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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1890/2005**of 14 November 2005**

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel fasteners and parts thereof originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam and terminating the proceeding on imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines

THE COUNCIL OF THE EUROPEAN UNION,

B. SUBSEQUENT PROCEDURE

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 771/2005 ⁽²⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the People's Republic of China (PRC), Indonesia, Taiwan, Thailand and Vietnam.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (IP). The examination of trends relevant for the injury analysis covered the period from 1 January 2001 to 30 June 2004 (period considered).

(3) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

(4) Those parties who so requested were granted an opportunity to be heard by the Commission.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

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

(7) The oral and written comments were considered and, where deemed appropriate, taken into account in the definitive findings.

(8) Following the imposition of provisional measures, one importer and its association questioned the representativeness of the Community industry, as set out under recital 113 of the provisional Regulation, within the meaning of Article 5(4) of the basic Regulation. However, no evidence was produced to substantiate this claim. The investigation has confirmed that the Community industry accounted for approximately 54 % of the Community production during the IP and has standing within the meaning of Article 5(4) of the basic Regulation.

⁽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 128, 21.5.2005, p. 19.

- (9) The cooperating Thai exporting producers contended upon disclosure that the non-confidential questionnaire replies of the Community producers were not sufficiently detailed and not filed in accordance with Article 19 of the basic Regulation. It was alleged that a lack of information in the non-confidential questionnaire replies denied cooperating exporters an effective opportunity to defend their interests and allegedly put them at a disadvantage as compared with other parties, namely the Community industry, in this procedure. However, the injury information as set out in Section E of the provisional Regulation provides all interested parties with verified data on an aggregated basis. Thus, they all have a sufficiently precise picture of the facts with regard to the injury and causality situation to enable them to defend their interests. All parties are treated in the same way and there is no imbalance between the different interested parties with regard to disclosure. Furthermore, the non-confidential questionnaire replies together with the information contained in the provisional Regulation ensured respect for the rights of defence of all parties. The argument was therefore rejected.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (10) It is recalled that, in the course of the provisional investigation, doubts arose as to whether nuts could be regarded as a single product with other stainless steel fasteners and parts thereof (SSF). In this respect, a number of aspects needed to be explored further, e.g. whether and to what extent bolts and nuts are marketed together as a system, to what extent these types are developed together, etc. Further examination was also needed as to what extent the producers in the Community are able to offer these systems. For the purpose of the preliminary findings, it was therefore provisionally decided not to include nuts normally declared within CN code 7318 16 30 in the product definition.
- (11) Following the imposition of provisional measures, Community producers as well as importers, provided evidence that nuts and bolts are neither developed nor produced and marketed together. While nuts are typically used in conjunction with bolts, they are not typically sold as a set. Also, bolts can be used as fastening devices without nuts, which shows that there can be different end-uses between bolts and nuts. This is borne out by the imports from some of those producers in the countries concerned, which produce and sell either nuts or bolts, as well as by the fact that the sampled Community producers manufacture screws and bolts but not nuts. This is particularly apparent in the case of the Philippines, from where virtually all imports consisted of nuts without any corresponding imports of bolts. Furthermore, as stated above, bolts are not necessarily combined with nuts and washers. This is also obvious from the description of the HS-code 7318 15: 'other screws or bolts whether or not with their nuts or washers'. Furthermore, it is pertinent to note that the Community industry does not keep the necessary machinery to produce nuts and did not manifest any intention to produce nuts in the future.
- (12) Therefore, the findings set out in recital 13 of the provisional Regulation to exclude nuts, not imported as part of a set with their screws and bolts, from the product scope are confirmed. Consequently, in line with the conclusions drawn in recitals 14 and 105 of the provisional Regulation, the proceeding should be terminated as regards the Philippines.
- (13) Following the imposition of provisional measures, the cooperating Thai exporting producers alleged that nuts and bolts are normally marketed and developed together and, therefore, if nuts were to be excluded from the product scope, bolts should be excluded from the scope of the proceeding as well. However, they did not substantiate this allegation. Consequently, and in light of the findings set out in recitals 11 and 12 that nuts are not marketed and developed together with bolts, the claim was rejected and only nuts were excluded from the scope of the proceeding.
- (14) Furthermore, several importers and their association reiterated their claim to further limit the investigation to two CN codes, namely 7318 15 61 (hexagon socket head screws of stainless steel) and 7318 15 70 (hexagon bolts of stainless steel). To this end, they referred to an alleged lack of production by the Community industry of all other fasteners being subject to this investigation, i.e. SSF normally declared within CN codes 7318 12 10 (other wood screws of stainless steel), 7318 14 10 (self tapping screws of stainless steel), 7318 15 30 (screws and bolts without heads of stainless steel) and 7318 15 51 (slotted and cross-recessed screws of stainless steel). In this respect, they provided as evidence some orders which some Community producers could not deliver. Furthermore it was claimed that bolts and screws are manufactured on different machines.

(15) It should be recalled, as stated in recital 15 of the provisional Regulation, that the investigation confirmed that types of SSF falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30 and 7318 15 51 are produced in the Community. Consequently, the sampled Community producers (i) have the machinery to produce these other types of SSF; and (ii) face competition for these types from the dumped product concerned. The information with regard to some orders which could not be supplied by the Community industry relates to a period outside the IP which, normally, shall not be taken into account according to Article 6(1) of the basic Regulation. In any event, this fact does not show that these products are not produced by the Community industry. In addition, the investigation established that, in the absence of unfair dumped competition from the countries concerned, the Community industry is able to increase production in order to meet demand of such items. In this context, it should be considered that the Community industry has significant spare capacity (see table before recital 127 in the provisional Regulation). Consequently, the claim of the importers could not be accepted.

(16) The cooperating Thai exporting producers asked to limit the product scope to the CN codes 7318 12 10 (other wood screws of stainless steel), 7318 15 30 (screws and bolts without heads of stainless steel) and 7318 15 61 (hexagon socket head screws of stainless steel). To this end, they argued that neither bolts (CN code 7318 15 70), nor self-tapping, slotted and cross-recessed screws of stainless steel (CN codes 7318 14 10 and 7318 15 51) should be considered as one single product category with the other fasteners under investigation because of alleged (i) different physical properties, nature and quality of these fasteners, (ii) different end-uses, (iii) different consumers' tastes and habits and (iv) different CN codes, which in their view would show that bolts and screws do not constitute one single category of product.

(17) In the case at hand, the investigation has shown that all types of fasteners under consideration share, from a user's perspective, similar basic physical and technical characteristic and uses, i.e. they are threaded stainless steel metal pins, used to join things, by means of rotation of the fastening devices. Thus, all these fasteners fall under the same four digit heading of the Combined Nomenclature. Consequently, the claim to further limit the product scope has to be rejected.

(18) Since no other comments were submitted, the findings concerning the product concerned and the like product as set out in recitals 10 to 18 of the provisional Regulation are hereby confirmed.

D. SAMPLING

(19) No comments concerning sampling of exporting producers in Taiwan, Community producers and importers have been submitted following the imposition of provisional measures. The findings set out in recitals 19 to 32 of the provisional Regulation are hereby confirmed.

E. DUMPING

1. Market economy treatment (MET)

(20) No new comments concerning MET were submitted following the imposition of provisional measures. The findings set out in recitals 33 to 54 of the provisional Regulation are hereby confirmed.

2. Individual treatment (IT)

(21) One cooperating exporting producer in Vietnam expressed its disappointment at the rejection of its claim for IT, despite its cooperation with the investigation. It also said that the rejection of its claim for IT, as well as those of two other Vietnamese exporters, lead to the imposition of the same provisional anti-dumping duty on imports from all exporting producers in Vietnam.

As set out in recital 60 of the provisional Regulation, the company in question was not able to demonstrate that it met the conditions of Article 9(5) of the basic Regulation for being granted IT. Furthermore, no argument or evidence was submitted which could alter this finding and, therefore, Article 2(7)(a) of the basic Regulation had to apply to Vietnam, as a whole. This means that the same measure applies to all exporting producers in Vietnam.

(22) In the absence of any other comments, the findings set out in recitals 55 to 61 of the provisional Regulation concerning individual treatment are hereby confirmed.

3. Normal value

3.1. Analogue country

(23) Taiwan had provisionally been chosen as the analogue market economy third country for the purpose of establishing normal value for exporting producers not granted MET. Following the imposition of provisional measures, no party raised any comments concerning the determination of the normal value in the analogue country. Thus, the findings set out in recitals 62 to 64 of the provisional Regulation are hereby confirmed.

3.2. Methodology applied for the determination of normal value

- (24) Four Thai exporting producers argued that the selling, general and administrative (SG&A) expenses and the profit realised on domestic sales in another country, in this case Taiwan, cannot be used for constructing their normal value. However, as set out in recital 80 of the provisional Regulation, these exporting producers had no representative sales of the like product, or other products in the same general category, in the ordinary course of trade. It was therefore, necessary to rely on another reasonable method for the calculation of SG&A expenses and profit as provided for by Article 2(6)(c) of the basic Regulation. In this respect, the use of Taiwanese SG&A expenses and profit was considered the most reasonable method because of (i) the representative domestic market, in terms of volumes and competition in terms of prices, for the like product in Taiwan; and (ii) the fact that the Taiwanese SSF industry controls the majority of SSF producers in all the countries under investigation, including some in Thailand (see recital 71 of the provisional Regulation). No information was provided to show that the profit so used would exceed the profit normally realised by other exporters or producers on sales of the same general category of products in Thailand.
- (25) No other comments were raised concerning the methodology applied for the determination of normal value and thus the methodology set out in recitals 65 to 72 of the provisional Regulation is hereby confirmed.

3.3. Determination of normal value

(a) People's Republic of China

- (26) In the absence of any comments, the findings set out in recital 73 of the provisional Regulation are hereby confirmed.

(b) Indonesia

- (27) In the absence of any comments, the findings set out in recital 74 of the provisional Regulation are hereby confirmed.

(c) Malaysia

- (28) In the absence of any comments, the findings set out in recital 76 of the provisional Regulation are hereby confirmed.

(d) Taiwan

- (29) One Taiwanese exporting producer objected to the methodology used to determine normal value as set out in

recital 79 of the provisional Regulation. The company claimed that it did not classify the different types of the product concerned according to the specifications given by the Commission as some of these fasteners were speciality fasteners. It also claimed that the company had demonstrated during the on-spot verification, by way of drawings, samples and sales documentation, the unique product characteristics of its speciality fasteners exported to the Community.

- (30) In fact, the evidence collected during the verification visit indicated that these products are not falling within the CN codes under investigation. In these circumstances, it was considered appropriate not to consider the exports of these products for the purposes of this investigation. Findings for this company, including those on normal value as set out in recital 79 of the provisional Regulation, are based on its remaining exports which fell within the description of the product concerned.
- (31) For the normal value of its remaining exports, the company suggested some adjustments to the cost of production used for the provisional determination of its normal value (see recital 79 of the provisional Regulation).
- (32) However, these adjustments were based on data which were not submitted either with the response to the questionnaire or during the verification visit and, thus, were not verifiable. Furthermore, these adjustments were not supported by any information available on the record. Consequently, this claim concerning the cost of production should be rejected.
- (33) Another Taiwanese exporting producer claimed that there was certain double counting in the cost of production and the SG&A expenses used for the determination of normal value. It argued that the SG&A expenses ratio submitted in the Profit and Loss table of its response to the questionnaire was not the correct one and that the SG&A expenses ratio given during the verification visit should be used instead.
- (34) In this respect, it should be noted that the company did not make any correction on its Profit and Loss table before the verification visit. The company provided a significantly revised table for the SG&A expenses at the very last stage of the verification, when it was too late for it to be verified. Consequently, and since the revised SG&A expenses did not link to other verified information available on the record, the claim was rejected and data derived from the Profit and Loss table submitted in the questionnaire response have been maintained in the dumping calculation, in line with the provisions of Article 6(8) of the basic Regulation.

(35) The same Taiwanese exporting producer claimed that scrap materials must be deducted from the cost of the raw materials. The company claimed that since scrap is obtained from the production process, the income from its sales should be allowed to offset cost of production. However, it has not reported the amount of any such income. In any event, any income from other products or by-products is not relevant for the calculation of the cost of production of the like product as it has not been a practice historically utilised by the company in allocating costs. Therefore, the claim of the company should be rejected and the provisional findings confirmed.

(36) No other comments were submitted and, therefore, the findings set out in recitals 77 to 79 of the provisional Regulation are hereby confirmed.

(e) Thailand

(37) One Thai exporting producer having some domestic sales made several claims relating to the calculation of the cost of production and the SG&A expenses used for the determination of its normal value. Furthermore, it stated that should the claims be accepted its domestic sales in the ordinary course of trade would be representative and could be used for the determination of normal value in Thailand.

(38) It should be noted that this company provided several revised versions of its questionnaire response during the verification visit to an extent that significantly impeded the investigation as it was not possible to reconcile any of the different versions with its accounts. Nevertheless, all this information was examined as far as possible in line with the provisions of Article 6(8) of the basic Regulation. It is noted that the cost of production, as reported by the company for a large number of product types, was significantly understated, in particular the cost of raw materials, and it was, therefore, corrected for the provisional dumping calculations. As the company has not provided any substantiated information regarding its cost of production that would require a change in the dumping calculations, its claim regarding calculation of the cost of production has to be rejected.

(39) This exporting producer claimed that income from sales of scrap should be deducted from the cost of raw materials in the cost of production of the like product. However, no income from sales of scrap has been reported in the company's Profit and Loss Table. In any event, any income from other products or by-products is not relevant for the calculation of the cost of production of the like product as it has not been a practice historically utilised by the company in allocating costs.

(40) Concerning the exporting producer's claim to use a different level of SG&A expenses, it was established that, even if the claim was accepted, it would not lead

to a situation where the company's domestic sales could have been used as a basis for establishing normal value, as they would still not be made in the ordinary course of trade.

(41) Consequently, these claims regarding scrap and SG&A expenses should be rejected and the findings set out in recital 80 of the provisional Regulation are hereby confirmed.

(f) Vietnam

(42) In the absence of any comments, the findings set out in recital 81 of the provisional Regulation are hereby confirmed.

4. Export price

(43) In the absence of any comments, the findings set out in recitals 82 to 91 of the provisional Regulation concerning the establishment of the export price pursuant to Article 2(8) of the basic Regulation for all countries concerned are hereby confirmed.

5. Comparison

(44) In the absence of any comments, the methodology and the findings set out in recitals 92 and 93 of the provisional Regulation concerning the comparison between normal value and export price are hereby confirmed.

6. Dumping margins

6.1. General methodology

(45) In the absence of any comments concerning the determination of the dumping margin, the methodology set out in recitals 94 to 100 of the provisional Regulation is hereby confirmed.

6.2. Dumping margins

(a) People's Republic of China

(46) In the absence of any comments, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	21,5 %
— Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2 %
— All other companies	27,4 %.

(b) Indonesia

- (47) In the absence of any comments, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— PT. Shye Chang Batam Indonesia, Batam	9,8 %
— All other companies	24,6 %

(c) Malaysia

- (48) In the absence of any comments on the calculation of the provisional dumping margin for the two cooperating exporting producers in Malaysia, the findings as set out in recital 104 of the provisional Regulation are hereby confirmed. Consequently, as no dumping was found for any Malaysian exporting producer, the proceeding should be terminated as regards imports of the product concerned from Malaysia.

(d) The Philippines

- (49) In the absence of any comments on the situation concerning the Philippines, no dumping margin has been established. Consequently, as stated above in recital 12, the proceeding should be terminated as regards imports of the product concerned from the Philippines.

(e) Taiwan

- (50) In the absence of any further comments on the calculation of the provisional dumping margins for Taiwan, as set out in recitals 106 to 108 of the provisional Regulation, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— Arrow Fasteners Co. Ltd, Taipei	15,2 %
— Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	18,8 %
— Min Hwei Enterprise Co. Ltd, Pingtung	16,1 %
— Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1 %
— Yi Tai Shen Co. Ltd, Tainan	11,4 %
— Cooperating exporting producers not included in the sample	15,8 %
— All other companies	23,6 %

(f) Thailand

- (51) One Thai exporting producer made claims relating to the calculation of its individual dumping margin insofar as

product type classifications, production quantities and the use of various grades of stainless steel were concerned.

- (52) The claims were examined on the basis of the verified information and certain appropriate corrections were made leading to the determination of a revised individual dumping margin for this exporting producer. As the basis for establishing the dumping margin for any non-cooperating Thai exporters was the level of the highest dumping margin found for a cooperating Thai exporter, the residual dumping margin was revised accordingly.

- (53) Consequently, the definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

— A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	11,1 %
— Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8 %
— Dura Fasteners Company Ltd, Samutprakarn	14,6 %
— Siam Screws (1994) Co. Ltd, Samutsakorn	11,0 %
— All other companies	14,6 %

(g) Vietnam

- (54) In the absence of any further comments on the calculation of the provisional dumping margin for Vietnam, as set out in recital 110 of the provisional Regulation, the definitive dumping margin for all companies in Vietnam, expressed as a percentage of the CIF import price at the Community border, duty unpaid, is confirmed as 7,7 %.

F. INJURY

1. Community production and Community industry

- (55) The cooperating Thai exporting producers contested the analysis methodology set out in recital 114 of the provisional Regulation, i.e. that some data have been established for the sampled Community producers only (transaction prices, investment and return on investment, wages, profitability, cash flow and ability to raise capital), whereas the other indicators (market share, production, capacity and capacity utilisation, sales volume and value, growth, stocks, employment and productivity) additionally included data of another Community producer, constituting with the sampled producers, the Community industry. They argued that this approach is (i) not objective within the meaning of Article 3(2) of the basic Regulation and that (ii) Article 17(4) of the basic Regulation allegedly does not permit such an approach.

(56) It is normal practice in anti-dumping proceedings to analyse injury factors for the full Community industry. However, in cases where the industry consists of a high number of producers, resort is made to sampling. The purpose of sampling is to provide that detailed data can be collected and verified from a limited number of producers within the time available. This data concerns factors such as prices, wages, investments, profit, return on investment, cash flow and ability to raise capital, where it would be unfeasible to verify the data for the full industry within the time available. For other factors, such as market share, sales volume and production, data is usually readily available for the full industry. To base the injury analysis merely on data from sampled producers would ignore usable data from other producers, thereby leading to an incomplete assessment. Therefore, in the interests of having as complete an assessment as possible within the time available in this case, data received and verified for trends in all injury factors from the sampled producers was complemented by information relating to the full industry.

(57) No other comment has been submitted concerning Community production and the definition of the Community industry and, therefore, the findings set out in recitals 111 to 114 of the provisional Regulation are hereby confirmed.

2. Community consumption, imports and their cumulative assessment

(58) The cooperating Thai exporting producers claimed that Thai imports should not have been assessed cumulatively with dumped imports of SSF originating in the PRC, Indonesia, Taiwan and Vietnam, because of an alleged lack of competition with imports from the latter mentioned countries in terms of volumes, average prices and market share. They pointed out that in 2002, volume and market share of Thai imports dropped by 29 % and 35 % respectively, whereas already in 2002 an increase can be observed with regard to the other countries concerned. Furthermore, they noted that since 2003, average Thai import prices increased by 2 %.

(59) It should be recalled that the margins of dumping established in relation to the imports from each country concerned are more than *de minimis* as defined in Article 9(3) of the basic Regulation, i.e. 2 %, and the volume of imports from each country concerned is above the threshold of 1 % market share set by Article 5(7) of the basic Regulation. Furthermore, it is pertinent to note that the analysis should not focus on 2002 in isolation, but on the overall picture during the period considered, i.e. from 2001 to the IP. Overall, Thai imports' volume and market share in fact increased significantly whilst their prices dropped considerably. Consequently, overall, the pattern of Thai imports is in line with the trends established for all countries concerned. Furthermore, it is recalled that the SSF imported from the countries concerned were alike in

all respects, they are interchangeable, they are marketed in the Community through comparable sales channels and under similar commercial conditions and compete with the SSF produced in the Community. Therefore, and in line with Article 3(4) of the basic Regulation, it is confirmed that a cumulative assessment of the effects of the dumped imports of the product concerned is appropriate.

(60) No other comment has been submitted concerning the analysis of the situation on the Community market and, therefore, the findings set out in recitals 115 to 126 of the provisional Regulation are hereby confirmed.

3. Economic situation of the Community industry

(61) Following the imposition of provisional measures, no comments were submitted concerning production, capacity, capacity utilisation, sales volume, sales price, market share, growth, stocks, employment, productivity, the magnitude of dumping and the recovery from past dumping of the Community industry. Therefore, the findings set out in recitals 127 to 133, 137, 142, 143, 145 and 146 of the provisional Regulation are hereby confirmed.

3.1. Profitability

(62) The cooperating Thai exporting producers contended that the profitability situation of the sampled Community producers had improved and did not reflect any injury. They further argued that the Community industry has not achieved the minimum profit margin of 5 % considered adequate and achievable in the absence of dumping because of the investments made by the sampled Community producers in 2002 and 2003. They also argued to disregard the fact that the Community industry benefited from the use of low priced stainless steel because this should be considered as a normal market situation from which all operators have benefited.

(63) It should be recalled, as set out in recitals 149 and 150 of the provisional Regulation, that the profitability situation was neither the only factor, nor the central factor, showing injury in the present case. According to Article 3(5) of the basic Regulation, not any one or more of the injury factors set out in that Article necessarily give decisive guidance as to the state of the Community industry. Investments were necessary to remain competitive, as set out in recital 138 of the provisional Regulation, so that no negative impact on profitability can be attributed to such investment. Furthermore, as set out in recital 136 of the provisional Regulation, the positive effect on the sampled Community producers' profitability from the rising stainless steel prices during the IP was strictly temporary and was a factor which may have benefited other economic operators for a very short period.

- (64) Thus, the allegation that the profitability situation does not reflect injury has to be rejected and the findings set out in recitals 134 to 136 of the provisional Regulation confirmed.

3.2. *Investments, return on investment, cash flow and the ability to raise capital*

- (65) The cooperating Thai exporting producers pointed out that the rising investments, return on investment, cash flow as well as the ability to raise capital did not indicate any injury.

- (66) As mentioned in recital 147 of the provisional Regulation, it should be recalled that the factors 'investment' and 'ability to raise capital' have not been considered as factors showing injury during the period considered.

- (67) With regard to return on investment, however, the overall improvement over the period considered needs to be viewed in the context of (i) the temporary and exceptional nature of the profitability situation of the sampled Community producers during the IP as already set out in recitals 136 and 139 of the provisional Regulation and (ii) the increased usage of leased machinery, which has not been considered as an investment. Leased capital goods were not included in the investments, but their increased usage contributed to the profit earned. These two reasons explain the artificially high increase on return on investment during the IP.

- (68) Concerning cash flow, the fact remains that over the period considered its development deteriorated by 36 %, and this clearly indicates injury over the period considered. Consequently, the findings set out in recitals 138 to 141 of the provisional Regulation should be confirmed.

