ISSN 1725-2555

Official Journal of the European Union

L 255

English edition

Legislation

Volume 50

29 September 2007

Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS

Council

Commission

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1124/2007

of 28 September 2007

amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1] (basic Regulation) and in particular Article 19 thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 2597/1999 [2], imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India (the product concerned). The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original investigation'. The measures took the form of an ad valorem duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The countervailing duty imposed on imports of PET film manufactured and exported by Jindal Poly Films Limited, formerly known as Jindal Polyester Ltd [3], (Jindal or the company) was 7 %. The original investigation period was 1 October 1997 to 30 September 1998.

(2) The Council, by Regulation (EC) No 367/2006 [4], following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

(3) The Council, by Regulation (EC) No 1288/2006, following an interim review concerning the subsidisation of another Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

II. Ex officio initiation of a partial interim review

(4) Prima facie evidence was available to the Commission indicating that Jindal benefited from increased levels of subsidisation, compared to the original investigation, and that the changes to such levels were of a lasting nature.

III. Investigation

(5) As a result, the Commission decided, after consulting the Advisory Committee, to initiate ex officio a partial interim review in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to Jindal, in order to assess the need for the continuation, removal or amendment of the existing countervailing measures. On 2 August 2006 the Commission announced, by a notice of initiation published in the *Official Journal of the European Union* [5], the initiation of this review.

[1] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 316, 10.12.1999, p. 1.
[3] OJ C 297, 2.12.2004, p. 2.
[4] OJ L 68, 8.3.2006, p. 15. Regulation as amended by Regulation (EC) No 1288/2006 (OJ L 236, 31.8.2006, p. 1).
[5] OJ C 180, 2.8.2006, p. 90.

(6) The review investigation period (review IP) ran from 1 April 2005 to 31 March 2006.

(7) The Commission officially advised Jindal, the Government of India (GOI) and Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nuroll, Italy, which represent the overwhelming majority of Community PET film production (hereinafter the Community industry), of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(8) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to Jindal, which cooperated by replying to the questionnaire. A verification visit was carried out at Jindal's premises in India.

(9) Jindal, the GOI and the Community industry were informed of the essential results of the investigation and had the opportunity to comment. Comments were received by Jindal and are discussed below. The GOI did not submit any comments.

B. **PRODUCT CONCERNED**

(10) The product concerned is polyethylene terephthalate (PET) film, originating in India, normally declared under CN codes ex 3920 62 19 and ex 3920 62 90, as defined in the original investigation.

C. **SUBSIDIES**

I. **Introduction**

(11) On the basis of the information available and the reply to the Commission's questionnaire, the following schemes, allegedly involving the granting of subsidies, were investigated:

(a) *Nationwide schemes*

(i) Advance Licence Scheme;

(ii) Duty Entitlement Passbook Scheme;

(iii) Export Oriented Units Scheme/Special Economic Zones Scheme;

(iv) Export Promotion Capital Goods Scheme;

(v) Export Income Tax Exemption Scheme;

(vi) Export Credit Scheme;

(vii) Duty-Free Replenishment Certificate.

(12) The schemes (i) to (iv) and (vii) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (the Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. A multi-annual plan relating to the Indian foreign trade policy for the period 1 September 2004 to 31 March 2009, which succeeded the former export and import (EXIM) policy, was published by the GOI (FTP 2004 to 2009). In addition, a handbook of procedures governing the FTP 2004 to 2009 (HOP I 2004 to 2009) was published by the GOI and is updated on a regular basis [1].

(13) The Export Income Tax Exemption Scheme specified in (v) above is based on the Income Tax Act 1961, which is amended annually by the Finance Act.

(14) The Export Credit Scheme specified in (vi) above is based on Sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India to instruct commercial banks regarding export credits.

(b) *Regional Schemes*

(15) On the basis of the information available and the reply to the Commission's questionnaire, the Commission also investigated the Package Scheme of Incentives (hereinafter, the 'PSI') of the Government of Maharashtra (the GOM) 1993. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

II. **Nationwide Schemes**

1. ***Advance Licence Scheme (ALS)***

(a) *Legal basis*

(16) The detailed description of the scheme is contained in paragraphs 4.1.3 to 4.1.14 of the FTP 2004 to 2009 and Chapters 4.1 to 4.30 of the HOP I 2004 to 2009. The scheme was replaced in April 2006, i.e. after the end of the review IP, by the 'Advance Authorisation Scheme'. However, this appears to be essentially a name change. The following analysis focuses on the ALS in place during the review IP.

[1] Notification No 1 (RE-2006)/2004 to 2009 of 7.4.2006 of the Ministry of Commerce and Industry of the Government of India.

(b) *Eligibility*

(17) The ALS consists of six sub-schemes. Those sub-schemes differ, inter alia, in the criteria for eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the ALS for physical exports and for the ALS for annual requirement. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 2004 to 2009, such as suppliers of an export oriented unit (EOU), are eligible for ALS deemed export. Manufacturer-exporters supplying the ultimate exporter are eligible for ALS for intermediate supplies. Finally, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit. Since only the first four of the six sub-schemes were used by Jindal during the review IP, only those will be described in more detail below.

(c) *Practical implementation*

(18) An Advance Licence can be issued for:

(i) *Physical exports*: This is the main sub-scheme. It allows the duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and an export obligation, including the type of export product, are specified in the licence.

(ii) *Annual requirement*: Such a licence is not linked to a specific export product, but to a wider product group (e.g. chemical and related products). The licence holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material.

(iii) *Deemed exports*: This sub-scheme allows a main contractor the duty-free import of inputs required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FTP 2004 to 2009. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply are regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone (SEZ).

(iv) *Intermediate supplies*: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter produces the intermediate product. It can import duty free input materials and can obtain for this purpose an ALS for intermediate supplies. The ultimate exporter finalizes the production and is obliged to export the finished product.

(19) As stated above, Jindal used the ALS during the review IP. More precisely, it made use of the four sub-schemes indicated under (i) to (iv) above.

(20) For verification purposes by the Indian authorities, a licence holder is legally obliged to maintain 'a true and proper account of licence-wise consumption and utilisation of imported goods' in a specified format (Chapter 4.30 HOP I 2004 to 2009) (hereinafter the consumption register). The verification showed that the company did not properly maintain its consumption register, i.e. that it did not record the link between input material and the final destination of the resultant product, as required by the format required by the GOI, despite the fact that it not only exports the resultant product but sells it on the domestic market as well.

(21) With regard to sub-schemes (i) and (iii) above, both the import allowance and the export obligation (including deemed export) are fixed in volume and value by the GOI and are documented on the licence. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the licence. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are published in Volume II of the HOP I 2004 to 2009. The SIONs for PET film and PET chips, an intermediate product, were revised downwards in October 2005.

(22) With regard to sub-scheme (iii) it was noted that the deemed exports fulfilling the respective obligation under the ALS were essentially intra-company sales, i.e. a PET chip manufacturing unit of Jindal (which is not a separate legal entity) sold the PET chips for further downstream production of PET film to Jindal's EOU. The import of raw materials took place in the context of the manufacture of the intermediate product (PET chips). In other words, under sub-scheme (iii) domestic sales are considered to be exports.

(23) With regard to sub-scheme (iv) input materials domestically procured by Jindal are written off from Jindal's Advance Licence and an intermediate Advance Licence is issued to the domestic supplier. The holder of such intermediate Advance Licence can import, duty-free, the goods needed to produce the product that will subsequently be supplied to Jindal as raw material for the production of the product concerned.

(24) In the case of sub-scheme (ii) listed above (Advance Licence for annual requirement), only the import allowance in value is documented on the licence. The licence holder is obliged to 'maintain the nexus between imported inputs and the resultant product' (paragraph 4.24A(c) HOP I 2004 to 2009).

(25) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (18 months with two possible extensions of six months each, i.e. a total of 30 months).

(26) The verification showed that the company's specific consumption rate of key raw materials needed to produce one kilogram of PET film, in various degrees depending on the quality of the PET film and as reported in the consumption register, was lower than the corresponding SION. This was clearly the case with regard to the old SION for PET film and PET chips, and, to a lesser extent, to the revised SION which came into force in September 2005, i.e. during the review IP. In other words, Jindal was allowed to import duty-free, as per the SION, more raw materials than actually needed for its manufacturing process. This made the consumption register, in line with the FTP 2004 to 2009, the crucial verification element. However, this register was neither properly kept nor ever inspected by the GOI. The company claimed that the GOI would adjust the excess benefit when the licences expired, i.e. 30 months from the issuance of a licence, as the common practice is to make use of the two possible extensions of six months each. However, this claim could not be verified as no licence used by Jindal had yet been redeemed.

(27) Changes in the administration of the FTP 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the Indian authorities in the context of the redemption procedure) had not yet been applied in the case of Jindal. Thus, the de facto implementation of this provision could not be verified at this stage.

(d) *Conclusion*

(28) The exemption from import duties is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, in that the non-collection of import duties otherwise due is a financial contribution of the GOI, which conferred a benefit upon Jindal by improving its liquidity.

(29) In addition, the four sub-schemes used by Jindal (i.e. the ones listed above under (i) to (iv)) are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes. Obviously, this is the case with regard to schemes (i), (ii) and (iv), but even the ALS deemed exports fulfils this criterion in the present case because the supply to an EOU ultimately aims at real exports.

(30) The sub-schemes used in the present case cannot be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply its verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SIONs themselves cannot be considered a verification system of actual consumption because the design of those overly generous standard norms does not enable the GOI to verify with sufficient precision what amount of inputs were consumed in the export production. Furthermore, no effective control by the GOI based on the consumption register took place.

