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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1193/2008

of 1 December 2008

**imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed
on imports of citric acid originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 4 September 2007, the Commission published a notice⁽²⁾ initiating an anti-dumping proceeding on imports into the Community of citric acid originating in the People's Republic of China (the PRC). On 3 June 2008, the Commission, by Regulation (EC) No 488/2008⁽³⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of citric acid originating in the PRC.

(2) It is noted that the proceeding was initiated following a complaint lodged by the European Chemical Industry Council (CEFIC) (the complainant) on behalf of a producer representing a major proportion of the total Community production of citric acid, in this case more than 25 %.

(3) As set out in recital 14 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2006 to 30 June 2007 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2004 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

(4) Following the imposition of provisional anti-dumping duties on imports of citric acid originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission intensified the investigation with regard to Community interest aspects. In this connection, one additional verification visit was carried out after the imposition of the provisional measures at the premises of the following user of citric acid in the European Union:

— Reckitt-Benckiser Corporate Services Ltd, Slough, UK and Nowy Dwor, Poland.

In addition, as explained in detail in recital 11, verification visits were carried out at the premises of the following exporting producers:

— Laiwu Taihe Biochemistry Co. Ltd (Laiwu Taihe), Laiwu City, Shandong Province,

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 205, 4.9.2007, p. 14.

⁽³⁾ OJ L 143, 3.6.2008, p. 13.

— Weifang Ensign Industry Co. Ltd (Weifang Ensign),
Changle City, Shandong Province.

- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of citric acid originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (7) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

C. INITIATION OF THE CASE, PRODUCT CONCERNED AND LIKE PRODUCT

- (8) One exporting producer reiterated the claim that the public version of the complaint did not contain any *prima facie* evidence of material injury to the Community industry, preventing the interested parties from exercising their rights of defence. According to this exporting producer, the case should not have been initiated due to lack of sufficient evidence included in the complaint. In this respect, it should be noted that the public version of the complaint contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding. Therefore, this argument should be rejected.
- (9) Some interested parties argued that the product concerned, as set out in recital 16 of the provisional Regulation, and the like product are not alike as stated in recital 18 of the provisional Regulation since they would not share the same physical and chemical characteristics and are not used for the same purposes. According to those interested parties, the statement in recital 18 of the provisional Regulation fails to address the arguments brought forward during the investigation and is in contradiction with the adjustment made by the Commission in the undercutting calculations for de-caking certain quantities of the product concerned after arrival in the EU. It is firstly noted that the investigation has shown that the product concerned and the like product are both used in the same basic applications, i.e. mainly for the household cleaning (auto dish-wash products, detergents, water softeners) and as additives in food and beverages, but also in the personal care/cosmetics area. The claim that the product concerned would

in fact not be used by certain users in the detergents, food and beverages industry because of its smell and/or colour was not further substantiated by evidence. The investigation has shown that only in one niche application, i.e. the pharmaceutical area, only the European citric acid was indeed used because of the cost of the special compliance test which is required. Since the pharmaceutical area represents only a small portion of the users' total business, running the compliance test was not considered as economically justifiable business decision. Secondly, there is no contradiction between the adjustment made in the undercutting calculation for de-caking parts of the product concerned after importation, as mentioned in recital 64 of the provisional Regulation, and the statement that both products are alike as it is sufficient that the product concerned and the like product share the same basic chemical, physical and technical characteristics and have the same basic uses, which is the case. It is further noted that the caking as such does not happen because of specific characteristics of the Chinese product, but happens because every citric acid, regardless of its origin, due to its chemical composition shows a tendency to cake when being exposed to humidity and changes of temperature. As naturally only the product concerned is exposed over a longer period of time to humidity and changes of temperature during the shipping time to the EU, the problem mainly occurs for the product concerned, but not exclusively. Therefore, the adjustment simply takes account of the fact that the de-caking incurs additional costs mainly for the product concerned as the quantities that are affected by the caking either are de-caked (by breaking and sieving or liquefying the caked product) before further selling or are sold with a rebate. Thus, this claim should be rejected.

- (10) In view of the above, it is definitively concluded that the product concerned and citric acid produced and sold in the analogue country, Canada, as well as the one produced and sold by the Community industry on the Community market are alike, within the meaning of Article 1(4) of the basic Regulation and recitals 15 to 17 of the provisional Regulation are hereby definitively confirmed.

D. DUMPING

1. General

- (11) At the provisional stage of the investigation the market economy treatment (MET)/individual treatment (IT) claims of all known exporting producers were investigated. Only a number of the exporting producers had been included in the sample and one company was granted individual examination. In their comments to the provisional Regulation, a number of parties have claimed that this approach has some shortcomings. The matter was therefore reconsidered and, in view also of the fact that it became possible, given the circumstances of the case such as for example the available resources, to increase the number of companies that could reasonably be investigated, it was finally decided that sampling

should not be applied. Given that every cooperating company has been granted at least IT at the provisional stage, an individual duty rate should be established for each of them. As a consequence, three companies not selected in the sample or individually examined at the provisional stage were requested to submit questionnaire replies. However, only two of these companies submitted a questionnaire reply. The third company did not submit a questionnaire reply and was not investigated further.

2. Market economy treatment (MET)

- (12) The company referred to in recital 27 of the provisional Regulation insisted that the subsidy mentioned in that recital was not for the purposes of the product concerned and that the non-payment of rents was justified by private inter-group arrangements for the setting off of profits against rent due. However, in the absence of any new elements or information concerning the issue, and in view of the distorting effects on the accounting of the practices mentioned concerning rent, the conclusions in respect of this company remain unchanged and are hereby definitively confirmed.
- (13) Further to provisional disclosure one group of companies referred to in recital 25 of the provisional Regulation claimed that it had received loans on the basis of a detailed financial analysis of one of the banks and after having been granted a high credit rating. However, the fact that a bank formally carried out an analysis and granted a high credit rating does not eliminate the fact that the company in question gave guarantees to other companies despite having mortgaged the majority of its non-current assets, nor the fact that the loans granted to the company in question were granted by a bank found to be under State influence. Therefore, the conclusions in respect of this company remain unchanged and are hereby definitively confirmed.
- (14) One of the companies referred to in recital 26 of the provisional Regulation insisted that it was penalised for the fact that its majority shareholder had acquired land use rights for a good price and then correctly had them revalued according to market price developments. However, the enormous difference between the acquisition price and later evaluations (1 000-2 000 %) could not be explained. Therefore, in the absence of any new elements or information concerning the acquisition and subsequent revaluation of the land use rights and in view of the advantages that the company received by

obtaining assets for prices significantly below market value, the conclusions in respect of this company remain unchanged and are hereby definitively confirmed.

- (15) In the absence of any other comments concerning MET, recitals 25 to 30 of the provisional Regulation are hereby definitively confirmed.

3. Individual treatment (IT)

- (16) Five companies or groups of companies that were not granted MET fulfilled all the criteria set out in Article 9(5) of the basic Regulation and were granted IT. One company which had been granted provisionally IT, failed to further cooperate and, thus, no IT was finally granted (see recitals 11 and 34).

4. Normal value

- (17) As explained in recital 11, following comments to the provisional Regulation, it was decided that sampling should not be applied and the three companies not selected in the sample or individually examined at the provisional stage were requested to submit questionnaire replies. Normal value was established for one of these companies (Laiwu Taihe), which was granted MET and which submitted a questionnaire reply.

4.1. Companies or groups of companies which could be granted MET

- (18) Since the sole company which could be granted MET and which was examined individually at the provisional stage of the investigation did not submit any comments on normal value, the findings in recitals 35 to 39 of the provisional Regulation are hereby definitively confirmed.
- (19) As for the only other company which was granted MET (Laiwu Taihe) and which was further investigated for the reasons explained in recital 11, it was first verified whether the company's total domestic sales of the like product were representative within the meaning of Article 2(2) of the basic Regulation. Domestic sales of the product concerned were slightly below 5 % of the exports of the like product to the Community. However, such lower ratio is nonetheless of sufficient magnitude to provide for a proper comparison and the domestic prices of the like product are considered representative given also the overall domestic sales of the company in question. Therefore, they were used to determine normal value.

- (20) For each product type sold for export to the Community by Laiwu Taihe, it was established whether a directly comparable product type was sold on the domestic market. Product types were considered to be directly comparable when they were of the same product type (defined by the chemical composition), comparable granulation and packing. It was established that for only one product type sold for export to the Community a directly comparable product type was sold on the domestic market.
- (21) It was subsequently examined whether the domestic sales of this product type could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was established that there were profitable domestic sales of this product type to independent customers during the IP, and therefore in the ordinary course of trade.
- (22) Since the volume of profitable sales of this product type represented 80 % or less of the total sales volume of that type, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.
- (23) As domestic prices of Laiwu Taihe could not be used in order to establish normal value for the other product types, normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (24) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs (SG & A) and for profits have been based, pursuant to Article 2(6) first introductory subparagraph of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by Laiwu Taihe.

4.2. Companies or groups of companies which could not be granted MET

- (25) In their comments to the provisional Regulation, some parties claimed that Canada would not be an appropriate analogue country given the fact that the United States of America (US) have recently initiated an anti-dumping proceeding against citric acid originating, *inter alia*, in Canada. Thailand was therefore again brought forward as an alternative analogue country. However, the analysis showed that while anti-dumping measures on citric acid originating in Canada were not in force

during the IP, anti-dumping measures were in force during the IP on citric acid originating in Thailand. The latter measures were imposed by India and consisted in substantial anti-dumping duties of USD 374,36/tonne, which only expired in August 2007, i.e. two months after the end of the IP. Therefore, also considering the arguments already mentioned in recitals 42 and 43 of the provisional Regulation and the fact that the US investigation on citric acid originating in Canada was still ongoing at the moment of finalising the Community investigation, it is concluded that there is no reason why Thailand should be preferred to Canada as an analogue country.

- (26) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers mentioned in recital 11 above that were not granted MET had to be established on the basis of the prices or constructed value in the analogue country.

5. Export price

- (27) In the case of the two companies which were further investigated for the reasons explained in recital 11 above, the export price was established following the same methodology explained in recitals 45 to 47 of the provisional Regulation.
- (28) Since no companies submitted any comments on export prices, the findings contained in recitals 45 to 47 of the provisional Regulation are hereby definitively confirmed.

6. Comparison

- (29) In its comments to the provisional Regulation and to the definitive disclosure, one group of companies contested the deduction of a notional commission for sales via a trader in the PRC, given that the trader was an integral part of the group. It was, however, established that the trading company did indeed perform the function of an independent trader, and that the economic result of the relationship of the two companies is that of a principal and an agent. It was established that the trader was not only trading products produced by related companies, but also products produced by independent producers. Moreover, the company in question did also sell directly to non-related customers. Therefore, the claim was rejected, and pursuant to Article 2(10)(i) of the basic Regulation, an allowance based on SG & A and profit of unrelated importers was deducted.

(30) In its comments to the provisional Regulation, one exporting producer claimed that cost for currency conversion should not be taken into account, as pursuant to Article 2(10)(j) of the basic Regulation, exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period. This claim could be accepted, and the dumping margin of the exporting producer was adjusted accordingly.

(31) In the provisional Regulation, a deduction to the export price was made in respect of non-refundable VAT charged on export sales, pursuant to Article 2(10)(b) of the basic Regulation. One exporting producer claimed in its comments to the provisional Regulation that no such adjustment to the export price should have been made, as Article 2(10)(b) of the basic Regulation would only relate to normal value. It is acknowledged that the adjustment provided for under Article 2(10)(b) of the basic Regulation only refers to the calculation of the normal value. In fact the above mentioned deduction to the export price is due and should be done pursuant to Article 2(10)(k) of the basic Regulation. While examining this claim, it was found that a clerical error had been made in calculating the adjustment for the company in question, and that the same error had been made in respect of other companies. These inaccuracies were rectified and have led to slight downward corrections in the dumping margins previously calculated for these companies.

(32) In examining the claim referred to in recital 31, it was found that the necessary adjustment had not been made in the case of one company which was granted individual treatment. This has been rectified and results in a slight increase in the dumping margin for that company.

(33) In the absence of any other comments in respect of comparison, and apart from the changes indicated in recitals 30, 31 and 32 above, recitals 48 to 50 of the provisional Regulation are hereby definitively confirmed.

7. Dumping margin

(34) In the case of the two companies which were further investigated for the reasons explained in recital 11 above, the dumping margin was established by following the same methodology explained in recital 51 of the provisional Regulation. In the case of the one company which did not submit a questionnaire

reply and was not further investigated, as explained in recital 11 above, this company is considered as non-cooperating and findings are based on facts available in accordance with Article 18(1) of the basic Regulation. In this case, considering the high level of cooperation mentioned in recital 19 of the provisional Regulation, the company has been attributed the highest dumping margin found in respect of all other companies.

(35) The dumping margins of all the companies which had already been individually investigated at the provisional stage were recalculated, to correct the inaccuracies referred to in recitals 30, 31 and 32. This recalculation has led to slight corrections of the dumping margins.

(36) In the absence of any new element, the conclusions in recital 53 of the provisional Regulation, which relates to the level of cooperation, are hereby definitively confirmed.

(37) On this basis, the definitive dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Company	Definitive dumping margin (%)
Anhui BBKA Biochemical Co. Ltd	58,1
DSM Citric Acid (Wuxi) Ltd	19,1
RZBC Co. Ltd	59,8
RZBC (Juxian) Co. Ltd	59,8
TTCA Co. Ltd	57,1
Yixing Union Biochemical Co. Ltd	55,7
Laiwu Taihe Biochemistry Co. Ltd	6,6
Weifang Ensign Industry Co. Ltd	53,5
All other companies	59,8

E. INJURY

1. Community production and Community industry

(38) Some interested parties claimed that SA Citrique Belge NV ceased production after the IP and was only trading the product concerned imported from its related company in China (DSM Citric Acid (Wuxi) Ltd) arguing, thus, that SA Citrique Belge NV should not constitute part of the Community industry. This claim was however not substantiated by any evidence and from the data submitted by SA Citrique Belge NV, it follows that the company continued production.

- (39) One interested party also complained that in recital 56 of the provisional Regulation only a range of imports of SA Citrique Belge NV from its related Chinese producer during the IP was given. This party claimed that the trend of all imports of the Community industry from related and unrelated companies should be given for the whole period considered since imports constitute an important factor for the assessment of community production and consequently for the conclusion of the existence of injury. The investigation has indeed shown that during the whole period considered the imports of the Community industry were insignificant, i.e. between 1 % and 6 % of production — this range is given for confidentiality reasons. Therefore the argument should be rejected and recitals 55 to 58 of the provisional Regulation are hereby definitively confirmed.

2. Community consumption

- (40) As no new and substantiated information was received with regard to Community consumption recitals 59 and 60 of the provisional Regulation are hereby definitively confirmed.

3. Imports from the country concerned

(a) *Volume and market share of the imports concerned, import prices*

- (41) With regard to import volumes, market share and prices, no new and substantiated information was found or received, therefore, and in the absence of any claims or arguments from any interested parties relating to volume and prices of the imports concerned, recitals 61 to 63 of the provisional Regulation are hereby definitively confirmed.

