ISSN 1725-2555

Official Journal of the European Union

L 359

English edition

Legislation

Volume 47

4 December 2004

Contents

I *Acts whose publication is obligatory*

[1] Text with EEA relevance

(Continued overleaf)

Price: EUR 18

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.

II *Acts whose publication is not obligatory*

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2073/2004

of 16 November 2004

on administrative cooperation in the field of excise duties

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Whereas:

(1) Fraud in the European Union has serious consequences for national budgets and may lead to distortions of competition in movements of excisable products. It therefore has an impact on the operation of the internal market.

(2) Close cooperation is required between the administrative authorities of each Member State responsible for implementing the measures adopted in this field in order to combat excise fraud.

(3) It is therefore essential to define the rules under which the administrative authorities of the Member States must afford each other mutual assistance and cooperate with the Commission to ensure that the rules relating to the movement of excisable products and the collection of excise duties are correctly applied.

(4) Mutual assistance and administrative cooperation in the field of excise duties are governed by Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums [3]. Mutual assistance and administrative cooperation in the field of VAT are governed by Regulation (EC) No 1798/2003 [4].

(5) Although this legal instrument has proved to be effective, it will not be able to cope with new administrative cooperation imperatives resulting from increasing economic integration within the internal market.

(6) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products [5] also introduced a number of information exchange instruments. Their procedures will have to be defined within a general legal framework for administrative cooperation in the field of excise duties.

(7) There is also a need for clearer and more binding rules on cooperation between Member States as the rights and obligations of all the parties concerned are not sufficiently defined.

(8) There are not sufficient direct contacts between local or national anti-fraud agencies as standard practice is for information to be communicated between central liaison offices. This leads to inefficiencies, under-use of the administrative cooperation arrangements and excessive delays in communication of information. Provision should therefore be made for more direct contacts between administrative departments to improve and speed up cooperation.

(9) There is, also, a need for closer cooperation as, with the exception of movement verification under Article 15b of Directive 92/12/EEC, there are few automatic or spontaneous exchanges of information between Member States. The exchange of information between national authorities and between those authorities and the Commission should be more intensive and speedier if fraud is to be effectively combated.

[1] Opinion delivered on 1 April 2004 (not yet published in the Official Journal).
[2] OJ C 112, 30.4.2004, p. 64.
[3] OJ L 336, 27.12.1977, p. 15. Directive last amended by Directive 2004/56/EC (OJ L 127, 29.4.2004, p. 70).
[4] OJ L 264, 15.10.2003, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).
[5] OJ L 76, 23.3.1992, p. 1. Directive last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

(10) There is consequently a need for a specific instrument in the field of excise duties to incorporate the provisions of Directive 77/799/EEC in this field. This instrument should also focus on the areas where cooperation between Member States can be improved through the introduction and improvement of systems for the transmission of information on the movement of excisable products. This instrument is without prejudice to the application of the Convention of 18 December 1997 on mutual assistance and cooperation between administrations [1].

(11) This Regulation should not hamper other Community measures to combat fraud in the field of excise duties.

(12) This Regulation incorporates and defines the arrangements contained in Directive 92/12/EEC to facilitate administrative cooperation between Member States. These arrangements include the register of traders concerned and premises and the movement verification system. This Regulation also introduces an early warning system between Member States.

(13) For the purposes of this Regulation it is appropriate to limit certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of data [2], in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(15) Since the objective of this Regulation, namely the simplification and the strengthening of administrative cooperation between Member States, which requires a harmonised approach, cannot be sufficiently achieved by the Member States alone, and can, by reason of the uniformity and effectiveness required, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(16) This Regulation respects the fundamental rights and observes the principles which are recognised by the Charter of Fundamental Rights of the European Union,

[1] Council Act of 18 December 1997 (OJ C 24, 23.1.1998, p. 1).
[2] OJ L 281, 23.11.1995, p. 31. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
[3] OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. This Regulation lays down the conditions under which the administrative authorities responsible in the Member States for the application of the legislation on excise duties are to cooperate with each other, and with the Commission, in order to ensure compliance with that legislation.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange any information that may help them to effect a correct assessment of excise duties.

The Regulation also lays down rules and procedures for the exchange of certain types of information by electronic means, and in particular as regards intra-Community trade in excisable products.

2. This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall also be without prejudice to the fulfilment of any obligation in relation to mutual assistance ensuing from other legal instruments, including bilateral or multilateral agreements.

Article 2

For the purposes of this Regulation:

1. 'competent authority' means the authority designated in accordance with Article 3(1);

2. 'requesting authority' means the central liaison office of a Member State or any liaison department or competent official of that Member State requesting assistance on behalf of the competent authority;

3. 'requested authority' means the central liaison office of a Member State or any liaison department or competent official of that Member State who receives the request for assistance on behalf of the competent authority;

4. 'central liaison office' means the office which has been designated under Article 3(3) with principal responsibility for contacts with other Member States in the field of administrative cooperation;

5. 'liaison department' means any office other than the central liaison office with a specific territorial competence or a specialised operational responsibility which has been designated by the competent authority pursuant to Article 3(4) to exchange directly information on the basis of this Regulation;

6. 'competent official' means any official who can directly exchange information on the basis of this Regulation, for which he has been authorised pursuant to Article 3(5);

7. 'excise office' means any office at which some of the formalities laid down by excise rules may be completed;

8. 'occasional automatic exchange' means the systematic communication of predefined information, without prior request, to another Member State as and when that information becomes available;

9. 'regular automatic exchange' means the systematic communication of predefined information, without prior request, to another Member State at pre-established regular intervals;

10. 'spontaneous exchange' means the occasional communication without prior request of information to another Member State;

11. 'computerised system' means the computerised system for monitoring the movement of excisable products set up by Decision No 1152/2003/EC [1];

12. 'person' means:

(a) a natural person;

(b) a legal person; or

(c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;

13. 'by electronic means' means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

14. 'identification number' means the number provided for in Article 22(2)(a) of this Regulation;

15. 'VAT identification number' means the number provided for in Article 22(1)(c), (d) and (e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment [2];

16. 'intra-Community movement of excisable products' means the movement between two or more Member States of excisable products under the suspension arrangements for excise duties within the meaning of Title III of Directive 92/12/EEC or of excisable products released for consumption within the meaning of Articles 7 to 10 of Directive 92/12/EEC;

17. 'administrative enquiry' means all the controls, checks and other action taken by officials or the competent authorities in the performance of their duties with a view to ensuring the proper application of excise legislation;

18. 'CCN/CSI network' means the common platform based on the common communication network (CCN) and common system interface (CSI), developed by the Community to ensure all transmissions by electronic means between the competent authorities in the area of customs and taxation;

19. 'excise duties' means the taxes which are subject to the Community legislation in the field of excise, and includes the taxes on energy products and electricity under Council Directive 2003/96/EC [3];

20. 'AAD' means the document referred to in Article 18(1) of Directive 92/12/EEC;

21. 'SAAD' means the document referred to in Article 7(4) of Directive 92/12/EEC.

Article 3

1. Each Member State shall inform the other Member States and the Commission of the competent authority it has designated as the authority in whose name this Regulation is to be applied, whether directly or by delegation.

2. Each Member State shall designate a central liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative cooperation. It shall inform the Commission and the competent authorities of the other Member States thereof.

[1] OJ L 162, 1.7.2003, p. 5.

[2] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

[3] OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

3. The central liaison office shall have principal responsibility for exchanges of information on movements of excisable products and in particular, it shall have principal responsibility for;

(a) the exchange of data stored in the electronic register provided for in Article 22;

(b) the early warning system provided for in Article 23;

(c) verification requests to or from other Member States provided for in Article 24.

4. The competent authority of each Member State may also designate liaison departments other than the central liaison office to directly exchange information under this Regulation. The competent authorities shall ensure that the list of these departments is kept up to date and made available to central liaison offices of the other Member States concerned.

5. The competent authority of each Member State may also designate, under the conditions laid down by it, competent officials who can directly exchange information under this Regulation. When it does so it may limit the scope of such delegation. The central liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central liaison offices of the other Member States concerned.

6. The officials exchanging information under Articles 11 and 13 shall be deemed to be competent officials for this purpose, in accordance with the conditions laid down by the competent authorities.

7. Where liaison departments or competent officials send or receive requests for assistance or responses to such requests for assistance, they shall inform the central liaison office of their Member State under the conditions laid down by the latter.

8. Where a liaison department or a competent official receives requests for assistance requiring action outside its territorial or operational area, it shall immediately forward them to the central liaison office of its Member State and inform the requesting authority thereof. In such a case, the time limits laid down in Article 8 shall begin on the day following that on which the request for assistance was forwarded to the central liaison office.

Article 4

1. The obligation to give assistance as provided for in this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 acting with the authorisation or at the request of the judicial authority.

2. However, where a competent authority has, in accordance with national law, the powers to communicate the information referred to in paragraph 1, it may be communicated as part of the administrative cooperation provided for in this Regulation. Any such communication shall have the prior authorisation of the judicial authority if such authorisation is required under national law.

CHAPTER II

COOPERATION ON REQUEST

SECTION 1

Request for information and for administrative enquiries

Article 5

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.

2. For the purposes of communicating the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3. The request referred to in paragraph 1 may include a reasoned request for a specific administrative enquiry. If the Member State decides that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons for its decision.

4. In order to obtain the information requested or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 6

Requests for information and for administrative enquiries pursuant to Article 5 shall, as far as possible, be sent using a standard form adopted in accordance with the procedure referred to in Article 34(2). However, under the circumstances referred to in Article 24, the standard movement verification document for excisable products provided for in Article 24(2) of this Regulation shall be a simplified form of information request.

Article 7

1. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information in its possession in the form of reports, statements and any other documents, or certified true copies or extracts thereof and the results of administrative enquiries.

2. Original documents shall be provided only where this is not contrary to the provisions in force in the Member State in which the requested authority is established.

SECTION 2

Time limit for providing information

Article 8

The requested authority shall provide the information referred to in Articles 5 and 7 as quickly as possible, and no later than three months following the date of receipt of the request.

Article 9

In certain special categories of cases, time limits different from those provided for in Article 8 may be agreed between the requested and the requesting authorities.

Article 10

Where the requested authority is unable to respond to the request by the time limit, it shall inform the requesting authority forthwith of the reasons for its failure to do so and indicate when it will be able to respond.

SECTION 3

Presence in administrative offices and participation in administrative enquiries

Article 11

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may be present in the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties, with a view to exchanging the information referred to in Article 1. Where the requested information is contained in the documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies of the documents containing the requested information.

2. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials designated by the requesting authority may be present during the administrative enquiries with a view to exchanging the information provided for in Article 1. Administrative enquiries shall be carried out exclusively by the officials of the requested authority. The requesting authority's officials shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through their intermediary and for the sole purpose of the administrative enquiry being carried out.

3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 shall at all times be able to produce a written authority indicating their identity and their official capacity.

SECTION 4

Simultaneous controls

Article 12

With a view to exchanging the information referred to in Article 1, two or more Member States may agree to conduct simultaneous controls, in their own territory, of the excise duty situation of one or more persons who are of common or complementary interest, whenever such controls would appear to be more effective than controls carried out by only one Member State.

Article 13

1. A Member State shall identify independently the persons whom it intends to propose for a simultaneous control. The competent authority of that Member State shall notify the competent authority in the other Member States concerned of the cases proposed for simultaneous controls. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be carried out.

2. The Member States concerned shall then decide whether they wish to participate in the simultaneous controls. On receipt of a proposal for a simultaneous control, the competent authority shall confirm its agreement or its reasoned refusal to its counterpart authority.

3. Each competent authority shall appoint a representative to be responsible for supervising and coordinating the control operation.

4. Following a simultaneous control, the competent authorities shall inform the excise liaison offices of the other Member States without delay of the fraud techniques identified during such a simultaneous control, when it is deemed that such information is of particular interest to other Member States. The competent authorities may also inform the Commission.

SECTION 5

Request for notification of administrative decisions and measures

Article 14

At the request of the requesting authority, the requested authority shall, in accordance with the rules governing similar notifications in force in its own Member State, notify the addressee of all administrative decisions and measures taken by the administrative authorities of the requesting Member State concerning the application of legislation on excise duties, except those referred to in Article 5 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures [1].

[1] OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 2003 Act of Accession.

Article 15

Requests for notification, mentioning the subject of the decision or measure to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.

Article 16

The requested authority shall, without delay, inform the requesting authority of its response to the request for notification and notify it, in particular, of the date of transmission of the decision or measure to the addressee, or of the reason for any inability to transmit. A request may not be refused on the grounds of the content of the decision or measure to be notified.

CHAPTER III

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

Article 17

Without prejudice to Chapter IV, the competent authority of each Member State shall, by occasional automatic or regular automatic exchange, forward the information referred to in Article 1 to the competent authority of any other Member State concerned, in the following cases:

1. where an irregularity or an infringement of excise duty legislation has occurred, or is suspected to have occurred, in the other Member State;

2. where an irregularity or an infringement of excise duty legislation which has occurred, or is suspected to have occurred, in the territory of one Member State may have repercussions in another Member State;

3. where there is a risk of fraud or a loss of excise duty in the other Member State.

Article 18

The following shall be determined in accordance with the procedure referred to in Article 34(2):

1. the exact categories of information to be exchanged;

2. the frequency of such exchanges;

3. the practical arrangements for the exchange of information.

Each Member State shall determine whether it will take part in the exchange of a particular category of information, as well as whether it will do so by means of regular automatic or occasional automatic exchange.

Article 19

The competent authorities of the Member States may in any case forward to each other, without prior request, and by means of spontaneous exchange, the information referred to in Article 1 of which they are aware.

Article 20

Member States shall take the necessary administrative and organisational measures to facilitate the exchanges provided for in this Chapter.

Article 21

A Member State cannot be obliged, for the purposes of implementing this Chapter, to impose new obligations on persons for the purposes of collecting information, nor to bear disproportionate administrative burdens.

CHAPTER IV

STORAGE AND EXCHANGE OF INFORMATION SPECIFIC TO INTRA-COMMUNITY TRANSACTIONS

Article 22

1. The competent authority of each Member State shall maintain an electronic database containing the following registers:

(a) a register of persons who are authorised warehousekeepers or registered traders for excise purposes within the meaning of Article 4(a) and (d) of Directive 92/12/EEC;

(b) a register of premises authorised as tax warehouses.

2. The register shall contain the following information made available to other Member States:

(a) the identification number issued by the competent authority in respect of the person or premises;

(b) the name and address of the person or premises;

(c) the category and combined nomenclature relating to excise products of the products which may be held or received by the person or which may be held or received at these premises;

(d) identification of the central liaison office or the excise office from which further information may be obtained;

(e) the date of issue, amendment and where applicable, the date of cessation of validity of the authorisation as an authorised warehousekeeper or as a registered trader;

(f) the information required to identify persons who have assumed the obligations within the meaning of Article 15(3) of Directive 92/12/EEC;

(g) the information required to identify persons involved on an occasional basis in the movement of excisable products, where such information is available.

3. Each national register shall be made available, for excise duty purposes only, to the competent authorities of the other Member States.

4. The central liaison office or a liaison department of each Member State shall ensure that persons involved in the intra-Community movement of products subject to excise duty are allowed to obtain confirmation of the information held under this Article.

5. The detailed information referred to in paragraph 2, the detailed arrangements for introducing and updating registers, the harmonised standards for recording identification numbers and collecting the information needed to identify persons and premises referred to in paragraph 2 and the arrangements for making available the registers to all Member States, as set out in paragraph 3, shall be defined according to the procedure provided for Article 34(2).

6. Where a trader can be identified only by means of a VAT identification number, Article 27 of Regulation (EC) No 1798/2003 shall apply for that purpose.

Article 23

1. Member States shall introduce an electronic early warning system under which the central liaison office or a liaison department in the Member State of departure of the excisable products can send an information or warning message to the liaison office in the Member State of destination as soon as that liaison office or liaison department is in possession of the AAD information, and at the latest when the products are dispatched. As part of this exchange of information, a risk analysis based on the AAD information shall be carried out before a message is sent, and if it is considered necessary, after it is received.

2. The information to be exchanged and the relevant arrangements shall be determined according to the procedure referred to in Article 34(2).

Article 24

1. In accordance with Article 5, during or after the movement of excisable products, the central liaison office of a Member State may request information from the central liaison office or a liaison department of another Member State. For the purposes of this exchange of information a risk analysis, based on the AAD or SAAD information, shall be carried out before a request is sent, and if it is considered necessary, after it is received.