(31) The company, in its post-disclosure comments, maintained that it keeps a proper consumption register and, as such, that a proper verification system is in place in accordance with Annex II to the basic Regulation. It further claimed that the ALS works as a substitution scheme, so that duty-free inputs may be used to produce products sold domestically, as long as the duty-free inputs are, either directly or through substitution, consumed in the production of goods subsequently exported within a reasonable period of time. However, even though the company might keep a register of the consumption of raw material to produce a quantity of the product concerned, it failed to maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FTP 2004 to 2009 (Appendix 23) and in accordance with Annex II(II)(4) to the basic Regulation. Further, it does not maintain a system whereby it can be verified that the quantity of the input for which drawback is claimed does not exceed the quantity of similar product exported, in accordance with Annex III(II)(2). In the present case, it is, after careful consideration, maintained that there is no link between the duty-free input consumed and the exported product, and that there is therefore no proper verification system in place.

(32) The sub-schemes are therefore countervailable.

(e) *Calculation of the subsidy amount*

(33) The subsidy amount was calculated as follows. The numerator is the sum of the import duties foregone (basic customs duty and special additional customs duty) on the material imported under sub-schemes (i) to (iii) respectively applicable to imports via the intermediate manufacturer; in the case of sub-scheme (iv), the numerator is the sum of the import duties foregone on inputs used in producing the product concerned during the review IP.

(34) The company claimed, in its post-disclosure comments, that the customs duties for the raw materials needed for the production of PET film decreased from 15 % to 7,5 % from March 2006, i.e. after the end of the IP, and requested that the Commission take this change into account in the calculation of the subsidy rate for ALS. However, although there have been instances where events occurring after the IP have been taken into account, this is restricted to extraordinary circumstances which do not appear to apply in this case. Therefore, in accordance with Articles 5 and 11(1) of the basic Regulation, this request has to be rejected.

(35) The company further claimed, in its post-disclosure comments, that the benefit under sub-scheme (iv) was, in fact, the price difference between regular domestic purchases of inputs and purchases of inputs against invalidation of ALS and produced some calculations to that effect without supporting evidence. However, the benefit is calculated on the basis of the duty foregone in the licence, since the sale/purchase price of the material is a purely commercial decision and does not alter the amount of duty unpaid. In any event, this claim was made post-disclosure for the first time and, as there was no opportunity for the Commission to verify it, it was rejected.

(36) In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amounts where justified claims were made. The entire amount of import duties foregone is taken as the numerator and not the excess remission/exemption, as the company requested, because the ALS does not fulfil the conditions laid down in Annex II to the basic Regulation. In accordance with Article 7(2) of the basic Regulation, the denominator is the export turnover during the review IP. The company claimed that deemed exports should be included in the total export turnover of the company during the review IP. However, as these transactions are not, in fact, exports but rather sales to the domestic market, they cannot be properly classified as exports and were thus not included in the total export turnover amount.

(37) The subsidy rate established for the ALS amounts to 14,68 %.

2. ***Duty Entitlement Passbook Scheme (DEPBS)***

(a) *Legal Basis*

(38) A description of the DEPBS is contained in paragraph 4.3 of the FTP 2004 to 2009.

(b) *Eligibility*

(39) Jindal was not found to be using the DEPBS during the review IP, therefore no further analysis of the countervailability of this scheme is necessary.

3. ***Export Oriented Units Scheme (EOUS)/Special Economic Zones Scheme (SEZS)***

(a) *Legal basis*

(40) The details of these schemes are contained in Chapter 6 of the FTP 2004 to 2009, the HOP I 2004 to 2009 (EOUS), the SEZ Act 2005 and the rules framed thereunder (SEZS).

(b) *Eligibility*

(41) With the exception of pure trading companies, all enterprises which undertake to export a certain amount of their production of goods or services may be set up under the EOUS or SEZS. Jindal was found to benefit from the EOUS but not the SEZS during the review IP. Consequently, the analysis focuses on the EOUS only.

(c) *Practical implementation*

(42) An EOU can be established anywhere in India. This scheme is complementary to the SEZS.

(43) An application for EOU status must include details of, inter alia, planned production quantities, projected value of exports, import requirements and indigenous requirements for a period of five years. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. The agreement to be recognised as a company under the EOUS is valid for a five-year period and can be renewed further.

(44) A crucial obligation of an EOU, as set out in the FTP 2004 to 2009, is to achieve net foreign exchange (NFE) earnings, i.e. in a reference period (five years), the total value of exports has to be higher than the total value of imported goods.

(45) An EOU is entitled to the following concessions:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production or processing or in connection therewith;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) reimbursement of central sales tax paid on goods procured locally;

(iv) facility to sell up to 50 % of the fob value of exports on the domestic market's so called domestic tariff area (DTA) on payment of concessional duties;

(v) exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act, for a period of 10 years after the beginning of its operations, but only up to 2010;

(vi) possibility of 100 % foreign equity ownership.

(46) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act. EOUs are legally obliged to maintain, in a specified format, a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made. These documents are required to be submitted periodically to the competent authorities (quarterly and annual progress reports). However, 'at no point in time shall [an EOU] be required to correlate every import consignment with its exports, transfers to other units, sales in the DTA and balance in stock', as per paragraph 6.11.2 of the FTP 2004 to 2009.

(47) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official, who is permanently posted in the EOU.

(48) Jindal utilised the EOU to import capital goods free of import duties and to obtain a reimbursement of the central sales tax paid on goods procured locally. It did not make use of the exemption from import duties on raw materials, since the EOU facility, in order to produce PET film, uses PET chips as raw materials. These PET chips are produced in another unit of the company from raw materials purchased under the ALS.

(d) *Conclusions on the EOU*

(49) The exemption of an EOU from two types of import duties (basic customs duty and special additional customs duty) and the reimbursement of the central sales tax are financial contributions by the GOI within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is foregone, thus conferring a benefit upon the EOU within the meaning of Article 2(2) of the basic Regulation by improving its liquidity.

(50) Thus, the exemption from basic customs duty and special additional customs duty and the sales tax reimbursement constitute subsidies within the meaning of Article 2 of the basic Regulation. They are contingent in law upon export performance and, therefore, deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. The export objective of an EOU as set out in paragraph 6.1 of the FTP 2004 to 2009 is a necessary condition to obtain the incentives.

(51) In addition, it was confirmed that the GOI has no effective verification system or procedure in place to confirm whether and in what amounts duty and/or sales-tax-free procured inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). In any event, the exemption from duties on capital goods is not a permissible duty drawback scheme because capital goods are not consumed in the production process.

(52) The GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be done in the absence of an effective verification system (Annex II(II)(5) and Annex III(II)(3) of the basic Regulation), nor did it prove that no excess remission had taken place.

(e) *Calculation of the subsidy amount*

(53) Accordingly, the countervailable benefit is the exemption from total duties (basic customs duty and special additional customs duty) normally due upon importation, as well as the sales tax reimbursement, both during the review IP.

(i) Reimbursement of central sales tax on domestically procured goods

(54) The numerator was established as follows: the subsidy amount was calculated on the basis of the sales tax reimbursable on the purchases made for the production sector, e.g. parts and packing materials, during the review IP. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(55) In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover generated by all export sales of the product concerned during the review IP (the denominator), because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 0,04 %.

(ii) Exemption from import duties (basic customs duty and special additional customs duty) and reimbursement of central sales tax on capital goods

(56) In accordance with Article 7(3) of the basic Regulation, the benefit was calculated on the basis of the amount of unpaid customs duty on imported capital goods and of the amount of sales tax reimbursed on purchases of capital goods, both spread across a period which reflected the normal depreciation period of such capital goods in the industry of the product concerned. The company claimed that this should have been the depreciation rate actually used by the company in its financial statements; however, the requirement in Article 7(3) is interpreted to refer to the depreciation rate specified in the legislation applicable to the company, in this case the rate specified in the Companies Act 1956. The amount so calculated which is then attributable to the review IP was adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establishing the full benefit of this scheme to the recipient. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as the numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount was allocated over the export turnover of sales of the product concerned during the review IP as the appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported. The company claimed that deemed exports should be included in the total export turnover, but this claim was rejected for the reasons set out in recital 36 above. The subsidy margin thus obtained was 1,26 %.

(57) Thus, the total subsidy margin under the EOU scheme for Jindal amounts to 1,3 %.

4. ***Export Promotion Capital Goods Scheme (EPCGS)***

(a) *Legal Basis*

(58) A detailed description of the EPCGS can be found in Chapter 5 of the FTP 2004 to 2009 and in Chapter 5 of the HOP I 2004 to 2009.

(b) *Eligibility*

(59) Any manufacturer-exporter and merchant-exporter 'tied to' a supporting manufacturer or service provider is eligible for this scheme. Jindal was found to benefit from this scheme during the review IP.

(c) *Practical Implementation*

(60) Under the condition of an export obligation, a company is allowed to import capital goods (new and — since April 2003 — second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and the payment of a fee, an EPCG licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 %, applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

(d) *Conclusion on the EPCGS*

(61) The EPCGS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, as the GOI foregoes revenue otherwise due. In addition, the duty reduction confers a benefit upon the exporter because the non-payment of duties saved upon importation improves its liquidity.

(62) Further, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(63) The scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) to the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i) to the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(64) The numerator was established as follows: the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of unpaid customs duty on imported capital goods spread over a period which reflects the normal depreciation period of such capital goods in the PET film industry, which, for the reasons set out in recital 56 above, was deemed to be the rate specified in the Companies Act 1956 and not the one actually used by the company. Interest was added to this amount in order to reflect the full value of the benefit over time. Fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation.

(65) The company claimed that capital goods imported duty-free under the ECPG scheme for use in the Khanvel unit were no longer in use and that the benefit relating to such goods should not be included in the numerator. However, as there is no evidence that the company no longer possesses such goods or that it will not use them again, the Commission must reject this claim.

(66) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned generated during the review IP (the denominator), as the subsidy is contingent upon export performance. The company claimed that deemed exports should be included in the total export turnover, but this claim was rejected for the reasons set out in recital 36 above. The subsidy obtained by Jindal is 1,11 %.

5. ***Export Income Tax Exemption Scheme (EITES)***

(a) *Legal basis*

(67) The legal basis for this scheme is contained in the Income Tax Act 1961, amended yearly by the Finance Act. The latter sets out, every year, the basis for the collection of taxes, as well as various exemptions and deductions which can be claimed. Export Oriented Units e.g. may claim income tax exemptions under section 10B of the Income Tax Act 1961.

