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⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 490/2008**of 3 June 2008****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 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽¹⁾, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 4 June 2008.

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

Done at Brussels, 3 June 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 3 June 2008 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	MA	41,9
	MK	44,3
	TR	93,6
	ZZ	59,9
0707 00 05	MK	30,3
	TR	134,3
	ZZ	82,3
0709 90 70	TR	101,8
	ZZ	101,8
0805 50 10	AR	146,8
	IL	134,6
	TR	144,8
	US	143,6
	UY	61,8
	ZA	130,6
	ZZ	127,0
0808 10 80	AR	104,6
	BR	84,5
	CA	61,8
	CL	91,9
	CN	82,3
	MK	50,7
	NZ	113,4
	TR	85,9
	US	113,4
	UY	89,8
	ZA	85,2
	ZZ	87,6
0809 10 00	TR	250,6
	ZZ	250,6
0809 20 95	TR	532,1
	US	508,1
	ZZ	520,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 491/2008**of 3 June 2008****laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 concerning production refunds in the cereals sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 98 in conjunction with Article 4 thereof,

Whereas:

(1) Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals ⁽²⁾ is to be repealed from 1 July 2008 under Article 201(1)(c) of Regulation (EC) No 1234/2007.

(2) Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 concerning production refunds in the cereals sector ⁽³⁾ has been substantially amended several times. Following the adoption of Regulation (EC) No 1234/2007 as single CMO Regulation it is appropriate to adapt Regulation (EEC) No 1722/93 accordingly. In the interests of clarity, that Regulation should be repealed and replaced by a new Regulation.

(3) In view of the special situation of the market in starch, and particularly the need to keep prices competitive in relation to starch produced in third countries and imported as goods in respect of which the import arrangements do not provide sufficient protection for Community producers, Article 96 of Regulation (EC) No 1234/2007 provides for the grant of a production refund for starch obtained from maize, wheat or potatoes and for certain derivatives used in the manufacture of certain products a list of which is drawn up by the Commission, or in the absence of significant domestic production of other cereals for the production of starch, in Finland and Sweden each marketing year a certain amount of starch from barley or oats, in so far as this

does not entail an increase in the level of starch production from those two cereals. The granting of this refund aims to enable the user industries concerned to have access to starch and certain derivatives at a lower price than that which would result from applying the rules of the common organization of the market in the products in question.

(4) Pursuant to Article 98 of Regulation (EC) No 1234/2007, it is necessary to adopt detailed rules for the grant of production refunds, including rules for control and payment, so that the same rules are applied in all Member States.

(5) The Regulation (EC) No 1234/2007 provides for a list to be drawn up of products the manufacture of which uses starch giving rise to entitlement to the refund.

(6) To ensure that control measures are effective, provision should be made for beneficiaries of the refund to be approved in advance by the Member States in whose territory the abovementioned products are manufactured.

(7) It is necessary to define how the production refund is to be calculated and how often it is to be fixed. The most satisfactory calculation method is at present based on the difference between the market price for cereals and the price used to calculate the import duty. For reasons of stability, the production refund should as a general rule be fixed every month and, as a means of checking that the production refund is of the correct value, the prices of cereals should be monitored on the world and the most representatives Community markets. It should be clarified which Community markets are to be monitored, and this monitoring should be limited to maize. Since taking other cereal prices into account has not had any practical effect in the past on calculating the amount of the refund, references to other cereals should therefore not be necessary.

(8) Production refunds are to be paid for the use of starch and certain derived products in the manufacture of certain goods; detailed information is required to facilitate the appropriate control and payment of the production refunds to applicants; the competent authority in the Member State concerned should be empowered to require applicants to supply any information and allow any checks or inspections necessary to effect such controls.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Regulation (EC) No 361/2008 (OJ L 121, 7.5.2008, p. 1).

⁽²⁾ OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6).

⁽³⁾ OJ L 159, 1.7.1993, p. 112. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

- (9) The manufacturer of the product may not necessarily use basic starch and it is therefore necessary to draw up a list of certain products derived from starch the use of which will give the manufacturer the right to receive the refund.
- (10) The special characteristics of esterified or etherified starch could lead to certain speculative processing operations designed to receive the production refund more than once; so as to prevent such speculation, measures are needed to ensure that esterified or etherified starch is not reprocessed into a raw material the use of which gives the right to apply for a refund. The level of the security should be adapted to prevent such speculation.
- (11) The production refund should not be paid until processing has taken place. Once processing has taken place, payment should be made within five months following verification by the competent authority that the starch has been processed. However, it should be possible for the manufacturer to receive an advance before completion of the controls.
- (12) With a view to simplification and reducing administrative burdens and the costs of re-converting modified starches it is appropriate to increase the amount of the production refund below which control measures are not deemed to be necessary, without expanding the risk for inappropriate spending of Community resources.
- (13) Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products⁽¹⁾, applies to the arrangements provided for in this Regulation. Therefore, the primary requirements of the obligations incumbent on manufacturers and guaranteed by the lodging of a security should be defined.
- (14) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. In accordance with Article 96 of Regulation (EC) No 1234/2007 a production refund (hereinafter called 'refund') may be granted to natural or legal persons using starch extracted from wheat, maize, or potatoes, or certain derived products, in the manufacture of the goods listed in Annex I to this Regulation.

For Finland and Sweden, a refund may also be granted for the use of barley and oat starch limited to a total quantity of 50 000 tonnes in Finland and 10 000 tonnes in Sweden.

⁽¹⁾ OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 1913/2006 (OJ L 365, 21.12.2006, p. 52).

2. It is decided to grant a refund taking into account, in particular:

- (a) the level of competition with third countries, and the degree of protection against such competition afforded by the mechanisms of the common agricultural policy and the Common Customs Tariff;
- (b) the progress made in the technology of starch manufacture and utilization;
- (c) the degree to which starch is incorporated in the final product and/or the relative value of starch in the final product and/or the importance of the product as an outlet for starch, in the light of competition with other products.

3. The grant of a refund for a product may not cause distortion in the conditions of competition with other products which are not eligible for such refunds.

4. Should it be established that distortion has occurred following the grant of a refund, that refund shall:

- (a) be abolished; or
- (b) adjusted, in so far as is necessary to eliminate the distortion in the conditions of competition.

5. Starches imported into the Community under an import scheme which gives rise to a reduction in import duty may not benefit from a production refund.

6. The decisions provided for in this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

Article 2

For the purposes of this Regulation the following definitions shall apply:

- (a) 'starch' means basic starch or a product derived from starch as listed in Annex II;
- (b) 'approved products' means any of the products listed in Annex I;
- (c) 'the manufacturer' means the user of the starch for the production of approved products.

Article 3

1. In cases where a refund is granted, it shall be fixed once a month. However, if the prices of maize and/or wheat in the Community or on the world market change in a significant way, the refund calculated in accordance with paragraph 2 can be modified during this month to take account of these changes.

2. The refund per tonne of starch of maize, wheat, barley or oats shall be calculated in particular on the basis of the difference, multiplied by a coefficient of 1,6, between:

- (a) the average of the maize market prices in France and Hungary, valid during the five days preceding the day of fixing; and
- (b) the average of the representative cif Rotterdam import prices used for the determination of the import duties on the maize, noted during the five days preceding the day of the beginning of application.

For the purposes of calculating the difference referred to in the first subparagraph, the following rules shall apply:

- (a) if the maize market price referred to in point (a) is higher than the intervention price referred to in Article 18 of Regulation (EC) No 1234/2007, but less than 155 % of that price, the price to be taken into account shall be the intervention price plus half the difference between the real price and the intervention price;
- (b) if the maize market price referred to in point (a) is higher than 155 % of the intervention price, the price to be taken into account shall be the intervention price plus 27,5 % of the intervention price.

For potato starch a different rate may be set that reflects the minimum price indicated in Article 4a of Council Regulation (EC) No 1868/94 ⁽¹⁾. In that case, the calculation shall be made on the basis of the maize market price in France and Hungary referred to in point (a) of the first subparagraph, up to a limit of 115 % of the intervention price.

During July, August and September, the maize price referred to in point (a) of the first subparagraph shall be reduced by the difference between the intervention price for cereals as referred to in Article 18 of Regulation (EC) No 1234/2007 valid in June and that valid in July, save if the price of maize referred to in point (a) of the first subparagraph corresponds already to that valid for the new harvest.

3. The refund payable shall be that calculated in accordance with paragraph 2 and multiplied by the coefficient indicated in Annex II which corresponds to the CN code of the starch actually used to manufacture the approved products.

4. The decisions provided for in this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

Article 4

1. Manufacturers who intend to claim refunds should apply to the competent authority in the Member State where the starch is used, giving the following information:

- (a) the name and address of the manufacturer;
- (b) the range of products in which starch is used, including those which are on the list in Annex I and those which are not, giving a full description and the CN codes;
- (c) the address(es) of the place(s) where the starch is to be processed into an approved product, if the address is different as these of the manufacturer.

Member States may ask the manufacturer for additional information.

2. Manufacturers shall submit a written undertaking to the competent authority, allowing the competent authorities to carry out all checks and inspections required to monitor the use of the starch and that they will provide any information required.

3. The competent authority shall take measures to ensure that the manufacturer is established and officially recognized in the Member State.

4. On the basis of the information specified in paragraphs 1 and 2, the competent authority shall draw up a list of approved manufacturers which it shall keep up to date.

Only manufacturers thus approved shall be entitled to claim a refund in accordance with Article 5.

Article 5

1. If the manufacturer wishes to apply for a refund, he must address himself in writing to his competent authority to obtain a refund certificate. Applications may be lodged every working day before 13:00 Brussels time.

⁽¹⁾ OJ L 197, 30.7.1994, p. 4.

2. The application must specify:

- (a) the name and address of the manufacturer;
- (b) the quantity of starch to be used;
- (c) in the case of manufacture of a product falling within CN code 3505 10 50, the quantity of starch which will be used;
- (d) the place(s) where the starch will be used;
- (e) the planned dates of the processing operations.

3. The application shall be accompanied by:

- (a) the lodging of a security in accordance with Article 8;
- (b) a declaration by the supplier of the starch that the product to be used has been directly produced from maize, wheat, barley, oats or potatoes, with the exclusion of all use of by-products obtained at the time of the manufacture of other agricultural products or goods.

4. Member States may require additional information.

Article 6

1. As soon as applications submitted in accordance with Article 5 are received, the competent authority shall verify them and shall issue the refund certificate forthwith.

2. Member States shall use national forms for the refund certificate which, without prejudice to the other provisions of Community legislation, shall contain at least the information specified in paragraph 3.

3. The refund certificate shall include the information referred to in Article 5(2) and state the refund rate and the last day of its validity, which shall be the last day of the third month following the month of issue.

However, during July, August and until 24 September included, the validity of the certificates requested during the periods in question is limited to 30 days as from the day on which they are issued, without being able to exceed the limit of 30 September.

4. The rate of the refund applicable and stated on the certificate corresponds to that valid the day of the receipt of the request.

However, where any of the quantities of starch quoted on the certificate is processed during the cereals marketing year

following that in which the application was received, the refund payable for that starch which is processed in the new marketing year shall be adjusted according to the difference between the intervention price applicable during the month of delivery of the restitution certificate, and that applicable in the month of processing, multiplied by a coefficient of 1,60. The operative event for the exchange rate applicable to the refund shall be that referred to in Article 2(1) of Regulation (EC) No 1913/2006.

Article 7

1. Manufacturers in possession of a refund certificate delivered in accordance with Article 6 shall be entitled, provided all the requirements of this Regulation have been met, to request payment of the refund indicated on the certificate, after the starch has been used in the manufacture of the approved products concerned.

2. Rights under the certificate shall not be transferable.

Article 8

1. The issue of a certificate shall be subject to the lodging of a security by the manufacturer with the competent authority, equal to EUR 15 per tonne of basic starch, where appropriate multiplied by the coefficient corresponding to the type of starch to be used as set out in Annex II.

2. The security shall be released in accordance with Regulation (EEC) No 2220/85. The primary requirement within the meaning of Article 20 of that Regulation shall be the processing of the quantity of starch stated on the application into approved products within the period of validity of the certificate. However, if a manufacturer has processed at least 90 % of the quantity of starch stated on the application, he shall be deemed to have fulfilled that primary requirement.

Article 9

1. The definitive payment of the refund may be made only after the manufacturer has notified the competent authority of the following information:

- (a) the date or dates of purchase and delivery of the starch;
- (b) the name and address of the suppliers of the starch;
- (c) the name and address of the producers of the starch;
- (d) the date or dates on which the starch was processed;
- (e) the quantity and type of starch, including the CN codes, which has been used;
- (f) the quantity of the approved product shown on the certificate and manufactured using the starch.

2. Where the product mentioned on the certificate falls within CN code 3505 10 50, the notification referred to in paragraph 1 shall be accompanied by the lodging of a security equal to the production refund payable on the manufacture of the product in question. However, where the amount of the production refund is less than EUR 30/tonne of starch, the security shall not be required and the verification and control measures provided for in Article 10 shall not apply.

The primary requirement, within the meaning of Article 20 of Regulation (EEC) No 2220/85, constitutes the use or the export of the product in accordance with the respective provisions of points (a) and (b) of Article 10(1) of this Regulation. The use or the export is to be effected within 12 months following the deadline of validity of the certificate. An extension of maximum six months of this deadline may be considered on the basis of a duly justified request presented to the competent authority.

3. Before payment, the competent authority shall establish that the starch has been used for the manufacture of the approved products in accordance with the information stated on the certificate. This will normally be achieved using administrative checks, but these should be supported by physical checks where necessary.

4. All checks provided for in this Regulation shall be completed within five months of the date on which the competent authority received the information required in paragraph 1.

5. Where the quantity of starch processed is greater than the quantity shown on the certificate, then the extra quantity, up to a limit of 5 %, shall be deemed to have been processed under that document, conferring a right to the refund indicated thereon.

Article 10

1. The security provided for in Article 9(2) shall be released only once the competent authority has received proof that the product falling within CN code 3505 10 50:

- (a) has been used within the customs territory of the Community to manufacture products other than those listed in Annex II; or
- (b) has left the customs territory of the Community, in the case of direct export to third countries.

2. The proof referred to in paragraph 1(a) shall consist of a declaration submitted by the manufacturer to the competent authority, indicating:

- (a) whether the product in question is to be processed;
- (b) that the product will be used to manufacture only products other than those listed in Annex II;

(c) that the product in question will be sold only to a party who will take the undertaking mentioned in point (b), on the basis of either a contractual clause established for that purpose or a specific condition mentioned in the sales invoice; the manufacturer shall retain a copy of the sales contract or of the sales invoice, to be kept at the disposal of the competent authority;

(d) that he is aware of the provisions of paragraph 8;

(e) the name and address of the party who receives the product and the quantity involved if the product is transferred;

(f) the number of the T 5 control copy if the buyer is located in another Member State.

3. At the end of each quarter, the manufacturer shall forward copies of the declaration referred to in paragraph 2 to his competent authority within 20 working days. On receipt, the competent authority concerned shall forward the same documents to the competent authority of the buyer within 20 working days.

4. Both manufacturers and buyers of the product falling within CN code 3505 10 50 must have stock records of a type approved by the Member States so that compliance with the undertakings and information contained in the manufacturer's declaration referred to in paragraph 2 can be verified. The competent authorities of the Member States will carry out verifications on the basis of these stock records with reference to financial accounts, including invoices and bank extracts, as necessary to satisfy themselves of the quantitative operations recorded.

However, the buyers who, each quarter, use a quantity of the products within this CN code which is less than 1 000 kg, can be exempted from this obligation.

5. The verification provided for in paragraph 4 shall be made by the competent authorities of the respective Member States at the premises of the manufacturer and of the buyer after the end of each quarter. Such checks shall focus on reconciling global data relating to that period for the manufacturers and buyers concerned, and with detailed verification of at least 10 % of all the transactions and utilizations which have taken place.

Such verification shall be determined by the competent authorities on the basis of a risk analysis, taking into account the importance of the quantities and sums involved, findings from previous verifications, and other factors to be decided by the competent control authorities.

Each verification operation must be completed not later than five months after the end of each quarter.

The competent authority of the manufacturer must have the results of each verification at its disposal not later than 20 working days after the end of each check.

Where such verifications take place in two or more Member States, the competent authorities concerned shall communicate the results of the verifications made as part of the procedures referred to in Council Regulation (EEC) No 1468/81 ⁽¹⁾.

6. If irregularities are found in 3 % or more of the checks referred to in paragraph 5, the competent authorities shall intensify checks.

Where the results of verifications so warrant, the authority which released the security shall apply the penalty provided for in paragraph 8 to the manufacturer concerned.

7. When the product in question is the subject of intra-Community trade or is exported to third countries via the territory of another Member State, a T 5 control copy shall be issued in accordance with Commission Regulation (EEC) No 2454/93 ⁽²⁾.

Box 104 of the control copy shall include, under the heading 'Other', one of the entries listed in Annex III to this Regulation.

8. If the conditions laid down in paragraphs 1 to 7 are not met, the competent authority of the Member State concerned shall, without prejudice to national sanctions, require payment of an amount equivalent to 150 % of the highest refund applicable to the product in question during the 12 preceding months.

Article 11

1. The refund quoted on the certificate shall be paid only for the quantity of starch actually processed. At the same time, the

security referred to in Article 8(1) shall be released in accordance with Title V of Regulation (EEC) No 2220/85.

2. The refund shall be paid not later than five months after the date on which the check provided for in Article 9(3) is completed. However, at the request of the manufacturer, the competent authority may advance a sum equivalent to the refund 30 days after receipt of the said information. Apart from cases where the product falls within CN code 3505 10 50, this advance shall be subject to the lodging of a security by the manufacturer equal to 115 % of the sum advanced. The security shall be released in accordance with Article 19(1) of Regulation (EEC) No 2220/85.

Article 12

Member States shall notify to the Commission:

- (a) by the end of the first week of each month, the quantities of starch for which certificate applications as indicated in Article 5(1) were made during the previous month;
- (b) within three months of the end of each quarter of the calendar year the type, quantities and origin of starch (maize, wheat, potatoes, barley or oats) on which refunds were paid and the quantities of products for which the starch was used.

Article 13

Regulation (EEC) No 1722/93 is hereby repealed.

Article 14

This Regulation shall enter into force on 1 July 2008.

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

Done at Brussels, 3 June 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 144, 2.6.1981, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

ANNEX I

Products for which starch and/or its derivatives are used falling within the following codes and chapters of the Combined Nomenclature

CN code	Description
ex 1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	– Mucilages and thickeners, whether or not modified, derived from vegetable products:
ex 1302 32 90	– – – Mucilage of guar seeds
ex 1302 39 00	– – Other:
	– Carrageenan
ex 1404	Vegetable products not elsewhere specified or included:
1404 20 00	– Cotton linters
ex 1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter, artificial honey, whether or not mixed with natural honey; caramel:
1702 50 00	– Chemically pure fructose
ex 1702 90	– Other, including invert sugar:
1702 90 10	– – Chemically pure maltose
ex Chapter 29	Organic chemicals, excluding subheadings 2905 43 00 and 2905 44
Chapter 30	Pharmaceutical products
3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations), and cleaning preparations, whether or not containing soap, other than those of heading No 3401
ex Chapter 35	Albuminoid substances; modified starches; glues; enzymes excluding heading No 3501 and subheading 3505 10 10, 3505 10 90 and 3505 20
ex Chapter 38	Miscellaneous chemical products excluding heading Nos 3809 and 3824 60
Chapter 39	Plastics and articles thereof
ex Chapter 48	Paper and paperboard; articles of paper pulp, of paper or of paperboard
4801 00	Newsprint, in rolls or sheets
4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and punch card stock and punch tape paper, in rolls or sheets, other than paper falling within heading Nos 4801 or 4803; handmade paper and paperboard
4803 00	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets
4804	Uncoated craft paper and paperboard, in rolls or sheets, other than that of heading Nos 4802 or 4803
4805	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in note 2 in Chapter 48 of the Combined Nomenclature
4806	Vegetable parchment, greaseproof papers, tracing papers, and glassine and other glazed transparent or translucent papers, in rolls or sheets

CN code	Description
4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets
4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading No 4803
4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets
4810	Paper and paperboard, coated on one or both sides with kaolin (china clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or sheets
4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated covered, surface-coloured, surface-decorated or printed, in rolls or sheets, other than goods of the kind described in heading Nos 4803, 4809 or 4810
4812 00 00	Filter blocks, slabs and plates, of paper pulp
ex 4813	Cigarette paper, whether or not cut to size or in the form of booklets or tubes:
ex 4813 90	– Other
ex 4814	Wallpaper and similar wall coverings; window transparencies or paper:
4814 10 00	– ‘ingrain’ paper
4814 20 00	– Wallpaper and similar wall coverings, consisting of paper coated or covered, on the face side, with a grained, embossed, coloured, design-printed or otherwise decorated layer of plastics
4814 90	– Other
ex 4816	Carbon paper, self-copy paper and other copying or transfer papers (other than those falling within heading No 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes:
4816 10 00	– Carbon or similar copying papers
4816 90 00	– Other
Chapter 52	Cotton
ex 5801	Woven pile fabrics and chenille fabrics, other than fabrics of heading No 5806:
	– Of cotton:
5801 21 00	– – Uncut weft pile fabrics
ex 5802	Terry towelling and similar woven terry fabrics, other than narrow fabrics of heading No 5806; tufted textile fabrics, other than products of heading No 5703:
	– Terry towelling and similar woven terry fabrics, of cotton:
5802 11 00	– – Unbleached
5802 19 00	– – Other
ex 5803	Gauze, other than narrow fabrics falling within heading No 5806:
5803 10 00	– Of cotton

ANNEX II

Basic starches and products derived from starch

CN code	Description	Quantity of starch needed to produce one tonne (Coefficient)
A. BASIC STARCHES ⁽¹⁾ ⁽²⁾		
ex 1108	Starches; inulin:	
	- Starches:	
1108 11 00	-- Wheat starch	1,00
1108 12 00	-- Maize (corn) starch	1,00
1108 13 00	-- Potato starch	1,00
ex 1108 19	-- Other starches:	1,00
B. THE FOLLOWING DERIVED PRODUCTS WHEN BASED ON THE ABOVE		
1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel:	
ex 1702 30	- Glucose and glucose syrup, not containing fructose or containing in the dry state less than 20 % by weight of fructose:	
	-- Other:	
	--- Containing in the dry state 99 % or more by weight of glucose:	
1702 30 51	---- In the form of white crystalline powder, whether or not agglomerated	1,304
1702 30 59	---- Other ⁽³⁾	1,00
	--- Other	
1702 30 91	---- In the form of white crystalline powder, whether or not agglomerated:	1,304
1702 30 99	---- Other ⁽³⁾	1,00
ex 1702 40	- Glucose and glucose syrup, containing in the dry state at least 20 % but less than 50 % by weight of fructose:	
1702 40 90	-- Other ⁽³⁾	1,00
ex 1702 90	- Other, including invert sugar:	
1702 90 50	-- Maltodextrine and maltodextrine syrup:	
	--- In the form of white crystalline powder, whether or not agglomerated	1,304
	--- Other ⁽³⁾	1,00
	-- Caramel:	
	--- Other:	
1702 90 75	---- In the form of powder, whether or not agglomerated	1,366
1702 90 79	---- Other ⁽³⁾	0,95
ex 2905	Acrylic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives:	
	- Other polyhydric alcohols:	
2905 43 00	-- Mannitol	1,52

CN code	Description	Quantity of starch needed to produce one tonne (Coefficient)
2905 44	-- D-glucitol (sorbitol):	
	--- In aqueous solution:	
2905 44 11	---- Containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content ⁽⁴⁾	1,068
2905 44 19	---- Other ⁽⁴⁾	0,944
	--- Other:	
2905 44 91	---- Containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content	1,52
2905 44 99	---- Other	1,52
3505	Dextrins and other modified starches (for example, pregelatinized or esterified starches), glues based on starches, or on dextrins or other modified starches:	
ex 3505 10	- Dextrins and other modified starches:	
3505 10 10	-- Dextrins ⁽⁵⁾	1,14
	-- Other modified starches:	
3505 10 90	--- Other ⁽⁵⁾	1,14
3505 20	- Glues	1,14
ex 3809	Finishing agants, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included:	
3809 10	- With basis of amylaceous substances ⁽⁵⁾	1,14
ex 3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:	
3824 60	- Sorbitol other than that falling within CN code 2905 44:	
	-- In aqueous solution	
3824 60 11	--- Containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content ⁽⁴⁾	1,068
3824 60 19	--- Other ⁽⁴⁾	0,944
	-- Other:	
3824 60 91	--- Containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content	1,52
3824 60 99	--- Other	1,52

⁽¹⁾ The coefficient shown applies to starch with a dry matter content of at least 87 % in the case of maize and wheat starches, and at least 80 % in the case of potato starch.