3.3. *Wages*

- (69) The cooperating Thai exporting producers further contended that the 10 % increase in labour costs per employee over the period considered does not show injury in the present case.

- (70) It is recalled that the provisional conclusion on injury with regard to wages had acknowledged an increase in wages to reflect reward for improved productivity and compensation for inflation. However, the fact remains that employment decreased by 5 % over the period considered, which was assessed as a sign of injury. Consequently, the findings set out in recital 144 of the provisional Regulation should be confirmed.

3.4. *Conclusion on injury*

- (71) In summary, the conclusions set out in recitals 147 to 150 of the provisional Regulation are confirmed. Overall, the negative trend indicators (significant losses in market share, growth, loss in employment, unsatisfactory improvement of profitability/return on investments and cash flow) significantly outweigh the positive trends (small increase of production and sales volume, stocks reduction, continuing investments, decrease in labour costs in absolute terms and ability to raise capital).

G. CAUSATION

- (72) The Thai exporting producers and an importers association submitted comments on the provisional causation analysis with regard to certain factors which are set out below. In the absence of any other comments, the findings set out in the provisional Regulation concerning the effect of dumped imports (recital 152 of the provisional Regulation), the impact of imports from other third countries (recitals 153 to 159 of the provisional Regulation) and the development of consumption on the Community market (recital 160 of the provisional Regulation) are hereby confirmed.

1. *Impact of currency exchange rates*

- (73) The cooperating Thai exporting producers, one importer and its association focused on the impact of the currency depreciation of the USD compared to the euro, notably during 2003, which they alleged favoured the Chinese and Thai exports to the Community. Thus, they argued that at least partially, the price decrease and consequent injurious effect on the Community industry should not be attributed to dumping practices by exporters in the PRC and Thailand, but to such exchange rate development (in case of the PRC in particular due to the Yuan/USD peg).

- (74) First of all, it is noted that the invoice currencies of all export transactions from the countries concerned are not known. Therefore, the effect of any exchange rates fluctuation cannot be estimated. Furthermore, as regards injury, irrespective of whether the low import prices may also be somewhat due to currency movements, actual import prices during the IP are used to establish the level of undercutting and the subsequent impact on the Community industry. The undercutting margins were found to be significant (see recitals 125 and 126 of the provisional Regulation).

- (75) In light of the above, the argument regarding the possible effect of exchange rate movements must be rejected.

2. Competitiveness of the Community industry

- (76) The Thai exporting producers further submitted that the injury endured by the Community industry should be attributed to a lack of competitiveness due to allegedly outdated production facilities.
- (77) However, it should be recalled that the Community industry constantly invested over the period considered in order to replace obsolete machinery and to maintain 'state of the art' production facilities. Thus, no outdated non-competitive production technique exists which could have broken the causal link between dumped imports from the countries concerned and their injurious effects on the Community industry. The argument should be therefore rejected and the findings set out in recital 161 of the provisional Regulation concerning the competitiveness of the Community industry are confirmed.

3. Conditions on the Community market

- (78) The cooperating Thai exporting producers also contended that the injury might have been caused by unstable market conditions. In this context, they referred to the temporary steel price increases and the bargaining power of large customers.
- (79) It is noted, however, that the temporary steel price increases have not inflicted any injury on the sampled Community producers. To the contrary, it was beneficial to them, since profitability temporarily increased. With regard to the impact of large customers, it is noted that unfair competition in the form of dumped imports essentially contributes to their bargaining power. Thus, a direct linkage between imports from the countries concerned and the behaviour of importers/distributors can be observed. Overall, therefore, the conditions on the Community market have not broken the causal link between dumped imports and the injury sustained by the Community industry.

4. Conclusion on causation

- (80) In summary, an appreciation of the above comments on causation and for the reasons set out in recitals 151 to 162 of the provisional Regulation, it is confirmed that no other factor has broken the causal link between the imports from the five countries concerned taken together and the material injury sustained by the Community industry.

H. COMMUNITY INTEREST

- (81) A number of importers/distributors and Thai exporting producers alleged that measures may not be in the interests of the Community.

1. Impact of the measures on importers and users

- (82) The importers/distributors, pointed out that measures would have a direct impact on their profit margins as they would not be able to pass on the costs of measures to their customers through higher prices.
- (83) First of all, these parties did not substantiate their allegations. Moreover, as already stated in the provisional Regulation, no indication exists that anti-dumping measures would put the economic viability of importers/distributors at risk. Moreover, their profit margins were, over the period considered, well above the profitability of the Community industry. It is therefore confirmed that any advantage importers/distributors may gain from the non-imposition of anti-dumping measures is outweighed by the interest of the Community industry in having the unfair and injurious trading practices from the countries concerned redressed. The findings set out in recitals 164 to 170 of the provisional Regulation should be therefore confirmed.
- (84) The Thai exporting producers commented that the imposition of measures would increase costs for the European car industry and this would not be in the Community's interest. However, they did not substantiate this alleged impact on users. On the basis of information available, i.e. the reply of one user, a rolling stock vehicles producer, the impact of measures on downstream users would be negligible. The findings set out in recitals 173 and 174 of the provisional Regulation concerning interests of users and consumers should therefore be confirmed.

2. Conclusion

- (85) Having examined the various interests involved, it is confirmed for the reasons given in recitals 163 to 175 of the provisional Regulation that from an overall Community interest perspective no interest outweighs the Community industry's interest to have anti-dumping measures imposed with the aim of eliminating the trade distorting effects resulting from dumped imports.

I. DEFINITIVE ANTI-DUMPING MEASURES

- (86) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, it is considered appropriate to impose definitive anti-dumping measures in order to prevent further injury being caused to the Community industry by the dumped imports. For the purpose of determining the level of these measures, account was taken of the dumping margins found during the IP and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

1. Injury elimination level

- (87) The necessary price increase to eliminate injury was determined on a per-company basis, by comparing the weighted average import price of the product concerned with the non-injurious price of the like product sold by the Community industry on the Community market. The price difference was expressed as a percentage of the CIF import value.
- (88) The non-injurious price has been obtained by taking the weighted cost of production of the Community industry together with a profit margin of 5 %. In the absence of comments, this profit margin is confirmed to be that that the Community industry could achieve in the absence of dumped imports. It reflects the achievable profit margin for similar product groups of the Community industry not subject to unfair competition, e.g. fasteners which do not fall under the CN codes of the product scope of the present investigation.

2. Form and level of the duty

- (89) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on imports of SSF from the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.
- (90) With regard to the level of duty, in the case of two cooperating exporting producers (one in Taiwan and one in the PRC), the injury elimination level was found to be lower than the dumping margin. In these cases, the level of the duty should be restricted to the injury elimination level. In all other cases, the level of the duty should be set at the level of the dumping margin found pursuant to Article 9(4) of the basic Regulation.
- (91) On the basis of the above, the definitive duty rates should be as follows:

Country	Exporting producer	AD duty rate
The PRC	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4 %
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2 %
	All other companies	27,4 %
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8 %
	All other companies	24,6 %

Country	Exporting producer	AD duty rate
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2 %
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8 %
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1 %
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1 %
	Yi Tai Shen Co. Ltd, Tainan	11,4 %
	Cooperating exporting producers not included in the sample	15,8 %
	All other companies	23,6 %
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	11,1 %
	Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8 %
	Dura Fasteners Company Ltd, Samutprakarn	14,6 %
	Siam Screws (1994) Co. Ltd, Samutsakorn	11,0 %
	All other companies	14,6 %
Vietnam	All companies	7,7 %

- (92) The Thai exporting producers drew attention to Article 15 of the WTO Anti-dumping Agreement, which provides that special regard is to be given to the special situation of developing countries when consideration is being given to the imposition of anti-dumping measures. However, it was not substantiated that the case at hand affects the essential interests of Thailand, as stipulated by this provision. In these circumstances, it is considered appropriate to impose an anti-dumping duty on imports from Thailand at the above-mentioned rates.

- (93) 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 countries 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, 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'.

- (94) 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, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. Collection of provisional duty

- (95) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation, i.e. Regulation (EC) No 771/2005, be collected definitively to the extent of the amount of the duty definitively imposed by the present Regulation. For exporting producers whose rate of definitive duty is lower than the provisional duty,

the amounts provisionally secured in excess of the definitive duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 and originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the Taiwanese exporting producers listed in the Annex shall be 15,8 % (TARIC additional code A649).

3. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the companies listed below shall be as follows:

Country	Exporting producer	Rate of duty (%)	TARIC additional code
The People's Republic of China	Tengzhou Tengda Stainless Steel Product Co., Ltd, Tengzhou City	11,4	A650
	Tong Ming Enterprise (Jiaxing) Co. Ltd, Zhejiang	12,2	A651
	All other companies	27,4	A999
Indonesia	PT. Shye Chang Batam Indonesia, Batam	9,8	A652
	All other companies	24,6	A999
Taiwan	Arrow Fasteners Co. Ltd, Taipei	15,2	A653
	Jin Shing Stainless Ind. Co. Ltd, Tao Yuan	8,8	A654
	Min Hwei Enterprise Co. Ltd, Pingtung	16,1	A655
	Tong Hwei Enterprise, Co. Ltd, Kaohsiung	16,1	A656
	Yi Tai Shen Co. Ltd, Tainan	11,4	A657
	All companies other than the above and those listed in the Annex	23,6	A999
Thailand	A.B.P. Stainless Fasteners Co. Ltd, Ayutthaya	11,1	A658
	Bunyat Industries 1998 Co. Ltd, Samutsakorn	10,8	A659
	Dura Fasteners Company Ltd, Samutprakarn	14,6	A660
	Siam Screws (1994) Co. Ltd, Samutsakorn	11,0	A661
	All other companies	14,6	A999
Vietnam	All companies	7,7	—

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate B, J-79 5/17, rue de la Loi/Wetstraat 200, B-1049 Brussels.

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 771/2005 imposing an anti-dumping duty on imports of certain stainless steel fasteners and parts thereof, falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70 originating in the People's Republic of China, Indonesia, Taiwan, Thailand and Vietnam shall be definitively collected, in accordance with the rules set out below. The amounts secured

in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

The proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in Malaysia and the Philippines is hereby terminated.

Article 4

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

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

Done at Brussels, 14 November 2005.

For the Council
The President
T. JOWELL

ANNEX

(TARIC additional code A649)

A-STAINLESS INTERNATIONAL CO. LTD, Taipei
BOLTUN CORPORATION, Tainan
CHAEN WEI CORPORATION, Taipei
CHIAN SHYANG ENT CO. LTD, Chung-Li City
CHONG CHENG FASTENER CORP., Tainan
DIING SEN FASTENERS & INDUSTRIAL CO. LTD, Taipei
DRAGON IRON FACTORY CO. LTD, Kaohsiung
EXTEND FORMING INDUSTRIAL CORP. LTD, Lu Chu
FORTUNE BRIGHT INDUSTRIAL CO. LTD, Lung Tan Hsiang
FWU KUANG ENTERPRISES CO. LTD, Tainan
HSIN YU SCREW ENTERPRISE CO. LTD, Taipin City
HU PAO INDUSTRIES CO. LTD, Tainan
J C GRAND CORPORATION, Taipei
JAU YEOU INDUSTRY CO. LTD, Kangshan
JOHN CHEN SCREW IND. CO. LTD, Taipei
KUOLIEN SCREW INDUSTRIAL CO. LTD, Kwanmiao
KWANTEX RESEARCH INC., Taipei
LIH LIN ENTERPRISES & INDUSTRIAL CO. LTD, Taipei
LIH TA SCREW CO. LTD, Kweishan
LU CHU SHIN YEE WORKS CO. LTD, Kaohsiung
M & W FASTENER CO. LTD, Kaohsiung
MULTI-TEK FASTENERS & PARTS MANUFACTURER CORP., Tainan
NATIONAL AEROSPACE FASTENERS CORP., Ping Jen City
QST INTERNATIONAL CORP., Tainan
SEN CHANG INDUSTRIAL CO. LTD, Ta-Yuan
SPEC PRODUCTS CORP., Tainan
SUMEKO INDUSTRIES CO. LTD, Kaohsiung
TAIWAN SHAN YIN INTERNATIONAL CO. LTD, Kaohsiung
VIM INTERNATIONAL ENTERPRISE CO. LTD, Taichung
YEA-JANN INDUSTRIAL CO. LTD, Kaohsiung
ZONBIX ENTERPRISE CO. LTD, Kaohsiung
ZYH YIN ENTERPRISE CO. LTD, Kaohsiung.

COUNCIL REGULATION (EC) No 1891/2005**of 14 November 2005****amending Regulation (EEC) No 3068/92 imposing a definitive anti-dumping duty on imports of potassium chloride originating in Belarus, Russia or 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 Article 11(3) thereof,

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

Whereas:

(4) To this end, in May 2004, by Regulation (EC) No 1002/2004⁽⁵⁾, the Commission accepted undertakings from two exporting producers in Russia, namely JSC Silvinit and JSC Uralkali for a period of one year. In June 2005, by Commission Regulation (EC) No 858/2005⁽⁶⁾ new undertakings, which expire on 13 April 2006, were accepted from the two exporting producers in Russia. In addition, in order to provide for the exemption from the anti-dumping duties imposed by Regulation (EEC) No 3068/92 on imports made under the terms of the undertakings, Regulation (EEC) No 3068/92 was amended by Regulation (EC) No 992/2004⁽⁷⁾.

(5) It should also be noted that all references to 'the Community' or 'the Community of 15' in the present Regulation shall be taken to mean, unless otherwise specified, the Community as constituted immediately before Enlargement.

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

- (1) Following an investigation (the previous investigation), the Council, by Regulation (EC) No 969/2000⁽²⁾, amended the measures originally imposed by Regulation (EEC) No 3068/92⁽³⁾ on imports of potassium chloride originating, *inter alia*, in Russia (the existing measures).
- (2) In March 2004, by means of a notice published in the *Official Journal of the European Union*⁽⁴⁾, the Commission launched, on its own initiative, a partial interim review of the existing measures to examine whether they should be amended to take account of the enlargement of the European Union to 25 Member States on 1 May 2004 (Enlargement).
- (3) The results of that partial interim review showed that it was in the interests of the Community to provide for the temporary adaptation of the existing measures so as to avoid a sudden and excessively negative impact on importers and users in the ten new Member States immediately following Enlargement.

2. Grounds for the present reviews

- (6) In January 2004, separate requests were received from JSC Silvinit and JSC Uralkali (the applicants) for individual partial interim reviews of the existing measures pursuant to Article 11(3) of the basic Regulation.
- (7) The applicants alleged and provided sufficient *prima facie* evidence that a comparison of normal value based on their own costs/domestic prices and their export prices to the Community would lead to a removal of dumping. Therefore, the continued imposition of the existing measures at the existing levels, which were based on the level of dumping previously established, were no longer necessary to offset dumping.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of partial interim reviews, the Commission published notices of initiation and commenced an investigation⁽⁸⁾.

⁽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 112, 11.5.2000, p. 4.

⁽³⁾ OJ L 308, 24.10.1992, p. 41.

⁽⁴⁾ OJ C 70, 20.3.2004, p. 15.

⁽⁵⁾ OJ L 183, 20.5.2004, p. 16. Regulation as amended by Regulation (EC) No 588/2005 (OJ L 98, 16.4.2005, p. 11).

⁽⁶⁾ OJ L 143, 7.6.2005, p. 11.

⁽⁷⁾ OJ L 182, 19.5.2004, p. 23.

⁽⁸⁾ OJ C 93, 17.4.2004, p. 2 and p. 3.

3. Period of investigation

- (9) The investigation was limited to dumping and covered the period from 1 April 2003 until 30 March 2004 (the investigation period or IP).

4. Parties concerned by the investigation

- (10) The Commission officially advised the representatives of the exporting country, the applicants and the Community industry of the initiation of the interim reviews and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Commission also sent questionnaires to the applicants. Questionnaires replies were received from the applicants and from an exporting trader in Russia related to one of the applicant companies.

- (11) The Commission sought and verified all information it deemed necessary for the purpose of the determination of dumping and carried out verifications of the replies to the questionnaire at the premises of the following companies:

- (a) Exporting producers in Russia:

JSC Silvinit, Solikamsk, Perm Region, Russia,

JSC Uralkali, Berezniki, Perm Region, Russia.

- (b) Related exporter to JSC Silvinit:

International Potash Company, Moscow, Russia.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (12) The product is the same as in previous investigation, i.e. potassium chloride (potash or KCl) and is generally used as agricultural fertiliser, directly, blended with other fertilisers or after transformation into a complex fertiliser known as NPK (nitrogen, phosphorus, potassium). The potassium content is variable and is expressed as a percentage of the weight of potassium oxide (K_2O) on the dry anhydrous product. It is also used as a raw material in the manufacture of certain industrial and pharmaceutical products.
- (13) Potash is generally commercialised in either a standard/powder form (standard potash) or in other than standard form that includes — but is not limited to — a granular form (granular potash). The product is generally classified

into three basic categories, based on the K_2O content, namely:

— potassium content not exceeding 40 % K_2O — falling within Combined Nomenclature (CN) code 3104 20 10,

— potassium content exceeding 40 % K_2O but less than or equal to 62 % — falling within CN code 3104 20 50,

— potassium content over 62 % K_2O — falling within CN code 3104 20 90.

- (14) It should be recalled that in the previous investigation it was found that imports of certain special mixtures or blends with an unusually high content of potash which do not fall under any of the CN codes for potash indicated above, should also be considered as the product concerned. This conclusion was reached as such mixtures and blends shared the same basic physical and chemical characteristics and have the same uses as the basic categories mentioned above. Accordingly, such mixtures or blends falling within CN codes ex 3105 20 10, ex 3105 20 90, ex 3105 60 90, ex 3105 90 91 and ex 3105 90 99 were also included in the present investigation and constitute part of the product concerned.

2. Like product

- (15) It was established that, as there were no differences in the physical or chemical properties between the product exported from Russia to the Community and the product produced in Russia and sold on the Russian domestic market, they were considered to be like products for the purposes of the present investigation.

C. DUMPING WITH REGARD TO THE APPLICANTS

1. Normal value

- (16) As far as the determination of normal value is concerned, it was first established whether the total volume of each of the applicants' total domestic sales of the like product were representative in comparison with their respective total export sales volumes to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered to be representative when each of the applicants' domestic sales volumes of the like product constituted at least 5 % of their respective total export sales volumes to the Community during the investigation period. On this basis, for both applicants, overall domestic sales of the product concerned during the IP were found to have been made in representative quantities.

- (17) Subsequently, by defining the product types in accordance with the TARIC codes under which the product is classified (i.e. by standard grade or other than standard grade, including granular) and by the packing or form in which it is shipped (i.e. in bulk, in bags or in containers), an analysis was made as to 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.
- (18) As a result of this analysis, it was found that one exporting producer, JSC Silvinit, had only sold one exported product type in representative quantities on the domestic market. For the other exporting producer, JSC Uralkali, it was found that all exported product types had been sold in representative quantities on the domestic market.
- (19) 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.
- (20) In this regard, it was found for JSC Uralkali that its domestic sales prices for the best sold product type exported to the Community (the best sold export type) accounting for over 99 % of such exports, showed unusual trends during the investigation period. It was established that, during the investigation period, 77 % of domestic sales of the best sold exported type had been made to one customer in Russia and that the sales price to this particular customer had, in the space of one month in the middle of the investigation period, more than doubled. Price rises for the same product type sold to other domestic customers also rose at the same time, but only by a margin of around 40 %. Examination of price rises for other potash types sold domestically showed similar price increases of around 40 % during the investigation period.
- (21) In view of this particular market situation with regard to pricing for a key product type used to calculate the dumping margin, pursuant to Article 2(3) of the basic Regulation it is considered that such sales do not permit a proper comparison. Given the significance of such sales in the domestic sales volumes of the type in question, and the importance of this type in the overall export volume of potash exported by the company concerned to the Community, it is considered reasonable to disregard these specific sales to the customer in question. The remaining domestic sales of this product type to other customers were found to be below the 5 % threshold considered necessary for them to be regarded as representative. Accordingly, normal value for this product type was calculated on the basis of the cost of production of the exporting producer concerned, plus a reasonable amount for selling, general and administrative costs and profit. The amounts for selling, general and administrative costs and for profit were based on 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.
- (22) It was submitted by Uralkali that the 'particular market situation' foreseen in Article 2(3) of the basic Regulation is not applicable for the sales of the product concerned to the customer in question and therefore the domestic prices for the product type concerned should have been used to establish normal value. In this regard it was argued (i) that the provision of Article 2(3) of the basic Regulation would not apply in case of 'artificially high prices' and (ii) that special conditions applied to only one specific client could not be considered to constitute a 'particular market situation' for the Russian domestic market as a whole. Moreover, it was claimed that the prices in question were resulting from 'market forces' and reflected 'the actual situation on the market'.
- (23) With regard to the above, it should be noted that the particular market situations referred to in Article 2(3) of the basic Regulation are not exhaustive and that the particularity of the market should be assessed, *inter alia*, in light of price variations and trends rather than solely on the basis of the absolute level of the prices. In this case both low priced sales transactions and high priced transactions were excluded from the calculations since they did not reflect a level of prices of a lasting nature and since those prices did not appear to reflect market forces as such trends were not found for any other product type or for any other client of Uralkali. Secondly, Article 2(3) of the basic Regulation provides that normal value may be constructed in situations where '... because of a particular market situation such sales do not permit a proper comparison ...'. This clearly allows that, as in the current situation, sales to a customer which are considered not to permit a proper comparison may be disregarded as a basis for establishing normal value. This conclusion does not relate to the Russian market as a whole but rather to these sales of Uralkali.