(b) *Price undercutting*

- (42) During the provisional stage of the investigation, in order to compare the product concerned and the citric acid produced by the Community industry at the same level of trade, an adjustment for the markup (including SG & A) of unrelated importers was made in the price undercutting calculation and, additionally, an adjustment was made for special treatment costs incurred by importers in the Community to de-cake certain volumes of the product concerned before further selling. However, due to a minor revision of the data concerning the level of trade adjustment, the weighted average price undercutting margin which was calculated and found to be 17,42 % has been revised downwards to 16,54 %.
- (43) After final disclosure, one Community producer claimed that the level of trade adjustments should also be made in relation to sales of the Community industry, i.e. that

its sales made via traders should be taken into account. In this respect it should be noted that a level of trade adjustment was made indeed for the Community industry's sales prices before comparing them with the import prices of the product concerned.

- (44) The same Community producer also requested that the adjustment for special treatment costs to de-cake certain volumes of the product concerned should also apply to the like product. However, this request was not further substantiated with data concerning the specific costs incurred by this Community producer and, thus, it could not be accepted. In view of the above, recital 64 of the provisional Regulation is hereby definitively confirmed.

4. Situation of the Community industry

(a) *General*

- (45) Some interested parties claimed that the Commission had not analysed thoroughly all injury indicators and thus, no proper and complete link between the situation of the Community industry and the Chinese imports was established. In particular, it was claimed that there had been no assessment of the positive developments of certain injury indicators. It should be noted that even though some injury indicators show a positive development which was acknowledged in recital 79 of the provisional Regulation, the overall picture points to a deterioration of the situation of the Community industry. The moderate improvement of production, production capacity, capacity utilisation, sales volume and unit price levels as well as the increased cost efficiency described in recital 76 of the provisional Regulation reflect the efforts of the Community producers to remain competitive over the period considered and to benefit from the increased consumption. However, as can be seen in recital 68 of the provisional Regulation, despite these efforts the Community industry lost 5 percentage points (i.e. the market share decreased from 54 % to 49 %) of its market share which was mostly taken by Chinese low-priced, dumped imports. As an aggravating factor, it is also mentioned that the Community industry could have expected to gain some of the market share held by those three Community producers of citric acid which closed down as of 2004. But on the contrary, the Community industry could neither take over customers from the three closed EC producers, nor benefit from the increased consumption. This significant loss of market share, coupled with the clearly deteriorating financial indicators, i.e. profitability, return on investment and cash flow, show that the overall situation of the Community industry deteriorated over the period considered and appeared to be at its worst during the IP. In addition, stocks' decrease cannot be assessed as a positive development of the Community industry's situation in this case since it cannot be considered as a meaningful indicator, given the nature of the product which does not allow long-term storage.

(b) *Investments and ability to raise capital*

- (46) One interested party argued that investments are not constant in this field but follow certain investments cycles. While even under normal market conditions it can certainly not be expected that important investments would be made every year, the fact that over the whole period neither of the two remaining Community producers carried out any important investment is considered as a sign that the low profitability (which turned into loss as of 2006) did not allow any important investment to be made. It is hence considered that investment is a particularly meaningful injury indicator in this case.
- (47) Finally, the Community producers' ability to raise capital should be considered. In this regard, the investigation has shown that both Community producers, due to the deteriorating citric acid business environment, had difficulties to raise capital.
- (48) One interested party claimed that the complainant was at least able to raise capital for other products since it announced in February 2007 the construction of a new glucose plant. In this respect it is noted that the scope of the investigation is limited to the ability to raise capital in relation to the product in question, i.e. citric acid, which appeared to have been negatively affected by the financial situation of the Community industry.
- (49) Based on the above, the conclusion set out in recital 72 of the provisional Regulation on the Community industry's investment is hereby definitively confirmed.

(c) *Profitability and return on investment*

- (50) One interested party claimed that the findings set out in recital 73 of the provisional Regulation could not be reconciled with the accounts of both Community producers, in particular none of the accounts would show the mentioned extraordinary restructuring cost. In this respect, it is noted that throughout the period considered, the extraordinary result of one Community producer has to a large extent been affected by restructuring efforts, which was presented in the accounts either as a cost or a revenue, depending on whether it concerns the addition or the release of a provision and by royalties paid to the mother company in Switzerland. Therefore, it

was deemed more appropriate to use the operating result as a basis for the injury analysis rather than the net profit.

- (51) The same party claimed that the fine for anti-competitive behaviour that was imposed in 2005 on both mother companies of the Community producers could have influenced the profit situation of the Community industry. Any effects stemming from the fine (both the adding and releasing of provisions) have been recorded under extraordinary result. As mentioned in recital 50, the operating result has been used as an injury indicator in this proceeding. Therefore, the fine that was imposed on the Community producers, could not have affected the profit situation used in the injury analysis. In addition, it should be noted that Community industry was loss making as of 2006 until the end of IP. Therefore, the trends as presented in the provisional Regulation are hereby definitively confirmed.
- (52) Several interested parties pointed to some inconsistency between the trend concerning profitability and the return on investment. Indeed, in contrast to profitability which was established by expressing the operating profit on sales of the like product to unrelated customers as a percentage of the turnover of these sales, return on investment was calculated as the net profit in percentage of net book value of investments. In order to be consistent in the calculation of all injury indicators, the calculation of return on investment was revised, based on the operating profit in percentage of the net book value of investments. The revised figures are as follows:

	2004	2005	2006	IP
Return on total investments (index)	100	148	- 147	- 207

- (53) The corrected figures however follow the same trend and therefore do not alter the conclusion drawn in recital 74 of the provisional Regulation, which is hereby definitively confirmed.

5. Conclusion on injury

- (54) In the absence of any new and substantiated information or argument concerning production, sales volume, market shares, unit sales price, stocks, cash flow, employment, productivity, wages and magnitude of the

dumping margin, the findings in recitals 66 to 71, 73 and 75 to 78 of the provisional Regulation are hereby definitively confirmed. In addition, the corrected figures given for return on investment leave unaffected the trends as set out in recitals 73 to 74 of the provisional Regulation. Therefore, considering the clearly deteriorating financial indicators, such as profitability, return on investment and cash flow coupled with the significant loss of market share, the conclusion laid down in recital 81 of the provisional Regulation that the Community industry suffered material injury is hereby definitively confirmed.

F. CAUSATION

1. Effect of the dumped imports

- (55) As mentioned in recital 42, it is definitively concluded that during the IP, the average prices of imports from the PRC undercut the average Community industry prices. Following a minor revision in the calculations, the average undercutting margin was found to be 16,54 %. This slight downwards revision cannot affect the conclusions on the effect of the dumped imports set out in recitals 83 to 85 of the provisional Regulation, which are hereby definitively confirmed.

2. Effect of other factors

(a) Self-inflicted injury

- (56) Some importers claimed that the Community industry self-inflicted the injury as it followed a 'price-over-volume' strategy, i.e. to serve only the high-end segment of the market, abstaining from producing and selling the low-end product. According to the same importers the consequence was that the Community industry could not benefit from the increased demand of low-end citric acid, and thereby lost market share and deteriorated its financial performance. The investigation, however, showed that both the product concerned and the like product are basically used in the same applications and compete mainly in the same segments (see recital 9), with the exception of one niche market representing a small portion of the European citric acid market share, which was supplied so far solely by the Community industry. The investigation has indeed established that the Community industry was present in the low-end segment of the market. Therefore, this argument should be rejected.

- (57) Moreover, some interested parties considered the lack of any investment during the period considered and in particular during the years when the Community industry achieved better results, i.e. 2004-2005, as a

factor which contributed to the market share loss and consequently to the deterioration of its situation. The investigation showed the Community industry did not operate at full capacity and that its capacity utilisation was stable throughout the period considered. Therefore, some production increase would have been possible in case of stronger demand without further investments. Moreover, given that the profitability of the Community industry was insufficient, i.e. below target profit, throughout the period considered and even turned into negative, it is considered to be an economically justifiable business decision not to invest significant amounts in the production of the like product. This argument is therefore not convincing and should be rejected.

(b) Rise in the costs of raw materials, rising energy prices

- (58) Almost all interested parties reiterated their claims that any injury found would be due to the reform of the sugar market and the consequent abolition of the production refunds in 2006 and/or the rising energy prices.
- (59) One interested party claimed that in the annual report of one Community producer relating to 2007, it was stated that the raw material availability was limited due to the European sugar regime which resulted in higher cost. In this respect, it is noted that the mentioned Community producer does not use sugar as main raw material, but molasses and as explained in recital 89 of the provisional Regulation was thus never subject to production refunds. The cost increase for molasses was however not substantial, but corresponding to the increase of world market prices for sugar. As concerns the situation of the other Community producer which was described in detail in recitals 90 to 94 of the provisional Regulation, no new or substantiated information or argument was received. The overall conclusion laid down in recital 93 that the reform of the sugar market had no considerable impact on the cost situation of the Community industry is hereby definitively confirmed.
- (60) The same interested party claimed that there would indeed be a link between sugar prices and biofuel production as this was acknowledged in a study of the Commission on 'The causes of the food price crisis' ⁽¹⁾. In this respect it is noted that the Commission, as already stated in recital 98 of the provisional Regulation, had

⁽¹⁾ European Commission 'The causes of the food price crisis: sugar', 20 May 2008, http://ec.europa.eu/agriculture/analysis/perspec/foodprice/sugar_en.pdf

access to the cost data of both Community producers and was therefore in a position to analyse the concrete cost of raw materials for both Community producers concerning the production of citric acid. Any link between sugar prices and biofuel production has therefore been investigated and taken into account in assessing the impact of EU sugar market reform and the increasing biofuel production. Based on this, it could be concluded and is hereby definitively confirmed that these factors had no considerable impact on the injury found and suffered by the Community industry.

(61) In addition, it has to be stated that any cost increase concerning molasses, sugar or glucose or energy which was acknowledged in the provisional Regulation (see recitals 93 and 96 thereof) are not the source of the injury of the Community industry as in a normal market situation, the Community industry could have passed on these increased costs at least to a certain extent to its customers. However, the investigation showed the increasing presence of dumped imports which undercut the prices of the Community industry significantly. Thus, as stated in recital 84 of the provisional Regulation there was a price depression and the Community industry could only pass on a fraction of its own cost increases to its customers, which led to the deterioration of its financial situation and a further loss of market share.

(62) Finally, it has to be mentioned that the investigation has shown that the Chinese costs of production of citric acid had also increased. These increased costs were however not translated into higher sales prices, but on the contrary, unit sales prices even decreased by 6 percentage points during the period considered as shown in recital 63 of the provisional Regulation.

(63) On the basis of the above, the claims should be rejected and recitals 88 to 99 of the provisional Regulation are hereby definitively confirmed.

(c) Price cartel of Community industry

(64) Some interested parties reiterated their claims that the loss of market share for the European producers was self-inflicted because of the citric acid cartel (1991 to 1995) in which both the complainant and the other

European producer participated and which was claimed to be the reason of the boost of Chinese citric acid imports. This allegation was not further substantiated and, therefore, did not alter the conclusion drawn in recital 100 of the provisional Regulation that the big boost of the dumped imports happened several years after the cartel ceased to exist.

(65) On the basis of the above, it is definitively concluded that the consequences of the anti-competitive practices in which the Community industry took part did not contribute to the material injury suffered by the Community industry.

(d) Currency fluctuations

(66) Some interested parties reiterated their claims that the drop in prices of Chinese citric acid during the IP was largely due to the unfavourable exchange rate from the US dollar to euro, the fact that prices for citric acid are generally expressed in US dollar on world markets and the difficulty to adjust prices, which are generally negotiated annually, to the new currency situation.

(67) It is recalled that in recital 104 of the provisional Regulation, the impact of any currency fluctuation is not considered to be significant because even if the devaluation of the US dollar against the euro between 2004 and the IP, which amounted to 4,97 %, after a fine-tuning of provisional calculations, would have been fully disregarded, there would still be undercutting of over 10 %.

(68) Consequently, it is definitively confirmed that the appreciation of the euro in respect of the US dollar was not such as to break the causal link between the established injury to the Community industry and the imports concerned. The claim should, therefore, be rejected.

3. Conclusion on causation

(69) In the absence of any further new and substantiated information or argument, recitals 82 to 110 of the provisional Regulation are hereby definitively confirmed.

(70) In the light of the above, the provisional finding of existence of causal link between the material injury suffered by the Community industry and the dumped Chinese imports is hereby definitively confirmed.

G. COMMUNITY INTEREST

1. Developments after the investigation period

(71) Comments relating to the need to take into consideration certain important post-IP developments have been received both from certain Community industry producers as well as from the cooperating exporting producers and importers. It is noted that in accordance with Article 6(1) of the basic Regulation, information concerning dumping and injury relating to a period subsequent to the investigation period shall, normally, not be taken into account. However, in view of the statement made in recitals 119 and 129 of the provisional Regulation, it was exceptionally considered necessary to collect data and information related to the period after June 2007 until July 2008.

(72) Some interested parties claimed that the imposition of measures would be unnecessary as the profitability of the Community industry attained high levels post-IP due to significantly increased prices and that the market had regulated itself. During the IP, there was evidence of dumping and injury and this injury was caused to a significant degree by the price depression stemming from the dumped imports. Import statistics show an average increase of Chinese sales prices of only 12 % after the IP. Compared to the undercutting level of 16,54 % found during the IP, this increase is clearly not sufficient as it would not allow the Community industry to increase its sales price to a sustainable level without risking losing more customers in the absence of anti-dumping measures. Concerning the price level of the Community industry, it was found that the Community industry managed to increase its prices moderately as of the first quarter of 2008 which appeared to have improved the financial situation of the Community industry. These price increases are, nevertheless, in a close timely correlation with the initiation of this proceeding and it thus appears that the situation of the Community industry may have improved because of the potential anti-dumping measures on imports from the PRC. It was hence concluded that there was no self-regulation of the market, or the self-regulation was insufficient to render the imposition of measures unnecessary. The argument should be thus rejected.

2. Interest of the Community industry

(73) In the absence of any new and substantiated information or argument with regard to the interest of the Community industry, the conclusion made in recitals 112 to 115 of the provisional Regulation regarding the interest of the Community industry are hereby definitively confirmed.

3. Competition and security of supply

(74) Most interested parties reiterated their claim that the imposition of measures would significantly reduce competition in the European market and create a duopolistic market situation. It is considered, however, that in view of the strong market position that the Chinese exporting producers obtained over the last years, the imposition of measures would not drive them out of the Community market, but merely restore a level playing field allowing the Community industry and the Chinese exporting producers to compete on equal terms. Moreover, a reasonable price increase on the Community market could indeed attract more imports from other third countries with own production, such as Israel and South America which were likely less interested in exporting to a market with depressed prices.

(75) On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would have to cease its manufacturing activities for this particular business, leading to the opposite scenario, i.e. a dominant position of the Chinese imports.

(76) Most interested parties also claimed that should Chinese imports stop due to the imposition of measures the security of supply would be at stake because the Community industry cannot satisfy the demand on the EU market even if both producers would produce at 100 % of their capacity. This would be aggravated by the fact that the demand of citric acid is predicted to even increase with the effects of Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents⁽¹⁾. In this Regulation, the Commission undertakes to conduct a review regarding the use of phosphates in detergents and, based on the results, to submit a proposal for appropriate action. Following this obligation, the Commission submitted a report, but did not propose any action. However, even if phosphates would be completely banned from the detergents' industry, their main substitutes are zeolites and to a smaller extent only citric acid.

(77) Furthermore, several facts contradict the assumption that Chinese imports would indeed stop.