2. The exchange of information referred to in paragraph 1 shall be carried out on the basis of a standard verification document of the movements in question. The form and content of this document and the arrangements for exchange of information shall be laid down according to the procedure provided for in Article 34(2).

3. The relevant authorities of the Member State in which a consignor of excisable products is established may grant assistance, using the document provided for in paragraph 2, where such consignor fails to receive Copy 3 of the AAD or SAAD and where such consignor has exhausted all the means available to him to obtain proof that the movement of products has been cleared. If such assistance is granted, this in no way relieves the consignor of his tax obligations.

The relevant authorities of the Member State of destination shall make every effort to comply with any request made to them by the relevant authorities of the Member State of the consignor in the course of such assistance.

Article 25

1. Where monitoring of the movement of and surveillance of excisable products is carried out by means of a computerised system, the competent authority of each Member State shall keep and process the information in this system.

The information shall be kept for at least three years from the end of the calendar year in which the movement was initiated in order that such information can be used for the procedures provided for in this Regulation.

2. Member States shall ensure that the information stored in the system is kept up to date, and is complete and accurate.

CHAPTER V

RELATIONS WITH THE COMMISSION

Article 26

1. Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. For the application of this Article, the Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements. To this end, the information delivered by the Member States shall not contain individual or personal data.

2. Member States shall communicate to the Commission any available information relevant to their application of this Regulation, including any statistical data needed for the evaluation of its implementation. The relevant statistical data shall be determined in accordance with the procedure referred to in Article 34(2), and shall be communicated only in so far as they are available and the communication is not likely to involve administrative burdens which would be unjustified.

3. Member States shall communicate to the Commission any available information on the methods or practices used or suspected of having been used to contravene excise duty legislation which have revealed shortcomings or lacunae in the operation of the administrative cooperation arrangements provided for in this Regulation where it is deemed that such information is of particular interest to other Member States.

4. With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax fraud, Member States may communicate to the Commission any other available information referred to in Article 1.

5. The Commission shall forward the information referred to in paragraphs 2, 3 and 4 to the other Member States concerned.

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES

Article 27

1. When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of any Member States which might be interested in it and in any event, to all those which request it, in so far as permitted by assistance arrangements with that particular third country. Such information may also be passed on to the Commission whenever it is of Community interest.

2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions which appear to contravene excise duty legislation, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities which supplied the information, in accordance with their domestic provisions applying to the communication of personal data to third countries.

CHAPTER VII

CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

Article 28

Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under the arrangements to be adopted in accordance with the procedure referred to in Article 34(2).

Article 29

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed between the requested and requesting authority. The said requests shall be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is established only in special cases when the requested authority gives a reason for asking for such a translation.

Article 30

1. The requested authority in one Member State shall provide the requesting authority in another Member State with the information referred to in Article 1 provided that:

(a) the number and the nature of the request for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on the requested authority;

(b) the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2. Where mutual assistance involves particular problems leading to excessive costs the requesting and requested authorities may agree on special reimbursement arrangements in the cases in question.

3. This Regulation shall impose no obligation to have enquiries carried out or to provide information if the laws or administrative practices of the Member State which would have to provide the information do not authorise the competent authority to carry out those enquiries or to collect or use that information for that Member State's own purposes.

4. The competent authority of a Member State may refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information.

5. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where its disclosure would be contrary to public policy.

6. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance. The Commission shall also be informed of the categories of grounds for such refusals on an annual basis for statistical purposes.

7. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure referred to in Article 34(2).

Article 31

1. Information communicated pursuant to this Regulation shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under both the national law of the Member State which received it and the corresponding provisions applicable to Community authorities.

Such information may be used for the purpose of establishing the assessment base, for collection or administrative control of excise duties, the monitoring of movements of excisable products, for risk analysis and for enquiries.

It may be used in connection with judicial or administrative proceedings that may involve penalties initiated as a result of infringements of tax law, without prejudice to the general rules and legal provisions governing the right of the defendants and witnesses in such proceedings.

It may also be used to establish other taxes, duties and charges covered by Article 2 of Directive 76/308/EEC.

Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as this is necessary for care, maintenance and development of the CCN/CSI network.

2. By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the requesting authority, if the legislation of the Member State of the requested authority allows the information to be used for similar purposes.

3. Where the requesting authority considers that information it has received from the requested authority may be useful to the competent authority of a third Member State, it may forward it to the latter authority. It shall inform the requested authority that it has done so. The requested authority may make the communication of information to a third Member State subject to its prior consent.

4. Member States shall restrict the scope of the obligations and rights provided for in Article 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC where that is necessary to safeguard the interests referred to in Article 13(e) of that Directive.

Article 32

Reports, statements, and any other documents or certified true copies or extracts thereof obtained by the officials of the requested authority and communicated to the requesting authority under the assistance provided for by this Regulation may be invoked as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar documents provided by another authority of that country.

Article 33

1. For the purposes of applying this Regulation, a Member State shall take all necessary measures to:

(a) ensure effective internal coordination between the competent authorities referred to in Article 3;

(b) establish direct cooperation between the authorities authorised for the purposes of such coordination;

(c) ensure the smooth operation of the information exchange system provided for in this Regulation.

2. The Commission shall communicate without delay to the competent authority of each Member State any information which it receives and which it is able to provide.

CHAPTER VIII

GENERAL AND FINAL PROVISIONS

Article 34

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article 24(1) of Directive 92/12/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

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

3. The Committee shall adopt its Rules of Procedure.

Article 35

1. Every five years from the date of entry into force of this Regulation and based in particular on the information provided by the Member States, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

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

Article 36

Where the competent authorities conclude arrangements on bilateral matters covered by this Regulation other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the competent authorities of the other Member States.

Article 37

This Regulation shall enter into force on 1 July 2005.

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

Done at Brussels, 16 November 2004.

For the Council
The President
G. ZALM

COUNCIL REGULATION (EC) No 2074/2004

of 29 November 2004

imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the 'basic Regulation'), and in particular Article 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 1997, Council Regulation (EC) No 119/97 [2] imposed a definitive anti-dumping duty on imports of certain ring binder mechanisms ('RBM') originating, *inter alia*, in the People's Republic of China ('PRC' or 'country concerned'). The rate of the definitive duty applicable to the net, free-at-Community-frontier price, before duty, was 32,5 % for World Wide Stationery Mfg ('WWS'), a company which was granted individual treatment and 39,4 % for all other companies in the PRC. These rates of duty were applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19), while RBM with 17 and 23 rings (TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29) were subject to a duty equal to the difference between the minimum import price ('MIP') of EUR 325 per 1 000 pieces and the free-at-Community-frontier price, before duty, whenever the latter was lower than the MIP.

(2) In September 2000, following a request for an anti-absorption review of the abovementioned measures, lodged pursuant to Article 12 of the basic Regulation, the rates of duty applicable to RBM other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19) were revised upwards by Council Regulation (EC) No 2100/2000 [3] to 51,2 % for WWS and to 78,8 % for all other companies in the PRC.

(3) Anti-dumping and countervailing measures are in force since June 2002 on imports of RBM originating in Indonesia. These measures, which are not subject to the current review, were imposed by Council Regulation (EC) No 976/2002 and Council Regulation (EC) No 977/2002 of 4 June 2002 [4], respectively.

(4) Following an investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Vietnam, the measures were extended to imports consigned from Vietnam by Council Regulation (EC) No 1208/2004 [5].

(5) An investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EC) No 119/97 by imports of RBM consigned from Thailand, whether declared as originating in Thailand or not, was initiated in April 2004 [6].

(6) Both investigations mentioned in the previous two recitals were independent of the results of the present investigation.

2. Request for a review

(7) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of certain RBM originating in the PRC [7], the Commission received, on 23 October 2001, a request to review these measures pursuant to Article 11(2) of the basic Regulation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 22, 24.1.1997, p. 1.
[3] OJ L 250, 5.10.2000, p. 1.
[4] OJ L 150, 8.6.2002, p. 1 and p. 17.
[5] OJ L 232, 1.7.2004, p. 1.
[6] OJ L 127, 29.4.2004, p. 67.
[7] OJ C 122, 25.4.2001, p. 2.

(8) The request was lodged by two Community producers, Koloman Handler AG and Krause Ringbuchtechnik GmbH ('the applicants'), representing a major proportion of the total Community production of RBM. The request was based on the grounds that the expiry of the measures would be likely to result in higher volumes of injurious dumped imports originating in the PRC.

(9) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review [1].

3. **Investigation**

(a) *Procedure*

(10) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting country, the applicant Community producers and the other known Community producer of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(11) All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(12) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation. In addition, one producer in India (analogue country) was contacted and received a questionnaire.

(13) Replies to the questionnaires were received from the two applicant Community producers and one exporting producer in the country concerned, as well as from one producer in the analogue country and two unrelated importers in the Community.

(14) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were granted a period within which to make representations subsequent to disclosure. The comments of the parties were considered and where appropriate, the findings have been modified accordingly.

(b) *Interested parties and verification visits*

(15) All the information deemed necessary for the purpose of determination of the likelihood of a continuation or recurrence of dumping and injury and of the Community interest was sought and verified. Verification visits were carried out at the premises of the following companies:

(i) *Applicant Community producers*

— Krause Ringbuchtechnik GmbH, Espelkamp, Germany

— SX Bürowaren Produktions- und Handels GmbH (until November 2001 RBM had been manufactured by Koloman Handler AG), Vienna, Austria (see recital (50)),

(ii) *Producer in the exporting country*

— World Wide Stationery Mfg, Hong Kong, PRC

(iii) *Producer in the analogue country*

— Tocheunglee Stationery Manufacturing Co, Chennai, India

(iv) *Unrelated importer in the Community*

— Bensons International Systems B.V., Utrecht, the Netherlands

(c) *Investigation period*

(16) The investigation on the likelihood of a continuation or recurrence of dumping covered the period from 1 January 2001 to 31 December 2001 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 1998 up to the end of the IP ('period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product concerned is the same as in the original investigation, i.e. certain ring binder mechanisms made of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half-rings or with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most common ones being round and D-shaped. RBM are currently classified within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19 for mechanisms other than those with 17 or 23 rings and TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29 for mechanisms with 17 and 23 rings). Lever-arch mechanisms ('LAM') classified within the same CN code are not included in the scope of this investigation.

[1] OJ C 21, 24.1.2002, p. 25.

(18) RBM are used to make paper, cardboard and plastic-coated office files, presentation and other bound files.

(19) A large number of different types of RBM were sold in the Community during the IP. The differences between these types were determined by the width of the base, the type of mechanism, the number of rings, the opening system, the nominal paper holding capacity, the ring diameter, the shape of the rings, the length and the ring spacing. Given the fact that all types have the same basic physical and technical characteristics and within certain ranges, are interchangeable, it was established that all RBM constitute one single product for the purpose of the present proceeding.

2. **Like product**

(20) It was found that RBM produced and sold on the domestic market in the analogue country (India) and those exported to the Community from the PRC had the same basic physical and technical characteristics and uses.

(21) It was also found that there was no difference in the basic physical and technical characteristics and uses between RBM imported into the Community originating in the PRC and RBM produced by the Community industry and sold on the Community market.

(22) It was therefore concluded that RBM produced and sold on the domestic market in the analogue country, RBM originating in the PRC exported to the Community and RBM produced and sold by the Community industry on the Community market were all like products within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

(23) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. **Preliminary remarks**

(24) Of the three Chinese exporting producers named in the complaint, only WWS, which was granted individual treatment in both the original and the anti-absorption investigations, cooperated. The two other exporting companies stated that they had not exported the product concerned to the Community during the IP. However, one of these companies appears to be involved in circumvention practices via Thailand, which has been investigated by the European Anti-Fraud Office (OLAF) (see recitals (42) and (43)).

2. **Continuation of dumping**

(25) The volume of export sales of the sole cooperating company represented all imports originating in the PRC during the IP, according to Eurostat. This volume represents 1,9 % of the total Community consumption during the IP of the current investigation, compared with 45 % of the total Community consumption during the IP of the original investigation, i.e. from 1 October 1994 to 30 September 1995.

(a) *Methodology*

(26) Compared with the original investigation, only the choice of analogue country has changed, otherwise the methodology for calculating the dumping margin has remained the same.

(b) *Analogue country*

(27) Since the PRC is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country (the 'analogue country') selected in accordance with Article 2(7)(a) of the basic Regulation.

(28) In the original investigation Malaysia was chosen as analogue country. In view of the fact that production in Malaysia has ceased and been transferred, *inter alia*, to India, another representative country had to be chosen. In the expiry review request, India was suggested as analogue country for the purpose of establishing normal value. This choice was not contested. It was also found that the reasons for selecting India, i.e. the size of its domestic market, the openness of its market and its degree of access to basic materials, ensured normal conditions of competition. The Indian producer contacted agreed to cooperate and had representative domestic sales. This company was related to the cooperating Chinese exporting producer, but no reasons were found to consider that this could have an impact on the determination of normal value. Therefore, in accordance with Article 2(7)(a) of the basic Regulation, India was considered to be an appropriate analogue country for establishing normal value.

(c) *Normal value*

(29) Domestic sales of the like product in the analogue country were found to be profitable and representative during the IP. Therefore, the normal value was based on the price paid or payable in the ordinary course of trade by independent customers in the analogue country, i.e. India.

(d) *Export price*

(30) Since the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the export price actually paid or payable.

(e) *Comparison*

(31) For the purposes of a fair comparison, and in accordance with Article 2(10) of the basic Regulation, due allowance, in the form of adjustments, was made for differences in respect of inland freight, discounts and deferred rebates, handling and loading, transport and credit costs, commissions and insurance which affected prices and price comparability.

(32) In this respect it should, however, be noted that following the imposition of anti-dumping measures, the volume and the variety of the types of RBM exported to the Community fell sharply. Therefore, the types of the like product sold on the domestic market of the analogue country during the IP were comparable with only 10 % of the types directly exported from the PRC by the sole cooperating exporting producer. Whereas, in the original investigation the comparison was based on 75 % of total sales volume. Indeed, most of the direct exports from the PRC during the IP of the current investigation covered 'niche segments' such as 17 and 23 ring mechanisms subject to the MIP.

(f) *Dumping margin*

(33) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price, at the same level of trade. The comparison showed an absence of dumping.

(g) *Conclusion on dumping*

(34) With regard to dumping practices, no dumping was found for WWS, the cooperating Chinese exporting producer. However, the volume of export sales of WWS direct to the Community during the IP of the current investigation was significantly smaller than that identified in the original investigation. The exports direct from the PRC by WWS were also centred on the top end of the range of RBM, in particular 17 and 23 ring models subject to a duty in the form of a MIP (see recital (32) above). This means, in effect, that hardly any anti-dumping duties were paid on these imports. This result cannot be compared to the dumping margin calculated in the original investigation because it was not possible to calculate a dumping margin for the models of RBM subject to the anti-dumping duty, which were the models sold most on the Community market and which were not exported direct from the PRC during the IP of the current investigation. Also, in terms of sales volume, a comparison could only be made between the sales of the like product sold on the domestic market of the analogue country and the models that formed 10 % of the sales from the PRC to the Community. In the light of the above, it was considered that a clear conclusion on the continuation of dumping cannot be reached.

3. **Recurrence of dumping**

(35) In the absence of a clear conclusion of continuation of dumping, the question of likelihood of a recurrence of dumping was investigated.

(36) In this respect, the following elements were analysed: (a) the spare capacity and investments of the exporting Chinese producers; (b) the behaviour of the cooperating Chinese exporting producer on third country markets; (c) the structure in volume and prices of the exports of the product concerned to third countries by the non-cooperating companies.

(a) *Spare capacity and investments*

(37) It is worth recalling that, in the absence of cooperation from exporting producers other than WWS, no information concerning production in the PRC, spare production capacity and sales on the Chinese market was available, except for the cooperating producer.

(38) The production capacity of the cooperating company remained stable from 1999 to the IP. However, since the production of the product concerned fell by 28 % between 1999 and the IP, it is likely that the cooperating exporting producer has a significant unused production capacity, i.e. one third of its total capacity. Consequently, this producer might quickly increase production and direct it towards any export market, including the Community market, if measures are allowed to expire. It should also be noted that the unused production capacity of the sole cooperating exporting producer is able to meet roughly half of the Community consumption. It can also be reasonably assumed that the other Chinese producers also have significant spare capacities, as overall Chinese exports have decreased and there is no information showing that capacity in the PRC has declined.

(39) It is noted that the cooperating company maintained a high level of investment in machinery and equipment from 1999 to the IP, although to a gradually decreasing extent.

(b) *Behaviour of the cooperating Chinese exporting producer on third country markets*

(40) Export sales to third countries (excluding the Community) by the cooperating company decreased by 8 % in volume from 2000 to the IP. Its average export price to third countries decreased by 12 % during the same period.