- (24) As concerns JSC Silvinit, where the sales volume of one 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 adjusted 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.
- (25) For the other product type of JSC Silvinit, which was sold in insufficient quantities for the domestic prices to provide an appropriate basis for the establishment of the normal value, 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 adjusted unit cost of the exported type, a reasonable percentage for selling, general and administrative expenses 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.
- (26) It was claimed by Uralkali that the profit margin used in the construction of the normal value did not properly take into account the adjustments of the gas costs, as the profits used for the constructed normal values were derived from the company's accounts before adjustments. However, this claim could not be accepted since in accordance with the chapeau of Article 2(6) of the basic Regulation the actual profit amounts realised by the company in the domestic market should be used for the construction of the normal value.
- (27) As concerns energy costs, such as electricity and gas used in the mining and production processes of the product concerned, the investigation established that these costs form a significant proportion of the total cost of manufacturing of potash producers, not only in Russia but in other producing countries as well. In this regard, it was submitted by the Community industry that the energy cost per unit of electricity and gas paid by the Russian companies to their utilities suppliers did not reasonably reflect the actual production cost of the electricity and gas purchased.
- (28) In view of these allegations, it was considered appropriate in the present case to also compare the applicants' energy purchase costs per unit to those of another major potash producer with similar production methods, output levels and similar natural advantages. As there are no other producers of potash in Russia, this information was sought and obtained from a large producer of potash in Canada.
- (29) The data provided showed that the energy requirements of the Canadian producer were similar to those of the applicant Russian producers and that electricity and gas purchased by this company was derived from domestic hydro-electric power and major gas fields, as is the electricity and gas used by the Russian companies. The comparison showed that the cost per unit for electricity paid by the Canadian producer was not too dissimilar to that paid by the Russian producers.
- (30) As concerns gas supplies, it was established on the basis of data found in the published annual report for 2003 of the Russian gas provider OAO Gazprom (whose regional distributor was also the supplier to the exporting producers in question), that the domestic price of gas paid by the two Russian Producers was around one fifth of the export price from Russia. The same report clearly stated that 'OAO Gazprom did not make any profit in the domestic market'. While there is no officially available information as to the profitability of Russian domestic gas prices, quotes from Russian government sources in the press together with data obtained from specialized market intelligence sources and governmental websites all strongly suggest that the gas prices charged to domestic customers were made at prices far from cost recovery levels. Moreover, the price of gas paid by the two Russian Producers was significantly lower than the gas price paid by the Canadian producers.
- (31) In view of the above, it was therefore considered that the prices charged by the regional Russian gas provider to the Russian potash producers in the investigation period could not reasonably reflect the costs associated with the production of gas when compared to the exported price of gas from Russia and the price of a Canadian gas provider to a major industrial user in Canada. In accordance, therefore, with Article 2(5) of the basic Regulation, an adjustment to the cost of production for each of the applicants was made. In the absence of any other reasonable basis, such an adjustment was made using information concerning the price of gas for export, net of transport costs, customs export tax, value added tax and excise duty.

- (32) In this regard, it was submitted by one of the applicants that the charges for gas were properly reflected in its accounting records, therefore no adjustment was warranted under Article 2(5) of the basic Regulation. In response to this argument it is not disputed that the company has correctly accounted for the invoiced prices paid, rather the adjustment is justified by the fact that the price of the gas purchased does not reasonably reflect the cost of production and distribution of the gas.
- (33) On the adjustment for the gas costs, it was also submitted by the Russian Authorities that the Commission had not taken into account the different transportation costs between the gas sold domestically for industrial usage and the gas sold for export. It should be recalled (see recital 31) that the comparison which has led to the adjustment has been made between the gas prices actually paid by the companies and the export prices charged by the Russian gas provider OAO Gazprom for export from Russia, net of transport costs, customs export tax, value added tax and excise duty. Therefore, this claim was rejected.
- (34) One of the applicants submitted that it had a significantly lower unit cost of production during the first quarter of 2004 (i.e. the last quarter of the investigation period) due to increased efficiency and lower maintenance costs and that this lower unit cost should be considered as the basis for the cost of production for the whole investigation period. This request was not granted as the appropriate basis for establishing such costs is the full investigation period, rather than costs occurring in an exceptional, shorter, period.
- (35) As also concerns cost of production, it was submitted by the Community industry that depreciation of capital assets should, for the purpose of the applicants' cost of production, be based on the replacement costs of such assets (e.g. new mine shafts and machinery etc.). In this regard, it was argued that depreciation based conventionally on the acquisition (historical) value of the capital assets would not, in accordance with Article 2(5) of the basic Regulation, reasonably reflect the costs associated with the production of the product concerned. It was submitted, therefore, that an upward adjustment to the Russian producers' costs was required.
- (36) As concerns this submission, it was noted that depreciation based on the acquisition value and residual economical life of capital assets appears to be in line with accounting practices in the mining industry. Therefore, in order to establish whether the depreciation included in the cost of production data reasonably reflected the costs associated with the production of the product concerned, the investigation focused on the way the historical values of the assets had been established.
- (37) In this regard, the on-the-spot verification visits to the Russian producers showed that the original value of their assets had been determined on the basis of valuations carried out during the privatization process which took place in 1993. These asset values were subsequently revised between 1993 and 1997 as a result of the application of 'revaluation coefficients' issued by the Russian Government to deal with hyperinflation. At the end of 1997, following a Decree of the Russian Government, independent valuations of assets were carried out by independent evaluators. Three basic criteria were adopted in establishing these asset values, one of which was the replacement value of the asset. The result of these independent assessments are reflected in the opening Balance Sheet of the applicants in 1998.
- (38) Nevertheless, despite this upward valuation of the original values, it was noted that the asset values of the applicants, when expressed as a ratio of production to value of the assets, still appear to be significantly lower than the asset values of the companies comprising the Community industry and a major producer with similar extraction and production capacity in Canada. Such an assessment, however, does not take into account the obsolescence and lower technological level of the assets of the Russian producers obtained prior to the privatisation which took place in 1993.
- (39) Therefore in the absence of any substantive evidence showing that depreciation had not been correctly reflected in the accounts of the exporting producers, it is not considered possible at the present time to make any adjustment to depreciation costs in the cost of production data used for establishing the normal value of the applicants.
- (40) The Community industry also submitted that an allocation for environmental protection costs comparable to those incurred by the Community producers should also be factored into the cost of production calculations. It was found, however, that the applicants had incurred such costs and had accounted for them in the cost of production calculations. With regard to whether such costs should be of a similar proportion or magnitude to those of the Community producers, it is considered that as long as the applicants have met the environmental protection levels prescribed by the Russian authorities and that the costs involved in meeting such levels are correctly reflected in their records, no adjustment is required. As this was found to be the case for both of the applicants, no adjustment was warranted for environmental costs.

2. Export price

JSC Silvinit (Silvinit)

- (41) With regard to Silvinit, it was found that most of the company's sales of potash to the Community in the investigation period were made via an unrelated Swiss trading company. For the purposes of the present investigation and pursuant to Article 2(8) of the basic Regulation, the prices, actually paid or payable to Silvinit by this trading company, were taken as the basis for calculating the export price.
- (42) However, it was found that two transactions were made via Silvinit's related Russian trading company, International Potash Company (IPC), to a related company in Belgium called Ferchimex AS (Ferchimex), which processed the imported potash into a product not covered by the investigation. In accordance with Article 2(9) of the basic Regulation, the prices charged by IPC to Ferchimex may be disregarded if they are considered to be unreliable. It was noted that for both of the transactions, the sales price to Ferchimex were at a broadly similar price for the same types when sold to independent customers in the Community. Moreover, both transactions concerned only minor quantities. Therefore, they were both included in the overall determination of the export price.

JSC Uralkali (Uralkali)

- (43) As concerns Uralkali, it was found that all of the company's sales of potash to the Community in the investigation period were made directly to a trader situated in Cyprus called Fertexim Ltd which acted as an exclusive distributor for Uralkali. For such sales, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the prices actually paid or payable by Fertexim.

3. Comparison

- (44) The normal value and export prices for both of the applicants 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 was made for differences which affect price comparability in accordance with Article 2(10) of the basic Regulation.
- (45) Accordingly, allowances for differences in respect of discounts, transport, insurance, handling, loading and ancillary costs, packing and credit costs have been granted where applicable and supported by evidence.

4. Dumping margin

- (46) In accordance with Article 2(11) of the basic Regulation, for each exporting producer the adjusted weighted average normal value by product type was compared to the adjusted weighted average export price of each corresponding type of the product concerned sold to the Community.
- (47) The comparison showed the existence of dumping for both of the companies concerned, however, at significantly lower levels than those established previously. As a weighted average of all types exported to the Community, expressed as percentages of the total CIF Community frontier price, duty unpaid, the dumping margins established were as follows:

Exporting producer	% Dumping margin
JSC Silvinit	23,0
JSC Uralkali	12,3

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (48) In accordance with Article 11(3) of the basic Regulation, an analysis was made as to whether the circumstances with regard to dumping had changed significantly and if any change could be said to be of a lasting nature. In this regard, it was found that the change in the dumping margins resulted from a lowering of the normal values of the applicants.
- (49) In this regard, it should be noted that in the present investigation, normal value was established on the basis of the applicants' costs and prices. Moreover, contrary to the findings in the previous investigation, domestic consumption for potash has been steadily increasing in the last few years and, overall, the domestic sales prices of both Russian producers are profitable.
- (50) As concerns the lasting nature of export sales prices on markets other than the Community, neither of the applicants was able to provide detailed data on a transaction-by-transaction basis at producer level. Aggregated data was, however, provided by country of destination and by product type. This was considered sufficient for the purposes of the present partial interim review as an

exact determination of sales prices on such markets is not an absolute requirement. In the absence of detailed data, and in view of (i) the variety of delivery terms used for such sales (e.g. cif, fob, FCA etc.) (ii) the different logistical arrangements and combinations (e.g. rail + sea, rail only etc.) (iii) the differences in distances and transport and handling costs to various destinations in Asia and South America, the Commission was not in a position to determine with exactitude the sales prices to each country. There were, however, indications that sales price levels to the non-Community markets were, allowing for transport costs, of the same order of magnitude as sales to the Community.

- (51) In view of all these factors, it is considered appropriate to amend the existing measures insofar as they concern the applicants by lowering the dumping margins to those established in the present investigation.
- (52) According to Article 9(4) of the basic Regulation, the amount of the anti-dumping duties should not exceed the margins of dumping established, but they should be less than those margins if such lesser duties would be adequate to remove the injury of the Community Industry. As the existing duties for the applicants had been calculated on the basis of the dumping margins, and as the new dumping margins are lower than the ones previously calculated, the duties should be adjusted to the lower dumping margins found in this investigation, namely 23,0 % for JSC Silvinit and 12,3 % for JSC Uralkali.
- (53) The interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the anti-dumping duties originally imposed by Regulation (EEC) No 3068/92 be amended. They were given the opportunity to comment and to request a hearing. All comments received were taken into consideration where appropriate.

E. UNDERTAKINGS

- (54) Following disclosure of the essential facts and considerations on the basis of which it was intended to recommend that the anti-dumping duties originally imposed by Regulation (EEC) No 3068/92 be amended, both of the applicants offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (55) The Commission, by Decision 2005/802/EC ⁽¹⁾ accepted the undertakings offered by the applicants. The reasons for accepting these undertakings are set out in that Decision.

F. FORM OF THE MEASURES WITH REGARD TO THE APPLICANTS

- (56) The existing measures are applicable to eight CN codes and comprise fixed amounts ranging from EUR 19,61/tonne to EUR 40,63/tonne, depending on the product type. During the current investigation period, however, it was found that almost all the exports by the applicants to the Community were limited to a product type falling under one CN code.
- (57) Accordingly, in view of the absence of information on the other product types, and as the particular type of potash concerned appears now to be the most commercialised, the most reasonable approach for implementing the amended duties is considered to be the replacement of all the fixed amounts with a single *ad valorem* duty for all potash types manufactured by the applicants,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3068/92 is amended as follows:

1. Article 1 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of potassium chloride falling within CN codes 3104 20 10, 3104 20 50, 3104 20 90, and on special mixtures falling within CN codes ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 99 20), originating in Belarus or Russia;'

- (b) in paragraph 3, the heading for the table relating to 'Russia' shall be replaced by the following:

'Russia (all companies excluding JSC Silvinit and JSC Uralkali — TARIC additional code A999)';

⁽¹⁾ See page 79 of this Official Journal.

(c) the following paragraph shall be inserted:

'3a. For the imports of the exporting producers mentioned below, the rate of the anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the products described in paragraph 1 shall be as follows:

Company	Rate of duty	TARIC additional code
JSC Silvinit, Solikamsk, Russia	23,0 %	A665
JSC Uralkali, Berezniki, Russia	12,3 %	A666'

2. in Article 1a, paragraph 1 shall be replaced by the following:

'1. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are produced by companies from which undertakings are accepted by the Commission and whose names are listed in the Commission Regulation (EC) No 858/2005 and in Commission Decision No 2005/802/EC, as from time to time amended, and have been imported in conformity with the provisions of the same Commission acts.'

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 November 2005.

For the Council

The President

T. JOWELL

COUNCIL REGULATION (EC) No 1892/2005**of 14 November 2005****terminating the partial interim review of the anti-dumping measures applicable to imports of bicycles originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

- (1) On 9 September 1993, the Council, by Regulation (EEC) No 2474/93 ⁽²⁾ imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in the People's Republic of China (the PRC), (the original measures). On 18 January 1997, following an anti-circumvention investigation, this duty was extended by Council Regulation (EC) No 71/97 to imports of certain bicycle parts originating in the PRC.
- (2) On 14 July 2000, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 1524/2000 ⁽³⁾, decided that the abovementioned measures should be maintained.
- (3) On 14 July 2005, following an interim review pursuant to Article 11(3) of the basic Regulation (the previous investigation), the Council by Regulation (EC) No 1095/2005, amended the definitive anti-dumping duty on imports of bicycles originating in the PRC. The amended rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is 48,5 % for imports of bicycles originating in the PRC.

2. Current investigation

- (4) The Commission received a request lodged by Giant China Co., Ltd (the applicant) for a partial interim review pursuant to Article 11(3) of the basic Regulation.

- (5) The request was based on the *prima facie* evidence, provided by the applicant, that the circumstances on the basis of which measures were established have changed and that these changes are of lasting nature. The applicant alleged, *inter alia*, that the circumstances with regard to market economy status (MES) had changed significantly. In particular, the applicant claimed that it now fulfilled the requirements to be granted MES pursuant to Article 2(7)(b) of the basic Regulation. Furthermore, the applicant provided evidence showing that a comparison of normal value based on its own cost/domestic prices and its export prices to the enlarged European Union, would lead to a dumping margin significantly below the level of the current measure. Accordingly, the applicant alleged that the continued imposition of the measure at its current level was no longer necessary to offset dumping.

- (6) The Commission, after consulting the Advisory Committee, initiated on 19 February 2005 by a notice ⁽⁴⁾ a partial interim review limited in scope to the examination of whether the applicant operated under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively whether the applicant fulfilled the requirements to have an individual duty in accordance with Article 9(5) of the basic Regulation.

- (7) The Commission sent a questionnaire and a claim form for MES pursuant to Article 2(7) of the basic Regulation to the applicant.

- (8) The investigation covered the period from 1 January 2004 to 31 December 2004 (hereinafter referred to as investigation period or IP).

3. Parties concerned by the investigation

- (9) The Commission officially advised the exporting producer, the representatives of the exporting country and the Community producers of the initiation of the review. Interested parties were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence and to request a hearing within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

⁽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 228, 9.9.1993, p. 1. Regulation as last amended by Regulation (EC) No 71/97 (OJ L 16, 18.1.1997, p. 55).

⁽³⁾ OJ L 175, 14.7.2000, p. 39. Regulation as last amended by Regulation (EC) No 1095/2005 (OJ L 183, 14.7.2005, p. 1).

⁽⁴⁾ OJ C 44, 19.2.2005, p. 24.

B. PRODUCT CONCERNED

- (10) The product concerned is the same as that covered by the original and previous investigations, namely bicycles and other cycles (including delivery tricycles), not motorised, currently classifiable within CN codes 8712 00 10, 8712 00 30 and 8712 00 80 (product concerned). No evidence was found suggesting that circumstances with regard to the product concerned had significantly changed since the imposition of the measures.

C. RESULT OF THE INVESTIGATION**1. Market Economy Status (MES)**

- (11) In the framework of the investigation which was concluded by Regulation (EC) No 1095/2005, it was established that all the Chinese exporting producers applying for MES did not meet the criteria set in Article 2(7)(c) of the basic Regulation, for the reasons set out in recitals 31 to 33 of the said Regulation. The applicant was amongst the companies denied MES within the framework of that investigation.
- (12) In view of the fact that findings regarding the MES claims of the previous investigation remain valid also for the year 2004, i.e. the IP of the current investigation, it was decided, after consulting the Advisory Committee, not to grant MES to the applicant, since it did not meet the criteria set in Article 2(7)(c) of the basic Regulation.

2. Individual treatment (IT)

- (13) In the framework of the previous investigation it was also concluded that the Chinese exporting producers having applied for IT did not meet the necessary requirements for individual treatment as set out in Article 9(5) of the basic Regulation for the reasons set out in recitals 45 to 47 of Regulation (EC) No 1095/2005.

- (14) The applicant was amongst the companies that did not meet the necessary requirements for individual treatment in the framework of the previous investigation and the findings of that investigation remain valid also for the IP of the current investigation. In this respect, it was established, that all PRC exporting producers were subject to significant State control with regard to determining their export prices and quantities of the product concerned as explained in recital 13. It was, therefore, concluded that the applicant does not meet the requirements for individual treatment in the framework of the current investigation.

3. Conclusion

- (15) Given the above, neither MES nor IT could be granted to the applicant. On this basis, it is considered that, in the case of the applicant, the circumstances with regard to dumping have not changed significantly compared to the situation prevailing during the investigation period used in the investigation which led to the amended measures. Therefore, it is concluded that the partial interim review of the anti-dumping measures applicable to imports into the Community of bicycles originating in the People's Republic of China should be terminated without amending the measures in force,

HAS ADOPTED THIS REGULATION:

Article 1

1. The partial interim review of the anti-dumping duty on imports of bicycles originating in the People's Republic of China is hereby terminated.
2. The definitive anti-dumping duty imposed by Regulation (EC) No 1524/2000 shall be maintained.

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 November 2005.

For the Council
The President
T. JOWELL

COMMISSION REGULATION (EC) No 1893/2005**of 18 November 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 19 November 2005.

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

Done at Brussels, 18 November 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 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 18 November 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	56,5
	204	39,1
	999	47,8
0707 00 05	052	124,0
	204	30,3
	999	77,2
0709 90 70	052	108,7
	204	76,2
	999	92,5
0805 20 10	204	74,4
	388	85,5
	999	80,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	67,6
	624	113,6
	999	90,6
0805 50 10	052	67,2
	388	74,2
	999	70,7
0806 10 10	052	110,8
	400	241,9
	508	275,3
	720	86,9
	999	178,7
0808 10 80	388	69,3
	400	102,0
	404	101,3
	512	132,0
	720	42,6
	800	141,8
0808 20 50	999	98,2
	052	95,1
	720	67,8
	999	81,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1894/2005**of 17 November 2005****establishing a prohibition of fishing for hake in ICES zone Vb (EC waters), VI, VII, XII, XIV by vessels flying the flag of Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2005.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2005.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2005 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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, 17 November 2005.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

⁽³⁾ OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1300/2005 (OJ L 207, 10.8.2005, p. 1).

ANNEX

Member State	Spain
Stock	HKE/571214
Species	Hake (<i>Merluccius merluccius</i>)
Zone	Vb (EC waters), VI, VII XII, XIV
Date	4 November 2005

COMMISSION REGULATION (EC) No 1895/2005

of 18 November 2005

on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food

(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 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(1) thereof,

After consulting the European Food Safety Authority,

Whereas:

(1) To avoid risks to human health and barriers to the free movement of goods, Commission Directive 2002/16/EC of 20 February 2002 on the use of certain epoxy derivatives in materials and articles intended to come into contact with food ⁽²⁾, lays down specific migration limits for 2,2-bis(4-hydroxyphenyl)propane bis(2,3-epoxypropyl) ether ('BADGE' i.e. Bisphenol-A DiGlycidyl Ether), bis(hydroxyphenyl)methane bis(2,3-epoxypropyl)ethers ('BFDGE' i.e. Bisphenol-F DiGlycidyl Ether) and novolac glycidyl ethers (NOGE) and some of their derivatives.

(2) Directive 2002/16/EC provides that the use and/or the presence of BFDGE and NOGE may only be continued until 31 December 2004. For BADGE the transitional period was extended until 31 December 2005 pending the expected submission of new toxicological data and their evaluation by the European Food Safety Authority (the Authority).

(3) The toxicological data required for BADGE have been transmitted. The Authority concluded that BADGE, BADGE.H₂O and BADGE.2H₂O do not raise concern about carcinogenicity and genotoxicity *in vivo* and that

a Tolerable Daily Intake of 0,15 mg/kg body weight can be established for BADGE, BADGE.H₂O and BADGE.2H₂O. Therefore a higher specific migration limit SML(T) can be established for BADGE, BADGE.H₂O and BADGE.2H₂O. As regards the BADGE chlorohydrins, in view of the lack of data on genotoxicity *in vivo*, the Authority considers that the current specific migration limit of 1 mg/kg of food or food simulants remains appropriate.

(4) Trade in and use of materials and articles containing BADGE in accordance with this Regulation shall therefore be permitted throughout the Community as from 1 January 2006.

(5) The toxicological data required for NOGE and BFDGE have not been transmitted on time to permit their evaluation by the Authority and to continue their use. Therefore the use and/or presence BFDGE and NOGE is no longer permitted as from 1 January 2005 in accordance with Directive 2002/16/EC. However the exhaustion of existing stocks should be permitted.

(6) For large containers, the use and/or presence of BADGE, NOGE and BFDGE are permitted. The high volume/surface area ratio, the repeated use over their long lifetime which reduces migration and the fact that contact with food usually occurs at ambient temperature suggests that it is not necessary to set a migration limit for BADGE, NOGE and BFDGE used in such containers.

(7) Pursuant to Article 16 of Regulation (EC) No 1935/2004 materials and articles covered by specific measures are to be accompanied by a written declaration stating that they comply with the rules applicable to them. That requirement has not yet been included in Directive 2002/16/EC. Therefore it is necessary to introduce this obligation and to provide for a transitional period.

(8) Having regard to the amendments required and in the interest of clarity, Directive 2002/16/EC should be replaced by a new Regulation.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ OJ L 51 of 22.2.2002, p. 27. Regulation as amended by Directive 2004/13/EC (OJ L 27, 30.1.2004, p. 46).

(9) Directive 2002/16/EC provides that its requirements concerning BADGE, BFDGE and NOGE do not apply to materials and articles brought into contact with food before 1 March 2003. Those materials and articles may continue to be placed on the market provided that the date of filling appears on them. This date may be replaced by the 'best before' date as provided for by Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of food ⁽¹⁾ or another indication, such as the lot number required by Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs ⁽²⁾ for the food packed in such materials and articles, provided a link is established between this indication and the date of filling so that the latter can always be identified.

(10) Directive 2002/16/EC should therefore be repealed.

(11) 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

Scope

1. This Regulation shall apply to materials and articles, including active and intelligent food contact materials and articles, as referred to in Article 1(2) of Regulation (EC) No 1935/2004, which are manufactured with or contain one or more of the following substances:

- (a) 2,2-bis(4-hydroxyphenyl)propane bis(2,3-epoxypropyl) ether, hereinafter referred to as 'BADGE' (CAS No 001675-54-3), and some of its derivatives;
- (b) bis(hydroxyphenyl)methane bis(2,3-epoxypropyl)ethers, hereinafter referred to as 'BFDGE' (CAS No 039817-09-9);
- (c) other novolac glycidyl ethers, hereinafter referred to as 'NOGE'.