— Import statistics showed that the Chinese imports increased by 17 % during the twelve months following the IP, whereas after the imposition of provisional measures they remained at a substantial level, appearing sufficient to guarantee the security of supply in the EU.

⁽¹⁾ OJ L 104, 8.4.2004, p. 1.

— The investigation showed some overcapacity of some exporting producers in China which is an indication that Chinese imports in the EU market will not stop, in particular if the USA would impose measures against PRC, in the framework of the US anti-dumping investigation.

(78) In addition, the Community industry announced to take appropriate measures in order to increase its production capacity. The complainant announced to increase its production capacity significantly. According to the press release issued in July 2008, those additional capacities should be fully available as of mid 2009 with the first increase already available in January 2009. This should indeed contribute to satisfy the demand in the EU. It is further noted that the other Community producer announced in August 2008, that it would close its production site in China by the first quarter of 2009 and that it will focus on its production site in the Community.

(79) Moreover, a more attractive price level in the EU market would probably also increase imports from third countries and with those alternative sources, supply appears to be better secured as if users would only depend on Chinese citric acid. During the 12 months following the IP, imports from Israel for example have increased by 30 %.

(80) It therefore appears that the imposition of measures would not drive the Chinese exporting producers out of the market, but would rather restore a level playing field which secures alternative sources of supply.

4. Interest of unrelated importers

(81) Some interested parties claimed that due to sampling, the Commission only received the results for the largest importers in Europe, thus lacking information of the effects of duties on the overwhelming majority of small and medium sized importers. However, no party raised any objection against the selected sample and, therefore, the sample is considered to be representative for all importers.

(82) Given that citric acid, on average, constitutes only 1 % of the importers' total revenue, it is expected that the effects of an anti-dumping duty will be diluted in the companies' overall results.

(83) In the absence of any further comments from importers, the conclusions made in recitals 116 to 120 of the provisional Regulation are hereby definitively confirmed.

5. Interest of users

(84) After the provisional stage, the Commission intensified the investigation as regards the possible impact of measures on users. To this end, additional information was requested from the users and national associations and an additional verification visit was carried out at one Community user's premises.

(85) The information received confirms the provisional finding, based on users' questionnaire incomplete responses as mentioned in recitals 121 and 122 of the provisional Regulation, that the effect of citric acid in the total cost of production of the users is relatively moderate. While the share of citric acid in the users' cost of production naturally depends on the product, it was found to range generally between less than 1 % and 20 %. The additional information mentioned above has also confirmed the provisional findings that a duty at the level of the underselling margin would have a very limited effect on the cost of production of the cooperating users. After the definitive disclosure, two of the main industrial users of citric acid argued that citric acid represents a high proportion in certain of their products and, thus, the effect of the duties would be significant for them. Firstly, it should be noted that both users produce a wide range of products in which citric acid is used in different proportions. Secondly, based on the data submitted, it could not be proved that those users sold predominantly those products in which the cost of citric acid were more important. Finally, the argument was not further substantiated by any additional data. Therefore, this argument could not be accepted.

6. Conclusion on Community interest

(86) The above additional analysis concerning the interest of the importers and the users in the Community has not altered the provisional conclusions in this respect. Even if in certain cases the burden would need to be fully borne by the importer/user, any negative financial impact on the latter would in any event be not significant. On this basis, it is considered that the conclusions regarding the Community interest as set out in the provisional Regulation are not altered. In the absence of any other comments, they are therefore hereby definitively confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

(87) Several interested parties contested the profit margin level provisionally used and claimed the 9 % profit is excessive, arguing that the Community industry during the period considered never actually achieved this profit level. It is acknowledged that indeed only one Community producer achieved this profit level in the absence of dumping, i.e. in 2001, whereas the other did not. The methodology used to determine the injury elimination level was thus re-examined and it was deemed more appropriate to use as profit margin the weighted average profit margin that was achieved by both European producers in 2001, i.e. 6 %.

(88) On the basis of the above, it is concluded that the Community industry could reasonably expect to achieve a pre-tax profit margin of 6 % in the absence of dumped imports and this profit margin was used in the definitive findings.

(89) The Chinese import prices were compared, for the IP, with the non-injurious price of the like product 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 in order to reflect the profit margin, as now revised. The difference resulting from this comparison, when expressed as a percentage of the total CIF value, amounted to a range from 8,3 % to 42,7 % for each company, i.e. less than the dumping margin found, except for one company.

2. Definitive measures

(90) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In all but one case, the duty rate should accordingly be set at the level of the injury found.

(91) On the basis of the above, the definitive duties should be as follows:

Exporting producer	Proposed anti-dumping duty (%)
Anhui BBKA Biochemical Co. Ltd	35,7
DSM Citric Acid (Wuxi) Ltd	8,3
RZBC Co. Ltd	36,8
RZBC (Juxian) Co. Ltd	36,8
TTCA Co. Ltd	42,7
Yixing Union Biochemical Co. Ltd	32,6
Laiwu Taihe Biochemistry Co. Ltd	6,6
Weifang Ensign Industry Co. Ltd	33,8
All other companies	42,7

3. Form of the measures

(92) During the course of the investigation, six exporting producers in the PRC offered acceptable price undertakings in accordance with Article 8(1) of the basic Regulation.

(93) The Commission, by Decision 2008/899/EC ⁽¹⁾, accepted these undertaking offers. The Council recognises that the undertaking offers eliminate the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.

(94) To further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where the above conditions are not met the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

⁽¹⁾ See page 62 of this Official Journal.

(95) Whenever the Commission withdraws, pursuant to Article 8(9) of the basic Regulation, its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(96) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 94 and 95 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(97) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(98) For the reasons stated above, the undertakings offered by the exporting producers are therefore considered acceptable by the Commission and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(99) In the event of a breach or withdrawal of the undertakings, or in case of withdrawal of acceptance of the undertakings by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) of the basic Regulation shall automatically apply in accordance with Article 8(9) thereof.

I. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(100) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duty rates are lower than the provisional duty rates, amounts provisionally secured in excess of the definitive rate of anti-dumping duty should be released,

within CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 10) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Anti-dumping duty (%)	TARIC additional code
Anhui BBKA Biochemical Co. Ltd — No 73, Daqing Road, Bengbu City 233010, Anhui Province, PRC	35,7	A874
DSM Citric Acid (Wuxi) Ltd — West Side of Jincheng Bridge, Wuxi 214024, Jiangsu province, PRC	8,3	A875
RZBC Co. Ltd — No 9 Xinghai West Road, Rizhao, Shandong Province, PRC	36,8	A876
RZBC (Juxian) Co. Ltd, West Wing, Chenyang North Road, Ju County, Rizhao, Shandong Province, PRC	36,8	A877
TTCA Co. Ltd — West, Wenhe Bridge North, Anqiu City, Shandong Province, PRC	42,7	A878
Yixing Union Biochemical Co. Ltd — Economic Development Zone Yixing City 214203, Jiangsu Province, PRC	32,6	A879
Laiwu Taihe Biochemistry Co. Ltd, No 106 Luzhong Large East Street, Laiwu, Shandong Province, PRC	6,6	A880
Weifang Ensign Industry Co. Ltd, The West End, Limin Road, Changle City, Shandong Province, PRC	33,8	A882
All other companies	42,7	A999

3. Notwithstanding the first paragraph, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of citric acid and of trisodium citrate dihydrate falling

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

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2008/899/EC, as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

- (a) they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and
- (b) such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex of this Regulation; and
- (c) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

- (a) whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled; or
- (b) when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of Regulation (EC) No 384/96 in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 488/2008 shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1 of this Regulation. The amounts secured in excess of the amount of the definitive duty shall be released.

Article 4

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

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

Done at Brussels, 1 December 2008.

For the Council
The President
H. NOVELLI

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the Community of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.
6. The exact description of the goods, including:
 - the product code number (PCN) used for the purpose of the undertaking,
 - plain language description of the goods corresponding to the PCN concerned,
 - the company product code number (CPC),
 - TARIC code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonnes,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates,
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2008/899/EC. I declare that the information provided in this invoice is complete and correct.'

COMMISSION REGULATION (EC) No 1194/2008**of 2 December 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 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⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 December 2008.

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

Done at Brussels, 2 December 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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	56,3
	TR	106,2
	ZZ	81,3
0707 00 05	JO	167,2
	MA	59,1
	TR	146,5
	ZZ	124,3
0709 90 70	JO	230,6
	MA	71,0
	TR	108,7
	ZZ	136,8
0805 10 20	BR	44,6
	TR	57,3
	ZA	44,6
	ZZ	48,8
0805 20 10	MA	65,0
	TR	65,0
	ZZ	65,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	49,2
	IL	74,6
	TR	60,2
	ZZ	61,3
0805 50 10	MA	64,0
	TR	61,7
	ZA	79,4
	ZZ	68,4
0808 10 80	CA	89,4
	CL	67,1
	CN	73,2
	MK	33,4
	US	110,9
	ZA	114,6
0808 20 50	ZZ	81,4
	CN	49,8
	TR	103,0
	US	147,8
	ZZ	100,2

⁽¹⁾ Nomenclature of countries laid down 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 1195/2008

of 2 December 2008

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Scottish Farmed Salmon (PGI))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and food-stuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1), and in accordance with Article 17(2) of Regulation (EC) No 510/2006, the Commission has examined the United Kingdom's application for the approval of amendments to the specification for the protected geographical indication 'Scottish Farmed Salmon' registered under Commission Regulation (EC) No 2400/96 ⁽²⁾, as amended by Regulation (EC) No 1437/2004 ⁽³⁾.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* ⁽⁴⁾ as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been sent to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name in the Annex to this Regulation are hereby approved.

Article 2

This Regulation shall enter into force on the 20th 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 December 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 327, 18.12.1996, p. 11.

⁽³⁾ OJ L 265, 12.8.2004, p. 3.

⁽⁴⁾ OJ C 76, 27.3.2008, p. 28.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.7. Fresh fish, molluscs and crustaceans and products derived therefrom

UNITED KINGDOM

Scottish Farmed Salmon (PGI)

COMMISSION REGULATION (EC) No 1196/2008**of 2 December 2008****fixing the coefficients applicable to cereals exported in the form of Scotch whisky for the period 2008/09**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

31 December 2007, the average ageing period for Scotch whisky in 2007 was eight years.

Having regard to the Treaty establishing the European Community,

(3) The coefficients for the period 1 October 2008 to 30 September 2009 should therefore be fixed accordingly.

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 162(3) thereof,

(4) Article 10 of Protocol 3 to the Agreement on the European Economic Area excludes the grant of refunds in respect of exports to Liechtenstein, Iceland and Norway. Moreover, the Community has concluded agreements abolishing export refunds with certain third countries. Under the terms of Article 7(2) of Regulation (EC) No 1670/2006, this should be taken into account in calculating the coefficients for 2008/09,

Having regard to Commission Regulation (EC) No 1670/2006 of 10 November 2006 laying down certain detailed rules for the application of Council Regulation (EC) No 1784/2003 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks ⁽²⁾, and in particular Article 5 thereof,

HAS ADOPTED THIS REGULATION:

Whereas:

Article 1

(1) Article 4(1) of Regulation (EC) No 1670/2006 lays down that the quantities of cereals eligible for the refund are to be the quantities placed under control and distilled, weighted by a coefficient to be fixed annually for each Member State concerned. The coefficient is to express the average ratio between the total quantities exported and the total quantities marketed of the spirit drink concerned, on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirit drink in question.

For the period 1 October 2008 to 30 September 2009, the coefficients provided for in Article 4 of Regulation (EC) No 1670/2006 applying to cereals used in the United Kingdom for manufacturing Scotch whisky shall be as set out in the Annex to this Regulation.

Article 2

(2) According to the information provided by the United Kingdom in respect of the period 1 January to

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

It shall apply from 1 October 2008.

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

Done at Brussels, 2 December 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 312, 11.11.2006, p. 33.

ANNEX

Coefficients applicable in the United Kingdom

Period of application	Coefficient applicable	
	to malted barley used in the production of malt whisky	to cereals used in the production of grain whisky
1 October 2008 to 30 September 2009	0,235	0,234

COMMISSION REGULATION (EC) No 1197/2008**of 1 December 2008****establishing a prohibition of fishing for hake in EC waters of IIa and IV by vessels flying the flag of the Netherlands**

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 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, 1 December 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	63/T&Q
Member State	NDL
Stock	HKE/2AC4-C
Species	Hake (<i>Merluccius merluccius</i>)
Area	EC waters of IIa and IV
Date	9.10.2008

COMMISSION REGULATION (EC) No 1198/2008**of 1 December 2008****establishing a prohibition of fishing for Greenland halibut in NAFO 3LMNO by vessels flying the flag of Estonia**

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 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, 1 December 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

No	52/T&Q
Member State	EST
Stock	GHL/N3LMNO
Species	Greenland halibut (<i>Reinhardtius hippoglossoides</i>)
Area	NAFO 3LMNO
Date	18.9.2008

COMMISSION REGULATION (EC) No 1199/2008**of 2 December 2008****on the issue of licences for the import of garlic in the subperiod 1 March to 31 May 2009**

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⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 341/2007 ⁽³⁾ opens and provides for the administration of tariff quotas and introduces a system of import licences and certificates of origin for garlic and other agricultural products imported from third countries.
- (2) The quantities for which 'A' licence applications have been lodged by traditional importers and by new importers during the first five working days following

the 15th day of November 2008, pursuant to Article 10(1) of Regulation (EC) No 341/2007 exceed the quantities available for products originating in China, Argentina, and all third countries other than China and Argentina.

- (3) Therefore, in accordance with Article 7(2) of Regulation (EC) No 1301/2006, it is now necessary to establish the extent to which the 'A' licence applications sent to the Commission by the end of November 2008 can be met in accordance with Article 12 of Regulation (EC) No 341/2007,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for 'A' import licences lodged pursuant to Article 10(1) of Regulation (EC) No 341/2007 during the first five working days following the 15th day of November 2008 and sent to the Commission by the end of November 2008 shall be met at a percentage rate of the quantities applied for as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 2 December 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 90, 30.3.2007, p. 12.

ANNEX

Origin	Order number	Allocation coefficient
Argentina		
— Traditional importers	09.4104	78,613107 %
— New importers	09.4099	1,125730 %
China		
— Traditional importers	09.4105	22,581466 %
— New importers	09.4100	0,460126 %
Other third countries		
— Traditional importers	09.4106	100 %
— New importers	09.4102	18,349317 %

COMMISSION REGULATION (EC) No 1200/2008
of 2 December 2008
amending Regulation (EC) No 1186/2008 fixing the import duties in the cereals sector applicable
from 1 December 2008

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⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector applicable from 1 December 2008 were fixed by Commission Regulation (EC) No 1186/2008 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 1186/2008.

- (3) Regulation (EC) No 1186/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1186/2008 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 3 December 2008.

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

Done at Brussels, 2 December 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 319, 29.11.2008, p. 56.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 3 December 2008

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	35,10
1005 10 90	Maize seed other than hybrid	27,72
1005 90 00	Maize, other than seed ⁽²⁾	27,72
1007 00 90	Grain sorghum other than hybrids for sowing	35,10

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

28.11.2008-1.12.2008

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	190,56	108,51	—	—	—	—
Fob price USA	—	—	241,10	231,10	211,10	114,32
Gulf of Mexico premium	—	10,79	—	—	—	—
Great Lakes premium	27,27	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 11,45 EUR/t

Freight costs: Great Lakes–Rotterdam: 8,98 EUR/t

DIRECTIVES

DIRECTIVE 2008/102/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

amending Council Directive 79/409/EEC on the conservation of wild birds, as regards the implementing powers conferred on the Commission

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(2) Decision 1999/468/EC has been amended by Council Decision 2006/512/EC ⁽³⁾, which was introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and was designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, inter alia, by deleting some of those elements or by supplementing the instrument with new non-essential elements.