(c) *Behaviour of non-cooperating Chinese companies (volume and prices)*

(41) With regard to the companies which did not cooperate in the present investigation, findings had to be based on facts available in accordance with Article 18 of the basic Regulation. In the absence of any cooperation, US and Chinese statistics were consulted in order to establish volumes and prices of Chinese exports to other countries. Even if the absolute volume of the Chinese exports differs according to the source of information, both statistics confirm that there was a significant decrease in RBM exports from China in the period between 1999 and the IP all over the world. According to Chinese statistics, the volume of RBM exported in 1999 to the world market was around 662 million pieces, which decreased to 523 million pieces during the IP. The average export price, although covering various product types with widely differing prices, remained more or less stable during the same period. As mentioned in recital (38), in the absence of information on a hypothetical decrease in production capacity of the non cooperating Chinese exporting producers, it is likely that they still have significant unused capacities. In these circumstances, it is reasonable to consider that if the anti-dumping measures were allowed to expire, the Community market would become a very attractive target for these Chinese exporters, who would then resume their exports to the Community market in considerable quantities.

(42) Furthermore, it is important to note that OLAF carried out an investigation to determine whether imported RBM declared as originating in Thailand did actually originate in that country or, as it is alleged, were actually of PRC origin.

(43) Investigations by OLAF and the Member States concerned have concluded that the RBM were not of Thai origin. The investigations further established that a substantial part of that traffic was of Chinese non-preferential origin and thus liable to anti-dumping duties.

(44) In this respect, it should be noted that the product types exported via Thailand included the models of RBM sold most on the Community market during the IP, rather than the 17 and 23 ring models sold directly from the PRC. This allowed a comparison to be made using the models sold most on the Community market. As such, a comparison was made between RBM exported from Thailand to the Community and a number of comparable product types sold on the domestic market of the analogue country. The result should be viewed with caution, since in the absence of a full investigation on imports of RBM from Thailand, the calculation could only be based on a FOB Bangkok price offer provided by the Community industry for product types exported from Thailand to the Community during and after the IP. However, the calculation appeared to show that the export prices of the RBM exported from Thailand were lower than the prices on the Indian domestic market, and therefore it cannot be excluded that these RBM were sold to the Community at dumped prices.

(d) *Anti-absorption investigation*

(45) In addition, it should be recalled that in October 2000, following the original investigation which imposed a duty of 32,5 % for WWS and 39,4 % for all other Chinese companies, an anti-absorption investigation led to an increase in the level of duty to 51,2 % for WWS and 78,8 % for all other companies.

(e) *Trade defence measures applied by third countries*

(46) No third countries apply trade defence measures to imports of RBM from the PRC.

4. **Conclusion**

(47) The investigation has shown that both the cooperating exporting producer and most likely also the other two Chinese exporting producers have considerable spare capacity in view of the significant decrease in their exports from 1999 to the IP. Moreover, the unused production capacity of the sole cooperating exporting producer is able to meet roughly half of the Community consumption.

(48) The apparent Community consumption in the IP was around 270 million pieces, of which only 5 million pieces were declared as originating in the PRC. In the IP of the original investigation (1 October 1994 to 30 September 1995) Chinese exporting producers exported 126 million pieces to the Community. Therefore, and in view of the spare capacity of the Chinese exporting producers, it is likely that imports from the PRC to the Community market could resume in significant quantities if the anti-dumping measures were allowed to expire. In addition to the pressure on the Chinese companies to export in the light of their huge spare capacity, these exports will most likely be at dumped prices. Indeed, although the comparison for the cooperating company did not show dumping, this was based on a small sample not comparable with the calculation of dumping in the original investigation. On the other hand, one of the Chinese companies that did not cooperate in this investigation exported RBM to the Community market via a related company located in Thailand. Calculations have shown the possibility that these sales were at dumped prices. Therefore it cannot be excluded that only one year after an anti-absorption investigation the dumping practices have continued.

(49) Based on all these findings and events, it is likely that in the event of resumption of exports by Chinese exporters to the EU, these exports would be priced below the normal value. Consequently, it must be expected that, in the absence of the present duties, the dumping from China would recur.

D. DEFINITION OF THE COMMUNITY INDUSTRY

(50) During the IP RBM were manufactured in the Community by the following producers:

— Krause Ringbuchtechnik GmbH, Espelkamp, Germany

— SX Bürowaren Produktions- und Handels GmbH (until November 2001 RBM had been manufactured by Koloman Handler AG), Vienna, Austria

— Industria Meccanica Lombarda srl, Offanengo, Italy.

(51) The first two producers are the applicants and cooperated in the investigation. The cooperating Community producers represented more than 90 % of the total Community production of RBM in the IP. It was therefore considered that these producers represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'. After the IP, these two companies became part of the same company group, but their production was maintained in the Community. This company group is unrelated to the Chinese exporting producers.

E. SITUATION ON THE COMMUNITY MARKET

1. Consumption on the Community market

(52) The questionnaire replies of the cooperating Community producers were used to establish the Community industry's sales of RBM on the Community market. Other information available was also used to calculate the sales of the Community producer not included in the definition of the Community industry.

(53) For imports originating in the PRC and imports declared as originating in Thailand, Eurostat figures were used with the exception of the figures regarding imports declared as originating in the PRC in the IP, for which the information provided by the cooperating Chinese exporting producer was used.

(54) As to the imports originating in other third countries, the figures on imports originating in India and Indonesia, with the exception of those related to the IP, have been obtained from the anti-dumping proceeding concerning these two countries. Eurostat information was used to calculate the volume of imports not available in the questionnaire replies or in previous proceedings. For imports originating in Hungary, the questionnaire reply of one cooperating Community producer was used. For third countries other than Hungary and the countries referred to in this recital, Eurostat information was used. It should also be noted that Eurostat figures had to be converted from tonnes into pieces.

(55) On this basis, the apparent Community consumption decreased by 9 % during the period considered, from 297 million pieces (figures rounded to the million) in 1998 to 270 million pieces in the IP. The figures for 1999 and 2000 were 306 million pieces and 316 million pieces, respectively.

2. Imports from the country concerned

(a) *Import volume and market share*

(56) The imports declared as originating in the PRC decreased sharply, from 44 million pieces in 1998 to 24 million pieces in 1999, to 10 million pieces in 2000 and to 5 million pieces in the IP. The market share of the imports declared as originating in the PRC fell in each year of the period considered, from 14,8 % in 1998 to 7,8 % in 1999, to 3 % in 2000 and to 1,9 % in the IP.

(b) *Price evolution of the imports of the product concerned*

(57) The average price of the imports declared as originating in the PRC increased by 96 % between 1998 (EUR 141) and the IP (EUR 278). The upward trend of the prices of imports declared as originating in the PRC reflects the growing weight of more expensive product types subject to an MIP (RBM with 17 and 23 rings) rather than a genuine price increase.

3. **Imports declared as originating in Thailand**

(58) It was mentioned above, based on the findings of the OLAF investigation, that a substantial part of imports declared as originating in Thailand was in fact of Chinese origin. Imports declared as originating in Thailand increased from one million pieces in 1998 to 16 million pieces in 1999, to 17 million pieces in 2000 and to 20 million pieces in the IP. The market share of the imports declared as originating in Thailand increased in each year of the period considered, from 0,3 % in 1998 to 5,2 % in 1999, to 5,3 % in 2000 and to 7,4 % in the IP. The average price of the imports declared as originating in Thailand fell by 9 % in the same period, from EUR 100 to EUR 91. More detailed price information available for imports declared as originating in Thailand concern resale prices of a European distributor of RBM exported via Thailand. It was found that these resale prices were on average around 12 % below the sales prices of the Community industry.

4. **Economic situation of the Community industry** [1]

(a) *Production, production capacity and capacity utilisation*

(59) The production of the Community industry decreased by 17 % over the period considered from 100 (index number) in 1998 to 91 in 1999, to 89 in 2000 and to 83 in the IP. Koloman Handler AG's decision to transfer part of its production to Hungary in 2000 accounts for the decrease of production in that year. In the IP, Koloman Handler AG filed for bankruptcy and its production decreased significantly in the second half of 2001.

(60) The production capacity of the Community industry decreased by 7 % in the period considered. It increased in 1999 to 107 (index number) and then fell to 93 in 2000 as a result of Koloman Handler AG's decision to transfer part of its production to Hungary. Production capacity stabilised in the IP.

(61) Capacity utilisation fell from above 80 % in 1998 to 70-75 % in 1999, then increased to 76-80 % in 2000 and decreased again to 70-75 % in the IP.

(b) *Stocks*

(62) The Community industry's closing stocks fell by 37 % in the period considered, having fallen in each year of that period. The main factor contributing to this decrease was the slowdown of Koloman Handler AG's production after filing for bankruptcy. The period during which stocks were kept before being sold was reduced by 10 days in the period considered.

(c) *Sales volume, market share and growth*

(63) The Community industry's sales on the Community market decreased by 8 % over the period considered, from 119 million pieces in 1998 to 109 million pieces in the IP. Sales had also fallen in 1999 to 115 million pieces and remained almost at the same level in 2000.

(64) The market share held by the Community industry grew slightly during the period considered, from 40,1 % in 1998 to 40,4 % in the IP, although it had fallen significantly in 1999 and 2000 to 37,6 % and 36,2 %, respectively.

(65) While the Community consumption decreased by 9 % in the period considered, the sales volume of the Community industry decreased by 8 %. On the other hand, the aggregated volume of imports declared as originating in the PRC and in Thailand fell by 44 % in the period considered. The Community industry thus slightly increased its market share, whereas the imports declared as originating in the PRC lost market share and the imports declared as originating in Thailand increased their market share.

(d) *Sales prices and costs*

(66) The weighted average selling price of RBM sold by the Community industry on the Community market to unrelated customers decreased in each year of the period considered, from EUR 206 per thousand pieces in 1998 to EUR 190 in 1999, to EUR 177 in 2000 and to EUR 174 in the IP, i.e. by 16 % in the period considered. Anti-dumping measures against imports from Indonesia were only taken in June 2002, i.e. it cannot be excluded that dumped RBM from Indonesia could have an impact on the price development over the period considered.

(67) The selling price of the main raw materials (steel strip and steel wire) did not follow the downward trend. On the other hand, unit labour costs, which account for more than two-fifths of the total unit cost, decreased significantly over the period considered.

[1] Data is given in index numbers (1998 = 100) or in a range whenever it is necessary to preserve confidentiality.

(e) *Profitability*

(68) As the impact of certain items that do not reflect the regular performance of the business (especially depreciation for goodwill following an acquisition) was significant, the operating profit margin before depreciation for goodwill was considered to be a better indicator than the pre-tax profit margin to assess the profitability of the Community industry. The Community industry has consistently registered a poor operating profit margin on its sales to unrelated customers in the Community. Profitability improved from 0-3 % in 1998 to 3,1 %-6 % in 1999 and then fell abruptly to between 0 % and -3 % in 2000 and it was lower than -3 % in the IP. This negative performance certainly contributed to the fact that the two companies concerned went into bankruptcy: Koloman Handler AG in July 2001 and Krause Ringbuchtechnik GmbH in April 2002 (i.e. soon after the end of the IP).

(f) *Investments and ability to raise capital*

(69) The analysis of investment focussed on investment in plant and machinery, representing more than 90 % of total investment in the IP. The investment in goodwill was not taken into consideration since it does not reflect the regular performance of the Community industry over several years, as that investment was the result of an acquisition which was a one-off event. Investment in plant and machinery decreased by 65 % in the period considered. It fell to 52 (index number) in 1999, to 48 in 2000 and to 35 in the IP.

(70) The ability of the Community industry to raise capital was dented by its consistently poor profitability.

(g) *Return on investment*

(71) As equity became negative in 2000 and both Community producers subsequently filed for bankruptcy, the return on total assets ('ROTA') was used to measure the return on investment. ROTA was stable in 1998 and 1999 at between 0 and 3 %, then fell abruptly to between 0 % and -5 % in 2000 and it was lower than -10 % in the IP.

(h) *Cash flow*

(72) An analysis of a simplified net operating cash flow, i.e. operating profit plus depreciation (excluding depreciation of goodwill), shows that the trend is similar to that of the operating profit margin. Cash flow increased from 100 (index number) in 1998 to 126 in 1999, and then decreased sharply to 62 in 2000 and to -65 in the IP.

(i) *Employment, productivity and wages*

(73) Employment (full-time units) fell in each year of the period considered, from 100 (index number) in 1998 to 86 in 1999, to 82 in 2000 and to 77 in the IP.

(74) Productivity, measured in thousand pieces per employee, improved by 8 % over the period considered, while labour costs per unit of output, measured in EUR per kg, decreased by 12 % in the same period.

(j) *Magnitude of the actual margin of dumping*

(75) There is no finding of actual dumping during the IP for imports declared as originating in the PRC as the findings for these imports relate to a small and not representative range of RBM. Furthermore, no full determination on dumping for imports declared as originating in Thailand could be made due to a lack of investigation on dumping (the OLAF investigation concerned the determination of origin and did not relate to the issue of dumping). Therefore, no conclusion could be reached on the magnitude of the actual margin of dumping.

5. **Conclusion**

(76) The Community industry continued to be in a precarious situation during the period considered. This is illustrated by its declining profitability (or, in other words, by its growing losses after 1999) on lower sales volumes at decreasing unit prices.

(77) The precarious situation of the Community industry in the IP resulted from various past events such as: (i) dumping of imports originating in the PRC until the imposition of measures in January 1997; (ii) absorption of these measures as determined in October 2000; (iii) dumping of imports originating in Indonesia until the imposition of anti-dumping measures in June 2002; (iv) circumvention through Thailand (OLAF investigation). In addition, following an investigation into circumvention, the anti-dumping measures imposed by Council Regulation (EC) No 119/97 were extended to imports consigned from Vietnam (see recital (4)). This shows that during the period considered the Community industry always suffered from dumping and had no opportunity to recover. The decrease in consumption on the Community market was limited and cannot, therefore, explain in itself the precarious situation of the Community industry.

F. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **Impact of the projected increase in dumped imports on the Community industry**

(78) In the IP of the original investigation (i.e. in the period between 1 October 1994 and 30 September 1995), the Chinese exporting producers sold 126 million pieces on the Community market (WWS's sales accounting for more than two-fifths of this volume). In 2001, the IP of the current investigation, they sold 5 million pieces declared as originating in the PRC. The facts that there is significant spare capacity in the PRC (while Chinese exports to third countries are decreasing in volume) and that the behaviour of Chinese exporting producers has consistently shown that they are willing to sell at dumped and injurious prices to gain market share, clearly indicate that there is a likelihood of recurrence of injurious dumping through imports originating in the PRC if the anti-dumping measures expired.

(79) The Community is the only market where Chinese exporting producers could still increase market share, as the other markets are already supplied by Chinese producers or producers in third countries controlled by Chinese producers. The Community industry's presence is not significant in the most important markets outside the Community where almost all of the RBM sold are manufactured in the PRC or by companies controlled by the Chinese exporting producers. The price pressure exerted by the imports concerned would most probably significantly increase, as suggested by the analysis of the anti-absorption investigation, if the existing measures were allowed to expire. If WWS was able to absorb a significant part of its 32,5 % anti-dumping duty and the other Chinese companies did the same of their 39,4 % duty, then it is most likely that in the absence of anti-dumping measures they would be in a position to increase their strong downward pressure on the prices of RBM sold in the Community.

(80) It is recalled that the average price of RBM declared as originating in Thailand fell by 9 % over the period considered and a comparison between average selling price of a European distributor of RBM declared as originating in Thailand and the Community industry's weighted average selling price showed that the former was around 12 % lower than the latter.

(81) As to imports from other third countries, Hungary is part of the Community since 1 May 2004 onwards. As concerns India and Indonesia, exporting producers in both of these countries are controlled by Chinese exporting producers. If the measures on imports originating in the PRC expire, the incentive to export RBM from India and Indonesia to the Community would be reduced, as it is likely that in this case there would be a sharp increase in dumped imports coming directly from the PRC.

(82) Given the already precarious situation of the Community industry, the aforementioned substantial increase of imports from the PRC at dumped prices combined with substantial price undercutting would undoubtedly have serious consequences for the Community industry. Indeed, and also in view of the experience concerning past anti-dumping and anti-subsidy investigations with regard to RBM, the expiry of the measures concerning RBM imports originating in the PRC would in all likelihood lead to a further and material deterioration of the situation of the Community industry.