2. For the purposes of this Regulation, 'materials and articles' are:

- (a) materials and articles made of any type of plastics;

(b) materials and articles covered by surface coatings; and

(c) adhesives.

3. This Regulation shall not apply to containers or storage tanks having a capacity greater than 10 000 litres or to pipelines belonging to or connected with them, covered by special coatings called 'heavy-duty coatings'.

Article 2

BADGE

Materials and articles shall not release the substances listed in Annex I in a quantity exceeding the limits laid down in that Annex.

Article 3

BFDGE

The use and/or presence of BFDGE in the manufacture of materials and articles are prohibited.

Article 4

NOGE

The use and/or presence of NOGE in the manufacture of materials and articles are prohibited.

Article 5

Written declaration

At the marketing stages other than the retail stages, materials and articles containing BADGE and its derivatives shall be accompanied by a written declaration in accordance with Article 16 of Regulation (EC) No 1935/2004.

Appropriate documentation shall be available to demonstrate such compliance. That documentation shall be made available to the competent authorities on demand.

Article 6

Transitional provisions

1. Articles 2, 3 and 4 shall not apply to materials and articles referred to in Article 1(2)(b) and (c) which are brought into contact with food before 1 March 2003.

2. Articles 3 and 4 shall not apply to materials and articles which are in compliance with Directive 2002/16/EC and which are brought into contact with food before 1 January 2005.

⁽¹⁾ OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

⁽²⁾ OJ L 186, 30.6.1989, p. 21. Directive as last amended by Directive 91/11/EEC (OJ L 65, 11.3.1992, p. 32).

3. Article 5 shall not apply to materials and articles referred to Article 1(2)(a)(b) and (c) which are brought into contact with food before 1 January 2007.

4. The materials and articles referred to in paragraphs 1, 2 and 3 may be placed on the market provided the date of filling appears on the materials and articles. The date of filling may be replaced by another indication, provided it permits the identification of the date of filling. Upon request the date of filling shall be made available to the competent authorities and any person enforcing the requirements of this Regulation.

5. Paragraphs 1 to 4 shall apply without prejudice to the requirements of Directive 2000/13/EC.

Article 7

Repeal

Directive 2002/16/EC is repealed.

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

Article 8

Entry into force

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

It shall apply from 1 January 2006.

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

Done at Brussels, 18 November 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX I

Specific migration limit for BADGE and certain of its derivatives

1. The sum of the migrations of the following substances:

(a) BADGE [= 2,2-bis(4-hydroxyphenyl)propane bis(2,3-epoxypropyl) ether] (CAS No = 001675-54-3)

(b) BADGE.H₂O (CAS No = 076002-91-0)

(c) BADGE.2H₂O (CAS No = 005581-32-8)

shall not exceed the following limits:

— 9 mg/kg in food or food simulants, or

— 9 mg/6 dm² in accordance with the cases provided by Article 7 of Commission Directive 2002/72/EC ⁽¹⁾.

2. The sum of the migrations of the following substances:

(a) BADGE.HCl (CAS No = 013836-48-1)

(b) BADGE.2HCl (CAS No = 004809-35-2)

(c) BADGE.H₂O.HCl (CAS No = 227947-06-0)

shall not exceed the following limits:

— 1 mg/kg in food or in food simulants, or

— 1 mg/6 dm² in accordance with the cases provided by Article 7 of Directive 2002/72/EC.

3. The migration testing shall be carried out in accordance to the rules established in Council Directive 82/711/EEC ⁽²⁾ and Directive 2002/72/EC.

⁽¹⁾ OJ L 39, 13.2.2003, p. 1.

⁽²⁾ OJ L 297, 23.10.1982, p. 26.

ANNEX II

Correlation table

Directive 2002/16/EC as amended by Directive 2004/13/EC	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
—	Article 5
Article 5	Article 6
Article 6	Article 7
Article 7	Article 8
Article 8	Article 8
Article 9	—
Annex I	Annex I
Annex II	—
Annex III	Annex II

COMMISSION REGULATION (EC) No 1896/2005**of 18 November 2005****amending Regulation (EC) No 887/2005 opening crisis distillation as provided for in Article 30 of Council Regulation (EC) No 1493/1999 for certain wines in Greece**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, and in particular Article 33(1)(f) thereof,

Whereas:

- (1) Commission Regulation (EC) No 887/2005 ⁽²⁾ opened crisis distillation under Article 30 of Regulation (EC) No 1493/1999 for certain wines produced in Greece.
- (2) Since this is the first time that crisis distillation has been applied in Greece, some practical problems have been encountered in launching the system. Certain producers wishing to deliver their wine for distillation may be unable to do so by the deadline set. To ensure that the measure is effective, therefore, the period for delivering the wine to distilleries as provided for in Regulation (EC) No 887/2005 should be extended until 31 January 2006.
- (3) Regulation (EC) No 887/2005 should therefore be amended accordingly.

- (4) To ensure continuity of the measure, this Regulation should apply from 15 November 2005.

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

HAS ADOPTED THIS REGULATION:

Article 1

The first paragraph of Article 4 of Regulation (EC) No 887/2005 is hereby replaced by the following:

‘1. The quantities of wine covered by approved contracts shall be delivered to the distilleries not later than 31 January 2006. The alcohol obtained shall be delivered to the intervention agency in accordance with Article 6(1) not later than 15 March 2006.’

Article 2

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

It shall apply from 15 November 2005.

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

Done at Brussels, 18 November 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 148, 11.6.2005, p. 34.

COMMISSION REGULATION (EC) No 1897/2005
of 18 November 2005
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme ⁽³⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling 22,102 EUR/100 kg.

Article 2

This Regulation shall enter into force on 19 November 2005.

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

Done at Brussels, 18 November 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

COMMISSION DIRECTIVE 2005/79/EC**of 18 November 2005****amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food****(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 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(2) thereof,

After consulting the European Food Safety Authority,

Whereas:

- (1) Commission Directive 2002/72/EC ⁽²⁾ establishes a list of monomers and other starting substances, which may be used for the manufacture of plastic materials and articles. On the basis of new information related to the risk assessment of such substances, certain monomers provisionally admitted at national level as well as new monomers should be included in the Community list of permitted substances in that Directive.
- (2) Directive 2002/72/EC also contains an incomplete list of additives which may be used in the manufacture of plastic materials and articles. That list should be amended so as to include other additives evaluated by the European Food Safety Authority (the Authority).
- (3) For certain substances, the restrictions already established at Community level should be amended on the basis of the new information available. In particular for epoxidised soybean oil (ESBO) the Authority recommended to decrease its specific migration limit (SML) for PVC gaskets containing that substance which are used to seal glass jars containing infant formulae and follow-on formulae or containing processed cereal-based foods and baby foods for infants and young children. In fact the Authority noted that the exposure of infants who regularly eat such foods may exceed the TDI. Therefore the SML for ESBO is decreased for these particular applications from 60 to 30 mg/kg of food or food simulant while it remains unchanged for all other applications.

(4) A transitional period should be provided for in respect of PVC gaskets containing epoxidised soybean oil, used to seal glass jars, which are brought into contact with food before the 19 November 2006.

(5) Directive 2002/72/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes II, III, V and VI of Directive 2002/72/EC are amended in accordance with Annexes I to IV to this Directive.

Article 2

PVC gaskets containing epoxidised soybean oil, with reference number 88640 in section A of Annex III to Directive 2002/72/EC, which are used to seal glass jars containing infant formulae and follow-on formulae as defined by Commission Directive 91/321/EEC ⁽³⁾ or containing processed cereal-based foods and baby foods for infants and young children as defined by Commission Directive 96/5/EC ⁽⁴⁾, filled before 19 November 2006 and which comply with the restrictions and/or specifications provided for in Section A of Annex III to Directive 2002/72/EC as amended by Directive 2004/19/EC, may continue to be placed on the market provided that the date of filling appears on the materials and articles.

The date of filling may be replaced by another indication, provided that that indication permits the identification of the date of filling. Upon request the date of filling shall be made available to the competent authorities and any person enforcing the requirements of this Directive.

The first and second subparagraphs shall apply without prejudice to Directive 2000/13/EC of the European Parliament and of the Council ⁽⁵⁾.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ OJ L 220, 15.8.2002, p. 18. Directive as last amended by Directive 2004/19/EC (OJ L 71, 10.3.2004, p. 8).

⁽³⁾ OJ L 175, 4.7.1991, p. 35. Directive as last amended by Directive 2003/14/EC (OJ L 41, 14.2.2003, p. 37).

⁽⁴⁾ OJ L 49, 28.2.1996, p. 17. Directive as last amended by Directive 2003/13/EC (OJ L 41, 14.2.2003, p. 33).

⁽⁵⁾ OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

Article 3

1. Member States shall adopt and publish, by 19 November 2006 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 in such a way as to:

- (a) permit the trade in and use of plastic materials and articles intended to come into contact with food and complying with this Directive, from 19 November 2006;
- (b) prohibit the manufacture and importation into the Community of plastic materials and articles intended to come into contact with food and which do not comply with this Directive, from 19 November 2007.

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 text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 18 November 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX I

Annex II to Directive 2002/72/EC is amended as follows:

1. point 2 of the general introduction is replaced by the following:

‘2. The following substances are not included even if they are intentionally used and are authorised:

- (a) salts (including double salts and acid salts) of aluminium, ammonium, calcium, iron, magnesium, potassium and sodium of authorised acids, phenols or alcohols. However, names containing “... acid(s), salts” appear in the lists, if the corresponding free acid(s) is (are) not mentioned;
- (b) salts (including double salts and acid salts) of zinc of authorised acids, phenols or alcohols. For these salts a Group SML = 25 mg/kg (expressed as Zn) apply. The same restriction for Zn applies to:
 - (i) substances whose name contains “... acid(s), salts” which appear in the lists, if the corresponding free acid(s) is (are) not mentioned,
 - (ii) substances referred to in note 38 of Annex VI.’;

2. section A is amended as follows:

(a) the following lines are inserted in the table in numerical order:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
11005	012542-30-2	Acrylic acid, dicyclopentenyl ester	QMA = 0,05 mg/6 dm ²
11500	000103-11-7	Acrylic acid, 2-ethylhexyl ester	SML = 0,05 mg/kg
12786	000919-30-2	3-Aminopropyltriethoxysilane	Residual extractable content of 3-aminopropyltriethoxysilane to be less than 3 mg/kg filler. To be used only for the reactive surface treatment of inorganic fillers
13317	132459-54-2	N,N'-Bis[4-(ethoxycarbonyl)-phenyl]-1,4,5,8-naphthalenetetracarboxydiimide	SML = 0,05 mg/kg. Purity > 98,1 % (w/w). To be used only as co-monomer (max 4 %) for polyesters (PET, PBT)
14260	000502-44-3	Caprolactone	SML = 0,05 mg/kg (expressed as the sum of caprolactone and 6-hydroxyhexanoic acid)
16955	000096-49-1	Ethylene carbonate	Residual content = 5 mg/kg of hydrogel at a maximum ratio of 10 g of hydrogel to 1 kg of food. The hydrolysate contains ethyleneglycol having an SML = 30 mg/kg
21370	010595-80-9	Methacrylic acid, 2-sulphoethyl ester	QMA = ND (DL = 0,02 mg/6 dm ²)
22210	000098-83-9	alpha-Methylstyrene	SML = 0,05 mg/kg
22932	001187-93-5	Perfluoromethyl perfluorovinyl ether	SML = 0,05 mg/kg. Only to be used for anti-stick coatings
24903	068425-17-2	Syrups, hydrolysed starch, hydrogenated	In compliance with the specifications laid down in Annex V
25540	000528-44-9	Trimellitic acid	SML(T) = 5 mg/kg ⁽³⁵⁾
25550	000552-30-7	Trimellitic anhydride	SML(T) = 5 mg/kg ⁽³⁵⁾ (expressed as trimellitic acid)

(b) in the following lines the content of the columns 'CAS No' or 'Restrictions and/or specifications' is replaced by the following:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
10690	000079-10-7	Acrylic acid	SML(T) = 6 mg/kg ⁽³⁶⁾
10750	002495-35-4	Acrylic acid, benzyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
10780	000141-32-2	Acrylic acid, n-butyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
10810	002998-08-5	Acrylic acid, sec-butyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
10840	001663-39-4	Acrylic acid, tert-butyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11470	000140-88-5	Acrylic acid, ethyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11590	000106-63-8	Acrylic acid, isobutyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11680	000689-12-3	Acrylic acid, isopropyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11710	000096-33-3	Acrylic acid, methyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11830	000818-61-1	Acrylic acid, monoester with ethyleneglycol	SML(T) = 6 mg/kg ⁽³⁶⁾
11890	002499-59-4	Acrylic acid, n-octyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
11980	000925-60-0	Acrylic acid, propyl ester	SML(T) = 6 mg/kg ⁽³⁶⁾
13720	000110-63-4	1,4-Butanediol	SML(T) = 5 mg/kg ⁽²⁴⁾
20020	000079-41-4	Methacrylic acid	SML(T) = 6 mg/kg ⁽³⁷⁾
20080	002495-37-6	Methacrylic acid, benzyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
20110	000097-88-1	Methacrylic acid, butyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
20140	002998-18-7	Methacrylic acid, sec-butyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
20170	000585-07-9	Methacrylic acid, tert-butyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
20890	000097-63-2	Methacrylic acid, ethyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21010	000097-86-9	Methacrylic acid, isobutyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21100	004655-34-9	Methacrylic acid, isopropyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21130	000080-62-6	Methacrylic acid, methyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21190	000868-77-9	Methacrylic acid, monoester with ethyleneglycol	SML(T) = 6 mg/kg ⁽³⁷⁾
21280	002177-70-0	Methacrylic acid, phenyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21340	002210-28-8	Methacrylic acid, propyl ester	SML(T) = 6 mg/kg ⁽³⁷⁾
21460	000760-93-0	Methacrylic anhydride	SML(T) = 6 mg/kg ⁽³⁷⁾
24190	008050-09-7	Rosin wood	See "Rosin" (Reference No 24100)

(c) the following line is deleted:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
11000	050976-02-8	Acrylic acid, dicyclopentadienyl ester	QMA = 0,05 mg/6 dm ²

3. in section B the following lines are deleted:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
11500	000103-11-7	Acrylic acid, 2-ethylhexyl ester	
14260	000502-44-3	Caprolactone	
21370	010595-80-9	Methacrylic acid, 2-sulphoethyl ester	
22210	000098-83-9	alpha-Methylstyrene	
25540	000528-44-9	Trimellitic acid	QM(T) = 5 mg/kg in FP
25550	000552-30-7	Trimellitic anhydride	QM(T) = 5 mg/kg in FP (expressed as trimellitic acid)

ANNEX II

Annex III to Directive 2002/72/EC is amended as follows:

1. point 2 is replaced by the following:

‘2. The following substances are not included even if they are intentionally used and are authorised:

- (a) salts (including double salts and acid salts) of aluminium, ammonium, calcium, iron, magnesium, potassium and sodium of authorised acids, phenols or alcohols. However, names containing “... acid(s), salts” appear in the lists, if the corresponding free acid(s) is (are) not mentioned;
- (b) salts (including double salts and acid salts) of zinc of authorised acids, phenols or alcohols. For these salts a Group SML = 25 mg/kg (expressed as Zn) apply. The same restriction for Zn applies to:
 - (i) substances whose name contains “... acid(s), salts” which appear in the lists, if the corresponding free acid(s) is (are) not mentioned,
 - (ii) substances referred to in note 38 of Annex VI.;

2. section A is amended as follows:

(a) the following lines are inserted in numerical order:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
30340	330198-91-9	12-(Acetoxy)stearic acid, 2,3-bis (acetoxy)propyl ester	
30401	—	Acetylated mono- and diglycerides of fatty acids	
31542	174254-23-0	Acrylic acid, methyl ester, telomer with 1-dodecanethiol, C ₁₆ -C ₁₈ alkyl esters	QM = 0,5 % (w/w) in FP
43480	064365-11-3	Charcoal, activated	In compliance with the specifications laid down in Annex V, Part B
62245	012751-22-3	Iron phosphide	For PET polymers and copolymers only
64990	025736-61-2	Maleic anhydride-styrene, copolymer, sodium salt	In compliance with specifications laid down in Annex V
66905	000872-50-4	N-Methylpyrrolidone	
66930	068554-70-1	Methylsilsesquioxane	Residual monomer in methylsilsesquioxane: < 1 mg methyltrimethoxysilane/kg of methylsil-sesquioxane
67155	—	Mixture of 4-(2-Benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene, 4,4'-bis(2-benzoxazolyl) stilbene and 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene)	Not more than 0,05 % w/w (quantity of substance used/quantity of the formulation). In compliance with the specifications laid down in Annex V
76415	019455-79-9	Pimelic acid, calcium salt	

(1)	(2)	(3)	(4)
76815	—	Polyester of adipic acid with glycerol or pentaerythritol, esters with even numbered, unbranched C ₁₂ -C ₂₂ fatty acids	In compliance with the specifications laid down in Annex V
76845	031831-53-5	Polyester of 1,4-butanediol with caprolactone	In compliance with the specifications laid down in Annex V
77370	070142-34-6	Polyethyleneglycol-30 dipolyhydroxystearate	
79600	009046-01-9	Polyethyleneglycol tridecyl ether phosphate	SML = 5 mg/kg. For materials and articles intended for contact with aqueous foods only. In compliance with the specification laid down in Annex V
80000	009002-88-4	Polyethylene wax	
81060	009003-07-0	Polypropylene wax'	

(b) in the following lines the content of the columns 'Name' and 'Restrictions and/or specifications' is replaced by the following:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
30080	004180-12-5	Acetic acid, copper salt	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
35760	001309-64-4	Antimony trioxide	SML = 0,04 mg/kg ⁽³⁹⁾ (expressed as Antimony)
40580	000110-63-4	1,4-Butanediol	SML(T) = 5 mg/kg ⁽²⁴⁾
42320	007492-68-4	Carbonic acid, copper salt	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
45195	007787-70-4	Copper bromide	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
45200	001335-23-5	Copper iodide	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
53610	054453-03-1	Ethylenediaminetetraacetic acid, copper salt	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
81515	087189-25-1	Poly(zinc glycerolate)	SML(T) = 25 mg/kg ⁽³⁸⁾ (as Zinc)
81760	—	Powders, flakes and fibers of brass, bronze, copper, stainless steel, tin and alloys of copper, tin and iron	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
88640	008013-07-08	Soybean oil, epoxidised	SML = 60 mg/kg. However in the case of PVC gaskets used to seal glass jars containing infant formulae and follow-on formulae as defined by Commission Directive 91/321/EEC or containing processed cereal-based foods and baby foods for infants and young children as defined by Directive 96/5/EC, the SML is lowered to 30 mg/kg
89200	007617-31-4	Stearic acid, copper salt	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
92030	010124-44-4	Sulphuric acid, copper salt	SML(T) = 5 mg/kg ⁽⁷⁾ (expressed as Copper)
96190	020427-58-1	Zinc hydroxide	SML(T) = 25 mg/kg ⁽³⁸⁾ (as Zinc)
96240	001314-13-2	Zinc oxide	SML(T) = 25 mg/kg ⁽³⁸⁾ (as Zinc)
96320	001314-98-3	Zinc sulphide	SML(T) = 25 mg/kg ⁽³⁸⁾ (as Zinc)

(c) the following lines are deleted:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
30400	—	Acetylated glycerides	
38320	005242-49-9	4-(2-Benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene	In compliance with the specifications laid down in Annex V

3. section B is amended as follows:

(a) the following lines are inserted in numerical order:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
31500	025134-51-4	Acrylic acid, acrylic acid, 2-ethylhexyl ester, copolymer	SML(T) = 6 mg/kg ⁽³⁶⁾ (expressed as acrylic acid) and SML = 0,05 mg/kg (expressed as acrylic acid, 2-ethylhexyl ester)
38505	351870-33-2	cis-endo-Bicyclo[2.2.1]heptane-2,3-dicarboxylic acid, disodium salt	SML = 5 mg/kg. Not to be used with polyethylene in contact with acidic foods. Purity ≥ 96 %
38940	110675-26-8	2,4-Bis(dodecylthiomethyl)-6-methylphenol	SML(T) = 5 mg/kg ⁽⁴⁰⁾
49595	057583-35-4	Dimethyltin bis(ethylhexyl mercaptoacetate)	SML(T) = 0,18 mg/kg ⁽¹⁶⁾ (expressed as Tin)
63940	008062-15-5	Lignosulphonic acid	SML = 0,24 mg/kg and to be used only as dispersant for plastics dispersions
66350	085209-93-4	2,2'-Methylenebis(4,6-di-tert-butylphenyl) lithium phosphate	SML = 5 mg/kg and SML(T) = 0,6 ⁽⁸⁾ (expressed as Lithium)
67515	057583-34-3	Monomethyltin tris(ethylhexyl mercaptoacetate)	SML(T) = 0,18 mg/kg ⁽¹⁶⁾ (expressed as Tin)
69160	014666-94-5	Oleic acid, cobalt salt	SML(T) = 0,05 mg/kg ⁽¹⁴⁾ (expressed as Cobalt)
76681	—	Polycyclopentadiene, hydrogenated	SML = 5 mg/kg ⁽¹⁾
85950	037296-97-2	Silicic acid, magnesium-sodium-fluoride salt	SML = 0,15 mg/kg (expressed as fluoride). Only to be used in layers of multilayers materials not coming into direct contact with food
95265	227099-60-7	1,3,5-Tris(4-benzoylphenyl) benzene	SML = 0,05 mg/kg'

(b) in the following lines the content of the columns 'Name' and 'Restrictions and/or specifications' is replaced by the following:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
40020	110553-27-0	2,4-Bis(octylthiomethyl)-6-methylphenol	SML(T) = 5 mg/kg ⁽⁴⁰⁾
50160	—	Di-n-octyltin bis(n-alkyl(C ₁₀ -C ₁₆) mercaptoacetate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)

(1)	(2)	(3)	(4)
50240	010039-33-5	Di-n-octyltin bis(2-ethylhexyl maleate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50320	015571-58-1	Di-n-octyltin bis(2-ethylhexyl mercaptoacetate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50360	—	Di-n-octyltin bis(ethyl maleate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50400	033568-99-9	Di-n-octyltin bis(isooctyl maleate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50480	026401-97-8	Di-n-octyltin bis(isooctyl mercaptoacetate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50560	—	Di-n-octyltin 1,4-butanediol bis(mercaptoacetate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50640	003648-18-8	Di-n-octyltin dilaurate	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50720	015571-60-5	Di-n-octyltin dimaleate	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50800	—	Di-n-octyltin dimaleate, esterified	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50880	—	Di-n-octyltin dimaleate, polymers (n = 2-4)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
50960	069226-44-4	Di-n-octyltin ethyleneglycol bis(mercaptoacetate)	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
51040	015535-79-2	Di-n-octyltin mercaptoacetate	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
51120	—	Di-n-octyltin thiobenzoate 2-ethylhexyl mercaptoacetate	SML(T) = 0,006 mg/kg ⁽¹⁷⁾ (expressed as Tin)
67180	—	Mixture of (50 % w/w) phthalic acid n-decyl n-octyl ester, (25 % w/w) phthalic acid di-n-decyl ester, (25 % w/w) phthalic acid di-n-octyl ester	SML = 5 mg/kg ⁽¹⁾

(c) The following line is deleted:

Reference No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
76680	068132-00-3	Polycyclopentadiene, hydrogenated	SML = 5 mg/kg ⁽¹⁾

ANNEX III

In Part B of Annex V, the following lines are inserted in numerical order:

Reference No	OTHER SPECIFICATIONS
24903	Syrups, hydrolysed starch, hydrogenated In compliance with the purity criteria for maltitol syrup E 965(ii) (Commission Directive 95/31/EC (OJ L 178, 28.7.1995, p. 1) as last amended by 2004/46/EC (OJ L 114, 21.04.2004, p. 15))
43480	Charcoal, activated To be used only in PET at maximum 10 mg/kg of polymer. Same purity requirements as for Vegetable Carbon (E 153) set out by Commission Directive 95/45/EC ((OJ L 226, 22.9.1995, p. 1). Directive as last amended by Directive 2004/47/EC (OJ L 113, 20.4.2004, p. 24)) with exception of ash content which can be up to 10 % (w/w).
64990	Maleic anhydride-styrene, copolymer, sodium salt MW fraction < 1 000 is less than 0,05 % (w/w)
67155	Mixture of 4-(2-Benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene, 4,4'-bis(2-benzoxazolyl) stilbene and 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene Mixture obtained from the manufacturing process in the typical ratio of (58-62 %):(23-27 %):(13-17 %).
76845	Polyester of 1,4-butanediol with caprolactone MW fraction < 1 000 is less than 0,05 % (w/w)
76815	Polyester of adipic acid with glycerol or pentaerythritol, esters with even numbered, unbranched C12-C22 fatty acids MW fraction < 1 000 is less than 5 % (w/w)
79600	Polyethyleneglycol tridecyl ether phosphate Polyethyleneglycol (EO ≤ 11) tridecyl ether phosphate (mono-and dialkyl ester) with a maximum 10 % content of polyethyleneglycol (EO ≤ 11) tridecylether'

ANNEX IV

Annex VI is amended as follows:

1. the notes ⁽⁸⁾, ⁽¹⁴⁾ and ⁽¹⁶⁾ are replaced by the following:

⁽⁸⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 38000, 42400, 64320, 66350, 67896, 73040, 85760, 85840, 85920 and 95725.

