, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the unit cost, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not. This was the case for two product types.
- (18) In the case where the volume of profitable sales of a product type represented 80 % or less but at least 10 % of the total sales volume of that type, or where the weighted average price of such sales was below the unit cost, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of those types only. This was the case for one product type.
- (19) For the fourth product type, less than 10 % of the domestic sales volume was profitable during the IP. It was therefore considered that this particular product type was sold in insufficient quantities for the domestic prices to provide an appropriate basis for the establishment of the normal value and another method had to be applied. In this case, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing cost of the exported type, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

1.3. *Export price*

- (20) The investigation showed that the export sales of Mechel Željezara Ltd were solely made directly to unrelated customers in the Community.
- (21) Therefore, the export price was established on the basis of export prices actually paid or payable for the product concerned when sold to the first independent customer in the Community, in accordance with Article 2(8) of the basic Regulation.

1.4. *Comparison*

- (22) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

- (23) Accordingly, allowances claimed for differences in transport costs, handling, loading and ancillary costs, credit costs and commissions were granted where applicable and supported by verified evidence.

1.5. *Dumping margin*

- (24) In accordance with Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type was compared with the adjusted weighted average export price of each corresponding type of the product concerned.
- (25) This comparison showed the existence of dumping. The dumping margin expressed as a percentage to the cif Community frontier price, duty unpaid, is as follows:

Mechel Željezara Ltd.	38,9 %.
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- (26) This dumping margin is below the dumping margin found during the original investigation. Since the level of cooperation was high (all exports of the product concerned from Croatia to the Community), the residual dumping margin was set at the same level as the one established for Mechel Željezara Ltd, namely 38,9 %.

2. **Ukraine**

2.1. *Market economy treatment (MET)*

- (27) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in Ukraine, normal value is to be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which can show that they meet the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevail in respect of the manufacture and sale of the like product.
- (28) Briefly, and for ease of reference only, the criteria for MET are set out in summarised form below:
1. business decisions and costs are made in response to market signals, and without significant State interference;
 2. firms have one clear set of accounting records which are independently audited in line with international accounting standards (IAS) and are applied for all purposes;
 3. there are no significant distortions carried over from former non-market economy system;
 4. legal certainty and stability is provided by bankruptcy and property laws;
 5. currency exchanges are carried out at market rate.
- (29) Claims for MET pursuant to Article 2(7)(b) of the basic Regulation were received from two groups of companies:
- (a) the producing company Dnipropetrovsk Tube Works (DTW) and its related trader in Ukraine, Time Ltd.;
 - (b) the related producing companies OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP) and CJSC Nikopolsky seamless tubes plant 'Nikotube' and their related trader in Ukraine, SGIP Interpipe.

- (30) The claims were analysed on the basis of the five criteria set out in Article 2(7)(c) of the basic Regulation.
- (31) In the case of the first group, the accounts of the producing company were found to be unreliable due to material inaccuracies and to the misapplication of accounting policies referred to in IAS 1. It was also found that the same company was in an insolvent situation and belonged to a category of companies which, by bankruptcy law provision, enjoyed a special status which denied legal certainty for the operation of such companies. It was therefore determined that this group of companies did not meet the second and fourth criteria of Article 2(7)(c) of the basic Regulation.
- (32) In the case of the second group, it was found that neither producing company had one clear set of basic accounting records which were independently audited in line with international accounting standards and which were applied for all purposes as both companies had several sets of basic accounting records used for different purposes. Additionally, significant distortions carried over from the former non-market economy system in the form of interest free loans not pursued by the State, debt forgiveness of considerable amounts and tax indebtedness were found to affect the cost structure and the financial situation of the group. It was therefore determined that this group of companies did not meet the second and third criteria of Article 2(7)(c) of the basic Regulation.
- (33) As a company or a group of companies has to fulfil all of the five criteria of Article 2(7)(c) of the basic Regulation in order to have Market Economy Treatment granted to them and this not being the case, both groups of companies were refused MET.
- (34) Both groups of companies argued that the Commission had made a determination regarding its application for MET beyond the three month period mentioned under Article 2(7)(c) of the basic Regulation, and that this determination was therefore not valid. In this respect it is noted that the Commission granted several extensions to the deadline to the Ukrainian exporting producers concerned which had major difficulties in filling in the MET claim forms within the deadline set in the notice of initiation. It is also noted that the MET claims received were deficient and required a number of substantial clarifications and additional information which delayed the investigation. Finally, the complexity of a number of issues such as the companies' structures and sales channels as well as the serious problems with regard to the companies' accounts prolonged the analysis. In view of this, it was not possible to make a determination regarding the MET claims received within three months from the initiation.
- (35) In this respect it is noted that the non-respect of such deadline does not entail any apparent legal consequences as companies have equally been granted the opportunity to comment. Furthermore, it is noted that the abovementioned groups of companies did not claim any negative impact due to the longer period needed for the MET determination.
- (36) Given the above, it is concluded that a valid determination with regard to MET can be made even after the three month period and the claims of the groups of companies concerned were therefore rejected.
- (37) The Commission findings were further contested by both groups of companies; however, no arguments were brought forward to alter the MET determination.
- (38) The Community industry was given the opportunity to comment and did not oppose the above findings.

2.2. Individual treatment

- (39) Pursuant to Article 9(5) of the basic Regulation, a country-wide duty, if any, is established for countries falling under Article 2(7)(a) of the basic Regulation, except in those cases where companies are able to demonstrate that their export prices and quantities as well as the conditions and the terms of sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.
- (40) The same Ukrainian exporting producers, which did not fulfil the MET criteria, alternatively requested individual treatment (IT) in accordance with Article 9(5) of the basic Regulation. The Commission consequently sought and verified all information deemed necessary for the purposes of determining whether the two groups of companies qualified for IT. It was found that the conditions as set in Article 9(5) of the basic Regulation were fulfilled by both groups of companies and it was therefore considered justified to grant IT to both groups of companies.

2.3. Analogue country

- (41) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that were not granted MET has to be established on the basis of the prices or constructed value in an appropriate analogue country for products comparable to those exported by the Ukrainian exporting producers to the Community.
- (42) Croatia was the analogue country used in the original investigation. In the notice of initiation, Croatia was again envisaged as the analogue country for the purpose of establishing normal value for Ukraine. As none of the interested parties objected to this choice, it was decided to use Croatia as an analogue country in the framework also of this investigation.

2.4. Normal value

- (43) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for Ukraine was established on the basis of verified information received from the sole producer in the analogue country, i.e. on the basis of all prices paid or payable on the domestic market of Croatia for comparable product types or constructed value in Croatia for comparable product types. In determining normal value for Ukraine, the same methodology as that described at recitals 15 to 19 was applied.
- (44) It was established that for the product type corresponding to CN code 7304 31 99 (cold-drawn or cold-rolled tubes), there was no domestic production in Croatia. Overall, these exports accounted for only 6,2 % of the Ukrainian exports of the product concerned to the Community. However, in the case of one group of companies, during the IP the exported quantity to the Community of this product type represented around 40 % of its total exports of the product concerned to the Community.
- (45) On the basis of data available, it was concluded that the other product types subject to the investigation were not comparable to this product type and that constructing normal value for this particular product type on the basis of normal value for the other product types would not lead to a reliable figure. It also appeared, because of a more complex manufacturing process, that normal value of this product type would be considerably higher than normal value of the other product types. Although export prices of cold-drawn or cold-rolled tubes were on average higher than export prices of the other product types, inclusion of this product type in the calculations would, in all likelihood, lead to a higher dumping margin. Insofar as mentioned in recital 127, the injury margin is significantly lower than the dumping margin found without including this product type, and therefore will serve as a basis for establishing the level of the measures. In view of this, it was not considered necessary to pursue this matter further. The product type corresponding to CN code 7304 31 99 was therefore excluded from the calculations.

2.5. *Export price*

- (46) Both groups of companies in Ukraine made all their export sales to the Community via a related trading company located in a third country. The export price was, therefore, in accordance with Article 2(9) of the basic Regulation, constructed on the basis of the related trading companies' resale prices to the first independent customers in the Community.

2.6. *Comparison*

- (47) For the purpose of a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation in respect of transport, insurance, handling, loading and ancillary costs and commissions. The adjustments in the export price in respect of inland transport in the exporting country, insurance, loading and ancillary costs were made on the basis of costs established in the analogue country.

- (48) The comparison between normal value and export price was made on an ex-works basis.

2.7. *Dumping margin*

- (49) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type, taken from the analogue country producer Mechel Željezara Ltd, was compared with the companies' adjusted weighted average export price of each corresponding product type of the product concerned.
- (50) This comparison showed the existence of dumping. The dumping margins expressed as a percentage to the cif Community frontier price, duty unpaid, are as follows:

Dnipropetrovsk Tube Works, Dnipropetrovsk	91,0 %
OJSC Nizhnedneprovsky Tube Rolling Plant, Dnipropetrovsk and CJSC Nikopolsky seamless tubes plant 'Nikotube', Nikopol	97,3 %.

- (51) Since the level of cooperation was high (more than 80 % of the exports of the product concerned from Ukraine to the Community), the residual margin was set at the same level as the one established for the cooperating exporting producers OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP) and CJSC Nikopolsky seamless tubes plant 'Nikotube', namely 97,3 %.

C. INJURY

1. **Preliminary remark**

- (52) As in the case of dumping, the investigation sought to establish whether the circumstances with regard to the situation of the Community industry had changed to such an extent that would warrant a conclusion different to that established during the original investigation.

2. **Community production**

- (53) During the original investigation, the Community industry was composed of 10 producers.
- (54) In the course of the present review investigation it was found that seamless pipes and tubes were manufactured by
- six complainant Community producers, of which five fully cooperated with the Commission during the investigation, whereas the sixth, Pietra, Italy, supported the proceeding, but did not provide a detailed questionnaire reply,
 - six other producers, which neither supported the Community industry nor cooperated with the Commission.