(3) In accordance with the statement by the European Parliament, the Council and the Commission ⁽⁶⁾ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure laid down in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

(4) The Commission should be empowered in particular to amend certain annexes to Directive 79/409/EEC in the light of scientific and technical progress. Since those measures are of general scope and are designed to amend non-essential elements of Directive 79/409/EEC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(5) Directive 79/409/EEC should therefore be amended accordingly.

(1) Council Directive 79/409/EEC ⁽³⁾ provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.

(6) Since the amendments made to Directive 79/409/EEC by this Directive are technical in nature and concern committee procedure only, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

⁽¹⁾ OJ C 211, 19.8.2008, p. 46.

⁽²⁾ Opinion of the European Parliament of 8 July 2008 (not yet published in the Official Journal) and Council Decision of 27 October 2008.

⁽³⁾ OJ L 103, 25.4.1979, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 200, 22.7.2006, p. 11.

⁽⁶⁾ OJ C 255, 21.10.2006, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 79/409/EEC is hereby amended as follows:

1. Article 15 shall be replaced by the following:

‘Article 15

Such amendments as are necessary for adapting Annexes I and V to technical and scientific progress and the amendments referred to in the second subparagraph of Article 6(4) shall be adopted. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 17(2).’;

2. Article 17 shall be replaced by the following:

‘Article 17

1. The Commission shall be assisted by the Committee for Adaptation to Technical and Scientific Progress.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’.

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

DIRECTIVE 2008/106/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 November 2008
on the minimum level of training of seafarers (recast)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers ⁽³⁾ has been significantly amended on several occasions ⁽⁴⁾. Now that new amendments are being made to that Directive, it is desirable, for reasons of clarity, that the provisions in question should be recast.

(2) Actions to be taken at Community level in the field of maritime safety and pollution prevention at sea should be in line with internationally agreed rules and standards.

(3) In order to maintain and develop the level of knowledge and skills in the maritime sector in the Community, it is important to pay appropriate attention to maritime training and the status of seafarers in the Community.

(4) A consistent level of training for the award of vocational competency certificates to seafarers should be ensured in the interests of maritime safety.

(5) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽⁵⁾ applies to maritime occupations covered by this Directive. It will help promote compliance with the obligations laid down in the Treaty abolishing obstacles to the free movement of persons and services between Member States.

(6) The mutual recognition of diplomas and certificates provided for under Directive 2005/36/EC does not always ensure a standardised level of training for all seafarers serving on board vessels flying the flag of a Member State. This is, however, vital from the viewpoint of maritime safety.

(7) It is therefore essential to define a minimum level of training for seafarers in the Community. That level should be based on the standards of training already agreed at international level, namely the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), as revised in 1995. All Member States are Parties to that Convention.

(8) Member States may establish standards higher than the minimum standards laid down in the STCW Convention and this Directive.

(9) The Regulations of the STCW Convention annexed to this Directive should be supplemented by the mandatory provisions contained in Part A of the Seafarers' Training, Certification and Watchkeeping Code (STCW Code). Part B of the STCW Code contains recommended guidance intended to assist Parties to the STCW Convention and those involved in implementing, applying or enforcing its measures to give the Convention full and complete effect in a uniform manner.

⁽¹⁾ OJ C 151, 17.6.2008, p. 35.

⁽²⁾ Opinion of the European Parliament of 17 June 2008 (not yet published in the Official Journal) and Council Decision of 20 October 2008.

⁽³⁾ OJ L 136, 18.5.2001, p. 17.

⁽⁴⁾ See Annex III, Part A.

⁽⁵⁾ OJ L 255, 30.9.2005, p. 22.

- (10) For the enhancement of maritime safety and pollution prevention at sea, provisions on minimum rest periods for watchkeeping personnel should be established in this Directive in accordance with the STCW Convention. Those provisions should be applied without prejudice to the provisions of Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) ⁽¹⁾.
- (11) Member States should take and enforce specific measures to prevent and penalise fraudulent practices associated with certificates of competency as well as pursue their efforts within the IMO to achieve strict and enforceable agreements on the worldwide combating of such practices.
- (12) In order to enhance maritime safety and prevent loss of human life and maritime pollution, communication among crew members on board ships sailing in Community waters should be improved.
- (13) Personnel on board passenger ships nominated to assist passengers in emergency situations should be able to communicate with the passengers.
- (14) Crews serving on board tankers carrying noxious or polluting cargo should be capable of coping effectively with accident prevention and emergency situations. It is paramount that a proper communication link between the master, officers and ratings is established, covering the requirements provided for in this Directive.
- (15) It is essential to ensure that seafarers holding certificates issued by third countries and serving on board Community ships have a level of competence equivalent to that required by the STCW Convention. This Directive should lay down procedures and common criteria for the recognition by the Member States of certificates issued by third countries, based on the training and certification requirements as agreed in the framework of the STCW Convention.
- (16) In the interests of safety at sea, Member States should recognise qualifications proving the required level of training only where these are issued by or on behalf of Parties to the STCW Convention which have been identified by the IMO Maritime Safety Committee (MSC) as having been shown to have given, and still to be giving, full effect to the standards set out in that Convention. To bridge the time gap until the MSC has been able to carry out such identification, a procedure for the preliminary recognition of certificates is needed.
- (17) Where appropriate, maritime institutes, training programmes and courses should be inspected. Criteria for such inspection should therefore be established.
- (18) The Commission should be assisted by a committee in carrying out the tasks related to the recognition of certificates issued by training institutes or administrations of third countries.
- (19) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽²⁾ should assist the Commission in verifying that Member States comply with the requirements laid down in this Directive.
- (20) Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels flying the flag of a third country which has not ratified the STCW Convention, thereby ensuring no more favourable treatment to vessels flying the flag of a third country.
- (21) It is appropriate to include in this Directive provisions on port State control, pending the amendment of Council Directive 95/21/EC ⁽³⁾ on port State control of shipping in order to transfer to that Directive the provisions on port State control which are included in this Directive.
- (22) It is necessary to provide for procedures for adapting this Directive to changes in international conventions and codes.
- (23) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.
- (24) In particular the Commission should be empowered to amend this Directive in order to apply, for the purposes of this Directive, subsequent amendments to certain international codes and any relevant amendment to Community legislation. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (25) The new elements introduced into this Directive only concern the committee procedures. They therefore do not need to be transposed by the Member States.

⁽¹⁾ OJ L 167, 2.7.1999, p. 33.

⁽²⁾ OJ L 208, 5.8.2002, p. 1.

⁽³⁾ OJ L 157, 7.7.1995, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

- (26) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex III, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

1. 'master' means the person having command of a ship;
2. 'officer' means a member of the crew, other than the master, designated as such by national law or regulations or, in the absence of such designation, by collective agreement or custom;
3. 'deck officer' means an officer qualified in accordance with the provisions of Chapter II of Annex I;
4. 'chief mate' means the officer next in rank to the master upon whom the command of the ship will fall in the event of the incapacity of the master;
5. 'engineer officer' means an officer qualified in accordance with the provisions of Chapter III of Annex I;
6. 'chief engineer officer' means the senior engineer officer responsible for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship;
7. 'second engineer officer' means the engineer officer next in rank to the chief engineer officer upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;
8. 'assistant engineer officer' means a person under training to become an engineer officer and designated as such by national law or regulations;
9. 'radio operator' means a person holding an appropriate certificate issued or recognised by the competent authorities under the provisions of the Radio Regulations;
10. 'rating' means a member of the ship's crew other than the master or an officer;
11. 'seagoing ship' means a ship other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
12. 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation; a ship not corresponding to this definition shall be regarded as a ship flying the flag of a third country;
13. 'near-coastal voyages' means voyages in the vicinity of a Member State as defined by that Member State;
14. 'propulsion power' means the total maximum continuous rated output power in kilowatts of all of a ship's main propulsion machinery which appears on the ship's certificate of registry or other official document;
15. 'oil-tanker' means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;
16. 'chemical tanker' means a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in Chapter 17 of the International Bulk Chemical Code, in its up-to-date version;
17. 'liquefied-gas tanker' means a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in Chapter 19 of the International Gas Carrier Code, in its up-to-date version;
18. 'Radio Regulations' means the revised radio regulations, adopted by the World Administrative Radio Conference for the Mobile Service in their up-to-date version;
19. 'passenger ship' means a seagoing ship which carries more than 12 passengers;
20. 'fishing vessel' shall mean a vessel used for catching fish or other living resources of the sea;
21. 'STCW Convention' means the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as it applies to the matters concerned taking into account the transitional provisions of Article VII and Regulation I/15 of the Convention and including, where appropriate, the applicable provisions of the STCW Code, all being applied in their up-to-date versions;
22. 'radio duties' includes, as appropriate, watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations, the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and, at the discretion of each Member State, the relevant recommendations of the IMO, in their up-to-date versions;

23. 'ro-ro passenger ship' means a passenger ship with ro-ro cargo spaces or special-category spaces as defined in the SOLAS 74, in its up-to-date version;
24. 'STCW Code' means the Seafarers' Training, Certification and Watchkeeping (STCW) Code as adopted by Resolution 2 of the 1995 STCW Conference of Parties, in its up-to-date version;
25. 'function' means a group of tasks, duties and responsibilities, as specified in the STCW Code, necessary for ship operation, safety of life at sea or protection of the marine environment;
26. 'company' means the owner of the ship or any other organisation or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by this Directive;
27. 'appropriate certificate' means a certificate issued and endorsed in accordance with this Directive and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein on a ship of the type, tonnage, power and means of propulsion concerned while engaged on the particular voyage concerned;
28. 'seagoing service' means service on board a ship relevant to the issue of a certificate or other qualification;
29. 'approved' means approved by a Member State in accordance with this Directive;
30. 'third country' means any country which is not a Member State;
31. 'month' means a calendar month or 30 days made up of periods of less than one month.

Article 2

Scope

This Directive shall apply to the seafarers mentioned in this Directive serving on board seagoing ships flying the flag of a Member State with the exception of:

- (a) warships, naval auxiliaries or other ships owned or operated by a Member State and engaged only on government non-commercial service;
- (b) fishing vessels;
- (c) pleasure yachts not engaged in trade;

- (d) wooden ships of primitive build.

Article 3

Training and certification

1. Member States shall take the measures necessary to ensure that seafarers serving on ships as referred to in Article 2 are trained as a minimum in accordance with the requirements of the STCW Convention, as laid down in Annex I to this Directive, and hold certificates as defined in Article 4 or appropriate certificates as defined in Article 1(27).
2. Member States shall take the measures necessary to ensure that those crew members that must be certified in accordance with Regulation III/10.4 of the SOLAS 74 are trained and certificated in accordance with this Directive.

Article 4

Certificate

A certificate shall be any valid document, by whatever name it may be known, issued by or under the authority of the competent authority of a Member State in accordance with Article 5 and with the requirements laid down in Annex I.

Article 5

Certificates and endorsements

1. Certificates shall be issued in accordance with Article 11.
2. Certificates for masters, officers and radio operators shall be endorsed by the Member State as prescribed in this Article.
3. Certificates shall be issued in accordance with Regulation I/2, paragraph 1, of the STCW Convention.
4. In respect of radio operators, Member States may:
 - (a) include the additional knowledge required by the relevant regulations in the examination for the issue of a certificate complying with the Radio Regulations; or
 - (b) issue a separate certificate indicating that the holder has the additional knowledge required by the relevant regulations.
5. At the discretion of a Member State endorsements may be incorporated in the format of the certificates being issued as provided for in section A-I/2 of the STCW Code. If so incorporated the form used shall be that set out in section A-I/2, paragraph 1. If issued otherwise, the form of endorsements used shall be that set out in paragraph 2 of that section. Endorsements shall be issued in accordance with Article VI, paragraph 2, of the STCW Convention.

6. A Member State which recognises a certificate under the procedure laid down in Article 19(2) shall endorse that certificate to attest its recognition. The form of the endorsement used shall be that set out in paragraph 3 of section A-I/2 of the STCW Code.

7. The endorsements referred to in paragraphs 5 and 6:

- (a) may be issued as separate documents;
- (b) shall each be assigned a unique number, other than endorsements attesting the issue of a certificate which may be assigned the same number as the certificate concerned, provided that that number is unique; and
- (c) shall each expire as soon as the certificate endorsed expires or is withdrawn, suspended or cancelled by the Member State or third country which issued them and, in any case, within five years of their date of issue.

8. The capacity in which the holder of a certificate is authorised to serve shall be identified in the form of endorsement in terms identical to those used in the applicable safe-manning requirements of the Member State concerned.

9. A Member State may use a format different from the format laid down in section A-I/2 of the STCW Code, provided that, as a minimum, the required information is provided in Roman characters and Arabic figures, taking account of the variations permitted under section A-I/2.

10. Subject to Article 19(7) any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving.

Article 6

Training requirements

The training required pursuant to Article 3 shall be in a form appropriate to the theoretical knowledge and practical skills required by Annex I, in particular the use of life saving and fire-fighting equipment, and approved by the competent authority or body designated by each Member State.

Article 7

Principles governing near-coastal voyages

1. When defining near-coastal voyages Member States shall not impose training, experience or certification requirements on seafarers serving on board ships entitled to fly the flag of another Member State or another Party to the STCW Convention and engaged in such voyages in a manner resulting in more stringent requirements for such seafarers than for seafarers serving on board ships entitled to fly their own flag. In no case shall a Member State impose requirements in respect of seafarers serving on board ships flying the flag of

another Member State or of another Party to the STCW Convention in excess of those of this Directive in respect of ships not engaged in near-coastal voyages.

2. With respect to ships entitled to fly the flag of a Member State regularly engaged in near-coastal voyages off the coast of another Member State or of another Party to the STCW Convention, the Member State the flag of which a ship is entitled to fly shall prescribe training, experience and certification requirements for seafarers serving on such ships at least equal to those of the Member State or the Party to the STCW Convention off the coast of which the ship is engaged, provided that they do not exceed the requirements of this Directive in respect of ships not engaged in near-coastal voyages. Seafarers serving on a ship which extends its voyage beyond what is defined as a near-coastal voyage by a Member State and enters waters not covered by that definition shall fulfil the appropriate requirements of this Directive.

3. A Member State may afford a ship which is entitled to fly its flag the benefits of the near-coastal voyage provisions of this Directive when it is regularly engaged off the coast of a non-Party to the STCW Convention on near-coastal voyages as defined by that Member State.

4. Upon deciding on the definition of near-coastal voyages and the conditions of education and training required thereof in accordance with the requirements of paragraphs 1, 2 and 3, Member States shall communicate to the Commission the details of the provisions they have adopted.

Article 8

Prevention of fraud and other unlawful practices

1. Member States shall take and enforce the appropriate measures to prevent fraud and other unlawful practices involving the certification process or certificates issued and endorsed by their competent authorities, and shall provide for penalties that are effective, proportionate and dissuasive.

2. Member States shall designate the national authorities competent to detect and combat fraud and other unlawful practices and exchange information with the competent authorities of other Member States and of third countries concerning the certification of seafarers.

Member States shall forthwith inform the other Member States and the Commission of the details of such competent national authorities.