2. **Conclusion on the likelihood of recurrence of injury**

(83) On the basis of the above, it is likely that the expiry of the anti-dumping measures on imports of RBM originating in the PRC would result in a sharp increase in the volume of these imports into the Community, combined with a significant decline in selling prices. It should be noted that the bulk of the products on the RBM market is highly standardised and competition takes place to a great extent in terms of prices.

(84) In this context, given the findings regarding the situation on the Community market, it is thus likely that an increase in the volume of imports at low, dumped prices will depress the prices of the Community industry. This will in turn lead to a further deterioration of the financial situation of the Community industry. The consequence for the Community industry would most probably be bankruptcy and the closure of its remaining plant.

(85) The expiry of the measures would remove the most important barrier to impede the Chinese exporting producers to sell at injurious dumped prices on the Community market.

(86) Therefore, it is concluded that there is a likelihood of a recurrence of injury caused by dumped imports originating in the PRC.

G. COMMUNITY INTEREST

1. Introduction

(87) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Community interest to renew the anti-dumping measures in force. For this purpose, and in accordance with Article 21 of the basic Regulation, the impact of the renewal of the measures on all parties involved in this proceeding and the consequences of the expiry of the measures were considered on the basis of all evidence submitted.

(88) In order to assess the impact of the possible maintenance of measures, all interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation. Only the cooperating Community producers and two unrelated importers replied to the questionnaire. Three users made some comments, but they neither replied to the questionnaire nor provided any evidence to substantiate their comments.

(89) Article 21(7) of the basic Regulation establishes that information shall only be taken into account where it is supported by actual evidence which substantiates its validity. In this context, no conclusion could be drawn from the comments made by users suggesting that it was not in the Community interest to maintain the anti-dumping measures, as they were not substantiated.

(90) As to the effect of the anti-dumping measures previously imposed, there was a sharp decline in imports declared as originating in the PRC, especially after the increase in the measures following the findings on absorption, combined with a sharp increase in imports originating or declared as originating in other third countries.

2. Interests of the Community industry

(91) The company group to which the applicants belong is the only Community producer of RBM with a significant production. They are facing a difficult environment in which low-priced, often dumped and subsidised injurious imports from third countries remain a threat. They restructured their operation after having filed for bankruptcy, but this was not enough to avoid the further bankruptcy procedures in the last quarter of 2003. The Community industry is making an effort to build a sound business able to compete with Chinese exporting producers on a world-wide basis. The expiry of the anti-dumping measures on imports originating in the PRC could seriously undermine that strategy, as Chinese exporting producers have shown in the past that they would push prices down to dumped levels in order to gain market share. Bearing in mind that the effects of the measures in place have been partially undermined by absorption practices and by dumped or subsidised RBM imports from Indonesia, the possible expiry of such measures would most likely make the current restructuring efforts of the Community industry impossible.

(92) The Community industry has a long tradition, but it is very likely that it would cease to exist if the current restructuring efforts fail. Robert Krause GmbH & Co. KG filed for bankruptcy in January 1998. Its successor, Krause Ringbuchtechnik GmbH, owned by Wilhelm vom Hoffe Drahtwerke GmbH since June 1998, filed for bankruptcy in April 2002. After having acquired the assets and taken over the personnel of the latter, Ringbuchtechnik Produktionsgesellschaft GmbH will probably not resume production after its application for the opening of bankruptcy procedures. SX Bürowaren Produktions- und Handels GmbH continues the tradition of Koloman Handler AG. Another bankruptcy would likely be the end of the Community industry. Once the Community industry stops manufacturing RBM, the skills accumulated during more than a century and the jobs left would be lost.

(93) The renewal of the measures would most probably enable the Community industry to increase its market share, to decrease its unit manufacturing costs and to increase profitability. Prices would probably not change significantly, but sales volumes could grow substantially. The restructuring of the Community industry is intended to boost its competitive position, allowing for better planning of the RBM types to be produced, increasing its negotiating power vis-à-vis its suppliers, and streamlining its sales operations. All these measures would contribute to a reduction in costs. The Community industry is viable, as even after several bankruptcies it is still in a position to supply an important part of the Community market, in particular, in conjunction with the production site located in Hungary, which became part of the Community production on 1 May 2004.

(94) SX Bürowaren Produktions- und Handels GmbH's acquisition of Bensons, a long time trader of RBM with companies located in the Netherlands, Singapore, the United Kingdom and the USA, clearly shows the will of the Community industry to enhance its access to the market on a world-wide basis and the seriousness of its restructuring efforts.

(95) There were two main issues raised after disclosure. Firstly, a possible abuse of a dominant position by the Community industry. In this respect, the Commission is not aware of any anti-trust procedure concerning the companies concerned.

(96) Secondly, it was alleged that the Community industry is now related to a Chinese exporter and that Bensons, the importer that is now part of the Community industry group, is an exclusive distributor of products sold by WWS, a Chinese exporter that also controls the production in India.

(97) It was found that there is a supply agreement between Bensons and WWS that initially foresaw the transfer of Intellectual Property Rights from WWS to Bensons and the transfer of some of Benson's shares to WWS. These transfers have, however, not taken place. The supply agreement foresees no exclusivity between Bensons and WWS, but stipulates that Bensons is given priority to be the exclusive distributor if a given supplier ceases its activity. Therefore, the alleged relationship cannot be confirmed.

3. **Interests of importers**

(98) The only two cooperating unrelated importers were acquired by SX Bürowaren Produktions- und Handels GmbH in August 2002, thus becoming related to the Community industry after the IP. Normally, events after the IP are not taken into account. However, since this acquisition is a significant and lasting event, it should, in this particular case, be taken into account. The interests of these importers are now the same as those of the Community industry as they are all related companies.

(99) No other unrelated importer cooperated in the investigation. This suggests that, although measures have been in place, the other unrelated importers were not significantly affected by these measures.

4. **Interests of users**

(100) No user cooperated in the investigation. This suggests that, although measures have been in place, users were not significantly affected by these measures. The situation of users is thus unlikely to deteriorate as a result of the maintenance of anti-dumping measures.

(101) In the period considered, some binder manufacturers reduced their production or closed their plants in the Community. In certain cases, they moved or expanded their production capacity outside the Community, mainly in Eastern European countries. The reasons behind the decisions of these users were mainly motivated by lower labour costs and the proximity of those countries to the Community market, combined with the perspective that these countries will become members of the European Union on 1 May 2004. The prices of RBM sold by the Community industry have followed a downward trend and imports of low-priced RBM, shipped from India, Indonesia, and Thailand not subject to anti-dumping duties have been available during the period considered.

(102) It should be stressed that should the Community industry cease to exist, users would become almost totally dependent on imports originating in the PRC and/or on imports from Chinese subsidiaries in other countries. At that moment, Chinese exporting producers would have an incentive to substantially increase prices in markets outside the PRC, which could seriously endanger the competitiveness of user industries. The Community industry has no interest in having a price policy that would contribute to the closure of Community binder manufacturers, as it would be in a much weaker position when competing outside the Community with Chinese exporting producers and their subsidiaries.

(103) Should measures be renewed, there will be alternative sources of supply. It is worth noting that the current anti-dumping measures on imports originating in the PRC did not entail any shortage of imported RBM on the Community market.

5. **Interests of upstream industry**

(104) Suppliers of steel wire and steel strip sell a negligible percentage of their production to the Community industry and as such, are not affected by the outcome of this proceeding. None of them made itself known as an interested party.

6. **Competition and trade distorting effects**

(105) With respect to the effects of possible expiry of the measures on competition in the Community, it should be noted that there are only a few producers of RBM world-wide, which are mostly Chinese or controlled by Chinese exporting producers. The disappearance of the remaining few producers not controlled by Chinese companies would thus have negative effects on competition in the Community.

7. **Conclusion on Community interest**

(106) Taking into account the above factors and considerations, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. **ANTI-DUMPING MEASURES**

(107) In the light of the foregoing, it is considered that, as provided for by Articles 11(2) and 11(6) of the basic Regulation, the anti-dumping measures on imports of RBM originating in the PRC imposed by Council Regulation (EC) No 119/97, as last amended by Council Regulation (EC) No 2100/2000, should be maintained.

(108) Because of the long duration of the investigation, it is considered appropriate that the measures be limited to four years,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms currently classifiable within CN code ex 8305 10 00 originating in the People's Republic of China.

For the purpose of this Regulation, ring binder mechanisms shall consist of two rectangular steel sheets or wires with at least four half rings made of steel wire fixed on it and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel-made trigger mechanism fixed to the ring binder mechanism.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

(a) for mechanisms with 17 and 23 rings (TARIC codes 8305 10 00 21, 8305 10 00 22 and 8305 10 00 29), the amount of duty shall be equal to the difference between the minimum import price of EUR 325 per 1 000 pieces and the net, free-at-Community-frontier price, before duty;

(b) for mechanisms other than those with 17 or 23 rings (TARIC codes 8305 10 00 11, 8305 10 00 12 and 8305 10 00 19)

	Rate of duty	TARIC additional code
People's Republic of China:		
— World Wide Stationery Mfg, Hong Kong, People's Republic of China	51,2 %	8934
— all other companies	78,8 %	8900

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

Article 2

This anti-dumping duty shall be imposed for a period of four years from the date of entry into force of this Regulation.

Article 3

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, 29 November 2004.

For the Council
The President
L. J. BRINKHORST

COMMISSION REGULATION (EC) No 2075/2004

of 3 December 2004

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 4 December 2004.

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

Done at Brussels, 3 December 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to Commission Regulation of 3 December 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	115,6
	204	94,9
	999	105,3
0707 00 05	052	106,6
	204	32,5
	999	69,6
0709 90 70	052	97,8
	204	71,6
	999	84,7
0805 10 10, 0805 10 30, 0805 10 50	388	43,9
	999	43,9
0805 20 10	204	68,0
	999	68,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	67,0
	204	57,0
	624	95,8
	720	30,1
	999	62,5
0805 50 10	052	58,9
	528	25,5
	999	42,2
0808 10 20, 0808 10 50, 0808 10 90	052	90,5
	388	138,0
	400	81,3
	404	87,3
	512	104,5
	720	76,7
	804	107,6
	999	98,0
0808 20 50	720	66,4
	999	66,4

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2076/2004

of 3 December 2004

adapting for the first time Annex I of Regulation (EC) No 2003/2003 of the European Parliament and of the Council relating to fertilisers (EDDHSA and triple superphosphate)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers [1], and in particular Articles 31 (1) and (3) thereof,

Whereas:

(1) Article 3 of Regulation (EC) No 2003/2003 provides that a fertiliser belonging to a type of fertiliser listed in Annex I thereto and complying with the conditions laid down in that Regulation may be designated 'EC FERTILISER'.

(2) Among the phosphatic fertilisers listed in table A2 of Annex I to Regulation (EC) No 2003/2003 is Triple superphosphate (TSP) and one of the criteria for its labelling is 'phosphorus expressed as P_2O_5 soluble in neutral ammonium citrate, at least 93 % of the declared content of P_2O_5 being water soluble'.

(3) The higher the water solubility of the TSP fertiliser, the better is its agronomic efficiency. In the past, European soils were in general deficient in phosphorous and a high minimum value of 93 % water solubility was justified in order to correct this deficiency.

(4) Today, the situation has changed in that many soils are no longer deficient in phosphorous and while there are soil conditions or crops for which TSP with a minimum of 93 % water solubility is still desirable, TSP with a minimum of 85 % of water solubility will be equally effective for many European soils and crops.

(5) TSP users should therefore be allowed to choose between a TSP with a minimum water solubility of 85 %, or one with a higher solubility, to suit the local soil and crop requirements. The entry concerning TSP in table A2 of Annex I to Regulation (EC) 2003/2003 should be adapted accordingly.

(6) Sodium salt of EDDHSA and its condensation products (EDDHSA) have been in use, particularly in Spain, France and Italy for 15 years as an organic chelating agent for micro-nutrients. Experience shows that it is an efficient fertilising agent and that it poses no risk to the environment.

(7) In particular, iron chelated with EDDHSA is used to correct iron shortages and to remedy ferric chlorosis. It is recommended for a large variety of vegetal species, particularly fruit trees such as citrus fruit, apricot, avocado plum and peach; it is also used for grapes, for small bushes and strawberries.

(8) The elimination of ferric chlorosis and its symptoms ensures green foliage, with good growth and development of the fruit for harvest.

(9) Concerning the effect on the soil and the environment, EDDHSA undergoes a chemical degradation process in the soil which is relatively slow but which does not create any dangerous substances. Nor does it cause any salinity problems in the soil.

(10) EDDHSA should therefore be added to the list of authorised organic chelating agents for micro-nutrients in Annex I to Regulation (EC) No 2003/2003.

(11) Regulation (EC) No 2003/2003 should therefore be amended accordingly.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 32 of Regulation (EC) No 2003/2003,

[1] OJ L 304, 21.11.2003, p 1. Regulation as last amended by Council Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 2003/2003 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 3 December 2004.

For the Commission
Günter VERHEUGEN
Member of the Commission

ANNEX

Annex I to Regulation (EC) No 2003/2003 is amended as follows:

(a) In Table A.2. the entry 2(c) relating to 'Triple superphosphate' is replaced by the following:

No	Type designation	Data on method of production and essential ingredients	Minimum content of nutrients (% by weight); Data on the expression of nutrients; Other requirements	Other data on the type designation	Nutrient content to be declared; Forms and solubilities of the nutrients; Other criteria
1	2	3	4	5	6
'2(c)	Triple superphosphate	Product obtained by reaction of ground mineral phosphate with phosphoric acid and containing monocalcium phosphate as its essential ingredient	38 % P_2O_5 Phosphorus expressed as P_2O_5 soluble in neutral ammonium citrate, at least 85 % of the declared content of P_2O_5 being water-soluble Test sample: 3 g		Phosphorus pentoxide soluble in neutral ammonium citrate Water-soluble phosphorus pentoxide'

(b) In point E.3.1. the following entry is added:

'Sodium salt of:

ethylenediamine di-(2-hydroxy 5-sulfophenylacetic) acid EDDHSA $C_{18}H_{20}O_{12}N_2S_2$ +

and its condensation products $n*(C_{12}H_{14}O_8N_2S)$'

COMMISSION REGULATION (EC) No 2077/2004

of 3 December 2004

amending Regulation (EC) No 2037/2000 of the European Parliament and of the Council with regard to the use of processing agents

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer [1], and in particular the third sentence of the fifteenth indent of Article 2 thereof,

Whereas:

(1) Taking account of new information and technical developments reported by the Technology and Economic Assessment Panel in its progress report dated April 2002 [2] on controlled substances used as chemical processing agents, Annex VI of Regulation (EC) No 2037/2000 should be modified as a result of Decision X/14 [3] and Decision XV/6 [4] adopted at the 10th (1998) and 15th Meetings (2003) of the Parties to the Montreal Protocol, respectively.

(2) More specifically, Decision XV/6 adds the processing agent carbon tetrachloride for producing cyclodime (a solvent); and deletes the use of CFC 113 as a process agent in the manufacture of vinorelbine (a pharmaceutical product) and the use of carbon tetrachloride as a process agent in the production of tralomethrine (an insecticide).

(3) Regulation (EC) No 2037/2000 should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex VI to Regulation (EC) No 2037/2000 is replaced by the text amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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, 3 December 2004.

For the Commission
Stavros DIMAS
Member of the Commission

---

[1] OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 1804/2003 (OJ L 265, 16.10.2003, p. 1).
[2] The report of the Technology and Economic Assessment Panel, April 2002, Volume 1, Progress report on Processing Agents.
[3] 10th Meeting of the Parties to the Montreal Protocol in 1998, Decision X/14: Process agents.
[4] 15th Meeting of the Parties to the Montreal Protocol in 2003, Decision XV/6: List of Uses of Controlled Substances as Process Agents.

ANNEX

'ANNEX VI

Processes in which controlled substances are used as processing agents as referred to in the fifteenth indent of Article 2

(a) use of carbon tetrachloride for the elimination of nitrogen trichloride in the production of chlorine and caustic soda;

(b) use of carbon tetrachloride in the recovery of chlorine in tail gas from production of chlorine;

(c) use of carbon tetrachloride in the manufacture of chlorinated rubber;

(d) use of carbon tetrachloride in the manufacture of isobutyl acetophenone (ibruprofen — analgesic);

(e) use of carbon tetrachloride in the manufacture of poly-phenylene-terephtalamide;

(f) use of CFC-11 in manufacture of fine synthetic polyolefin fibre sheet;

(g) use of CFC-12 in the photochemical synthesis of perfluoropolyetherpolyperoxide, precursors of Z-perfluoropolyethers and difunctional derivatives;

(h) use of CFC-113 in the reduction of perfluoropolyetherpolyperoxide intermediate for production of perfluoropolyether diesters;

(i) use of CFC-113 in the preparation of perfluoropolyether diols with high functionality;

(j) use of carbon tetrachloride in production of Cyclodime;

(k) use of HCFCs in the processes set out in points (a) to (j) when used to replace CFC or carbon tetrachloride.'