The production refund payable for basic starch of a lower dry matter content than that shown is to be adjusted using the following formula.

1. Maize or wheat starch: $(\text{Actual percentage of dry matter}/87) \times \text{Production refund}$.

2. Potato starch: $(\text{Actual percentage of dry matter}/80) \times \text{Production refund}$.

Where the production refund is paid for starch falling with CN code 1108, the purity of starch in the dry matter must be at least 97 %.

The degree of purity of the starch in dry matter is determined with the aid of one of the methods published in Annex I to Commission Directive 72/199/EEC (OJ L 123, 29.5.1972, p. 6).

⁽²⁾ Directly produced from maize, wheat, or potatoes, with the exclusion of all use of by-products obtained at the time of the manufacture of other agricultural products or merchandise.

⁽³⁾ The production refund is payable for products falling within CN codes with a dry matter content of at least 78 %. The production refund payable for products falling within these CN codes with a dry matter content lower than 78 % is to be adjusted using the following formula: $(\text{Actual percentage of dry matter}/78) \times \text{Production refund}$.

⁽⁴⁾ The production refund is payable for D-glucitol (sorbitol) in aqueous solution with a dry matter content of at least 70 %. Where the dry matter content is lower than 70 %, the production refund is to be adjusted using the following formula: $(\text{Actual percentage of dry matter}/70) \times \text{Production refund}$.

⁽⁵⁾ The production refund is payable for the actual starch or dextrin dry matter content.

ANNEX III

Entries referred to in Article 10(7)

- *in Bulgarian:* Предназначено за преработка или доставка съгласно Регламент (ЕО) № 491/2008, или за износ извън митническата територия на Общността.
- *in Spanish:* Se utilizará para la transformación o la entrega, de conformidad con el artículo 10 del Reglamento (CE) nº 491/2008 o para la exportación a partir del territorio aduanero de la Comunidad.
- *in Czech:* Použije se pro zpracování nebo dobavu v souladu s článkem 10 nařízení Komise (ES) č. 491/2008 nebo pro vývoz z celního území Společenství.
- *in Danish:* Til forarbejdning eller levering i overensstemmelse med artikel 10 i forordning (EF) nr. 491/2008 eller til udførsel fra Fællesskabets toldområde.
- *in German:* Zur Verarbeitung oder Lieferung gemäß Artikel 10 der Verordnung (EG) Nr. 491/2008 oder zur Ausfuhr aus dem Zollgebiet der Gemeinschaft bestimmt.
- *in Estonian:* Kasutatakse töötlemiseks või tarnimiseks komisjoni määruse (EÜ) nr 491/2008 artikli 10 kohaselt või ekspordiks ühenduse tolliterritooriumilt.
- *in Greek:* Προς χρήση για μεταποίηση ή παράδοση σύμφωνα με το άρθρο 10 του κανονισμού (ΕΚ) αριθ. 491/2008 ή για εξαγωγή από το τελωνειακό έδαφος της Κοινότητας.
- *in English:* To be used for processing or delivery in accordance with Article 10 of Commission Regulation (EC) No 491/2008 or for export from the customs territory of the Community.
- *in French:* À utiliser pour la transformation ou la livraison, conformément à l'article 10 du règlement (CE) nº 491/2008, ou pour l'exportation à partir du territoire douanier de la Communauté.
- *in Italian:* Da utilizzare per la trasformazione o la consegna, conformemente all'articolo 10 del regolamento (CE) n. 491/2008, o per l'esportazione dal territorio doganale della Comunità.
- *in Latvian:* Izmantošanai pārstrādei vai piegādei saskaņā ar Komisijas Regulas (EK) Nr. 491/2008 10. pantu, vai arī eksportam no Kopienas teritorijas.
- *in Lithuanian:* Naudoti perdirbimui arba pristatymui pagal Komisijos reglamento (EB) Nr. 491/2008 10 straipsnį, arba eksportui iš Bendrijos muitų teritorijos.
- *in Hungarian:* Az 491/2008/EK bizottsági rendelet 10. cikkével összhangban történő feldolgozásra vagy szállításra vagy a Közösség vámterületéről történő kivitelle irányuló felhasználásra.
- *in Maltese:* Biex jintuża għall-ipproċessar jew għall-kunsinna b'konformità ma' l-Artikolu 10 tar-Regolament tal-Kummissjoni (KE) Nru 491/2008 jew għall-esportazzjoni mit-territorju doganali tal-Komunità.
- *in Dutch:* Bestemd voor verwerking of levering overeenkomstig artikel 10 van Verordening (EG) nr. 491/2008 of voor uitvoer uit het douanegebied van de Gemeenschap.
- *in Polish:* Do przetwarzania lub dostaw, zgodnie z art. 10 rozporządzenia Komisji (WE) nr 491/2008, lub do wywozu z terytorium celnego Wspólnoty.
- *in Portuguese:* A utilizar para transformação ou entrega, em conformidade com o disposto no artigo 10.º do Regulamento (CE) n.º 491/2008, ou para exportação a partir do território aduaneiro da Comunidade.
- *in Romanian:* A se folosi pentru procesare sau livrare, conform articolului 10 din Regulamentul (CE) nr. 491/2008, sau pentru export de pe teritoriul vamal al Comunității.
- *in Slovak:* Na použitie pri spracovaní alebo dobavke v súlade s článkom 10 nariadenia Komisie (ES) č. 491/2008 alebo na vývoz z colného územia Spoločenstva.
- *in Slovenian:* Za predelavo ali dobavo v skladu s členom 10 Uredbe Komisije (ES) št. 491/2008 ali za izvoz iz carinskih območij Skupnosti.
- *in Finnish:* Käytetään jalostamiseen tai toimittamiseen asetuksen (EY) N:o 491/2008 10 artiklan mukaisesti taikka vientiin yhteisön tullialueelta.
- *in Swedish:* Avsedd för bearbetning eller leverans i enlighet med artikel 10 i kommissionens förordning (EG) nr 491/2008 eller för export från gemenskapens tullområde.

COMMISSION REGULATION (EC) No 492/2008**of 3 June 2008****imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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 7 thereof,

(4) The complainant, exporting producers, importers, supplier associations and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

After consulting the Advisory Committee,

(5) In the notice of initiation, the Commission indicated that in view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC and importers in the Community which indicated their willingness to cooperate, it was decided that sampling was not necessary.

Whereas:

1. PROCEDURE**1.1. Initiation**

(1) On 5 September 2007, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of monosodium glutamate (MSG) originating in the People's Republic of China (PRC or country concerned).

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and the authorities of the PRC.

(2) The proceeding was initiated as a result of a complaint lodged on 23 July 2007 by Ajinomoto Foods Europe SAS representing 100 % of the total Community production of MSG. The complaint contained prima facie evidence of dumping of the said product and of material injury suffered by the sole Community producer resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(7) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation, namely to the sole Community producer, 22 importers and 27 users of the product concerned as well as two raw materials suppliers.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users known to be concerned, and representatives of the countries concerned of the initiation of the proceeding.

(8) Replies were received from the complainant Community producer, three unrelated importers, four users, and two suppliers.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 206, 5.9.2007, p. 20.

(9) With regard to the country concerned by this investigation, the Commission received replies from three exporting producers in the PRC.

- (10) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Producer located in the Community*

- Ajinomoto Foods Europe SAS, Nesle, France and its related trader Ajinomoto Foods Deutschland, Hamburg, Germany.

(b) *Community user*

One user requested in terms of Article 19 of the basic Regulation that their details are not published, as to do so would have a significantly adverse effect upon them. The request was found to be sufficiently substantiated and therefore granted.

- Nestlé, Vevey, Switzerland,
- Unilever, Neuhausen, Switzerland.

(c) *Importers in the Community*

- Omya Peralta GmbH, Hamburg, Germany,
- Helm AG, Hamburg, Germany,
- Standard Sp. z o.o., Lublin, Poland.

(d) *Exporting producers and related companies in the PRC*

1. Meihua Group

- Hebei Meihua MSG Group Co., Ltd, Bazhou, Hebei,
- Tongliao Meihua Bio-Tech Co., Ltd, Tongliao, Neimenggu, Inner Mongolia,
- Tongliao Jianlong Hyperacidity Co., Ltd, Tongliao, Neimenggu, Inner Mongolia,
- Langfang Jianlong Hyperacidity, Bazhou, Hebei;

2. LingHua Group,

- Shandong Linghua MSG Incorporated Company, Jining, Shandog. Verification visits scheduled for other two companies of the group,
- Shangong Lingwei Seasoning Co., Ltd., Jining, Shandog, and

- Jining Jusheng Gourmet Powder Food Co., Ltd., Jining, Shandog had to be abandoned for the reasons explained in recitals 15 to 18;

3. Fujian Province Jianyang Wuyi MSG Co., Ltd., Jianyang, Fujian.

(e) *Producer in the analogue country*

- Ajinomoto Co., (Thailand) Ltd, Bangkok, Thailand.

1.3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 July 2006 to 30 June 2007 (IP). The examination of trends relevant for the assessment of injury covered the period from April 2004 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (12) MSG exported to the Community and originating in the PRC (the product concerned) is a food additive and is mainly used as a flavour enhancer in soups, broths, fish and meat dishes and ready-made foods. It is also used in the personal care cosmetics industry. It is normally declared within CN code ex 2922 42 00.

- (13) MSG is available in various packing sizes, ranging from consumer packs of 0,5 gram to 1 000 kg bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 20 kg and more are destined for industrial users. In addition, different purity grades exist. However, there are no differences in the characteristics of monosodium glutamate packed in the various sizes nor for different purity grades.

2.2. Like product

- (14) No differences were found between the product concerned and the MSG produced by the Community industry and sold on the Community market. The PRC is an economy in transition and as mentioned in recitals 30 to 33 normal value had to be established on the basis of information obtained in a market economy third country. According to the information available, MSG produced and sold on the market economy third country, has the same basic physical and chemical characteristics as MSG produced in the PRC and exported to the Community. It is therefore provisionally concluded that all types of MSG are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Application of Article 18 of the basic Regulation

- (15) In the case of one exporting producer it was found, during the first day of the on-the-spot verification, that it had submitted falsified information relating to its export sales which were considered as false and misleading information in the sense of Article 18(1) of the basic Regulation.
- (16) In view of this finding, the verification was ceased and the company was informed that pursuant to Article 18 of the basic Regulation, it was envisaged to base the findings (provisional or definitive, affirmative or negative) on facts available and was given an opportunity to comment.
- (17) The company in its response did not contest the findings of the investigation concerning the falsification of documents and did not raise any objection regarding application of Article 18 of the basic Regulation.
- (18) Under these circumstances, the information provided by this exporting producer was disregarded and facts available were used.

3.2. Market economy treatment (MET)

- (19) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:
1. business decisions and costs are made in response to market conditions, and without significant State interference;
 2. firms have one clear set of basic accounting records which are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;
 3. there are no significant distortions carried over from the former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

- (20) Three Chinese exporting producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines.
- (21) For one Chinese exporting producer Article 18 of the basic Regulation had to be applied (see recitals 15 to 18).
- (22) The verification established that the remaining two Chinese exporting producers did not meet all five MET criteria.
- (23) The verification established that one Chinese exporting producer (Meihua Group constituted of five companies) could not show that it met criteria 2 and 3 mentioned above. Firstly, Meihua Group failed to present audited consolidated financial statements, in line with IAS 27, in its MET claim or during the verification visit. The investigation showed that, as there were many transactions within the Group, only audited consolidated financial statements, whereby all intra-Group balances, transactions, income, and expenses are eliminated in full, would allow obtaining a clear picture about the Group. Meihua Group only provided audited consolidated financial statements well after the verification visit which did not allow the Commission to perform any verification of the information contained in these accounts nor to obtain a clear picture about the financial situation of the Group. Moreover, it was found that the accounts of the individual companies were not in compliance with IAS 1 and IAS 18, as the mother company was offsetting revenues and expenses and that this offsetting was of material nature. In view of these breaches of IAS and the fact that they were not even mentioned in the audit reports, it is considered that Meihua Group did not demonstrate that its records were audited in line with the said standards (criterion 2).
- (24) Secondly, on the basis of the individual accounts of the companies of the Group verified during the verification visit and on the basis of the unverified information mentioned above, significant distortions in the financial situation of the companies and of the Group were detected. Significant amounts of interest-free borrowings were found to exist. This resulted in a significant amount of negative working capital and in potential high financial costs not reflected in the records of the individual companies or the Group (criterion 3).

- (25) The second company, Fujian Province Jianyang Wuyi MSG Co., Ltd, could not show that it met criteria 1 to 3. Firstly, its decisions were not made in response to market signals and without significant State interference, notably because the State was over-represented in its Board and because the company had certain dubious, yet significant in amount, transactions with State-owned enterprises (loan with the State with interest twice above the market rate, advances to State-owned enterprises without any justification) (criterion 1). Secondly, it did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS, because the accounts were found not to be in compliance with IAS 1 and IAS 18 as the company was offsetting (i) accounts payable with accounts receivable and (ii) revenues and expenses. Both types of offsetting which were of material nature reduced in this way the ability to understand the transactions, other events and conditions that have taken place in the activity of the company. As these breaches of IAS were not mentioned in the audit report, the company did not demonstrate that its records were audited in line with the said standards (criterion 2). Finally, distortions carried over from the non-market economy system were observed in the form of inappropriate asset and land-use right evaluations (criterion 3).
- (26) Consequently, it was concluded that no Chinese exporting producer demonstrated that it fulfilled the conditions set out in Article 2(7)(c) of the basic Regulation.

3.3. Individual treatment (IT)

- (27) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and are therefore granted individual treatment.
- (28) The exporting producers which did not meet the MET criteria had also claimed IT in the event that they were not granted MET.
- (29) On the basis of information available, it was found that two Chinese exporting producers meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

3.4. Normal value

3.4.1. Analogue country

- (30) According to Article 2(7)(a) of the basic Regulation, in economies in transition normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).
- (31) In the notice of initiation Thailand was proposed as an appropriate analogue country for the purpose of establishing normal value for the PRC. The Commission invited all interested parties to comment on this proposal.
- (32) Only one interested party submitted comments proposing as alternative analogue countries Brazil or Indonesia. The Commission contacted known companies in Brazil and Indonesia. However, no questionnaire replies or any meaningful comments were received from producers in Brazil or Indonesia.
- (33) Moreover, Thailand is worldwide one of the biggest MSG producers with a competitive market and the major MSG producer in Thailand fully co-operated. Thailand met the criteria for an appropriate analogue country as there is competition in the Thai market, the quantities sold on the Thai market are sufficient and both the Chinese and the Thai markets are comparable in terms of product range and production process.
- (34) In view of the above, it was therefore provisionally concluded that Thailand constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.4.2. Methodology applied for the determination of normal value

- (35) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the PRC was established on the basis of verified information received from the co-operating producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market of Thailand for comparable product types, since these were found to be made in the ordinary course of trade. Regarding the product types, it is noted that essentially only one product type was exported from the PRC during the IP, i.e. MSG with purity above or equal to 99 % and this was directly comparable with the product sold by the analogue country producer on its domestic market. The investigation showed certain differences in the production process between the Thai and the Chinese manufacturers, in that the latter use different equipment that require less use of electricity energy. The

Thai domestic selling prices were therefore adjusted downwards by an amount which reflects these differences.

3.5. Export Price

- (36) All cooperating Chinese exporting producers made export sales to the Community either directly to independent customers in the Community or through unrelated companies located in the PRC and Taiwan. Therefore, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (37) With regard to all other Chinese exporters, the Commission first established the level of cooperation. A comparison was made between the total export quantities indicated in the questionnaire replies of the two cooperating exporting producers and total dumped imports from the PRC as derived from the Eurostat import statistics. The percentage of cooperation found was 74 %. On this basis, the level of cooperation was deemed to be low. As a consequence, export prices were provisionally established on the basis of the transactions with the highest dumping margin made by one of the two cooperating Chinese exporting producers that were granted IT in accordance with Article 18(1) of the basic Regulation.

3.6. Comparison

- (38) The comparison between normal value and export price was made on an ex-works basis.
- (39) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated companies (cooperating exporting producers and the producer in the analogue country) allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and commissions have been granted where applicable and justified.

3.7. Dumping margins

3.7.1. For the cooperating producers granted IT

- (40) For those companies granted IT, the weighted average normal value was compared with the weighted average

export price as provided for in Article 2(11) and (12) of the basic Regulation.

- (41) On this basis, the provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid, are:

Company	Provisional dumping margin
Hebei Meihua MSG Group Co., Ltd, and Tongliao Meihua Bio-Tech Co., Ltd	33,8 %
Fujian Province Jianyang Wuyi MSG Co., Ltd	36,5 %

3.7.2. For all other exporting producers

- (42) The countrywide dumping margin was calculated on the basis of a comparison between the export price as set out in recital (36) and the normal value as set out in recital (35).
- (43) On this basis, the country-wide level of dumping was provisionally established at 39,7 % of the cif Community frontier price, duty unpaid.

4. INJURY

4.1. Definition of the Community industry

- (44) The sole cooperating Community producer accounted for 100 % of the Community production of MSG during the IP. It is therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (45) As the Community industry is thus constituted of only one producer, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality. Bracketed figures relate to negative figures.
- (46) Since the Community producer uses a fiscal year from 1 April to 31 March of the following year, all the data below are presented for fiscal years (FY) rather than for calendar years (e.g. FY2005 covers the period from 1 April 2004 to 31 March 2005). The data concerning imports are presented on the same comparable basis.

4.2. Community consumption

- (47) Community consumption was established on the basis of sales volumes of the Community industry on the Community market plus imports from the PRC and other third countries, based on Eurostat. Community consumption of MSG increased between FY2005 and FY2006 before continually decreasing in FY2007 and the IP. Overall, consumption decreased by 4 % during the period considered.

Table 1

	FY2005	FY2006	FY2007	IP
Community consumption (tonnes)				
<i>Index</i>	100	107	98	96

4.3. Imports into the Community from the PRC

4.3.1. Volume and market share

- (48) Import volumes from the PRC increased significantly from 4 701 tonnes in FY2005 to 34 613 tonnes in the IP, i.e. by 636 % over the period considered.
- (49) The corresponding market share was in the range of 3 % to 7 % in FY2005 and increased to in the range of 38 % to 43 % over the period considered, despite the decrease in consumption.

Table 2

	FY2005	FY2006	FY2007	IP
Imports from PRC (tonnes)	4 701	11 376	34 254	34 613
<i>Index</i>	100	242	729	736
Market share PRC				
<i>Index</i>	100	226	745	768

Source: Imports quantities from Eurostat.

4.3.2. Unit selling price

- (50) Average prices for imports from China fluctuated during the period considered and overall showed a slight decrease of 2 %.

Table 3

	FY2005	FY2006	FY2007	IP
Prices of imports from PRC (EUR/tonne)	790	818	785	773
<i>Index</i>	100	104	99	98

Source: Import prices from Eurostat.

4.3.3. Price undercutting

- (51) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports concerned, established on a cif basis with an appropriate adjustment for the customs duties and post-importation costs. The comparison was made after deduction of rebates and discounts.
- (52) Based on the above methodology, the difference between the prices, expressed as a percentage of the Community industry's weighted average price (ex-works), i.e. the price undercutting margin, ranged from 21 % to 24 %.

4.4. Economic situation of the Community industry

- (53) The trends of all economic factors mentioned in Article 3(5) of the basic Regulation were examined to establish the economic situation of the Community industry during the period considered.