- (55) A questionnaire was sent to these other producers but no cooperation was obtained. No further producers of the product concerned made themselves known to the European Commission.

3. Definition of the Community industry

- (56) The production of the five Community producers that fully cooperated in the investigation was 797 456 tonnes during the investigation period. This represents over 70 % of total Community production and these companies therefore constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

4. Community consumption

- (57) Eurostat information, related to volumes and values for CN codes ex 7304 10 10, ex 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93 was used as the source of the import data. Community industry data were obtained from the verified questionnaire responses of the five cooperating Community producers.
- (58) The apparent Community consumption, i.e. sales by the Community industry on the Community market and sales of other Community producers in the Community, as well as imports from all third countries, shows that consumption of the product concerned in the Community increased from 1 104 619 tonnes in 1999, to a peak of 1 233 357 tonnes in 2001. Consumption decreased to 1 103 805 tonnes during the IP, which is slightly less than the consumption in 1999.

	1999	2000	2001	IP
Community consumption (tonnes)	1 104 619	1 130 410	1 233 357	1 103 805
Index 1999 = 100	100	102	112	100

5. Imports into the Community from the countries concerned

5.1. Cumulative assessment of the effects of the imports concerned

- (59) It was first examined whether imports from Croatia and Ukraine should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.
- (60) The evolution of imports from the countries concerned, in volume and market share, has been the following:

Import volumes (tonnes)	1999	2000	2001	IP
Ukraine	103 477	22 996	37 353	37 683
Index 1999 = 100	100	22	36	36
Croatia	30 072	24 646	23 893	23 001
Index 1999 = 100	100	82	79	76
Countries concerned Total	133 549	47 642	61 246	60 684
Index 1999 = 100	100	36	46	45

Market shares of the imports	1999	2000	2001	IP
Ukraine	9,4 %	2,0 %	3,0 %	3,4 %
Croatia	2,7 %	2,2 %	1,9 %	2,1 %
Countries concerned Total	12,1 %	4,2 %	5,0 %	5,5 %
Imports from other countries	24,1 %	27,5 %	31,2 %	29,9 %

- (61) It was found that the dumping margins established (recitals 25 and 50) in relation to the imports from each of the countries concerned were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation. Additionally, despite the measures in force, the volumes of imports from each of these countries were not negligible during the investigation period, as market shares for these countries were 2,1 % for Croatia and 3,4 % for Ukraine. The shares of all imports ranged from 5,9 % for Croatia to 9,6 % for Ukraine in the IP.
- (62) The cumulative assessment was found to be appropriate in view of the conditions of competition both between imports originating in these countries, and between these imports and the like Community product. This is evidenced by the fact that, again despite the measures in force, prices from both countries have continued to significantly undercut the prices of the Community industry during the IP and that seamless pipes and tubes from both countries are sold through similar sales channels. Moreover, the investigation has shown that the imports from both countries concerned share the same physical and chemical characteristics, as the like product. Finally, the imports of both countries concerned and the like product follow the same price trends (see recitals 67 and 74).
- (63) One Croatian exporter claimed that no injury is caused by the Croatian imports since Croatian market share is minimal and therefore no cumulative assessment should take place. As stated above, the Croatian imports were clearly above *de minimis* and not negligible during the IP. While it is true that there was a considerable drop of imports originating in Ukraine at the beginning of the period considered, it should be noted that subsequently imports from both countries followed a broadly similar trend.
- (64) For these reasons, it is concluded that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports originating in Croatia and Ukraine should be assessed cumulatively.

5.2. Market share of imports concerned

- (65) As shown above, following the introduction of measures in 2000, the market share of imports from the countries concerned decreased significantly from 12,1 % in 1999 to 4,2 % in 2000 and then started to increase continuously up to 5,5 % in the IP.

5.3. Prices of imports and undercutting

- (66) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the exporting producers in the countries concerned. This comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to ex-works prices, and the prices of the imports were cif Community frontier, import duty paid, anti-dumping duty unpaid, with adjustments made for the level of trade and handling costs, based on information collected during the investigation, notably from cooperating unrelated importers.
- (67) The comparison showed that during the IP, imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, as follows: Ukraine 34,1 % and Croatia: 23,3 %. Even if the anti-dumping duties are taken into account, undercutting is still significant with 10 % for imports from Ukraine and 6,5 % for imports from Croatia. It has to be noted that average prices of the imports increased from 2000 up to the IP as shown below, which is in line with the overall price developments on the EU market. However, as shown in recital 74, prices of imports from the countries concerned did not increase as much as the prices of the Community industry.

Prices of imports, duty unpaid (Eur/tonne)	1999	2000	2001	IP
Ukraine	332	341	433	449
Index 1999 = 100	100	103	130	135
Croatia	461	465	516	523
Index 1999 = 100	100	101	112	113
Ukraine and Croatia Average	361	405	466	477
Index 1999 = 100	100	112	129	132

6. Situation of the Community industry

- (68) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1999 (base year) to the IP.
- (69) The Community industry data below represent the aggregated information of the five cooperating Community producers.

6.1. Production, production capacity and capacity utilisation

- (70) The evolution of production, production capacity and capacity utilisation is as follows:

	1999	2000	2001	IP
Production (tonnes)	710 029	911 669	928 231	797 456
Index 1999 = 100	100	128	131	112
Production capacity (tonnes)	1 117 881	1 183 067	1 140 304	1 094 548
Index 1999 = 100	100	106	102	98
Capacity utilisation	63,5 %	77,1 %	81,4 %	72,9 %
Index 1999 = 100	100	121	128	115

- (71) As shown in the table above, production during the period 1999 to 2001 increased to a peak in 2001 and then decreased significantly during the IP. Although export sales increased and compensated to some extent for the decrease of sales in the Community, the reduction in the production and the decrease in the production capacity during the IP could not be avoided.

6.2. Stocks

- (72) The figures below represent the volume of stocks at the end of each period.

	1999	2000	2001	IP
Stocks (tonnes)	38 753	49 620	49 062	59 287
Index 1999 = 100	100	128	127	153

- (73) Stocks have increased during the period considered. It is to be noted that the Community industry generally produces the product concerned to order. Consequently, the level of stocks held by the Community industry is found not to be a very significant indicator in the assessment of the situation of the Community industry. However, it was found that the increase in stocks is also a consequence of the decreasing sales and market share of the Community industry.

6.3. Sales volume, market shares, growth and average unit prices in the Community

- (74) The figures below represent the Community industry's sales to independent customers in the Community.

	1999	2000	2001	IP
Sales volume (tonnes)	516 529	573 136	576 850	504 317
Index (1999=100)	100	111	112	98
Market share	46,8 %	50,7 %	46,8 %	45,7 %
Index (1999=100)	100	108	100	98
Average sales prices (EUR/tonne)	576	589	659	696
Index (1999=100)	100	102	114	121

- (75) The Community industry's sales volumes increased by 12 % from 1999 to 2001 and then dropped down significantly during the IP to a level even below that in 1999. The development in sales volumes should be seen in the light of the level of consumption during the same period, which increased by 12 % from 1999 to 2001 and then decreased during the IP. However, the demand did not decrease as much as the sales volume between 2001 and the IP.
- (76) Following the introduction of measures in 2000, the Community industry was able to regain lost market share. Between 1999 and 2000, the market share of the Community industry increased from 46,8 % to 50,7 % of Community consumption. However, following this period of relative strength, the market share of the Community industry decreased again. Between 2000 and the IP, its share of Community consumption decreased to 45,7 % as dumped imports started again to penetrate the Community market.
- (77) Facing increasing imports as from 2000 on and decreasing Community sales from 2001 on, the Community industry could not increase the production of the product concerned. Rather were they forced to reduce production capacity and work force in the IP, as increasing exports of the Community industry could not compensate the loss of sales on the Community market.
- (78) The Community industry's average sales prices increased in the period considered. However, the higher prices could not generate sufficient profitability, as described in detail below.

6.4. Profitability

- (79) The profit concept used below is profit before taxes, which represents the profit generated by sales of the product concerned on the Community market.

	1999	2000	2001	IP
Profitability on EC Sales	- 7,8 %	0,1 %	0,3 %	- 0,1 %

- (80) Following the imposition of anti-dumping measures against imports of seamless pipes and tubes originating in Croatia and Ukraine, the Community industry could, as seen above, increase the prices to reach around break-even in 2000 and 2001. However, the Community industry could not reach the level of profit which it could be expected to achieve in the absence of dumped imports (i.e. 5 %) as set out in the Regulation imposing the measures currently in force. Moreover, the level of profit decreased during the IP below break-even. The reason for this decrease despite the higher sales prices were increasing raw material and labour costs per unit, which went up despite the reduction of employees during that time. The Community industry was not able to pass on those costs to its customers as would have been necessary due to the competition caused by the low priced dumped imports.

- (81) Following a slightly positive trend in 2000 and 2001, the financial situation of the Community industry started to deteriorate again during the IP, coinciding with increases of dumped imports from Croatia and Ukraine. The profit level reached in 2001 was just above break-even, and was far from the level that would allow financing sufficiently reinvestment.

6.5. Return on investments, cash flow, investments and ability to raise capital

- (82) The trends for the Return on Investments, the Cash flow and the Investments are shown in the following table.