⁽¹⁴⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 44960, 68078, 69160, 82020 and 89170.

⁽¹⁶⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 49595, 49600, 67520, 67515 and 83599.;

2. the following notes are added:

⁽³⁵⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 25540 and 25550.

⁽³⁶⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 10690, 10750, 10780, 10810, 10840, 11470, 11590, 11680, 11710, 11830, 11890, 11980 and 31500.

⁽³⁷⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 20020, 20080, 20110, 20140, 20170, 20890, 21010, 21100, 21130, 21190, 21280, 21340 and 21460.

⁽³⁸⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 81515, 96190, 96240 and 96320 as well as of salts (including double salts and acid salts) of zinc of authorised acids, phenols or alcohols. The same restriction for Zn applies to the names containing "... acid(s), salts" which appear in the lists, if the corresponding free acid(s) is (are) not mentioned.

⁽³⁹⁾ Migration limit might be exceeded at very high temperature.

⁽⁴⁰⁾ SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Reference Nos 38940 and 40020.'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 November 2005

concerning the conclusion of the International Agreement on Olive Oil and Table Olives, 2005

(2005/800/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the first sentence of the first subparagraph of Article 300(2), thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 25 November 2003, the Council authorised the Commission to negotiate on behalf of the Community the revision of the International Agreement on Olive Oil and Table Olives, 1986, as amended and extended in 1993, and last prolonged in 2004.
- (2) On 29 April 2005, the New International Agreement on Olive oil and Table Olives was adopted by the United Nations Conference for the Negotiation of a Successor Agreement to the International Agreement on Olive Oil and Table Olives, 1986.
- (3) The International Agreement on Olive Oil and Table Olives, 2005, promotes international cooperation, contributes to the development and the stability of the markets for the product concerned and to the attainment of the objectives of the Community's commercial and agricultural policy.

- (4) It is therefore in the Community's interest to approve the 2005 Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The International Agreement on Olive Oil and Table Olives, 2005, is hereby approved on behalf of the Community.

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 express the Community's consent to be bound thereby, in accordance with Article 39(2)(a) ⁽¹⁾.

Done at Brussels, 14 November 2005.

For the Council

The President

T. JOWELL

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
INTERNATIONAL AGREEMENT ON OLIVE OIL AND TABLE OLIVES, 2005**



**UNITED NATIONS
Geneva, 2005**

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

TD/OLIVE OIL.10/6

PREAMBLE

THE PARTIES TO THIS AGREEMENT,

EMPHASISING that olive cultivation governs the existence and standard of living of millions of families which are dependent on the measures taken to maintain and expand the consumption of olive products and to enhance the world economy for such products,

BEARING IN MIND that the olive tree is a plant that is indispensable for the continuous maintenance and conservation of soils, due to its perennial nature, and that it is also instrumental in developing land that will not bear other crops and which, even under non-intensive farming conditions, responds favourably to any improvement in cultivation,

MINDFUL that olive oil and table olives are essential basic commodities in the regions where olive growing is established and that they are basic constituents of the Mediterranean diet and recently also of other diets,

BEARING IN MIND that olive production is irregular, which gives rise to special difficulties that may seriously harm the interests of producers and consumers and jeopardise general policies of economic expansion in countries of the regions where olive growing is established,

EMPHASISING in this connection the major importance of olive production to the economies of many countries,

MINDFUL that the measures to be taken in the light of the particular characteristics of olive growing and of the market for its products transcend the national sphere, and international action is essential,

BEING OF THE VIEW that it is essential to continue and develop the work undertaken within the framework of the previous agreements concluded since the 1956 Agreement until the 1986 Agreement, as amended in 1993, and that it is necessary to negotiate a new updated agreement in the light of the changes in the industry,

TAKING INTO ACCOUNT the provisions of the São Paulo Consensus of the 11th session of the United Nations Conference on Trade and Development,

HAVE AGREED AS FOLLOWS:

CHAPTER I

General objectives

Article 1

General objectives

The general objectives of this Agreement are indicated hereafter:

1. With respect to international technical cooperation:

- to foster international cooperation for the integrated, sustainable development of world olive growing,
- to foster the coordination of production, industrialisation, storage and marketing policies for olive oils, olive-pomace oils and table olives,
- to encourage research and development and to foster the transfer of technology and training activities in the olive products sector with the aim, *inter alia*, of modernising

olive growing and the olive products industry and of improving the quality of production,

- to lay the foundations of international cooperation in international trade in olive oils, olive-pomace oils and table olives to create, in this context, close cooperative ties with the representatives of the various stakeholders of the olive products sector, in compliance with the corresponding international agreements and accords,
- to further the efforts made and steps taken to improve and draw notice to product quality,
- to further the efforts made and steps taken to improve the interaction between olive growing and the environment, particularly with a view to protecting and conserving the environment,
- to examine and foster the integral utilisation of the products derived from the olive tree,
- to conduct activities for the preservation of the gene sources of olive trees.

2. With respect to the standardisation of international trade in olive products:

— to carry on conducting collaborative activities in the area of physico-chemical and sensory testing in order to add to the knowledge of the composition and quality characteristics of olive products, with a view to establishing international standards enabling:

— product quality control,

— fair international trading,

— protection of consumer rights,

— prevention of fraudulent practices;

— to facilitate the study and application of measures for harmonising national and international laws relating, in particular, to the marketing of olive oil and table olives,

— to encourage harmonisation of the criteria for the definition of geographical indications granted by the Members with a view to their international protection,

— to lay the foundations of international cooperation to prevent and, where appropriate, to combat any fraudulent practices in international trade in any edible olive products by establishing close cooperative ties in this context with the representatives of the various stakeholders of the olive products sector.

3. With respect to the expansion of international trade and the promotion of olive products:

— to promote any activities conducive to the harmonious, sustainable expansion of the world olive products economy by every means in the power of the International Olive Council in the fields of production, consumption and international trade, having regard to the ways in which they are interrelated,

— to facilitate the study and application of measures for balancing production and consumption and the establishment of procedures for information and consultation in order to enhance the transparency of the market,

— to implement measures designed to expand international trade in olive products and to adopt whatever measures are appropriate to enhance the consumption of olive oil and table olives,

— to undertake activities fostering a better understanding of the nutritional, therapeutic and other properties of olive oil and table olives,

— to maintain and amplify the role of the International Olive Council as a meeting point for all the operators in the sector and as a world documentation and information centre on the olive tree and its products.

CHAPTER II

Definitions

Article 2

Definitions

For the purposes of this Agreement:

1. 'International Olive Council' means the international organisation referred to in Article 3(1), established for the purpose of applying the provisions of this Agreement;

2. 'Council of Members' means the decision-making organ of the International Olive Council;

3. 'Member' means a Contracting Party to this Agreement;

4. 'olive oils' means the oils obtained solely from the fruit of the olive tree, to the exclusion of oils obtained by solvent or re-esterification processes and of any mixture with oils of other kinds;

5. 'table olives' means the product prepared from the sound fruits of varieties of the cultivated olive tree which are chosen for their production of olives particularly suited to curing, and which are suitably treated or processed and offered for trade and for final consumption;

6. 'olive products' means all edible olive products, in particular olive oils, olive-pomace oils and table olives;

7. 'olive by-products' means, in particular, the products derived from olive pruning and the olive products industry and the products resulting from alternative uses of the products of the sector;

8. 'olive crop year' means the period from 1 October of each year to 30 September of the following year.

PART ONE

INSTITUTIONAL PROVISIONS

CHAPTER III

Article 5

International Olive Council**Privileges and immunities**

Section I

Establishment, organs, functions, privileges and immunities

Article 3

Establishment, headquarters and structure of the International Olive Council

1. The International Olive Council shall act through:

- its Chairperson,
- its Council of Members and, as the case may be, its committees and subcommittees,
- its Executive Secretariat,

in accordance with the provisions laid down in sections II to V.

2. The headquarters of the International Olive Council shall be in Madrid (Spain) unless the Council of Members decides otherwise.

Article 4

Representation of the Members in the International Olive Council

1. Each Member shall designate its representative in the International Olive Council.

2. Any reference in this Agreement to a 'Government' or 'Governments' shall be construed as including the European Community and any intergovernmental organisation having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, to notification of provisional application or to accession shall, in the case of the European Community or such intergovernmental organisations, be construed as including a reference to signature, ratification, acceptance or approval, to notification of provisional application or to accession by the European Community or such intergovernmental organisations.

1. The International Olive Council shall have international legal personality. It shall, in particular, have the capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings. It shall not have the power to borrow money.

2. In the territory of each Member, and in so far as that Member's legislation allows, the International Olive Council shall have the legal capacity necessary for the performance of the functions conferred upon it by this Agreement.

3. For the purpose of its proper functioning, the status, privileges and immunities of the International Olive Council, of its Executive Director, senior officials and other staff of its Executive Secretariat, of experts and of the delegations of the Members in the territory of Spain shall be governed by a Headquarters Agreement.

4. The Government of the State in which the headquarters of the International Olive Council is situated shall, in so far as the legislation of that State allows, exempt the remuneration paid by the International Olive Council to its employees and the assets, income and other property of the International Olive Council from taxation.

5. The International Olive Council may conclude with one or more Members agreements relating to such privileges and immunities as may be necessary for the proper application of this Agreement.

Section II

Council of Members

Article 6

Composition and functions

1. The Council of Members shall be composed of one delegate per Member. Furthermore, each Member may appoint one or more alternates and one or more advisers to its delegate.

2. The Council of Members shall be the principal decision-making organ of the International Olive Council. It shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to achieve the objectives of this Agreement. The Council of Members shall take any decisions, adopt any recommendations or make any suggestions provided for, or envisaged in, this Agreement, unless powers or functions are explicitly vested in the Executive Secretariat or the Executive Director.

Any decisions, recommendations or suggestions adopted in accordance with the International Agreement which preceded this Agreement ⁽¹⁾ and which are still in force at the time of the entry into force of this Agreement shall continue to apply unless they are contrary to this Agreement or they are repealed by the Council of Members.

3. The Council of Members shall, in accordance with the provisions of this Agreement, adopt:

- (a) Rules of Procedure;
- (b) Staff Regulations having regard to those applying to officials of similar intergovernmental organisations; and
- (c) an organisation chart.

4. The Council of Members shall undertake or arrange for the undertaking of studies or other work, including the collection of detailed information on the various kinds of aid for activities relating to olive growing and olive products, so as to enable it to formulate any recommendations and suggestions it may consider appropriate for achieving the general objectives set forth in Article 1. Any such studies and work shall, in particular, cover as many countries or groups of countries as possible and take into account the general, social and economic conditions of the countries concerned.

The Members shall inform the Council of Members, in accordance with a procedure defined by the aforesaid Council, of the conclusions they reach after considering the recommendations and suggestions arising from the application of this Agreement.

5. The Council of Members shall publish an annual report on its activities and on the operation of this Agreement.

6. The Council of Members shall draw up, prepare and publish in the official languages of the International Olive Council such reports, studies and other documents as it deems useful and necessary, and shall keep up to date such records as it requires to perform its functions under this Agreement.

Article 7

Sessions of the Council of Members

1. The Council of Members shall meet at the headquarters of the International Olive Council unless it decides otherwise. If, on the invitation of any Member, the Council of Members decides to meet elsewhere, that Member shall bear the extra expenditure this entails for the budget of the International Olive Council over and above that incurred in holding a session at the headquarters.

⁽¹⁾ International Agreement on Olive Oil and Table Olives, 1986, as amended and extended, 1993, and last prolonged, 2004.

2. The Council of Members shall hold a regular session at least once a year, in the autumn.

Any Member may authorise the delegate of another Member to represent its interests and to exercise its right to participate in decisions of the Council of Members at one or more of its sessions. Evidence of such authorisation acceptable to the Council of Members shall be submitted thereto.

The delegate of a Member may not represent the interests or exercise the right to participate in decisions of the Council of Members of more than one other Member.

3. The Council of Members may be convened at any time at the discretion of its Chairperson. The Chairperson may also convene the Council of Members if so requested by various Members or by one single Member supported by at least two other Members.

4. The expenses of delegations to the Council of Members shall be met by the Members concerned.

5. Notice of any sessions provided for in paragraph 2 of this Article shall be given at least 60 days before the date of the first meeting of each such session. Notice of the sessions provided for in paragraph 3 of this Article shall be given at least 21 days before the date of the first meeting of each such session.

6. The quorum required for every session of the Council of Members shall be the presence of the delegates of the majority of the Members holding at least 90 % of the total participation shares allotted to the Members.

If this quorum does not exist, the session shall be postponed for 24 hours and the quorum required shall be the presence of the delegates of the Members holding at least 85 % of the total participation shares allotted to the Members.

7. The following may, with the prior consent of the Council of Members, attend as an observer all or part of any of the sessions of the Council of Members:

- (a) the international organisations and institutions referred to in Article 14 of this Agreement;
- (b) the Government of any member or observer State of the United Nations or of one of the organisations referred to in Article 14 of this Agreement which envisages becoming a Party to this Agreement, following written consultation between the date on which the notice of the session is sent and the date on which the session is held.

Observers shall not be entitled to address the sessions of the Council of Members unless so authorised by the Chairperson.

Article 8

Participation shares

1. The Members shall together hold 1 000 participation shares.

The participation shares shall be divided among the Members in proportion to the source data of each Member, calculated according to the following formula:

$$q = p_1 + e_1 + p_2 + e_2$$

The parameters in this formula are averages expressed in thousands of metric tonnes, any fraction of 1 000 tonnes above a whole number being disregarded. There may be no fractions of participation shares.

q: source data used for proportionately calculating the participation shares

p_1 : average olive oil production of the last six olive crop years

e_1 : average (customs) olive oil exports of the last six calendar years corresponding to the end years of the olive crop years considered for calculating p_1

p_2 : average table olive production of the last six olive crop years converted into its olive oil equivalent by the application of a conversion coefficient of 16 %

e_2 : average (customs) table olive exports of the last six calendar years corresponding to the end years of the olive crop years considered for calculating p_2 , and converted into their olive oil equivalent by the application of a conversion coefficient of 16 %.

2. However, no Member shall hold less than five participation shares. For that purpose, if the calculation based on paragraph 1 should give a result of less than five participation shares for an individual Member, that Member's share shall be increased to five and the participation shares of the other Members shall be decreased proportionately.

3. The Council of Members shall, at its annual session, adopt the participation shares calculated under this Article. Such distribution shall be in force for the following year.

4. The initial participation shares are contained in Annex A to this Agreement. They are determined on the basis of paragraphs 1 and 2 of this Article in the light of the average of the data for the last six olive crop years and calendar years for which final data are available. Each year the Council of

Members shall modify the shares as appropriate, in compliance with paragraphs 1, 2 and 3 of this Article.

Article 9

Decisions of the Council of Members

1. Unless otherwise provided in this Agreement, decisions of the Council of Members shall be taken by consensus of the Members within a time limit laid down by the Chairperson. Such time limit may not exceed the duration of the session at which the draft decision is submitted to the Council of Members.

If consensus is not reached within this time limit, Members shall take a vote.

2. Any decision shall be considered to be adopted when at least 50 % of the Members accounting for 82 % of the participation shares are in favour thereof.

3. The Council of Members may take decisions by an exchange of correspondence between the Chairperson and the Members without holding a session, provided that no Member objects to this procedure.

The rules for the application of this consultation procedure shall be laid down by the Council of Members in its Rules of Procedure.

Any decision so taken shall be communicated to all the Members by the Executive Secretariat as quickly as possible and shall be entered in the final report of the following session of the Council of Members.

Section III

Chairperson and Vice-Chairperson

Article 10

Chairperson and Vice-Chairperson

1. The Council of Members shall elect a Chairperson from among the delegations of the Members. In the event of the Chairperson being the Head of Delegation, his or her right of participation in decisions of the Council of Members shall be exercised by another member of his or her delegation.

Without prejudice to the powers or functions vested in the Executive Director in, or in accordance with, this Agreement, the Chairperson shall exercise the powers or functions set out in this Agreement and further specified in the Rules of Procedure. Furthermore, the Chairperson shall represent the International Olive Council legally and shall chair the sessions of the Council of Members.

2. The Council of Members shall also elect a Vice-Chairperson from among the delegations of the Members. In the event of the Vice-Chairperson being the Head of Delegation, the Vice-Chairperson shall have the right to participate in decisions of the Council of Members except when acting as Chairperson, in which case he or she shall delegate this right to another member of his or her delegation.

The Vice-Chairperson shall replace the Chairperson in the event of his or her absence.

3. The Chairperson and the Vice-Chairperson shall not receive any remuneration.

4. In the event of the temporary absence of both the Chairperson and the Vice-Chairperson or of the permanent absence of one or both, the Council of Members shall elect new officers, temporary or permanent as appropriate, from among the delegations of the Members.

Section IV

Committees and subcommittees

Article 11

Financial Committee

1. The Council of Members shall establish a Financial Committee comprising one delegate of each Member.

2. The Financial Committee shall be responsible for the financial control of the International Olive Council and for the control of the application of chapter IV of this Agreement.

In this context, it shall be in charge of analysing and studying the draft annual budgets of the International Olive Council proposed by the Executive Secretariat. Only the draft budgets resulting from the discussions of the Financial Committee shall be submitted to the Council of Members for adoption.

The Financial Committee shall likewise be responsible for examining the accounts of the International Olive Council in accordance with the provisions of Article 18.

Each year, the Financial Committee shall submit the accounts for the preceding financial year to the Council of Members for adoption at its annual session together with any other measure dealing with financial matters.

3. Detailed rules for the application of these provisions shall be established and adopted by the Council of Members in its Rules of Procedure.

Article 12

Other committees and subcommittees

1. The Council of Members may establish such committees and subcommittees as it deems useful for assisting it in the exercise of its functions under this Agreement.

2. Detailed rules for the application of this provision shall be established and adopted by the Council of Members in its Rules of Procedure. Such rules shall:

- (a) ensure the fair allocation of the committee chairs among the different Members;
- (b) establish the provisions governing the admission of observers to the meetings of its committees and subcommittees.

Section V

Executive Secretariat

Article 13

Executive Secretariat

1. The International Olive Council shall have an Executive Secretariat comprising an Executive Director, senior officials and such staff as are required to perform the tasks arising from this Agreement. The posts of the Executive Director and of the senior officials shall be defined in the Rules of Procedure adopted by the Council of Members.

2. The Council of Members shall appoint the Executive Director and senior officials on the basis of the principle of proportionate alternation among the Members and of geographical equilibrium.

The Council of Members shall fix their terms of appointment in the light of those applying to corresponding officials of similar intergovernmental organisations. Their profile shall be described in the Rules of Procedure.

3. The Executive Director shall be the chief administrative officer of the International Olive Council. The Executive Director shall carry out his or her duties and take management decisions on a collegiate basis with the senior officials.

4. The Executive Director shall appoint the staff in accordance with the Staff Regulations.

5. The Executive Director, the senior officials and the other members of the staff shall not carry out any gainful activity in any of the various sectors of the olive-growing and olive-products industry.

6. The Executive Director and the senior officials and staff shall not seek or receive instructions regarding their duties under this Agreement from any Member or from any authority external to the International Olive Council. They shall refrain from any action which might reflect on their position as international officials responsible only to the Council of Members. Members shall respect the exclusively international character of the responsibilities of the Executive Director, senior officials and staff and shall avoid influencing them in the discharge of their responsibilities.

Section VI

Cooperation and relationship with other organisations

Article 14

Cooperation with other organisations

1. The International Olive Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development (Unctad), the United Nations Development Programme (UNDP), the World Health Organisation (WHO), the Food and Agriculture Organisation of the United Nations (FAO), the Joint FAO/WHO Programme of the Codex Alimentarius Commission, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organisation (Unesco) and other specialised agencies of the United Nations and with such

intergovernmental, governmental and non-governmental organisations as may be appropriate for the olive sector and as may strive to provide funds to support the activities of the International Olive Council for the benefit of all the Members.

2. The International Olive Council shall establish relations and draw up, as appropriate, special collaborative agreements with international or regional organisations or institutions of a financial nature, in particular with the Common Fund for Commodities.

Any collaborative agreement established between the International Olive Council and the aforementioned international organisations or institutions shall receive the prior approval of the Council of Members.