4.4.1. Production capacity, production and capacity utilisation

- (54) The production capacity increased by 5 % in FY2006 followed by a further increase of three percentage points in FY2007 before remaining stable in the IP. The increases in the production capacity resulted from new investments as explained in recital 60 below.
- (55) Production of MSG by the Community industry decreased continually to show an overall decrease of 6 % in the period considered. The production figures for FY2007 and the IP reflects the fact that the Community industry had to stop the production for one month in 2006.
- (56) As a result of the decrease in production volumes, the capacity utilisation decreased by 14 % over the period considered.

Table 4

	FY2005	FY2006	FY2007	IP
Production capacity				
<i>Index</i>	100	105	108	108
Production				
<i>Index</i>	100	99	93	94
Capacity utilisation				
<i>Index</i>	100	95	86	86

Source: Questionnaire reply.

4.4.2. Sales volume, market share and average unit prices in the Community

- (57) Sales of MSG by the Community industry to independent customers on the Community market increased slightly in FY2006 before showing a massive decrease in FY2007 of 25 percentage points. Over the period considered, the decrease in sales was 24 %. This huge drop in sales volumes led to a significant decrease in market share by a total of 12,5 percentage points over the period considered (from 58,6 % market share in FY2005 to 46,1 % in the IP).

- (58) Average sales prices to unrelated customers in the Community market increased by 19 % over the period considered. The increase was even sharper in the FY2007 (+ 23 %) but then a slight decrease in prices took place in the last three months of the IP. The increase in prices was necessary to cover the increase of costs of raw materials and other inputs. Despite the fact that the Community industry managed to actually increase its efficiencies in the production of MSG, sales prices could not cover the cost of production during the IP.

Table 5

	FY2005	FY2006	FY2007	IP
Sales volumes				
<i>Index</i>	100	101	76	76
Market share				
<i>Index</i>	100	94	77	79
Average prices				
<i>Index</i>	100	106	123	119

Source: Questionnaire reply.

4.4.3. Stocks

- (59) During the period considered stocks increased by 52 %. This growth in inventories took place in the second half of the period considered and coincided with the big decrease in sales starting as from FY2007. At the end of the IP, the level of stocks remained at a high level.

Table 6

	FY2005	FY2006	FY2007	IP
Stocks				
<i>Index</i>	100	101	153	152

Source: Questionnaire reply.

4.4.4. Profitability, investments, return on investments, cash flow and ability to raise capital

- (60) The sales of the Community industry of the like product in the Community market were not profitable during the period considered. At the beginning of this period this situation had to be seen against the background of the acquisition of Orsan SA by Ajinomoto Foods Europe (AFE), and the restructuring that took place at that time. Indeed, Orsan SA had been in a poor financial situation up to 2003 and AFE proceeded to conduct an in-depth restructuring to reduce costs and improve efficiency with specific investments in 2004 and 2005. These investments aimed at increasing the production capacity, developing a new line of products and increasing energy efficiency. The Group to which the Community industry now belongs also transferred know-how including new and better performing bacteria strains for the fermentation process necessary for the production of MSG in the Community.
- (61) Although investments continued also in 2006 and 2007, the Community industry managed to reduce its losses in particular during the IP due to the increased selling prices but also to better efficiency in the raw material and energy use. However, further upward movement in prices was not possible. Chinese exporters were more and more present and rapidly penetrated the Community market. As a result, the Community industry still experienced significant losses on its sales on the Community market during the IP.

- (62) The return on investment from the production and sale of the like product was negative throughout the period considered, reflecting the above mentioned negative trend in profitability.
- (63) As with the other financial indicators, the cash flow generated by the MSG produced and sold in the EU was negative throughout the period considered.
- (64) Apart from the financial losses, there were no indications that the Community industry, being a part of the Ajinomoto Group, encountered other problems to raise capital for its activities.

Table 7

	FY2005	FY2006	FY2007	IP
Profitability				
<i>Index</i>	(100)	(103)	(66)	(75)
Investments				
<i>Index</i>	100	211	65	51
Return on investments				
<i>Index</i>	(100)	(92)	(63)	(67)
Cash flow				
<i>Index</i>	(100)	(102)	(59)	(83)

Source: Questionnaire reply.

4.4.5. Employment, productivity and wages

- (65) Employment in the Community industry decreased by 9 % in the period considered. Wages initially increased by 6 % in FY2006 compared to FY2005. However, in FY2007 and in the IP, wages dropped back to the level in FY2005.
- (66) Productivity increased by 3 % in FY2006, followed by a slight decrease in FY 2007. In the IP productivity increased again to the same level as FY2006.

Table 8

	FY2005	FY2006	FY2007	IP
Employment				
<i>Index</i>	100	95	92	91
Wages				
<i>Index</i>	100	106	100	100
Productivity				
<i>Index</i>	100	103	101	103

Source: Questionnaire reply.

4.4.6. Growth

- (67) While Community consumption decreased by 4 % over the period considered, the sales volume of the Community industry decreased by 24 %. This led to the loss of market share by the Community industry during the period considered of 12,5 percentage points.

4.4.7. Magnitude of the actual margin of dumping and recovery from past dumping

- (68) The dumping margins for exporters in the PRC are specified above in the dumping section and are significantly above *de minimis*. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.
- (69) There is no indication that the Community industry is recovering from the effects of past dumping. It is noted that imports of MSG have not been subject to measures since 2003.

4.5. Conclusion on injury

- (70) Most injury indicators pertaining to the Community industry developed negatively during the period considered. Production and capacity utilisation fell by 6 % and 14 %, respectively. While consumption on the Community market decreased by 4 %, the sales volumes of the Community industry fell significantly more, i.e. by 24 %, leading to a loss in market share of 12,5 percentage points. Other injury indicators such as stocks and employment, also developed negatively during the period considered.
- (71) The investigation showed that low priced Chinese imports were undercutting Community industry prices by up to 24 % during the IP. The selling prices of the Community industry increased during the period considered by 19 %, due to cost increases, but the consequence of this was a decrease in sales volumes and a drop in market share. Hence, the other financial injury indicators, including return on investments, cash flow and profitability also developed negatively during the period considered.
- (72) In the light of the foregoing, it can be concluded that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSALITY

5.1. Introduction

- (73) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the Commission has examined whether the dumped imports of MSG originating in the PRC have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effect of the dumped imports

- (74) Over the period considered, low priced dumped imports from the PRC in terms of volume increased more than seven times, which resulted in an increase of Community market share by Chinese MSG from in the range of 3 % to 7 % in FY2005 to in the range of 38 % to 43 % in the IP. At the same time, Chinese exporters were the only players on the market who decreased their selling prices. Available information indicates that both the Community producer and exporters from other third countries increased their prices following growing costs of production (mainly increases in prices of raw material and energy).
- (75) This increase in imports from the PRC coincided with the deterioration of the situation of the Community industry. In FY2006 the import volumes from the PRC increased by 142 % while the Community sales volume increased by 1 %. In FY2007 the import volume from the PRC increased by a further 201 % and sales prices decreased by 4 % while the Community sales volume decreased by 25 percentage points. As a result, the Community industry suffered a decrease in its sales volumes on the Community market and a resulting loss of market share of 12,5 percentage points during the IP. Price suppression by the dumped Chinese imports did not allow the Community industry to raise its sales prices to the level which would eliminate the losses and further improve its financial situation.

- (76) Based on the above, it is provisionally concluded that the low priced dumped imports from the PRC which significantly undercut the prices of the Community industry during the IP, and which also significantly increased in volume, have had a determining role in the injury suffered by the Community industry, which is reflected in its poor financial situation and in the deterioration of other injury indicators during the IP, as well as in loss of market share.

5.3. Effect of other factors

5.3.1. Imports from other third countries

- (77) The imports from third countries not concerned by this investigation decreased by 65 % in the period considered resulting in a market share drop from in the range of 35 % to 40 % in FY2005 to in the range of 10 % to 15 % in the IP. The prices of these imports increased by 20 % during the period considered which follows the trend of the Community industry's price development.
- (78) The trends in import volumes and prices from other third countries between FY2005 and IP were as follows:

Table 9

Other third country	FY2005	FY2006	FY2007	IP
Total imports (tonnes)	31 910	30 926	13 080	11 225
<i>Index</i>	100	97	41	35

Source: Eurostat.

Other third countries	FY2005	FY2006	FY2007	IP
Average price all imports (EUR/tonne)	789	831	976	945
<i>Index</i>	100	105	124	120

Source: Eurostat.

- (79) On the basis of the above, it was provisionally concluded that imports from other third countries did not break the causal link between the dumping found and the material injury caused by the dumped imports from the PRC to the Community industry.

5.3.3. Export performance and productivity of the Community industry

- (81) Contrary to the claims of some interested parties according to which the poor export performance of the Community industry might be the cause of the injury suffered, it should be noted that export sales increased by more than 50 % during the period considered. The claim has therefore to be rejected.
- (82) As to the productivity factor it should be noted that, during the period considered, the Community industry was able to reduce its fixed costs and labour costs and increased productivity per employee.
- (83) In view of the above, neither the export performance nor any alleged decrease in productivity of the Community industry has contributed to the deterioration of its situation in the IP.
- 5.3.2. Development of demand
- (80) As to the development of demand, the Community consumption of MSG decreased between FY2005 and IP. This decrease, however, was not significant (– 4 %) and cannot explain the decrease in Community industry sales volume on the Community market which fell by 24 %. It has to be emphasised that, during the period considered, the Community industry lost 12,5 percentage points of its market share and these sales were replaced by dumped imports originating in the PRC. Therefore, the material injury suffered by the Community industry cannot be attributed to a contraction in demand on the Community market.

5.3.4. *Currency fluctuations*

(84) Some interested parties have claimed that the depreciation of the USD against the euro has favoured imports of MSG into the European Community. It was indeed found that the vast majority of import transactions from the PRC into the European Community are invoiced in USD.

(85) It is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

(86) In practice, the effect of the dumped imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may need in certain cases to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the exchange rate cannot in principle be another factor of injury.

(87) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports. To summarise, if the imports are dumped, and even if they benefited from a favourable development of exchange rates, it is not considered that the development of such exchange rate could be another factor causing injury.

(88) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, such as the exchange rate fluctuations, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation.

(89) In any event, and without prejudice to the above, even based on the exchange rate prevailing at the beginning of FY2005, imports from the PRC significantly undercut the prices of the Community industry. Thus, this significant undercutting margin cannot be explained by the change

in the exchange rate between the euro v USD in the period considered.

(90) In light of the above, it was provisionally concluded that the appreciation of the euro compared to the USD is not a factor sufficient to break the causal link between the dumped imports and the material injury suffered by the Community industry.

5.3.5. *Imports by the Community industry*

(91) Some interested parties have claimed that the Community industry imported MSG from its non-Chinese related factories located outside the Community which has had an impact on its sales volumes of MSG produced in the Community.

(92) The investigation showed that after the acquisition of Orsan, the Community industry reorganised its sales structure/channels in the Community. Almost all the MSG sold on the Community market by the Community industry in the IP was produced by the sole Community producer. Sales of MSG on the Community market originating from exporters related to the Community industry in countries outside the Community were constantly and significantly reduced over the period considered.

(93) Some interested parties also argued that the Community industry itself or other companies of the Ajinomoto Group are related to Chinese MSG producers that export the product concerned to the Community. It has been claimed that exports to the Community by these related companies have caused the injury suffered by the Community industry. It has also been claimed that it is the Ajinomoto Group itself which is responsible for the price policies of these Chinese exporters.

(94) The investigation showed that in the case of one Chinese company allegedly related to the Ajinomoto Group, this relationship ceased to exist before the IP. Moreover, the export sales of this company to the Community in the years preceding the IP were found to be negligible. In the case of two other Chinese MSG producers related to the sole Community producer, it was established that their exports to the Community in the IP were insignificant. In this regard, the fact that the Ajinomoto Group may have been responsible for the price policies of these companies was not considered relevant.

(95) Therefore, it was provisionally concluded that the imports of the Community industry from related parties outside the Community have not contributed to the material injury suffered by them.

5.3.6. *New sugar regime*

- (96) The allegation made by certain interested parties concerning the negative impact of the new Communities' sugar regime (and the increase of sugar prices resulting therefrom) on the production costs of the Community industry was not confirmed. The investigation has shown that the Community industry benefited from long-term agreements signed well before the implementation of the new regime which ensured that their sugar purchase price was low throughout most of the period considered. In the second part of the IP, following the implementation of the new sugar regime, the sugar purchase price increased slightly but this impact was partially counter-balanced by the development of more efficient fermentation technology. The fermentation yield increased in the IP and is high compared to that achieved on average by Chinese producers. This means that per tonne of MSG, the Community producer requires substantially less sugar compared to the needs of the Chinese producers.

5.3.7. *Difference in basic raw materials*

- (97) MSG in the Community is produced from sugar molasses while in China it is produced from corn or rice starch. Some interested parties claimed that the evolution of prices of these raw materials might have given a comparative advantage to the Chinese producers. However, a comparison of the costs of raw materials needed to produce the same quantity of MSG indicates that there is a comparative advantage for producing MSG from molasses. On the basis of available information, there are indications that this comparative advantage has even been strengthened during the IP by the steep increase of corn prices, both internationally and on the Chinese market. However, due to the dumping of Chinese products, this comparative advantage failed to generate gains of market share for MSG produced from molasses by the Community industry.
- (98) Therefore, it was provisionally concluded that the difference in raw materials used by the Community industry compared to that used by the Chinese exporting producers did not contribute to the material injury suffered by the Community industry.

5.4. **Conclusion on causation**

- (99) The above analysis has demonstrated that there was a substantial increase in volume and market share of the dumped imports originating in the PRC between FY2005 and the IP, together with a high level of price undercutting during the IP. This increase in market share of the low priced imports from the PRC coincided with a significant drop in market share of the Community industry, which, together with the downward pressure on prices, resulted, inter alia, in substantial losses of

the Community industry during the period considered. On the other hand, the examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact.

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

6. **COMMUNITY INTEREST**

6.1. **Preliminary remark**

- (101) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Community interest to adopt measures in this particular case. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the raw material suppliers, the importers and the users of the product concerned.

6.2. **Community industry**

6.2.1. *Nature and structure of the Community industry*

- (102) The Community industry is composed of one sole producer located in France. The company is owned by the Ajinomoto Group which is involved, among other activities, in the production and sale of MSG worldwide. The Community industry bought its raw materials from Community suppliers, thus having an impact on the employment levels of raw material suppliers.

6.2.2. *Effects of the imposition or non-imposition of measures on the Community industry*

- (103) The Community industry has made efforts since FY2005 to invest in an in-depth restructuring to reduce costs and, as a result, can be considered to be viable. However, due to the dumped imports, injury has occurred which has taken the form of a significant decrease in the volume of sales and an insufficient increase in the sales price, which in turn resulted in significant financial losses for the Community industry. It is expected that, following the imposition of anti-dumping duties, the volume of MSG sold by the industry would increase and, to a certain extent, its prices on the Community market would also increase. This would enable the Community industry to reach an acceptable level of profitability.

- (104) It is considered that the imposition of measures would restore fair competition on the market. It should be noted that the Community industry's losses are the result of its difficulty in competing with the dumped, low priced imports originating in the PRC. The imposition of anti-dumping measures is likely to put the Community industry in the position to regain at least part of its lost market share with a consequent positive impact on profitability.
- (105) As mentioned above, the Community industry suffered material injury caused by dumped imports originating in the PRC. If measures are not imposed, a further deterioration in the situation of the Community industry is probable, thus undermining the positive effects of the investments made in recent years. The price-depressive effect of the dumped imports would continue to foil all efforts made by the Community industry, in particular, to regain a profitable level. Not taking measures would put at risk the long-term presence of the Community industry.
- (106) In conclusion, it is expected that measures would be effective in giving the Community industry the opportunity to recover from the injurious dumping found during the investigation.

6.3. Importers

- (107) A total of three importers cooperated in the investigation and all were against the imposition of anti-dumping measures. These importers accounted for around 46 % of the total imports from the PRC into the Community and around 19 % of the Community consumption of MSG during the IP.
- (108) On the basis of the provisional findings, it has been concluded that the impact of the introduction of anti-dumping measures would be negligible for two of the cooperating importers. For the remaining cooperating importer, the preliminary indications are that MSG accounts for in the range of 7 % to 12 % of its turnover. This company employs less than five people directly in the MSG part of their business. The company's profit on sales of MSG is low. In view of that, the impact of the imposition of any anti-dumping duty should not be negligible. However, the expected effect of the imposition of measures will be to raise prices of MSG (from all sources) on the Community market. This importer should therefore be in a position to pass on all or almost all of the increase resulting from the imposition of anti-dumping measures, without having any significant effect on its overall profit.

- (109) In these circumstances, it was provisionally concluded that, on the basis of the information provided, the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers.

6.4. Users

- (110) A total of four user companies accounting for 18 % of imports of MSG from the PRC cooperated in the investigation. These companies are active in the food processing industry and the personal care cosmetics industry.
- (111) Two of the cooperating users are involved in the food processing industry. In total, these two companies accounted for approximately 17 % of imports of MSG from the PRC in the IP. It has to be noted that both companies also source significant quantities from the Community industry as well as from other sources. It has also to be noted that MSG-related activities only account for a small part of the overall business of both companies. For one of the companies which had a very small quantity of imports of MSG from the PRC in the IP, the impact of the imposition of any measures will be negligible. For the other company, the impact of the possible imposition of measures will be investigated further.
- (112) As regards the two other cooperating users, it was found that they accounted for only about 1 % of imports from China in the IP. In these circumstances, it was considered that the imposition of anti-dumping measures would not have a significant effect on the financial situation of these companies.
- (113) In these circumstances, it was provisionally concluded that, on the basis of the information provided, the effect of the anti-dumping measures, if any, will most likely not have a material impact on users.

6.5. Suppliers of raw materials

- (114) Two suppliers replied to the questionnaire and supported the imposition of anti-dumping measures. One of them is a supplier of raw material, namely sugar molasses, to the Community industry. The sugar molasses which is supplied by this company to the Community industry accounts for approximately 5 % of the company's turnover. If anti-dumping measures are not to be imposed, there is a risk, as stated above, that the long-term presence of the Community industry will be put in doubt. Should this happen, there would be a clear negative impact on the situation of raw material suppliers to the Community industry.

(115) As to the second supplier, this will be further investigated after the imposition of any provisional measures.

order to prevent further injury being caused to the Community industry by the dumped imports.

(116) If measures are not imposed, the sales of the Community industry will continue to fall with the result that their demand for raw materials will also decrease. This will most likely negatively affect the profitability of the raw material suppliers.

(121) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

6.6. Competition and trade distorting effects

(117) Some interested parties alleged that the Ajinomoto Group could have a dominant position not only on the Community market but also on the world market. These interested parties claimed that, apart from Chinese competitors, the Ajinomoto Group in fact monopolises MSG production worldwide. However, it should be emphasised that, on the basis of information provided by one of the interested parties that made this claim, non-Chinese and non-Ajinomoto-related MSG production still accounts for over 500 000 tonnes (which is more than total production of MSG by the Ajinomoto Group).

(118) With respect to the Community market, if anti-dumping measures are imposed, the Chinese exporting producers concerned, given their strong market positions, will likely continue to sell their products, albeit at non-dumped prices. It is also likely that there will still be a sufficient number of major competitors on the Community market, including the producers in Indonesia, South Korea, Vietnam, Brazil and Taiwan. It should be emphasised that, at the beginning of the period considered, imports from these sources accounted for 31,4 % of the Community market and it decreased substantially due to the dumped import from the PRC. Therefore, it is likely that users will continue to have the choice of different suppliers of MSG. If, however, no measures were to be imposed, the future of the Community industry would be at stake. Its disappearance would severely reduce competition on the Community market.

(122) As the Community industry suffered financial losses during the whole of the period considered, the profit that could be achieved in the absence of dumped imports was based on profit margins of the like product which were achieved in the period considered by MSG producers in countries where Chinese dumped imports were not present (namely Taiwan and Thailand). On this basis, it was found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping. The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

7.2. Provisional measures

(123) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

6.7. Conclusion on Community interest

(119) Given the above, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

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

7. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

7.1. Injury elimination level

(120) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be imposed in

(125) The proposed anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
Hebei Meihua MSG Group Co., Ltd, and Tongliao Meihua Bio-Tech Co., Ltd	54,8 %	33,8 %	33,8 %
Fujian Province Jianyang Wuyi MSG Co., Ltd	60,4 %	36,5 %	36,5 %
All other companies	63,7 %	39,7 %	39,7 %

8. DISCLOSURE

(126) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. The provisional findings may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of monosodium glutamate falling within CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies below shall be:

Company	AD duty rate (%)	TARIC additional code
Hebei Meihua MSG Group Co., Ltd and Tongliao Meihua Bio-Tech Co., Ltd.	33,8	A883
Fujian Province Jianyang Wuyi MSG Co., Ltd	36,5	A884
All other companies	39,7	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

1. Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

Article 1 of this Regulation shall apply for a period of six months.

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, 3 June 2008.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 493/2008**of 2 June 2008****establishing a prohibition of fishing for cod in Norwegian waters of I and II by vessels flying the flag of Portugal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council 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 40/2008 of 16 January 2008 fixing for 2008 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 2008.
- (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 2008.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transshipment 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 2008 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 that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 2 June 2008.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as last amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	04/T & Q
Member State	PRT
Stock	COD/1N2AB.
Species	Cod (<i>Gadus Morhua</i>)
Area	Norwegian waters of I and II
Date	26.3.2008

COMMISSION REGULATION (EC) No 494/2008**of 2 June 2008****establishing a prohibition of fishing for cod in VI; EC waters of Vb; EC and international waters of XII and XIV by vessels flying the flag of France**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council 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 40/2008 of 16 January 2008 fixing for 2008 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 2008.
- (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 2008.

- (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 2008 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, 2 June 2008.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as last amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	05/T&Q
Member State	FRA
Stock	COD/561214
Species	Cod (<i>Gadus Morhua</i>)
Area	VI; EC waters of Vb; EC and international waters of XII and XIV
Date	6.5.2008

COMMISSION REGULATION (EC) No 495/2008**of 2 June 2008****establishing a prohibition of fishing for blue whiting in EC and international waters of I, II, III, IV, V, VI, VII, VIIIa, VIIIb, VIIIc, VIIIe, XII and XIV by vessels flying the flag of Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

or registered in the Member State referred to therein have exhausted the quota allocated for 2008.