	1999	2000	2001	IP
Return on investments	- 13 %	0 %	1 %	0 %
Index 1999 = 100	100	202	204	198
Cash flow	- 13 978 142	5 273 981	5 910 373	4 959 440
Index 1999=100	100	238	242	235
Investments	19 320 730	32 691 925	33 056 929	21 087 534
Index 1999=100	100	169	171	109

- (83) It is noted that the above figures for Return on Investments reflect to a large extent those on profitability. The Return on Investments increased from 1999 to 2000 but decreased again up to the IP. The Cash Flow shows approximately the same trend as the profitability, namely a peak in 2001 and then a decrease again. Insofar as the product concerned accounts for less than 1 % of total turnover of the Community producers and the Community producers also use their production lines for the manufacturing of a variety of other steel products, it is considered that these figures are not meaningful in themselves. However, they are illustrative, in that two of the cooperating Community producers which produced the product concerned to a much higher extent than other Community producers show trends similar to the ones indicated in the table above regarding Return on Investments, Cash Flow and Investments.
- (84) Following the imposition of anti-dumping measures in 2000, the Community industry made some investments. However, these investments were found to be in the majority aimed at the replacement of machinery. In the IP, investments decreased significantly compared to the preceding two years.
- (85) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was nevertheless not seriously affected during the period considered as the product concerned accounts for less than 1 % of total turnover of the Community producers and the Community producers also use their production lines for the manufacture of a variety of other steel products.

6.6. Employment, productivity and wages

	1999	2000	2001	IP
Number of employees	2 583	2 776	2 622	2 472
Index 1999=100	100	107	102	96
Productivity (tonne/employee)	275	328	354	323
Index 1999 = 100	100	119	129	117
Wages Index 1999=100	100	104	106	105

- (86) As seen above, the Community industry increased its productivity and the number of employees in 2000 and 2001 as production increased during that period. However, in the IP, the number of employees was reduced significantly to a level below that in 1999. Productivity also decreased following the substantial decrease in production.

- (87) Wages were relatively stable during the period considered, and merely moved in line with inflation.

6.7. Recovery from past dumping

- (88) Following the introduction of measures in 2000, the Community industry was able to regain lost market share and reach a more sustainable level in its average sale prices. Nevertheless, from 2001 on, the Community industry's financial performance started to deteriorate again. Therefore, it can be concluded that the Community has not recovered from past dumping.

6.8. Magnitude of the actual margin of dumping

- (89) The dumping margins are specified in the dumping part (recitals 25 and 50). These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

6.9. Conclusion on injury

- (90) It is recalled that, following the imposition of anti-dumping measures against imports of the product concerned from Croatia and Ukraine, the Community industry immediately gained confidence. Average prices of its Community sales increased by 14 % between 1999 and 2001 and sales volumes in the Community as well as production increased in the same period. In consequence, the industry could make some necessary investments at that time and employed more work force.
- (91) However, the situation started to deteriorate substantially in the IP. Sales in the Community decreased by 12 % from 2001 to the IP and the Community industry had to adjust significantly by reducing production, production capacity and employment. The market share of the Community industry decreased further from 2001 to the IP to a level below that in 1999. The declining trend in the IP is also confirmed by the reduced capacity utilisation, the stagnating development of the wages and the increased level of stocks leaving the industry in a situation similar to that in 1999 when measures had not yet been imposed against imports from the countries concerned.
- (92) The same trend is shown by the development of investments, return on investments and cash flow. The minor improvement in 2000 and 2001, which was far from being very satisfying as the return on investments reached only 1 % and the negative cash flow which had just turned towards positive, is followed by a deterioration in the IP. The fact that the ability of the companies to raise capital was not seriously affected is due to those companies being part of larger corporate groups and, accordingly, cannot be considered as a viable indicator for the sector of the product concerned.
- (93) In regard to the Community industry's financial situation, it improved from a loss-making situation in 1999, but only to reach a more or less break-even situation in 2000 and 2001 and fell back into a loss-making situation again in the IP.
- (94) As can be seen above, the indicators improved initially after 1999 when measures were imposed but all of them with the exception of the sales prices deteriorated again in the IP showing a clear injurious picture.

- (95) The continuous increase in selling prices which occurred during the whole period considered, could not lead to a satisfying profit situation as it was completely absorbed by rising production costs, notably raw material costs and labour costs per unit. Moreover, the Community industry was not able to pass on these cost increases to the customer as much as would have been necessary because low priced dumped imports penetrated the market. In consequence, the profit situation of the Community industry deteriorated and fell below break-even in the IP.
- (96) In view of the above, it is concluded that the Community industry has still suffered material injury during the IP within the meaning of Article 3 of the basic Regulation.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES AND LIKELIHOOD OF CONTINUATION OF DUMPING AND INJURY

- (97) The original measures were to expire on 18 February 2005. In accordance with Article 11(7) of the basic Regulation, it was therefore examined whether the expiry of the existing measures would be likely to lead to a continuation of dumping and injury. In accordance with Article 11(3) of the basic Regulation, it was also analysed whether the circumstances with regard to dumping and injury have changed significantly, and if this change could reasonably be said to be of a lasting nature.
- (98) It was found that the product concerned was still dumped on the Community market during the IP (recitals 25 and 50). In this regard, the dumping margins for the product concerned originating in each of the countries subject to the proceeding were close to the dumping margins found in the original investigation. Moreover, there are still huge production capacities in the countries concerned, which were not used during the IP. It was also noted that there were still significant quantities of imports from Croatia and Ukraine sold on the Community market and that their market share has continuously increased since 2000. This demonstrates a clear interest by Croatian and Ukrainian exporters in the EU market. Given all of the above, it is considered that there is no reason to doubt that the level of dumping found is of a lasting nature and a continuation of dumping is highly likely if the original measures were allowed to expire.
- (99) Despite the fact that the Community industry recovered to a certain extent from past dumping of imports originating in, *inter alia*, Croatia and Ukraine, it was also found that the Community industry still suffered material injury within the meaning of Article 3 of the basic Regulation. The injury margins found in the investigation have increased as compared to the original investigation because the dumped imports continued to substantially undercut the Community industry's prices and this despite the fact that costs have risen worldwide. Considering the effects of the dumped imports on profitability (recital 79) and market share of the Community industry (recital 74), which were again decreasing from 2001 to the IP, it is concluded that the circumstances leading to injury are of a lasting nature and that the expiry of the original measures would be likely to lead to the continuation of injury.

E. CAUSATION

- (100) It was also examined whether the causal link between the dumped imports from Croatia and Ukraine and the injury suffered by the Community industry, which has been established in the previous investigation is still present in this investigation. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

- (101) Despite the measures in force, which first led to a reduction of imports in 2000, the exporting producers from Croatia and Ukraine subsequently increased their market share in the Community from 4,2 % up to 5,5 % during the period considered. Even with decreasing consumption from 2001 to the IP, they saw an increase of their market share. At the same time, from 2000 to the IP, the Community industry lost market share. It had to reduce production substantially in the IP and suffered from declining profitability. The increasing imports from the countries concerned, which significantly undercut Community industry's prices and the deteriorating situation of the Community industry coincide in time. Therefore, those imports could have continued to contribute to the injury suffered by the Community industry.
- (102) Imports originating in other third countries, such as the Czech Republic, Poland and the Slovak Republic, which were during the investigation period not yet members of the Community, as well as imports from Romania or Russia could also have contributed to the injury suffered by the Community industry.
- (103) It has to be noted that anti-dumping duties ranging from 9,8 % to 38,2 % and undertakings were in force for imports from the abovementioned five countries during the whole period considered. There is a review currently ongoing on the measures in force on imports from Russia and Romania (recital 4).
- (104) Imports from Russia accounted for a market share of 3,3 % during the investigation period. The average import prices of these imports inclusive of anti-dumping duties were around 20 % lower than the prices of the imports from Croatia and Ukraine. Given the level of prices of imports from Russia, these imports seem to have contributed to the injury. However, having regard to the size of the market share, which is lower than that of the countries concerned, Russian imports cannot have been the only cause for the injury suffered by the Community industry. Imports from Romania accounted for a market share of 3,5 % in the IP. Import prices from Romania, inclusive of anti-dumping duties are higher than the prices of the imports from Croatia and Ukraine, but still lower than the Community industry's prices. From this, it can be concluded that they could also have contributed to injury suffered by the Community industry. However, it is considered that any possible effect of imports from Russia and Romania would not be such as to alter the finding that there is a genuine and substantial causal link between the dumped imports of seamless pipes and tubes from Croatia and Ukraine and the material injury suffered by the Community industry.
- (105) Prices for imports from the former accession countries Poland, the Czech Republic and Slovakia were, inclusive of anti-dumping duties, also at a significantly higher level than those from Croatia and Ukraine, but still lower than the Community industry's prices. Their market share altogether in the IP was 14,2 %. Although those imports could also have contributed to the injury, it can be concluded from their price level that their contribution could have been only a minor one.
- (106) Having regard to the fact that imports from Croatia and Ukraine undercut substantially the Community industry prices, there is no indication that the abovementioned imports, which in the majority undercut the Community prices to a lesser extent, could break the causal link between the dumped imports from Croatia and Ukraine and the material injury suffered by the Community industry.
- (107) Imports from several other third countries altogether accounted for 8,9 % market share in the IP. With regard to their high level of prices which are in the majority sufficiently above the Community industry prices, there is no indication that those imports could break the causal link between the dumped imports from Croatia and Ukraine and the material injury suffered by the Community industry.
- (108) Other Community producers, which did not cooperate in the investigation were facing the same problems as regards the increasing raw material costs forcing them to raise prices as much as possible. No indication has been found that those competitors could have caused the injury suffered by the Community industry.

- (109) There is a decreasing consumption in the Community as from 2001 on. However, Community sales decreased to a higher percentage than the consumption and Community industry lost market share while the countries concerned increased their market share on the Community market in that period. Therefore, it is concluded that this factor could not break the causal link between the dumped imports from Croatia and Ukraine and the material injury suffered by the Community industry. No other factors have been found in the course of the investigation that could have caused injury.
- (110) Based on the above analysis of the effects of all known factors on the situation of the Community industry, it is concluded that the causal link between the dumped imports from Croatia and Ukraine and the material injury to the Community industry, which has been established in the previous investigation, has not been broken.