(b) *Practical implementation*

(68) As Jindal was not found to have availed itself of any benefits under the EITES no further analysis of the countervailability of this scheme is necessary.

6. ***Export Credit Scheme (ECS)***

(a) *Legal basis*

(69) The details of the scheme are set out in Master Circular IECD No 5/04.02.01/2002-03 (Export Credit in Foreign Currency) and Master Circular IECD No 10/04.02.01/2003-04 (Rupee Export Credit) of the Reserve Bank of India (RBI), which is addressed to all commercial banks in India.

(b) *Eligibility*

(70) Manufacturing exporters and merchant exporters are eligible for this scheme. Jindal was found to benefit from this scheme during the review IP.

(c) *Practical implementation*

(71) Under this scheme, the RBI sets mandatory ceilings on interest rates applicable to export credits, both in Indian rupees and in foreign exchange, which commercial banks can charge an exporter 'with a view to making credit available to exporters at internationally competitive rates'. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans for financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.

(72) As a result of these RBI Master Circulars, exporters can obtain export credit at preferential interest rates compared to the interest rates on ordinary commercial credit (cash credits), which are set under market conditions.

(d) *Conclusion on the ECS*

(73) Firstly, by lowering financing costs as compared with market interest rates, the above preferential interest rates confer a benefit within the meaning of Article 2(2) of the basic Regulation on such exporters. Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 2(1)(iv) of the basic Regulation. The RBI is a public body, falling, therefore, within the definition of a 'government' set out in Article 1(3) of the basic Regulation and it instructs commercial banks to grant preferential financing to exporting companies. This preferential financing amounts to a subsidy, which is deemed to be specific and countervailable, since the preferential interest rates are contingent upon export performance pursuant to Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

(74) The subsidy amount was calculated on the basis of the difference between the interest paid for export credits used during the review IP and the amount that would have been payable if market interest rates had been charged, as for ordinary commercial loans made by the company. The subsidy amount (numerator) was allocated over the total export turnover during the review investigation period (denominator) in accordance with Article 7(2) of the basic Regulation, as the subsidy is contingent upon export performance and is not granted by reference to quantities manufactured, produced, exported or transported. Jindal availed itself of benefits under the ECS and obtained a subsidy of 0,1 %.

7. ***Duty-Free Replenishment Certificate (DFRC)***

(a) *Legal basis*

(75) The legal basis for this scheme is contained in paragraph 4.2 of the FTP 2004 to 2009.

(b) *Practical Implementation*

(76) As Jindal was not found to have availed itself of any benefits under the DFRC during the review IP, no further analysis of the countervailability of this scheme is necessary.

III. **Regional Scheme**

Package Scheme of Incentives (PSI) of the Government of Maharashtra (GOM)

(a) *Legal basis*

(77) In order to encourage the establishment of industries in less developed areas of the State, the GOM has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package Scheme of Incentives'. The scheme has been amended several times since its introduction and the '1993 scheme' was eligible for application from 1 October 1993 to 31 March 2001, whereas the latest amendment, the PSI 2006, was introduced in the margins of the 'Industrial, Investment & Infrastructure Policy of Maharashtra 2006' in spring 2006 and is foreseen to be eligible for application up to 31 March 2011. The PSI of the GOM is composed of several sub-schemes, the main one being direct grants via a so-called industrial promotion subsidy, the exemption from local sales tax and electricity duty and the refund of octroi tax.

(78) Jindal continues to avail itself of incentives under the PSI 1993 until May 2011 and not under successor schemes. Consequently, only the PSI 1993 was assessed in the context of the case at hand.

(b) *Eligibility*

(79) In order to be eligible, companies must invest in less developed areas, either by setting up a new industrial establishment or by making a large-scale capital investment in expansion or diversification of an existing industrial establishment. These areas are classified, according to their economic development, into different categories (e.g. less developed area, lesser developed area and least developed area). The main criterion to establish the amount of incentives is the area in which the enterprise is or will be located and the size of the investment.

(c) *Practical implementation*

(80) Remission of local sales tax on sales of finished goods: goods are normally subject to central sales tax (for inter-State sales) or, in the past, State sales tax (for intra-State sales) at varying levels, depending upon the State(s) in which transactions are made. In April 2005 the sales tax legislation for intra-State sales in Maharashtra was replaced by a value added tax (VAT) system. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Jindal was found to have benefited from this exemption in relation to sales transactions during the review IP.

(81) Reimbursement of electricity duty: eligible units are eligible for refund of electricity duty on the electricity consumed for production purposes for a period of seven years from the date of commercial production. In the case of Jindal this seven-year period lapsed on 31 March 2003. Consequently, Jindal was no longer eligible for the reimbursement of electricity duty.

(82) Refund of the octroi tax: octroi is a tax levied by local Governments in India, including the GOM, on goods that enter the territorial limits of a town. Industrial enterprises are entitled to a refund of the octroi tax from the GOM if their facility is located in certain specified towns within the territory of the State. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. Jindal's plant is located outside city limits and is therefore per se exempt from octroi tax, with the result that this sub-scheme is not applicable in the present case.

(d) *Conclusion on the PSI 1993 of the GOM*

(83) Jindal only accrued remission rights of sales tax on sales of finished goods during the review IP, which in the past has been found not to confer a benefit on the recipient (recital 114 of Regulation (EC) No 367/2006). Consequently, the PSI is not countervailable in the present case.

IV. **Amount of countervailable subsidies**

(84) The amount of countervailable subsidies determined in accordance with the basic Regulation, expressed ad valorem, for the investigated exporting producer is 17,1 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

SCHEME	ALS	EOUS	EPCGS	ECS	Total
	%	%	%	%	%
Jindal	14,68	1,30	1,11	0,1	17,1

V. **Lasting nature of changed circumstances with regard to subsidisation**

(85) In accordance with Article 19(2) of the basic Regulation, it was examined whether the continuation of the existing measure was insufficient to counteract the countervailable subsidy which is causing injury.

(86) It was established that, during the review IP, Jindal continued to benefit from countervailable subsidisation by the Indian authorities. Further, the subsidy rate found during this review is considerably higher than that established during the original investigation. No evidence is available that the schemes will be discontinued or phased out in the near future.

(87) Since it has been demonstrated that the company is in receipt of much higher subsidisation than before and that it is likely to continue to receive subsidies of an amount higher than determined in the original investigation, it is concluded that the continuation of the existing measure is not sufficient to counteract the countervailable subsidy causing injury and that the level of the measure should therefore be amended to reflect the new findings.

VI. **Conclusion**

(88) In view of the conclusions reached with regard to the level of subsidisation of Jindal and the insufficiency of the existing measure to counteract the countervailable subsidies found, the countervailing duty with regard to Jindal should be amended in order to reflect the new subsidisation levels found.

(89) The amended countervailing duty should be established at the new rate of subsidisation found during the present review, as the injury margin calculated in the original investigation remains higher.

(90) Pursuant to Article 24(1) of the basic Regulation and Article 14(1) of Regulation (EC) No 384/96, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. However, since Jindal is subject to an anti-dumping duty of 0 % with regard to the product concerned, these provisions do not apply in the present case.

(91) Jindal, the GOI and the Community industry were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the measures in force and had the opportunity to comment. The GOI did not submit any comments, and Jindal's comments have been discussed in the recitals relevant to each specific comment above.

(92) The company, in its post-disclosure comments, requested the Commission to accept a price undertaking in order to offset the countervailable subsidies found herein. The Commission has examined the company's proposal and considers that a price undertaking cannot be accepted. Price undertakings based on groups of products, as suggested by the company, permit a large degree of flexibility to change the technical characteristics of the products within the group. PET film comprises numerous and evolving differentiating features, which largely determine sales price. Consequently, changes in those features have a significant impact on prices. An attempt to subdivide the groupings to make them more homogeneous in terms of physical characteristics would lead to a multiplication of groupings which would render monitoring unworkable, in particular, by making it difficult for customs authorities to discern the difference between product types and the classification of products by grouping upon importation. For these reasons, the acceptance of the undertaking is considered impractical within the meaning of Article 13(3) of the basic Regulation. Jindal was informed and given the opportunity to comment. However, its comments have not altered the above conclusion.

(93) As India Polyfilms Limited, a company previously related to Jindal, merged with Jindal on 1 April 1999 and no longer forms a separate entity, it was removed from the list set out in Article 1(2),

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Council Regulation (EC) No 367/2006 shall be replaced by the following:

'2. The rate of duty applicable to the net free-at-Community-frontier price, before duty for imports produced in India by the companies listed below, shall be as follows:

Company	Definitive duty (%)	TARIC Additional Code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	12,0	A026
Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	12,5	A027
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,9	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	17,1	A030
MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	19,1	A032
All other companies	19,1	A999'

Article 2

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

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

Done at Brussels, 28 September 2007.

For the Council
The President
M. PINHO

COMMISSION REGULATION (EC) No 1125/2007

of 28 September 2007

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 September 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 28 September 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MK	45,9
	TR	97,6
	XS	28,3
	ZZ	57,3
0707 00 05	JO	151,2
	MK	27,9
	TR	87,4
	ZZ	88,8
0709 90 70	IL	51,9
	TR	107,9
	ZZ	79,9
0805 50 10	AR	67,9
	TR	97,9
	UY	80,4
	ZA	66,1
	ZZ	78,1
0806 10 10	IL	284,6
	MK	11,8
	TR	110,7
	US	284,6
	ZZ	172,9
0808 10 80	AR	87,7
	AU	127,2
	CL	77,6
	CN	79,8
	MK	29,7
	NZ	102,3
	US	96,1
	ZA	77,7
	ZZ	84,8
0808 20 50	CN	86,5
	TR	135,1
	ZA	87,3
	ZZ	103,0
0809 30 10, 0809 30 90	TR	146,4
	US	161,1
	ZZ	153,8
0809 40 05	IL	118,5
	ZZ	118,5

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

COMMISSION REGULATION (EC) No 1126/2007

of 28 September 2007

amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs as regards *Fusarium* toxins in maize and maize products

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food [1], and in particular Article 2(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs [2] sets maximum levels for *Fusarium* toxins in certain foodstuffs.