Having regard to the Treaty establishing the European Community,

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

Having regard to Council 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,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**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,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2008 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Whereas:

(1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 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 2008.

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**

(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

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, 2 June 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as last amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	06/T&Q
Member State	ESP
Stock	WHB/1X14
Species	Blue whiting (<i>Micromesistius poutassou</i>)
Area	EC and international waters of I, II, III, IV, V, VI, VII, VIIIa, VIIIb, VIIIc, VIIIe, XII and XIV
Date	29.4.2008

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 20 November 2007

on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche

(notified under document number C(2007) 5400)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/408/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

and Cementir (hereinafter 'the Terni companies').

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement of the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

(2) By letter dated 23 December 2005 the Commission requested information from Italy, which replied by letter dated 24 February 2006. By letters dated 2 March 2006 and 27 April 2006, Italy provided additional information.

(3) By letter dated 19 July 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of both schemes (Case C 36/06).

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the measures.

I. PROCEDURE

(1) In framework of case C 13/06 (ex N 587/05) — Preferential Electricity Tariff in Sardinia, the Commission became aware of the extension of two measures granting a preferential electricity tariff. The extension was granted by virtue of Article 11, paragraph 11 of *decreto-legge* No 35/2005, converted into Law 80 of 14 May 2005 (hereinafter Law 80/2005) and was implemented without prior notification to the Commission. The beneficiaries are the aluminium producer Alcoa and the three successor companies of Società Terni: Terni Acciai Speciali, Nuova Terni Industrie Chimiche

(5) Italy submitted observations by letter dated 25 October 2006. Further information was submitted by letters dated 9 November 2006 and 7 December 2006.

(6) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react. Italy's comments were received by letter dated 22 December 2006.

⁽¹⁾ OJ C 214 of 6.9.2006, p. 5.

⁽²⁾ See footnote 1.

- (7) By letter of 20 February 2007, the Commission requested further information, which was provided by Italy by letters dated 16 April 2007, 10 May 2007 and 14 May 2007.
- (8) On 18 September 2007 the file was split into part A, which deals with the three companies resulting from the splitting of Società Terni (the Terni companies) and part B, which concerns Alcoa. This decision concerns exclusively the extension of the preferential tariff in favour of the Terni companies.
- (9) The exchanges of correspondence which concern Alcoa are not quoted here.

II. DETAILED DESCRIPTION OF THE MEASURE

- (10) Article 11, paragraph 11 of Law 80/2005 provides for the extension in time of two measures granting reductions of the general electricity tariff. The beneficiaries of these two measures, which are different in nature and will be dealt with separately, are aluminium-producer Alcoa on the one hand, and three companies resulting from the splitting up of Società Terni, on the other.

The original measure and its first extension

- (11) Italy nationalised its electricity sector by law No 1643 of 6 December 1962 (hereinafter the nationalisation law). The law provided for the transfer of Italy's existing power plants to the newly created State-owned company ENEL, which was to hold a monopoly in the production, distribution and supply of electricity.
- (12) At the time of nationalization, Società Terni was a State-owned company active in the manufacturing of steel, cement, and chemicals. The State exercised effective control over the company via a majority stake in its capital, held by the State holding IRI and the State-owned Finsider group. Società Terni also owned and operated a hydropower plant. Most of the electricity produced was used to power the company's manufacturing processes.
- (13) The nationalisation law laid down that, as a general rule, companies which produced electricity primarily for self-consumption (*self-producers*) were excluded from nationalisation and were permitted to retain their power generating assets⁽³⁾. Società Terni's electricity assets were nationalized in spite of the company's status as a self-producer because they were strategically located on

the Italian territory. The transfer to ENEL was laid down in Article 4, paragraph 5, fourth indent of the nationalization law.

- (14) By Presidential Decree No 1165/63, Italy granted the company compensation for the transfer of its electricity assets. The compensation took the form of a preferential electricity tariff which was to apply from 1963 to 1992.
- (15) In 1964, Società Terni was split up into three companies: steel-maker Terni Acciai Speciali, chemical manufacturer Nuova Terni Industrie Chimiche and cement manufacturer Cementir. These undertakings were later privatized and acquired by ThyssenKrupp, Norsk Hydro and Caltagirone, respectively.
- (16) As indicated in point (1) of this decision, these successor undertakings will be collectively referred to as '*the Terni companies*' whereas the original company will be referred to as '*Società Terni*'. The tariff applicable to Società Terni first, and to the Terni companies later, will be referred to as '*the Terni tariff*'.
- (17) The preferential tariff continued to apply, under the same conditions, to the three Terni companies. The main beneficiary (in terms of the quantity of subsidized electricity, both in absolute terms and also as a proportion of the company's total electricity consumption) is ThyssenKrupp.
- (18) The duration of the special tariff coincided with the general duration of hydro-electric concessions⁽⁴⁾ in Italy, which were to expire in 1992. Società Terni's own hydroelectric concession had been granted for an exceptional duration of 60 years (against the normal 30 years) and was to expire at the end of the 1980s.
- (19) In 1991 Italy extended existing hydroelectric concessions until 2001 by Law No 9 of 9 January 1991 'Implementing provisions for the new National Energy Plan: institutional aspects, hydro power plants and networks, hydrocarbons and geothermal energy, self-producers and fiscal provisions' (hereinafter Law 9/1991). By virtue of Article 20, paragraph 4 of Law 9/1991, Italy also prolonged until 2001 the preferential tariff for the Terni companies. Over the subsequent six years (2002-2007) the quantities of subsidized electricity supplied to the Terni companies were to be gradually reduced (phased-out), so that the tariff advantage would disappear by the end of 2007.

⁽³⁾ Article 4, paragraph 6, first indent, letters (a) and (b) of Law 1643/62.

⁽⁴⁾ Companies which exploit public water to generate power operate on the basis of a concession (*concessione di derivazione idroelettrica*) which is temporary. Its duration (generally thirty years in Italy) is sufficiently long to allow companies to defray their investment costs. As concessions expire, they should be awarded again on the basis of a transparent selection procedure.

- (20) Law 9/1991 included a large number of provisions, some of which involved State aid. Law 9/1991 was submitted to the Commission together with Law 10/1991 'Implementing provisions for the National Energy Plan as regards energy efficiency, energy savings and the development of renewable energy sources'. The Commission declared compatible the aid contained in both laws under the State aid rules in 1991 ⁽⁵⁾.

Structure of the Terni tariff

- (21) The conditions of Società Terni's preferential tariff were established in Articles 6, 7 and 8 of Presidential Decree No 1165/63 Transfer to Ente Nazionale per l'Energia Elettrica of the assets used for the activities mentioned in Article 1(1) of Law No 1643 of 6 December 1962 carried out by 'Terni-società per l'Industria e l'Elettricità S.p.A.' (hereinafter DPR 1165/1963). DPR 1165/1963 laid down that ENEL would supply Società Terni with a fixed amount of electricity (1 025 000 MWh a year) which was the equivalent of the company's electricity consumption in 1961, plus an extra amount (595 000 MWh a year) which corresponded to its additional expected consumption resulting from investments undertaken but not yet completed in 1962.

- (22) The preferential price was calculated by comparing two alternative methods and applying whichever was more favourable to the company:

- (a) Alternative 1 was based on the average electricity price paid by Società Terni's manufacturing branches to the company's electricity branch (corresponding to the production cost of Terni's own hydroelectric plant);
- (b) Alternative 2 was linked to ENEL's reference price for a customer having the same profile (self-producer) as Società Terni.

- (23) In practice, the first method was used until 2000, when changes in the Italian tariff structure due to the liberalization of the electricity market made it necessary to switch to the second method.

- (24) In 1997 began the overhaul of the tariff structure, with the introduction of a structured tariff consisting of two parts: Part A representing fixed and general costs and Part B reflecting variable costs. As of 1 January 2000, the Terni tariff was awarded in the form of a compensatory component (*componente compensativa*) calculated as the sum of all components of the tariff which Terni, as a (virtual) self-producer, was not required to pay (the whole of part B and a fraction of part A). This method corre-

sponds to the second of the alternative methods described in Decree 1165/63.

- (25) The gradual reduction of the quantities of electricity and power delivered to the Terni companies at the preferential price during the phasing-out period (2002-2007) is shown in the table below:

Year	GWh	MW
2001	1 620	270
2002	1 389	231
2003	1 157	193
2004	926	154
2005	694	116
2006	463	77
2007	231	39

The second extension of the tariff

- (26) By Article 11, paragraph 11 of Law 80/2005, Italy decided to interrupt the phasing-out and extend again the Terni tariff arrangement until 2010. Article 11, paragraph 13 of the Law made this measure applicable as of 1 January 2005. Shortly afterwards, ordinary hydroelectric concessions were extended until 2020 ⁽⁶⁾.

- (27) The second extension of the tariff is the measure on which the Commission has opened the formal investigation procedure pursuant to Article 88(2) of the Treaty and which is the object of this decision.

- (28) Law 80/2005 laid down that, until 2010, the Terni companies will benefit from the same treatment they enjoyed on 31 December 2004 in terms of quantities supplied (926 GWh for the three Terni companies) and prices (1,32 eurocents/kWh). The quantities of supplied electricity are currently broken down as follows: Thyssen-Krupp 86 %, Nuova Terni Industrie Chimiche 10 % and Cementir 4 %.

- (29) Law 80/2005, as interpreted and implemented by the AEEG, also introduced an indexation mechanism whereby, as of 1 January 2006, the preferential tariff would increase yearly in line with price increases recorded on the European Power Exchanges of Amsterdam and Frankfurt, subject to a 4 % cap.

⁽⁵⁾ State aid NN 52/1991, letter SG (91) D/15502.

⁽⁶⁾ Article 1, paragraph 285 of Law 266/2005.

Financing mechanism

(30) The Terni preferential tariff was initially managed and paid for by the State-owned company ENEL, which held a monopoly position in the generation, transmission, import, distribution and supply of electricity in Italy.

(31) In 2002, as the electricity market was gradually liberalized and ENEL no longer held a monopoly position, the financial burden arising from the preferential tariff systems was transferred from ENEL to all electricity users⁽⁷⁾. The compensatory components due to the Terni companies were advanced by electricity distributors, who were then reimbursed by the State-owned body *Cassa Conguaglio per il Settore Elettrico* (Equalisation Fund for the Electric Sector, hereinafter referred to as '*Cassa Conguaglio*') by means of a parafiscal levy collected via the A4 component of the electricity tariff, which is one of the cost items that appear on the electricity bill.

(32) In 2004 the AEEG decided to hand over the administrative management of the special tariff schemes entirely to *Cassa Conguaglio*⁽⁸⁾. As of September 2004, the Terni companies pay the market price for the electricity they purchase (on the liberalized market) and receive from *Cassa Conguaglio* reimbursement corresponding to the difference between the price paid and the preferential price to which they are entitled (the compensatory component) minus charges for transport, measurement and sales. The costs are paid for by electricity consumers in Italy by means of the parafiscal levy mentioned in paragraph (31) above.

The guarantee imposed by the AEEG

(33) After the Commission initiated the formal investigation procedure, the AEEG, by *Delibera* 190/06, made payments under Law 80/2005 conditional upon the provision, by the Terni companies, of a guarantee to cover the risk of recovery of the aid.

(34) In the same *Delibera*, the AEEG foresaw, as an alternative, the possibility to pay out in 2006 as an advance the amounts of aid which would have become due until the end of the previous arrangement (2007) on the basis of Law 9/1991. For these amounts, the AEEG did not request a guarantee. This option was taken up by the Terni companies and implemented by the AEEG.

(35) With the exception of the advance payments mentioned in paragraph (34) above, all other payments made to the companies by *Cassa Conguaglio* under Law 80/2005 are covered by a guarantee.

III. DECISION TO INITIATE PROCEEDINGS UNDER ARTICLE 88.2 OF THE EC TREATY

(36) The Commission Decision to initiate a formal investigation was based on the grounds described in points (37) to (41).

(37) The Commission expressed doubts as to whether the tariff could be considered a compensatory measure, since *Società Terni* was a State-owned undertaking at the time of nationalization. Given that the State cannot expropriate itself, the Commission had doubts that the transfer of *Società Terni*'s assets to ENEL could be construed as an expropriation entitling *Società Terni* to compensation, and formulated the hypothesis that such transfer could in fact be regarded as a mere restructuring of the State's own assets.

(38) The Commission took the view that, even if the compensatory nature of the measure were to be conceded, doubts would still persist as regards the proportionality of this compensation with regard to the financial damage suffered by *Società Terni*. The Commission in particular expressed doubts that compensation could still be justified after 44 years.

(39) The Commission pointed out that the nature of the tariff appeared to have changed when ENEL stopped administering the scheme and bearing the financial burden arising from it.

(40) The Commission Decision to open the procedure also relied on ECSC Decision 83/396: Commission Decision of 29 June 1983 concerning aid the Italian government intends to grant to certain steel producers⁽⁹⁾, which precluded such aid from being granted to *Società Terni*, and the judgment of the Court of Justice in case C 99/92⁽¹⁰⁾, where the Court upheld the aforementioned ECSC Decision, as evidence that the Terni tariff had already been found to constitute State aid.

⁽⁷⁾ *Delibera* AEEG No 228/01.

⁽⁸⁾ *Delibera* AEEG No 148/04.

⁽⁹⁾ OJ L 227, 19.8.1983, p. 24.

⁽¹⁰⁾ Sentence of the ECJ in *Terni SpA and Italsider v. Cassa Conguaglio per il settore elettrico*, reference for a preliminary ruling, Case C 99/92, [1994] ECR p. I-00541.

- (41) The opening decision also pointed out that ThyssenKrupp has not yet repaid a State aid granted by Italy and which was declared incompatible⁽¹¹⁾, and therefore, pursuant to the *Deggendorf*⁽¹²⁾ case-law, could not receive any further State aid.

IV. COMMENTS FROM INTERESTED PARTIES

Comments from the Terni companies

- (42) Most of the observations submitted by the Terni companies on Società Terni's functioning as *ente pubblico economico*, the nature of the operation leading to the transfer of the company's assets, the compensatory nature of the tariff, the interpretation of the ECSC decision and ECJ ruling as well as the role played by *Cassa Conguaglio* are largely equivalent to those made by Italy, which are summarized in points (52) to (69). Therefore, only the main thrust of the Terni companies observations and any additional elements submitted will be reported here in points (43) to (51).

Nature of the compensation

- (43) According to the Terni companies, the tariff is the legitimate compensation to which Società Terni was entitled following the expropriation of its assets and cannot therefore be qualified as State aid.

Adequacy of the compensation

- (44) Concerning the adequacy of the compensation, the Terni companies retrace the history of the tariff, pointing out that all the extensions of the Terni tariff beyond 1991 were concomitant with the general renewal of the hydro-electric concessions for other generators, and thus in line with the principle that there should be no discrimination between Terni and other self-producers who had not been expropriated and who could therefore continue to produce and consume electricity at very low cost.
- (45) The Terni companies also point out that the financial amounts received in the form of lower electricity tariffs never exceeded the difference between the cost of acquiring energy on the market and the cost of self-produced electricity.

Impact on trade

- (46) The Terni companies claim that the measure has no impact on trade between Member States for the reasons summarized below:

- (a) Cementir: In its Spoleto plant (the plant which benefits from the tariff) Cementir produces and markets mainly cement, which is used the construction industry. Cement is difficult to substitute with other products. Since it is uneconomical to transport, the geographic market for cement is regional or multi-regional. Imports of cements are negligible in Italy, since they account for 5 % of overall demand in Italy and Cementir markets all the production of its Spoleto plant in central Italy;
- (b) Nuova Terni Industrie Chimiche: The plant which benefits from the tariff produces ammonia and nitric acid. Ammonia can be economically transported only by sea and provided ports are suitably equipped for its storage. There are no such storage plants in central Italy. The same applies to nitric acid. Therefore, the Terni companies claim that the geographic market is at best national. National demand is fully met by domestic production and there are no trade flows;
- (c) ThyssenKrupp: the Terni companies claim that the market for the distribution (not the production or sale) of steel products is national. In particular, ThyssenKrupp's Terni plant markets only 6 % of its production in the European Union.

Legitimate expectations

- (47) The Terni companies claim legitimate expectations on two grounds:
- (a) firstly, the Italian authorities had explicitly confirmed, in a letter to the AEEG, that the nature of the tariff was compensatory and that the extension of the existing tariff scheme was not subject to prior notification to the Commission under the State aid rules⁽¹³⁾;
- (b) secondly, the Commission had not called the measure into question, either when it was first prolonged by Law 9/1991 (approved in the context of case NN 52/1991), or when information on the second extension was submitted in the context of another State aid procedure (C 13/06).

⁽¹¹⁾ Commission Decision SEC/1999/687 of 11 May 1999 in Case C 49/98, Measures in favour of employment, Articles 15 and 26 of Law 196/97, OJ L 42, 15.2.2000, p. 1-18.

⁽¹²⁾ Sentence of the ECJ in *Deggendorf v. Commission*, Case C-355/95 [1997] ECR p. I-02549.

⁽¹³⁾ Communication of 16.12.2005 of the Ministry for productive activities to the AEEG.

State aid clearance of the second extension

- (48) The Terni companies further submit, in this context, that when Article 11, paragraph 12 of Law 80/2005 (establishing a preferential tariff for certain energy-intensive companies in Sardinia, case C 13/06) was notified to the Commission, the Italian authorities had submitted information and clarifications also on the Terni tariff, so that the notification might be considered complete within the meaning of Article 4, paragraph 5 of Regulation EC 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁴⁾. The Commission had failed to take a decision within two months, and therefore, even if the tariff was to be considered State aid, *quod non*, it should be deemed to be authorized on the basis of Article 4, paragraph 5 of Regulation N 659/1999⁽¹⁵⁾.
- (49) The Terni companies underline that their good faith is substantiated by the fact that, in case of doubts on the compatibility of the tariff, ThyssenKrupp would certainly not have launched large-scale investments in the Terni area.

Amounts received

- (50) The Terni companies point out that, in the absence of Law 80/2005, they would have benefited until 31 December 2007 from the preferential tariff on the basis of Article 20, paragraph 4 of Law 9/1991 (approved by the Commission). The AEEG authorized Cassa Conguaglio to pay out in 2006 (as advance payment) only the sums which would have become due in 2007⁽¹⁶⁾. Therefore, the amounts received until 31 December 2006 should be considered authorized. According to the companies, the provisions of *Decreto-legge* No 80/2005 have *de facto* not been implemented in respect of these amounts.

Deggendorf case-law

- (51) Concerning the *Deggendorf* case-law, ThyssenKrupp states its willingness, in principle, to repay the aid, subject to agreement being found on the amount to be recovered.

V. COMMENTS FROM ITALY*Expropriation of Terni's assets and its entitlement to compensation*

- (52) Italy submits that Terni's generating assets were nationalized as an exception to the general rule set out in the nationalization law, according to which self-producers would not be subject to expropriation. The nationalization law of 1962 was based on Article 43 of the Italian Constitution, according to which certain

undertakings which carry out services of fundamental public interest or in the energy sector may be transferred to the State by way of expropriation, provided compensation is granted.

- (53) Concerning the Commission's doubts as to the possibility to expropriate assets belonging to a State-owned company, Italy submits that neither Article 42, nor Article 43 of the Constitution limit the notion of expropriation to privately owned property. The expropriation of Società Terni's electrical branch was legally required, according to Italy, because Terni was controlled by an '*ente pubblico economico*', which, unlike an '*ente pubblico*' was obliged to operate according to market principles. The nationalization law did not envisage any compensation for undertakings managed by public entities *strictu sensu*, but it did for Terni in view of its different status and mode of functioning.
- (54) As regards Terni's ownership structure, Italy underlines that Terni was a joint stock company (*società per azioni*) where the State had a majority stake, but equity was also owned by a large number of private investors. Italy has provided documentation showing that Terni's capital was also partly in private hands and that the company was quoted on the stock exchange.
- (55) According to Italy, depriving Terni of the same right to adequate compensation to which a private company would be entitled would have constituted a breach of the principle of neutrality of ownership enshrined in Article 295 of the EC Treaty.
- (56) Italy quotes a number of rulings by the *Corte di Cassazione* and the *Consiglio di Stato* whereby these Courts confirmed that the logic of the tariff for Terni was to put the company on the same footing as self-producers of electricity from renewable sources of energy, and therefore the tariff could not be raised by means of supplements which would not apply to self-producers.

- (57) As regards other electricity producers who were also expropriated, Italy submits that, with the exception of Terni, all expropriated producers were undertakings exclusively or primarily active in the production, import or supply of electricity. As a general rule, the compensation paid by the State reflected the market value of the assets, which was calculated in different ways according to the type of company. The net accounting value of the assets was taken as reference value, but was corrected on the basis of other factors which Italy did not identify in detail. For hydropower producers, the Italian observations suggest that the residual duration of the concession played a role in the calculation of the compensation.

⁽¹⁴⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁵⁾ See footnote 14.

⁽¹⁶⁾ Delibera AEEG 190/2006.

Non-aid nature of Terni's tariff and its clearance under the State aid rules

- (58) Italy submits that both the original tariff arrangement — which constituted Terni's legitimate compensation for the expropriation of its assets — and its further extensions in time do not constitute State aid. To substantiate this claim, Italy quotes a number of rulings of the European Court of Justice, which concern the non-aid nature of certain forms of compensation to undertakings⁽¹⁷⁾, notably compensation for damages and services of general economic interest.
- (59) As regards the State aid clearance of Terni's tariff, Italy underlines that Law 9/1991, laying down the first extension of the tariff, was duly notified to the Commission and approved by it. The subsequent extensions in time of the tariff, which are concomitant with the extensions of hydroelectric concessions for hydropower producers, follow the same logic, which was never challenged by the Commission. Therefore, according to Italy, the Terni tariff should be considered an existing non-aid measure.
- (60) Italy submits that it has thus always acted in good faith. It did not notify under Article 88(3) the contested extension of the tariff arrangement for Terni since, in its view, it did not constitute State aid. Italy underlines that the Commission was informed of the existence of this measure (Report of November 2005 and letter of February 2006).
- (61) As regards the policy reasons of the second extension, Italy submits that the tariff is necessary to establish a level-playing field between these energy-intensive companies active in Italy and their competitors in the EU⁽¹⁸⁾, which also benefit from reduced energy prices (tariff or contract-based), pending the completion of ongoing infrastructure projects on electricity generation and transport. If the tariff was abolished, the companies in question would delocalize their operations outside the EU. This would inevitably lead to an industrial crisis and sever job losses in the affected regions. Therefore, according to Italy, the prolongation of the tariff should be seen as a transitional solution. Italy quotes the conclusions of the *High-level group on competitiveness, energy and environment*⁽¹⁹⁾ which suggest, as a long-term

solution, the improvement of interconnection and infrastructure, and, as a medium-term solution, long-term supply contracts and partnership between customers and energy suppliers/generators.