COUNCIL DIRECTIVE 2004/106/EC

of 16 November 2004

amending Directives 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums and 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Whereas:

(1) Closer cooperation between Community tax authorities and between the latter and the Commission based on common principles is required to effectively combat excise duty fraud.

(2) Regulation (EC) No 2073/2004 of the European Parliament and of the Council of 16 November 2004 on administrative cooperation in the field of excise duties [3] incorporates all the provisions designed to facilitate administrative cooperation in the field of excise duties contained in Directives 77/799/EEC [4] and 92/12/EEC [5] with the exception of mutual assistance provided for by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures [6].

(3) Council Directive 2004/56/EC [7] amending Directive 77/799/EEC requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with it before 1 January 2005. These provisions apply in the field of direct taxation, certain excise duties and taxation of insurance premiums. Since the Directive 77/799/EEC will not apply to excise duties, pursuant to this Directive, as from 1 July 2005, it is not appropriate that Member States be required to adopt provisions which are bound to cease to apply within a short time. Therefore, it is necessary to allow Member States not to adopt the provisions necessary to comply with Directive 2004/56/EC concerning excise duties, without prejudice to the obligation to adopt such provisions in respect of other taxes to which Directive 77/799/EC applies.

(4) Directives 77/799/EEC and 92/12/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/799/EEC is hereby amended as follows:

1. the title shall be replaced by the following title:

   'Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums';

2. paragraph 1 of Article 1 shall be replaced by the following:

   '1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital, and any information relating to the establishment of taxes on insurance premiums referred to in the sixth indent of Article 3 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (*).

   (*) OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 2003 Act of Accession.'

Article 2

Directive 92/12/EEC is hereby amended as follows:

1. Article 15a shall be deleted;

2. Article 15b shall be deleted;

3. Article 19(6) shall be deleted.

[1] Opinion delivered on 1 April 2004 (not yet published in the Official Journal.
[2] Opinion delivered on 31 March 2004 (not yet published in the Official Journal.
[3] See page 1 of this Official Journal.
[4] OJ L 336, 27.12.1977, p. 15. Directive as last amended by Directive 2004/56/EC (OJ L 127, 29.4.2004, p. 70).
[5] OJ L 76, 23.3.1992, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
[6] OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 2003 Act of Accession.
[7] OJ L 127, 29.4.2004, p. 70.

Article 3

References to Directive 77/799/EEC in respect of excise duties shall be construed as being made to Regulation (EC) No 2073/2004.

References to Directive 92/12/EEC in respect of administrative cooperation in the field of excise duties shall be construed as being made to Regulation (EC) No 2073/2004.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 2005. They shall forthwith inform the Commission thereof.

They shall apply these provisions from 1 July 2005.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. By way of derogation from Article 2 of Directive 2004/56/EC, Member States are not obliged to adopt and apply the provisions needed to comply with Directive 2004/56/EC in respect of excise duties.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 16 November 2004.

For the Council
The President
G. ZALM

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 2 November 2004

concerning the signature of the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signature of the accompanying Memorandum of Understanding

(2004/828/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) On 16 October 2001 the Council authorised the Commission to negotiate with the Principality of Andorra an agreement for securing the adoption by that State of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.

(2) The text of the Agreement which is the result of the negotiations duly reflects the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, and the Principality of Andorra.

(3) Subject to the adoption at a later date of a Decision on the conclusion of the Agreement, it is desirable to sign the two documents that were initialled on 1 July 2004 and have confirmation of the Council approval of the Memorandum of Understanding,

HAS DECIDED AS FOLLOWS:

Article 1

Subject to the adoption at a later date of a Decision on the conclusion of the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC [1] on taxation of savings income in the form of interest payments, the President of the Council is hereby authorised to designate the persons empowered to sign, on behalf of the European Community, the Agreement and the accompanying Memorandum of Understanding and the Letters from the European Community which have to be exchanged in accordance with Article 19(2) of the Agreement and the last paragraph of the Memorandum of Understanding.

The Memorandum of Understanding is approved by the Council.

The text of the Agreement and of the Memorandum of Understanding are attached to this Decision.

Article 2

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

Done at Brussels, 2 November 2004.

For the Council
The President
B. R. BOT

[1] OJ L 157, 26.6.2003, p.38.

AGREEMENT

between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

THE EUROPEAN COMMUNITY,

and

THE PRINCIPALITY OF ANDORRA,

hereinafter referred to as 'Contracting Party' or 'Contracting Parties' as the context may require,

With a view to introducing measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, hereinafter referred to as 'the Directive', within a framework of cooperation which takes account of the legitimate interests of both Contracting Parties and in a context where other third countries in a situation similar to that of the Principality of Andorra will also be applying measures equivalent to the Directive,

HAVE AGREED AS FOLLOWS:

Article 1

Aim

1. Within a framework of cooperation between the European Community and the Principality of Andorra savings income in the form of interest payments made in the Principality of Andorra to beneficial owners who are individuals identified as residents of a Member State of the European Community in accordance with the procedures laid down in Article 3 shall be subject to a withholding tax to be levied by paying agents established on the territory of the Principality of Andorra under the conditions laid down in Article 7.

This withholding tax shall be levied unless the voluntary disclosure measures are applied in accordance with the rules set out in Article 9. The income corresponding to the amount of withholding tax levied in accordance with Articles 7 and 9 shall be shared between the Member States of the European Community and the Principality of Andorra according to the rules set out in Article 8.

To ensure that this Agreement is equivalent to the Directive, these measures shall be supplemented by rules on the exchange of information on request set out in Article 12 and by the consultation and review procedures described in Article 13.

2. The Contracting Parties shall take the necessary measures to implement this Agreement. The Principality of Andorra shall in particular take the necessary measures to ensure the tasks required to implement this Agreement are carried out, irrespective of the place of establishment of the debtor of the debt claim which produces the interest, by the paying agents established on its territory, and shall expressly provide for provisions on procedures and penalties.

Article 2

Definition of beneficial owner

1. For the purposes of this Agreement, 'beneficial owner' means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides proof that this payment has not been made or secured on his own account, where:

(a) he acts as a paying agent within the meaning of Article 4; or

(b) he acts on behalf of a legal person, an entity whose profits are taxed under the general arrangements for business taxation, an undertaking for collective investment in transferable securities established in a Member State of the European Community or in the Principality of Andorra; or

(c) he acts on behalf of another individual who is the beneficial owner and informs the paying agent of the identity of this beneficial owner in accordance with Article 3(1).

2. Where a paying agent possesses information suggesting the individual receiving an interest payment or for whom an interest payment is secured may not be the beneficial owner, it must take reasonable measures to establish the identity of the beneficial owner in accordance with Article 3(1). If the paying agent is not able to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 3

Identity and residence of beneficial owners

1. The paying agent shall establish the identity of the beneficial owner in the form of his name, forename and address according to the anti-money-laundering provisions applying in the Principality of Andorra.

2. The paying agent shall establish the residence of the beneficial owner on the basis of rules which may vary according to the time at which the relations between the paying agent and the beneficial owner of the interest are entered into. Subject to the conditions set out below residence shall be considered to be in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner according to the anti-money-laundering provisions applying in the Principality of Andorra;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned in the official identity document or, if necessary, on the basis of any documentary proof presented by the beneficial owner and according to the following procedure: for individuals presenting an official identity document issued by a Member State of the European Community who declare that they are resident in a State which is not a Member of the European Community, residence shall be established by means of a residence certificate or a document authorising residence issued by the competent authority of that third country in which the individual declares he is resident. If such a certificate of residence or document authorising residence cannot be provided, residence shall be considered to be in the Member State of the European Community which issued the official identity document.

Article 4

Definition of paying agent

For the purposes of this Agreement, 'paying agent' means any economic operator established in the Principality of Andorra who pays interest to, or secures the payment of interest for the immediate benefit of, the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing payment of the interest.

Article 5

Definition of competent authority

1. For the purposes of this Agreement the 'competent authorities' of the Contracting Parties means those listed in Annex I.

2. For third countries, the competent authority is that defined for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

Article 6

Definition of interest payment

1. For the purposes of this Agreement, 'interest payment' means:

(a) interest paid or credited to an account relating to debt claims of any kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest payments;

(b) interest accrued or capitalised on the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments, either directly or through an entity referred to in Article 4(2) of the Directive distributed by:

  (i) undertakings for collective investment established in a Member State of the European Community or in the Principality of Andorra;

  (ii) entities which qualify for the option under Article 4(3) of the Directive;

  (iii) undertakings for collective investment established outside the territory referred to in Article 17;

(d) income realised on the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly via other undertakings for collective investment or entities referred to below, more than 40 % of their assets in debt claims as referred to in (a):

  (i) undertakings for collective investment established in a Member State of the European Community or in the Principality of Andorra;

  (ii) entities which qualify for the option under Article 4(3) of the Directive;

(iii) undertakings for collective investment established outside the territory referred to in Article 17.

However, the Principality of Andorra shall have the option of including income mentioned under (d) in the definition of interest payment only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

2. As regards paragraph 1(c) and (d), when a paying agent possesses no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered to be an interest payment.

3. As regards paragraph 1(d), when a paying agent possesses no information concerning the percentage of the assets invested in debt claims or in shares or units defined in that paragraph, that percentage shall be considered to be more than 40 %. Where it cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. As regards paragraph 1(b) and (d), the Principality of Andorra shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during this period.

5. Income derived from undertakings or entities that have invested up to 15 % of their assets in debt-claims within the meaning of paragraph 1(a) are not considered as a payment of interest within the meaning of paragraph 1(c) and (d).

6. From 1 January 2011, the percentage referred to in paragraph 1(d) and paragraph 3 shall be 25 %.

7. The percentages referred to in paragraph 1(d) and paragraph 5 shall be determined by reference to the investment policy laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and failing that, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 7

Withholding tax

1. Where the beneficial owner of the interest is resident in a Member State of the European Community, the Principality of Andorra shall levy a withholding tax at a rate of 15 % in the first three years of application of this Agreement, 20 % in the subsequent three years and 35 % thereafter.

2. The paying agent shall levy withholding tax as follows:

(a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by means of a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;

(d) where the Principality of Andorra exercises the option under Article 6(4): on the amount of annualised interest.

3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

4. Tax imposed on and tax withheld on an interest payment other than the withholding tax provided for under this Agreement shall be deducted from the withholding tax calculated in accordance with paragraphs 1 to 3 on the same interest payment.

5. Subject to the provisions of Article 10, the levying of withholding tax by a paying agent established in the Principality of Andorra shall not preclude the Member State of the European Community of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law.

Where a taxpayer declares income from interest paid by a paying agent established in the Principality of Andorra to the tax authorities of the Member State of the European Community where he resides, this income shall be taxed at the same rate as that applying to interest earned in this Member State.

Article 8

Revenue sharing

1. The Principality of Andorra shall retain 25 % of its revenue from the withholding tax referred to in Article 7 and transfer 75 % to the Member State of the European Community of residence of the beneficial owner.

2. Such transfers shall take place in one single operation for each Member State for each calendar year at the latest within a period of six months following the end of the calendar year in which the tax was levied.

The Principality of Andorra shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

Article 9

Voluntary disclosure

1. The Principality of Andorra shall provide for a procedure allowing beneficial owners not to bear the withholding tax referred to Article 7 where the beneficial owner provides his paying agent with a certificate drawn up in his name by the competent authority of his Member State of residence in accordance with paragraph 2 of this Article.

2. At the request of the beneficial owner, the competent authority of his Member State of residence shall issue a certificate containing the following information:

(a) the name, forename, address and tax identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

This certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it within two months of the date of submission of the request.

Article 10

Elimination of double taxation

1. The Member State of the European Community of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 7, in accordance with paragraphs 2 and 3 of this Article.

2. If interest received by a beneficial owner has been subject to the withholding tax referred to in Article 7 in the Principality of Andorra, the Member State of the European Community of residence for tax purposes of the beneficial owner shall grant him, in accordance with its national law, a tax credit equal to the amount of tax withheld. Where this amount exceeds the amount of tax due in accordance with its national law on the total amount of interest subject to withholding tax, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

3. If, in addition to the withholding tax referred to in Article 7, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of the European Community of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.

4. The Member State of the European Community of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 7.

Article 11

Negotiable debt securities

1. From the date of application of this Agreement and as long as the Principality of Andorra imposes the withholding tax referred to in Article 7, and at least one Member State of the European Community applies a similar withholding tax, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which were first issued before 1 March 2001 or for which the original issuing prospectuses were approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC, or by the responsible authorities in the Principality of Andorra, or by the responsible authorities in third countries shall not be considered to be debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made after 1 March 2002.

2. However, as long as at least one of the Member States of the European Community also applies similar measures, the provisions of this Article shall continue to apply beyond 31 December 2010 in respect of negotiable debt securities:

— which contain gross-up and early redemption clauses, and

— where the paying agent defined in Article 4 is established in the Principality of Andorra, and

— where the paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State of the European Community.

If and where all Member States of the European Community cease to apply similar provisions, the provisions of this Article shall continue to apply solely in respect of negotiable debt securities:

— which contain gross-up and early redemption clauses, and

— where the paying agent of the issuer is established in the Principality of Andorra, and

— where that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State of the European Community.

If a further issue is made on or after 1 March 2002 of an abovementioned negotiable debt security issued by a government or a related entity acting as a public authority or whose role is recognised by an international Treaty, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an abovementioned negotiable debt security issued by any other issuer not covered by the preceding subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

3. This Article shall not prevent Member States of the European Community and the Principality of Andorra from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

Article 12

Exchange of information on request

1. The competent authorities of the Principality of Andorra and the Member States of the European Community shall exchange information concerning the income covered by this Agreement on conduct constituting a crime of tax fraud under the laws of the requested State or the like. The like includes only an offence with the same level of wrongfulness as conduct constituting a crime of tax fraud under the laws of the requested State.

Until it introduces the concept of the crime of tax fraud in its internal law, the Principality of Andorra shall undertake, where it is the requested State, to treat as tax fraud for the purposes of the first subparagraph, conduct which, as a result of deception, damages the financial interests of the tax authorities of the requesting State and constitutes under the laws of the Principality of Andorra the crime of fraud.

In response to a duly justified request, the requested State shall provide information concerning matters mentioned above in this Article which are subject to, or likely to be subject to, an investigation by the requesting State on a non-criminal or criminal basis.

2. In order to determine whether information may be provided in response to a request, the requested State shall apply the statute of limitations under the law of the requesting State instead of the statute of limitations applicable under the law of the requested State.

3. The requested State shall provide information where the requesting State has reasonable grounds for suspecting that such conduct constitutes the crime of tax fraud or the like. Where the Principality of Andorra is the requested State, the acceptability of the request must be determined within a time limit of two months, by the judicial authorities of the Principality of Andorra in relation to the conditions laid down in this Article.

4. The requesting State's grounds for suspecting that an offence may have been committed may be based on:

(a) documents, whether authenticated or not, including books of accounts or accounting documents or documents relating to bank accounts;

(b) statements by the taxpayer;

(c) information obtained from an informant or third person that has been independently corroborated or otherwise appears credible; or

(d) circumstantial indirect evidence.

5. Any information exchanged in this way shall be treated as confidential and may be disclosed only to persons or the competent authorities of the Contracting Party with competence for taxation of the interest payments referred to in Article 1, either as regards withholding tax, and the revenue deriving therefrom referred to in Articles 7 and 8, or as regards the voluntary disclosure arrangements referred to in Article 9. Those persons or authorities may disclose the information received in public court proceedings or in judicial decisions concerning such taxation.

Information may be communicated to another person or authority only with the written and prior agreement of the competent authority of the party providing the information.

6. The Principality of Andorra will agree to enter into bilateral negotiations with any Member State wishing to do so, in order to define the individual categories of cases falling under 'the like' in accordance with the procedure applied by that State.

Article 13

Consultation and review

1. The Contracting Parties shall consult each other at least every three years or at the request of either Contracting Party with a view to examining, and — if they consider it necessary — improving the technical functioning of this Agreement and assessing international developments. Consultations shall be held within one month of the request or as soon as possible in urgent cases.

On the basis of such an assessment, the Contracting Parties may consult each other in order to examine whether changes to the Agreement are necessary in the light of international developments.