F. COMMUNITY INTEREST

1. General considerations

- (111) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to maintain the anti-dumping duties against imports from the countries concerned. The Commission sent questionnaires to importers and industrial users. A complete questionnaire reply was received from one importer, Comercial de Tubos, SA, Spain.
- (112) From the user industry, no questionnaire replies were received. No supplier has made itself known during the investigation. On the basis of the information received from the cooperating parties, the following conclusions are reached.
- (113) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

2. Interest of the Community industry

- (114) It is recalled that the Community industry consisted of five producers which employ approximately 2 470 staff for the production and sales of seamless pipes and tubes. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results during the investigation period. Despite the growing consumption of seamless pipes and tubes in the Community in 2000 and 2001, which was, however, again declining in the IP, the Community industry could not gain financial stability.
- (115) Indeed, the industry recovered partially in 2000 to 2001. However, given the prevailing financial situation for the Community industry, it is clear that anti-dumping measures would be in the interest of the Community industry.

3. Interest of unrelated importers

- (116) The cooperating importer did not generally oppose the continued imposition of anti-dumping measures. No other comments from importers, which imported the product concerned from Croatia or Ukraine, were received.
- (117) The purpose of the anti-dumping measures is to restore fair trade. It is neither to prohibit imports nor to hamper the activities of the importers in the Community. In fact, any measures to be proposed are to be set at a level which will enable the continuation of imports also in future, but at prices that are non-dumped or non-injurious, whichever is the lower.

- (118) As fairly-priced imports will still be allowed to enter into the Community market, it is likely that the traditional business of the importers will continue even if anti-dumping measures against dumped imports are imposed.

4. Interest of suppliers

- (119) No supplier made himself known during the investigation. Therefore, it is concluded that no compelling reason exists that measures should not be imposed as regards the suppliers' interests.

5. Interest of users

- (120) In the previous investigation, it was concluded that any price effect resulting from anti-dumping measures would not be significant with respect to downstream industrial users. This was based on the fact that seamless pipes and tubes represented only a small element in the overall costs of the user industries (including the chemical and petrochemical industries, power stations, the automobile and construction industries). Given that no representations have been made contradicting the previous findings and in view of the lack of cooperation of users in the present investigation, it is expected that any price effect resulting from anti-dumping measures would be negligible with respect to downstream industrial users.

6. Competition aspects

- (121) It should be noted that in Commission Decision 2003/382/EC⁽¹⁾, it was found that some Community producers were involved in an anti-competitive agreement on parts of the product concerned until 1995. Accordingly, neither the original investigation with an IP from 1 November 1997 until 31 October 1998 (and with a period considered from January 1997 until the end of the IP), nor the current review investigation were affected by any anti-competitive practices.

7. Conclusion on Community interest

- (122) The maintenance of measures against imports of seamless pipes and tubes originating in the countries concerned would clearly be in the interest of the Community industry. As regards both the importers/traders and the user industries, any impact on prices of seamless tubes is expected only to be marginal.
- (123) In view of the above, it is concluded that there are no compelling reasons not to impose anti-dumping duties against imports of seamless pipes and tubes originating in the countries concerned.

G. ANTI-DUMPING MEASURES

1. Injury elimination level

- (124) In view of the conclusions reached with regard to dumping, injury and Community interest, measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (125) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 5 % of turnover. It is the same as in the original proceeding since there was no indication found and no intervention made that this rate should be changed. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the abovementioned profit margin of 5 % to the cost of production.

⁽¹⁾ OJ L 140, 6.6.2003, p. 1.

- (126) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value.

2. Amended measures

- (127) In the light of the foregoing, it is considered that the anti-dumping duties in force against imports of the product concerned originating in Croatia and Ukraine should be amended. The new anti-dumping duties should be set at a level reflecting the injury margins found, as the dumping margins found for all companies in Croatia and Ukraine were higher than the injury margins calculated. Since the level of cooperation was high (more than 80 % of the exports of the product concerned from Ukraine to the Community), the residual margin for Ukraine should be set at the same level as that established for the cooperating exporting producers OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP) and CJSC Nikopolsky seamless tubes plant 'Nikotube'.
- (128) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (129) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (130) The proposed anti-dumping duties are the following:

Country	Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Croatia	All companies	38,8 %	38,9 %	38,8 %
Ukraine	Dnipropetrovsk Tube Works (DTW), Dnipropetrovsk	51,9 %	91,0 %	51,9 %
	OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP), Dnipropetrovsk and CJSC Nikopolsky seamless tubes plant 'Nikotube', Nikopol	64,1 %	97,3 %	64,1 %
	All other companies	64,1 %	97,3 %	64,1 %

⁽¹⁾ European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels

- (131) On the basis of the measures proposed, a new five-year period for the measures will start to run. The measures, therefore, will not expire on 18 February 2005 as stated in the notice of impending expiry published on 27 August 2004⁽¹⁾.

3. Developments after the IP concerning the Croatian exporter

- (132) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was concluded that the level of the anti-dumping measures should be amended, the Croatian government informed the Commission that the sole producer in Croatia, Mechel Željezara Ltd, has been liquidated and ceased production in autumn 2004. In its place, a new legal entity named Valjaonice Cijevi Sisak d.o.o (Valjaonice) was set up by the Croatian Privatisation Foundation (CPF), a governmental institution in charge of the privatisation process in Croatia. The newly established company appears not to have started production yet and is in the process of obtaining the assets from Mechel Željezara Ltd.
- (133) However, from the information submitted it appears that the production capacity of Valjaonice will remain unchanged compared to that of Mechel Željezara Ltd and that there is a clear intention by Valjaonice to continue the production of the product concerned. On this basis, the fact that the production has stopped cannot be considered as of a lasting and undisputed nature and does not, therefore, affect the findings of the investigation.
- (134) However, should there be changes in the situation of the company justifying a review of the measures, such a review will be initiated.

4. Undertakings

- (135) The Commission, by Decision 2000/137/EC, accepted a price undertaking, *inter alia*, from the sole Croatian exporting producer. This undertaking with regard to Mechel Željezara Ltd was also subject to the review.
- (136) Through the undertaking, Mechel Željezara Ltd undertook to sell to its independent customers up to a certain quantity of the product concerned for export to the Community at revised prices. In addition, Mechel Željezara Ltd undertook that its prices per product group would fall into line with the price structure in use in the Community.
- (137) In accordance with Article 8(1) of the basic Regulation, the aim of an undertaking is to eliminate the injurious effect of dumped imports, which is achieved through the exporter raising its prices or ceasing exports at dumped levels. The investigation has shown that the type of undertaking originally accepted in the present case failed to raise prices to non-injurious levels and thus restore fair trade on the Community market. Therefore, in this case, the undertaking accepted from Mechel Željezara Ltd is not considered as an appropriate and effective means of eliminating the injurious effect of dumping. As stated above, Mechel Željezara Ltd has been liquidated recently. Therefore, the undertaking is considered as being no longer valid.
- (138) Subsequent to the disclosure of the essential facts and considerations, on the basis of which it was concluded that the level of the existing anti-dumping margin should be amended, the Ukrainian companies OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP), CJSC Nikopolsky seamless tubes plant 'Nikotube' and their related trader/holding company 'Interpipe' offered a joint undertaking in accordance with Article 8(1) of the basic Regulation.

⁽¹⁾ OJ C 215, 27.8.2004, p. 2.

- (139) These Ukrainian companies are producers of different types of steel products which can be sold together with the product concerned. This raises a potential risk of cross-compensation, i.e. that any undertaking prices would be formally respected but that prices for products other than the one concerned would be lowered when sold together with the product concerned. In addition, in view of the volatility in prices, the minimum export prices that the company was prepared to offer were at levels which did not eliminate the injurious effects of dumping. Accordingly, this offer could not be accepted.
- (140) In addition, the Ukrainian company Dnipropetrovsk Tube Works (DTW), Dnipropetrovsk declared that it was offering an undertaking but without indicating either the nature or any minimum price to be respected. Therefore, the offer could not be taken into consideration.

H. FINAL PROVISION

- (141) Interested parties were informed of all the facts and considerations on the basis of which it was intended to propose an amendment to the Regulation in force. They were given the opportunity to comment and to request a hearing. Comments were received and taken into consideration where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 348/2000 is hereby amended as follows:

1. The table in Article 1(2) shall be replaced by the following:

Country	Company	Rate of duty (%)	TARIC additional code
Croatia	All companies	38,8	—
Ukraine	Dnipropetrovsk Tube Works (DTW), Dnipropetrovsk	51,9	A614
	OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP), Dnipropetrovsk and CJSC Nikopolsky seamless tubes plant "Nikotube", Nikopol	64,1	A615
	All other companies	64,1	A999'

2. Article 2 shall be deleted.

Article 2

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

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

Done at Brussels, 14 February 2005.

For the Council
The President
J. ASSELBORN

COMMISSION REGULATION (EC) No 259/2005**of 16 February 2005****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 17 February 2005.