In respect of the implementation of any project under this Article, the International Olive Council shall not, in its capacity as an international commodity body, incur any financial obligation for guarantees given by individual Members or other entities. No Member shall be responsible by reason of its membership in the International Olive Council for any liabilities arising from borrowing or lending by any other Member or entity in connection with such projects.

3. The International Olive Council shall, if necessary, keep Unctad informed of its activities and programs of work, bearing in mind the particular role of Unctad in international commodity trade.

PART TWO

FINANCIAL PROVISIONS

CHAPTER IV

Budgets of the International Olive Council

Article 15

Budgets of the International Olive Council

1. The Council of Members shall adopt the following annual budgets to achieve the general objectives laid down in chapter I of this Agreement:

— an administrative budget,

— a technical cooperation budget,

— a promotion budget.

2. The administrative budget shall be financed by the contributions of the Members and by any other related revenue generated. The amount of the contribution of each Member shall be established in proportion to its participation share as set in compliance with Article 8 of this Agreement.

3. The technical cooperation budget shall be financed by:

(a) the amount of the contribution of each Member, which shall be established in proportion to its participation share as set in compliance with Article 8 of this Agreement;

(b) subsidies, voluntary contributions of the Members, which shall be governed by the provisions embodied in an agreement established between the International Olive Council and the donor Member, and donations; and

(c) any other related revenues generated.

4. The promotion budget shall be financed by:
- (a) the amount of the contribution of each Member, which shall be established in proportion to its participation share as set in compliance with Article 8 of this Agreement;
 - (b) the voluntary contributions of the Members, which shall be governed by the provisions embodied in an agreement established between the International Olive Council and the donor Member;
 - (c) donations from Governments and/or other sources; and
 - (d) any other related revenues generated.

5. The International Olive Council may also receive other forms of supplementary contributions, including services, scientific and technical equipment and/or staff that may meet the requirements of approved programmes.

The International Olive Council shall, in addition, as part of the development of international cooperation, endeavour to procure such essential financial and/or technical assistance as may be obtainable from the competent international, regional or national organisations, whether financial or of some other kind.

The above contributions shall be allocated by the Council of Members either to the technical cooperation budget, or to the promotion budget, or to both budgets.

6. The amounts of the administrative budget, of the technical cooperation budget and of the promotion budget that are not committed during one calendar year may be carried forward to the following calendar years as advance financing of the corresponding budgets and shall be assigned thereto according to the participation shares of each Member for the calendar year concerned.

Such amounts may not, under any circumstances, be transferred to other budgets unless the Council of Members decides otherwise.

Article 16

Administrative funds

In addition to the budgets referred to in Article 15, the International Olive Council may be provided with the funds for administrative purposes for which provision is made in its Rules of Procedure.

Article 17

Payment of contributions

1. Each year, at its annual session, the Council of Members shall determine the amount of the contribution to be paid by

each Member for the following calendar year, which shall be calculated on the basis of the number of participation shares corresponding to each Member as established pursuant to Article 8.

2. The initial conditions of any Member which becomes a Party to this Agreement after its entry into force shall be assessed by the Council of Members. The contribution of the new Member shall be calculated on the basis of the share allotted to that Member and of the unexpired portion of the year in question at the time of the accession of the new Member, but the assessments made upon the other Members for that calendar year shall not be altered.

3. The contributions provided for in Article 15 shall fall due upon the first day of the calendar year for which they are assessed. They shall be determined in Euro and be payable in that currency or in the equivalent amount of another freely convertible currency.

4. The Council of Members shall, at the start of the calendar year, request the Members to settle their contribution as soon as possible to enable the International Olive Council to operate normally and to enable the implementation of the activities planned by it for the calendar year concerned.

If a Member does not settle its contribution within six months of the start of the calendar year, the Council of Members shall invite it to make payment within the following three months. If these two deadlines are not met, the matter shall be brought to the attention of the Council of Members at its regular session. The right of the Member in arrears to participate in decisions of the Council of Members and to hold elective office in the Council of Members and its committees and subcommittees shall be suspended automatically until the contribution is paid in full. The Council of Members shall, after hearing the Member in arrears, take any other appropriate decisions, which shall be applied.

5. No decision of the Council of Members may relieve a Member of its financial obligations under this Agreement.

Article 18

Financial control

1. The financial control of the International Olive Council shall be carried out by the Financial Committee in accordance with Article 11.

2. The financial statements of the International Olive Council for the previous calendar year, certified by an independent auditor, shall be presented to the Financial Committee which, after analysing the accounts, shall submit them to the Council of Members at its annual session for approval and publication.

The Council of Members shall designate the independent auditor by holding a tender in which at least three relevant specialised firms shall take part.

The independent auditor may not be designated for more than three years.

No firm chosen to audit the accounts of the International Olive Council may be reselected to act as auditor in the course of the following nine years, during the life of this Agreement.

3. Furthermore, the Council of Members shall, at its annual session, examine and adopt the report relating to:

— the verification of the management of the funds, assets and cash of the International Olive Council,

— the regularity of financial operations and their conformity with the rules and regulations and budgetary provisions in force.

Article 19

Liquidation

1. The Council of Members shall, if dissolved, first take the steps stipulated in Article 47(5).

2. On the expiry of this Agreement, and unless it is prolonged, extended or renewed, the assets of the International Olive Council and any uncommitted sums proceeding from the funds referred to in Article 16 as well as any uncommitted sums of the budgets referred to in Article 15 shall be repaid to Members in proportion to the total of their participation shares in force at the time. The voluntary contributions referred to in Article 15(4)(b) and 15(5)(b) and the donations referred to in Article 15(5)(c) shall be repaid to the Member or donor concerned.

PART THREE

ECONOMIC AND STANDARDISATION PROVISIONS

CHAPTER V

Designations and definitions of olive oils, olive-pomace oils and table olives — Geographical indications

Article 20

Use of the designation 'olive oil'

1. The designation 'olive oil' shall be restricted to oil obtained solely from the olive, to the exclusion of oil obtained by solvent or re-esterification processes and of any mixture with oils of other kinds.

2. In no case shall the designation 'olive oil' be used alone to refer to olive-pomace oils.

3. The Members undertake to suppress in their internal and international trade any use of the designation 'olive oil', alone or in combination with other words, which is not in conformity with this Article.

Article 21

Designations and definitions of olive oils, olive-pomace oils and table olives

1. The definitions of the following different categories of olive oils and olive-pomace oils are described in Annex B:

I. Olive oil:

A. virgin olive oils:

(a) virgin olive oils fit for consumption as they are:

- (i) extra virgin olive oil;
- (ii) virgin olive oil;
- (iii) ordinary virgin olive oil;

(b) virgin olive oils not fit for consumption as they are:

lampante virgin olive oil;

B. refined olive oil;

C. olive oil.

II. Olive-pomace oil:

A. crude olive-pomace oil;

B. refined olive-pomace oil;

C. olive-pomace oil.

2. The definitions of the following types of table olives are described in Annex C:

- (i) green olives;
- (ii) olives turning colour;
- (iii) black olives.

3. The Council of Members may make all such amendments as it deems necessary or appropriate to the categories of oils and types of table olives provided for in this Article and to the definitions laid down in Annexes B and C.

Article 22

Undertakings by Members

1. The Members of the International Olive Council undertake to apply the designations prescribed in Annexes B and C in their international trade and shall encourage their application in their internal trade.

2. The Council of Members shall determine quality criteria standards applicable to the international trade of the Members, in accordance with Article 25(3).

3. The Members undertake to analyse in detail the definition of the designations and geographical indications that may be of economic interest to the Members as well as the minimum national legal provisions required to ensure, or ensuring, the protection of such indications. To this end, the International Olive Council shall secure the means to develop a scheme of mutual recognition of such indications.

4. Geographical indications, when given, may only be applied to virgin olive oils and to table olives belonging to the Extra trade category which are produced in accordance with the relevant provisions for these products.

5. Geographical indications may only be used in conformity with the conditions prescribed by the law of the country of origin.

6. The Members undertake, in particular, to develop a scheme for the mutual recognition of geographical indications to ensure protection, ex officio, of geographical indications protected under the national law of the Members, and to prohibit and repress the use in their territories, for the purposes of international trade, of such geographical indications and designations of olive oils, olive-pomace oils and table olives as conflict with these principles.

This undertaking shall apply to all inscriptions placed on packagings, invoices, consignment notes and commercial documents or used in advertising, and to trade marks, registered names and illustrations connected with the international marketing of olive oils, olive-pomace oils and table olives, in so far as such inscriptions might constitute false statements or

give rise to confusion as to the origin, source or quality of the olive oils, olive-pomace oils or table olives concerned.

Article 23

Disputes and conciliation

1. Any dispute regarding geographical indications arising from the interpretation of the provisions of this chapter or from difficulties in their application shall, if the dispute has not been settled by direct negotiation, be examined by the Council of Members.

2. The Council of Members shall endeavour to reconcile the dispute, after seeking the opinion of an advisory panel as provided for in Article 37(1), and after consultation with the World Intellectual Property Organisation, with a competent professional organisation and, if necessary, with the International Chamber of Commerce and specialised international institutions for analytical chemistry; if this is unsuccessful, and after the Council of Members has determined that every means has been employed to reach agreement, the Members concerned shall have the right of recourse in the final instance to the International Court of Justice.

CHAPTER VI

Standardisation of the markets for olive products

Article 24

Examination of the situation of and developments in the market for olive oil, olive-pomace oil and table olives

1. Within the framework of the general objectives set forth in Article 1, and with a view to contributing towards the standardisation of the market for olive oil, olive-pomace oil and table olives and correcting any imbalance between international supply and demand due to irregularity of harvests or to other factors, Members shall make available and furnish to the International Olive Council all the necessary data, statistics and documentation on olive oil, olive-pomace oil and table olives.

2. The Council of Members shall, at its annual session, make a detailed examination of the balances for olive products and an overall estimate of the supplies of and demand for olive oil, olive-pomace oil and table olives, on the basis of the information furnished by each Member under Article 36, of any information communicated to the International Olive Council by Governments of States not Parties to this Agreement, and of any other relevant statistical material available to the International Olive Council on the subject. The Council of the Members shall, taking into account all the information available to it, examine the market situation and make an overall estimate of supplies of and demand for all olive products, and may propose to the Members such measures as it considers desirable.

*Article 25***Standardisation of the market for olive products**

1. The International Olive Council shall undertake studies with a view to making recommendations to the Members for achieving a balance between production and consumption, and, more generally, for standardising the market for olive products over the long term through the application of appropriate measures.

2. With a view to such standardisation, the International Olive Council shall also undertake studies to recommend to Members suitable solutions to the problems which may arise as regards the evolution of the international market for olive oil, olive-pomace oil and table olives, through appropriate arrangements, account being taken of market imbalances resulting from fluctuations in production or from other causes.

3. The International Olive Council shall examine ways and means of ensuring the expansion of international trade and the increase of the consumption of olive oil and table olives. In particular, it shall make appropriate recommendations to the Members concerning:

- (a) the adoption and use of a standard international contract for transactions in olive oils, olive-pomace oils and table olives;
- (b) the constitution and functioning of an international conciliation and arbitration office to deal with any disputes relating to transactions in olive oils, olive-pomace oils and table olives;
- (c) the application of standards for the physical, chemical and organoleptic characteristics of olive oils, olive-pomace oils and table olives;
- (d) the establishment of uniform methods of analysis.

4. The International Olive Council shall take any measures it considers useful for the suppression of unfair competition at the international level, including such competition by States which are not Parties to this Agreement or by persons who are nationals of such States.

PART FOUR

TECHNICAL PROVISIONS

CHAPTER VII

Technical cooperation in the olive sector*Article 26***Programmes and activities**

1. In order to achieve the general objectives set forth in Article 1 concerning technical cooperation with regard to olives and olive products, the International Olive Council, acting through its Council of Members, shall conceive, promote and elaborate programmes of activities relating thereto.

2. Such technical cooperation shall encompass olive cultivation, olive oil extraction and table olive industry.

3. The International Olive Council may take direct action to promote such technical cooperation.

4. The International Olive Council may decide to call upon the collaboration of public or private bodies and/or entities, whether national or international, to implement part or all of the provisions of this chapter. It may also give a financial contribution to the aforementioned bodies and/or concerns within the budgetary limits.

*Article 27***Research and development**

1. The International Olive Council, acting through its Council of Members, shall examine any proposals for research and development projects of general interest to Members and shall take such measures as are appropriate in this field.

2. The International Olive Council may call upon the collaboration of specialised research institutes, laboratories and centres for the implementation, monitoring, use and dissemination, for the benefit of Members, of the findings of the research and development programmes.

3. The International Olive Council shall undertake the necessary studies on the economic returns which can be expected from the application of the results of the research and development programmes.

*Article 28***Training and specific operations**

1. The International Olive Council, acting through its Council of Members, shall take the necessary steps for the organisation of refresher and training courses at various levels for technical experts in the olive sector, particularly those from Members that are developing countries.

2. The International Olive Council shall encourage the transfer of technologies to Members that are developing countries from Members highly advanced in olive cultivation, olive oil extraction and table olive processing techniques.

3. The International Olive Council shall facilitate any technical cooperation enabling consultants and experts to be placed at the disposal of the Members requiring such services.

4. The International Olive Council shall facilitate the participation of the delegations and experts of the Members in its general or scientific/technical meetings.

5. In particular, the Council of Members shall:

- (a) carry out specific studies and operations;
- (b) convene or foster the holding of international seminars and meetings;
- (c) collect technical information and circulate it to all the Members;
- (d) promote the coordination of activities relating to technical cooperation among Members in olive cultivation, olive oil extraction and table olive industry, including action within the framework of interregional or regional planning;

- (e) promote such bilateral or multilateral cooperation as may assist the International Olive Council in achieving the objectives of this Agreement.

CHAPTER VIII

Other measures

Article 29

Other measures

The International Olive Council shall:

- (a) foster and coordinate appropriate studies and research on the biological value of olive oil and table olives, with particular reference to their nutritional qualities and other intrinsic properties;
- (b) draw up, in association with specialist bodies, olive-related terminology, standards covering olive products and related methods of analysis, as well as any other standards connected with the olive sector;
- (c) take whatever measures are appropriate to draw up a compendium of established fair trade practices for international trade in olive oil, olive-pomace oil and table olives.

PART FIVE

PROMOTIONAL PROVISIONS

CHAPTER IX

World promotion of the consumption of olive oil and table olives

Article 30

Programmes to promote the consumption of olive oil and table olives

1. The Members undertake jointly to conduct generic promotional activities to expand world consumption of olive oil and table olives, on the basis of the use of the designations of edible olive oils and table olives defined in Annexes B and C respectively.

2. Those activities shall take the form of educational and information campaigns and shall deal with the organoleptic and chemical characteristics of olive oils and table olives, as well as with their nutritional, therapeutic and other properties.

3. The promotional campaigns shall aim to inform consumers about the designations, origins and sources of

olive oils and table olives, care being taken to ensure that no quality, origin or source is either promoted or given prominence in preference to another.

4. The promotional programs to be undertaken under this Article shall be decided by the Council of Members in the light of the resources made available to it. Priority shall be given to action in the mainly consuming countries and in those countries in which the consumption of olive oil and table olives is likely to increase.

5. The resources of the promotion budget shall be used in the light of the following criteria:

- (a) the volume of consumption and the possibilities of developing existing markets;
- (b) the creation of new outlets for olive oil and table olives;
- (c) the return obtainable on the promotion expenditure.

6. The Council of Members shall administer all the resources allocated for joint promotion purposes. It shall prepare an annual estimate of receipts and expenditure relating to this promotion as an annex to its budget.

7. In the event of a Member, organisation or person providing a voluntary contribution for the conduct of promotional action, the Council of Members shall adopt the procedures governing the use of such resources within the framework of a specific agreement between the International Olive Council and the contributor.

8. The International Olive Council shall be responsible for the technical execution of the promotional programs, which it

may also entrust to specialised bodies chosen in accordance with the Rules of Procedure.

Article 31

International guarantee label of the International Olive Council

The Council of Members may make provision for the application of the international quality guarantee label ensuring compliance with the international standards of the International Olive Council.

PART SIX

OTHER PROVISIONS

CHAPTER X

Miscellaneous obligations

Article 32

General obligations

The Members undertake not to adopt any measures that conflict with their obligations under this Agreement or with the general objectives set forth in Article 1.

Article 33

Financial liability of Members

In accordance with the general principles of law, the financial liability of each Member to the International Olive Council and to other Members is limited to the extent of its obligations under Article 15 concerning the contributions to the budgets referred to in the same Article, and, as the case may be, under Article 16 referring to the administrative funds.

Article 34

Environmental and ecological aspects

Members shall give due consideration to environmental and ecological aspects at all stages of olive and olive oil production and undertake to implement such action as may be deemed necessary by the Council of Members to improve or solve any problems encountered in this sphere.

Article 35

Encouragement of international trade and consumption

The Members undertake to adopt all the appropriate measures to facilitate trade, encourage consumption of olive oils and table

olives and ensure the proper development of the international trade in these products. To that end, they undertake to conform to the principles, rules and guidelines they have approved in the competent international forums.

Article 36

Information

The Members undertake to make available and furnish to the International Olive Council all the statistics, data and documentation which it needs to discharge its functions under this Agreement, and in particular any information it requires in order to establish the balances for olive oils, olive-pomace oils and table olives and to acquire a knowledge of Members' national policies for olive products.

CHAPTER XI

Disputes and complaints

Article 37

Disputes and complaints

1. Any dispute which concerns the interpretation or application of this Agreement other than a dispute under Article 23, and which is not settled by negotiation shall, at the request of any Member which is a party to the dispute, be referred to the Council of Members, which shall take a decision in the absence of the Member concerned after seeking an opinion, where appropriate, from an advisory panel, the composition and operational details of which shall be laid down in the Rules of Procedure.

2. A substantiated opinion by the advisory panel shall be submitted to the Council of Members, which shall in all circumstances settle the dispute after considering all the relevant facts.

3. Any complaint that a Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council of Members, which shall take a decision in the absence of the Member in question after consulting the Members concerned and after seeking an opinion, where appropriate, from the advisory panel referred to in paragraph 1 of this Article.

4. If the Council of Members finds that a Member has committed a breach of this Agreement, it may either impose on that Member sanctions, ranging from a simple warning to the suspension of the Member's right to participate in decisions of the Council of Members until it has met its obligations, or, in accordance with the procedure laid down in Article 45, exclude the Member from participation in the Agreement. The Member in question shall have the right of recourse in the final instance to the International Court of Justice.

CHAPTER XII

Final provisions

Article 38

Depositary

The Government of Spain is hereby designated as the depositary of this Agreement.

Article 39

Signature, ratification, acceptance and approval

1. This Agreement shall be open for signature at Madrid with the Government of Spain from 15 June to 31 December 2005 inclusive by governments invited to the United Nations Conference for the Negotiation of a Successor Agreement to the International Agreement on Olive Oil and Table Olives, 1986, as amended and extended, 1993.

2. Any government referred to in paragraph 1 of this Article may:

(a) at the time of signing this Agreement, declare that by such signature it expresses its consent to be bound by this Agreement (definitive signature); or

(b) after signing this Agreement, ratify, accept or approve it by the deposit of an instrument to that effect with the depositary.

This Agreement shall be open for signature, ratification, acceptance or approval by the European Community.

3. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

Article 40

Accession

1. Any State may accede to this Agreement upon conditions established by the International Olive Council, acting through its Council of Members, which shall include a number of participation shares and a time limit for the deposit of the instruments of accession. The Council of Members may, however, grant extensions of time to governments which are unable to accede by the time limit set in the conditions of accession. Upon accession, a State shall be deemed to be listed in Annex A to this Agreement, together with its participation shares as laid down in the conditions of accession.

This Agreement shall be open for accession by the European Community.

2. Accession shall be effected by the deposit of an instrument of accession with the depositary. Instruments of accession shall state that the Government accepts all the conditions established by the International Olive Council.

Article 41

Notification of provisional application

1. A signatory government which intends to ratify, accept or approve this Agreement, or a government for which the Council of Members has established conditions for accession but which has not yet been able to deposit its instrument, may, at any time, notify the depositary that it will apply this Agreement provisionally when it enters into force in accordance with Article 42, or, if it is already in force, at a specified date.

2. A government which has notified under paragraph 1 of this Article that it will apply this Agreement when it enters into force, or, if it is already in force, at a specified date shall, from that time, be a provisional Member until it deposits its instrument of ratification, acceptance, approval or accession and thus becomes a Member.

Article 42

Entry into force

1. This Agreement shall enter into force definitively on the day when at least five governments among those mentioned in Annex A to this Agreement and accounting for at least 90 % of the participation shares have signed this Agreement definitively or have ratified, accepted or approved it, or acceded thereto.

2. If, on 1 January 2006, this Agreement has not entered into force in accordance with paragraph 1 of this Article, it shall enter into force provisionally if by that date five governments satisfying the percentage requirements of paragraph 1 of this Article have signed this Agreement definitively or have ratified, accepted or approved it, or have notified the depositary that they will apply this Agreement provisionally.

3. If, on 1 January 2006, the requirements for entry into force under paragraph 1 or paragraph 2 of this Article have not been met, the depositary shall invite those governments which have signed this Agreement definitively or have ratified, accepted or approved it, or have notified that they will apply this Agreement provisionally, to decide whether to bring this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine.

4. For any government which has not notified the depositary under Article 41 that it will apply this Agreement provisionally and which deposits an instrument of ratification, acceptance, approval or accession after the entry into force of this Agreement, this Agreement shall enter into force on the date of such deposit.

Article 43

Amendment

1. The International Olive Council, acting through its Council of Members, may recommend amendments of this Agreement to the Members.

2. The proposed amendment shall be adopted by the Council of Members, in accordance with Article 9 of the Agreement, and shall enter into force for all Members 90 days after the depositary has received notification of the decision of the Council of Members.

Article 44

Withdrawal

1. Any Member may withdraw from this Agreement at any time after the entry into force of this Agreement by giving written notice of withdrawal to the depositary. The Member shall simultaneously inform the International Olive Council in writing of the action it has taken.

2. Withdrawal under this Article shall become effective 90 days after the notice is received by the depositary.

Article 45

Exclusion

Without prejudice to Article 37, if the Council of Members decides that any Member is in breach of its obligations under

this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by reasoned decision of the other Members taken in the absence of the Member concerned, exclude that Member from this Agreement. The International Olive Council shall immediately notify the depositary of its decision. The Member in question shall cease to be a Party to this Agreement 30 days after the date of the decision of the Council of Members.

Article 46

Settlement of accounts

1. The Council of Members shall determine any settlement of accounts which it finds equitable, taking into account all the commitments entailing legal consequences for the International Olive Council and which would have repercussions on the contributions of a Member which has withdrawn from this Agreement or which has been excluded from the International Olive Council or has otherwise ceased to be a Party to this Agreement, as well as the time needed to ensure an adequate transition, in particular when such commitments have to be terminated.