2. Once they have acquired sufficient experience of the full implementation of Article 7(1) of the Agreement, the Contracting Parties shall consult each other in order to examine whether changes to this Agreement are necessary in the light of international developments.

3. For the purposes of the consultations referred to in paragraphs 1 and 2, the Contracting Parties shall inform each other of any developments which could affect the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third country.

4. In the event of disagreement between the competent authorities of the Principality of Andorra and one or more of the other competent authorities of the Member States of the European Community in accordance with Article 5 of this Agreement on the interpretation or application of the Agreement, they shall endeavour to resolve their differences amicably. They shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the European Community of the results of their consultations. The Commission of the European Communities may take part in the consultations at the request of any of the competent authority on issues of interpretation.

Article 14

Application

1. Application of this Agreement is conditional on the adoption and implementation by the dependent or associated territories of Member States mentioned in the report from the Council (Economic and Financial Affairs) to the European Council of Santa Maria de Feira of 19 and 20 June 2000, and by the United States of America, Monaco, Liechtenstein, Switzerland and San Marino of measures which are respectively identical or equivalent to those laid down in the Directive or in this Agreement and providing for the same dates of implementation.

2. The Contracting Parties shall decide by mutual consent, at least six months before the date referred to in paragraph 6, whether the condition set out in paragraph 1 is satisfied as regards the dates of entry into force of the relevant measures in third countries and the dependent or associated territories concerned. If the Contracting Parties do not decide that this condition is met, they shall fix by mutual consent a new date for the purposes of paragraph 6.

3. Notwithstanding its institutional arrangements, the Principality of Andorra shall implement this Agreement from the date referred to in paragraph 6 and shall notify it to the European Community.

4. Implementation of this Agreement or parts thereof may be suspended by either Contracting Party with immediate effect by means of notification addressed to the other party where the Directive or a part thereof ceases to be applicable either temporarily or permanently in accordance with European Community law, or where one of the Member States of the European Community suspends the application of its implementing legislation.

5. Each Contracting Party may also suspend implementation of this Agreement by notifying the other if one of the five third countries referred to above (United States of America, Monaco, Liechtenstein, Switzerland or San Marino) or one of the dependent or associated territories of the Member States of the European Community referred to in paragraph 1 subsequently cease applying measures identical or equivalent to those of the directive. Suspension of implementation shall not come into effect until two months after notification. The Agreement shall begin applying again once measures have been reincorporated.

6. The Contracting Parties shall adopt the laws, regulations and administrative provisions necessary to comply with this Agreement by 1 July 2005 at the latest.

Article 15

Signing, entry into force and termination

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their internal procedures. The Contracting Parties shall notify each other when these procedures have been completed. This Agreement shall enter into force on the first day of the second month following the last notification.

2. Either Contracting Party may terminate this Agreement by giving notice addressed to the other. In such a case, the Agreement shall cease to have effect twelve months after the serving of said notice.

Article 16

Claims and final account

1. Termination or the total or partial suspension of this Agreement shall not affect claims by individuals.

2. In such a case, the Principality of Andorra shall draw up a final account before this Agreement ceases to apply and make a final payment to the Member States of the European Community.

Article 17

Territorial scope

This Agreement shall apply, on the one hand, to the territories where the Treaty establishing the European Community applies, and under the conditions provided in the said Treaty, and on the other hand, to the territory of the Principality of Andorra.

Article 18

Annexes

1. The two Annexes shall form an integral part of this Agreement.

2. The list of competent authorities featured in Annex I may be modified by a simple notification to the other Contracting Party by the Principality of Andorra in so far as it concerns the authority identified in point (a) of the said Annex, and by the European Community insofar as it concerns the other authorities.

The list of related entities featured in Annex II may be amended by common accord.

Article 19

Languages

1. This Agreement is drafted in duplicate in the following languages: Catalan, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish; the texts in each language being equally authentic.

2. The Maltese language version shall be authenticated by the Contracting Parties on the basis of an Exchange of Letters. They shall also be authentic, in the same way as for the languages referred to in paragraph 1.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, have signed the present Agreement.

Hecho en Bruselas, el quince de noviembre del dos mil cuatro.

V Bruselu dne patnáctého listopadu dva tisíce čtyři.

Udfærdiget i Bruxelles den femtende november to tusind og fire.

Geschehen zu Brüssel am fünfzehnten November zweitausendundvier.

Kahe tuhande neljanda aasta novembrikuu viieteistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα πέντε Νοεμβρίου δύο χιλιάδες τέσσερα.

Done at Brussels on the fifteenth day of November in the year two thousand and four.

Fait à Bruxelles, le quinze novembre deux mille quatre.

Fatto a Bruxelles, addì quindici novembre duemilaquattro.

Briselē, divi tūkstoši ceturtā gada piecpadsmitajā novembrī.

Pasirašyta du tūkstančiai ketvirtų metų lapkričio penkioliktą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-negyedik év november havának tizenötödik napján.

Magħmul fi Brussel fil-ħmistax il-jum ta' Novembru tas-sena elfejn u erbgħa.

Gedaan te Brussel, de vijftiende november tweeduizendvier.

Sporządzono w Brukseli w dniu piętnastego października roku dwutysięcznego czwartego.

Feito em Bruxelas, em quinze de Novembro de dois mil e quatro.

V Bruseli pätnásteho novembra dvetisícštyri.

V Bruslju, petnajstega novembra leta dva tisoč štiri.

Tehty Brysselissä viidentenätoista päivänä marraskuuta vuonna kaksituhattaneljä.

Som skedde i Bryssel den femtonde november tjugohundrafyra.

Fet a Brussel les el dia quinze de novembre de l'any dos mil quatre.

Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Ghall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar
Per la Comunitat Europea

Pel Principat d'Andorra

ANNEX I

LIST OF COMPETENT AUTHORITIES OF THE CONTRACTING PARTIES

The competent authorities for the purposes of this Agreement are:

(a) in the Principality of Andorra: El Ministre eucarregat de les Finances or an authorised representative; however, for the application of Article 3 the competent authority is el Ministre eucarregat de l'Interior or an authorised representative,

(b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,

(c) in the Czech Republic: Ministr financí or an authorised representative,

(d) in the Kingdom of Denmark: Skatteministeren, or an authorised representative,

(e) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,

(f) in the Republic of Estonia: Rahandusminister or an authorised representative,

(g) in the Hellenic Republic: Ο Υπουργός Οικονομίας και Οικονομικών or an authorised representative,

(h) in the Kingdom of Spain: El Ministro de Economía y Hacienda or an authorised representative,

(i) in the French Republic: Le Ministre chargé du budget or an authorised representative,

(j) in Ireland: The Revenue Commissioners, or their authorised representative,

(k) in the Italian Republic: Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,

(l) in the Republic of Cyprus: Υπουργός Οικονομικών, or an authorised representative,

(m) in the Republic of Latvia: Finanšu ministrs or an authorised representative,

(n) in the Republic of Lithuania: Finansų ministras or an authorised representative,

(o) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative; however, for the purposes of Article 12, the competent authority shall be the Procureur Général d'Etat luxembourgeois,

(p) in the Republic of Hungary: A pénzügyminiszter or an authorised representative,

(q) in the Republic of Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,

(r) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,

(s) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,

(t) in the Republic of Poland: Minister Finansów or an authorised representative,

(u) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,

(v) in the Republic of Slovenia: Minister za financií or an authorised representative,

(w) in the Slovak Republic: Minister financií or an authorised representative,

(x) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,

(y) in the Kingdom of Sweden: Chefen för Finansdepartementet or an authorised representative,

(z) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom shall designate in accordance with the Agreed Arrangements relating to the competent authority in Gibraltar with the EU and EC instruments and relevant Treaties, notified to the Member States and institutions of the European Union on 19 April 2000, of which a copy shall be notified to the Principality of Andorra by the Secretary-General of the Council of the European Union, and which shall apply to this Agreement.

ANNEX II

LIST OF RELATED ENTITIES

For the purposes of Article 11 of this Agreement, the following entities shall be considered as 'related entity acting as a public authority or whose role is recognised by an international Treaty':

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

— Région flamande (Vlaams Gewest)

— Région wallonne

— Région bruxelloise (Brussels Gewest)

— Communauté française

— Communauté flamande (Vlaamse Gemeenschap)

— Communauté germanophone (Deutschsprachige Gemeinschaft)

Spain

— Xunta de Galicia (Government of the Autonomous Community of Galicia)

— Junta de Andalucía (Government of the Autonomous Community of Andalucia)

— Junta de Extremadura (Government of the Autonomous Community of Extremadura)

— Junta de Castilla-La Mancha (Government of the Autonomous Community of Castilla-La-Mancha)

— Junta de Castilla-León (Government of the Autonomous Community of Castilla-León)

— Gobierno Foral de Navarra (Government of the Autonomous Community of Navarra)

— Govern de les Illes Balears (Government of the Autonomous Community of the Balearic Islands)

— Generalitat de Catalunya (Government of the Autonomous Community of Catalunya)

— Generalitat de Valencia (Government of the Autonomous Community of Valencia)

— Diputación General de Aragón (Government of the Autonomous Community of Aragon)

— Gobierno de las Islas Canarias (Government of the Autonomous Community of the Canary Islands)

— Gobierno de Murcia (Government of the Autonomous Community of Murcia)

— Gobierno de Madrid (Government of the Autonomous Community of Madrid)

— Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque country)

— Diputación Foral de Guipúzcoa (Provincial Council of Guipúzcoa)

— Diputación Foral de Vizcaya/Bizkaia (Provincial Council of Vizcaya)

— Diputación Foral de Alava (Provincial Council of Alava)

— Ayuntamiento de Madrid (Commune of Madrid)

— Ayuntamiento de Barcelona (Commune of Barcelona)

— Cabildo Insular de Gran Canaria (Council of the Island of Grand Canaria)

— Cabildo Insular de Tenerife (Council of the Island of Tenerife)

— Instituto de Crédito Oficial (State Credit Office)

— Instituto Catalán de Finanzas (Catalan Finance Institute)

— Instituto Valenciano de Finanzas (Finance Institute of Valencia)

Greece

— Οργανισμός Τηλεπικοινωνιών Ελλάδος (Greek Telecommunications Organisation)

— Οργανισμός Σιδηροδρόμων Ελλάδος (Greek Railways Organisation)

— Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

— La Caisse d'amortissement de la dette sociale (CADES)

— L'Agence française de développement (AFD)

— Réseau Ferré de France (RFF)

— Caisse Nationale des Autoroutes (CNA)

— Assistance publique Hôpitaux de Paris (APHP)

— Charbonnages de France (CDF)

— Entreprise minière et chimique (EMC)

Italy

— Regions

— Provinces

— Communes

— Cassa Depositi e Prestiti (Savings bank for deposits and loans)

Latvia

— Pašvaldības (local Governments)

Poland

— gminy (communes)

— powiaty (districts)

— województwa (provinces)

— związki gmin (associations of communes)

— związki powiatów (associations of districts)

— związki województw (associations of provinces)

— miasto stołeczne Warszawa (Warsaw capital)

— Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for the restructuring and the modernisation of agriculture)

— Agencja Nieruchomości Rolnych (Agency for agricultural property)

Portugal

— Região Autónoma da Madeira (Autonomous Region of Madeira)

— Região Autónoma dos Açores (Autonomous Region of Azores)

— Municipalities

Slovakia

— mestá a obce (municipalities)

— Železnice Slovenskej republiky (Slovak Railway Company)

— Štátny fond cestného hospodárstva (State Road Management Fund)

— Slovenské elektrárne (Slovak Power Plants)

— Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

— European Bank for Reconstruction and Development

— European Investment Bank

— Asian Development Bank

— African Development Bank

— World Bank/IBRD/IMF

— International Finance Corporation

— Interamerican Development Bank

— Council of Europe Social Development Fund

— EURATOM

— European Community

— Andean Development Corporation

— Eurofima

— European Coal and Steel Community

— Nordic Investment Bank

— Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into in respect of the abovementioned international entities.

ENTITIES IN THIRD COUNTRIES:

Entities satisfying the following criteria:

1. the entity is considered to be a public entity according to national criteria;

2. this public entity is a non-market producer which administers and finances a group of activities, principally non-market goods or services intended for the benefit of the Community, and which is effectively controlled by public administration;

3. this public entity is a large and regular issuer of debt securities;

4. the State concerned is able to guarantee that this public entity will not exercise early redemption in the event of gross-up clauses.

MEMORANDUM OF UNDERSTANDING

between the European Community, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the Principality of Andorra

THE EUROPEAN COMMUNITY,

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

and

THE PRINCIPALITY OF ANDORRA

HAVE AGREED AS FOLLOWS:

When an Agreement providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of income from interest payments (hereinafter referred to as the Directive) was concluded, the European Community, its Member States and the Principality of Andorra signed this Memorandum of Understanding supplementing this Agreement.

1. The signatories to this Memorandum of Understanding consider that the said Agreement between the European Community and the Principality of Andorra and this Memorandum of Understanding are an acceptable agreement protecting the legitimate interests of the Parties. Consequently, they shall apply in good faith the measures agreed and shall refrain from taking any unilateral action which might jeopardise this Agreement without reasonable cause. If a serious discrepancy is discovered between the scope of the Directive adopted on 3 June 2003 and that of the Agreement, in particular as concerns Articles 4 and 6 of the latter, the Contracting Parties shall consult each other forthwith in accordance with Article 13(4) of the Agreement to ensure that the equivalent nature of the measures provided for by the Agreement is safeguarded.

2. The European Community undertakes to enter into, within the transitional period provided for in the abovementioned Directive, discussions with other major financial centres to ensure that measures equivalent to those of the Directive are applied by these jurisdictions.

3. With a view to applying Article 12 of the said Agreement, the Principality of Andorra undertakes to introduce into its legislation during the first year of the application of the Agreement, the concept of the crime of tax fraud, consisting at least of the use of documents which are false, falsified, or recognised as being incorrect in terms of their content, with intent to deceive the tax authorities in the field of taxation of savings income. The signatories to this Memorandum of Understanding note that this definition of tax fraud concerns only needs relating to the taxation of savings, within the framework of the Agreement, and is without prejudice to developments and/or decisions relating to tax fraud under other circumstances and in other forums.

4. The Principality of Andorra and each Member State of the European Community wishing to do so shall enter into bilateral negotiations to define the administrative procedure for the exchange of information.

5. The signatories to this Memorandum of Understanding solemnly declare that the signing of the Agreement on the taxation of savings, together with the opening of negotiations for a monetary agreement, constitute a significant step in the deepening of cooperation between the Principality and the European Union.

   In this context of deepening relations, in parallel with the bilateral negotiations provided under point 4, the Principality of Andorra and each Member State of the European Community shall enter into consultations with a view to defining a wider field of application for economic and fiscal cooperation. These consultations will take place in a spirit of cooperation that takes account of the efforts for alignment in the fiscal area achieved by the Principality of Andorra and solidified by the signature of this Agreement. In particular, these consultations might lead to the implementation:

   — of bilateral programmes for economic cooperation in order to promote the integration of the Andorran economy into the European economy,

   — of bilateral cooperation in the area of taxation aimed at examining the conditions in which withholding taxes levied by the Member States on receipts from the provision of services and financial products, might be eliminated or reduced.

Drawn up at Brussels, 15 November 2004 in duplicate in the Catalan, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these languages being equally authentic.

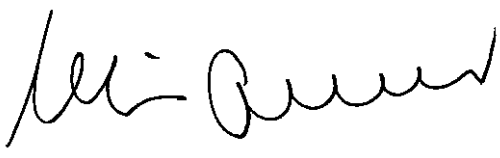
The Maltese language version shall be authenticated by the signatories on the basis of an Exchange of Letters. It shall also be authentic, in the same way as for the languages referred to in the preceding paragraph.