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

Done at Brussels, 16 February 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽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 16 February 2005 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	132,3
	204	84,7
	212	189,0
	624	230,6
	628	104,0
	999	148,1
0707 00 05	052	167,2
	068	111,6
	204	68,5
	999	115,8
0709 10 00	220	39,4
	999	39,4
0709 90 70	052	194,3
	204	227,9
	999	211,1
0805 10 20	052	49,0
	204	48,3
	212	44,6
	220	34,7
	421	29,7
	448	35,8
	624	61,8
	999	43,4
0805 20 10	204	88,2
	624	73,4
	999	80,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	50,3
	204	93,6
	220	35,5
	400	79,0
	464	47,5
	624	67,2
	662	40,8
	999	59,1
0805 50 10	052	61,3
	999	61,3
0808 10 80	400	107,7
	404	105,1
	508	87,5
	528	87,5
	720	45,6
	999	86,7
0808 20 50	388	77,5
	400	90,3
	512	70,8
	528	74,3
	720	55,6
	999	73,7

⁽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 260/2005**of 16 February 2005****amending Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards rapid tests****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies⁽¹⁾, and in particular the first subparagraph of Article 23 thereof,

Whereas:

- (1) Regulation (EC) No 999/2001 sets out a list of rapid tests approved for TSE monitoring.
- (2) In its opinion of 16 November 2004, the European Food Safety Authority (EFSA) recommended the inclusion of seven new BSE rapid post mortem tests in the list of rapid tests approved for monitoring of bovine spongiform encephalopathy (BSE).
- (3) The rapid tests currently listed in Annex X to Regulation (EC) No 999/2001 have been approved for sheep based on data provided by the test manufacturers showing that their tests may also be used for monitoring of TSE in sheep.

- (4) The EFSA is currently evaluating rapid post mortem tests intended for small ruminants. A list of approved rapid tests for use in the surveillance programme for small ruminants is to be established on the basis of the opinion to be published. Accordingly, the currently approved rapid tests should be used for detecting TSE in small ruminants, until the publication of that opinion.
- (5) Regulation (EC) No 999/2001 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Annex X to Regulation (EC) No 999/2001 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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, 16 February 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 147, 31.5.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1993/2004 (OJ L 344, 20.11.2004, p. 12).

ANNEX

In Annex X, Chapter C, point 4 is replaced by the following:

‘4. Rapid tests

For the purposes of carrying out the rapid tests in accordance with Article 5(3) and Article 6(1), the following methods shall be used as rapid tests for the monitoring of BSE in bovine animals:

- immuno-blotting test based on a Western blotting procedure for the detection of the protease-resistant fragment PrP^{Res} (Prionics-Check Western test),
- chemiluminescent ELISA test involving an extraction procedure and an ELISA technique, using an enhanced chemiluminescent reagent (Enfer test & Enfer TSE Kit version 2.0, automated sample preparation),
- sandwich immunoassay for PrP^{Res} carried out following denaturation and concentration steps (Bio-Rad TeSeE test),
- microplate based immunoassay (ELISA) which detects protease resistant PrP^{Res} with monoclonal antibodies (Prionics-Check LIA test),
- automated conformation-dependent immunoassay comparing the reactivity of a detection antibody to the protease sensitive and protease resistant forms of PrP^{Sc} (some fraction of the protease resistant PrP^{Sc} is equivalent to PrP^{Res}) and to PrP^C (InPro CDI-5 test),
- chemiluminescent ELISA for qualitative determination of PrP^{Sc} (CediText BSE test),
- immunoassay using a chemical polymer for selective PrP^{Sc} capture and a monoclonal detection antibody directed against conserved regions of the PrP molecule (IDEXX HerdChek BSE Antigen Test Kit, EIA),
- microplate based chemiluminiscent immunoassay for the detection of PrP^{Sc} in bovine tissues (Institut Pourquier Speed'it BSE),
- lateral flow immunoassay using two different monoclonal antibodies to detect Proteinase K resistant PrP fractions (Prionics Check PrioSTRIP),
- two-sided immunoassay using two different monoclonal antibodies directed against two epitopes presented in a highly unfolded state of bovine PrP^{Sc} (Roboscreen Beta Prion BSE EIA Test Kit),
- sandwich ELISA for the detection of Proteinase K (PK) resistant PrP^{Sc} (Roche Applied Science PrionScreen).

For the purposes of carrying out the rapid tests in accordance with Article 5(3) and Article 6(1), the following methods shall be used as rapid tests for the monitoring of TSE in small ruminants:

- immuno-blotting test based on a Western blotting procedure for the detection of the protease-resistant fragment PrP^{Res} (Prionics-Check Western test),
- chemiluminescent ELISA test involving an extraction procedure and an ELISA technique, using an enhanced chemiluminescent reagent (Enfer test),
- sandwich immunoassay for PrP^{Res} carried out following denaturation and concentration steps (Bio-Rad TeSeE test, the former Bio-Rad Platelia test),
- microplate based immunoassay (ELISA) which detects protease resistant PrP^{Res} with monoclonal antibodies (Prionics-Check LIA test),

- automated conformation-dependent immunoassay comparing the reactivity of a detection antibody to the protease sensitive and protease resistant forms of PrP^{Sc} (some fraction of the protease resistant PrP^{Sc} is equivalent to PrP^{Res}) and to PrP^C (InPro CDI-5 test).

The producer of the rapid tests must have a quality assurance system in place agreed by the Community reference laboratory, which ensures that the test performance does not change. The producer must provide the test protocol to the Community reference laboratory.

Modifications to rapid tests or to test protocols may only be made following advance notification to the Community reference laboratory, and provided that the Community reference laboratory finds that the modification does not reduce the sensitivity, specificity or reliability of the rapid test. That finding shall be communicated to the Commission and to the national reference laboratories.'

COMMISSION REGULATION No 261/2005**of 16 February 2005****amending Regulation (EC) No 43/2003 laying down detailed rules for applying Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 as regards aid for the local production of crop products in the outermost regions of the European Union**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

grouped into two reports with deadlines of 30 June and 30 November each year.

Having regard to the Treaty establishing the European Community,

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for Cereals, Fresh Fruit and Vegetables, Products Processed from Fruit and Vegetables, Wine, Hops, Live Plants, and Sugar,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom)⁽¹⁾, and in particular Articles 5(2), 12(4), 13(4), 15(7), 18 and 22 thereof,

HAS ADOPTED THIS REGULATION:

Article 1

Article 68 of Regulation (EC) No 43/2003 is hereby replaced by the following:

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima)⁽²⁾, and in particular Articles 5(3), 6(5), 16(2), 19, 21(3), 27, 28(3), 30(5) and 34 thereof,

*'Article 68***Notifications**

1. The Member States concerned shall send the Commission each year:

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican)⁽³⁾, and in particular Articles 9(2), 10(5) and 20 thereof,

- (a) not later than 30 June, a report on the implementation of the measures referred to in this Regulation in the preceding marketing year showing in particular:

Whereas:

- (1) Article 68 of Commission Regulation (EC) No 43/2003 of 23 December 2002 laying down detailed rules for applying Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 as regards aid for the local production of crop products in the outermost regions of the European Union⁽⁴⁾, contains a list of the notifications that Member States must send to the Commission, together with the timetable.
- (2) With a view to simplifying administration, the number of deadlines by which the authorities of the Member States concerned are required to submit their reports to the Commission should be reduced. In the light of experience, the information to be provided should be

— the areas covered by applications for aid under Title I for the current marketing year for which the aid has actually been paid,

— the quantities of green vanilla and essential oils of geranium and vetiver qualifying for the aid referred to in Chapter II of Title II,

— for the aid referred to in Chapter III of Title II, for each department:

— the total quantities of cane, expressed in tonnes, covered by aid applications,

— the total amount of the aid and the variation in the unit amounts,

— any changes to the criteria for granting the aid and any additional national measures recently adopted;

— the quantities of raw materials qualifying for the aid referred to in Chapter I of Title III, broken down by product as set out in part A of Annex I, and the quantities, expressed in net weight, of finished products, broken down in accordance with part B of Annex I,

⁽¹⁾ OJ L 198, 21.7.2001, p. 11. Regulation as last amended by Regulation (EC) No 1690/2004 (OJ L 305, 1.10.2004, p. 1).

⁽²⁾ OJ L 198, 21.7.2001, p. 26. Regulation as last amended by Regulation (EC) No 1690/2004.

⁽³⁾ OJ L 198, 21.7.2001, p. 45. Regulation as last amended by Regulation (EC) No 1690/2004.

⁽⁴⁾ OJ L 7, 11.1.2003, p. 25. Regulation as last amended by Regulation (EC) No 1137/2004 (OJ L 221, 22.6.2004, p. 3).

- in the case of France and Portugal, for the aid referred to in Section I of Chapter II of Title III:
 - the total quantities of sugar syrup, sucrose syrup and agricultural rum covered by aid applications, expressed as white sugar or hectolitres of pure alcohol,
 - the factories and distilleries in receipt of aid,
 - the aid received and the quantity of sugar syrup, sucrose syrup or agricultural rum produced by each factory or distillery;
- the quantities qualifying for the aid and increased aid referred to in Chapter I of Title IV, broken down by product set out Annex II, III, IV and V,
- the quantities qualifying for the aid referred to in Chapter II of Title IV, broken down by product, and their average value within the meaning of Article 46(4),
- the quantities, broken down by category or product, covered by contracts for the current marketing year as referred to in Chapter II of Title IV,
- the progress made in converting and restructuring areas planted with prohibited direct hybrid vine varieties in the Azores and Madeira;

(b) not later than 30 November, a report showing:

- the quantities of pineapples harvested for which the aid referred to in Chapter I of Title II has been paid,
- the minimum prices referred to in Chapter I of Title III, set in accordance with Article 13 of Regulation (EC) No 1452/2001 for each category of products set out in Annex I,
- for the aid referred to in Section II of Chapter II of Title III:
 - the areas and overall amount for which the flat-rate aid per hectare has been requested and paid,
 - the quantities of white sugar produced and the overall amount of the special processing aid paid.

2. The Member States shall inform the Commission immediately of cases which they recognise as *force majeure* or exceptional circumstances justifying continued entitlement to the aid.'

Article 2

Entry into force and application

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

It shall apply from 1 January 2005.