(2) Maximum levels should be set at a strict level which is reasonably achievable by following good agricultural and manufacturing practices and taking into account the risk related to the consumption of the food.

(3) Climatic conditions during the growth, in particular at flowering, have a major influence on the *Fusarium* toxin content. However, good agricultural practices, whereby the risk factors are reduced to a minimum, can prevent to a certain degree the contamination by *Fusarium* fungi. Commission Recommendation 2006/583/EC of 17 August 2006 on the prevention and reduction of *Fusarium* toxins in cereals and cereal products [3], including maize and maize products contains general principles for the prevention and reduction of *Fusarium* toxin contamination (zearalenone, fumonisins and trichothecenes) in cereals to be implemented by the development of national codes of practice based on these principles.

(4) Maximum levels were established in 2005 for *Fusarium* toxins in cereals and cereal products, including maize and maize products. For maize, not all factors involved in the formation of *Fusarium* toxins, in particular zearalenone and fumonisins B_1 and B_2, were precisely known. Therefore, the maximum levels in maize and maize products were foreseen to apply only from 1 July 2007 for deoxynivalenol ad zearalenone and from 1 October 2007 for fumonisins B_1 and B_2, in case no changed maximum levels based on new information on occurrence and formation are set before that time. This time period enabled food business operators in the cereal chain to perform investigations on the sources of the formation of these mycotoxins and on the identification of the management measures to be taken to prevent their presence as far as reasonably possible.

(5) Taking into account new information since 2005, it appears necessary to amend the maximum levels in maize and maize products as well as the date of application of these levels.

(6) Recent information has been provided demonstrating that for the harvest 2005 and 2006 higher levels have been observed in maize than for the harvest 2003 and 2004 of mainly zearalenone and fumonisins and to a lesser extent deoxynivalenol, linked to the weather conditions. The foreseen levels for zearalenone and fumonisins are therefore under certain weather conditions not achievable for maize, even when applying prevention measures to the extent possible. Therefore the maximum levels need to be amended in order to avoid a disruption of the market whilst maintaining a high level of public health protection by ensuring that human exposure will remain significantly below the health based guidance value.

(7) In order to ensure a correct and smooth application of these maximum levels, it is also appropriate that they apply to all maize and maize products harvested in a season and therefore the date of application should reflect the beginning of the marketing season of the next harvest year. As the harvest of maize in Europe starts usually mid-September and runs until the end of October, it is appropriate to take 1 October 2007 as date of application.

[1] OJ L 37, 13.2.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).
[2] OJ L 364, 20.12.2006, p. 5.
[3] OJ L 234, 29.8.2006, p. 35.

(8) In the light of the foregoing this Regulation should apply from 1 July 2007.

(9) In addition, a number of minor technical changes should also be made.

(10) It is appropriate to provide that the maximum level does not apply to the unprocessed maize intended to be processed by wet milling (starch production). Indeed, scientific data have shown that regardless the levels of *Fusarium* toxins present in unprocessed maize, *Fusarium* toxins were not detected or only at very low levels in starch produced from maize. Nevertheless, in order to protect public and animal health, food business operators in the wet milling sector should intensively monitor the by-products from the wet milling process destined for animal feeding to check compliance with the guidance values referred in Commission Recommendation 2006/576/EC of 17 August 2006 on the presence of deoxynivalenol, zearalenone, ochratoxin A, T-2 and HT-2 and fumonisins in products intended for animal feeding ([1]).

(11) The dry milling process results in milling fractions with different particle size from the same batch of unprocessed maize. Scientific data show that the milling fractions with smaller particle size contain a higher level of *Fusarium* toxins than the milling fractions with a larger particle size. Maize milling fractions are classified according to the particle size in different headings in the Combined Nomenclature based upon a rate of passage through a sieve with an aperture of 500 microns. Different maximum levels for milling fractions smaller and larger than 500 microns should be set to reflect the contamination level of the different fractions.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1881/2006 is amended as follows:

1. Article 11, point (b) is replaced by the following:

'(b) 1 October 2007 as regards the maximum levels for deoxynivalenol and zearalenone laid down in points 2.4.3, 2.4.8, 2.4.9, 2.5.2, 2.5.4, 2.5.6, 2.5.8, 2.5.9 and 2.5.10 of the Annex;'

2. The Annex, Section 2 is amended as follows:

(a) The entries for Deoxynivalenol (2.4), Zearalenone (2.5), and Fumonisins (2.6) are replaced by the entries in the Annex to this Regulation.

(b) The text of footnote 20 is replaced by 'Maximum level shall apply from 1 October 2007.'

(c) The footnote 21 is deleted.

Article 2

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

It shall apply from 1 July 2007.

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

Done at Brussels, 28 September 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

([1]) OJ L 229, 23.8.2006, p. 7.

ANNEX

'2.4	**Deoxynivalenol** ([17])	
2.4.1	Unprocessed cereals ([18]) ([19]) other than durum wheat, oats and maize	1 250
2.4.2	Unprocessed durum wheat and oats ([18]) ([19])	1 750
2.4.3	Unprocessed maize ([18]), with the exception of unprocessed maize intended to be processed by wet milling (*)	1 750 ([20])
2.4.4	Cereals intended for direct human consumption, cereal flour, bran and germ as end product marketed for direct human consumption, with the exception of foodstuffs listed in 2.4.7, 2.4.8 and 2.4.9	750
2.4.5	Pasta (dry) ([22])	750
2.4.6	Bread (including small bakery wares), pastries, biscuits, cereal snacks and breakfast cereals	500
2.4.7	Processed cereal-based foods and baby foods for infants and young children ([3]) ([7])	200
2.4.8	Milling fractions of maize with particle size > 500 micron falling within CN code 1103 13 or 1103 20 40 and other maize milling products with particle size > 500 micron not used for direct human consumption falling within CN code 1904 10 10	750 ([20])
2.4.9	Milling fractions of maize with particle size ≤ 500 micron falling within CN code 1102 20 and other maize milling products with particle size ≤ 500 micron not used for direct human consumption falling within CN code 1904 10 10	1 250 ([20])
2.5	**Zearalenone** ([17])	
2.5.1	Unprocessed cereals ([18]) ([19]) other than maize	100
2.5.2	Unprocessed maize ([18]) with the exception of unprocessed maize intended to be processed by wet milling (*)	350 ([20])
2.5.3	Cereals intended for direct human consumption, cereal flour, bran and germ as end product marketed for direct human consumption, with the exception of foodstuffs listed in 2.5.6, 2.5.7, 2.5.8, 2.5.9 and 2.5.10	75
2.5.4	Refined maize oil	400 ([20])
2.5.5	Bread (including small bakery wares), pastries, biscuits, cereal snacks and breakfast cereals, excluding maize-snacks and maize-based breakfast cereals	50
2.5.6	Maize intended for direct human consumption, maize-based snacks and maize-based breakfast cereals	100 ([20])
2.5.7	Processed cereal-based foods (excluding processed maize-based foods) and baby foods for infants and young children ([3]) ([7])	20
2.5.8	Processed maize-based foods for infants and young children ([3]) ([7])	20 ([20])

2.5.9	Milling fractions of maize with particle size > 500 micron falling within CN code 1103 13 or 1103 20 40 and other maize milling products with particle size > 500 micron not used for direct human consumption falling within CN code 1904 10 10	200 ([20])
2.5.10	Milling fractions of maize with particle size ≤ 500 micron falling within CN code 1102 20 and other maize milling products with particle size ≤ 500 micron not used for direct human consumption falling within CN code 1904 10 10	300 ([20])
2.6	**Fumonisins**	Sum of B_1 and B_2
2.6.1	Unprocessed maize ([18]), with the exception of unprocessed maize intended to be processed by wet milling (*)	4 000 ([23])
2.6.2	Maize intended for direct human consumption, maize-based foods for direct human consumption, with the exception of foodstuffs listed in 2.6.3 and 2.6.4	1 000 ([23])
2.6.3	Maize-based breakfast cereals and maize-based snacks	800 ([23])
2.6.4	Processed maize-based foods and baby foods for infants and young children ([3]) ([7])	200 ([23])
2.6.5	Milling fractions of maize with particle size > 500 micron falling within CN code 1103 13 or 1103 20 40 and other maize milling products with particle size > 500 micron not used for direct human consumption falling within CN code 1904 10 10	1 400 ([23])
2.6.6	Milling fractions of maize with particle size ≤ 500 micron falling within CN code 1102 20 and other maize milling products with particle size ≤ 500 micron not used for direct human consumption falling within CN code 1904 10 10	2 000 ([23])

(*) The exemption applies only for maize for which it is evident e.g. through labelling, destination, that it is intended for use in a wet milling process only (starch production).'

COMMISSION REGULATION (EC) No 1127/2007

of 28 September 2007

amending Regulation (EEC) No 3149/92 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to designated organisations for distribution to the most deprived persons in the Community [1], and in particular Article 6 thereof,

Whereas:

(1) In recent years the free distribution of foodstuffs under Regulation (EEC) No 3730/87 has proved highly successful and of huge value to beneficiaries in a growing number of participating Member States. However, audits have shown the need for certain amendments to the wording of Commission Regulation (EEC) No 3149/92 [2]. In addition, the circumstances of the agricultural market have changed, making it necessary to amend a number of the rules governing the implementation of the programme.

(2) Article 1(1) of Regulation (EEC) No 3149/92 lays down that those Member States wishing to take part in the next annual plan for the distribution of food for the most deprived persons must inform the Commission by 15 February. To facilitate budget planning, that date should be brought forward to 1 February.