Pour le Royaume de Belgique
Voor het Koninkrijk België
Für das Königreich Belgien

Za Českou republiku

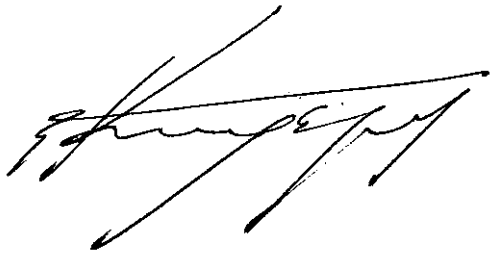
På Kongeriget Danmarks vegne

Für die Bundesrepublik Deutschland

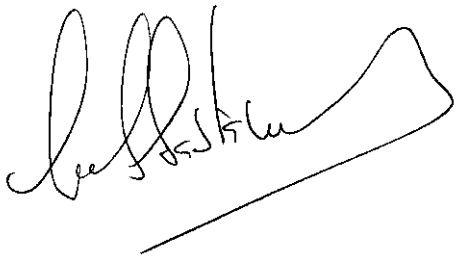


Eesti Vabariigi nimel

Για την Ελληνική Δημοκρατία



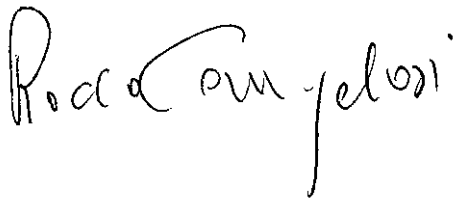
Por el Reino de España



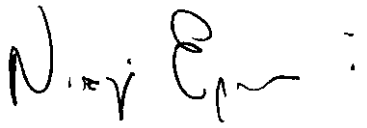
Pour la République française

Thar cheann Na hÉireann
For Ireland

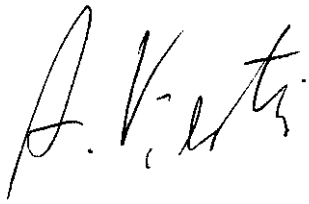
Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā

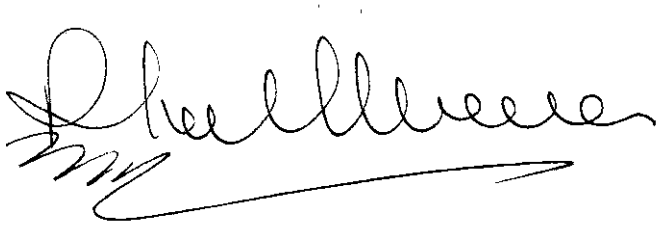


Lietuvos Respublikos vardu

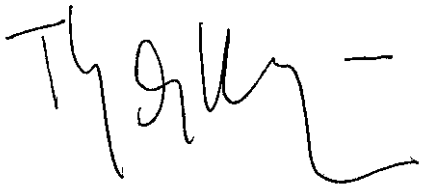
Pour le Grand-Duché de Luxembourg

A Magyar Köztársaság részéről

Għar-Repubblika ta' Malta



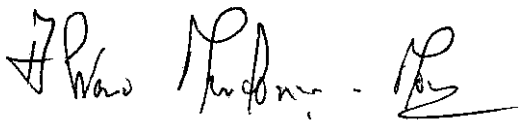
Voor het Koninkrijk der Nederlanden



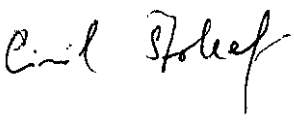
Für die Republik Österreich

W imieniu Rzeczypospolitej Polskiej

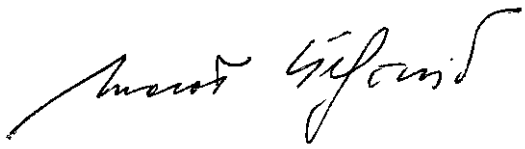
Pela República Portuguesa



Za Republiko Slovenijo



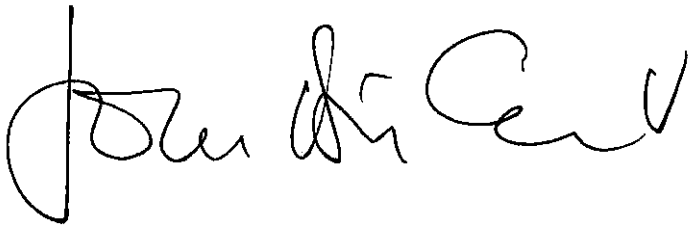
Za Slovenskú republiku



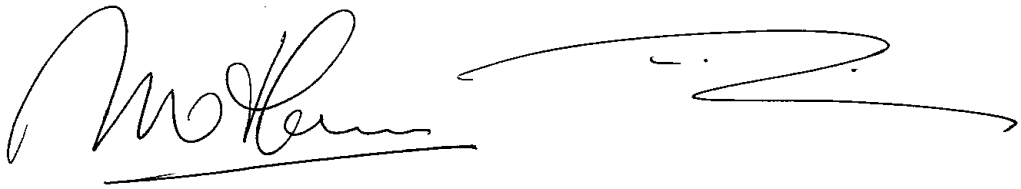
Suomen tasavallan puolesta
För Republiken Finland

För Konungariket Sverige

For the United Kingdom of Great Britain and Northern Ireland



Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Ghall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Pel Principat d'Andorra

COUNCIL DECISION

of 29 November 2004

appointing a Spanish alternate member of the Committee of the Regions

(2004/829/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Having regard to the proposal from the Spanish Government,

Whereas:

(1) On 22 January 2002 the Council adopted Decision 2002/60/EC appointing the members and alternate members of the Committee of the Regions [1].

(2) A seat as an alternate member of the Committee of the Regions has become vacant following the resignation of Mr Alejandro FONT de MORA y TURÓN, notified to the Council on 26 October 2004,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms Gema AMOR PEREZ, Consejera de Cooperación y Participación — Gobierno de la Comunidad Autónoma de Valencia, is hereby appointed an alternate member of the Committee of the Regions in place of Mr Alejandro FONT de MORA y TURÓN for the remainder of his term of office, which runs until 25 January 2006.

Done at Brussels, 29 November 2004.

For the Council
The President
L. J. BRINKHORST

[1] OJ L 24, 26.1.2002, p. 38.

COMMISSION

COMMISSION DECISION

of 18 October 2004

terminating the accelerated review of Council Regulation (EC) No 2164/98 imposing a definitive countervailing duty on imports of certain broad spectrum antibiotics originating in India

(2004/830/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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] (the basic Regulation), and in particular Article 20 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EC) No 2164/98 [2], imposed a definitive countervailing duty on imports of certain broad spectrum antibiotics, namely amoxicillin trihydrate, ampicillin trihydrate and cefalexin not put up in measured doses or in forms or packings for retail sale (the product concerned) falling within CN codes ex 2941 10 10, ex 2941 10 20 and ex 2941 90 00 originating in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 12 % on individual exporters, with a residual duty rate of 14,6 % for non-cooperating exporters.

B. CURRENT PROCEDURE

1. Request for review

(2) Following the imposition of definitive measures, the Commission received a request for the initiation of an accelerated review of Regulation (EC) No 2164/98 pursuant to Article 20 of the basic Regulation, from an Indian producer of the product concerned, Nestor Pharmaceuticals Limited (the applicant). The applicant claimed not to be related to any other exporters of the product concerned in India. Furthermore, it asserted that it had not exported the product concerned during the original investigation period (i.e. from 1 July 1996 to 30 June 1997), but had exported the product concerned to the Community subsequently. On the basis of the above, it requested that an individual duty rate be established for it, in case subsidisation was to be found.

2. Initiation of an accelerated review

(3) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 20 of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given an opportunity to comment, the Commission initiated by a notice in the *Official Journal of the European Union* [3] an accelerated review of Regulation (EC) No 2164/98 with regard to the applicant.

3. Product concerned

(4) The product covered by this review is the same product as the one under consideration in Regulation (EC) No 2164/98.

4. Investigation period

(5) The investigation of subsidisation covered the period from 1 April 2002 to 31 March 2003 (the review investigation period).

5. Parties concerned

(6) The Commission officially advised the applicant and the Government of India (the GOI) of the initiation of the investigation. Furthermore, it gave other interested parties an opportunity to make their views known in writing and to request a hearing. However, no such views or any request for a hearing was received by the Commission.

(7) The Commission sent a questionnaire to the applicant and received a full reply within the set deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verification visits at the premises of the applicant in New Delhi and in Hyderabad.

[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 273, 9.10.1998, p. 1.

[3] OJ C 102, 29.4.2003, p. 6.

C. **SCOPE OF THE REVIEW**

(8) As no request for a review of the findings on injury was made by the applicant, the review was limited to subsidisation.

(9) The Commission examined the same subsidy schemes which were analysed in the original investigation. It also examined whether the applicant had used any other subsidy schemes, or had received ad hoc subsidies in relation to the product concerned.

D. **RESULTS OF THE INVESTIGATION**

1. **New exporter qualification**

(10) The applicant was able to satisfactorily demonstrate that it was not related, directly or indirectly, to any of the Indian exporting producers subject to the countervailing measures in force with regard to the product concerned.

(11) The investigation confirmed that the applicant had not exported the product concerned during the original period of investigation, i.e. from 1 July 1996 to 30 June 1997, and that it had begun exporting to the Community after this period.

Furthermore, the applicant was not individually investigated during the original investigation for reasons other than a refusal to cooperate with the Commission.

Consequently, it is confirmed that the applicant should be considered as a new exporter. Therefore, in accordance with Article 20 of the basic Regulation, the Commission examined whether an individual countervailing duty rate could be determined for the applicant.

2. **Subsidisation**

(12) On the basis of the information contained in the applicant's reply to the Commission's questionnaire and further collected in the course of the investigation, the following schemes were investigated:

— Duty Entitlement Passbook Scheme,

— Income Tax Exemption Scheme,

— Passbook Scheme,

— Export Promotion Capital Goods Scheme,

— Export Processing Zones/Export Oriented Units,

— Advance Licence Scheme physical export.

2.1. *Schemes originally investigated and used by the company*

2.1.1. Duty Entitlement Passbook Scheme (DEPBS)

General

(13) It was established that the applicant received benefits under the DEPBS on a post-export basis. The detailed description of the scheme is contained in paragraph 4.3 of the Export and Import Policy 2002-2007 (EXIM-policy 02-07) and in Chapter 4 of the complementing Handbook of Procedures Volume I 2002-2007 (HOP I 02-07) [1]. The EXIM-policy 02-07 is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992).

(14) Any manufacturer-exporter or merchant-exporter is eligible for this scheme. It can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input/Output Norms (SION), taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless whether actually import duties have been paid or not.

(15) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue during the dispatch procedure an export shipping bill. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration is made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(16) It was also found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(17) Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.

[1] Notification No 1/2002-07 of 31 March 2002 of the Ministry of Commerce and Industry of the GOI.

(18) An application for DEPBS credits can cover up to 25 export transactions and if electronically filed, an unlimited amount of export transactions. De facto no strict deadlines to apply exist, because the time periods mentioned in Chapter 4.47 of the HOP I 02-07 are always counted from the most recent export transaction included in a given DEPBS application.

(19) The main characteristics of the DEPBS have not changed since the original investigation. The scheme is a subsidy contingent in law upon export performance. Therefore, it was determined during the original investigation that it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

Calculation of the subsidy amount

(20) In the original investigation the DEPBS subsidy amount was calculated on the basis of best information available in accordance with Article 28(1) of the basic Regulation and *pro rata temporis* the DEPBS rate was regarded as the corresponding subsidy rate. Because of the cooperation of the applicant, which is considered as a change of circumstances within the meaning of Article 22(4) of the basic Regulation, this methodology should not be applied to its detriment.

(21) In accordance with Articles 2(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation. As stated in recital 15, once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy and it has no discretion as to the amount of the subsidy. Also, as stated in the same recital, any change of the DEPBS rates between the actual export and the issuance of a DEPBS licence has no retroactive effect on the level of the benefit granted. Furthermore, as stated in recital 16, companies can, in line with Indian accounting standards, book the DEPBS credits on an accrual basis as income at the stage of export transaction. Finally, by virtue of the fact that a company is aware that it will receive a subsidy under the DEPBS, and indeed benefits under other schemes, the company is already in a competitively more advantageous position, because it can reflect the subsidies through offering lower prices.

(22) The rationale for imposing a countervailing duty, though, is to redress unfair trading practices based on illicit competitive advantage. In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the investigation period. In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted.

(23) The applicant claimed that only DEPBS credits generated by export transactions of the product concerned are relevant when calculating the subsidy margin in the present investigation. However, under the DEPBS no obligation exists which limits the use of the DEPBS credits to import duty-free input material linked to a specific product. On the contrary, DEPBS credits are freely transferable, can even be sold and be used for imports of any unrestrictedly importable goods (the input materials of the product concerned belong to this category), except capital goods. Consequently, the product concerned can benefit from all DEPBS credits generated.

(24) It further claimed that the sales tax payable on the transfer of DEPBS credits should be deducted as an expense when establishing the amount of the subsidy. However, the sales tax is not a cost necessarily incurred in order to qualify for, or to obtain the subsidy within the meaning of Article 7(1)(a) of the basic Regulation. The sales tax is only the consequence of a purely commercial decision to dispose of an already obtained DEPBS credit by selling it, instead of using it free of sales tax to offset duties payable for subsequent imports. Application fees for obtaining the DEPBS credits, though, have been considered as necessary expenses and deducted.

(25) The amount of the total subsidy (nominator) has been allocated over total export sales during the review investigation period (denominator) in accordance with Article 7(2) of the basic Regulation, since this subsidy was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin for the applicant under this scheme was 3,3 %.

2.1.2. Income Tax Exemption Scheme (ITES)

(26) It was established that the applicant received the benefit of a partial income tax exemption on profits from export sales during the review investigation period. The legal basis for this exemption is set by Section 80HHC of the Income Tax Act 1961.

(27) Section 80HHC of the Income Tax Act 1961 was abolished for the assessment year 2005 to 2006 (i.e. for the financial year from 1 April 2004 to 31 March 2005) onwards. Consequently, this scheme will not confer any benefits on the applicant after 31 March 2004. In accordance with Article 15(1) of the basic Regulation, this scheme shall therefore not be countervailed.

2.2. *Schemes originally investigated but not used by the company*

2.2.1. Passbook Scheme (PBS)

(28) It was found that the applicant had not received benefits under the PBS, which on 1 April 1997 was abolished and replaced by its successor, the DEPBS.

2.2.2. Export Promotion Capital Goods Scheme (EPCGS)

(29) It was established that the applicant had not imported capital goods under the EPCGS and therefore, had not availed itself of this scheme.

2.2.3. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

(30) It was established that the applicant was not located in an EPZ nor did it operate under the EOU scheme and as a result, had not availed itself of these schemes.

2.3. *Other scheme used by the applicant in relation to the product concerned and found countervailable: Advance Licence Scheme for physical exports (ALS physical exports)*

Legal basis

(31) It was established that the applicant received benefits under this scheme during the review investigation period. The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.7 of the EXIM-policy 02-07 and Chapters 4.1 to 4.30 of the HOP I 02-07.

Eligibility

(32) Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for this scheme.

Practical implementation

(33) The ALS physical exports allows for the duty-free import of input materials which have to be physically incorporated in the resultant export goods. For verification purposes by the Indian authorities, the exporter 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 and Appendix 18 of the HOP I 02-07), i.e. an actual consumption register. Both import allowance and export obligation are fixed in volume and value by the GOI and are documented on a 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 norms, i.e. on SIONs, allegedly reflecting the most efficient use possible to produce a reference quantity of the resultant export product. SIONs exist for most products including the product concerned and are published in the HOP II 02-07. 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 (18 months with two possible extensions of six months each).

(34) In the course of the review investigation it was established that the input materials, imported duty-free under this scheme by the applicant according to the SION import allowance, exceeded the material it needed to produce the reference quantity of the resultant export product. Thus, the SION for the product concerned was not sufficiently accurate. Furthermore, the applicant maintained the actual consumption register not in conformity with its real consumption. Instead it recorded in this register, incorrectly, its consumption according to GOI's more generous SIONs, although de facto it consumed less input material for the reference resultant export production. Neither the applicant nor the GOI were able to demonstrate that the import duty exemption did not lead to an excess remission.

Conclusion

(35) 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, i.e. a financial contribution of the GOI which conferred a benefit upon the applicant. In addition, the ALS physical exports is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(36) This scheme can not be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to 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) to the basic Regulation and in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The SIONs for the product concerned were not sufficiently precise and cannot be considered a verification system of actual consumption. An effective control based on a correctly kept actual consumption register did not take place. Besides, the GOI did neither carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation), nor did it prove, that no excess remission took place.

(37) Upon disclosure, the applicant claimed that the ALS physical exports operated as a permitted drawback or substitution drawback system. It argued, without providing new factual evidence or substantiating its claims, that the GOI installed an adequate verification in conformity with the basic Regulation. To this end, the applicant referred to the following verification elements available to the GOI: allegedly precise SIONs for the product concerned, quantity information on input material and resultant products on import and export documents (export shipping bill, import bill of entry), customs bond register of imports and exports under the ALS physical exports, the actual consumption register (see recital 33), a Duty Entitlement Export Certification book (DEECB) and additional verification mechanisms applied by the Indian authorities in the context of their excise duty administration (i.e. safeguarding that no excise duty credits on input materials (CENVAT-credits) are claimed unjustly for inputs imported duty-free under the ALS). Further, it argued that the Commission would have to quantify the imprecision of the SION. In addition, the applicant contended that a verification system does not need to ascertain on a shipment by shipment basis the link between import materials and resultant products in order to be in conformity with the basic Regulation. Finally, the applicant claimed that the Commission is bound by the results of past investigations not to countervail the ALS.