Member States shall also forthwith inform any third countries with which they have entered into an undertaking in accordance with Regulation I/10, paragraph 1.2 of the STCW Convention of the details of such competent national authorities.

3. At the request of a host Member State, the competent authorities of another Member State shall provide written confirmation or denial of the authenticity of seafarers' certificates, corresponding endorsements or any other documentary evidence of training issued in that other Member State.

Article 9

Penalties or disciplinary measures

1. Member States shall establish processes and procedures for the impartial investigation of any reported incompetence, act or omission, that may pose a direct threat to safety of life or property at sea or to the marine environment, on the part of the holders of certificates or endorsements issued by that Member State in connection with their performance of duties relating to their certificates and for the withdrawal, suspension and cancellation of such certificates for such cause and for the prevention of fraud.

2. Each Member State shall prescribe penalties or disciplinary measures for cases in which the provisions of this national legislation giving effect to this Directive are not complied with in respect of ships entitled to fly its flag or of seafarers duly certificated by it.

3. In particular, such penalties or disciplinary measures shall be prescribed and enforced in cases in which:

- (a) a company or a master has engaged a person not holding a certificate as required by this Directive;
- (b) a master has allowed any function or service in any capacity which under this Directive must be performed by a person holding an appropriate certificate to be performed by a person not holding the required certificate, a valid dispensation or having the documentary proof required by Article 19(7); or
- (c) a person has obtained by fraud or forged documents an engagement to perform any function or serve in any capacity which under this Directive must be performed or fulfilled by a person holding a certificate or dispensation.

4. Member States within the jurisdiction of which any company which or any person who is believed on clear grounds to have been responsible for or to have knowledge of any apparent non-compliance with this Directive specified in paragraph 3, is located shall extend cooperation to any Member State or other Party to the STCW Convention which advises them of its intention to initiate proceedings under its jurisdiction.

Article 10

Quality standards

1. Each Member State shall ensure that:

- (a) all training, assessment of competence, certification, endorsement and revalidation activities carried out by non-governmental agencies or entities under its authority are continuously monitored through a quality standards system to ensure the achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors;
- (b) where governmental agencies or entities perform such activities, there is a quality-standards system;
- (c) the education and training objectives and related quality standards of competence to be achieved are clearly defined and identify the levels of knowledge, understanding and skills appropriate to the examinations and assessments required under the STCW Convention;
- (d) the fields of application of the quality standards cover the administration of the certification systems, all training courses and programmes, examinations and assessments carried out by or under the authority of each Member State and the qualifications and experience required of instructors and assessors, having regard to the policies, systems, controls and internal quality-assurance reviews established to ensure achievement of the defined objectives.

The objectives and related quality standards referred to in point (c) of the first subparagraph may be specified separately for different courses and training programmes and shall cover the administration of the certification system.

2. Member States shall also ensure that independent evaluations of the knowledge, understanding, skills and competence acquisition and assessment activities, and of the administration of the certification system, are conducted at intervals of not more than five years by qualified persons who are not themselves involved in the activities concerned in order to verify that:

- (a) all internal management control and monitoring measures and follow-up actions comply with planned arrangements and documental procedures and are effective in ensuring that the defined objectives are achieved;
- (b) the results of each independent evaluation are documented and brought to the attention of those responsible for the area evaluated;
- (c) timely action is taken to correct deficiencies.

3. A report relating to each evaluation carried out pursuant to paragraph 2 shall be communicated by the Member State concerned to the Commission within six months of the date of the evaluation.

Article 11

Medical standards — issue and registration of certificates

1. Member States shall establish standards of medical fitness for seafarers, particularly regarding eyesight and hearing.

2. Member States shall ensure that certificates are issued only to candidates who comply with the requirements of this Article.

3. Each candidate for certification shall provide satisfactory proof:

- (a) of his or her identity;
- (b) that his or her age is not less than that prescribed in the Regulations in Annex I relevant to the certificate applied for;
- (c) that he or she meets the standards of medical fitness, particularly regarding eyesight and hearing, established by the Member State and holds a valid document attesting to his or her medical fitness, issued by a duly qualified medical practitioner recognised by the competent authority of the Member State;
- (d) of having completed the seagoing service and any related compulsory training prescribed in the Regulations in Annex I for the certificate applied for;
- (e) that he or she meets the standards of competence prescribed in the Regulations in Annex I for the capacities, functions and levels that are to be identified in the endorsement to the certificate.

4. Each Member State shall undertake:

- (a) to maintain a register or registers of all certificates and endorsements for masters and officers and, as appropriate, ratings, which are issued, have expired or have been revalidated, suspended, cancelled or reported lost or destroyed and of dispensations issued;
- (b) to make available information on the status of such certificates, endorsements and dispensations to other Member States or other Parties to the STCW Convention and companies which request verification of the authenticity and validity of certificates produced to them by seafarers seeking recognition of their certificates or employment on board ship.

Article 12

Revalidation of certificates

1. Every master, officer and radio operator holding a certificate issued or recognised under any chapter of Annex I other than Chapter VI who is serving at sea or intends to return to sea after a period ashore shall, in order to continue to qualify for seagoing service, be required at intervals not exceeding five years:

- (a) to meet the standards of medical fitness prescribed by Article 11; and
- (b) to establish continued professional competence in accordance with section A-I/11 of the STCW Code.

2. Every master, officer and radio operator shall, for continuing seagoing service on board ships for which special training requirements have been internationally agreed upon, successfully complete approved relevant training.

3. Each Member State shall compare the standards of competence which are required of candidates for certificates issued before 1 February 2002 with those specified for the appropriate certificate in Part A of the STCW Code, and shall determine the need to require the holders of such certificates to undergo appropriate refresher and updating training or assessment.

Refresher and updating courses shall be approved and include changes in relevant national and international regulations concerning the safety of life at sea and the protection of the marine environment and take account of any updating of the standard of competency concerned.

4. Each Member State shall, in consultation with those concerned, formulate or promote the formulation of a structure of refresher and updating courses as provided for in section A-I/11 of the STCW Code.

5. For the purpose of updating the knowledge of masters, officers and radio operators, each Member State shall ensure that the texts of recent changes in national and international regulations concerning the safety of life at sea and the protection of the marine environment are made available to ships entitled to fly its flag.

Article 13

Use of simulators

1. The performance standards and other provisions set out in section A-I/12 of the STCW Code and such other requirements as are prescribed in Part A of the STCW Code for any certificate concerned shall be complied with in respect of:

- (a) all mandatory simulator-based training;

- (b) any assessment of competence required by Part A of the STCW Code which is carried out by means of a simulator;
- (c) any demonstration, by means of a simulator, of continued proficiency required by Part A of the STCW Code.

2. Simulators installed or brought into use before 1 February 2002 may be exempted from full compliance with the performance standards referred to in paragraph 1 at the discretion of each Member State.

Article 14

Responsibilities of companies

1. In accordance with paragraphs 2 and 3 Member States shall hold companies responsible for the assignment of seafarers for service in their ships in accordance with this Directive, and shall require every company to ensure that:

- (a) each seafarer assigned to any of its ships holds an appropriate certificate in accordance with the provisions of this Directive and as established by the Member State;
- (b) its ships are manned in accordance with the applicable safe-manning requirements of the Member State;
- (c) documentation and data relevant to all seafarers employed on its ships are maintained and readily accessible, and include, without being limited to, documentation and data on their experience, training, medical fitness and competence in assigned duties;
- (d) on being assigned to any of its ships seafarers are familiarised with their specific duties and with all ship arrangements, installations, equipment, procedures, and ship characteristics that are relevant to their routine or emergency duties;
- (e) the ship's complement can effectively coordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution.

2. Companies, masters and crew members shall each have responsibility for ensuring that the obligations set out in this Article are given full and complete effect and that such other measures as may be necessary are taken to ensure that each crew member can make a knowledgeable and informed contribution to the safe operation of the ship.

3. The company shall provide written instructions to the master of each ship to which this Directive applies, setting out the policies and the procedures to be followed to ensure

that all seafarers who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties. Such policies and procedures shall include:

- (a) the allocation of a reasonable period of time during which each newly employed seafarer will have an opportunity to become acquainted with:
 - (i) the specific equipment the seafarer will be using or operating; and
 - (ii) ship-specific watchkeeping, safety, environmental protection and emergency procedures and arrangements the seafarer needs to know to perform the assigned duties properly;
- (b) the designation of a knowledgeable crew member who will be responsible for ensuring that each newly employed seafarer is given an opportunity to receive essential information in a language the seafarer understands.

Article 15

Fitness for duty

1. For the purpose of preventing fatigue, Member States shall establish and enforce rest periods for watchkeeping personnel and require that watch systems are arranged in such a way that the efficiency of watchkeeping personnel is not impaired by fatigue and that duties are organised in such a way that the first watch at the start of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

2. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be allowed at least 10 hours of rest in any 24-hour period.

3. The hours of rest may be divided into no more than two periods, one of which shall be at least six hours long.

4. The requirements for rest periods laid down in paragraphs 1 and 2 need not be maintained in the event of an emergency or drill or in other overriding operational conditions.

5. Notwithstanding paragraphs 2 and 3, the minimum period of 10 hours may be reduced to not less than 6 consecutive hours provided that no such reduction shall extend beyond 2 days and at least 70 hours of rest are provided each 7-day period.

6. Member States shall require that watch schedules be posted where they are easily accessible.

Article 16

Dispensation

1. In circumstances of exceptional necessity, competent authorities may, if in their opinion this does not cause danger to persons, property or the environment, issue a dispensation permitting a specified seafarer to serve in a specified ship for a specified period not exceeding six months in a capacity, other than that of the radio operator, except as provided by the relevant Radio Regulations, for which he or she does not hold the appropriate certificate, provided that the person to whom the dispensation is issued shall be adequately qualified to fill the vacant post in a safe manner to the satisfaction of the competent authorities. However, dispensations shall not be granted to a master or chief engineer officer, except in circumstances of force majeure and then only for the shortest possible period.

2. Any dispensation granted for a post shall be granted only to a person properly certificated to fill the post immediately below. Where certification of the post below is not required, a dispensation may be issued to a person whose qualification and experience are, in the opinion of the competent authorities, of a clear equivalence to the requirements for the post to be filled, provided that, if such a person holds no appropriate certificate, he or she shall be required to pass a test accepted by the competent authorities as demonstrating that such a dispensation may safely be issued. In addition, the competent authorities shall ensure that the post in question is filled by the holder of an appropriate certificate as soon as possible.

Article 17

Responsibilities of Member States with regard to training and assessment

1. Member States shall designate the authorities or bodies which shall:

- (a) give the training referred to in Article 3;
- (b) organise and/or supervise the examinations where required;
- (c) issue the certificates of competence referred to in Article 11;
- (d) grant the dispensations provided for in Article 16.

2. Member States shall ensure that:

- (a) all training and assessment of seafarers is:
 - (i) structured in accordance with the written programmes, including such methods and media of delivery,

procedures and course material as are necessary to achieve the prescribed standard of competence; and

- (ii) conducted, monitored, evaluated and supported by persons qualified in accordance with points (d), (e) and (f);
- (b) persons conducting in-service training or assessment on board ship do so only when such training or assessment will not adversely affect the normal operation of the ship and they can dedicate their time and attention to training or assessment;
- (c) instructors, supervisors and assessors are appropriately qualified for the particular types and levels of training or assessment of competence of seafarers either on board or ashore;
- (d) any person conducting in-service training of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under this Directive:
 - (i) has an appreciation of the training programme and an understanding of the specific training objectives for the particular type of training being conducted;
 - (ii) is qualified in the task for which training is being conducted; and
 - (iii) if conducting training using a simulator:
 - has received appropriate guidance in instructional techniques involving the use of simulators, and
 - has gained practical operational experience on the particular type of simulator being used;
- (e) any person responsible for the supervision of the in-service training of a seafarer intended to be used in qualifying for certification has a full understanding of the training programme and the specific objectives for each type of training being conducted;
- (f) any person conducting in-service assessment of the competence of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under this Directive:
 - (i) has an appropriate level of knowledge and understanding of the competence to be assessed;
 - (ii) is qualified in the task for which the assessment is being made;
 - (iii) has received appropriate guidance in assessment methods and practice;
 - (iv) has gained practical assessment experience; and

- (v) if conducting assessment involving the use of simulators, has gained practical assessment experience on the particular type of simulator under the supervision and to the satisfaction of an experienced assessor;
- (g) when a Member State recognises a course of training, a training institution, or a qualification granted by a training institution, as part of its requirements for the issue of a certificate, the qualifications and experience of instructors and assessors are covered in the application of the quality standard provisions of Article 10; such qualification, experience and application of quality standards shall incorporate appropriate training in instructional techniques and training and assessment methods and practice and comply with all applicable requirements of points (d), (e) and (f).
- (ii) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;
- (iii) the possible need to communicate during an emergency by some other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes) when verbal communication is impractical;
- (iv) the extent to which complete safety instructions have been provided to passengers in their native language or languages;

Article 18

On-board communication

Member States shall ensure that:

- (a) without prejudice to points (b) and (d), there are at all times, on board all ships flying the flag of a Member State, means in place for effective oral communication relating to safety between all members of the ship's crew, particularly with regard to the correct and timely reception and understanding of messages and instructions;
- (b) on board all passenger ships flying the flag of a Member State and on board all passenger ships starting and/or finishing a voyage in a Member State port, in order to ensure effective crew performance in safety matters, a working language is established and recorded in the ship's log-book;
- (c) on board passenger ships, personnel nominated on muster lists to assist passengers in emergency situations are readily identifiable and have communication skills that are sufficient for that purpose, taking into account an appropriate and adequate combination of any of the following factors:
 - (i) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
 - (ii) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers;
 - (d) on board oil tankers, chemical tankers and liquefied gas tankers flying the flag of a Member State, the master, officers and rating are able to communicate with each other in (a) common working language(s);
 - (e) there are adequate means for communication between the ship and the shore-based authorities; these communications shall be conducted in accordance with Chapter V, Regulation 14, paragraph 4, of the SOLAS 74;
 - (f) when carrying out port State control under Directive 95/21/EC, Member States also check that ships flying the flag of a State other than a Member State comply with this Article.

the company or the master, as appropriate, shall determine the appropriate working language; each seafarer shall be required to understand and, where appropriate, give orders and instructions and report back in that language;

if the working language is not an official language of the Member State, all plans and lists that must be posted shall include translations into the working language;

Article 19

Recognition of certificates

1. Seafarers who do not possess the certificates referred to in Article 4 may be allowed to serve on ships flying the flag of a Member State, provided that a decision on the recognition of their appropriate certificates has been adopted through the procedure set out in paragraphs 2 to 6 of this Article.
2. A Member State which intends to recognise, by endorsement, appropriate certificates issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request for recognition of that third country to the Commission, stating its reasons.

The Commission, assisted by the European Maritime Safety Agency and with the possible involvement of any Member State concerned, shall collect the information referred to in Annex II and shall carry out an assessment of the training and certification systems in the third country for which the request for recognition was submitted, in order to verify whether the country concerned meets all the requirements of the STCW Convention and whether the appropriate measures have been taken to prevent fraud involving certificates.

3. The decision on the recognition of a third country shall be taken by the Commission in accordance with the regulatory procedure referred to in Article 28(2), within three months from the date of the request for recognition.

If granted, the recognition shall be valid subject to the provisions of Article 20.