(3) The first, second and third subparagraphs of Article 3(2) of Regulation (EEC) No 3149/92 specify certain time limits for the withdrawal of products from intervention stocks with which the Member State to which these stocks were assigned must comply. In order to improve compliance with these time limits it should be laid down that, in the event of failure to comply with the time limit, storage charges will no longer be covered by the Community budget. The fourth subparagraph of Article 3(2) of that Regulation stipulates that intervention products must be withdrawn within sixty days from the date of the award of the tender to the successful tenderer. Given that some language versions contain ambiguities regarding the act signalling the start of that period, the wording of that provision should be made more precise.

(4) Regulation (EEC) No 3149/92 does not specify a time limit for operations to mobilise products on the market under Article 2(3)(c) and (d) thereof. Products may therefore be mobilised until the end of the programme implementation period. A time limit which ensures consistency with the budget year should be established for these operations. It is also appropriate, within the framework of these operations, to lay down provisions regarding securities in order to ensure the satisfactory performance of the supply contract.

(5) Given that the third indent of the second subparagraph of Article 4(2)(a) of Regulation (EEC) No 3149/92 provides for the possibility of obtaining processed agricultural products or foodstuffs on the market by the use of products from intervention stocks, it should be specified that this possibility is part of the normal implementation of the plan. Due to the sharp reduction in intervention products available in stock, it should be specified that it is sufficient for the foodstuffs obtained to contain an ingredient belonging to the same product group as the intervention product.

(6) To respond more effectively to the needs of charitable organisations and expand the range of foodstuffs supplied, it has been laid down that products from intervention stocks may be incorporated into other products for the purposes of manufacturing foodstuffs. Due to the sharp reduction in the range of intervention products available in stock, the obligation to maintain a minimum content of intervention product in the final product should be rescinded.

(7) Article 4(1)(b) of Regulation (EEC) No 3149/92 provides for the possibility of mobilising on the market a product belonging to the same group as the product temporarily unavailable in the intervention stocks. Under the third indent of the second subparagraph of Article 4(2)(a) of the abovementioned Regulation, processed agricultural products or foodstuffs may be obtained by supplying for payment products belonging to the same group of products from intervention stocks. These possibilities should be included in the rules on the processing of intervention products laid down in Article 4(2a) of that Regulation. At the same time, and in the interests of clarity, the structure of Article 4(1) should also be amended.

[1] OJ L 352, 15.12.1987, p. 1. Regulation as amended by Regulation (EC) No 2535/95 (OJ L 260, 31.10.1995, p. 3).

[2] OJ L 313, 30.10.1992, p. 50. Regulation as last amended by Regulation (EC) No 758/2007 (OJ L 172, 30.6.2007, p. 47).

(8) To clarify the application of the provisions concerning the release of securities in the event of failure to comply with the second requirement, the rules on the application of reductions, in accordance with Article 23(2)(a) and the third indent of Article 23(2)(b) of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products [1], should be defined.

(9) Under the second subparagraph of Article 4(4) of Regulation (EEC) No 3149/92, the Member States are required to send the Commission the models of the invitations to tender before the commencement of the plan implementation period. This requirement unnecessarily complicates the management of the scheme and should be abolished.

(10) As a result of changes to the wording of Article 2(3) of Regulation (EEC) No 3149/92 certain references to that paragraph should be changed in order to ensure clarity.

(11) Article 7 of Regulation (EEC) No 3149/92 lays down the procedures to be followed in the event of transfers. Since transfers require close cooperation between the Member State of destination and the supplier Member State, the supplier Member State should facilitate the operations in question as far as possible so that the time limits laid down in Article 3(2) of that Regulation can be met and that operations can be carried out in accordance with Article 2 of Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States [2]. In that context, it should be specified that a removal order issued by the intervention agency of the Member State of destination is the document required for placing the products at the disposal of the supply contractor by the intervention agency of the supplier Member State. Furthermore, in order to ensure that withdrawal from stocks is controlled, it should be laid down that the intervention agency of the supplier Member State must inform the competent authority of the Member State of destination of the end of the operation to withdraw products from intervention stocks.

(12) Article 8a of Regulation (EEC) No 3149/92 specifying rules for payment does not cover cases of incomplete payment requests. Rules and penalties to be applied in such cases should be laid down. Provision should also be made for Community measures to be taken in the event of late payment.

(13) Experience has shown that European Union citizens are not sufficiently aware of the role played by the Community in food aid for disadvantaged sections of the population. As a result, it should be laid down that the European Union flag must appear on the packaging.

(14) The stages of the distribution chain to which the checks provided for in the first subparagraph of Article 9(2) of Regulation (EEC) No 3149/92 apply should be more precisely stipulated. The penalties to be applied in the event of shortcomings or irregularities by the various bodies involved in distribution should also be specified.

(15) Regulation (EEC) No 3149/92 should be amended accordingly.

(16) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3149/92 is hereby amended as follows:

1. In Article 1(1), '15 February' is replaced by '1 February';

2. Article 3 is amended as follows:

(a) in paragraph 2, the fourth subparagraph is replaced by the following subparagraphs:

'If the time limits provided for in the first, second and third subparagraphs are exceeded, the costs of storing the intervention products shall no longer be covered by the Community. This provision shall not apply to products which have not been withdrawn from intervention stocks on 30 September of the year of implementation of the plan.

The products to be withdrawn must be removed from intervention stocks within sixty days of the date on which the successful tenderer to whom the supply is assigned signs the contract or, in the case of transfers, within sixty days from the notification by the Member State of destination to the competent authority of the supplier Member State.';

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

[2] OJ L 171, 23.6.2006, p. 35. Regulation as amended by Regulation (EC) No 721/2007 (OJ L 164, 26.6.2007, p. 4).

(b) the following paragraph 2a is inserted:

'2a. Payment operations for products to be supplied by the operator must, in the case of products to be mobilised on the market under Article 2(3)(c) and (d), be closed before 1 September of the year of implementation of the plan.';

3. Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following paragraphs 1 and 1a:

'1. Implementation of the plan shall comprise:

(a) the supply of products withdrawn from intervention stocks;

(b) the supply of products mobilised on the Community market under Article 2(3)(c) and (d);

(c) the supply of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks.

1a. Those products referred to in paragraph 1(b) which are mobilised on the market must belong to the same product group as the product temporarily unavailable in the intervention stocks.

However, where no rice is available in the intervention stocks, the Commission may authorise the removal of cereals from intervention stocks as payment for the supply of rice or rice products mobilised on the market.

Similarly, where no cereals are available in the intervention stocks, the Commission may authorise the removal of rice from intervention stocks as payment for the supply of cereals or cereal products mobilised on the market.

A given product may be mobilised on the market only if all the quantities of product in the same group to be withdrawn from intervention stocks for supply purposes in application of Article 2(3)(1)(b), including quantities to be transferred in application of Article 7, have already been allocated. The competent national authority shall inform the Commission of the opening of mobilisation procedures on the market.'

(b) paragraph 2 is amended as follows:

i) point (a) is amended as follows:

— the third indent of the second subparagraph is replaced by the following:

'— or the quantity of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks; these foodstuffs must contain an ingredient belonging to the same group of products as the intervention product supplied as payment.';

— the fifth subparagraph is replaced by the following text:

'Where the supply involves the processing and/or packaging of the product, the invitation to tender shall refer to the obligation of the successful bidder to lodge a security, before taking over the products, for the intervention agency in accordance with Title III of Commission Regulation (EEC) No 2220/85 (*), for an amount equal to the intervention price applicable on the day fixed for taking over the product plus 10 % of that price. For the purposes of Title V of that Regulation, the primary requirement shall be to supply the product at the stipulated destination. In the event of delivery after the end of the implementation period of the plan specified in Article 3(1), the security forfeited shall be 15 % of the secured amount. The remainder of the security shall also be forfeited at an additional 2 % per day of delay. This subparagraph shall not apply where the product withdrawn from the intervention stocks is made available to the supply contractor as payment for supply already carried out.

(*) OJ L 205, 3.8.1985, p. 5.';

ii) the following is added to the first subparagraph of point (b):

'The supply contract is awarded to the selected tenderer subject to the latter depositing a security equivalent to 110 % of the amount of his tender and established in the name of the intervention agency, in accordance with Title III of Regulation (EEC) No 2220/85'.

(c) paragraph 2a is replaced by the following:

'2a. Products from intervention or mobilised on the market under Article 2(3)(c) and (d) or point c of the first subparagraph of paragraph 1 of this Article may be incorporated into or added to other products mobilised on the market for the manufacture of food to be supplied for the purposes of implementing the plan.';

(d) in paragraph 4, the second subparagraph is deleted;

4. Article 7 is amended as follows:

(a) in paragraph 2, the third sentence is replaced by the following:

'The expenditure shall be set off against the appropriations referred to in Article 2(3)(2).';

(b) paragraph 5 is replaced by the following:

'5. In the case of transfer, the Member State of destination shall provide the supplier Member State with the name of the person contracted to carry out the operation.

The intervention agency of the Member State supplying the products shall make them available to the person contracted to carry out the supply or his/her duly authorised agent, on presentation of a removal order issued by the intervention agency of the Member State of destination.

The competent authority shall ensure that the goods have been insured appropriately.

Dispatch declarations issued by the intervention agency of the supplier Member State shall include one of the entries given in Annex I.

The intervention agency of the supplier Member State shall, as soon as possible, notify the competent authority of the Member State of destination of the date on which the withdrawal operation is to end.

Intra-Community transport costs shall be paid by the Member State of destination of the products concerned for the quantities actually taken over.'

5. The following paragraphs are added to Article 8a:

'However, in the event of serious flaws in the supporting documents, the time limit provided for in the second paragraph may be suspended by notification in writing to the operator or the organisation designated to distribute products. The time limit shall continue to run from the date of receipt of the documents requested, which must be forwarded within 30 calendar days. If these documents are not sent within this period, the reduction specified in the first paragraph shall apply.