(38) The position of the applicant summarised in recital 37 does not change the Commission's conclusions on the ALS physical exports. The applicant has not refuted that in the present case de facto, not de jure, the verification system of actual consumption was not applied effectively by the GOI. It was established during the investigation on the basis of actual consumption data provided by the applicant, that the SION for the product concerned is not sufficiently precise (see recital 34). The applicant is aware of this fact and confirmed this during the investigation to the verification team. It is not the task of the Commission to establish the exact amount of imprecision of the SION, but only to refute, on the basis of sufficient evidence, the alleged precision of the standard norms. Further, the applicant did not provide any evidence that it kept records or other documentation for ALS verification purposes by the GOI which reflected its actual consumption, i.e. not just standard norm consumption. Thus, for verification purposes of quantities consumed in export production, the GOI depended on its imprecise standard norms. This is considered by the Commission insufficient to satisfy the requirements of an effective verification system in accordance with Annexes II and III to the basic Regulation.

(39) The applicant did not substantiate that excise controls of CENVAT-credits provide any information about the nexus between input materials and resultant export products. Consequently, such controls are not considered by the Commission as part of the verification system in accordance with Annexes II and III to the basic Regulation. Further, the DEECB was abolished by the EXIM-policy 02-07 and thus can no longer, contrary to the claim of the applicant, constitute a relevant verification element. In addition, it was not substantiated that actual consumption data were recorded in the DEECB by the applicant. No evidence was provided that in any other way a system was effectively applied by the GOI to establish the nexus between imported input materials and the resultant export products with the necessary precision, i.e. in another way than on the basis of overly generous standard norms. In this context, it should be noted that indeed a verification system should be based on a shipment per shipment basis in order to reflect the standard set by the EXIM-policy 02-07 as cited under recital 33. In addition, only such a standard allows the controlling authorities to verify that the strict rules for either a drawback system or a substitution drawback system, as appropriate, are met. It should be recalled that in accordance with Annex I item (i) to the basic Regulation a substitution drawback system is only permissible in particular cases and, *inter alia*, only during a two-year period between the import of substitute inputs and export.

(40) Finally, the Commission is not bound by any precedent concerning the ALS physical exports. The scheme was never analysed on a basis of facts comparable with those established during the present investigation, in particular in view of the imprecision of the SION for the product concerned.

(41) Consequently, in the absence of a permitted duty drawback system or substitution drawback system and in view of the fact that the verification system is not applied effectively for the purpose intended, the countervailable benefit is the remission of total import duties normally due upon importation.

Calculation of the subsidy amount

(42) The subsidy amount was calculated on the basis of import duties foregone (basic customs duty and special additional customs duty) on the material imported under the ALS physical exports for the product concerned during the review investigation period with fees necessarily incurred to obtain the subsidy deducted in accordance with Article 7(1)(a) of the basic Regulation (nominator). This amount has been allocated over the export turnover generated by the product concerned during the review investigation period in accordance with Article 7(2) of the basic Regulation (denominator), since this subsidy was not granted by reference to the quantities manufactured, produced, exported or transported. On this basis, the subsidy obtained was 22 %.

3. **Total amount of countervailable subsidies**

(43) Taking account of the findings relating to the schemes as set out above, the amount of countervailable subsidies for the applicant is as follows:

(%)

	DEPBS	ALS	Total
Nestor Pharmaceuticals Ltd	3,3	22	25,3

(44) In accordance with Article 15(1) of the basic Regulation, the amount of the countervailing duty should be less than the total amount of countervailable subsidies, if such lesser duty were to be adequate to remove the injury to the Community industry. In the original investigation an average injury elimination level of 14,6 % was established. The applicant did not request a review of the findings on injury. Therefore, the originally established injury elimination level limits in the present review the amount of the countervailing duty.

E. **TERMINATION OF THE ACCELERATED REVIEW**

(45) On the basis of the findings made during this review investigation, it is considered that imports of the product concerned into the Community produced and exported by the applicant should continue being subject to a countervailing duty rate corresponding to the injury elimination level as established during the original investigation.

(46) Given that this duty rate is the rate already applicable to all companies not individually mentioned in Article 1(2) of Regulation (EC) No 2164/98, this Regulation should not be amended. The accelerated review concerning the applicant should be therefore terminated.

F. **DISCLOSURE**

(47) The applicant and the GOI were informed of the essential facts and considerations upon which it was intended to propose the termination of the accelerated review. They were also given a reasonable time to comment. The GOI did not make any comments. The applicant's remarks on the disclosure, which only concern the ALS physical exports, were taken into consideration as set out under recitals 37 to 40,

DECIDES:

Sole Article

The accelerated review of Regulation (EC) No 2164/98 concerning Nestor Pharmaceuticals Limited is hereby terminated.

Done at Brussels, 18 October 2004.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION DECISION

of 3 December 2004

amending Decision 2003/526/EC as regards classical swine fever control measures in North Rhine-Westphalia, Germany, and Slovakia

(notified under document number C(2004) 4506)

(Text with EEA relevance)

(2004/831/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,

Whereas:

(1) In response to outbreaks of classical swine fever in certain Member States, Commission Decision 2003/526/EC of 18 July 2003 concerning protection measures relating to classical swine fever in certain Member States [2] was adopted. That Decision established certain additional disease control measures concerning that disease.

(2) The classical swine fever situation in North Rhine-Westphalia, Germany, has significantly improved. Therefore, the measures adopted by Decision 2003/526/EC in relation with North Rhine-Westphalia should no longer apply.

(3) In Slovakia, a case of classical swine fever has recently been detected in feral pigs in the district of Veľký Krtíš, which previously was not concerned by the disease. Therefore, Decision 2003/526/EC should be amended to take account of the epidemiology situation in that Member State.

(4) In the light of the overall disease situation in France, Germany and Luxembourg by classical swine fever, it is appropriate to extend the validity of Decision 2003/526/EC.

(5) Decision 2003/526/EC should therefore be amended accordingly.

(6) 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

Decision 2003/526/EC is amended as follows:

1. in Article 11, '31 October 2004' is replaced by '30 April 2005';

2. the Annex to Decision 2003/526/EC is amended as follows:

   — in Part I, point 1.A is deleted,

   — Part II is replaced by the following:

   'Areas of Slovakia referred to in Articles 2, 3, 5, 7 and 8

   The District Veterinary and Food Administrations (DVFA) of Trnava (comprising Piešťany, Hlohovec and Trnava districts); Levice (comprising Levice district); Nitra (comprising Nitra and Zlaté Moravce districts); Topoľčany (comprising Topoľčany district); Nové Mesto nad Váhom (comprising Nové Mesto nad Váhom district); Trenčín (comprising Trenčín and Bánovce nad Bebravou districts) Prievidza (comprising Prievidza and Partizánske districts); Púchov (comprising Púchov and Ilava districts); Žiar nad Hronom (comprising Žiar nad Hronom, Žarnovica and Banská Štiavnica districts); Zvolen (comprising Zvolen and Detva districts); Banská Bystrica (comprising Banská Bystrica and Brezno districts); Lučenec (comprising Lučenec and Poltár districts); Veľký Krtíš.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 3 December 2004.

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 183, 22.7.2003, p. 46. Decision as last amended by Decision 2004/625/EC (OJ L 280, 31.8.2004, p. 36).

COMMISSION DECISION

of 3 December 2004

approving the plans for the eradication of classical swine fever in feral pigs and the emergency vaccination of such pigs in the Northern Vosges, France

(notified under document number C(2004) 4538)

(Only the French version is authentic)

(Text with EEA relevance)

(2004/832/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever [1], and in particular the second subparagraph of Article 16(1) and Article 20(2) thereof,

Whereas:

(1) In 2002, classical swine fever was confirmed in the feral pig population in the departments of Moselle and Meurthe-et-Moselle in France. At that time, only the area of Thionville in the northern part of Moselle was concerned by the disease. In this area the disease now appears to be fully under control.

(2) By Commission Decision 2002/626/EC [2], the plan submitted by France for the eradication of the classical swine fever in feral pigs in Moselle and Meurthe-et-Moselle was approved.

(3) France put also in place an intensive programme to survey classical swine fever in feral pigs in the departments of Ardennes, Meurthe-et-Moselle, Moselle and Bas-Rhin, bordering Belgium, Germany and Luxemburg. That programme is still ongoing.

(4) Classical swine fever was later also confirmed in feral pigs in Bas-Rhin and it spread to the north-eastern part of Moselle, in the area of the Northern Vosges. It was established that this second epidemic was caused by a different virus strain and evolved in a distinct manner from the one confirmed in the area of Thionville.

(5) Accordingly, France has now submitted for approval a plan for the eradication of classical swine fever in feral pigs in the area of the Northern Vosges. In addition, as that Member State intends to introduce vaccination of the feral pigs in that area, it has also submitted a plan for emergency vaccination for approval.

(6) The French authorities have authorised the use of a live attenuated vaccine against classical swine fever (C strain) to be used for the immunisation of feral pigs by means of oral baits.

(7) The plans for the eradication of classical swine fever in feral pigs and the emergency vaccination of such pigs in the area of the Northern Vosges, as submitted by France, have been examined and found to comply with Directive 2001/89/EC.

(8) For the sake of transparency it is appropriate to set out in this Decision the geographical areas where the eradication and emergency vaccination plans are to be implemented.

(9) 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 plan submitted by France for the eradication of classical swine fever in feral pigs in the area as set out in point 1 of the Annex is approved.

[1] OJ L 316, 1.12.2001, p. 5. Directive as amended by the 2003 Act of Accession.

[2] OJ L 200, 30.7.2002, p. 37.

Article 2

The plan submitted by France for the emergency vaccination of feral pigs in the area as set out in point 2 of the Annex is approved.

Article 3

France shall immediately take the necessary measures to comply with this Decision and publish those measures. They shall immediately inform the Commission thereof.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 3 December 2004.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

1. **Areas where the eradication plan is to be implemented**

A. *Infected zone*

The territory of the Department of Bas-Rhin and Moselle located: west of the road D 264 from the border with Germany at Wissembourg to Soultz-sous-Forêts; north of the road D 28 from Soultz-sous-Forêts to Reichshoffen (the whole territory of the Municipality of Reichshoffen is included in in the area); east of the road D 62 from Reichshoffen to Bitche and then east of the road D 35 from Bitche to the border with Germany (in Ohrenthal); south of the border with Germany from Ohrenthal to Wissembourg and a strip of 5 to 10 km around this zone where vaccination is applied.

B. *Surveillance zone*

The territory of the Departments of Bas-Rhin and Moselle located north of the motorway A 4 from Strasbourg to Herbitzheim and east of the channel of Houillères and the river Sarre from Herbitzheim to Sarreguemines.

2. **Areas where the emergency vaccination plan is to be implemented**

The territory of the Department of Bas-Rhin and Moselle located: west of the road D 264 from the border with Germany at Wissembourg to Soultz-sous-Forêts; north of the road D 28 from Soultz-sous-Forêts to Reichshoffen (the whole territory of the Municipality of Reichshoffen is included in in the area); east of the road D 62 from Reichshoffen to Bitche and then east of the road D 35 from Bitche to the border with Germany (in Ohrenthal); south of the border with Germany from Ohrenthal to Wissembourg and a strip of 5 to 10 km around this zone.

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

COUNCIL DECISION 2004/833/CFSP

of 2 December 2004

implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons [1], and in particular Article 3 thereof, in conjunction with Article 23(2) of the Treaty on European Union,

Whereas:

(1) The excessive and uncontrolled accumulation and spread of small arms and light weapons poses a threat to peace and security and reduces the prospects for sustainable development; this is particularly the case in West Africa.

(2) In pursuing the objectives set out in Article 1 of Joint Action 2002/589/CFSP, the European Union envisages operating within the relevant international forums to promote confidence-building measures. This Decision is accordingly intended to implement the said Joint Action.

(3) The European Union considers that a financial contribution and technical assistance would help to consolidate the Economic Community of West African States (ECOWAS) initiative concerning small arms and light weapons.

(4) The European Union therefore intends to offer financial support and technical assistance to ECOWAS in accordance with Title II of Joint Action 2002/589/CFSP,

HAS DECIDED AS FOLLOWS:

Article 1

1. The European Union shall contribute towards implementing projects in the framework of the ECOWAS Moratorium on the Import, Export and Manufacture of Small Arms and Light Weapons.

2. To this end, the European Union shall offer a financial contribution and technical assistance to set up the Light Weapons Unit within the ECOWAS Technical Secretariat and convert the Moratorium into a Convention on small arms and light weapons between the ECOWAS Member States. The detailed arrangements for this assistance are set out in the Annex.

[1] OJ L 191, 19.7.2002, p. 1.

Article 2

1. In order to achieve the objectives specified in Article 1, the Presidency shall appoint a project manager based in Abuja, Nigeria.

2. The project manager shall perform his tasks under the responsibility of the Presidency.

3. The project manager shall report regularly to the Council or its designated bodies through the Presidency assisted by the Secretary-General/High Representative for the CFSP.

4. In carrying out his activities, the project manager shall cooperate, as appropriate, with local missions of Member States and the Commission.

Article 3

The Commission shall be entrusted with the financial implementation of this Decision. To that end, it shall conclude a financing agreement with ECOWAS on the conditions for use of the European Union contribution, which shall take the form of a grant. Amongst other things, this grant shall cover, over a period of 12 months, salaries, travel expenses, supplies and equipment necessary for setting up the Light Weapons Unit within the ECOWAS Technical Secretariat and converting the Moratorium into a Convention on small arms and light weapons between the ECOWAS Member States. The financing agreement to be concluded shall stipulate that ECOWAS must ensure visibility of the European Union contribution, appropriate to its size.

Article 4

1. The financial reference amount for the purposes referred to in Article 1 shall be EUR 515 000.

2. The Presidency and the Commission shall submit to the relevant Council bodies regular reports on the consistency of the European Union's activities in the field of small arms and light weapons, in particular with regard to its development policies, in accordance with Article 9(1) of Joint Action 2002/589/CFSP. More particularly, the Commission shall report on the aspects referred to in the first sentence of Article 3. This information shall be based, amongst other things, on regular reports to be supplied by ECOWAS under its contractual relationship with the Commission.

Article 5

This Decision shall take effect on the date of its adoption. It shall expire on 31 December 2005.

Article 6

This Decision shall be reviewed within six months of the date of its adoption.

Article 7

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

Done at Brussels, 2 December 2004.

For the Council
The President
J. P. H. DONNER

ANNEX

PROJECT ON EU ASSISTANCE TO ECOWAS

Objective of the project: conversion of the ECOWAS Moratorium on the Import, Export and Manufacture of Small Arms and Light Weapons into a legally binding regional Convention in December 2005, with a view to an operational West African contribution to the 2006 review conference on the United Nations Programme of Action.

Timetable and implementation of the project: presentation to ECOWAS Heads of State in December 2005 of a draft regional Convention on light weapons.

— January-June 2005: evaluation of a legislative and regulatory system for small arms and light weapons in the 15 ECOWAS countries.

  — Use of expertise gained in this area by the Programme for Coordination and Assistance on Security and Development (PCASED March 1999 to November 2004) when establishing national commissions with the assistance of civil society.

  — Putting in place of an African expert responsible for evaluation, with expertise in small arms and light weapons in the ECOWAS area (from amongst PCASED personnel), under the control of the Executive Secretary of ECOWAS. One-week stay in each ECOWAS country in order to determine specific national approaches vis-à-vis the problem of light weapons.

  — Taking into account of experience in this area by other regional African organisations (South African Development Community (SADC) East Africa):

    — SADC Firearms Protocol (2001).

    — Nairobi coordinated agenda for action on the problem of the proliferation of light weapons (2004).

  — Preparatory meeting within the Light Weapons Unit of ECOWAS with a view to organising a seminar/negotiating session (Abuja). Presentation by the PCASED expert to the Light Weapons Unit of the results of the regional evaluation.

— July-September 2005

  — Drawing up of the draft regional convention by the Light Weapons Unit.

  — Promotion of the draft convention to ECOWAS States by the ECOWAS Executive Secretariat.

— October-November 2005

  — Organisation of a seminar/negotiating session in Abuja involving State representatives and national experts from the 15 ECOWAS States.

  — Finalisation of a draft regional Convention by the Light Weapons Unit.

— December 2005

  — Presentation to ECOWAS Heads of State of the final draft Convention during an ordinary ECOWAS summit, and opening for adoption.