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

Done at Brussels, 16 February 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 262/2005**of 16 February 2005****fixing the export refunds on olive oil**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries.
- (2) The detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽²⁾.
- (3) Article 3(3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community.
- (4) In accordance with Article 3(4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market. However, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period. The amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate,

to take account of export costs for the products on the world market.

- (5) In accordance with Article 3(3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender. The tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations.
- (6) The second indent of Article 3(3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The refund must be fixed at least once every month. It may, if necessary, be altered in the intervening period.
- (8) It follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(2)(c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 February 2005.

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

Done at Brussels, 16 February 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 72, 30.9.1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 865/2004 (OJ L 161, 30.4.2004, p. 97).

⁽²⁾ OJ L 78, 31.3.1972, p. 1. Regulation as last amended by Regulation (EEC) No 2962/77 (OJ L 348, 30.12.1977, p. 53).

ANNEX

to the Commission Regulation of 16 February 2005 fixing the export refunds on olive oil

Product code	Destination	Unit of measurement	Amount of refund
1509 10 90 9100	A00	EUR/100 kg	0,00
1509 10 90 9900	A00	EUR/100 kg	0,00
1509 90 00 9100	A00	EUR/100 kg	0,00
1509 90 00 9900	A00	EUR/100 kg	0,00
1510 00 90 9100	A00	EUR/100 kg	0,00
1510 00 90 9900	A00	EUR/100 kg	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 263/2005**of 16 February 2005****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs⁽¹⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat⁽²⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin⁽³⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95⁽⁴⁾, fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

(3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 17 February 2005.

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

Done at Brussels, 16 February 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 49. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 806/2003.

⁽³⁾ OJ L 282, 1.11.1975, p. 104. Regulation as last amended by Commission Regulation (EC) No 2916/95 (OJ L 305, 19.12.1995, p. 49).

⁽⁴⁾ OJ L 145, 29.6.1995, p. 47. Regulation as last amended by Regulation (EC) No 2129/2004 (OJ L 368, 15.12.2004, p. 7).

ANNEX

to the Commission Regulation of 16 February 2005 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 90	Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as “65 % chickens”, or otherwise presented, frozen	81,1	11	01
		72,4	15	03
0207 14 10	Boneless cuts of fowl of the species Gallus domesticus, frozen	146,3	57	01
		130,0	66	02
		175,0	43	03
		251,2	15	04
0207 14 70	Other cuts of chicken, frozen	131,0	58	01
0207 25 10	Turkeys, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as “80 %” turkeys, frozen	86,7	26	01
0207 27 10	Boneless cuts of turkey, frozen	208,9	26	01
		240,0	17	04
1602 32 11	Preparations of uncooked fowl of the species Gallus domesticus	151,2	49	01
		193,7	28	03

⁽¹⁾ Origin of imports:

- 01 Brazil
- 02 Thailand
- 03 Argentina
- 04 Chile.

COMMISSION REGULATION (EC) No 264/2005**of 16 February 2005****fixing the export refunds on poultrymeat applicable from 17 February 2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat⁽¹⁾, and in particular the third subparagraph of Article 8(3) thereof,

Whereas:

- (1) Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) It follows from applying these rules and criteria to the present situation on the market in poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time.
- (3) Article 21 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down detailed rules for the application of the system of export refunds on agricultural products⁽²⁾ stipulates that no refund is granted if the products are not of sound and fair marketable quality on the date on which the export declaration is accepted. In order to ensure uniform application of the

rules in force, it should be stated that, in order to qualify for the refund, the poultrymeat listed in Article 1 of Regulation (EEC) No 2777/75 must bear the health mark as laid down in Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat⁽³⁾.

- (4) The Management Committee for Poultrymeat and Eggs has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The codes of products for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted and the amount of that refund shall be as shown in the Annex hereto.

However, in order to qualify for the refund, products falling within the scope of Chapter XII of the Annex to Directive 71/118/EEC must also satisfy the health marking conditions laid down in that Directive.

Article 2

This Regulation shall enter into force on 17 February 2005.

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

Done at Brussels, 16 February 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 671/2004 (OJ L 105, 14.4.2004, p. 5).

⁽³⁾ OJ L 55, 8.3.1971, p. 23. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

ANNEX

Export refunds on poultrymeat applicable from 17 February 2005

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	0,80
0105 11 19 9000	A02	EUR/100 pcs	0,80
0105 11 91 9000	A02	EUR/100 pcs	0,80
0105 11 99 9000	A02	EUR/100 pcs	0,80
0105 12 00 9000	A02	EUR/100 pcs	1,70
0105 19 20 9000	A02	EUR/100 pcs	1,70
0207 12 10 9900	V01	EUR/100 kg	41,00
0207 12 10 9900	A24	EUR/100 kg	41,00
0207 12 90 9190	V01	EUR/100 kg	41,00
0207 12 90 9190	A24	EUR/100 kg	41,00
0207 12 90 9990	V01	EUR/100 kg	41,00
0207 12 90 9990	A24	EUR/100 kg	41,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are defined as follows:

V01 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

COMMISSION DIRECTIVE 2005/11/EC**of 16 February 2005****amending, for the purposes of its adaptation to technical progress, Council Directive 92/23/EEC relating to tyres for motor vehicles and their trailers and to their fitting****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers⁽¹⁾, and in particular Article 13(2) thereof,

Having regard to Council Directive 92/23/EEC of 31 March 1992 relating to tyres for motor vehicles and their trailers and to their fitting⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Directive 92/23/EEC is one of the separate Directives of the EC type-approval procedure established by Directive 70/156/EEC.
- (2) Directive 92/23/EEC as amended by Directive 2001/43/EC provides the possibility for type-approval authorities to accept tyre manufacturers' laboratories as approved test laboratories until 31 December 2005. The experience with this provision has been very positive and therefore the possibility should be continued and that deadline should be removed.
- (3) Technical progress in the tyre-producing sector is very fast. Due to strong demand from consumers and the car industry, the production cycles of tyres become faster and the variety of tyre types is constantly increasing. This situation is expected to become even more critical in the future since very expensive or unique test installations and expertise will be required. In order to be able to bring the newly developed products on to the market without delay, a sufficient number of test facilities, which can be used in a flexible manner, is indispensable.

(4) In line with the development of superior tyres due to technical progress, the related test procedures need to be more and more sophisticated. There is currently no test capacity outside that of tyre manufacturers that would be able to cope with the high number of tests needed.

(5) Directive 92/23/EEC should therefore be amended accordingly.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee for Adaptation to Technical Progress established by Article 13(1) of Directive 70/156/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Point 1.3 of Annex I to Directive 92/23/EEC is replaced by the following:

'1.3. The approval authority may accept the laboratories of the tyre manufacturers as approved test laboratories pursuant to Article 14(1) of Directive 70/156/EEC.'

Article 2

1. Member States shall adopt and publish, by 31 December 2005 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2006.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

⁽¹⁾ OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2004/104/EC (OJ L 337, 13.11.2004, p. 13).

⁽²⁾ OJ L 129, 14.5.1992, p. 95. Directive as last amended by Directive 2001/43/EC of the European Parliament and of the Council (OJ L 211, 4.8.2001, p. 25).

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 16 February 2005.

For the Commission

Günter VERHEUGEN

Vice-President

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 February 2005

repealing Commission Decision 2000/137/EC accepting undertakings offered in connection with imports into the Community of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine

(2005/132/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

measure, in accordance with Article 11(3) of the basic Regulation⁽⁴⁾.

Having regard to the Treaty establishing the European Community,

B. WITHDRAWAL OF THE ACCEPTANCE OF AN UNDERTAKING

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the 'basic Regulation')⁽¹⁾ and in particular Article 8 thereof,

(3) The Council, by Regulation (EC) No 258/2005⁽²⁾, concluded the review.

After consulting the Advisory Committee,

(4) As set out in recital (137) of Regulation (EC) No 258/2005, and after having consulted all interested parties concerned, the undertaking in its current form is not appropriate anymore. On this basis, and also in accordance with the relevant clauses of the undertaking in question, which authorises the Commission to withdraw the acceptance of the undertaking unilaterally, the Commission has concluded to withdraw the acceptance of the undertaking.

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 348/2000⁽²⁾, the Council imposed definitive anti-dumping duties on imports into the Community of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine. By Decision 2000/137/EC⁽³⁾, the Commission accepted undertakings offered by exporters originating in Croatia and Ukraine. By Decision 2002/669/EC, the Commission accepted the voluntary withdrawal of the joint undertaking of the Ukrainian producers.

(5) The Commission informed the Croatian company Mechel Željezara Ltd. in December 2004 that it proposed to withdraw the acceptance of the current undertaking. Subsequent to the disclosure, the Croatian government informed the Commission that the company, being the sole producer of the product concerned in Croatia, has been liquidated and ceased production in autumn 2004. Therefore, in addition, the undertaking is considered as being no longer valid.

(2) Further to a request lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union, the Commission initiated an interim review of the anti-dumping measures in force, including the form of the

C. REPEAL OF DECISION 2000/137/EC

(6) In view of the above, Commission Decision 2000/137/EC, as amended by Commission Decision 2002/669/EC, should be repealed.

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

⁽²⁾ OJ L 45, 17.2.2000, p. 1. Regulation as amended by Regulation (EC) No 1515/2002 (OJ L 228, 24.8.2002, p. 8).

⁽³⁾ OJ L 46, 18.2.2000, p. 34. Decision as amended by Decision 2002/669/EC (OJ L 228, 24.8.2002, p. 20).

⁽⁴⁾ OJ C 288, 23.11.2002, p. 11.

⁽⁵⁾ See page 7 of this Official Journal.

- (7) In parallel to this Decision, the Council, by Regulation (EC) No 258/2005 has imposed a definitive country-wide anti-dumping duty on imports into the Community of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia,

HAS DECIDED AS FOLLOWS:

Article 1

Commission Decision 2000/137/EC, as amended by Commission Decision 2002/669/EC, is hereby repealed.