Absence of overcompensation

- (62) As regards the absence of overcompensation, Italy makes the following observations. If Terni had retained its generating assets, it would have been able to sell part of its energy to third parties, thus obtaining additional profits. The damage suffered by Terni was compounded by the sharp increase, over the years, of electricity prices. The still incomplete process of liberalization of the energy markets has not yet delivered results in terms of competitive electricity prices, and therefore the need to continue compensating Terni persists. The Terni companies are currently paying a price (between 40 and 72 EUR/MWh) which is largely in line with electricity prices paid by companies with an equivalent consumption profile in the EU. In fact, if Terni had retained its assets, it would be paying between 5 and 7 euros per MWh of self-produced electricity. Italy thus concludes that the tariff does not involve any overcompensation.
- (63) Italy has submitted a 'study' carried out by the private consultant *Energy Advisor S.r.l.* on behalf of the Terni companies. The study, which is perhaps better described as simple 'calculation', since it consists of one table with a few pages of methodological explanations, aims to assess the value of the electricity assets and compare this figure with the cumulative tariff advantage enjoyed by Terni. The study takes the book value of the electricity assets and actualizes it to 2006 in line with inflation. The study then calculates the net tariff advantage for Terni. For the period 1963-1999, the study considers the difference between the annual electricity costs of a comparable customer (Alternative 2) and the actual annual costs sustained by Terni on the 'own production costs' basis (Alternative 1). For the purpose of this calculation, a comparable customer is a self-producer of electricity (exempted, *inter alia*, from payment of the *sovrapprezzo termico*). For the period 2000-2006, the tariff advantage is calculated as the difference between the annual cost Terni would have sustained if the tariff was calculated on the basis of its own production costs (Alternative 1-no longer possible after the reform of the tariff) and the actual cost sustained by Terni on the basis of the 'comparable customer' method (Alternative 2). The results of the study are outlined below:

- (a) Actualised value (2006) of Terni's assets: EUR 1 687 745 045,19;

⁽¹⁷⁾ Notably the following judgments: A.D.B.H.U., Case C 240/83 of 7.2.1985 ECR (1985) p 00531, Asteris, joint cases 106-120/87 of 27.9.1988, ECR (1988) p. 05515 Altmark, Case C-280/00 of 24/7/2003, (ECR 2003) p. I-07747; Ferring, Case C 53/00 of 22.11.2001, ECR (2001) p. I-09067.

⁽¹⁸⁾ Notably in France, Germany, Spain, Greece and Finland. Italy has provided a description of schemes allegedly in force in these countries in favour of energy-intensive industries.

⁽¹⁹⁾ First Report of the High Level Group 'Contributing to an integrated approach on competitiveness, energy and the environment policies — functioning of the energy market, access to energy, energy efficiency and the EU Emission Trading Scheme' of 2 June 2006.

(b) Tariff advantage (also actualized to 2006): EUR 1 400 895 446,90.

- (64) The study therefore contends that there has been no overcompensation of Terni's losses. A prospective calculation of the tariff advantage accruing to Terni until 2010 would also show the absence of overcompensation.

Irrelevance of the ECSC Decision and the ECJ Ruling concerning Terni

- (65) Concerning ECSC Decision 83/396 and ECJ ruling C-99/92, Italy makes the following factual clarifications. The ECSC Decision does not concern either Cementir or Nuova Terni, which were never active in the steel sector. The ECSC Decision referred to the compatibility of of State aid granted in the form of reimbursement of a component of the tariff, the *sovrapprezzo termico* to the plant belonging to Terni's steelmaking branch, but located in Lovere, in Lombardy, not in the Terni area. This aid could be granted only to private steelmakers. The ECSC Decision ruled that, since Terni was State-owned, the Lovere plant could not benefit from the aid. The preliminary ruling of the Court of Justice concerned the issue of possible discrimination between private and State-owned producers. It confirmed the ECSC Decision in that it stated that it was not discriminatory to envisage different aid measures for private versus State-owned producers.
- (66) Therefore, the Terni group submits that both the ECSC Decision and the Court ruling are irrelevant to the case at hand, in that they concern the *sovrapprezzo termico* paid by the Lovere plant, not the special global tariff granted to the three plants in the Terni area.

New investments planned by ThyssenKrupp in the Terni area

- (67) Italy also underlines that the contested extension of the tariff laid down in Article 11, paragraph 11 of Law 80/2005 is linked to a wide-ranging program of investments which ThyssenKrupp is carrying out in the Terni-Narni industrial area. Under this action plan, new generating capacity will be developed in the area. The tariff is therefore meant as temporary solution until such generating capacity is in place, and its abolition would jeopardise the investments currently underway.

Role of Cassa Conguaglio and involvement of State resources

- (68) On the nature and role of Cassa Conguaglio, Italy submits that it is a mere technical intermediary, whose role is

confined to collecting and redirecting monetary flows. Cassa Conguaglio has no margin of manoeuvre in fixing the tariff and has no control over the funds. Therefore, according to Italy, (a) the resources handled by Cassa Conguaglio do not constitute State resources in the light of the case-law of the Court of Justice⁽²⁰⁾ and (b) the changes made to the administration of the special tariffs with the intervention of Cassa Conguaglio in 2004 have no impact on the compensatory nature of the tariff.

Deggendorf case-law

- (69) On the Deggendorf case-law, Italy informs the Commission that it is carrying out the pending recovery order in respect of ThyssenKrupp, and that the company has set aside EUR 865 538,00 on a blocked account in view of final recovery, subject to agreement being found on the amount.

VI. ASSESSMENT OF THE MEASURE

- (70) Compensation granted by the State for an expropriation of assets does not normally qualify as State aid. In the assessment of this measure, it is therefore necessary to ascertain first of all whether the transfer of Società Terni's hydropower assets to ENEL gave rise to an obligation to provide compensation, or whether it should be construed as a mere reorganisation of public assets. If the answer is that compensation was justified, the Commission must then determine until what date and/or what amount the Terni preferential tariff can be considered a commensurate compensatory measure.

Qualification as an expropriation and entitlement to compensation

- (71) In 1962, when its hydropower assets were transferred to ENEL, Società Terni was a State owned company, controlled by an *ente pubblico economico*. According to the Italian authorities, such entities had to be managed according to market principles. The State was the majority shareholder in Società Terni, but part of the capital was also held by private investors and the company was quoted on the Stock exchange. The nationalization law did not foresee compensation for *enti pubblici* 'strictu sensu', but did so for *enti pubblici economici* such as Società Terni. This reflects the different principles which govern the functioning of these entities. Moreover, other 'pure' electricity producers were expropriated during the same period and also received compensation (although on the basis of different criteria).

⁽²⁰⁾ Judgement of the ECJ in Pearle and others, (Case C-345/02 [2004] ECR I-7139 and Preussen-Elektra, Case C-379/98 [2001] ECR I-02099.

(72) The Commission notes that the removal of Società Terni's assets without compensation would have damaged the interests of the company, and in particular those of its private shareholders. In the light of the principle of equality of treatment between private and public undertakings, and also in view of the need to protect the constitutional rights of Società Terni's private shareholders to receive compensation, the Commission considers that Italy's decision to treat Terni in the same way as a privately-owned company in the same position, and to grant it compensation for the removal of its assets, can be considered justified.

Compensatory nature of the tariff

The original compensatory arrangement

(73) In 1962, Italy decided not to compensate Società Terni up to a fixed amount based on the market value of the expropriated assets (contrary to what was done in the case of 'pure' electricity producers). Instead, the compensation took the form of the provision of a fixed amount of electricity at the price the company would have paid if it had retained its generating assets. It should be noted that this method made economic sense: the treatment of Società Terni as a 'virtual self-producer' of electricity had the advantage of neutralising the risk of additional damage that might have arisen to Terni, over the years, in case of an increase in energy prices, for example.

(74) The Commission can accept the principle of this method. However, compensation for an expropriation cannot consist in an open-ended arrangement, but must be clearly and predictably established at the time of the expropriation, subject to the possibility for the expropriated company to challenge the proposed amount. Once accepted, a compensatory package cannot be reopened at a later stage.

(75) In the case at hand, the overall amount of compensation depended on the duration of the tariff. The original compensatory package offered by the Italian authorities foresaw that the tariff would last thirty years and thus end in 1992. Società Terni could have challenged this mechanism under the nationalization law if it had considered it inadequate ⁽²¹⁾, but chose not to do so.

(76) The Commission has assessed whether, in view of its mechanism and duration, the original compensatory arrangement could be considered adequate.

(77) In Italy, the operation of a hydropower plant is subject to a concession, the duration of which is such as to allow the company to amortize the investment. When the concession expires, the company loses, in principle, the right to exploit its assets. Considering Terni's compensatory method, it made economic sense that the provision of electricity at production cost should not overrun the residual duration of the company's concession. And, indeed, this appears to be the rationale of the original provision of Italian law limiting the duration of the preferential tariff to 1992. While Terni's own concession would have expired already a few years earlier, it is conceivable that the Italian authorities intended to align the expiry of the Terni tariff with the general expiry of hydroelectric concessions in Italy in 1992. Moreover, Società Terni had been granted a particularly long concession (60 years instead of 30), and therefore, at the time of expropriation, the company had already had thirty years to amortize its investment.

(78) In conclusion, the Commission considers that the original compensatory package was commensurate and by no means penalized for the company.

(79) The crucial issue here is whether the repeated extensions of this tariff arrangement can still be considered part and parcel of the compensation. The Commission takes the view that this cannot be the case. When the State expropriates, it establishes ex-ante either an absolute amount of compensation or, as in the case at hand, a compensatory mechanism. Any ex-post revision of the amounts or the mechanism necessarily changes the nature of the measure, which can no longer be considered compensatory insofar as it departs from the original arrangement. To admit the contrary would result in the exclusion of this type of measures from the scope of State aid control.

(80) A Member State may, however, notify the Commission of its intention to grant further advantages to an expropriated company. Such notification will be examined by the Commission on its merits in the light of the State aid rules and taking into account the specific circumstances invoked.

The 'study'

(81) The study referred to in paragraph (63) purports to show that the compensation granted to Società Terni and its successor companies over the years did not fully cover the market value of the expropriated assets, and that therefore there was no overcompensation and the beneficiaries never *de facto* enjoyed an advantage.

⁽²¹⁾ The mechanism for challenging the amount of compensation was laid down in Article 5, paragraph 5 of the nationalization law.

- (82) As a preliminary remark, the Commission would like to underline that an analysis of the adequacy of the compensatory agreement can only be carried out *ex ante*, that is, at the time of expropriation. In that context, it should be noted that the mechanism chosen by the Italian authorities aimed to put Società Terni in the same position as if its power plant had not been expropriated, by granting it access to electricity at cost price throughout the duration of its concession. Therefore, the argument that, under this arrangement, the Terni companies may have obtained less than what they were legitimately entitled to is difficult to follow. Besides, the Commission contends that, even if the findings of the study were substantiated (which is not the case, as demonstrated in points (88) to (92), that circumstance would be irrelevant for the purpose of establishing whether the tariff gave the beneficiaries an advantage.
- (83) It should be recalled that, at the time of the expropriation, Italy could have chosen to compensate Terni by paying a fixed financial amount based on the value of the expropriated assets. However, Italy opted for a different method, which consisted in treating Società Terni as a virtual self-producer. This method made perfect economic sense, and it is within this reference framework that the presence of an advantage should be assessed. Following this approach, one must conclude that, until the expiry of the original compensatory tariff arrangement (and only until that date) the beneficiaries did not receive an advantage. This conclusion cannot be called into question as a result of applying alternative benefit and loss calculations, especially where these are carried out retrospectively.
- (84) Using a different method retrospectively (*ex-post*) would lead to conflicting or even illogical results, as the following example will illustrate. Suppose that, due to an explosion in energy prices, the financial amounts received by the beneficiaries had already exceeded the market value of Terni's plant within the first 10 years of the tariff arrangement, following the study's methodology, it should be concluded that there was an over-compensation, even though the expropriation package foresaw that the tariff would last 30 years. This would be an obvious fallacy, since it would not take into account the *ratio* of the original arrangement. The same conclusion must apply *a contrario*, in the hypothesis that the actual amounts received fell short of covering the assets' value.
- (85) Besides, in the context of an expropriation, an *ex-post* recalculation of benefits and losses is totally out of place. The long-term economic outcome for the expropriated company, which is unpredictable at the time of the expropriation, cannot be the object of revision, many decades later, in order to justify further tranches of compensation.
- (86) Therefore, the study can be dismissed as irrelevant.
- (87) The Commission has nevertheless examined the data and findings of the study. This analysis has shown that the study is methodologically flawed. As will be shown below, it systematically underestimates the tariff advantage for the Terni companies, and in all likelihood overestimates the value of the expropriated assets.
- (88) In order to calculate the tariff advantage for the period 1963-1999, the study compares the price paid by Terni (Alternative 1-the cost of self-produced electricity) to the ordinary price paid by a *comparable* customer, meaning a self-producer who was exempt from certain tariff components (Alternative 2). The advantage is thus calculated as the difference between the two alternative preferential treatments foreseen as compensation for Terni. The Commission notes that, to calculate the tariff advantage, Terni's actual tariff should have been compared with the ordinary tariff payable by a *non self-producer* with Terni's consumption profile. The study therefore underestimates Terni's tariff advantage.
- (89) For the period 2000-2006, the advantage is, again, taken to be the difference between the two preferential treatments, the only difference being that the actual price paid by Terni corresponds to Alternative 2 (and no longer Alternative 1, which was no longer possible after the reform of the tariff). Using this method, for some years the advantage even turns out to be negative, which demonstrates the flaws in the methodology, considering that the Terni companies always paid a tariff below the market price. In principle, for this period, the tariff advantage should have been simply equivalent to the compensatory component paid by Cassa Conguaglio. Therefore, the advantage is, again, very significantly underestimated.
- (90) Another flaw in the study concerns the value of the assets. The study simply takes as the book value of the assets the difference between the item 'plant and machinery' in Terni's 1962 budget (the year before the nationalization) and the same item the following year. Firstly, it should be noted that there is no concrete proof that the difference is attributable exclusively to the loss of the hydro power plant. However, even if, *arguendo*, that book value could be accepted, the method used in the study would nonetheless be flawed. As confirmed by Italy, the real value of a hydro plant at the moment of an expropriation is linked to the residual duration of the underlying concession⁽²²⁾. Therefore, the book value of the plant should have been corrected to take this into account. In the study, the book value is simply actualized to 2006 in line with inflation. Therefore, there is evidence suggesting that the study overestimates the assets' value.
- (22) It should be noted that, under Italian law, when hydro-power concessions expire, the hydropower company loses ownership rights on part of its assets, notably certain engineering works, which automatically revert to the State.

- (91) In conclusion, the study can be dismissed altogether.

The extensions of the tariff

- (92) As regards the extensions in time of the Terni tariff, the Commission appreciates that their rationale was to retain the parallelism in treatment with those hydropower producers who had seen their concessions renewed. However, such parallelism, which lies at the heart of the compensatory mechanism, was foreseen in the expropriation arrangement only for 30 years, not indefinitely. Therefore, for the reasons already explained in paragraphs (73) to (78) above, these extensions did not have a compensatory nature.

- (93) This conclusion is even more obvious for the second extension of the tariff. This extension interrupted a phasing-out mechanism intended to ease the companies' transition to the full tariff, which signalled the Italian authorities' conviction that the companies had been fully compensated for. Italy itself has, indeed, extensively explained the reasons which led to this second extension, and which are related to industrial policy alone (see Italy's comments in paragraph (61) above).

Conclusions on the compensatory nature of the tariff

- (94) In the light of the above, the Commission considers that the Terni tariff can be considered compensatory until 1992. Until that date, the measure does not qualify as State aid. All further extensions of the tariff, however, must be examined in the light of the State aid rules.

Presence of aid within the meaning of Article 87(1) of the EC Treaty

- (95) The Commission has therefore assessed whether the preferential tariff granted to the Terni group after 1992, and in particular as of 1 January 2005, date of entry into force of Article 11, paragraph 11 of Law 80/2005, which is the object of these proceedings, constitute State aid within the meaning of Article 87(1) of the EC Treaty.

- (96) In this context, the Commission takes note of the Italian clarifications as regards the irrelevance of the ECSC Decision 83/396 and Court judgment C 99/92 and can agree that such decisions have no bearing on the assessment of the State aid nature of the tariff granted to the three plants in the Terni area.

- (97) A measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty if the following conditions are cumulatively fulfilled: the measure (a) confers an economic advantage to the beneficiary; (b) is granted by the State or through State resources and is imputable to the State; (c) is selective; (d) has an impact on intra-community trade and is liable to distort competition within the EU.

Advantage

- (98) In the light of the reasoning developed in points (73) to (94), the Commission has come to the conclusion that the preferential tariff for Terni did not provide an advantage to the beneficiaries throughout the duration of the original compensatory package, that is, until 1992. Therefore, only the extensions of the tariff have to be assessed in order to ascertain the presence of an advantage.

- (99) There can be no doubt that the provision of electricity at lower prices compared to the ordinary electricity tariff constitutes a clear economic advantage for the beneficiaries, who see their production costs reduced and their competitive position strengthened.

Selectivity

- (100) Since this particular tariff arrangement applies only to the Terni group, the measure is selective.

Financing through State resources and imputability to the State

- (101) As regards the financing through State resources, it should be noted that, as of 2002, the financial burden arising from the tariff is borne by all electricity consumers in Italy by means of a parafiscal levy collected by *Cassa Conguaglio* via the A4 component of the electricity tariff. Such levy is obligatory as it imposed by means of *Delibere* of the AEEG which implement national legislation. *Cassa Conguaglio* is a public body established by law, which carries out its functions on the basis of precise instructions laid down in the *Delibere* of the AEEG and the relevant legislative and regulatory provisions.

- (102) It is settled case-law that, the yield of a levy which is obligatory under national law and is paid to a public body established by law constitutes State resources within the meaning of Article 87(1) of the Treaty when it is earmarked for the financing of a measure which fulfils the other criteria of that Article ⁽²³⁾.

⁽²³⁾ See judgments of the ECJ in *Steinike & Weinlig*, C-78/76, [1977] ECR p. 595 and in *French Government v. Commission*, Case C-47/69 [1970] ECR p. 00487.

- (103) In paragraph (68) above, Italy quotes *Pearle* ⁽²⁴⁾ in order to substantiate its claim that the resources transiting through Cassa Conguaglio do not constitute State aid. In *Pearle*, the Court found that under certain, precisely defined circumstances, the resources of a levy which transited through a public body could not be considered State resources. In *Pearle*, the measures were financed entirely by an economic sector, at the initiative of that sector, by way of a levy which merely transited through a public body and the subjects paying the levy were identical to those who received the benefits of the aid measure. The Commission contends that the case at hand is manifestly different. The Terni tariff was established at the initiative of the State, (not an economic sector), the beneficiaries of the tariff do not bear any of the financial burden of the levy, which rests solely on electricity consumers, and the State can, at any time, give instructions to Cassa Conguaglio via a *Delibera* of the AEEG or other legislative or regulatory provisions, as to how to dispose of the funds collected through the levy. Therefore, *Pearle* is irrelevant to this case.
- (104) In the *Preussen-Elektra* case, also quoted by Italy in paragraph (68) above, the Court considered that a purchase obligation imposed on private electricity supply undertakings to purchase electricity from renewable sources at minimum prices higher than the real economic value of that type of electricity did not constitute State aid because the measure did not involve any direct or indirect transfer of State resources.
- (105) Here again, the substance of the cases is clearly different. In *Preussen Elektra*, the resources required to finance the measure were provided directly by the electricity suppliers without any public body being involved, not even as a passive vehicle for the transit of such monies. In that case, no transfer of State resources could be identified. In the case at hand, however, the monies come from the general public via a parafiscal charge which transits through a public body before being channelled to the final beneficiaries. This is therefore a classic case of involvement of State resources.
- (106) In the light of the above, therefore, the parafiscal levy used to finance the Terni tariff constitutes State resources.
- (107) The criterion of imputability to the State ⁽²⁵⁾ is also fulfilled, since the legal basis for the Terni tariff is laid down in national legislation, in conjunction with the *Delibere* of the AEEG which is a public body.
- Impact on trade and distortion of competition*
- (108) As regards the last criteria of Article 87(1) — impact on trade between Member States and distortion of competition — the Commission can dismiss the arguments put forward by the Terni companies in paragraph (46) on the basis of the considerations developed in points (109) to (116).
- (109) The beneficiaries' main substantive argument is that the plants which benefit from the tariff are not active in intra-community trade as they sell most of their products on the domestic market.
- (110) It should be noted, in this respect, that the analysis cannot be limited to the plants located in the Terni area. The beneficiaries are part of international groups active in various sectors of the economy ⁽²⁶⁾, and operating aid granted to one branch or plant can be used to cross-subsidize other branches of the group in sectors open to intra-community trade, and in fact, this circumstance alone could warrant the conclusion that the tariff has an impact on trade between Member States.
- (111) Besides, even if it was demonstrated that most or all of the companies' production was sold on the Italian domestic market, *quod non*, this would be irrelevant for the purpose of establishing the impact on intra-community trade of the measure. The Court has ruled that 'aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export

⁽²⁴⁾ Judgment of the ECJ in *Pearle and others v. Commission*, Case C-345/02 [2004] ECR I-7139.

⁽²⁵⁾ See judgment of the ECJ in *Italy v. Commission*, Case C-303/88, [1988] ECR I.1433, *France v. Commission*, Case C 47/69 [1970] ECR 4393; judgment of the CFI in *Deutsche Bahn/Commission*, Case T-351/02, [2006] ECR II. 1047.