If no decision is taken on recognition of the third country concerned within the period laid down in the first subparagraph, the Member State submitting the request may decide to recognise the third country unilaterally until a decision is taken in accordance with the regulatory procedure referred to in Article 28(2).

4. A Member State may decide, with respect to ships flying its flag, to endorse certificates issued by the third countries recognised by the Commission, account being taken of the provisions contained in Annex II, points (4) and (5).

5. Recognitions of certificates issued by recognised third countries and published in the *Official Journal of the European Union*, C series, before 14 June 2005 shall remain valid.

These recognitions may be used by all Member States unless the Commission has subsequently withdrawn them pursuant to Article 20.

6. The Commission shall draw up and update a list of the third countries that have been recognised. The list shall be published in the *Official Journal of the European Union*, C series.

7. Notwithstanding Article 5(6), a Member State may, if circumstances require, allow a seafarer to serve in a capacity other than radio officer or radio operator, except as provided by the Radio Regulations, for a period not exceeding three months on board a ship flying its flag, while holding an appropriate and valid certificate issued and endorsed as required by a third country, but not yet endorsed for recognition by the Member State concerned so as to render it appropriate for service on board a ship flying its flag.

Documentary proof shall be kept readily available that application for an endorsement has been submitted to the competent authorities.

Article 20

Non-compliance with the requirements of the STCW Convention

1. Notwithstanding the criteria specified in Annex II, when a Member State considers that a recognised third country no longer complies with the requirements of the STCW Convention, it shall notify the Commission immediately, giving substantiated reasons therefor.

The Commission shall without delay refer the matter to the Committee referred to in Article 28(1).

2. Notwithstanding the criteria set out in Annex II, when the Commission considers that a recognised third country no longer complies with the requirements of the STCW Convention, it shall notify the Member States immediately, giving substantiated reasons therefor.

The Commission shall without delay refer the matter to the Committee referred to in Article 28(1).

3. When a Member State intends to withdraw the endorsements of all certificates issued by a third country it shall without delay inform the Commission and the other Member States of its intention, giving substantiated reasons therefor.

4. The Commission, assisted by the European Maritime Safety Agency, shall reassess the recognition of the third country concerned in order to verify whether that country failed to comply with the requirements of the STCW Convention.

5. Where there are indications that a particular maritime training establishment no longer complies with the requirements of the STCW Convention, the Commission shall notify the country concerned that recognition of that country's certificates will be withdrawn in two months' time unless measures are taken to ensure compliance with all the requirements of the STCW Convention.

6. The decision on the withdrawal of the recognition shall be taken in accordance with the regulatory procedure referred to in Article 28(2), within two months from the date of the communication made by the Member State.

The Member States concerned shall take appropriate measures to implement the decision.

7. Endorsements attesting recognition of certificates, issued in accordance with Article 5(6) before the date on which the decision to withdraw recognition of the third country is taken, shall remain valid. Seafarers holding such endorsements may not claim an endorsement recognising a higher qualification, however, unless that upgrading is based solely on additional seagoing service experience.

*Article 21***Reassessment**

1. The third countries that have been recognised under the procedure referred to in the first subparagraph of Article 19(3), including those referred to in Article 19(6), shall be reassessed by the Commission, with the assistance of the European Maritime Safety Agency, on a regular basis and at least every five years to verify that they fulfil the relevant criteria set out in Annex II and whether the appropriate measures have been taken to prevent fraud involving certificates.

2. The Commission shall define the priority criteria for assessment of third countries on the basis of performance data provided by the port State control pursuant to Article 23, as well as the information relating to the reports of the independent evaluations communicated by third countries pursuant to section A-I/7 of the STCW Code.

3. The Commission shall provide the Member States with a report on the results of the assessment.

*Article 22***Port State control**

1. Irrespective of the flag it flies each ship, with the exception of those types of ships excluded by Article 2, shall, while in the ports of a Member State, be subject to port State control by officers duly authorised by that Member State to verify that all seafarers serving on board who are required to be certificated by the STCW Convention are so certificated or hold appropriate dispensations.

2. When exercising port State control under this Directive, Member States shall ensure that all relevant provisions and procedures laid down in Directive 95/21/EC are applied.

*Article 23***Port State control procedures**

1. Without prejudice to Directive 95/21/EC, port State control pursuant to Article 22 shall be limited to the following:

- (a) verification that every seafarer serving on board who must be certificated in accordance with the STCW Convention holds an appropriate certificate or a valid dispensation or provides documentary proof that an application for an endorsement attesting recognition has been submitted to the authorities of the flag State;
- (b) verification that the numbers and certificates of the seafarers serving on board are in accordance with the safe-manning requirements of the authorities of the flag State.

2. The ability of the ship's seafarers to maintain watch-keeping standards as required by the STCW Convention shall be assessed in accordance with Part A of the STCW Code if there are clear grounds for believing that such standards are not being maintained because any of the following has occurred:

- (a) the ship has been involved in a collision, grounding or stranding;
- (b) there has been a discharge of substances from the ship when under way, at anchor or at berth which is illegal under an international convention;
- (c) the ship has been manoeuvred in an erratic or unsafe manner whereby routing measures adopted by the IMO, or safe navigation practices and procedures have not been followed;
- (d) the ship is otherwise being operated in such a manner as to pose a danger to persons, property or the environment;
- (e) a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued;
- (f) the ship is flying the flag of a country which has not ratified the STCW Convention, or has a master, officer or rating holding a certificate issued by a third country which has not ratified the STCW Convention.

3. Notwithstanding verification of the certificate, assessment under paragraph 2 may require the seafarer to demonstrate the relevant competence at the place of duty. Such a demonstration may include verification that operational requirements in respect of watchkeeping standards have been met and that there is a proper response to emergency situations within the seafarer's level of competence.

*Article 24***Detention**

Without prejudice to Directive 95/21/EC, the following deficiencies, in so far as they have been determined by the officer carrying out the port State control that they pose a danger to persons, property or the environment, shall be the only grounds under this Directive on which a Member State may detain a ship:

- (a) failure of seafarers to hold certificates, to have appropriate certificates, to have valid dispensations or provide documentary proof that an application for an endorsement attesting recognition has been submitted to the authorities of the flag State;

(b) failure to comply with the applicable safe-manning requirements of the flag State;

(c) failure of navigational or engineering-watch arrangements to conform to the requirements specified for the ship by the flag State;

(d) absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution;

(e) failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution;

(f) inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.

Article 25

Regular monitoring of compliance

Without prejudice to the powers of the Commission under Article 226 of the Treaty, the Commission, assisted by the European Maritime Safety Agency, shall verify on a regular basis and at least every five years that Member States comply with the minimum requirements laid down by this Directive.

Article 26

Reports

1. Not later than 14 December 2008 the Commission shall submit an evaluation report to the European Parliament and the Council, based on a detailed analysis and evaluation of the provisions of the STCW Convention, the implementation thereof and new insights gained with regard to the correlation between safety and the level of training of ships' crews.

2. Not later than 20 October 2010 the Commission shall submit to the European Parliament and the Council an evaluation report drawn up on the basis of the information obtained pursuant to Article 25.

In the report the Commission shall analyse the Member States' compliance with this Directive and, where necessary, make proposals for additional measures.

Article 27

Amendment

1. This Directive may be amended by the Commission in order to apply, for the purposes of this Directive, subsequent amendments to the international codes referred to in points (16), (17), (18), (23) and (24) of Article 1 which have entered into force.

This Directive may also be amended by the Commission in order to apply, for the purposes of this Directive, any relevant amendments to Community legislation.

Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(3).

2. Following the adoption of new instruments or protocols to the STCW Convention, the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States' parliamentary procedures, as well as the relevant procedures within the IMO on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

3. The amendments to the international instruments referred to in Article 1(16), (17), (18), (21), (22) and (24) may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) ⁽¹⁾.

Article 28

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at eight weeks.

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

⁽¹⁾ OJ L 324, 29.11.2002, p. 1.

*Article 29***Transitional provisions**

Where pursuant to Article 12 a Member State reissues or extends the validity of certificates which it originally issued under the provisions which applied before 1 February 1997, the Member State may, at its discretion, replace tonnage limitations appearing on the original certificates as follows:

- (a) '200 gross registered tonnes' may be replaced by '500 gross tonnage';
- (b) '1 600 gross registered tonnes' may be replaced by '3 000 gross tonnage'.

*Article 30***Penalties**

Member States shall lay down systems of penalties for breaching the national provisions adopted pursuant to Articles 1, 3, 5, 7, 9 to 15, 17, 18, 19, 22, 23, 24 and 29, and Annexes I and II, and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Article 31***Communication**

Member States shall immediately communicate to the Commission the texts of all the provisions which they adopt in the field governed by this Directive.

The Commission shall inform the other Member States thereof.

*Article 32***Repeal**

Directive 2001/25/EC, as amended by the Directives listed in Annex III, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex III, Part B.

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

*Article 33***Entry into force**

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

*Article 34***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

ANNEX I

TRAINING REQUIREMENTS OF THE STCW CONVENTION, REFERRED TO IN ARTICLE 3

CHAPTER I

GENERAL PROVISIONS

1. The Regulations referred to in this Annex are supplemented by the mandatory provisions contained in Part A of the STCW Code with the exception of Chapter VIII, Regulation VIII/2.

Any reference to a requirement in a Regulation also constitutes a reference to the corresponding section of Part A of the STCW Code.

2. Member States shall ensure that seafarers possess adequate language proficiency, as defined in Sections A-II/1, A-III/1, A-IV/2 and A-II/4 of the STCW Code so as to enable them to perform their specific duties on a vessel flying the flag of a host Member State.
3. Part A of the STCW Code contains standards of competence required to be demonstrated by candidates for the issue, and revalidation of certificates of competency under the provisions of the STCW Convention. To clarify the linkage between the alternative certification provisions of Chapter VII and the certification provisions of Chapters II, III and IV, the abilities specified in the standards of competence are grouped as appropriate under the following seven functions:

1. Navigation;
2. Cargo handling and stowage;
3. Controlling the operation of the ship and care for persons on board;
4. Marine engineering;
5. Electrical, electronic and control engineering;
6. Maintenance and repair;
7. Radio communications,

at the following levels of responsibility:

1. Management level;
2. Operational level;
3. Support level.

Functions and levels of responsibility are identified by subtitle in the tables of standards of competence given specified in Chapters II, III and IV of the Part A of the STCW Code.

CHAPTER II

MASTER AND DECK DEPARTMENT

*Regulation II/1***Mandatory minimum requirements for certification of officers in charge of a navigational watch on ships of 500 gross tonnage or more**

1. Every officer in charge of a navigational watch serving on a seagoing ship of 500 gross tonnage or more shall hold an appropriate certificate.
2. Every candidate for certification shall:
 - 2.1. be not less than 18 years of age;

- 2.2. have approved seagoing service of not less than one year as part of an approved training programme which includes on-board training which meets the requirements of Section A-II/1 of the STCW Code and is documented in an approved training record book, or otherwise have approved seagoing service of not less than three years;
- 2.3. have performed, during the required seagoing service, bridge watchkeeping duties under the supervision of the master or a qualified officer for a period of not less than six months;
- 2.4. meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designed radio duties in accordance with the Radio Regulations;
- 2.5. have completed approved education and training and meet the standard of competence specified in Section A-II/1 of the STCW Code.

Regulation II/2

Mandatory minimum requirements for certification of masters and chief mates on ships of 500 gross tonnage or more

Master and chief mate on ships of 3 000 gross tonnage or more

1. Every master and chief mate on a seagoing ship of 3 000 gross tonnage or more shall hold an appropriate certificate.
2. Every candidate for certification shall:
 - 2.1. meet the requirements for certification as an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service in that capacity:
 - 2.1.1. for certification as chief mate, not less than 12 months; and
 - 2.1.2. for certification as master, not less than 36 months; however, this period may be reduced to not less than 24 months if not less than 12 months of such seagoing service has been served as chief mate;
 - 2.2. have completed approved education and training and meet the standard of competence specified in Section A-II/2 of the STCW Code for masters and chief mates on ships of 3 000 gross tonnage or more.

Master and chief mate on ships of between 500 and 3 000 gross tonnage

3. Every master and chief mate on a seagoing ship of between 500 and 3 000 gross tonnage shall hold an appropriate certificate.
4. Every candidate for certification shall:
 - 4.1. for certification as chief mate, meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more;
 - 4.2. for certification as master, meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service of not less than 36 months in that capacity; however, this period may be reduced to not less than 24 months if not less than 12 months of such seagoing service has been served as chief mate;
 - 4.3. have completed approved training and meet the standard of competence specified in Section A-II/2 of the STCW Code for masters and chief mates on ships of between 500 and 3 000 gross tonnage.

*Regulation II/3***Mandatory minimum requirements for certification of officers in charge of a navigational watch and of masters on ships of less than 500 gross tonnage***Ships not engaged on near-coastal voyages*

1. Every officer in charge of a navigational watch serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall hold an appropriate certificate for ships of 500 gross tonnage or more.
2. Every master serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall hold an appropriate certificate for service as master on ships of between 500 and 3 000 gross tonnage.

*Ships engaged on near-coastal voyages**Officer in charge of a navigational watch*

3. Every officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall hold an appropriate certificate.
4. Every candidate for certification as officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall:
 - 4.1. be not less than 18 years of age;
 - 4.2. have completed:
 - 4.2.1. special training, including an adequate period of appropriate seagoing service as required by the Administration; or
 - 4.2.2. approved seagoing service in the deck department of not less than three years;
 - 4.3. meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;
 - 4.4. have completed approved education and training and meet the standard of competence specified in Section A-II/3 of the STCW Code for officers in charge of a navigational watch on ships of less than 500 gross tonnage engaged on near-coastal voyages.

Master

5. Every master serving on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall hold an appropriate certificate.
6. Every candidate for certification as master on a seagoing ship of less than 500 gross tonnage engaged on a near-coastal voyages shall:
 - 6.1. be not less than 20 years of age;
 - 6.2. have approved seagoing service of not less than 12 months as officer in charge of a navigational watch;
 - 6.3. have completed approved education and training and meet the standard of competence specified in Section A-II/3 of the STCW Code for masters on ships of less than 500 gross tonnage engaged on near-coastal voyages.
7. Exemptions

The Administration, if it considers that a ship's size and the conditions of its voyage are such as to render the application of the full requirements of this regulation and Section A-II/3 of the STCW Code unreasonable or impracticable, may to that extent exempt the master and the officer in charge of a navigational watch on such a ship or class of ships from some of the requirements, bearing in mind the safety of all ships which may be operating in the same waters.

*Regulation II/4***Mandatory minimum requirements for certification of ratings forming part of a navigational watch**

1. Every rating forming part of a navigational watch on a seagoing ship of 500 gross tonnage or more, other than ratings under training and ratings whose duties while on watch are of an unskilled nature, shall be duly certificated to perform such duties.
2. Every candidate for certification shall:
 - 2.1. be not less than 16 years of age;
 - 2.2. have completed:
 - 2.2.1. approved seagoing service including not less than six months training and experience; or
 - 2.2.2. special training, either pre-sea or on board ship, including an approved period of seagoing service which shall not be less than two months;
 - 2.3. meet the standard of competence specified in Section A-II/4 of the STCW Code.
3. The seagoing service, training and experience required by points 2.2.1 and 2.2.2 shall be associated with navigational watchkeeping functions and involve the performance of duties carried out under the direct supervision of the master, the officer in charge of the navigational watch or a qualified rating.
4. Seafarers may be considered by a Member State to have met the requirements of this regulation if they have served in a relevant capacity in the deck department for a period of not less than one year within the last five preceding the entry into force of the STCW Convention for that Member State.