Notwithstanding the provisions of the subparagraph above, such Member shall be bound to pay any amounts due from it to the International Olive Council in respect of the period during which it was a Member.

2. Upon termination of this Agreement, no Member referred to in paragraph 1 of this Article shall be entitled to any share of the proceeds of the liquidation or the other assets of the International Olive Council; nor shall it be burdened with any part of the deficit, if any, of the International Olive Council.

Article 47

Duration, prolongation, extension and termination

1. This Agreement shall remain in force until 31 December 2014 unless the International Olive Council, acting through its Council of Members, decides to prolong it, extend it, renew it or terminate it in advance in accordance with the provisions of this Article.

2. The International Olive Council, acting through its Council of Members, may decide to prolong this Agreement for not more than two periods of two years each. Any Member which does not accept any such prolongation of this Agreement shall so inform the International Olive Council and shall cease to be a Party to this Agreement from the beginning of the period of prolongation.

3. If, before 31 December 2014, or before the expiry of a period of prolongation referred to in paragraph 2 of this Article, as the case may be, a new agreement or a protocol for the extension of this Agreement has been negotiated but has not yet entered into force either definitively or provisionally, this Agreement shall remain in force beyond its expiry date until the new agreement or protocol enters into force, provided that the period of such prolongation does not exceed 12 months.

4. The International Olive Council, acting through its Council of Members, may at any time decide to terminate this Agreement with effect from such date as it may determine.

5. Notwithstanding the expiry or termination of this Agreement, the International Olive Council shall continue in being for as long as may be necessary for the purpose of carrying out the liquidation of the International Olive Council, including the settlement of accounts, and shall have during that period such powers and functions as may be necessary for these purposes.

6. The International Olive Council shall notify the depositary of any decision taken under this Article.

Article 48

Reservations

No reservations may be made with respect to any of the provisions of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have affixed their signature under this Agreement on the dates indicated.

DONE at Geneva on 29 April 2005, the texts of this Agreement in the Arabic, English, French, Italian and Spanish languages being equally authentic.

ANNEX A

Participation shares in the budgets of the Organisation established in accordance with Article 8 ⁽¹⁾

Algeria	11
European Community	801
Croatia	5
Egypt	8
Iran (Islamic Republic of)	5
Israel	5
Libyan Arab Jamahiriya	5
Jordan	7
Lebanon	5
Morocco	25
Syrian Arab Republic	45
Serbia and Montenegro	5
Tunisia	73
Total	<u>1 000</u>

⁽¹⁾ Calculations are based on the average production for the period 1997/1998 to 2002/2003 and on the average exports for the period 1998 to 2003.

ANNEX B

Designations and definitions of olive oils and olive-pomace oils

The designations of the different categories of olive oils and olive-pomace oils are given below with the definition corresponding to each designation:

I. **Olive oil** is the oil obtained solely from the fruit of the olive tree, to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds. It is designated as follows:

A. *virgin olive oils*: oils which are obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to deterioration of the oil, and which have not undergone any treatment other than washing, decantation, centrifugation and filtration. Virgin olive oils shall be classified and designated as follows:

(a) *virgin olive oils fit for consumption as they are*:

- (i) *extra virgin olive oil*: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0,8 grams per 100 grams and the other characteristics of which correspond to those laid down for this category;
- (ii) *virgin olive oil*: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2,0 grams per 100 grams and the other characteristics of which correspond to those laid down for this category;
- (iii) *ordinary virgin olive oil*: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3,3 grams per 100 grams and the other characteristics of which correspond to those laid down for this category ⁽¹⁾;

(b) *virgin olive oil not fit for consumption as it is*:

lampante virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of more than 3,3 grams per 100 grams and/or the organoleptic characteristics and other characteristics of which correspond to those laid down for this category. It is intended for refining for use for human consumption, or it is intended for technical use;

B. *refined olive oil*: olive oil obtained by refining virgin olive oils. It has a free acidity, expressed as oleic acid, of not more than 0,3 grams per 100 grams, and its other characteristics correspond to those laid down for this category ⁽²⁾;

C. *olive oil*: oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams, and its other characteristics correspond to those laid down for this category ⁽³⁾.

II. **Olive-pomace oil** is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by re-esterification processes and of any mixture with oils of other kinds. It is classified as follows:

A. *crude olive-pomace oil*: olive-pomace oil whose characteristics are those laid down for this category. It is intended for refining for use for human consumption, or it is intended for technical use;

⁽¹⁾ This product may only be sold direct to the consumer if permitted in the country of retail sale. If not permitted, the designation of this product shall comply with the legal provisions of the country concerned.

⁽²⁾ This product may only be sold direct to the consumer if permitted in the country of retail sale.

⁽³⁾ The country of retail sale may require a more specific designation.

- B. *refined olive-pomace oil*:: oil obtained by refining crude olive-pomace oil. It has a free acidity, expressed as oleic acid, of not more than 0,3 grams per 100 grams and its other characteristics correspond to those laid down for this category ⁽¹⁾;
- C. *olive-pomace oil*: oil consisting of a blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams and its other characteristics correspond to those laid down for this category. In no case shall this blend be called 'olive oil' ⁽²⁾.
-

⁽¹⁾ This product may only be sold direct to the consumer if permitted in the country of retail sale.

⁽²⁾ The country of retail sale may require a more specific designation.

ANNEX C

Types and definitions of table olives

Table olives shall be classified in one of the following types:

- (i) *green olives*: fruits harvested during the ripening period, prior to colouring and when they have reached normal size. They may vary in colour from green to straw yellow;
 - (ii) *olives turning colour*: fruits harvested before the stage of complete ripeness is attained, at colour change. They may vary in colour from rose to wine rose or brown;
 - (iii) *black olives*: fruits harvested when fully ripe or slightly before full ripeness is reached. They may vary in colour from reddish black to violet black, deep violet, greenish black or deep chestnut.
-

Information on the entry into force of the Additional Protocol to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union

On 28 October 2005 both sides have accomplished the necessary procedures for the conclusion of the Additional Protocol to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union. This additional protocol therefore enter into force on 1 November 2005, in accordance with its article 13.2. in he OJ L 38, 10.2.2005, p. 3.

COMMISSION

COMMISSION DECISION

of 9 December 2004

declaring a concentration incompatible with the common market pursuant to Article 8(3) of the Council Regulation (EEC) No 4064/89 (Merger Regulation (ECMR))

(Case No COMP/M.3440 — EDP/ENI/GDP)

(notified under document number C(2004) 4715)

(Only the English version is authentic)

(Text with EEA relevance)

(2005/801/EC)

On 9 December 2004 the Commission adopted a Decision in a merger case under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, and in particular Article 8(3) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://europa.eu.int/comm/competition/index_en.html

I. THE PARTIES

- (1) Energias de Portugal, SA (EDP) is the incumbent electricity company in Portugal. As such, its main activities consist of generation, distribution and supply of electricity in Portugal. EDP also controls the Spanish company Hidrocarburo, which is active in Spain in the sectors of electricity and gas. EDP is listed on the Euronext Lisbon and the Portuguese State holds directly or indirectly about 30 % of the shares.
- (2) ENI SpA (ENI) is active in the exploration and production of oil and natural gas worldwide. ENI is also active in the supply, transmission, storage, distribution and trade of natural gas. Moreover, ENI holds shares in companies with transportation capacities which are active in the operation of the trans-national pipelines for transmission of natural gas.
- (3) Gás de Portugal, SGPS, SA, (GDP) is the incumbent gas company in Portugal. GDP is a wholly-owned subsidiary of the Portuguese company Galp Energia, SGPS, SA

(GALP), currently jointly controlled by the Portuguese State and ENI, with interests in both the oil and the gas sectors. GDP and its subsidiaries cover all levels of the gas chain in Portugal. GDP, through its subsidiary Transgás, imports natural gas into Portugal, through a Maghreb-Spain-Portugal pipeline and through the Sines LNG terminal, and is responsible for the transportation, storage, transport and supply through the Portuguese high-pressure gas pipeline network (the Network). GDP is also active in the natural gas supply to large industrial customers and in the development and future operation of the first underground natural gas storage caverns in Portugal. GDP, through GDP Distribuição (GDPD), also currently controls five of the six local gas distribution companies (LDCs) in Portugal.

- (4) Rede Eléctrica Nacional SA (REN) is not a notifying party for the present concentration but takes part in the overall transaction to which this concentration belongs. REN is a Portuguese company resulting from the 1994 spin-off from EDP of the Portuguese electric grid. REN currently manages the Portuguese electric grid and acts as Single Buyer, buying electricity from producers and reselling it to the distributor/supplier for the supply of the non-eligible clients. The Portuguese State controls directly or indirectly 70 % of REN while the remainder is held by EDP.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

II. THE OPERATION

- (5) The present case concerns a concentration by which EDP and ENI (the parties) plan to acquire joint control over GDP. The operation foresees that the gas transmission network (i.e. excluding Sines LNG terminal, import pipeline and Carriço underground storage) will be transferred to REN, the Portuguese electricity grid operator within a given timeframe. During a transitory period, EDP will have control over the gas network, along with ENI and REN.
- (6) According to the second gas directive ⁽²⁾ and the derogation granted to Portugal, 33 % of the Portuguese gas market shall be liberalised at the latest by 2007, all non-residential customers at the latest by 2009 and all customers (including residential customers) at the latest by 2010. The Portuguese government may decide to start the liberalisation process earlier.

III. RELEVANT MARKET

A. RELEVANT ELECTRICITY MARKET

1. RELEVANT PRODUCT MARKET

- (7) Taking into consideration the specifics of the Portuguese markets and the competitive and regulatory framework, the Commission has reached the conclusion that the following markets should indeed be distinguished:
- (i) wholesale supply of electricity,
 - (ii) provision of regulating/balancing power services ⁽³⁾,
 - (iii) transmission grid,
 - (iv) distribution grid,
 - (v) retail supply of electricity (large customers and small customers).
- (8) The National Electric System is organised in two co-existing systems, the public electricity system or 'bound system' (*Sistema Eléctrico de Serviço Público*, SEP) and the independent electricity system (*Sistema Eléctrico Independente*, SEI). The national transmission grid is used for both systems and is exploited under a concession regime by Rede Eléctrica Nacional (REN).
- (9) SEP is a regulated system that covers generation and distribution. It is composed of 'bound' generators and 'bound' distribution networks. In this system, REN is the single buyer of electricity at the wholesale level. It

mainly acquires electricity from a group of power stations (the bound generators), pursuant to Power Purchase Agreements (PPAs).

- (10) Under the PPAs, bound generators undertake to supply electricity to the SEP on an exclusive basis for a term of more than 20 years and under a fixed price formula ⁽⁴⁾. The construction of those bound generation plants is not liberalised but regulated by the State. According to the applicable legislation, the following companies are integrated in the SEP: EDP (through EDP Produção and Companhia Portuguesa de Produção de Electricidade), Tejo Energia ⁽⁵⁾, and Turbogás ⁽⁶⁾. Most of the electricity in Portugal (83 % in 2003) ⁽⁷⁾ is supplied through these exclusive PPAs between REN and power producers.
- (11) The electricity acquired by REN is then sold to the regulated distributor, which is controlled by EDP, under a regulated tariff system. Regulated tariffs are set by the Portuguese energy regulator, ERSE.
- (12) The independent system (SEI) is composed of the unbound system (*Sistema Eléctrico Não Vinculado*, SENV), which operates under free market conditions (i.e. most of this power is finally sold to the customers who switch out of the regulated system), and the special regime system (*Produtores em regime especial*, PRE), in which generation by co-generation plants, mini-hydro plants, and other renewable energies such as wind power plants is supplied to REN at regulated tariffs.
- (13) Eligible customers are free to choose their electricity supplier and can therefore purchase electricity either from the SEP at regulated tariffs, or from the SENV (being supplied by a free retailer at market conditions). The Decree Law of 17 August 2004 finally provided that all clients are eligible ⁽⁸⁾.

⁽⁴⁾ The price formula essentially guarantees the payment for capacity (which implies a predetermined return on invested capital for the plant) and for energy (based on a reflection of costs).

⁽⁵⁾ Tejo Energia is controlled by the British company International Power, which holds 45 % of the shares, and by the Spanish company Endesa, with 35 % of the shares. EDP and Electricité de France only hold a minority 10 % interest each, which does not seem to confer to either of them the possibility to exercise joint control over the company.

⁽⁶⁾ At the time of the notification Turbogás was controlled by the German power company RWE. EDP holds a 20 % stake, which does not seem to confer to it the possibility to exercise joint control over the company. RWE has since concluded a sales agreement with International Power. International Power's purchase has been approved by the Portuguese Competition Authority.

⁽⁷⁾ 35 TWh out of a total supply of 43 TWh in 2003.

⁽⁸⁾ Portugal will thus advance implementation of Directive 2003/54/EC of the European Parliament and the Council (OJ L 176, 15.7.2003, p. 37), which provides the full opening the electricity retail markets as from 1 July 2007.

⁽²⁾ Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57).

⁽³⁾ See Case COMP/M.3268-Sydskraft/Granninge.

- (14) (The existing regulatory framework is currently being amended.

Wholesale electricity

- (15) Wholesale electricity encompasses the production of electricity at power stations as well as electricity physically imported through interconnectors for the purpose of resale to retailers. As in other Member States, a few very large electricity consumers may also decide to buy directly from the wholesale market (in Spain, they account for less than 5 % of the purchases in the wholesale market).
- (16) The Commission considers that, as from the termination of the PPAs, there will be an electricity wholesale market in Portugal encompassing the offer of the former bound generation, the unbound generation and imports. The assessment focuses on this wholesale market irrespective of the liberalised and regulated systems.

Balancing power and ancillary services

- (17) There is a technical necessity for such service as the transmission system operator is responsible for maintaining the tension in the grid within a very narrow bandwidth. If there is over-consumption, the tension in the grid would drop and this could cause at some point network stability problems. A problem also arises if there is under-consumption as then the tension in the grid rises above an acceptable tolerance level and the transmission system operator must make sure that either some generation capacity is switched off or that some consumption is added.
- (18) This service needs to be paid for and there will usually be a 'penalty' for deviation if demand of a customer exceeds, or falls below, the expected level which corresponds to the amount that each supplier purchases from the wholesale level or plans to produce himself and which he has to communicate in advance to the transmission system operator.
- (19) Currently, in Portugal, this service, as well as other similar ancillary services (congestion management services), is provided by REN to all agents in the system. There is as yet no established market for such services in Portugal. However, it is likely that, after the termination of the PPAs, such a market, or such markets, will emerge. For the purpose of this decision, the exact delineation of this emerging market, or these emerging markets, can be left open.

Transmission and distribution

- (20) These markets are not affected by the proposed operation. In Portugal the transmission grid has already

been unbundled and is operated by REN, the Portuguese Transmission System Operator. Distribution grids are owned by EDP and municipalities and are managed by EDP's subsidiary EDP Distribuição Energia SA (EDPD). Access to both transmission grid and distribution grids is regulated by the Portuguese regulator ERSE.

Retail supply of electricity

- (21) The following electricity retail markets will be considered for the purpose of the present statement: (i) the supply of electricity to Large Industrial Customers (LICs) which are connected to the high and medium voltage (HV and MV) grid and (ii) the supply of electricity to smaller industrial, commercial and domestic customers which are connected to the low voltage (LV) grid.
- (22) HV/MV customers and LV customers are very different as regards their consumption and terms and conditions under which they purchase electricity. The commercial relationship is also very different. MV and HV customers are for the most part industrial customers for which electricity may account for a significant part of their costs. On the contrary, most LV customers are small industrials, commercial or domestic customers whose consumption of electricity per consumer is quite limited in volume.

2. GEOGRAPHICAL MARKETS IN ELECTRICITY

- (23) In past Commission decisions, the relevant geographic market for the wholesale supply of electricity has been considered to be no wider than national borders⁽⁹⁾. In the present case, the investigation has shown that wholesale and retail electricity markets are clearly Portuguese in scope and will remain so in the foreseeable future.
- (24) The parties argued that an Iberian trading market called MIBEL would be established very soon and would thus lead to an Iberian market. This view has not been confirmed by the in-depth investigation carried out by the Commission. It appears that (1) the current level of interconnections between Spain and Portugal is not sufficient to consider the existence of a single market in the Iberian peninsula and (2) it is highly unlikely that the electricity wholesale market will become Iberian in scope in the near future for the following reasons:

- (i) many important regulatory barriers still have to be removed for the purpose of the establishment of the MIBEL;

⁽⁹⁾ See e.g. Case M. 2434 — Grupo Villar MIR/ENBW/Hidrocantabrico.

(ii) competitive conditions between Spain and Portugal are likely to remain significantly different even after the launch of the MIBEL;

(iii) CO₂ emission national allocation plans and national compensation scheme for stranded costs are likely to maintain or even increase these differences in the competitive conditions;

(iv) the projected level of interconnection capacity between Spain and Portugal is not likely to allow effective integration of both markets in the foreseeable future.

B. RELEVANT NATURAL GAS MARKETS

1. PRODUCT MARKET

(25) The Commission has identified four distinct gas product markets which will be affected by the operation:

(i) supply of gas to power producers (CCGTs ⁽¹⁰⁾);

(ii) supply of gas to local distribution companies (LDC);

(iii) supply of gas to large industrial customers (LICs);

(iv) supply of gas to small industrial, commercial and domestic customers.

(26) Six local distribution companies (LDCs) distribute and supply most end-customers through medium and low pressure ⁽¹¹⁾ networks and operate in exclusive concession areas.

(27) The market of gas supply to power producers will be the first to be opened to competition in Portugal. The parties claimed that CCGTs and LICs should be considered as part of a single, wider wholesale market. The Commission does not agree with the parties. Indeed, power producers have unique demand needs in terms of quantity and flexibility of supply. CCGTs therefore need to combine long-term contracts, which are necessary for establishing the basic economic and technical viability and supply security of the CCGT project, with short-term contracts for more limited periods. They also have different margins, customer relationship; commercial needs of resellers and growth dynamics.

2. GEOGRAPHICAL MARKET

(28) On each relevant gas market, the Commission and the parties agree that the supply of natural gas in Portugal is no wider than national.

IV. COMPETITIVE ASSESSMENT

A. ELECTRICITY MARKETS

1. WHOLESALE MARKET

(a) ***EDP holds a dominant position on the wholesale market for electricity in Portugal***

(29) Following the Commission's in-depth investigation, it appears that EDP holds a dominant position on the wholesale market in Portugal, irrespective of whether it is considered under the current structure or after the termination of the PPAs.

(30) Indeed, in 2003, in the wholesale market, EDP holds 70 % of generation capacity, accounts for 70 % of generation and is the largest importer of electricity. Moreover, EDP's Portuguese generation portfolio will remain unmatched after the abolition of the PPAs. After the termination of the PPAs, a stranded cost scheme (CMECs) is to be put in place to compensate existing power generators for any possible loss in the market in the future. This scheme favours incumbents. EDP is bound to get most of it, which will help shield EDP from future competition.

(31) On the demand side, EDP holds close to 100 % of the distribution of electricity in Portugal. EDP Distribuição's future role as the retailer for the regulated system confer EDP crucial advantages.

(32) On the supply side, the addition of EDP's new gas fired power-plant (TER) is significant in EDP's portfolio. As regard new generation capacities to be built by third parties, the Commission has come to the conclusion that CCGTs projects by competitors are uncertain and that EDP has influence over one of them (Tejo Energia).

(b) ***The operation will strengthen EDP's dominant position, due to both horizontal and vertical effects***

Horizontal effects: removal of a significant competitor

(33) As for the horizontal effects, the Commission came to the conclusion that, absent the merger, GDP would have been very likely to become the main competitor in the electricity markets in Portugal, considering (i) that having access to competitive gas resources confers a significant advantage in electricity as gas-fired power plants (CCGTs) now constitute the most common way of generating new power and (ii) that GDP, as a Portuguese company, could rely on its brand and gas customers, to which it could offer a joint supply of gas and electricity.

⁽¹⁰⁾ CCGTs stands for 'Combined Cycle Gas Turbines' power plants.

⁽¹¹⁾ Respectively between 4 and 20 bar and below 4 bar.

- (34) This significant potential competition would be lost after the merger, thereby strengthening further EDP's dominant position.

Non-horizontal effects: raising rivals' costs

Privileged and preferential access to the Portuguese gas infrastructure (Sines LNG terminal, import pipeline and Carriço underground storage)

- (35) Further to the proposed transaction, EDP will have the ability and the incentive to maintain a privileged and preferential access to natural gas to the detriment of companies actually or potentially involved in electricity generation.

- (36) *High-pressure gas network* further to the merger EDP will be able to have influence on the management of the high-pressure gas network: (i) in the short term, EDP will jointly control Transgás (including the gas network) for a temporary⁽¹²⁾ period which may last up to 19,5 months. During this period, EDP may have a strong influence on the strategy and management of the network. This may also provide EDP with a deep insight into the network operating features from which EDP may later on draw advantages; (ii) in the long term, REN will operate the high-pressure gas network as a result of the merger.

- (37) *GDP's international pipeline* the merged entity would be in a position to use the first existing entry point in Portugal (the pipeline which goes from Algeria to Portugal through Morocco and Spain and which enters Portugal in Campo Maior) at a full capacity in order to prevent competitors to use any freed capacity. Therefore, even if TPA is applied, there is currently not enough free capacity for third parties to import gas on a permanent basis and with a minimum of certainty as to the level of gas they will be able to import.

- (38) *GDP's Sines terminal* the LNG terminal located in Sines is the only one in Portugal. It was launched at the beginning of 2004 and is owned and operated by GDP (through its wholly-owned subsidiary Transgás). Its maximum import capacity is 5.3 bcm p.a. In the absence of liberalisation in the gas sector, so far, no TPA rule has been imposed on the terminal. As a result, third parties who would like to have access to the terminal would have to contact GDP and negotiate specific terms and conditions with the latter.

⁽¹²⁾ The Commission also has to assess intermediate steps in the evolution of the market structure, in particular as a situation, even though temporary, may have a strong detrimental impact on competition and, possibly, long-lasting effects.

- (39) *Carriço underground storage* further to the merger, EDP will also be in a position to operate GDP's Carriço underground storage. This is the only storage of natural gas available in Portugal (apart from the LNG storage in Sines which is much smaller). It is essential for competing power generators operating CCGTs to have access to the flexibility offered by this storage on a non-discriminatory basis. The market investigation confirmed that these access conditions were not sufficient to ensure that competitors will actually fully benefit from the storage, as EDP will be in a position the limit access by arguing about technical issues.

- (40) Further to the operation as notified, EDP acquires a significant control over the gas entry points as well as the storage facilities. The operation could thus provide it with all the necessary means and incentives to make access to the gas network more difficult for its competitors, even though the high-pressure gas grid in Portugal is to be ownership-unbundled to REN.