⁽²⁶⁾ Cementir belongs to the Caltagirone Group, operates a number of plants in Italy, some of which are active in the export business. The company produces a variety of cement and lime products and controls a cement-producer in Turkey which exports to the EU. Nuova Terni Industrie Chimiche belongs to the Norsk Hydro group, active in the production of chemical and mineral fertilizers, oil and gas and petrochemicals. ThyssenKrupp is a global conglomerate active mainly, but not only, in steel production.

its products (...). Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State' ⁽²⁷⁾.

(112) Therefore, the Commission has examined whether, in general terms, there is intra-community trade in the sectors concerned.

(113) As regards cement-producer Cementir, the Commission has extensively analysed the cement market and its various segments, most notably in its 1994 Cement Decision ⁽²⁸⁾. Cement is a heavy product having a low value in relation to its weight, so that the cost of transport may make it uneconomical to transport over long distances. The Commission found, however, that this constraint did not impede intracommunity trade. Cement products are *de facto* traded between Member States, and the conclusion in the past of unlawful agreements and concerted practices between cement producers (sanctioned in the above Decision) in order to protect their home markets is further evidence that there is effective competition at the EU level.

(114) As regards Nuova Terni Industrie Chimiche, it suffices to say that, in the very merger decision whereby the Commission authorized the takeover by Norsk Hydro of Nuova Terni Industrie Chimiche ⁽²⁹⁾, the Commission found that, for the products manufactured by the Terni chemical branch, there was intra-community trade and the geographical market was at least EEA-wide.

(115) Concerning ThyssenKrupp, the Commission notes that the steel market is a global, highly competitive market. In previous decisions, the Commission had already found that the market segments in which ThyssenKrupp is active were at least EU-wide ⁽³⁰⁾.

(116) Therefore, the conclusion must be drawn that the preferential electricity tariff granted to the three Terni companies is liable to improve their competitive position vis-à-vis competing undertakings in intra-community trade. It is settled case-law ⁽³¹⁾ that in such

circumstances intra-community trade should be considered affected and competition distorted.

Conclusions on the presence of aid

(117) In the light of the above, the Commission has come to the conclusion that the preferential tariff granted to the Terni companies as of 1 January 2005 constitutes State aid within the meaning of Article 87(1) of the EC Treaty and can only be authorized if it can benefit from one of the derogations laid down in the Treaty.

Qualification of the measure as new aid and lawfulness of the aid

(118) The measure cannot be considered existing aid for the reasons explained in points (119) to (133).

(119) The original provision of Law 9/1991 which is considered to be covered by a State aid authorisation was modified in 2005 by Article 11(11) of Law 80/2005.

(120) It should be noted that the substance of the implicitly approved tariff and that of the tariff introduced by Law 80/2005 are only apparently similar.

(121) Law 80/2005 laid down that Terni should continue benefiting from a preferential tariff until 2010. Even if the second extension had been a mere prolongation in time of the previous measure, it would have constituted new aid. It is settled case law that an amendment to the duration of an existing aid should be regarded as new aid ⁽³²⁾.

(122) A more detailed analysis shows, however, that the differences between the two measures are much more substantive.

(123) Before the entry into force of Law 80/2005, the Terni price (and its annual update) was still based on the original parallelism in treatment with self-producers. Law 80/2005 intervenes by severing this link and effectively decoupling Terni from self-producer treatment. The price set for 2005 happens to coincide with the 2004 price, but the price formation mechanism is fundamentally altered, since the new price is updated in line with average increases in energy prices, with a guarantee that, however high such price increases may be, the tariff will not rise by more than 4 % yearly.

⁽²⁷⁾ Judgment of the ECJ *France Republic v. Commission*, Case C 102/87, [1988] ECR p. 04067.

⁽²⁸⁾ Commission Decision of 30 November 1994 (Cases IV/33.322 — cement), OJ L 343/1994, p. 1-158.

⁽²⁹⁾ Decision IV/M.832 of 25.10.1996 *Norsk Hydro/Enichem Agricoltura — Terni (II)*.

⁽³⁰⁾ See, *inter alia*, Decision IV/M.925 *Krupp-Hoesch/Thyssen* of 11 August 1997.

⁽³¹⁾ See, *inter alia*, the judgment of the ECJ in *Philip Morris/Commission*, (Case 730/79, ECR [1980] p. 02671, paragraph 11) and judgment of the ECJ in *Air Liquide Industries/Ville de Seraing et Province de Liège* (Joint Cases C 393/04 and C 41/05, [2006] ECR p. I-05293).

⁽³²⁾ See, for example, on this point, the judgment of the CFI in *Territorio Historico de Alava — Diputacion Foral de Alava*, Joint Cases T-127/99 and T-148/99, [2002] ECR II-012575, paragraphs 173-175.

- (124) The level of aid is also raised due to the increase in the quantities supplied at the preferential price. The degenerativity element is eliminated altogether.
- (125) It should be underlined, in this context, that even if the aid level had remained unchanged, the same conclusion would necessarily have to be drawn, if the the Opinion of Advocate General Fennelly in Case Italy and Sardegna Lines v. Commission ⁽³³⁾ is to be followed. In assessing what constitutes a substantive change to a scheme, Advocate General Fennelly stated that 'the introduction of a wholly new method of providing effectively the same level of aid constituted a significant amendment of the original regime'.
- (126) The Commission also notes that, in the light the different mechanisms governing the tariff, it would be impossible to distinguish, in the new measure implemented in 2005, a part which, until 2007, would continue to be existing aid, and an alteration liable to be classified as new aid ⁽³⁴⁾.
- (127) Therefore, the Commission considers that the measure referred to as 'second extension' is in fact a fully new aid scheme in that it is substantially altered compared to that covered by the 1991 Decision.
- (128) In the light of the above, the measure must be considered new aid as from 1 January 2005, which is the date when Law 80/2005 made the extension of the tariff applicable ⁽³⁵⁾.
- (129) The allegation, made in paragraphs (48) and (60), that the measure should be deemed authorized pursuant to Article 4, paragraph 5 of Regulation N 659/1999 because the Commission had been informed of it and failed to take a decision within the procedural time-limits) is manifestly unfounded. There is a substantial difference between notifying a measure pursuant to Article 88(3), on the one hand, and simply informing the Commission of the existence of a measure, on the other. In *Breda Fucine Meridionali* ⁽³⁶⁾, the Court of First Instance has notably ruled that the transmission of documents which are not addressed to the Secretary General and do not contain an explicit reference to
- Article 93, paragraph 3 of the EC Treaty cannot not be considered as a valid notification.
- (130) Only measures which are duly notified pursuant to Article 88(3) and are not implemented before a Commission Decision can benefit from the procedural time limits set out in Regulation 659/99. In the case as issue, it is undisputed that Article 11(11) of Law 80/2005 was not notified.
- (131) Besides, according to Article 4, paragraph 6 of Regulation 659/99, where the Commission fails to take a decision within the two months' procedural time limits, the aid is deemed to have been authorized provided the Member State gives prior notice of its intention to implement the measure, and unless the Commission takes a decision within a period of 15 working days following receipt of the notice. In the case at hand, no prior notice was given by Italy. Therefore, even if the Terni's companies allegation was substantiated, which is not the case, as explained in paragraphs (129) and (130) above, Article 4, paragraph 6 of Regulation 659/99 would not be applicable.
- (132) Since Italy failed to notify Article 11(11) of Law 80/2005, the aid is unlawful.

Compatibility of the aid

The first extension

- (133) Even though this procedure concerns only the second extension of the tariff, the Commission deems it appropriate to make a number of considerations on the first extension and its approval under the State aid rules.
- (134) This first extension of the Terni tariff was provided for in Article 20(4) of Law 9/1991. This law was declared compatible under the State aid rules in case NN 52/1991 ⁽³⁷⁾. The Commission Decision as notified to Italy does not specify which articles of the Law were found compatible. However, the internal documents leading to the Commission Decision provided for a brief description and assessment of the articles with State aid relevance. Article 20(4) of the law, providing for the extension of the Terni tariff, was not mentioned.
- (135) Given such scant information, it is unfortunately impossible to trace back the reasoning followed in that case, and in particular to know whether the Commission had examined and intended to approve the Terni tariff.

⁽³³⁾ Joined Cases C 15/98 and C 105/99, Italy and Sardegna Lines v. Commission ECR [2000] I-8855, paragraph 74 of the Opinion.

⁽³⁴⁾ Judgment of the CFI in Government of Gibraltar v. Commission, Joint Cases T 195-01 and T 207/01 [ECR 2002] p. II-02309.

⁽³⁵⁾ The conversion law of Decree 80/05 provided for the retroactive entry into force of the tariff extension as of 1 January 2005.

⁽³⁶⁾ *Breda Fucine Meridionali v Commission*, Joined Cases T-126/96 and T-127/96 [1998] ECR II-3437, paragraph 47.

⁽³⁷⁾ See footnote 5.

- (136) However, since Italy notified the entire law and the approval decision also refers to the entire law, the extension of the Terni tariff should be considered covered by the 1991 Commission Decision.

The second extension under challenge

- (137) In derogation from the general prohibition of State aid laid down in Article 87(1) of the EC treaty, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Treaty.

- (138) The State aid granted to the Terni companies pursuant to Article 11(11) of Law 80/2005 can be classified as operating aid.

- (139) It is settled case-law that operating aid, that is to say, aid intended to relieve an undertaking of the expenses which it would normally have had to bear in its day-to-day management or its usual activities, in principle, distorts competition to an extent contrary to the common interest in the sectors in which it is granted⁽³⁸⁾. The Commission notes that operating aid granted in the form of a preferential electricity price to an energy-intensive undertaking, that is, an undertaking having electricity as one of its major cost factors, is a particularly distortive form of support since the aid has a substantial and direct impact on that undertaking's production cost and resulting competitive position.

- (140) Operating aid may be granted, under specific conditions, under the Guidelines on State aid for environmental protection⁽³⁹⁾. The tariff under consideration, however, serves no environmental purpose.

- (141) Exceptionally, operating aid may be granted in assisted areas eligible for aid under the derogation of Article 87(3)(a) of the EC Treaty. Throughout the period considered, Region Umbria was not eligible for aid under Article 87(3)(a) of the Treaty.

⁽³⁸⁾ See Judgments of the ECJ in *Italy v Commission*, Case C-86/89 [1990] ECR I-3891, paragraph 18, and *France v Commission*, Case C-301/87 [1990] ECR I-307, paragraph 50; judgment of the Court of First Instance in *Siemens v Commission*, Case T-459/93 [1995] ECR II-1675, paragraph 48.

⁽³⁹⁾ OJ C 37, 3.2.2001, p. 3.

- (142) Even though, for the reasons explained above in paragraphs (123) to (127), the two extensions constitute different measures, the Commission deems it useful to recall that, when the first extension was notified, Region Umbria was going through a serious economic crisis, which affected in particular the steel and chemical sectors in the Terni area. This crisis, which had come to a head at the beginning of the 1990s, was acknowledged by the Commission when, in 1997, it approved the Italian map of areas eligible for aid under Article 87(3)(c)⁽⁴⁰⁾. The Terni and Perugia areas were declared eligible for aid under Objective 2 of the Structural Funds.

- (143) In 2005, however, at the time Law 80/2005 was adopted, the process of structural adjustment in Umbria had already largely taken place. In the proposed regional aid map for the period 2007-2013, Umbria will lose the status of assisted region altogether. Therefore, while it is difficult to know whether Regional development considerations may have played a role in the original approval decision, it is nevertheless certain that the Commission cannot rely on any such considerations in assessing the second extension of the tariff.

- (144) Italy has in fact extensively explained the industrial policy reasons for the second prolongation of the Terni tariff (see paragraph (61)). The main thrust of Italy's argument in favour of the tariff is that energy intensive companies in other Member States can also benefit from reduced energy prices and the tariff is required as a transitional measure to avoid delocalization outside the EU pending the full liberalization of the energy market and the improvement of infrastructure. Incidentally, these explanations contradict the Italian claim that the Terni tariff would still be compensatory and certainly offer no justification for a revision of the expropriation package.

- (145) The Commission notes that the Court has ruled that 'the fact that a Member State seeks to approximate, by unilateral measures, conditions of competition in a particular sector of the economy to those prevailing in other Member States cannot deprive the measures in question of their character as State aid'⁽⁴¹⁾. Further, the Italian argument that such a State aid would be justified by the existence of other (equally distortive) State aids in

⁽⁴⁰⁾ State aid No 27/1997, Commission Decision SG(97) 4949 of 30 June 1997.

⁽⁴¹⁾ See, for example, the judgment of the ECJ in *Italian Republic v Commission*, Case C-372/97 [2004], ECR I-03679, paragraph 67.

the EU is to be dismissed altogether. Such an approach would lead to subsidy races and would run counter to the very objective of State aid control. As regards the alleged risk of delocalization outside the EU, the Commission notes that there is no precedent in its decisional practice or in the jurisprudence of the Community courts, where such an argument has been accepted as a justification for the grant of State aids. In the case at issue, there is no need for the Commission to even consider this question since the Italian authorities have not provided any substantiation for such an allegation. Notably, it has not been shown that the tariff was necessary and proportionate to prevent that risk.

- (146) As regards the conclusions of the High Level group mentioned in point (61), they are irrelevant as they reflect the outcome of general political debate and do not constitute legally binding provisions. It should be noted, incidentally, that the solutions proposed by the group and quoted by Italy do not involve the granting of State aid.
- (147) Since the aid cannot benefit of any of the derogations laid down in Article 87 of the EC Treaty, the second extension of the preferential tariff in favour of the Terni companies should be declared incompatible with the common market.
- (148) Pursuant to Council Regulation (EC) No 659/1999⁽⁴²⁾ laying down detailed rules for the application of Article 93 of the Treaty, in cases of unlawful aid which is not compatible with the common market, effective competition should be restored and the aid, including interest, needs to be recovered without delay.

Legitimate expectations

- (149) It is settled case-law that, when aid has been granted without prior notification pursuant to Article 88(3) of the Treaty, the recipient of the aid cannot have at that time a legitimate expectation that its grant is lawful⁽⁴³⁾. A diligent businessman should normally be able to determine whether the notification procedure has been followed and the aid is lawful.
- (150) However, a recipient of unlawfully granted aid is not precluded from relying on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus declining to refund that aid⁽⁴⁴⁾. The

Commission has examined whether the exceptional circumstances alleged by the Terni companies in paragraph (47) could have led them to entertain such legitimate expectations.

- (151) In substance, the beneficiaries plead that Italy had given them assurances about the non-aid character of the measure, and that the Commission had not called the measure into question, either when it was first extended, or when information on the second extension was submitted.
- (152) As regards the first claim, it will suffice to recall that, according to settled case-law, the existence of legitimate expectations cannot depend on the behaviour of the Member State granting the aid. The CFI has ruled, in particular, that 'incorrect information given by a Member State about the legality of a measure cannot in any circumstances give rise to legitimate expectations, especially where the Commission has not even been informed of that information'⁽⁴⁵⁾.
- (153) Only the behaviour of the Community administration may thus give rise to legitimate expectations. In particular, the Court has ruled that 'a person may not plead infringement of that principle unless he has been given precise assurances (emphasis added) by the Community administration'⁽⁴⁶⁾.
- (154) The Terni companies claim that the measure was not called into question in 1991, when the Commission approved Law 9/1991. It should be pointed out that the 1991 Commission Decision covers only the measure laid down in Law 9/1991, so that the approval of that measure cannot give rise to legitimate expectations concerning the lawfulness or compatibility of the new aid measure introduced by Law 80/2005. Even if the Commission had explicitly stated that the 1991 measure did not constitute aid, *quod non*, the beneficiaries could not assume that the 2005 measure would also automatically qualify as non-aid, since there are many circumstances that may transform a non-aid measure into a State aid.
- (155) Moreover, the wording of the Commission Decision as notified to Italy, which declares compatible the aid measures contained in Law 9/1991 and 10/1991 would, if anything, suggest the opposite, that the Terni measure did constitute aid.

⁽⁴²⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁴³⁾ Judgment of the ECJ in *Alcan Deutschland*, Case C 24/95 [1997], ECR I-1591, paragraphs 25, 30 and 31, and *Demesa and Territorio histórico de Alava v Commission*, Joined Cases C-183/02 P and C-187/02 [2004] ECR I-10609, paragraph 45.

⁽⁴⁴⁾ Judgment of the ECJ in *Commission v Germany*, Case C-5/89 [1990] ECR I-3437, paragraph 16.

⁽⁴⁵⁾ See judgment of the CFI in *Fleuren Compost v. Commission*, Case T-109/01 [2004] ECR p. II-127, paragraphs 141-143.

⁽⁴⁶⁾ See judgment of the ECJ in *Germany v. Commission*, Case C-506/03, [2005] ECR p. I-0000, paragraph 58.

(156) Therefore, the Commission Decision could not possibly have given the beneficiaries precise assurances as to the non-aid character of the tariff, but — at best — a legitimate expectation that the 1991 extension of the tariff was compatible. No expectations could be entertained, however, in respect of the 2005 extension. Therefore, this argument should also be dismissed.

(157) As regards the Commission's alleged failure to act diligently when it received information on the second extension of the tariff, this claim is manifestly unfounded. Italy allegedly mentioned the Terni tariff in the 2005 State aid Report. Detailed information on the measure provided for in Article 11(11) of Law 80/2005 was provided, however, only in February 2006, on request by the Commission, in the context of the State aid investigation on Article 11(12) of the same Law (State aid C 13/06). The formal investigation procedure was opened by the Commission in July 2006.

(158) Considering the short time elapsed between the submission of information and action by the Commission, it is manifest that the Commission acted diligently.

(159) In the light of the above considerations, the Commission has concluded that there are no extraordinary circumstances which could have led the Terni companies to entertain legitimate expectations as to the lawfulness of the contested measure.

Recovery

(160) All amounts of incompatible aid received by ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche pursuant to Article 11(11) of Law 80/2005 and which cover the period starting on 1 January 2005 (see paragraph (26)) shall be recovered, with interest, in accordance with Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽⁴⁷⁾.

(161) It should be recalled, in this context, that the purpose of recovery is to restore the beneficiary's competitive situation prevailing before the grant of the incompatible aid. In establishing what was the competitive situation of the Terni companies before the introduction of Law 80/2005, account should be taken of the existence of the existing aid measure laid down in Law 9/1991, which was cleared under the State aid rules until 2007.

(162) Therefore, the Commission considers that the residual amounts of aid to which the beneficiaries would have been entitled under Law 9/1991 in 2005, 2006 and 2007 if Law 80/2005 had not been implemented may be deducted from the sums to be recovered, if Italy considers that the beneficiaries are entitled to them under national law.

VII. CONCLUSION

(163) The Commission finds that Italy has unlawfully implemented, in breach of Article 88(3) of the EC Treaty, the provision of Article 11, paragraph 11 of *Decreto-legge* 80/05, converted into Law 80/2005, providing for the modification and extension in time until 2010 of the preferential electricity tariff applicable to the three Terni companies. The Commission considers that such measure, which constitutes pure operating aid, is not eligible for any derogation under the EC treaty, and is therefore incompatible with the common market. Therefore, the parts of the above measure that have not yet been granted or paid must not be implemented. The aid already paid has to be recovered. The amounts to which the beneficiaries would have been entitled in 2005, 2006 and 2007 under Law 9/1991 may be deducted from the total amount to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which Italy has implemented in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche is incompatible with the common market.

2. The State aid which Italy has granted but not yet paid out to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche is also incompatible with the common market and may not therefore be implemented.

Article 2

1. Italy shall recover from the beneficiaries the aid referred to in Article 1(1).

2. The sums to be recovered shall include interest for the entire period running from the date on which they were put at the disposal of the beneficiaries until the date of their recovery.

3. The interest shall be calculated on a compound basis in conformity with Regulation (EC) No 794/2004.

⁽⁴⁷⁾ OJ L 140, 30.4.2004, p. 1-134.

Article 3

1. Italy shall take all necessary measures to recover from the beneficiary the illegal and incompatible aid referred to in Article 1.
2. Recovery shall take place without delay and in accordance with the procedures under national law provided that they allow the immediate and effective execution of the decision.
3. Italy shall ensure that the present decision is implemented within four months of the date of notification.

Article 4

1. Italy shall keep the Commission informed of the progress of the national proceedings to implement this decision until these proceedings have been completed.
2. Within two months of notification of this decision, Italy shall submit information specifying the total amounts (principal and interest) to be recovered from the beneficiaries and a detailed description of the measures already taken or planned

to comply with the present decision. By the same deadline, it shall send to the Commission all the documents demonstrating that the beneficiaries have been ordered to repay the aid.

3. After the period of two months referred to in paragraph 2, Italy shall submit, on a simple request by the Commission, a report on the measures already taken or planned to comply with this decision. This report shall also provide detailed information on the amounts of aid and interest already recovered from the beneficiaries.

Article 5

This Decision is addressed to Italy.

Done at Brussels, 20 November 2007.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 17 April 2008

on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2008 under Regulation (EC) No 2037/2000 of the European Parliament and of the Council

(notified under document number C(2008) 1403)

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

(Text with EEA relevance)

(2008/409/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

200 tonnes of chlorofluorocarbons (CFCs) in 2008 for the manufacturing and use of Metered-Dose Inhalers (MDIs) qualifying for essential uses of CFCs as defined in Decision IV/25.

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) The Community has already phased out the production and consumption of chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbon and bromochloromethane.

(2) Each year the Commission is required to determine essential uses for these controlled substances, the quantities that may be used and the companies that may use them.

(3) Decision IV/25 of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, hereinafter 'the Montreal Protocol', sets out the criteria used by the Commission for determining any essential uses and authorises the production and consumption necessary to satisfy essential uses of controlled substances in each Party.

(4) Decision XIX/13 of the Parties to the Montreal Protocol authorises the production in the European Community of

(5) Decision XIX/18 of the Parties to the Montreal Protocol authorises the production and consumption necessary to satisfy essential uses of controlled substances listed in Annexes A, B and C (Group II and III substances) of the Montreal Protocol for laboratory and analytical uses as listed in Annex IV to the report of the Seventh Meeting of the Parties, subject to the conditions set out in Annex II to the report of the Sixth Meeting of the Parties, as well as Decisions VII/11, XI/15 and XV/5 of the Parties to the Montreal Protocol. Decision XVII/10 of the Parties to the Montreal Protocol authorises the production and consumption of the controlled substance listed in Annex E of the Montreal Protocol necessary to satisfy laboratory and analytical uses of methyl bromide.