Except in cases of force majeure and taking account of the option of suspension provided for in the third paragraph, failure to comply with the time limit of two months stipulated in the second paragraph shall result in a reduction in the amount to be reimbursed to the Member State in accordance with the rules laid down in Article 9 of Commission Regulation (EC) No 883/2006 (*).

(*) OJ L 171, 23.6.2006, p. 1.';

6. Article 9 is amended as follows:

(a) paragraph 1(b) is replaced by the following:

'(b) the words "EC aid", accompanied by the European Union flag following the instructions given in Annex II, shall be clearly visible on the packaging of goods which are not delivered in bulk to the beneficiaries;';

(b) the first subparagraph of paragraph 2 is replaced by the following:

2. 'Checks by the competent authorities shall be carried out when the products are taken over on their release from intervention storage or, where appropriate, as from the mobilisation of the products on the market under Article 2(3)(c) and (d) or Article 4(1)(c) at all stages of implementation of the plan and at all levels of the distribution chain. The checks shall be performed throughout the plan implementation period, at all stages including the local level.';

(c) paragraph 3 is replaced by the following:

'3. The Member States shall take all the measures needed to ensure that the plan is properly implemented and to anticipate and penalise irregularities. To this end they may, in particular, suspend the participation of operators in the competitive tendering procedure or organisations designated for distribution in the annual plans, depending on the nature and seriousness of the shortcomings or irregularities found.';

7. The Annex becomes Annex I and its title is replaced by the following:

'Entries referred to in the fourth subparagraph of Article 7(5)';

8. The Annex to this Regulation is added as Annex II.

Article 2

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

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

Done at Brussels, 28 September 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

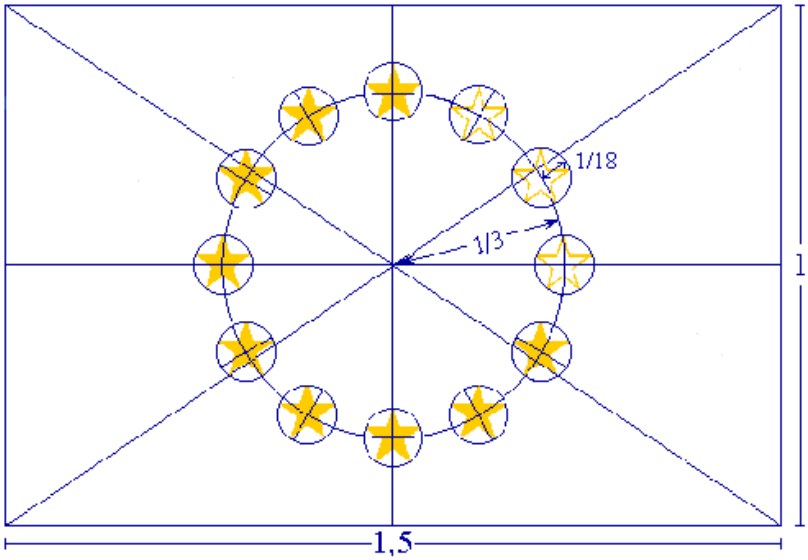
'ANNEX II

INSTRUCTIONS FOR CREATING THE EMBLEM AND A DEFINITION OF THE STANDARD COLOURS

1. **Heraldic description**

On an azure field a circle of 12 golden mullets, their points not touching.

2. **Geometric description**



The emblem is in the form of a blue rectangular flag of which the fly is one and a half times the length of the hoist. Twelve golden stars situated at equal intervals form an invisible circle whose centre is the point of intersection of the diagonals of the rectangle. The radius of the circle is equal to one-third of the height of the hoist. Each of the stars has five points which are situated on the circumference of an invisible circle whose radius is equal to one-eighteenth of the height of the hoist. All the stars are upright — that is to say, with the one point vertical and two points in a straight line at right angles to the mast. The circle is arranged so that the stars appear in the position of the hours on the face of a clock. Their number is invariable.

3. **Regulation colours**

The emblem is in the following colours: PANTONE REFLEX BLUE for the surface of the rectangle; PANTONE YELLOW for the stars. The international PANTONE range is very widely available and easily accessible even for non-professionals.

Four-colour reproduction process: If the four-colour process is used, it is not possible to use the two standard colours. It is therefore necessary to recreate them by using the four colours of the four-colour process. PANTONE YELLOW is obtained by using 100 % "Process Yellow". By mixing 100 % "Process Cyan" and 80 % "Process Magenta" one can get a colour very similar to PANTONE REFLEX BLUE.

Monochrome reproduction process: If only black is available, outline the rectangle in black and print the stars in black and white. In the event that blue is the only colour available (it must be Reflex Blue, of course), use it 100 % with the stars reproduced in negative white and the field 100 % blue.

Reproduction on coloured background: It is preferable for the emblem to be reproduced on a white background. Avoid a background of varied colours, and in any case one which does not go with blue. If there should be no alternative to a coloured background, put a white border around the rectangle, with the width of this being equal to one twenty-fifth of the height of the rectangle.'

COMMISSION REGULATION (EC) No 1128/2007

of 28 September 2007

fixing the import duties in the cereals sector applicable from 1 October 2007

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92 [2], and in particular Article 2(1) thereof,

Whereas:

(1) Article 10(2) of Regulation (EC) No 1784/2003 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Article 10(3) of Regulation (EC) No 1784/2003 lays down that, for the purposes of calculating the import duty referred to in paragraph 2 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

(3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

(4) Import duties should be fixed for the period from 1 October 2007, and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 October 2007, the import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

---

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

[2] OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1816/2005 (OJ L 292, 8.11.2005, p. 5).

ANNEX I

Import duties on the products referred to in Article 10(2) of Regulation (EC) No 1784/2003 applicable from 1 October 2007

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	0,00
1005 10 90	Maize seed other than hybrid	0,00
1005 90 00	Maize, other than seed [2]	0,00
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

[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

14.9.2007-27.9.2007

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

(EUR/t)

	Common wheat (*)	Maize	Durum wheat, high quality	Durum wheat, medium quality (**)	Durum wheat, low quality (***)	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	231,04	102,89	—	—	—	—
Fob price USA	—	—	299,04	289,04	269,04	172,28
Gulf of Mexico premium	—	16,20	—	—	—	—
Great Lakes premium	0,42	—	—	—	—	—

(*) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).
(**) Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(***) 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:	44,83 EUR/t
Freight costs: Great Lakes–Rotterdam:	42,73 EUR/t

COMMISSION REGULATION (EC) No 1129/2007

of 28 September 2007

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ([1]), and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.

(2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([2]).

(3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

(4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(5) The refund must be fixed once a month. It may be altered in the intervening period.

(6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

([2]) OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

ANNEX

to the Commission Regulation of 28 September 2007 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—
1001 10 00 9400	A00	EUR/t	0
1001 90 91 9000	—	EUR/t	—
1001 90 99 9000	A00	EUR/t	—
1002 00 00 9000	A00	EUR/t	0
1003 00 10 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	—
1004 00 00 9200	—	EUR/t	—
1004 00 00 9400	A00	EUR/t	0
1005 10 90 9000	—	EUR/t	—
1005 90 00 9000	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—
1101 00 11 9000	—	EUR/t	—
1101 00 15 9100	C01	EUR/t	0
1101 00 15 9130	C01	EUR/t	0
1101 00 15 9150	C01	EUR/t	0
1101 00 15 9170	C01	EUR/t	0
1101 00 15 9180	C01	EUR/t	0
1101 00 15 9190	—	EUR/t	—
1101 00 90 9000	—	EUR/t	—
1102 10 00 9500	A00	EUR/t	0
1102 10 00 9700	A00	EUR/t	0
1102 10 00 9900	—	EUR/t	—
1103 11 10 9200	A00	EUR/t	0
1103 11 10 9400	A00	EUR/t	0
1103 11 10 9900	—	EUR/t	—
1103 11 90 9200	A00	EUR/t	0
1103 11 90 9800	—	EUR/t	—

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

C01: All third countries with the exception of Albania, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

COMMISSION REGULATION (EC) No 1130/2007

of 28 September 2007

fixing the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 15(2) thereof,

Whereas:

(1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which an application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.

(2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals [2], allows for the fixing of a corrective amount for the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

(3) The world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination.

(4) The corrective amount must be fixed according to the same procedure as the refund; it may be altered in the period between fixings.

(5) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance except for malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

---

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

[2] OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

ANNEX

to the Commission Regulation of 28 September 2007 fixing the corrective amount applicable to the refund on cereals

(EUR/t)

Product code	Destination	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3	6th period 4
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	A00	0	0	0	0	0	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C01	0	0	0	0	0	—	—
1002 00 00 9000	A00	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	C02	0	0	0	0	0	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	C03	0	0	0	0	0	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	C01	0	0	0	0	0	—	—
1101 00 15 9130	C01	0	0	0	0	0	—	—
1101 00 15 9150	C01	0	0	0	0	0	—	—
1101 00 15 9170	C01	0	0	0	0	0	—	—
1101 00 15 9180	C01	0	0	0	0	0	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	A00	0	0	0	0	0	—	—
1102 10 00 9700	A00	0	0	0	0	0	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	0	0	0	0	—	—
1103 11 10 9400	A00	0	0	0	0	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended. The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

C01: All third countries with the exception of Albania, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, Liechtenstein and Switzerland.

C02: Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libia, Morocco, Mauritania, Oman, Qatar, Syria, Tunisia and Yemen.

C03: All countries with the exception of Norway, Switzerland and Liechtenstein.

COMMISSION REGULATION (EC) No 1131/2007

of 28 September 2007

fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ([1]), and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([2]).

(3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down in Regulation (EC) No 1501/95.

(4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(5) The refund must be fixed once a month. It may be altered in the intervening period.

(6) It follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1(c) of Regulation (EC) No 1784/2003 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

([2]) OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

ANNEX

to the Commission Regulation of 28 September 2007 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	A00	EUR/t	0,00
1107 10 99 9000	A00	EUR/t	0,00
1107 20 00 9000	A00	EUR/t	0,00

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

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

COMMISSION REGULATION (EC) No 1132/2007

of 28 September 2007

fixing the corrective amount applicable to the refund on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals [1], and in particular Article 15(2),

Whereas:

(1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.