*CHAPTER III**ENGINE DEPARTMENT**Regulation III/1***Mandatory minimum requirements for certification of officers in charge of an engineering watch in a manned engine-room or designated duty engineers in a periodically unmanned engine-room**

1. Every officer in charge of an engineering watch in a manned engine-room or designated duty engineer officer in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall hold an appropriate certificate.
2. Every candidate for certification shall:
 - 2.1. be not less than 18 years of age;
 - 2.2. have completed not less than six months seagoing service in the engine department in accordance with Section A-III/1 of the STCW Code;
 - 2.3. have completed approved education and training of at least 30 months which includes on-board training documented in an approved training record book and meet the standards of competence specified in Section A-III/1 of the STCW Code.

*Regulation III/2***Mandatory minimum requirements for certification of chief engineer officers and second engineer officers on ships powered by main propulsion machinery of 3 000 kW propulsion power or more**

1. Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of 3 000 kW propulsion power or more shall hold an appropriate certificate.
2. Every candidate for certification shall:
 - 2.1. meet the requirements for certification as an officer in charge of an engineering watch and:
 - 2.1.1. for certification as a second engineer officer, shall have not less than 12 months approved seagoing service as assistant engineer officer or engineer officer; and
 - 2.1.2. for certification as chief engineer officer, shall have not less than 36 months approved seagoing service of which not less than 12 months shall have been served as an engineer officer in a position of responsibility while qualified to serve as second engineer officer;
 - 2.2. have completed approved education and training and meet the standard of competence specified in Section A-III/2 of the STCW Code.

*Regulation III/3***Mandatory minimum requirements for certification of chief engineer officers and second engineer officers on ships powered by main propulsion machinery of between 750 kW and 3 000 kW propulsion power**

1. Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of between 750 and 3 000 kW propulsion power shall hold an appropriate certificate.
2. Every candidate for certification shall:
 - 2.1. meet the requirements for certification as an officer in charge of an engineering watch and:
 - 2.1.1. for certification as second engineer officer, shall have not less than 12 months approved seagoing service as assistant engineer officer or engineer officer; and
 - 2.1.2. for certification as chief engineer officer, shall have not less than 24 months approved seagoing service of which not less than 12 months shall be served while qualified to serve as second engineer officer;
 - 2.2. have completed approved education and training and meet the standard of competence specified in Section A-III/3 of the STCW Code.
3. Every engineer officer who is qualified to serve as second engineer officer on ships powered by main propulsion machinery of 3 000 kW propulsion power or more, may serve as chief engineer officer on ships powered by main propulsion machinery of less than 3 000 kW propulsion power, provided that not less than 12 months approved seagoing service shall have been served as an engineer officer in a position of responsibility and the certificate is so endorsed.

*Regulation III/4***Mandatory minimum requirements for certification of ratings forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room**

1. Every rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more, other than ratings under training and ratings whose duties are of an unskilled nature, shall be duly certificated to perform such duties.
2. Every candidate for certification shall:
 - 2.1. be not less than 16 years of age;

- 2.2. have completed:
 - 2.2.1. approved seagoing service including not less than six months training and experience; or
 - 2.2.2. special training, either pre-sea or on board ship, including an approved period of seagoing service which shall not be less than two months;
- 2.3. meet the standard of competence specified in Section A-III/4 of the STCW Code.
3. The seagoing service, training and experience required by points 2.2.1 and 2.2.2 shall be associated with engine-room watchkeeping functions and involve the performance of duties carried out under the direct supervision of a qualified engineer officer or a qualified rating.
4. Seafarers may be considered by a Member State to have met the requirements of this regulation if they have served in a relevant capacity in the engine department for a period of not less than one year within the last five years preceding the entry into force of the STCW Convention for that Member State.

CHAPTER IV

RADIO COMMUNICATION AND RADIO PERSONNEL

Explanatory note

Mandatory provisions relating to radio watchkeeping are set forth in the Radio Regulations and in the SOLAS 74, as amended. Provisions for radio maintenance are set forth in the SOLAS 74, as amended, and the guidelines adopted by the International Maritime Organisation.

Regulation IV/1

Application

1. Except as provided in point 2, the provisions of this chapter apply to radio personnel on ships operating in the global maritime distress and safety system (GMDSS) as prescribed by the SOLAS 74, as amended.
2. Radio personnel on ships not required to comply with the provisions of the GMDSS in Chapter IV of the SOLAS 74 are not required to meet the provisions of this chapter. Radio personnel on these ships are, nevertheless, required to comply with the Radio Regulations. The Administration shall ensure that the appropriate certificates as prescribed by the Radio Regulations are issued to or recognised in respect of such radio personnel.

Regulation IV/2

Mandatory minimum requirements for certification of GMDSS radio personnel

1. Every person in charge of or performing radio duties on a ship required to participate in the GMDSS shall hold an appropriate certificate related to the GMDSS, issued or recognised by the Administration under the provisions of the Radio Regulations.
2. In addition, every candidate for certification under this regulation for service on a ship which is required by the SOLAS 74, as amended, to have a radio installation shall:
 - 2.1. be not less than 18 years of age; and
 - 2.2. have completed approved education and training and meet the standard of competence specified in Section A-IV/2 of the STCW Code.

CHAPTER V

SPECIAL TRAINING REQUIREMENTS FOR PERSONNEL ON CERTAIN TYPES OF SHIPS

Regulation V/1

Mandatory minimum requirements for the training and qualification of masters, officers and ratings on tankers

1. Officers and ratings assigned specific duties and responsibilities relating to cargo or cargo equipment on tankers shall have completed an approved shore-based firefighting course in addition to the training required by Regulation VI/1 and shall have completed:

- 1.1. at least three months of approved seagoing service on tankers in order to acquire adequate knowledge of safe operational practices; or
- 1.2. an approved tanker-familiarisation course covering at least the syllabus given for that course in Section A-V/1 of the STCW Code.

However the Administration may accept a period of supervised seagoing service shorter than that prescribed by point 1.1, provided:

- 1.3. the period so accepted is not less than one month;
 - 1.4. the tanker is of less than 3 000 gross tonnage;
 - 1.5. the duration of each voyage on which the tanker is engaged during the period does not exceed 72 hours;
 - 1.6. the operational characteristics of the tanker and the number of voyages and loading and discharging operations completed during the period allow the same level of knowledge and experience to be acquired.
2. Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging and care in transit or handling of cargo shall, in addition to meeting the requirements of point 1.1 or 1.2, have:
 - 2.1. experience appropriate to their duties on the type of tanker on which they serve; and
 - 2.2. completed an approved specialised training programme which at least covers the subjects set out in Section A-V/1 of the STCW Code that are appropriate to their duties on the oil tanker, chemical tanker or liquefied gas tanker on which they serve.
 3. Within two years after the entry into force of the STCW Convention for a Member State, seafarers may be considered to have met the requirements of point 2.2 if they have served in a relevant capacity on board the type of tanker concerned for a period of not less than one year within the preceding five years.
 4. Administrations shall ensure that an appropriate certificate is issued to masters and officers, who are qualified in accordance with points 1 or 2 as appropriate, or that an existing certificate is duly endorsed. Every rating who is so qualified shall be duly certificated.

Regulation V/2

Mandatory minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on ro-ro passenger ships

1. This Regulation applies to masters, officers, ratings and other personnel serving on board ro-ro passenger ships engaged on international voyages. Administrations shall determine the applicability of these requirements to personnel serving on ro-ro passenger ships engaged on domestic voyages.
2. Prior to being assigned shipboard duties on board ro-ro passenger ships, seafarers shall have completed the training required by points 4 to 8 in accordance with their capacities, duties and responsibilities.
3. Seafarers who are required to be trained in accordance with points 4, 7 and 8 shall at intervals not exceeding five years undertake appropriate refresher training or be required to provide evidence of having achieved the required standard of competence within the previous five years.
4. Masters, officers and other personnel designated on muster lists to assist passengers in emergency situations on board ro-ro passenger ships shall have completed training in crowd management as specified in Section A-V/2, paragraph 1, of the STCW Code.

5. Masters, officers and other personnel assigned specific duties and responsibilities on board ro-ro passenger ships shall have completed the familiarisation training specified in Section A-V/2, paragraph 2, of the STCW Code.
6. Personnel providing direct service to passengers in passenger spaces on board ro-ro passenger ships shall have completed the safety training specified in Section A-V/2, paragraph 3, of the STCW Code.
7. Masters, chief mates, chief engineer officers, second engineer officers and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging or securing cargo, or closing hull openings on board ro-ro passenger ships shall have completed approved training in passenger safety, cargo safety and hull integrity as specified in Section A-V/2, paragraph 4, of the STCW Code.
8. Masters, chief mates, chief engineer officers, second engineer officers and any person having responsibility for the safety of passengers in emergency situations on board ro-ro passenger ships shall have completed approved training in crisis management and human behaviour as specified in Section A-V/2, paragraph 5, of the STCW Code.
9. Administrations shall ensure that documentary evidence of the training which has been completed is issued to every person found qualified under the provisions of this Regulation.

Regulation V/3

Mandatory minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on passenger ships other than ro-ro passenger ships

1. This Regulation applies to masters, officers, ratings and other personnel serving on board passenger ships, other than ro-ro passenger ships, engaged on international voyages. Administrations shall determine the applicability of these requirements to personnel serving on passenger ships engaged on domestic voyages.
2. Prior to being assigned shipboard duties on board passenger ships, seafarers shall have completed the training required by points 4 to 8 in accordance with their capacity, duties and responsibilities.
3. Seafarers who are required to be trained in accordance with points 4, 7 and 8 shall, at intervals not exceeding five years, undertake appropriate refresher training or be required to provide evidence of having achieved the required standard of competence within the previous five years.
4. Personnel designated on muster lists to assist passengers in emergency situations on board passenger ships shall have completed training in crowd management as specified in Section A-V/3, paragraph 1, of the STCW Code.
5. Masters, officers and other personnel assigned specific duties and responsibilities on board passenger ships shall have completed the familiarisation training specified in Section A-V/3, paragraph 2, of the STCW Code.
6. Personnel providing direct service to passengers on board passenger ships in passenger spaces shall have completed the safety training specified in Section A-V/3, paragraph 3, of the STCW Code.
7. Masters, chief mates and every person assigned immediate responsibility for embarking and disembarking passengers shall have completed approved training in passenger safety as specified in Section A-V/3, paragraph 4, of the STCW Code.
8. Masters, chief mates, chief engineer officers, second engineer officers and any person having responsibility for the safety of passengers in emergency situations on board passenger ships shall have completed approved training in crisis management and human behaviour as specified in Section A-V/3, paragraph 5, of the STCW Code.
9. Administrations shall ensure that documentary evidence of the training which has been completed is issued for every person found qualified under the provisions of this Regulation.

CHAPTER VI

EMERGENCY, OCCUPATIONAL SAFETY, MEDICAL CARE AND SURVIVAL FUNCTIONS

*Regulation VI/1***Mandatory minimum requirements for familiarisation, basic safety training and instruction for all seafarers**

Seafarers shall receive familiarisation and basic safety training or instruction in accordance with Section A-VI/1 of the STCW Code and shall meet the appropriate standard of competence specified therein.

*Regulation VI/2***Mandatory minimum requirements for the issue of certificates of proficiency in survival craft, rescue boats and fast rescue boats**

1. Every candidate for a certificate of proficiency in survival craft and rescue boats other than fast rescue boats shall:
 - 1.1. be not less than 18 years of age;
 - 1.2. have approved seagoing service of not less than 12 months or have attended an approved training course and have approved seagoing service of not less than six months;
 - 1.3. meet the standard of competence for certificates of proficiency in survival craft and rescue boats set out in Section A-VI/2, paragraphs 1 to 4, of the STCW Code.
2. Every candidate for a certificate of proficiency in fast rescue boats shall:
 - 2.1. be the holder of a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;
 - 2.2. have attended an approved training course;
 - 2.3. meet the standard of competence for certificates of proficiency in fast rescue boats set out in Section A-VI/2, paragraphs 5 to 8, of the STCW Code.

*Regulation VI/3***Mandatory minimum requirements for training in advanced firefighting**

1. Seafarers designated to control firefighting operations shall have successfully completed advanced training in techniques for fighting fire with particular emphasis on organisation, tactics and command in accordance with the provisions of Section A-VI/3 of the STCW Code and shall meet the standard of competence specified therein.
2. Where training in advanced firefighting is not included in the qualifications for the certificate to be issued, a special certificate or documentary evidence, as appropriate, shall be issued indicating that the holder has attended a course of training in advanced firefighting.

*Regulation VI/4***Mandatory minimum requirements relating to medical first aid and medical care**

1. Seafarers designated to provide medical first aid on board ship shall meet the standard of competence in medical first aid specified in Section A-VI/4, paragraphs 1, 2 and 3, of the STCW Code.
2. Seafarers designated to take charge of medical care on board ship shall meet the standard of competence in medical care on board ships specified in Section A-VI/4, paragraphs 4, 5 and 6, of the STCW Code.
3. Where training in medical first aid or medical care is not included in the qualifications for the certificate to be issued, a special certificate or documentary evidence, as appropriate, shall be issued indicating that the holder has attended a course of training in medical first aid or in medical care.

CHAPTER VII**ALTERNATIVE CERTIFICATION***Regulation VII/1***Issue of alternative certificates**

1. Notwithstanding the requirements for certification laid down in Chapters II and III of this Annex, Member States may elect to issue or authorise the issue of certificates other than those mentioned in the regulations of those chapters, provided that:
 - 1.1. the associated functions and levels of responsibility to be stated on the certificates and in the endorsements are selected from and identical to those appearing in Sections A-II/1, A-II/2, A-II/3, A-II/4, A-III/1, A-III/2, A-III/3, A-III/4 and A-IV/2 of the STCW Code;
 - 1.2. the candidates have completed approved education and training and meet the requirements for standards of competence, prescribed in the relevant sections of the STCW Code and as set forth in Section A-VII/1 of this Code, for the functions and levels that are to be stated on the certificates and in the endorsements;
 - 1.3. the candidates have completed approved seagoing service appropriate to the performance of the functions and levels that are to be stated on the certificate. The minimum duration of seagoing service shall be equivalent to the duration of seagoing service prescribed in Chapters II and III of this Annex. However, the minimum duration of seagoing service shall be not less than as prescribed in Section A-VII/2 of the STCW Code;
 - 1.4. the candidates for certification who are to perform the function of navigation at the operational level shall meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;
 - 1.5. the certificates are issued in accordance with the requirements of Article 11 and the provisions set forth in Chapter VII of the STCW Code.
2. No certificate shall be issued under this chapter unless the Member State has communicated the information required by the STCW Convention to the Commission.

*Regulation VII/2***Certification of seafarers**

Every seafarer who performs any function or group of functions specified in Tables A-II/1, A-II/2, A-II/3 or A-II/4 of Chapter II or in Tables A-III/1, A-III/2, A-III/4 of Chapter III or A-IV/2 of Chapter IV of the STCW Code, shall hold an appropriate certificate.