Article 2

This Decision shall take effect on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 16 February 2005.

For the Commission

Peter MANDELSON

Member of the Commission

COMMISSION DECISION**of 16 February 2005****partially suspending the definitive anti-dumping duties imposed by Regulation (EC) No 258/2005 on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine**

(2005/133/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

- (1) Following a review investigation carried out in accordance with Article 11(3) of the basic Regulation ('review investigation'), the Council, by Regulation (EC) No 258/2005⁽²⁾ ('the definitive Regulation'), imposed an anti-dumping duty of 38,8 % on imports of certain seamless pipes and tubes of iron or non-alloy steel ('SST') originating in Croatia and an anti-dumping duty of 64,1 % for imports of SST originating in Ukraine with the exception of imports from Dnipropetrovsk Tube Works ('DTW') which is subject to an anti-dumping duty of 51,9 % ('the existing measures'). The definitive Regulation amended definitive anti-dumping duties imposed by Regulation (EC) No 348/2000⁽³⁾, as last amended by Regulation (EC) No 1515/2002⁽⁴⁾ and repealed the possibility of exemption from the duties as provided for in Article 2 of Regulation (EC) No 348/2000 ('original measures').

B. MEASURES IN FORCE ON IMPORTS OF SST FROM ROMANIA AND RUSSIA

- (2) By Regulation (EC) No 2320/97, anti-dumping duties were imposed on imports of SST originating, *inter alia*, in Romania and Russia⁽⁵⁾. By Decisions 97/790/EC⁽⁶⁾ and 2000/70/EC⁽⁷⁾, undertakings were accepted from exporters in, *inter alia*, Romania and Russia. By Regulation (EC) No 1322/2004⁽⁸⁾, it was decided to no longer apply the measures in force on imports of SST originating in Romania and Russia ('the non-applied measures') as a matter of prudence due to an anti-competitive behaviour of certain Community producers⁽⁹⁾.

⁽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⁾ See page 7 of this Official Journal.

⁽³⁾ OJ L 45, 17.2.2000, p. 1.

⁽⁴⁾ OJ L 228, 24.8.2002, p. 8.

⁽⁵⁾ 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).

⁽⁶⁾ OJ L 322, 25.11.1997, p. 63.

⁽⁷⁾ OJ L 23, 28.1.2000, p. 78.

⁽⁸⁾ OJ L 246, 20.7.2004, p. 10.

⁽⁹⁾ See recital (9) of Regulation (EC) No 1322/2004.

C. EXAMINATION OF GROUNDS FOR SUSPENSION OF THE EXISTING MEASURES

- (3) Article 14(4) of the basic Regulation provides that, in the Community interest, anti-dumping measures may be suspended on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such a suspension. Article 14(4) further specifies that the anti-dumping measures concerned may be reinstated at any time if the reason for suspension is no longer applicable.
- (4) The definitive Regulation takes account mainly of the situation between October 2001 and September 2002, i.e. the investigation period of that review investigation ('review investigation period'). The review investigation leading to the definitive Regulation showed that imports from Ukraine and Croatia had, during the review investigation period, a significant market position. They were still dumped and the injury margin had increased as compared to the original investigation. On this basis, the review concluded that the original measures which were at a level of 23 % for Croatia and 38,5 % for Ukraine should be increased to reach their current level of 38,8 % for Croatia and 51,9 % and 64,1 % depending on the exporting producer concerned, for imports from Ukraine.
- (5) An examination of recent import flows reveals that in particular since the non-application of the measures on imports of SST from Russia and Romania, the situation on the Community market with respect to imports has changed, notably in that cumulated import flows from the aforesaid countries have increased, whereas at the same time cumulated imports from Croatia and Ukraine have significantly decreased to very low levels.
- (6) As long as the current market conditions prevail, Russian and Romanian imports are likely to maintain their strong presence and it would be unlikely that Ukrainian and/or Croatian imports would increase significantly. Therefore, it is considered that, in this specific situation, it is unlikely that injury to the Community industry would resume if the increase of the duty rates as provided for by the definitive Regulation would be suspended. Consequently, and because of the special circumstances regarding, *inter alia*, the non-application of the measures on imports from Russia and Romania, it is considered that the duty levels of 23 % and 38,5 % established in the original investigation for Croatia and Ukraine respectively would be sufficient to eliminate injurious dumping.
- (7) The Commission also notes that the current temporary change in market conditions does not warrant a complete suspension of measures applicable against Croatia and Ukraine. Information collected in the review investigation concluded by the definitive Regulation demonstrates that Ukrainian and Croatian producers continue to have a considerable export potential so that they could easily increase exports to the Community market to an injurious level. Thus, a full suspension of measures against imports from Croatia and Ukraine could also lead to similar import trends from these two countries as are currently experienced with regard to imports from Russia and Romania and would, therefore, in all likelihood lead to injury of the Community industry.
- (8) For the above reasons, it is concluded that the requirements permitting a partial suspension of the definitive Regulation, pursuant to Article 14(4) of the basic Regulation are met. Indeed, it is not in the interest of the Community to apply the increased duty levels provided for by the definitive Regulation as long as the duty levels set out in Regulation (EC) No 348/2000, as last amended by Regulation (EC) No 1515/2002 are sufficient. Accordingly, the application of the duty rates foreseen in the definitive Regulation should be partially suspended to the extent of the difference between the rates set in Article 1 of the definitive Regulation and those set in Article 1(2) of Regulation (EC) No 348/2000.
- (9) Should the situation which led to the suspension change subsequently, the Commission may reinstate the anti-dumping measures by repealing the partial suspension of the anti-dumping duties forthwith.

D. CONSULTATION OF THE COMMUNITY INDUSTRY

- (10) In accordance with the provisions of Article 14(4) of the basic Regulation the Commission informed the Community industry of its intention to partially suspend the anti-dumping measures and provided it with an opportunity to comment. The Community industry did not raise any objection.

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping duty imposed by Regulation (EC) No 258/2005 on imports of

- 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 (falling within CN codes 7304 10 10 and 7304 10 30);
- seamless pipes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled (falling within CN code 7304 31 99);
- other tubes of circular cross-section, of iron or non-alloy steel, of an external diameter not exceeding 406,4 mm (falling within CN codes 7304 39 91 and 7304 39 93)

is hereby partially suspended as follows for a period of nine months:

Country	Company	Rate of duty foreseen in Regu- lation (EC) No 258/2005 %	Rate of duty which is suspended %	Rate of duty which is not suspended %	TARIC additional code
Croatia	All companies	38,8	15,8	23	—
Ukraine	Dnipropetrovsk Tube Works (DTW), Dnipropetrovsk	51,9	13,4	38,5	A614
	OJSC Nizhnedneprovsky Tube Rolling Plant (NTRP), Dnipropetrovsk, and CJSC Nikopolsky seamless tubes plant 'Nikotube', Nikopol	64,1	25,6	38,5	A615
	All other companies	64,1	25,6	38,5	A999

Article 2

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

Done at Brussels, 16 February 2005.

For the Commission
Peter MANDELSON
Member of the Commission

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

COUNCIL DECISION 2005/134/CFSP

of 20 December 2004

concerning the conclusion of the Agreement between the European Union and the Republic of Bulgaria establishing a framework for the participation of the Republic of Bulgaria in the European Union crisis management operations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

(1) Conditions regarding the participation of third states in the EU crisis management operations should be laid down in an Agreement establishing a framework for such possible future participation, rather than defining these conditions on a case-by-case basis for each operation concerned.

(2) Following authorisation by the Council on 23 February 2004, the Presidency, assisted by the Secretary-General/High Representative, negotiated an Agreement between the European Union and the Republic of Bulgaria establishing a framework for the participation of the Republic of Bulgaria in the European Union crisis management operations.

(3) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union and the Republic of Bulgaria establishing a framework for the participation of the

Republic of Bulgaria in the European Union crisis management operations is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

Article 3

This Decision shall take effect on the day of its adoption.

Article 4

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

Done at Brussels, 20 December 2004.

For the Council

The President

P. VAN GEEL

AGREEMENT**between the European Union and the Republic of Bulgaria establishing a framework for the participation of the Republic of Bulgaria in the EU crisis management operations**

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF BULGARIA,

of the other part,

hereinafter referred to as the 'Parties',

Whereas:

- (1) The European Union may decide to take action in the field of crisis management.
- (2) The European Union will decide whether third states will be invited to participate in an EU crisis management operation. The Republic of Bulgaria may accept the invitation by the European Union and offer its contribution. In such case, the European Union will decide on the acceptance of the proposed contribution of the Republic of Bulgaria.
- (3) If the European Union decides to undertake a military crisis management operation with recourse to NATO assets and capabilities, the Republic of Bulgaria may express its intention in principle of taking part in the operation.
- (4) The European Council at Brussels on 24 and 25 October 2002 has agreed modalities for implementation of the provisions agreed by the Nice European Council on 7 to 9 December 2000 on the involvement of the non-EU European NATO members in EU-led crisis management.
- (5) Conditions regarding the participation of the Republic of Bulgaria in EU crisis management operations should be laid down in an Agreement establishing a framework for such possible future participation, rather than defining these conditions on a case-by-case basis for each operation concerned.
- (6) Such an Agreement should be without prejudice to the decision-making autonomy of the European Union, and should not prejudice the case-by-case nature of the decisions of the Republic of Bulgaria to participate in an EU crisis management operation.
- (7) Such an Agreement should only address future EU crisis management operations and should be without prejudice to possible existing agreements regulating the participation of the Republic of Bulgaria in an already deployed EU crisis management operation.