(6) Pursuant to paragraph 3 of Decision XII/2 of the Parties to the Montreal Protocol on measures to facilitate the transition to chlorofluorocarbon-free MDIs, all Member States have notified⁽²⁾ the United Nations Environment Programme the active ingredients for which chlorofluorocarbons (CFCs) are no longer essential for the manufacture of CFC-MDIs for placing on the market of the European Community.

(7) Article 4(4)(i)(b) of Regulation (EC) No 2037/2000 prevents CFCs from being used and placed on the market unless they are considered essential under the conditions described in Article 3(1) of that Regulation. These non-essentiality determinations have therefore reduced the demand for CFCs used in MDIs that are placed on the market of the European Community. In addition, Article 4(6) of Regulation (EC) No 2037/2000 prevents CFC-MDI products being imported and placed on the market unless the CFCs in these products are considered essential under the conditions described in Article 3(1).

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Decision 2007/540/EC (OJ L 198, 31.7.2007, p. 35).

⁽²⁾ www.unep.org/ozone/Information_for_the_Parties/3Bi_dec12-2-3.asp

- (8) The Commission has published a Notice⁽¹⁾ on the 18 July 2007 to those companies in the Community of 27 Member States that request consideration by the Commission for the use of controlled substances for essential uses in the Community in 2008 and has received declarations on intended essential uses of controlled substances for 2008.
- (9) For the purpose of ensuring that interested companies and operators may continue to benefit in due time from the licensing system, it is appropriate that the present decision shall apply from 1 January 2008.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Management Committee established by Article 18(1) of Regulation (EC) No 2037/2000,

HAS ADOPTED THIS DECISION:

Article 1

1. The quantity of controlled substances of Group I (chlorofluorocarbons 11, 12, 113, 114 and 115) subject to Regulation (EC) No 2037/2000 which may be used for essential medical uses in the Community in 2008 shall be 155 460,00 ozone-depleting potential (ODP) kilograms.
2. The quantity of controlled substances of Group I (chlorofluorocarbons 11, 12, 113, 114 and 115) and Group II (other fully halogenated chlorofluorocarbons) subject to Regulation (EC) No 2037/2000 which may be used for essential laboratory uses in the Community in 2008 shall be 56 213,60 ODP kilograms.
3. The quantity of controlled substances of Group III (halons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory use in the Community in 2008 shall be 418,7 ODP kilograms.
4. The quantity of controlled substances of Group IV (carbon tetrachloride) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2008 shall be 150 832,836 ODP kilograms.

5. The quantity of controlled substances of Group V (1,1,1-trichloroethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the European Union in 2008 shall be 381,5 ODP kilograms.

6. The quantity of controlled substances of Group VI (methyl bromide) subject to Regulation (EC) No 2037/2000 that may be used for laboratory and analytical uses in the Community in 2008 shall be 150,00 ODP kilograms.

7. The quantity of controlled substances of Group VII (hydrobromofluorocarbons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2008 shall be 0,96 ODP kilograms.

8. The quantity of controlled substances of group IX (bromochloromethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2008 shall be 13,368 ODP kilograms.

Article 2

The chlorofluorocarbon metered-dose inhalers listed in Annex I shall not be placed on markets where the Competent Authority has determined chlorofluorocarbons for metered-dose inhalers on those markets to be non-essential.

Article 3

During the period 1 January to 31 December 2008 the following rules shall apply:

1. The allocation of essential medical use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 shall be to the companies indicated in Annex II.
2. The allocation of essential laboratory use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 and other fully halogenated chlorofluorocarbons shall be to the companies indicated in Annex III.

⁽¹⁾ OJ C 164, 18.7.2007, p. 37.

3. The allocation of essential laboratory use quotas for halons shall be to the companies indicated in Annex IV.
4. The allocation of essential laboratory use quotas for carbon tetrachloride shall be to the companies indicated in Annex V.
5. The allocation of essential laboratory use quotas for 1,1,1-trichloroethane shall be to the companies indicated in Annex VI.
6. The allocation of laboratory and analytical critical use quotas for methyl bromide shall be to the companies indicated in Annex VII.
7. The allocation of essential laboratory use quotas for hydro-bromofluorocarbons shall be to the companies indicated in Annex VIII.
8. The allocation of essential laboratory use quotas for bromochloromethane shall be to the companies indicated in Annex IX.
9. The essential use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115, other fully halogenated chlorofluorocarbons, carbon tetrachloride, 1,1,1-trichloroethane, hydro-bromofluorocarbons and bromochloromethane shall be as set out in Annex X.

Article 4

This Decision shall apply from 1 January 2008 and shall expire on 31 December 2008.

Article 5

This Decision is addressed to the following undertakings:

Acros Organics bvba Janssen Pharmaceuticaaan 3A° B-2440 Geel	Airbus France Service EVICS BP M6322 Route de Bayonne 316 F-31060 Toulouse Cedex 16
Bie & Berntsen Sandbækvej 7 DK-2610 Rødovre	Boehringer Ingelheim GmbH Binger Straße 173 D-55216 Ingelheim am Rhein
Carlo Erba Reactifs-SDS ZI de Valdonne, BP 4 F-13124 Peypin	Chiesi Farmaceutici SpA Via Palermo 26/A I-43100 Parma
CNRS — Département Galilée Observatoire de la Côte d'Azur — Siège Social Boulevard de l'Observatoire, BP 4229 F-06304 Nice Cedex 4	Eras Labo 222 RN 90 F-38330 Saint-Nazaire-les-Eymes
Harp International Gellihirion Industrial Estate Rhondda, Cynon Taff Pontypridd CF37 5SX United Kingdom	Health Protection Inspectorate-Laboratories Paldiski mnt 81 EE-10617 Tallinn
Honeywell Specialty Chemicals Seelze GmbH Wunstorfer Straße 40 Postfach 100262 D-30918 Seelze	Ineos Fluor Ltd PO Box 13 The Heath Runcorn Cheshire WA7 4QX United Kingdom
Laboratorio Aldo-Union SA Baronesa de Maldá 73 Espluges de Llobregat E-08950 Barcelona	LGC Standards GmbH Mercatorstraße 51 D-46485 Wesel

Mallinckrodt Baker EMEA Teugseweg 20 7418 AM Deventer Nederland	Mebrom Assenedestraat 4 B-9940 Rieme Ertvelde
Merck KGaA Frankfurter Straße 250 D-64271 Darmstadt	Mikro+Polo d.o.o. Zagrebska cesta 22 SI-2000 Maribor
Ministry of Defense Defence Fuel Lubricants and Chemicals Service/ Chemical Laboratory PO Box 10.000 1780 CA Den Helder Nederland	Panreac Química SAU Pol. Ind. Pla de la Bruguera C/Garraf 2 E-08211 Castellar del Vallès — Barcelona
Sanolabor d.d. Leskoškova 4 Ljubljana Slovenia	SICOR SpA Via Terrazzano 77 I-20017 Rho
Sigma Aldrich Chimie SARL 80, rue de Luzais L'Isle d'Abeau Chesnes F-38297 St-Quentin-Fallavier	Sigma Aldrich Company The Old Brickyard, New Road Gillingham SP8 4XT United Kingdom
Sigma Aldrich Laborchemikalien GmbH Wunstorfer Straße 40 D-30926 Seelze	Sigma Aldrich Logistik GmbH Riedstraße 2 D-89555 Steinheim
Tazzetti Fluids SRL Corso Europa n. 600/a I-10070 Volpiano (TO)	Valeas SpA Pharmaceuticals Via Vallisneri, 10 I-20133 Milano
Valvole Aerosol Research Italiana (VARI) SpA — LINDAL Group Italia Via del Pino, 10 I-23854 Olginate (LC)	VWR I.S.A.S. 201, rue Carnot F-94126 Fontenay-sous-Bois

Done at Brussels, 17 April 2008.

For the Commission
Stavros DIMAS
Member of the Commission

ANNEX I

Pursuant to paragraph 3 of Decision XII/2 of the Twelfth Meeting of the Parties to the Montreal Protocol on measures to facilitate the transition to chlorofluorocarbon-free metered-dose inhalers (MDIs), the following countries have determined that, due to the presence of suitable non-CFC MDIs, CFCs no longer qualify as 'essential' under the Protocol when combined with following active ingredients:

LIST OF NON-ESSENTIAL SUBSTANCES

Table 1

Short-acting beta agonist bronchodilators

[illegible]

Table 2

Inhaled steroids

Country	Beclomethasone	Dexamethasone	Flunisolide	Fluticasone	Budesonide	Triamcinolone
Austria	X	X	X	X	X	X
Belgium	X	X	X	X	X	X
Bulgaria	X	X	X	X	X	X
Cyprus						
Czech Republic	X	X	X	X	X	X
Denmark	X			X		
Estonia	X	X	X	X	X	X
Finland	X			X		
France	X			X		
Germany	X	X	X	X	X	X
Greece	X		X	X	X	X
Hungary	X	X	X	X	X	X
Ireland	X			X		
Italy	X	X	X	X	X	X
Latvia	X	X	X	X	X	X
Lithuania	X	X	X	X	X	X
Luxembourg	X	X	X	X	X	X
Malta	X			X		
Netherlands	X	X	X	X	X	X
Poland	X	X	X	X	X	X
Portugal	X	X	X	X	X	X
Romania	X	X	X	X	X	X
Slovakia	X	X	X	X	X	X
Slovenia	X	X	X	X	X	X
Spain	X			X	X	
Sweden	X			X		
United Kingdom				X		

Table 3

Non-steroidal anti-inflammatories

Country	Cromoglicic acid	Nedrocromil				
Austria	X	X				
Belgium	X	X				
Bulgaria	X	X				
Cyprus	X	X				
Czech Republic	X	X				
Denmark	X	X				
Estonia	X	X				
Finland	X	X				
France	X	X				
Germany	X	X				
Greece	X	X				
Hungary	X					
Ireland						
Italy	X	X				
Latvia	X	X				
Lithuania	X	X				
Luxembourg	X					
Malta		X				
Netherlands	X	X				
Poland	X	X				
Portugal	X					
Romania	X	X				
Slovakia	X	X				
Slovenia	X	X				
Spain		X				
Sweden	X	X				
United Kingdom	X	X				

Table 4

Anticholinergic bronchodilators

Country	Ipratropium bromide	Oxitropium bromide				
Austria	X	X				
Belgium	X	X				
Bulgaria	X	X				
Cyprus	X	X				
Czech Republic	X	X				
Denmark	X	X				
Estonia	X	X				
Finland	X	X				
France						
Germany	X	X				
Greece	X	X				
Hungary	X	X				
Ireland	X	X				
Italy						
Latvia	X	X				
Lithuania	X	X				
Luxembourg	X	X				
Malta	X	X				
Netherlands	X	X				
Poland	X	X				
Portugal	X					
Romania	X	X				
Slovakia	X	X				
Slovenia	X	X				
Spain	X	X				
Sweden	X	X				
United Kingdom	X	X				

Table 5

Long-acting beta agonist bronchodilators

Country	Formoterol	Salmeterol				
Austria	X	X				
Belgium	X	X				
Bulgaria	X	X				
Cyprus	X					
Czech Republic	X	X				
Denmark		X				
Estonia	X	X				
Finland	X	X				
France	X	X				
Germany	X	X				
Greece						
Hungary	X	X				
Ireland	X	X				
Italy	X	X				
Latvia	X	X				
Lithuania	X	X				
Luxembourg	X	X				
Malta	X	X				
Netherlands	X	X				
Poland	X	X				
Portugal	X	X				
Romania	X	X				
Slovakia	X	X				
Slovenia	X	X				
Spain		X				
Sweden	X	X				
United Kingdom	X	X				

Table 6

Combinations of active ingredients in a single MDI

Country						
Austria	X All products					
Belgium	X All products					
Bulgaria	X All products					
Cyprus						
Czech Republic	X All products					
Denmark	X All products					
Estonia						
Finland	X All products					
France	X All products					
Germany	X All products					
Greece	X All products					
Hungary	X All products					
Ireland						
Italy	Budesonide + Fenoterol	Fluticasone+ Salmeterol				
Latvia	X All products					
Lithuania	X All products					
Luxembourg	X All products					
Malta	X All products					
Netherlands	X All products					
Poland	X All products					
Portugal	X All products					
Romania	X All products					
Slovakia	X All products					
Slovenia	X All products					
Spain						
Sweden	X All products					
United Kingdom						

Source: www.unep.org/ozone/Information_for_the_Parties/3Bi_dec12-2-3.asp

ANNEX II

ESSENTIAL MEDICAL USES

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

Boehringer Ingelheim GmbH (DE)
Chiesi Farmaceutici SpA (IT)
Laboratorio Aldo Union SA (ES)
SICOR SpA (IT)
Valeas SpA Pharmaceuticals (IT)
(VARI) SpA — LINDAL Group Italia (IT)

ANNEX III

ESSENTIAL LABORATORY USES

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

Bie & Berntsen (DK)
Carlo Erba Reactifs-SDS (FR)
CNRS — Département Galilée (FR)
Harp International (UK)
Honeywell Specialty Chemicals (DE)
Ineos Fluor (UK)
LGC Standards (DE)
Mallinckrodt Baker (NL)
Merck KGaA (DE)
Mikro + Polo (SI)
Panreac Quimica (ES)
Sanolabor (SI)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Company (UK)
Sigma Aldrich Logistik (DE)
Tazzetti Fluids (IT)
VWR ISAS (FR)

ANNEX IV

ESSENTIAL LABORATORY USES

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

Airbus France (FR)
Eras Labo (FR)
Ineos Fluor (UK)
Ministry of Defence (NL)

ANNEX V

ESSENTIAL LABORATORY USES

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

Acros Organics (BE)
Bie & Berntsen (DK)
Carlo Erba Reactifs-SDS (FR)
Health Protection Inspectorate-Laboratories (EE)
Honeywell Specialty Chemicals (DE)
Mallinckrodt Baker (NL)
Merck KGaA (DE)
Mikro + Polo (SI)
Panreac Quimica (ES)
Sanolabor d.d. (SI)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Company (UK)
Sigma Aldrich Laborchemikalien (DE)
Sigma Aldrich Logistik (DE)
VWR ISAS (FR)

ANNEX VI

ESSENTIAL LABORATORY USES

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

Acros Organics (BE) Bie & Berntsen (DK) Merck KgaA (DE) Mikro + Polo (SI) Panreac Quimica (ES) Sanolabor d.d. (SI) Sigma Aldrich Chimie (FR) Sigma Aldrich Company (UK) Sigma Aldrich Logistik (DE)

ANNEX VII

LABORATORY AND ANALYTICAL CRITICAL USES

Quota of controlled substances of Group VI that may be used for laboratory and analytical critical uses are allocated to:

Mebrom NV (BE) Sigma Aldrich Logistik (DE)

ANNEX VIII

ESSENTIAL LABORATORY USES

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

Ineos Fluor (UK)

ANNEX IX

ESSENTIAL LABORATORY USES

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

Ineos Fluor (UK) Sigma Aldrich Company (UK) Sigma Aldrich Logistik (DE)

ANNEX X

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

COMMISSION DECISION

of 30 April 2008

on the allocation of import quotas for controlled substances for the period 1 January to 31 December 2008 under Regulation (EC) No 2037/2000 of the European Parliament and of the Council

(notified under document number C(2008) 1639)

(Only the Bulgarian, Dutch, English, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovenian and Spanish texts are authentic)

(2008/410/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

must not exceed the average of the calculated level of methyl bromide which a producer or importer placed on the market or used for its own account for QPS in the years 1996, 1997 and 1998.

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer ⁽¹⁾, and in particular to Article 7 thereof,

(4) Article 4(4)(i) of Regulation (EC) No 2037/2000 allows a derogation from Article 4(2) if methyl bromide is imported for destruction or if it is imported for feedstock use.

Whereas:

(5) Article 4(3)(i)(e) of Regulation (EC) No 2037/2000 sets out the total calculated level of hydrochlorofluorocarbons which producers and importers may place on the market or use for their own account in the period 1 January to 31 December 2008.

(1) The quantitative limits for the placing on the market in the Community of controlled substances are set out in Article 4 of Regulation (EC) No 2037/2000 and Annex III thereto.

(6) The Commission has published a notice to importers in the Community of controlled substances that deplete the ozone layer ⁽²⁾ and has thereby received declarations on intended imports in 2008.

(2) Article 4(2)(i)(d) of Regulation (EC) No 2037/2000 prohibits each producer and importer placing any methyl bromide on the market or using any for their own account after 31 December 2004. Article 4(4)(i)(b) of Regulation (EC) No 2037/2000 allows a derogation from this prohibition if methyl bromide is used to meet the licensed requests for critical uses of those users identified as described in Article 3(2)(ii) of that Regulation. The quantity of methyl bromide licensed for critical uses for the period 1 January to 31 December 2008 will be published in a separate Commission Decision.

(7) For hydrochlorofluorocarbons the allocation of quotas to producers and importers is in accordance with the provisions of Commission Decision 2007/195/EC of 27 March 2007 ⁽³⁾ determining a mechanism for the allocation of quotas to producers and importers for hydrochlorofluorocarbons for the years 2003 to 2009 under Regulation (EC) No 2037/2000.

(3) Article 4(2)(iii) of Regulation (EC) No 2037/2000 allows a derogation from Article 4(2)(i)(d) if methyl bromide is imported or produced for quarantine and pre-shipment (QPS) applications. The amount of methyl bromide that can be imported or produced for these purposes in 2008

(8) For the purpose of ensuring that operators and companies benefit from allocated import quotas in due time and thereby ensure the necessary continuity of their operations, it is appropriate that this Decision should apply from 1 January 2008.

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Decision 2007/540/EC (OJ L 198, 31.7.2007, p. 35).

⁽²⁾ OJ C 164, 18.7.2007, p. 22.

⁽³⁾ OJ L 88, 29.3.2007, p. 51.

- (9) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18(1) of Regulation (EC) No 2037/2000,

HAS ADOPTED THIS DECISION:

Article 1

1. The quantity of controlled substances of group I (chlorofluorocarbons 11, 12, 113, 114 and 115) and group II (other fully halogenated chlorofluorocarbons) subject to Regulation (EC) No 2037/2000 which may be released for free circulation in the Community in 2008 from sources outside the Community shall be 8 608 000 ozone-depleting potential (ODP) kilograms.

2. The quantity of controlled substances of group III (halons) subject to Regulation (EC) No 2037/2000 that may be released for free circulation in the Community in 2008 from sources outside the Community shall be 5 144 000 ODP kilograms.

3. The quantity of controlled substances of group IV (carbon tetrachloride) subject to Regulation (EC) No 2037/2000 that may be released for free circulation in the Community in 2008 from sources outside the Community shall be 10 000 330 ODP kilograms.

4. The quantity of controlled substances of group V (1,1,1-trichloroethane) subject to Regulation (EC) No 2037/2000 that may be released for free circulation in the Community in 2008 from sources outside the Community shall be 400 060 ODP kilograms.

5. The quantity of controlled substances of group VI (methyl bromide) subject to Regulation (EC) No 2037/2000 which may be released for free circulation in the Community in 2008 from sources outside the Community for quarantine and pre-shipment uses, for feedstock and destruction shall be 1 372 411,20 ODP kilograms.

6. The quantity of controlled substances of group VII (hydrobromofluorocarbons) subject to Regulation (EC) No 2037/2000 for feedstock which may be released for free circulation in the Community in 2008 from sources outside the Community shall be 146 ODP kilograms.

7. The quantity of controlled substances of group VIII (hydrochlorofluorocarbons) subject to Regulation (EC) No 2037/2000 that may be released for free circulation in the Community in 2008 from sources outside the Community shall be 10 102 977,467 ODP kilograms.

8. The quantity of controlled substances of group IX (bromochloromethane) subject to Regulation (EC) No 2037/2000 that may be released for free circulation in the Community in 2008 from sources outside the Community shall be 168 012 ODP kilograms.

Article 2

1. The allocation of import quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 and other fully halogenated chlorofluorocarbons during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex I.

2. The allocation of import quotas for halons during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex II.

3. The allocation of import quotas for carbon tetrachloride during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex III.

4. The allocation of import quotas for 1,1,1-trichloroethane during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex IV.

5. The allocation of import quotas for methyl bromide during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex V.

6. The allocation of import quotas for hydrobromofluorocarbons during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex VI.

7. The allocation of import quotas for hydrochlorofluorocarbons during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex VII.

8. The allocation of import quotas for bromochloromethane during the period 1 January to 31 December 2008 shall be for the purposes indicated and to the companies indicated in Annex VIII.

9. The import quotas for chlorofluorocarbons 11, 12, 113, 114 and 115, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons, hydrochlorofluorocarbons and bromochloromethane during the period 1 January to 31 December 2008 shall be as set out in Annex IX.

Article 3

This Decision shall apply from 1 January 2008 and shall expire on 31 December 2008.