(2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [2] allows for the fixing of a corrective amount for the malt referred to in Article 1(1)(c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

(3) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 15(3) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

[2] OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

ANNEX

to the Commission Regulation of 28 September 2007 fixing the corrective amount applicable to the refund on malt

(EUR/t)

Product code	Destination	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

(EUR/t)

Product code	Destination	6th period 4	7th period 5	8th period 6	9th period 7	10th period 8	11th period 9
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

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

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

COMMISSION REGULATION (EC) No 1133/2007

of 28 September 2007

fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ([1]) and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice ([2]) and in particular Article 14(3) thereof,

Whereas:

(1) Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid ([3]) lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section.

(2) In order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined.

(3) The general and implementing rules provided for in Article 13 of Regulation (EC) No 1784/2003 and in Article 13 of Regulation (EC) No 1785/2003 on export refunds are applicable *mutatis mutandis* to the abovementioned operations.

(4) The specific criteria to be used for calculating the export refund on rice are set out in Article 14 of Regulation (EC) No 1785/2003.

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

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 October 2007.

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

Done at Brussels, 28 September 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

([2]) OJ L 270, 21.10.2003, p. 96. Regulation as last amended by Commission Regulation (EC) No 797/2006 (OJ L 144, 31.5.2006, p. 1).

([3]) OJ L 288, 25.10.1974, p. 1.

ANNEX

to the Commission Regulation of 28 September 2007 fixing the refunds applicable to cereal and rice sector products supplied as Comunity and national food aid

(EUR/t)

Product code	Refund
1001 10 00 9400	0,00
1001 90 99 9000	0,00
1002 00 00 9000	0,00
1003 00 90 9000	0,00
1005 90 00 9000	0,00
1006 30 92 9100	0,00
1006 30 92 9900	0,00
1006 30 94 9100	0,00
1006 30 94 9900	0,00
1006 30 96 9100	0,00
1006 30 96 9900	0,00
1006 30 98 9100	0,00
1006 30 98 9900	0,00
1006 30 65 9900	0,00
1007 00 90 9000	0,00
1101 00 15 9100	0,00
1101 00 15 9130	0,00
1102 10 00 9500	0,00
1102 20 10 9200	5,28
1102 20 10 9400	4,52
1103 11 10 9200	0,00
1103 13 10 9100	6,79
1104 12 90 9100	0,00

NB: The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 28 September 2007

denouncing, on behalf of the Community, the Agreement between the European Economic Community and the Republic of India on cane sugar

(2007/626/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) Under the Agreement between the European Economic Community and the Republic of India on cane sugar (hereinafter referred to as 'the Agreement'), approved by Council Decision 75/456/EEC [1], the Community undertakes to purchase and import, at guaranteed prices, a specific quantity of cane sugar, raw or white, which originates in India and which India undertakes to deliver to the Community. Article 11 of the Agreement provides that either party may denounce the Agreement after giving to the other party two years' notice in writing to that effect.

(2) With the end of intervention in the reformed common market organisation for sugar, internal sugar prices will no longer be guaranteed by intervention buying. It is consistent to terminate the system of guaranteed prices for sugar imported under the Agreement.

(3) It is therefore necessary to denounce the Agreement in accordance with Article 11 thereof, and to notify India as signatory to the Agreement of such denunciation,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Economic Community and the Republic of India on cane sugar, signed on 18 July 1975, is hereby denounced on behalf of the Community with effect from 1 October 2009.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to notify the Government of India of the denunciation of the said Agreement.

Article 3

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

Done at Brussels, 28 September 2007.

For the Council
The President
M. PINHO

[1] OJ L 190, 23.7.1975, p. 35.

COUNCIL DECISION

of 28 September 2007

denouncing on behalf of the Community Protocol 3 on ACP sugar appearing in the ACP-EEC Convention of Lomé and the corresponding declarations annexed to that Convention, contained in Protocol 3 attached to Annex V to the ACP-EC Partnership Agreement, with respect to Barbados, Belize, the Republic of Congo, the Republic of Côte d'Ivoire, the Republic of the Fiji Islands, the Republic of Guyana, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Mozambique, the Federation of Saint Kitts and Nevis, the Republic of Suriname, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe

(2007/627/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) Under Protocol 3 on ACP sugar appearing in the ACP-EEC Convention of Lomé signed on 28 February 1975 and the corresponding declarations annexed to that Convention (Sugar Protocol), contained in Protocol 3 attached to Annex V to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (ACP-EC Partnership Agreement) [1], the Community undertakes to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the signatory ACP States and which those States undertake to deliver to the Community. The Sugar Protocol provides that the Protocol may be denounced by the Community with respect to each ACP State and by each ACP State with respect to the Community, subject to two years' notice.

(2) The current trade provisions applicable to the ACP States, set out in Annex V to the ACP-EC Partnership Agreement, expire on 31 December 2007. In accordance with Article 36 of the ACP-EC Partnership Agreement, the Economic Partnership Agreements (EPAs) will provide the new legal framework for trade with ACP States and will replace the trade regime of the ACP-EC Partnership Agreement. Article 36(4) of the ACP-EC Partnership Agreement requires the parties to review the Sugar Protocol in the context of EPA negotiations. The waiver from the Community's obligations under Article I of the GATT with regard to the trade preferences to ACP States under ACP-EC Partnership Agreement, granted by the WTO Ministerial Conference in Doha on 14 November 2001, also expires on 31 December 2007.

(3) In order to ensure that the import regime for sugar is included in the import regime envisaged by EPAs, it is appropriate to take all necessary steps to ensure the termination of the Sugar Protocol and any commitments contained therein at a sufficiently early stage in view of the two years' notice requirement under the Sugar Protocol.

(4) The arrangements of the Sugar Protocol have served the interests of both the ACP States and the Community, by guaranteeing ACP exporters an outlet to a profitable market and ensuring a regular supply for Community cane sugar refiners. However, the arrangements of the Sugar Protocol can no longer be maintained. In the context of a reformed Community sugar market, the Community will cease to guarantee prices to European sugar producers as the former mechanism of intervention is being phased out.

(5) In the context of a transition towards liberalisation of ACP-EC trade, unlimited quantities cannot coexist with the price and volume guarantees of the Sugar Protocol. As regards least developed countries, unlimited access for sugar is scheduled under the Everything But Arms (EBA) initiative as from 1 July 2009. Since the beginning of the second phase of the transition period is foreseen on 1 October 2009 the EBA sugar regime should be adjusted accordingly.

[1] OJ L 317, 15.12.2000, p. 3, revised in Luxembourg on 25 June 2005 (OJ L 287, 28.10.2005, p. 4).

(6) Denunciation does not prejudge a subsequent mutual agreement between the Community and the ACP States on the treatment of sugar in the context of comprehensive EPAs.

(7) It is therefore necessary to denounce the Sugar Protocol in accordance with Article 10 thereof, and to notify each ACP State signatory to the Sugar Protocol of such denunciation,

HAS DECIDED AS FOLLOWS:

Article 1

Protocol 3 on ACP Sugar appearing in the ACP-EEC Convention of Lomé signed on 28 February 1975 and the corresponding declarations annexed to that Convention, contained in Protocol 3 attached to Annex V to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, is hereby denounced on behalf of the Community with effect from 1 October 2009 with respect to Barbados, Belize, the Republic of Congo, the Republic of Côte d'Ivoire, the Republic of the Fiji Islands, the Republic of Guyana, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Mozambique, the Federation of Saint Kitts and Nevis, the Republic of Suriname, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to notify the Governments of Barbados, Belize, the Republic of Congo, the Republic of Côte d'Ivoire, the Republic of the Fiji Islands, the Republic of Guyana, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Mozambique, the Federation of Saint Kitts and Nevis, the Republic of Suriname, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe of the denunciation of the said Protocol.

Article 3

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

Done at Brussels, 28 September 2007.

For the Council
The President
M. PINHO

COMMISSION

COMMISSION DECISION

of 19 September 2007

concerning the non-inclusion of methomyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2007) 4258)

(Text with EEA relevance)

(2007/628/EC)

THE COMMISSION OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

(1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I of that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.

(2) Commission Regulations (EC) No 451/2000 [2] and (EC) No 703/2001 [3] lay down the detailed rules for the implementation of the second stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes methomyl.

(3) For methomyl the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 703/2001 for a range of uses proposed by the notifier. Moreover, those Regulations designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For methomyl the rapporteur Member State was the United Kingdom and all relevant information was submitted on 3 May 2004.

(4) The assessment report was peer reviewed by the Member States and the EFSA and presented to the Commission on 23 June 2006 in the format of the EFSA conclusion regarding the peer review of the pesticide risk assessment of the active substance methomyl [4]. This report was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health.

(5) During the evaluation of this active substance, a number of concerns were identified. In particular, based on the available information, the operator exposure would exceed the AOEL (acceptable operator exposure level) and it has not been demonstrated that the worker and bystander exposure is acceptable. Moreover, with regard to ecotoxicology, there are concerns due to a high risk for birds and mammals, aquatic organisms, bees and non-target arthropods.

(6) The Commission invited the notifier to submit its comments on the results of the peer review and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments advanced, the above concerns remained unsolved, and assessments made on the basis of the information submitted and evaluated during the EFSA expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing methomyl satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.

[1] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/52/EC (OJ L 214, 17.8.2007, p. 3).
[2] OJ L 55, 29.2.2000, p. 25. Regulation as last amended by Regulation (EC) No 1044/2003 (OJ L 151, 19.6.2003, p. 32).
[3] OJ L 98, 7.4.2001, p. 6.
[4] *EFSA Scientific Report (2006) 83, 1-73, Conclusion regarding the peer review of pesticide risk assessment of methomyl.*

(7) Methomyl should therefore not be included in Annex I to Directive 91/414/EEC.