HAVE AGREED AS FOLLOWS:

SECTION I**GENERAL PROVISIONS***Article 1***Decisions relating to the participation**

1. Following the decision of the European Union to invite the Republic of Bulgaria to participate in an EU crisis management operation, and once the Republic of Bulgaria has decided to participate, the Republic of Bulgaria shall provide information on its proposed contribution to the European Union.
2. Where the European Union has decided to undertake a military crisis management operation with recourse to NATO assets and capabilities, the Republic of Bulgaria will inform the European Union of any intention to participate in the operation, and subsequently provide information on any proposed contribution.

3. The assessment by the European Union of the Republic of Bulgaria's contribution shall be conducted in consultation with the Republic of Bulgaria.

4. The European Union will provide the Republic of Bulgaria with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting the Republic of Bulgaria in the formulation of its offer.

5. The European Union shall communicate the outcome of the assessment to the Republic of Bulgaria by letter with a view to securing the participation of the Republic of Bulgaria in accordance with the provisions of this Agreement.

Article 2

Framework

1. The Republic of Bulgaria shall associate itself with the Joint Action by which the Council of the European Union decides that the EU will conduct the crisis management operation, and with any Joint Action or Decision by which the Council of the European Union decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of the Republic of Bulgaria to an EU crisis management operation is without prejudice to the decision-making autonomy of the European Union.

Article 3

Status of personnel and forces

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by the Republic of Bulgaria shall be governed by the agreement on the status of forces/mission, if available, concluded between the European Union and the State(s) in which the operation is conducted.

2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation takes place shall be governed by arrangements between the headquarters and command elements concerned and the Republic of Bulgaria.

3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, the Republic of Bulgaria shall exercise jurisdiction over its personnel participating in the EU crisis management operation.

4. The Republic of Bulgaria shall be responsible for answering any claims linked to participation in an EU crisis management operation from or concerning any of its

personnel. The Republic of Bulgaria shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel.

5. The Republic of Bulgaria undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which the Republic of Bulgaria participates, and to do so when signing this Agreement. A model for such a declaration is annexed to this Agreement.

6. The European Union undertakes to ensure that Member States make a declaration as regards the waiver of claims, for any future participation of the Republic of Bulgaria in an EU crisis management operation, and to do so when signing this Agreement. A model for such a declaration is annexed to this Agreement.

Article 4

Classified information

1. The Republic of Bulgaria shall take appropriate measures to ensure that EU classified information is protected in accordance with the European Union Council's security regulations, and in accordance with further guidance issued by competent authorities, including the EU Operation Commander concerning an EU military crisis management operation or by the EU Head of Mission concerning an EU civilian crisis management operation.

2. Where the EU and the Republic of Bulgaria have concluded an agreement on security procedures for the exchange of classified information, the provisions of such an agreement shall apply in the context of an EU crisis management operation.

SECTION II

PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. The Republic of Bulgaria shall ensure that its personnel seconded to an EU civilian crisis management operation undertake their mission in conformity with:

— the Joint Action and subsequent amendments as referred to in Article 2(1) of this Agreement;

— the Operation Plan;

— implementing measures.

2. The Republic of Bulgaria shall inform in due time the EU civilian crisis management operation Head of Mission and the General-Secretariat of the Council of the European Union of any change to its contribution to the EU civilian crisis management operation.

3. Personnel seconded to the EU civilian crisis management operation shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the Republic of Bulgaria. Personnel seconded to the EU civilian crisis management operation shall produce a copy of this certification.

Article 6

Chain of command

1. Personnel seconded by the Republic of Bulgaria shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind.

2. All personnel shall remain under the full command of their national authorities.

3. National authorities shall transfer operational control to the EU civilian crisis management operation Head of Mission, who shall exercise that command through a hierarchical structure of command and control.

4. The Head of Mission shall lead the EU civilian crisis management operation and assume its day-to-day management.

5. The Republic of Bulgaria shall have the same rights and obligations in terms of day-to-day management of the operation as EU Member States taking part in the operation, in accordance with the legal instruments referred to in Article 2(1) of this Agreement.

6. The EU civilian crisis management operation Head of Mission shall be responsible for disciplinary control over EU civilian crisis management operation personnel. Where required, disciplinary action shall be taken by the national authority concerned.

7. A National Contingent Point of Contact (NPC) shall be appointed by the Republic of Bulgaria to represent its national contingent in the operation. The NPC shall report to the EU civilian crisis management operation Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

8. The decision to end the operation shall be taken by the European Union, following consultation with the Republic of

Bulgaria, provided that the Republic of Bulgaria is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

Article 7

Financial aspects

1. The Republic of Bulgaria shall assume all the costs associated with its participation in the operation apart from the costs, which are subject to common funding, as set out in the operational budget of the operation. This shall be without prejudice to Article 8.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Bulgaria shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status of mission, if available, as referred to in Article 3(1) of this Agreement.

Article 8

Contribution to operational budget

1. The Republic of Bulgaria shall contribute to the financing of the operational budget of the EU civilian crisis management operation.

2. The financial contribution of the Republic of Bulgaria to the operational budget shall be the lower amount of the following two alternatives:

(a) that share of the reference amount which is in proportion to the ratio of its gross national income (GNI) to the total of the GNIs of all States contributing to the operational budget of the operation; or

(b) that share of the reference amount for the operational budget which is in proportion to the ratio of the number of its personnel participating in the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraphs 1 and 2, the Republic of Bulgaria shall not make any contribution towards the financing of *per diem* allowances paid to personnel of the European Union Member States.

4. Notwithstanding paragraph 1, the European Union shall, in principle, exempt third States from financial contributions to a particular EU civilian crisis management operation when:

(a) the European Union decides that the third State participating in the operation provides a significant contribution which is essential for this operation; or

(b) the third State participating in the operation has a GNI per capita which does not exceed that of any Member State of the European Union.

5. An arrangement on the practical modalities of the payment shall be signed between the EU civilian crisis management operation Head of Mission and the relevant administrative services of the Republic of Bulgaria on the contributions of the Republic of Bulgaria to the operational budget of the EU civilian crisis management operation. This arrangement shall, *inter alia*, include the following provisions:

(a) the amount concerned;

(b) the arrangements for payment of the financial contribution;

(c) the auditing procedure.

SECTION III

PROVISIONS ON PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in the EU military crisis management operation

1. The Republic of Bulgaria shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in conformity with:

— the Joint Action and subsequent amendments as referred to in Article 2(1) of this Agreement;

— the Operation Plan;

— implementing measures.

2. Personnel seconded by the Republic of Bulgaria shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

3. The Republic of Bulgaria shall inform the EU Operation Commander in due time of any change to its participation in the operation.

Article 10

Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander. The EU Operation Commander is entitled to delegate his authority.

3. The Republic of Bulgaria shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

4. The EU Operation Commander may, following consultations with the Republic of Bulgaria, at any time request the withdrawal of the Republic of Bulgaria's contribution.

5. A Senior Military Representative (SMR) shall be appointed by the Republic of Bulgaria to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day-to-day contingent discipline.

Article 11

Financial aspects

1. Without prejudice to Article 12, the Republic of Bulgaria shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1) of this Agreement, as well as in Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications⁽¹⁾.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Bulgaria shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on the status of forces, if available, as referred to in Article 3(1) of this Agreement.

Article 12

Contribution to the common costs

1. The Republic of Bulgaria shall contribute to the financing of the common costs of the EU military crisis management operation.

⁽¹⁾ OJ L 63, 28.2.2004, p. 68.

2. The financial contribution of the Republic of Bulgaria to the common costs shall be the lower amount of the following two alternatives:

- (a) that share of the reference amount for the common costs which is in proportion to the ratio of its GNI to the total of the GNIs of all States contributing to the common costs of the operation; or
- (b) that share of the reference amount for the common costs which is in proportion to the ratio of the number of its personnel participating in the operation to the total number of personnel of all States participating in the operation.

In calculating 2(b), where the Republic of Bulgaria contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of its personnel to that of the total number of the respective headquarters personnel. Otherwise, the ratio shall be that of all personnel contributed by the Republic of Bulgaria to that of the total personnel of the operation.

3. Notwithstanding paragraph 1, the European Union shall, in principle, exempt third States from financial contributions to the common costs of a particular EU military crisis management operation when:

- (a) the European Union decides that the third State participating in the operation provides a significant contribution to assets and/or capabilities which are essential for this operation; or
- (b) the third State participating in the operation has a GNI per capita which does not exceed that of any Member State of the European Union.

4. An arrangement shall be concluded between the Administrator provided for in Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications, and the competent administrative authorities of the Republic of Bulgaria. This arrangement shall include inter alia provisions on:

- (a) the amount concerned;
- (b) the arrangements for payment of the financial contribution;
- (c) the auditing procedure.

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to the provisions of Articles 8(5) and 12(4), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the Secretary-General of the Council of the European Union, High Representative for the Common Foreign and Security Policy, and the appropriate authorities of the Republic of Bulgaria.

Article 14

Non compliance

Should one of the Parties fail to comply with its obligations laid down in the previous Articles, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

Article 15

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 16

Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement may be amended on the basis of mutual written agreement between the Parties.

4. This Agreement may be denounced by one Party by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party.

Done at Brussels and Sofia, on 24 January 2005, in the English language in four copies.

For the European Union



For the Republic of Bulgaria



ANNEX

TEXT FOR DECLARATIONS**Declaration by the European Union Member States:**

The European Union Member States applying an EU Joint Action on an EU crisis management operation in which the Republic of Bulgaria participates will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Republic of Bulgaria for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel from the Republic of Bulgaria in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
- arose from the use of any assets owned by the Republic of Bulgaria, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel from the Republic of Bulgaria using those assets.

Declaration by the Republic of Bulgaria:

The Republic of Bulgaria applying an EU Joint Action on an EU crisis management operation will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
 - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.
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