Ability to manage the constraints in the gas supply to CCGTs to the detriment of competing CCGTs

- (41) The high uncertainties as to the effectiveness of the transfer of infrastructures and transport rights to REN do not ensure that the gas requirements of actual (i.e. Turbogás) and potential competing CCGTs will be supplied by another company but the merged entity. When restrictions occur in gas supply in Portugal, GDP will have the incentive to favour EDP's plants to the detriment of competing CCGTs.

Ability and incentive to control gas price and raise rivals' costs, thereby foreclosing its actual and potential and deterring entry

- (42) Further to the merger, EDP will have the ability and incentive to raise the price of gas supplied to actual competitors (Turbogás, for its short-term requirements). This holds also true for potential competitors (for the whole of their requirements) since the pace of liberalisation and uncertainties as to the access to entry points makes it likely that future CCGTs, if any, will be supplied with gas by GDP.

Access to proprietary information about EDP competitors' costs, conferring it a significant advantage:

- (43) The merged entity will be armed with the knowledge of its actual competitors' input costs will be able to price in such a way so as to foreclose its rivals. Such structural advantage will also strengthen EDP's dominant position as it is likely to further deter or delay entries of potential competitors willing to operate new CCGTs through supplies of gas by GDP.

Access to the daily gas nomination of its main proprietary information about its competitors' costs, conferring it a significant advantage;

- (44) Further to the merger, EDP will also have access to the daily gas nominations of Turbogás (and of other CCGTs possibly supplied by GDP in the future), that is the information one day in advance about the volume of gas that the CCGT plans to consume on an hourly basis. As a result, EDP will be able to know in advance the pattern of power production planned by Turbogás for the following day. Given the volatility of CCGTs' production, this information is strategic: Knowing, for instance, that Turbogás does not plan to generate power at a certain time of the following day, EDP will be in a position to raise its prices above Turbogás' variable costs with no fear of losing sales to Turbogás.
- (45) The abovementioned horizontal and vertical effects, considered individually or together, strengthen EDP's dominant position in the electricity wholesale market.

2. ANCILLARY SERVICES

- (46) The present operation will remove GDP as a likely entrant on the electricity market, and therefore a potential provider of ancillary services. Based on all the reasons developed in the assessment of the wholesale market and given that only a few plants can provide such services, GDP's entry on the wholesale market would have weakened EDP's position in the provision of ancillary services. The concentration results in the elimination of this potential competitor in the market for the provision of ancillary services.

3. RETAIL MARKETS FOR ELECTRICITY IN PORTUGAL

(a) *EDP holds a dominant position on the retail markets for electricity in Portugal*

- (47) The market for supply of electricity to large industrial customers (45 % of total consumption) is fully eligible. On this market, EDP holds a 92 % market share in volume (much more in customers).
- (48) The small customer market only began to be opened in the course of 2004. EDP holds close to 100 % market share. Experience from other Member States shows clearly that the switching rates of those clients will be much lower than those of industrial customers. EDP's dominance will therefore only be challengeable at a slower pace.

(b) *Strengthening of EDP' dominant position on the retail market for electricity in Portugal*

- (49) The proposed operation will strengthen EDP's dominant positions since it will eliminate GDP as a significant potential competitor. During the Commission's investigation, respondents have indeed confirmed that GDP would be the most likely and effective potential entrant on these markets, in particular due to its wide gas customer base, its well-known national brand as well as its ability to make dual-fuel offers.
- (50) Moreover, the merger will raise further barriers to entry as the merged entity will combine incumbents' advantages in gas and electricity and force competitors to enter simultaneously on the gas and electricity markets to be able to offer dual-fuel.

B. GAS MARKETS

1. GDP HAS A DOMINANT POSITION ON THE PORTUGUESE GAS MARKETS

- (51) Due to its current position of legal monopolist, GDP holds a dominant position in all gas markets, with the only exception of the distribution of natural gas in the area of Porto where Portgás — a company in which EDP has recently acquired joint control — is active.
- (52) GDP enjoys and will keep enjoying after the opening of the markets significant incumbency advantages vis-à-vis potential new entrants. In particular, (i) it has gained a strong experience and knowledge of the Portuguese gas markets at every level, (ii) it has established a large customer base and a significant volume of sales in the country, (iii) it has developed very well known brands both at national and local level, and (iv) it has acquired a unique knowledge of the customers' profile (in terms of consumption profile, or solvency and credit terms) and specific needs (such as need for additional services or special customer care), (v) it controls, through the GDP-controlled LDCs, the distribution system operators.

2. STRENGTHENING OF GDP'S DOMINANT POSITION ON THE PORTUGUESE GAS MARKETS

(a) *Gas supply to power producers (CCGTs)*

- (53) As regards the supply of gas to CCGTs, the notified operation will foreclose all the gas demand by CCGTs (namely Turbogás' ⁽¹³⁾ and TER/Carregado's short-term requirements) which could otherwise have been challenged by competitors of GDP, once CCGTs are eligible. This strengthens GDP's dominant position in the market for the supply of gas to CCGTs.

⁽¹³⁾ EDP's 20 % shareholding in Turbogás confers to it certain blocking rights.

(b) Gas supply to LDCs (local distribution company)

- (54) The notified operation will foreclose the gas demand of the only LDC which is so far not controlled by GDP, namely Portgás. Further to the operation, no gas supply to LDCs will be challengeable by gas competitors any longer, when they become eligible. This strengthens GDP's dominant position in the market for the supply of gas to LDCs.

(c) Supply to gas to LICs (large industrial customers)

- (55) The investigation has shown that EDP would have been the most likely entrant in the market for supply of gas to large industrial customers, once it is liberalised.
- (56) EDP appears to be the most likely potential entrant in this market, considering (i) that it operates a CCGT for the production of electricity (and hence has access to large quantities of gas), which confers a strong incentive to enter the gas supply markets, (ii) that it could rely on its electricity customers (EDP controls close to 100 % of the electricity distribution in Portugal), to which it could offer a joint supply of gas and electricity (dual-fuel) and (iii) that it could also rely on the experience, the reputation and the customer base of the gas distributor Portgás. The effective entry of electricity incumbents in gas markets has been witnessed in many Member States.
- (57) The loss of EDP's potential competition strengthens GDP's dominant position on the market of gas supply to LICs.

(d) Gas supply to small customers

- (58) The Commission has come to the conclusion that, absent the merger, EDP would have been the most likely entrant on the market for the supply of gas to small customers.
- (59) EDP's advantages can be grouped in three main bundles of advantages: (a) advantages in procurement due to EDP's position as a gas-fired power producer in Portugal; (b) advantages due to EDP's position as the incumbent electricity retailer and distributor (c) advantages due to its position in and information on gas retailing in Portugal (Portgás and information sharing on Lisboagás).
- (60) EDP's will to enter the gas markets is further evidenced by its recent acquisition of control over a Portuguese LDC, Portgás, and its strong development in gas markets in Spain (EDP acquired control over the second largest gas company in Spain, Naturcorp).
- (61) On the basis of the abovementioned elements, the concentration would remove GDP's main competitor

and raise further the barriers to entry in the market for the supply of gas to small customers. It will thus strengthen GDP's dominant position in the retail gas market in Portugal.

V. COMMITMENTS PROPOSED BY THE NOTIFYING PARTIES

- (62) The parties have submitted commitments on 28 October 2004 and an improved version on 17 November 2004. The 17 November 2004 commitments are summarised below, using the parties' numbering:

EDP.1: Reduction of EDP's shares in REN from 30 % to 5 %

EDP.2: Divestment of EDP's shares in Tejo Energia

EDP.3: Moratorium concerning the construction of new CCGTs subject to a review clause

EDP.4: Lease of TER production capacity equivalent to one unit subject to a review clause

EDP.5: Suspension of some of EDP's voting rights in Turbogás and appointment of independent board members in Turbogás

ENI.II: Sale of the Sines LNG terminal to REN

ENI.III: Sale of the Carriço underground storage to REN

ENI.IV: Anticipated sale of the gas high-pressure network to REN

ENI.V: Guarantees for access to the network pending sale of the network to REN

ENI.VI: Release to REN of the capacity at the Campo Maior entry point currently booked and unused by Transgás

ENI.VII: Commitment not to book further capacity at the Campo Maior entry point

ENI.VIII: Commitment not to book further capacity on the Extremadura pipeline

ENI.IX: Commitment to make capacity available on the Extremadura pipeline and/or at the Campo Maior entry point under certain conditions

ENI.X: Elimination of GDP's right of first refusal, based on 'matching the best offer mechanism'.

ENI.XI: measures aimed at eliminating concerns related to possible privileged access to price information

ENI.XII: Measures aimed at ensuring scope for the effective liberalisation of the demand represented by LICs

ENI.XIII: Commitment not to engage in dual offers of natural gas and electricity to LICs and retail customers in Portugal until the natural gas supply to such customer groups is liberalized

ENI.XIV: Sale of the LDC Setgás.

VI. ASSESSMENT OF THE COMMITMENTS PROPOSED

A. COMMITMENTS ON ELECTRICITY

1. WHOLESALE ELECTRICITY MARKET

(a) *Horizontal effects of the operation (removal of GDP as the most likely entrant)*

(63) The parties' proposal consists in a combination of measures aimed at ensuring the entry of competitors while, at the same time, avoiding to divest generation assets. It relies mainly on a moratorium concerning the construction of new CCGTs by EDP and the lease of some production capacity of EDP's power plant TER for a limited period of time.

(64) Respondents to the Commission's market test considered these proposals as clearly insufficient in terms of scale, scope and duration to compensate for the significant loss of GDP as a potential competitor and to effectively ensure the timely entry of potential competitors. The Commission shares these concerns expressed by third parties.

(65) The lease of production capacity from TER is equivalent to only one third of the plant and would account for 4 % of the total generation capacity in Portugal. The lease can be automatically terminated based on criteria which do not ensure the presence of new competitors nor the actual existence of an Iberian market. The lease can be as short as three years. EDP will know in real-time the costs and volumes of electricity that the lessee can market. All this makes it unlikely that such a lessee might have a significant influence on the market and exercise a competitive constraint on EDP.

(66) Given the review clause attached to the proposed moratorium, the moratorium is likely to end shortly with no insurance that new competitors will actually enter the market. Besides, it does not prevent EDP from starting new CCGT projects (all steps but the actual building). The moratorium and the lease proposed thus fall short of having a pro-competitive effect similar to a structural remedy.

(67) In addition, the parties propose to divest EDP's 10 % share in Tejo Energia, one of EDP's competitor. If this is a positive proposal, it does not at all guarantee that Tejo Energia will actually build a CCGT in the future.

(68) The parties have also proposed to suspend EDP's voting rights in Turbogás. This suspension is limited to a three year period and to only two specific areas of decision. EDP has also recently acquired an option to buy 20 % more share in Turbogás and manage all of Turbogás' production. It is therefore quite doubtful that the parties' commitments will prevent EDP from exercising influence on Turbogás' gas supply policy and future projects.

(b) *Non-horizontal effects (raising rival costs)*

EDP's privileged and preferential access to the Portuguese gas infrastructure

(69) The sale of the Sines LNG terminal and the Carriço underground storage to the gas high-pressure network operator, i.e. an ownership unbundling, is a positive proposal welcomed by the Commission. However, the terms and conditions attached to these transfers do not ensure that a sufficient capacity will be available for third parties. In particular, the remedies explicitly allows subsidiaries of the parties active in gas in Spain, Union Fenosa Gas and Naturcorp, to book further capacity even before the transfer, as well as the parties after the transfer.

(70) The parties also proposed to make capacity available in the Spain-Portugal pipeline at Portuguese entry point (Campo Maior). According to the market test, this capacity is far too small (less than 10 % of this pipeline's capacity, not enough to supply a single 400 MW CCGT unit) and is not ensured in the upstream pipeline (Extremadura pipeline) to bring gas up to the Portuguese border. A mechanism has been included to provide additional capacity but under conditions which make the access to this extra-capacity neither timely, economically feasible nor long-lasting enough for third parties to rely thereon.

- (71) The commitments on natural gas infrastructures are therefore likely to have very limited positive effects on the electricity and gas markets in Portugal.

Other vertical impacts of the merger

- (72) As regards the other vertical competition concerns⁽¹⁴⁾ raised by the operation, the commitments provide mainly for Chinese Walls to limit flows of information between GDP and EDP. The market test clearly indicated that, in the present case, such measures are not sufficient to address these issues.

2. MARKET FOR ANCILLARY SERVICES

- (73) The lease of production capacity, as provided for by commitments, do not allow the lessee to be active in the balancing power market, which requires adapting the output of the plant in real-time.

- (74) As explained above, the commitments do not ensure with a sufficient level of certainty that competitors will build new power generation capacities in Portugal in the foreseeable future. As a result, the proposed remedies do not remedy the strengthening of EDP's dominant position in this market.

3. RETAIL SUPPLY OF ELECTRICITY

- (75) The only remedy which relates directly to the retail supply of electricity is the *commitment not to engage in dual offers of natural gas and electricity to retail customers until the natural gas supply to such customer groups is liberalised*. This commitment would only apply for a limited period and in any case, this remedy does not ensure the appearance of competitors to compensate for the loss of GDP.

- (76) Other remedies may indirectly positively affect the retail electricity market but do not ensure that new competitors will effectively enter the retail supply of electricity in Portugal in a timely and sufficiently large way so as to compensate for the loss of GDP's future competition.

⁽¹⁴⁾ That is: (i) EDP's ability and incentive to control gas prices and raise its rivals' costs, thereby foreclosing its actual and potential competitors and deterring entry; (ii) EDP's ability to manage the constraints in the gas supply to CCGTs to the detriment of competing CCGTs; (iii) EDP's access to proprietary information about its competitors' costs and daily gas nominations, conferring on it a significant advantage.

B. NATURAL GAS MARKETS

1. GAS SUPPLY TO POWER PRODUCERS (CUSTOMER FORECLOSURE)

- (77) Three commitments directly relate to this concern: (i) the elimination of GDP's right of first refusal for the gas supply of TER, (ii) the suspension of some of EDP's voting rights in Turbogás for three years and (iii) the partial lease of TER.

- (78) (i) Market participants have underlined that the elimination of GDP's right of first refusal to supply TER does not eliminate EDP's incentives to source gas supply from GDP; (ii) the mere suspension of some voting rights for a limited period of time does not prevent EDP's influence on Turbogás' gas supply policy; (iii) the lease accounts only for one third of TER and the lessee will have to buy most of its gas from GDP. The Commission therefore considers that these commitments fall short from addressing the strengthening of GDP's dominant position in the market for gas supply to power producers.

2. GAS SUPPLY TO LDCS (CUSTOMER FORECLOSURE)

- (79) The operation forecloses the gas demand of Portgás, the only LDC not controlled by GDP. The gas consumption of the LDC proposed to be divested, Setgás, is four times as small as Portgás'. The commitment therefore does not remove the strengthening of GDP's dominant position in the market for the gas supply of LDCs.

3. GAS SUPPLY TO LARGE INDUSTRIAL CUSTOMERS (LICS)

- (80) The only remedies which directly address the concerns raised in this market are the commitments not to engage in dual offers (gas/electricity) before the gas liberalisation of LICs and to offer LICs the possibility to renew their gas contract on a yearly basis. Both remedies fall short from ensuring that a new competitor will enter the gas market for LICs.

- (81) Nevertheless, remedies which may have an indirect impact on this concern have also been analysed: as regards gas import infrastructures, high uncertainties remain as to whether sufficient capacities will be available. Besides, Setgás, which would be divested, accounts for less than 10 % of the gas customers in Portugal and would be a much more limited starting base to enter the LIC market as compared with EDP's electricity and Portgás' gas customer bases.

4. GAS SUPPLY TO SMALL CUSTOMERS

- (82) The divestiture of Setgás is a structural remedy but does not compensate for the loss of EDP/Portgás future competition in the gas retail market: Setgás' sales account for 8 % of the overall gas retail sales in Portugal while Portgás holds a 30 % market share. The commitment not to offer dual-fuel supplies to retail gas customers who are not yet eligible in both gas and electricity is very limited in time and effect. No other remedy has been proposed to directly address the loss of potential competition stemming from EDP's ability to rely on its nationwide electricity customer base, its strong brand and its incentive to provide dual offers (electricity/gas) to customers.

VII. LATE REMEDIES

- (83) After the expiration of the deadline set for the submission of remedies ⁽¹⁵⁾, on 26 November 2004, the parties submitted documents proposing to amend the remedies already presented, with a view to addressing the concerns raised by the Commission. However, these remedies did not fully and unambiguously remove the competition concerns identified by the Commission.

- (84) On Friday evening 3 December 2004, the parties submitted new set of 'gas commitments' aiming to implement the intentions stated by them in the document sent to the Commission on 26 November 2004. Considering the very late stage of the procedure at which these new commitments have been presented (only three working days before the Commission meeting of 9 December 2004 scheduled for the adoption of the final decision, leaving insufficient time for the Commission to assess them in accordance with procedural obligations) and given that this proposal merely aims to implement the intentions expressed in the document sent on 26 November 2004, this latest set of commitments cannot form the basis of an authorisation decision.

VIII. CONCLUSION

- (85) For the reasons outlined above, considered individually or together, the Commission issued a decision on 9 December 2004, which declared the proposed concentration incompatible with the common market pursuant to Article 8(3) of the ECMR in that it strengthens dominant positions in several gas and electricity markets in Portugal as a result of which effective competition would be significantly impeded in a substantial part of the common market.

⁽¹⁵⁾ The deadline for the submission of remedies was 17 November 2004.

COMMISSION DECISION

of 17 October 2005

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in the Russian Federation

(2005/802/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 8 thereof,

After consulting the Advisory Committee,

Whereas:

I. PROCEDURE

- (1) By Regulation (EEC) No 3068/92⁽²⁾, the Council imposed definitive anti-dumping duties on imports of potassium chloride originating, *inter alia*, in Russia (the existing measures).
- (2) In March 2004, by means of a notice published in the *Official Journal of the European Union*⁽³⁾, the Commission launched, on its own initiative, a partial interim review of the existing measures to examine whether they should be amended to take account of the enlargement of the European Union to 25 Member States on 1 May 2004 (enlargement).
- (3) The results of that partial interim review showed that it was in the interests of the Community to provide for the temporary adaptation of the existing measures so as to avoid a sudden and excessively negative impact on importers and users in the 10 new Member States (the EU10) immediately following enlargement.
- (4) To this end, in May 2004, by Regulation (EC) No 1002/2004⁽⁴⁾, the Commission accepted undertakings from, *inter alia*, two exporting producers in Russia, namely JSC Silvinit and JSC Uralkali, in respect of their exports to the EU10. In addition, in order to provide

for the exemption from the anti-dumping duties imposed by Regulation (EEC) No 3068/92 on imports made under the terms of the undertakings, Regulation (EEC) No 3068/92 was amended by Regulation (EC) No 992/2004⁽⁵⁾.

- (5) In June 2005, pursuant to Regulation (EC) No 858/2005⁽⁶⁾, the Commission accepted new undertakings for exports to the EU10 by these Russian companies for a further period which will expire on 13 April 2006.

- (6) In the meantime, in January 2004, separate requests were received from JSC Silvinit and JSC Uralkali (the applicants) for individual partial interim reviews of the existing measures pursuant to Article 11(3) of the basic Regulation.

- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of partial interim reviews, the Commission published notices of initiation and commenced an investigation⁽⁷⁾.

- (8) Pursuant to the findings of these two partial interim reviews, by Regulation (EC) No 1891/2005, the Council amended the rates of the anti-dumping duty imposed against the applicants.

II. UNDERTAKINGS

- (9) As mentioned above, the Commission has accepted undertakings offered by the applicants with regard to their exports to the EU10. In this regard it should be recalled from Regulation (EC) No 992/2004 that these undertakings were of a transitional nature and intended as interim measure allowing potassium chloride purchase prices in the EU10 to rise to those prevailing in the in the Community as constituted immediately before enlargement (the EU15). Furthermore, these EU10 undertakings were not directly equivalent to an anti-dumping duty since the minimum import prices (MIPs) established were, exceptionally, at lower levels than would usually be the case (i.e they were set at levels which did not fully eliminate the injurious effect of dumping).

⁽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 308, 24.10.1992, p. 41. Regulation as last amended by Regulation (EC) No 1891/2005 (see page 14 of this Official Journal).

⁽³⁾ OJ C 70, 20.3.2004, p. 15.

⁽⁴⁾ OJ L 183, 20.5.2004, p. 16. Regulation as amended by Regulation (EC) No 588/2005 (OJ L 98, 16.4.2005, p. 11).

⁽⁵⁾ OJ L 182, 19.5.2004, p. 23.

⁽⁶⁾ OJ L 143, 7.6.2005, p. 11.

⁽⁷⁾ OJ C 93, 17.4.2004, p. 2.

- (10) However, within the framework of the partial interim reviews and in addition to the above mentioned undertakings already in force for their exports to the EU10, the applicants have also offered to sell the product concerned to customers in the EU15 at or above price levels which eliminate the injurious effect of dumping.
- (11) The undertakings offered in respect of sales to the EU10 will expire on 13 April 2006 and, until this time, the undertakings for sales to the EU10 and the undertakings offered for exports to the EU15 will operate in parallel.
- (12) It follows that, after the EU10 undertakings expire in April 2006, the higher MIPs established in the undertakings offered within the framework of the partial interim reviews for sales to the EU15 will also apply to sales to the EU10. In this way, the same MIPs, set at non-injurious levels will apply to all imports by the applicants into the Community market as a whole, and the aim of the transitional and exceptional measures applicable to the exports to the EU10 in the period following enlargement will have been achieved.
- (13) The companies will provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. Furthermore, the sales structure of the companies is such that the Commission considers that the risk of circumvention of the undertaking is limited.
- (14) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Regulation (EC) No 1891/2005. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.
- (15) The exporting producers should also be aware that, under the terms of the undertakings, if it is found that the undertakings become in any way difficult or

impossible to monitor, or if they are breached in any way, the Commission is entitled to withdraw acceptance of the undertaking of the company concerned which would result in a definitive anti-dumping duty being imposed in its place.

- (16) In view of all these factors, the undertakings offered by the applicants within the framework of the partial interim reviews are acceptable,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by the exporting producers and companies mentioned below, in connection with the present anti-dumping proceedings concerning imports of potassium chloride originating in Russia are hereby accepted.

Country	Manufacturer	TARIC additional code
Russian Federation	Produced by JSC Silvinit, Solikamsk, Russia and sold by JSC International Potash Company, Moscow, Russia, to the first independent customer in the Community acting as an importer	A695
Russian Federation	Produced and sold by JSC Uralkali, Berezniki, Russia or produced by JSC Uralkali, Berezniki, Russia and sold by Uralkali Trading SA, Geneva, Switzerland to the first independent customer in the Community acting as an importer	A520

Article 2

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

Done at Brussels, 17 October 2005.

For the Commission
Peter MANDELSON
Member of the Commission