Article 4

This Decision is addressed to the following undertakings:

Agropest Sp. z o.o. ul. Górnica 12/14 PL-91-765 Łódź	Albemarle Chemicals SAS 28, Étang de la Gaffette F-13521 Port-de-Bouc
Albemarle Europe SPRL Parc Scientifique Einstein Rue du Bosquet 9 B-1348 Louvain-la-Neuve	Alcobre SA C/Luis I, Nave 6-B Poligono Industrial Vallecas E-28031 Madrid
Arkema SA 420, rue d'Estienne D'Orves F-92705 Colombes	AT-Karlovo 56 A, General Kartzov str. Karlovo 4302 Bulgaria
Avantec SA 26, Avenue du Petit Parc F-94683 Vincennes	Bang & Bonsomer 20/22 - 3 Jekaba str LV-1050 Riga
BASF SE Carl-Bosch-Str. 38 D-67605 Ludwigshafen	BaySystems Ibéria Crta Vilaseca – La Pineda s/n E-43006 Tarragona
Blye Engineering Co Ltd Naxxar Road San Gwann SGN 07 Malta	Bromotirrena Srl Via Torino, 4 I-04022 Fondi (LT)
Calorie Fluor SAS 503, rue Hélène Boucher ZI Buc — BP 33 F-78534 Buc Cedex	Desautel SAS Parc d'Entreprises BP 9 F-01121 Montluel (Cedex)
Dow Deutschland Anlagegesellschaft mbH Buettzflethersand D-21683 Stade	DuPont de Nemours (Nederland) BV Baanhoekweg 22 3313 LA Dordrecht Nederland
Dyneon GmbH & Co KG Werk Gendorf D-84504 Burgkirchen	Empor d.o.o. Leskoškova 9a SLO-1000 Ljubljana
Etis d.o.o. Trzaska 333 SLO-1000 Ljubljana	Eurobrom BV Fosfaatweg 48 1013 BM Amsterdam Nederland
Freolitus Centrine g. 1D Ramučiai, Kauno r. LT-54464 Lithuania	Fenner Dunlop Oliemolenstraat 2 9203 ZN Drachten Nederland

Fujifilm Electronic Materials (Europe) NV Keetberglaan 1A Haven 1061 B-2070 Zwijndrecht	G.A.L. Cycle-Air Ltd 3, Sinopis Str., Strovolos 2835 Nicosia Cyprus
Galco SA Avenue Carton de Wiart 79 B-1090 Brussels	Harp International Ltd. Gellihirion Industrial Estate Rhondda Cynon Taff Pontypridd CF37 5SX United Kingdom
Honeywell Fluorine Products Europe BV Laarderhoogtweg 18, 1101 EA Amsterdam Nederland	Hovione Farmaciencia SA Sete Casas P-2674-506 Loures
Ineos Fluor Ltd PO Box 13, The Heath Runcorn, Cheshire WA7 4QX United Kingdom	Laboratorios Miret SA (Lamirsa) Geminis 4 E-08228 Terrassa (Barcelona)
Linde Gaz Polska Sp. z o.o. al. Jana Pawła II 41 a PL-31-864 Kraków	Matero Ltd PO Box 51744 3508 Limassol Cyprus
Mebrom NV Assenedestraat 4 B-9940 Rieme Ertvelde	Poż-Pliszka Sp. z o.o. ul. Szczecińska 45 PL-80-392 Gdańsk
PUPH SOLFUM Sp. z o.o. ul. Ziemiańska 21 PL-95-070 Rąbień AB	Refrigerant Products Ltd. Banyard Road Portbury West Bristol BS20 7XH United Kingdom
Sigma Aldrich Company The Old Brickyard, New Road Gillingham SP8 4XT United Kingdom	Sigma Aldrich Logistik GmbH Riedstraße 2 D-89555 Steinheim
SJB Energy Trading BV Slagveld 15 3230 AG Brielle Nederland	Solquimia Iberia C/Mexico n° 3 E-50196 La Muela (Zaragoza)
Solvay Fluor GmbH Hans-Böckler-Allee 20 D-30173 Hannover	Solvay Organics GmbH Hans-Böckler-Allee 20 D-30173 Hannover
Solvay Solexis SpA Viale Lombardia 20 I-20021 Bollate (MI)	Syngenta Crop Protection Surrey Research Park 30 Priestly Road, Guildford Surrey GU2 7YH United Kingdom
Tazzetti Fluids SRL Corso Europa n. 600/a I-10070 Volpiano (TO)	Vrec-Co Import-Export Kft. Kossuth u. 12 HU-6763 Szatymaz
Wigmors ul. Irysowa 5 PL-51-117 Wrocław	Wilhelmsen Maritime Service AS Wilhelmbarentstraat 50, 3165 AB Rotterdam/Albrandswaard Nederland

Zakłady Azotowe w Tarnowie-Mościcach
ul. Kwiatkowskiego 8
PL-33-101 Tarnów

Zephyr Kereskedelmi és Szolgáltató Kft.
6000 Kecskemét
Tatár sor 18.
Hungary

Done at Brussels, 30 April 2008.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX I

GROUPS I AND II

Import quotas for chlorofluorocarbons 11, 12, 113, 114 and 115 and other fully halogenated chlorofluorocarbons allocated to importers in accordance with Regulation (EC) No 2037/2000 for feedstock uses and for destruction during the period 1 January to 31 December 2008.

Avantec SA (FR)
Ineos Fluor Ltd (UK)
Honeywell Fluorine Products Europe (NL)
Solvay Fluor GmbH (DE)
Solvay Solexis SpA (IT)
Syngenta Crop Protection (UK)
Tazzetti Fluids SRL (IT)
Wilhelmsen Maritime Service AS (NL)

ANNEX II

GROUP III

Import quotas for halons allocated to importers in accordance with Regulation (EC) No 2037/2000 for critical uses and for destruction during the period 1 January to 31 December 2008.

Avantec SA (FR)
BASF SE (DE)
Desautel SAS (FR)
Poz-Pliszka (PL)
Wilhelmsen Maritime Service AS (NL)

ANNEX III

GROUP IV

Import quotas for carbon tetrachloride allocated to importers in accordance with Regulation (EC) No 2037/2000 for feedstock uses and for destruction for the period 1 January to 31 December 2008.

Dow Deutschland (DE)
Fenner Dunlop (NL)

ANNEX IV

GROUP V

Import quotas for 1,1,1-trichloroethane allocated to importers in accordance with Regulation (EC) No 2037/2000 for feedstock uses and for destruction for the period 1 January to 31 December 2008.

Arkema SA (FR)
Fujifilm Electronic Materials Europe (BE)

ANNEX V

GROUP VI

Import quotas for methyl bromide allocated to importers in accordance with Regulation (EC) No 2037/2000 for quarantine and pre-shipment applications, for feedstock uses and for destruction for the period 1 January to 31 December 2008.

AT-KARLOVO (BG)
Agropest Sp. z o.o. (PL)
Albemarle Chemicals (FR)
Albemarle Europe (BE)
Bang & Bonsomer (LV)
Bromotirrena SRL (IT)
Eurobrom BV (NL)
Mebrom NV (BE)
PUPH SOLFUM Sp. z o.o (PL)
Sigma Aldrich Logistik (DE)
Zephyr Kereskedelmi és Szolgáltató Kft. (HU)

ANNEX VI

GROUP VII

Import quotas for hydrobromofluorocarbons allocated to importers in accordance with Regulation (EC) No 2037/2000 for feedstock uses for the period 1 January to 31 December 2008.

Hovione Farmaciencia SA (PT)

ANNEX VII

GROUP VIII

Import quotas for hydrochlorofluorocarbons allocated to producers and importers in accordance with Regulation (EC) No 2037/2000 and in accordance with the provisions of Commission Decision 195/2007/EC and for feedstock uses, process agents, for reclamation, for destruction and other applications allowed under Article 5 of Regulation (EC) No 2037/2000 for the period 1 January to 31 December 2008.

Producer

Arkema SA (FR) DuPont de Nemours (Nederland) BV (NL) Honeywell Fluorine Products Europe BV (NL) Ineos Fluor Ltd (UK) Solvay Fluor GmbH (DE) Solvay Organics GmbH (DE) Solvay Solexis SpA (IT)
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Importer

Alcobre SA (ES) Avantec SA (FR) Bay Systems Iberia (ES) Blye Engineering Co Ltd (MT) Calorie Fluor SA (FR) Dyneon (DE) Empor d.o.o. (SI) Etis d.o.o. (SI) Freolitus (LT) Galco SA (BE) G.AL. Cycle Air Ltd (CY) Harp International Ltd (UK)	Linde Gaz Polska Sp. z o.o. (PL) Matero Ltd (CY) Mebrom NV (BE) Refrigerant Products Ltd (UK) SJB Energy Trading BV (NL) Sigma Aldrich Company (UK) Solquimia Iberia, SL (ES) Tazzetti Fluids SRL (IT) Vrec-Co Export-Import Kft. (HU) Wigmors (PL) Wilhelmsen Maritime Service AS (NL) Zakady Azotowe (PL)
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*ANNEX VIII***GROUP IX**

Import quotas for bromochloromethane allocated to importers in accordance with Regulation (EC) No 2037/2000 for feedstock uses during the period 1 January to 31 December 2008.

Albemarle Europe (BE)
Eurobrom BV (NL)
Laboratorios Miret SA (LAMIRSA) (ES)
Sigma Aldrich Logistik GmbH (DE)

ANNEX IX

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

COMMISSION DECISION

of 21 May 2008

on the harmonisation of the 3 400-3 800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community*(notified under document number C(2008) 1873)***(Text with EEA relevance)**

(2008/411/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

communications service in one Member State could also gain access to equivalent services in any other Member State.

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽¹⁾, and in particular Article 4(3) thereof,

Whereas:

(1) The Commission has supported a more flexible use of spectrum in its Communication on 'Rapid access to spectrum for wireless electronic communications services through more flexibility' ⁽²⁾, which, *inter alia*, addresses the 3 400-3 800 MHz band. Technological neutrality and service neutrality have been underlined by Member States in the Radio Spectrum Policy Group (RSPG) opinion on Wireless Access Policy for Electronic Communications Services (WAPECS) of 23 November 2005 as important policy goals to achieve a more flexible use of spectrum. Moreover, according to this opinion, these policy goals should not be introduced abruptly, but in a gradual manner to avoid disruption of the market.

(2) The designation of the 3 400-3 800 MHz band for fixed, nomadic and mobile applications is an important element addressing the convergence of the mobile, fixed and broadcasting sectors and reflecting technical innovation. The services provided in this frequency band should mainly target end-user access to broadband communications.

(3) It is expected that the wireless broadband electronic communications services for which the 3 400-3 800 MHz band is to be designated will to a large extent be pan-European in the sense that users of such electronic

(4) Pursuant to Article 4(2) of Decision No 676/2002/EC, the Commission gave a mandate dated 4 January 2006 to the European Conference of Postal and Telecommunications Administrations (hereinafter the CEPT) to identify the conditions relating to the provision of harmonised radio frequency bands in the EU for Broadband Wireless Access (BWA) applications.

(5) In response to that Mandate, the CEPT issued a report (CEPT Report 15) on BWA, which concludes that the deployment of fixed, nomadic and mobile networks is technically feasible within the 3 400-3 800 MHz frequency band under the technical conditions described in the Electronic Communications Committee's Decision ECC/DEC/(07)02 and Recommendation ECC/REC/(04)05.

(6) The results of the Mandate to the CEPT should be made applicable in the Community and implemented by the Member States without delay given the market demand for the introduction of terrestrial electronic communication services providing broadband access in these bands. Taking into account the differences in current use and in market demand for the 3 400-3 600 MHz and 3 600-3 800 MHz sub-bands at national level a different deadline should be established for the designation and availability of the two sub-bands.

(7) The designation and making available of the 3 400-3 800 MHz band in accordance with the results of the Mandate on BWA recognises the fact that there are other existing applications within these bands and does not preclude the future use of these bands by other systems and services to which these bands are allocated in accordance with the ITU Radio Regulations (designation on a non-exclusive basis). Appropriate sharing criteria for coexistence with other systems and services in the same and adjacent bands have been developed in ECC Report 100. This report confirms, *inter alia*, that sharing with satellite services is often feasible considering the extent of their deployment in Europe, geographical separation requirements and case-by-case evaluation of actual terrain topography.

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ COM(2007) 50.

- (8) Block Edge Masks (BEM) are technical parameters that apply to the entire block of spectrum of a specific user, irrespective of the number of channels occupied by the user's chosen technology. These masks are intended to form part of the authorisation regime for spectrum usage. They cover both emissions within the block of spectrum (i.e. in-block power) as well as emissions outside the block (i.e. out-of-block emission). They are regulatory requirements aimed at managing the risk of harmful interference between neighbouring networks and are without prejudice to limits set in equipment standards under Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ⁽¹⁾ (the R&TTE Directive).
- (9) Harmonisation of technical conditions for the availability and efficient use of spectrum does not cover assignment, licensing procedures and timing, nor the decision whether to use competitive selection procedures for the assignment of radio frequencies, which will be organised by Member States in line with Community law.
- (10) Differences in the national legacy situations could result in competitive distortions. The existing regulatory framework gives Member States the tools to deal with these problems in a proportionate, non-discriminatory and objective manner, subject to Community law including Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽²⁾ and Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ⁽³⁾.
- (11) The use of the 3 400-3 800 MHz band by other existing applications in third countries can limit the introduction and use of this band by electronic communications networks in several Member States. Information on such limitations should be notified to the Commission pursuant to Articles 7 and 6(2) of Decision No 676/2002/EC and published in accordance with Article 5 of Decision No 676/2002/EC.
- (12) In order to ensure effective use of the 3 400-3 800 MHz band also in the longer term, administrations should continue with studies that may increase efficiency and innovative use, such as meshed network architectures. Such studies should be taken into account when considering a review of this Decision.
- (13) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee,
- HAS ADOPTED THIS DECISION:
- Article 1*
- This Decision aims at harmonising, without prejudice to the protection and continued operation of other existing use in this band, the conditions for the availability and efficient use of the 3 400-3 800 MHz band for terrestrial systems capable of providing electronic communications services.
- Article 2*
1. No later than six months after entry into force of this Decision Member States shall designate and make available, on a non-exclusive basis, the 3 400-3 600 MHz band for terrestrial electronic communications networks, in compliance with the parameters set out in the Annex to this Decision.
2. By 1 January 2012 Member States shall designate and subsequently make available, on a non-exclusive basis, the 3 600-3 800 MHz band for terrestrial electronic communications networks, in compliance with the parameters set out in the Annex to this Decision.
3. Member States shall ensure that networks referred to in paragraphs 1 and 2 give appropriate protection to systems in adjacent bands.
4. Member States shall not be bound to implement the obligations under this Decision in geographical areas where coordination with third countries requires a deviation from the parameters in the Annex to this Decision.
- Member States shall make all practicable efforts to solve such deviations, which they shall notify to the Commission, including the affected geographical areas, and publish the relevant information pursuant to Decision No 676/2002/EC.
- Article 3*
- Member States shall allow the use of the 3 400-3 800 MHz band in accordance with Article 2 for fixed, nomadic and mobile electronic communications networks.

⁽¹⁾ OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 108, 24.4.2002, p. 21.

⁽³⁾ OJ L 108, 24.4.2002, p. 33. Directive as amended by Regulation (EC) No 717/2007 (OJ L 171, 29.6.2007, p. 32).

Article 4

Member States shall keep the use of the 3 400-3 800 MHz band under scrutiny and report their findings to the Commission to allow regular and timely review of the Decision.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 21 May 2008.

For the Commission

Viviane REDING

Member of the Commission

ANNEX

PARAMETERS REFERRED TO IN ARTICLE 2

The following technical parameters called block edge mask (BEM) are an essential component of conditions necessary to ensure coexistence in the absence of bilateral or multilateral agreements between neighbouring networks. Less stringent technical parameters, if agreed among the operators of such networks, can also be used. Equipment operating in this band may also make use of e.i.r.p. ⁽¹⁾ limits other than those set out below provided that appropriate mitigation techniques are applied which comply with Directive 1999/5/EC and which offer at least an equivalent level of protection to that provided by these technical parameters ⁽²⁾.

A) LIMITS FOR IN-BLOCK EMISSIONS

Table 1

E.i.r.p. spectral density limits for fixed and nomadic deployments between 3 400 and 3 800 MHz

Station type	Maximum e.i.r.p. spectral density (dBm/MHz) (including tolerances and automatic transmitter power control (ATPC) range)
Central station (and repeater station downlinks)	+ 53 ⁽¹⁾
Terminal station outdoor (and repeater station uplinks)	+ 50
Terminal station (indoor)	+ 42

⁽¹⁾ The central station e.i.r.p. spectral density value given in the table is considered suitable for conventional 90 degrees sectorial antennas.

Table 2

E.i.r.p. spectral density limits for mobile deployments between 3 400 and 3 800 MHz

Station type	Maximum e.i.r.p. spectral density (dBm/MHz) (Minimum ATPC range: 15 dB)
Central station	+ 53 ⁽¹⁾
Terminal station	+ 25

⁽¹⁾ The central station e.i.r.p. spectral density value given in the table is considered suitable for conventional 90 degrees sectorial antennas.

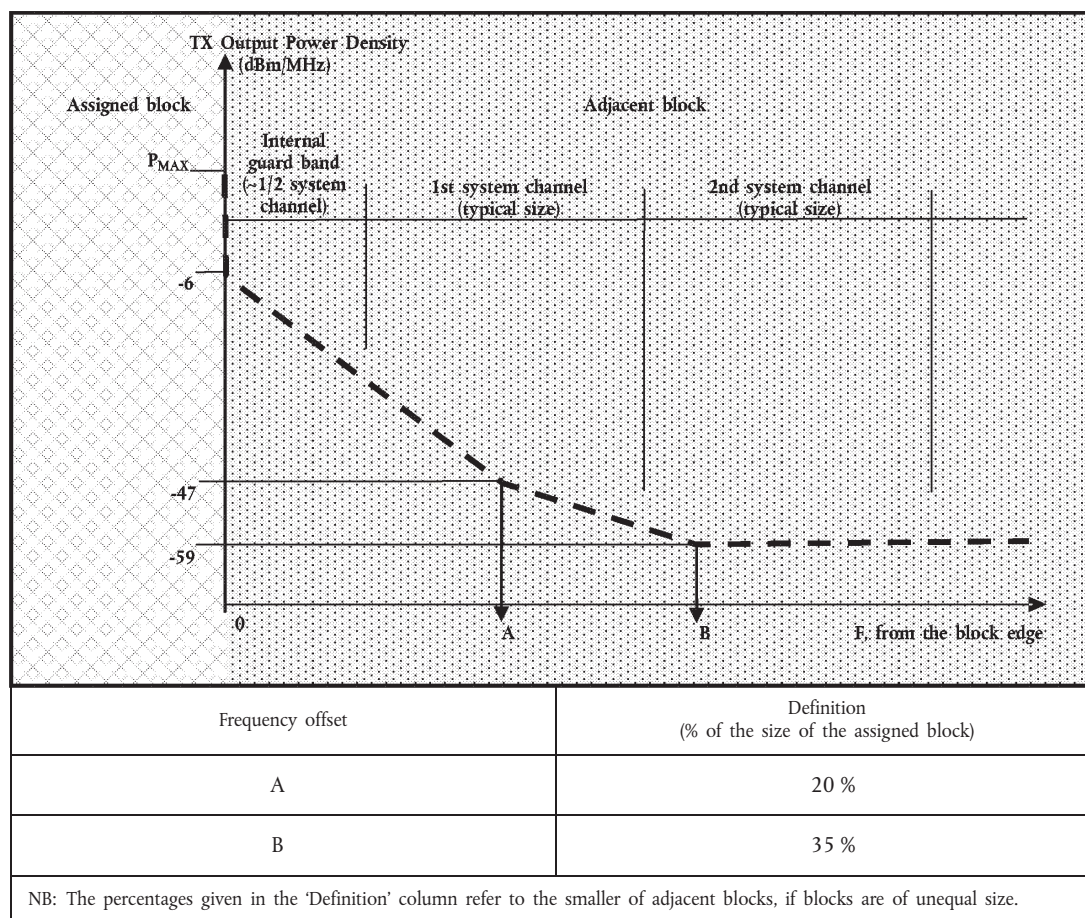
⁽¹⁾ Equivalent isotropically radiated power.

⁽²⁾ The generic technical conditions applicable to fixed and nomadic networks are described in Harmonised Standards EN 302 326-2 and EN 302 326-3, which also include definitions for a central station and a terminal station. The term central station may be considered equivalent to the term base station in the context of mobile cellular networks.

B) LIMITS FOR OUT-OF-BLOCK EMISSIONS (BLOCK EDGE MASK FOR CENTRAL STATIONS)

Figure

Central station out-of-block emissions



Table

Tabular description of central station block edge mask

Frequency offset	Central station transmitter output power density limits (dBm/MHz)
In-band (within assigned block)	See Tables 1 and 2
$\Delta F = 0$	- 6
$0 < \Delta F < A$	$- 6 - 41 \cdot (\Delta F / A)$
A	- 47
$A < \Delta F < B$	$- 47 - 12 \cdot ((\Delta F - A) / (B - A))$
$\Delta F \geq B$	- 59

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

POLITICAL AND SECURITY COMMITTEE DECISION CHAD/3/2008

of 28 May 2008

amending Political and Security Committee Decision CHAD/1/2008 on the acceptance of third States' contributions to the European Union military operation in the Republic of Chad and in the Central African Republic and Political and Security Committee Decision CHAD/2/2008 on the setting-up of the Committee of Contributors for the European Union military operation in the Republic of Chad and in the Central African Republic

(2008/412/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 25 thereof,

Having regard to Council Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic ⁽¹⁾ (Operation EUFOR Tchad/RCA), and in particular Article 10(2) thereof,

Having regard to Political and Security Committee Decision CHAD/1/2008 of 13 February 2008 on the acceptance of third States' contributions to the European Union military operation in Chad and in the Central African Republic ⁽²⁾ and to Political and Security Committee Decision CHAD/2/2008 on the setting-up of the Committee of Contributors for the European Union military operation in the Republic of Chad and in the Central African Republic ⁽³⁾,

Whereas:

(1) Following the recommendations on the contribution from the Russian Federation by the EU Operation Commander and the European Union Military Committee, the contribution from the Russian Federation should be accepted.

(2) In accordance with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on

European Union and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications,

HAS DECIDED AS FOLLOWS:

Article 1

Article 1 of Political and Security Committee Decision CHAD/1/2008 of 13 February 2008 shall be replaced by the following:

'Article 1

Third States' contributions

Following the Force Generation Conferences and further consultations, the contributions from the Republic of Albania and the Russian Federation shall be accepted for the EU military operation in the Republic of Chad and in the Central African Republic.'

Article 2

The Annex to Political and Security Committee Decision CHAD/2/2008 of 18 March 2008 shall be replaced by the following:

'ANNEX

List of third States referred to in Article 2(1)

— the Republic of Albania,

— the Russian Federation.'

⁽¹⁾ OJ L 279, 23.10.2007, p. 21.

⁽²⁾ OJ L 56, 29.2.2008, p. 64.

⁽³⁾ OJ L 107, 17.4.2008, p. 60.

*Article 3***Entry into force**

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

Done at Brussels, 28 May 2008.

For the Political and Security Committee

The Chairperson

M. IPAVIC