*Regulation VII/3***Principles governing the issue of alternative certificates**

1. A Member State which elects to issue or authorise the issue of alternative certificates shall ensure that the following principles are observed:
 - 1.1. no alternative certification system shall be implemented unless it ensures a degree of safety at sea and has a preventive effect as regards pollution at least equivalent to that provided by the other chapters;
 - 1.2. any arrangement for alternative certification issued under this chapter shall provide for the interchangeability of certificates with those issued under the other chapters.
2. The principle of interchangeability in point 1 shall ensure that:
 - 2.1. seafarers certificated under the arrangements of Chapters II and/or III and those certificated under Chapter VII are able to serve on ships which have either traditional or other forms of shipboard organisation;
 - 2.2. seafarers are not trained for specific shipboard arrangements in such a way as would impair their ability to take their skills elsewhere.

3. In issuing any certificate under the provisions of this chapter the following principles shall be taken into account:
 - 3.1. the issue of alternative certificates shall not be used in itself:
 - 3.1.1. to reduce the number of crew on board;
 - 3.1.2. to lower the integrity of the profession or 'deskill' seafarers; or
 - 3.1.3. to justify the assignment of the combined duties of the engine and check watchkeeping officers to a single certificate holder during any particular watch;
 - 3.2. the person in command shall be designated as the master and the legal position and authority of the master and others shall not be adversely affected by the implementation of any arrangement for alternative certification.
 4. The principles contained in points 1 and 2 shall ensure that the competency of both deck and engineer officers is maintained.
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ANNEX II

CRITERIA FOR THE RECOGNITION OF THIRD COUNTRIES THAT HAVE ISSUED A CERTIFICATE OR UNDER THE AUTHORITY OF WHICH WAS ISSUED A CERTIFICATE, REFERRED TO IN ARTICLE 19(2)

1. The third country must be a Party to the STCW Convention.
 2. The third country must have been identified by the Maritime Safety Committee as having demonstrated that full and complete effect is given to the provisions of the STCW Convention.
 3. The Commission, assisted by the European Maritime Safety Agency and with the possible involvement of any Member State concerned, must have confirmed, through all necessary measures, which may include the inspection of facilities and procedures, that the requirements concerning the standard of competence, the issue and endorsement of certificates and record keeping are fully complied with, and that a quality standards system has been established pursuant to Regulation I/8 of the STCW Convention.
 4. The Member State is in the process of agreeing an undertaking with the third country concerned that prompt notification will be given of any significant change in the arrangements for training and certification provided in accordance with the STCW Convention.
 5. The Member State has introduced measures to ensure that seafarers who present for recognition certificates for functions at management level have an appropriate knowledge of the maritime legislation of the Member State relevant to the functions they are permitted to perform.
 6. If a Member State wishes to supplement assessment of compliance of a third country by evaluating certain maritime training institutes, it shall proceed according to the provisions of section A-I/6 of the STCW Code.
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ANNEX III

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 32)

Directive 2001/25/EC of the European Parliament and of the Council

(OJ L 136, 18.5.2001, p. 17).

Directive 2002/84/EC of the European Parliament and of the Council only Article 11

(OJ L 324, 29.11.2002, p. 53).

Directive 2003/103/EC of the European Parliament and of the Council

(OJ L 326, 13.12.2003, p. 28).

Commission Directive 2005/23/EC

(OJ L 62, 9.3.2005, p. 14).

Directive 2005/45/EC of the European Parliament and of the Council only Article 4

(OJ L 255, 30.9.2005, p. 160).

PART B

List of time limits for transposition into national law

(referred to in Article 32)

Directive	Deadline for transposition
2002/84/EC	23 November 2003
2003/103/EC	14 May 2005
2005/23/EC	29 September 2005
2005/45/EC	20 October 2007

ANNEX IV

CORRELATION TABLE

Directive 2001/25/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, first to fourth indent	Article 2(a) to (d)
Articles 3 to 7	Articles 3 to 7
Article 7a	Article 8
Article 8	Article 9
Article 9(1) introductory wording	Article 10(1) first subparagraph introductory wording
Article 9(1)(a) and (b)	Article 10(1) first subparagraph (a) and (b)
Article 9(1)(c) first sentence	Article 10(1) first subparagraph (c)
Article 9(1)(c) second sentence	Article 10(1) second subparagraph
Article 9(1)(d)	Article 10(1) first subparagraph (d)
Article 9(2) and (3)	Article 10(2) and (3)
Article 10	Article 11
Article 11	Article 12
Article 12	Article 13
Article 13	Article 14
Article 14	Article 15
Article 15	Article 16
Article 16(1), introductory phrase	Article 17(1), introductory phrase
Article 16(1), first indent to fourth indent	Article 17(1)(a) to (d)
Article 16(2), introductory wording	Article 17(2), introductory wording
Article 16(2)(a)(1) and (2)	Article 17(2)(a)(i) and (ii)
Article 16(2)(b) and (c)	Article 17(2)(b) and (c)
Article 16(2)(d)(1) and (2)	Article 17(2)(d)(i) and (ii)
Article 16(2)(d)(3)(i) and (ii)	Article 17(2)(d)(iii), first and second indent
Article 16(2)(e)	Article 17(2)(e)
Article 16(2)(f)(1) to (5)	Article 17(2)(f)(i) to (v)
Article 16(2)(g)	Article 17(2)(g)
Article 17	Article 18
Article 18(1) and (2)	—
Article 18(3), introductory phrase	Article 19(1)
Article 18(3)(a)	Article 19(2)
Article 18(3)(b)	Article 19(3), first subparagraph
Article 18(3)(c)	Article 19(3), second subparagraph
Article 18(3)(d)	Article 19(4)
Article 18(3)(e)	Article 19(5)
Article 18(3)(f)	Article 19(6)
Article 18(4)	Article 19(7)

Directive 2001/25/EC	This Directive
Article 18a(1), first and second sentence	Article 20(1), first and second subparagraph
Article 18a(2), first and second sentence	Article 20(2), first and second subparagraph
Article 18a(3) to (5)	Article 20(3) to (5)
Article 18a(6), first and second sentence	Article 20(6), first and second subparagraph
Article 18a(7)	Article 20(7)
Article 18b	Article 21
Article 19	Article 22
Article 20(1), introductory words	Article 23(1), introductory words
Article 20(1), first and second indent	Article 23(1)(a) and (b)
Article 20(2), introductory words	Article 23(2), introductory words
Article 20(2), first to sixth indent	Article 23(2)(a) to (f)
Article 20(3)	Article 23(3)
Article 21	Article 24
Article 21a	Article 25
—	Article 26(1)
Article 21b, first sentence	Article 26(2), first subparagraph
Article 21b, second sentence	Article 26(2), second subparagraph
Article 22(1), first sentence	Article 27(1), first subparagraph
Article 22(1) second sentence	Article 27(1), second subparagraph
—	Article 27(1), third subparagraph
Article 22(3) and (4)	Article 27(2) and (3)
Article 23(1) and (2)	Article 28(1) and (2)
—	Article 28(3)
Article 23(3)	—
Article 24(1) and (2)	—
Article 24(3)(1) and (2)	Article 29(a) and (b)
Article 25	Article 30
Article 26, first sentence	Article 31, first paragraph
Article 26, second sentence	Article 31, second paragraph
Article 27	Article 32
Article 28	Article 33
Article 29	Article 34
Annexes I and II	Annexes I and II
Annex III	—
Annex IV	—
—	Annex III
—	Annex IV

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 2 December 2008

accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China

(2008/899/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the "basic Regulation"), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 488/2008 ⁽²⁾, the Commission imposed provisional anti-dumping duties on imports into the Community of citric acid originating in the People's Republic of China (PRC).
- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Community interest. The definitive findings and conclusions of the investigation are set out

in Council Regulation (EC) No 1193/2008 ⁽³⁾ imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of citric acid originating in the PRC.

- (3) The investigation confirmed the provisional findings of injurious dumping relating to imports of citric acid originating in the PRC.

B. UNDERTAKINGS

- (4) Subsequent to the adoption of provisional anti-dumping measures, six cooperating exporting producers in the PRC, namely Anhui BBKA Biochemical, RZBC, TTCA, Yixing Union Biochemical, Laiwu Taihe Biochemistry and Weifang Ensign Industry offered price undertakings in accordance with Article 8(1) of the basic Regulation. In these undertakings, the exporting producers have offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. Each exporting producer offered one minimum import price for all different product types in order to limit the risk of circumvention.
- (5) In addition, the offers provide for the indexation of the minimum prices given that the prices of the product concerned varied significantly, in particular prices increased considerably after the investigation period. The indexation is made in accordance with public international quotations of corn, the main raw material used by the exporting producers. However, the exporting producers offered to fix the minimum prices at least at the level of the non-injurious price even if the indexation would lead to a lower price level.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 143, 3.6.2008, p. 13.

⁽³⁾ See page 1 of this Official Journal.

- (6) Laiwu Taihe Biochemistry, which was accorded market economy treatment, offered to calculate its minimum price based on the normal value established during the investigation.
- (7) Moreover, the exporting producers, in order to reduce the risk of price violations by means of cross-compensation of prices, firstly offered to report all non-EU sales to those customers whose organisation or structure extends beyond the EU, should the exporting producer sell to this customer in the EU. Secondly, the exporting producers agreed to respect a certain price regime in relation to those non-EU sales.
- (8) The exporting producers will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.
- (9) It is also noted that the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCME') is joining the six companies mentioned in recital (4), and that therefore the CCCME will also play an active role in the monitoring of the undertakings. Thus, the Commission considers the risk of circumventing the agreed undertakings as limited.
- (10) Subsequent to the disclosure of the undertaking offers, the Community industry objected to these undertaking offers. The Community industry argued that an indexation based on corn is not appropriate as other main inputs constitute major variant components of the costs and suggested instead an indexation based on both raw material and energy costs. As concerns the Community industry's comments suggesting an indexation based also on energy, it is noted that energy is not a major cost driver. Moreover, there would be no clear source of indexation as the energy required can be produced from different sources such as coal, natural gas or electricity.
- (11) The Community industry further argued that, because the exporting producers sell the product covered by the undertaking to multinational companies, there is a high risk of price cross-compensation i.e. the product covered by the undertaking may be sold to the same customer at artificially low prices outside the EC in order to compensate the minimum prices in the EC. In this regard it should be noted that the majority of the companies' export sales to the EC are made to traders and not to multinational companies. Notwithstanding this, and to further reduce the remaining risk of cross-compensation by some specific companies, the offers contain special cross-compensation clauses in respect of sales by the companies concerned to those EC customers whose organisation or structure extends beyond the EU. These clauses significantly reduce the risk of cross-compensation.
- (12) In view of this, the undertakings offered by the exporting producers are acceptable.
- (13) In order to enable the Commission to monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in the Annex to Regulation (EC) No 1193/2008; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said company to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.
- (14) To further ensure the respect of the undertakings, importers have been made aware by the above-mentioned Council Regulation that the non-fulfilment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertakings, may lead to the customs debt being incurred for the relevant transactions.
- (15) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply by means of Article 8(9) of the basic Regulation,
- HAS DECIDED AS FOLLOWS:
- Article 1*
- The undertakings offered by the exporting producers mentioned below together with the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China, are hereby accepted.

Country	Company	Taric Additional Code
People's Republic of China	Anhui BBKA Biochemical Co., Ltd — No 73 Daqing Road, Bengbu City 233010, Anhui Province	A874
	Manufactured by RZBC Co., Ltd — No 9 Xinghai West Road, Rizhao, Shandong Province and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 9 Xinghai West Road, Rizhao, Shandong Province	A926
	Manufactured by RZBC (Juxian) Co., Ltd — West Wing, Chengyang North Road, Ju County, Rizhao, Shandong Province and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 9 Xinghai West Road, Rizhao, Shandong Province	A927
	TTCA Co., Ltd. — West, Wenhe Bridge North, Anqiu City, Shandong Province	A878
	Yixing Union Biochemical Co., Ltd — Economic Development Zone Yixing City 214203, Jiangsu Province	A879
	Laiwu Taihe Biochemistry Co. Ltd, No 106 Luzhong Large East Street, Laiwu, Shandong Province	A880
	Weifang Ensign Industry Co. Ltd, The West End, Limin Road, Changle City, Shandong Province	A882

Article 2

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

Done at Brussels, 2 December 2008.

For the Commission

Catherine ASHTON

Member of the Commission

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/900/CFSP

of 2 December 2008

amending Joint Action 2008/107/CFSP extending the mandate of the European Union Special Representative for Central Asia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 14, 18(5) and 23(2) thereof,

Whereas:

- (1) On 12 February 2008, the Council adopted Joint Action 2008/107/CFSP ⁽¹⁾.
- (2) The mandate of the European Union Special Representative should be amended to take account of his role in monitoring implementation of the European Union Strategy for a New Partnership with Central Asia, adopted by the European Council in June 2007,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Article 3(1)(i) of Joint Action 2008/107/CFSP is hereby replaced by the following text:

‘(i) provide input to the formulation of energy security, anti-narcotics and water resource management aspects of the CFSP with respect to Central Asia.’

Article 2

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

Article 3

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

Done at Brussels, 2 December 2008.

For the Council

The President

C. LAGARDE

⁽¹⁾ OJ L 38, 13.2.2008, p. 19.

COUNCIL DECISION 2008/901/CFSP**of 2 December 2008****concerning an independent international fact-finding mission on the conflict in Georgia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 13(3) and Article 23(1) thereof,

Whereas:

- (1) On 1 September 2008, the European Council stated that the European Union is ready to commit itself to support every effort to secure a peaceful and lasting solution to the conflicts in Georgia, and that it is ready to support confidence-building measures.
- (2) On 15 September 2008, the Council supported the idea of an independent international inquiry into the conflict in Georgia.
- (3) Ms Heidi TAGLIAVINI should be appointed as head of this fact-finding mission,

HAS DECIDED AS FOLLOWS:

*Article 1***Head of the independent international fact-finding mission and terms of reference**

1. Ms Heidi TAGLIAVINI is hereby appointed head of the independent international fact-finding mission on the conflict in Georgia, hereinafter 'the fact-finding mission', for the period from 2 December 2008 to 31 July 2009.
2. The aim of the fact-finding mission shall be to investigate the origins and the course of the conflict in Georgia, including with regard to international law⁽¹⁾, humanitarian law and human rights, and the accusations made in that context⁽²⁾. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict, and to the Council, the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations (UN), in the form of a report.
3. The head of the fact-finding mission shall be responsible for the implementation of the fact-finding mission. She shall determine, in complete independence, the procedures and working methods of the fact-finding mission, and the content of the report referred to in paragraph 2.

*Article 2***Financing**

1. The financial reference amount intended to cover the expenditure related to the implementation of the fact-finding

mission shall be EUR 1 600 000 for the period from 2 December 2008 to 31 July 2009.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be eligible as from 2 December 2008.

3. The expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the European Communities. The management of the expenditure shall be subject to a contract between the head of the fact-finding mission and the Commission.

4. The head of the fact-finding mission shall be accountable to the Commission for all expenditure.

*Article 3***Composition of the fact-finding mission**

The composition of the fact-finding mission shall be decided by the head of mission. It shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts.

*Article 4***Assessment**

The implementation of this Decision shall be reviewed by the Council before 31 July 2009.

*Article 5***Entry into effect and expiry**

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

It shall expire on 31 July 2009.

*Article 6***Publication**

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

Done at Brussels, 2 December 2008.

For the Council
The President
C. LAGARDE

⁽¹⁾ Including the Helsinki Final Act.

⁽²⁾ Including allegations of war crimes.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.