(8) Measures should be taken to ensure that authorisations granted for plant protection products containing methomyl are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

(9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing methomyl, should be limited to 12 months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing methomyl remain available to farmers for 18 months from the adoption of this Decision.

(10) This Decision does not prejudice the submission of an application for methomyl according to the provisions of Article 6(2) of Directive 91/414/EEC in view of a possible inclusion in its Annex I.

(11) The Standing Committee on the Food Chain and Animal Health did not deliver an opinion within the time-limit laid down by its Chairman and the Commission therefore submitted to the Council a proposal relating to these measures. On the expiry of the period laid down in the second subparagraph of Article 19(2) of Directive 91/414/EEC, the Council had neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures and it is accordingly for the Commission to adopt these measures,

HAS ADOPTED THIS DECISION:

Article 1

Methomyl shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

(a) authorisations for plant protection products containing methomyl are withdrawn by 19 March 2008;

(b) no authorisations for plant protection products containing methomyl are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 19 March 2009.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 19 September 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

COMMISSION DECISION

of 20 September 2007

concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2007) 4282)

(Text with EEA relevance)

(2007/629/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

(1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I of that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.

(2) Commission Regulations (EC) No 451/2000 [2] and (EC) No 703/2001 [3] lay down the detailed rules for the implementation of the second stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes trifluralin.

(3) For trifluralin the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 703/2001 for a range of uses proposed by the notifiers. Moreover, those Regulations designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For trifluralin the rapporteur Member State was Greece and all relevant information was submitted on 11 July 2003.

(4) The assessment report has been peer reviewed by the Member States and the EFSA within its Working Group Evaluation and presented to the Commission on 14 March 2005 in the format of the EFSA conclusion regarding the peer review of the pesticide risk assessment of the active substance trifluralin [4]. This report has been reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 16 March 2007 in the format of the Commission review report for trifluralin.

(5) During the evaluation of this active substance, a number of concerns were identified. Trifluralin is of high toxicity to aquatic organisms, in particular fish. It is also highly persistent in soil and not readily biodegradable. Moreover, it shows potential for accumulation. In particular, it exceeds significantly the maximum bioconcentration factor (BCF) laid down in Directive 91/414/EEC for aquatic organisms, indicating a potential for bioaccumulation in such organisms. Due to its high volatility, transport through air cannot be excluded and, despite a rapid photochemical degradation, monitoring programmes have shown migration to places distant from application. These concerns made it appear that trifluralin does not meet the criteria for inclusion in Annex I to Directive 91/414/EEC.

(6) The Commission invited the notifier to submit its comments on the results of the peer review and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forward by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted and evaluated during the EFSA expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing trifluralin satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.

[1] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/52/EC (OJ L 214, 17.8.2007, p. 3).
[2] OJ L 55, 29.2.2000, p. 25. Regulation as last amended by Regulation (EC) No 1044/2003 (OJ L 151, 19.6.2003, p. 32).
[3] OJ L 98, 7.4.2001, p. 6.
[4] EFSA Scientific Report (2005) 28, 1-77, Conclusion regarding the peer review of the pesticide risk assessment of the active substance trifluralin (finalised: 14 March 2005).

(7) Trifluralin should therefore not be included in Annex I to Directive 91/414/EEC.

(8) Measures should be taken to ensure that authorisations granted for plant protection products containing trifluralin are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

(9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing trifluralin should be limited to 12 months in order to allow existing stocks to be used in one further growing season which ensures that plant protection products containing trifluralin remain available to farmers for 18 months from the adoption of this Decision.

(10) This Decision does not prejudice the submission of an application for trifluralin according to the provisions of Article 6(2) of Directive 91/414/EEC in view of a possible inclusion in its Annex I.

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

HAS ADOPTED THIS DECISION:

Article 1

Trifluralin shall not be included as an active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

(a) authorisations for plant protection products containing trifluralin are withdrawn by 20 March 2008;

(b) no authorisations for plant protection products containing trifluralin are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 20 March 2009 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 20 September 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

COMMISSION DECISION

of 27 September 2007

amending Decision 2006/779/EC as regards extending the period of application of that Decision

(notified under document number C(2007) 4459)

(Text with EEA relevance)

(2007/630/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], and in particular Article 10(4) thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market [2], and in particular Article 9(4) thereof,

Whereas:

(1) Commission Decision 2006/779/EC of 14 November 2006 concerning transitional animal health control measures relating to classical swine fever in Romania [3] was adopted in response to outbreaks of classical swine fever in Romania.

(2) Decision 2006/779/EC applies for a period of nine months from the date of entry into force of the Treaty of Accession of Bulgaria and Romania. In the light of the disease situation of classical swine fever in Romania, it is appropriate to extend the period of application of Decision 2006/779/EC until 31 December 2009.

(3) Decision 2006/779/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Article 7 of Decision 2006/779/EC is replaced by the following:

'Article 7

Applicability

This Decision shall apply until 31 December 2009.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 September 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

---

[1] OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

[2] OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council (OJ L 157, 30.4.2004, p. 33, corrected by OJ L 195, 2.6.2004, p. 12).

[3] OJ L 314, 15.11.2006, p. 48.

COMMISSION DECISION

of 27 September 2007

amending Decision 2006/805/EC as regards extending the period of application of that Decision

(notified under document number C(2007) 4460)

(Text with EEA relevance)

(2007/631/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], and in particular Article 10(4) thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to completion of the internal market [2], and in particular Article 9(4) thereof,

Whereas:

(1) Commission Decision 2006/805/EC of 24 November 2006 concerning animal health control measures relating to classical swine fever in certain Member States [3] was adopted in response to outbreaks of classical swine fever in certain Member States. That Decision lays down certain disease control measures concerning classical swine fever in those Member States.

(2) Decision 2006/805/EC applies for a period of nine months from the date of entry into force of the Treaty of Accession of Bulgaria and Romania. In the light of the overall disease situation of classical swine fever in areas of Bulgaria, Germany, France, Hungary and Slovakia, it is appropriate to extend the period of application of Decision 2006/805/EC until 31 July 2008.

(3) Decision 2006/805/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Article 14 of Decision 2006/805/EC is replaced by the following:

'*Article 14*

Applicability

This Decision shall apply until 31 July 2008.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 September 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

---

[1] OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

[2] OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council (OJ L 157, 30.4.2004, p. 33, corrected version OJ L 195, 2.6.2004, p. 12).

[3] OJ L 329, 25.11.2006, p. 67. Decision as last amended by Decision 2007/152/EC (OJ L 67, 7.3.2007, p. 10).

COMMISSION DECISION

of 28 September 2007

amending Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in Germany

(notified under document number C(2007) 4480)

(Text with EEA relevance)

(2007/632/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market [1], and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [2], and in particular Article 10(4) thereof,

Having regard to Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC [3], and in particular Article 63(3) thereof,

Whereas:

(1) Commission Decision 2006/415/EC of 14 June 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in the Community and repealing Decision 2006/135/EC [4] lays down certain protection measures to be applied in order to prevent the spread of that disease, including the establishment of areas A and B following a suspected or confirmed outbreak of the disease.

(2) Germany has notified the Commission of an outbreak of H5N1 in a poultry holding on its territory in the *Land* Bavaria and has taken the appropriate measures as provided for in Decision 2006/415/EC, including the establishment of Areas A and B as provided for in Article 4 of that Decision.

(3) The Commission has examined those measures in collaboration with Germany and is satisfied that the borders of Areas A and B established by the competent authority in that Member State are at a sufficient distance to the actual location of the outbreak. Areas A and B in Germany can therefore be confirmed and the duration of that regionalisation fixed.

(4) Decision 2006/415/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2006/415/EC is amended in accordance with the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 September 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

---

[1] OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council (OJ L 157, 30.4.2004, p. 33); corrected version (OJ L 195, 2.6.2004, p. 12).

[2] OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

[3] OJ L 10, 14.1.2006, p. 16.

[4] OJ L 164, 16.6.2006, p. 51. Decision as last amended by Decision 2007/604/EC (OJ L 236, 8.9.2007, p. 11).

ANNEX

The Annex to Decision 2006/415/EC is amended as follows:

1. The following text is added to Part A:

ISO Country Code	Member State	Area A		Date until applicable Article 4(4)(b)(iii)
		Code (if available)	Name	
DE	GERMANY		The 10 km zone established around the outbreak in the communes of Bruck in der Oberpfalz and Nittenau including all or parts of the communes of:	18.10.2007
		LANDKREIS SCHWANDORF	BODENWÖHR BODENWÖHRER FORST BRUCK IN DER OBERPFALZ EINSIEDLER UND WALDERBACHER FORST MAXHÜTTE-HAIDHOF NEUNBURG VORM WALD NEUKIRCHEN-BALBINI NITTENAU ÖSTL. NEUBÄUER FORST SCHWANDORF SCHWARZENFELD STEINBERG TEUBLITZ WACKERSDORF	
		LANDKREIS REGENSBURG	ALTENTHANN BERNHARDSWALD REGENSTAUF	
		LANDKREIS CHAM	REICHENBACH RODING WALD WALDERBACH ZELL	

2. The following text is added to Part B:

ISO Country Code	Member State	Area B		Date until applicable Article 4(4)(b)(iii)
		Code (if available)	Name	
DE	GERMANY		The communes of:	18.10.2007
		LANDKREIS SCHWANDORF	BODENWÖHR BODENWÖHRER FORST BRUCK IN DER OBERPFALZ EINSIEDLER UND WALDERBACHER FORST MAXHÜTTE-HAIDHOF NEUNBURG VORM WALD NEUKIRCHEN-BALBINI NITTENAU ÖSTL. NEUBÄUER FORST SCHWANDORF SCHWARZENFELD SCHWARZHOFEN STEINBERG TEUBLITZ WACKERSDORF	
		LANDKREIS REGENSBURG	ALTENTHANN BERNHARDSWALD BRENNBERG REGENSTAUF	
		LANDKREIS CHAM	FALKENSTEIN REICHENBACH RODING WALD WALDERBACH ZELL	