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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1288/2006

of 25 August 2006

amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/1997 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 19 thereof,

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 [2] and, in particular, Article 14(1) thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

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

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

(3) The Council, by Regulation (EC), No 366/2006 [5], amended Regulation (EC) No 1676/2001 [6] following a partial interim review of the level of anti-dumping duty in force against five Indian producers and imposed an anti-dumping duty ranging from 0 % to 18 %. The anti-dumping duty imposed on imports of PET film from Garware was 17,4 %. It is noted that the anti-dumping duty rate for Garware was adjusted to take into account the level of subsidisation countervailed by Regulation (EC) No 367/2006 (see also recital 71 below).

II. Request for a partial interim review

(4) A request for a partial interim review of Council Regulation (EC) No 2597/1999, limited to the level of countervailing duty imposed on Garware was lodged by the following Community producers: DuPont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe (the applicants). The applicants represent a major proportion of the Community production of PET film.

[1] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[3] OJ L 316, 10.12.1999, p. 1.
[4] OJ L 68, 8.3.2006, p. 15.
[5] OJ L 68, 8.3.2006, p. 6.
[6] OJ L 227, 23.8.2001, p. 1.

(5) The applicants alleged that, in regard to imports of PET film from Garware, the level of existing countervailing measures was no longer sufficient to counteract the injurious subsidisation, as the circumstances regarding the subsidisation of Garware had changed significantly.

III. **Investigation**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 12 July 2005, by a notice of initiation published in the *Official Journal of the European Union* ([1]), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation.

(7) The review is limited in scope to the examination of subsidisation of one exporting producer, Garware, in order to assess the need for continuation, removal or amendment of the level of the existing measures. The investigation period ran from 1 April 2004 to 31 March 2005.

(8) The Commission officially advised the exporting producer concerned, the Government of India (GOI) and the applicants of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the notice of initiation.

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

(10) Garware, the GOI and the applicants were informed of the essential results of the investigation and had the opportunity to comment (see recital 73 below).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

I. **Product concerned**

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

([1]) OJ C 172, 12.7.2005, p. 5.

II. **Like product**

(12) As in the original investigation, it was found that PET film produced and sold by Garware on the domestic market in India and PET film exported to the Community from India have the same basic physical and technical characteristics and uses. Therefore, they are like products within the meaning of Article 1(5) of the basic Regulation.

C. **SUBSIDIES**

I. **Introduction**

(13) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Nationwide schemes

(i) Advance Licence Scheme/Advance Release Order;

(ii) Duty Entitlement Passbook Scheme;

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

(iv) Export Promotion Capital Goods Scheme;

(v) income tax schemes

— Export Income Tax Exemption Scheme,

— Income Tax Incentive for Research and Development;

(vi) Export Credit Scheme;

(vii) Duty-Free Replenishment Certificate.

(14) The schemes (i) to (iv) and (vii) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (the Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. A five-year plan relating to export and import policy for the period 1 April 2002 to 31 March 2007 was published by the GOI (EXIM policy 2002-07). In addition, a handbook of procedures governing the EXIM policy 2002-07 (HOP I 2002-07) was published by the GOI and is updated on a regular basis ([2]).

([2]) Notification No 1/2002-07 of 31.3.2002 of the Ministry of Commerce and Industry of the Government of India.

(15) The Income Tax Schemes specified in (v) above are based on the Income Tax Act 1961, which is amended annually by the Finance Act.

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

(b) Regional schemes

(17) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the Commission also investigated the package scheme of incentives (hereinafter, the PSI) of the Government of Maharashtra (the GOM) 1992. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

II. **Nationwide schemes**

1. *Advance Licence Scheme (ALS)/Advance Release Order (ARO)*

(a) Legal basis

(18) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM policy 2002-07 and chapters 4.1 to 4.30 of the HOP I 2002-07.

(b) Eligibility

(19) Garware was not found to be using the ALS/ARO during the investigation period, therefore no further analysis of the countervailability of this scheme is necessary.

2. *Duty Entitlement Passbook Scheme (DEPBS)*

(a) Legal basis

(20) A detailed description of DEPBS is contained in paragraph 4.3 of the EXIM policy 2002-07 and in Chapter 4 of HOP I 2002-07. At the time of the original investigation, two forms of DEPB existed: pre-export and post-export. In April 2000, the pre-export form of DEPB was discontinued and therefore only the post-export form was investigated in the current review.

(b) Eligibility

(21) Any manufacturer-exporter or merchant-exporter is eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical implementation

(22) An eligible exporter can apply for DEPB credits, which are calculated as a percentage of the value of products exported under this scheme. Such DEPB 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 (SIONs), taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(23) 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 he 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 was made. Therefore, there is no possibility of a retroactive amendment to the level of the benefit.

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

(25) Such credits may 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 otherwise used.

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

(27) An application for DEPBS credits can cover up to 25 export transactions or, if electronically filed, an unlimited amount of export transactions. De facto, no strict deadlines to apply for DEPBS exist, because the time periods mentioned in Chapter 4.47 HOP I 2002-07 are always counted from the most recent export transaction included in a given DEPBS application.

(28) The company brought to the Commission's attention that this scheme would soon be discontinued and be replaced by an allegedly WTO compatible scheme with effect from 1 April 2006. The DEPB was originally planned to expire on 1 April 2005. However, as the replacement scheme was not ready to be implemented by that date, the DEPBS was prolonged until 1 April 2006. No confirmation was given by the company whether this new scheme has finally entered into force after the latter date. In any event, this alleged change would fall outside the review investigation period.

(d) Conclusions on DEPBS

(29) The DEPBS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article (2)2 of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves the liquidity of the company.

(30) Further, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(31) This scheme cannot 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) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i), Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from DEPBS.

(e) Calculation of the subsidy amount

(32) 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 review 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.

(33) 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. The company submitted that the rate applicable to the DEPBS has been reduced from 11 % to 8 % with effect from 26 May 2005, i.e., this alleged change falls outside the review investigation period; therefore, the effects and relevance of this change could not be verified and this claim must be rejected in accordance with Article 5 of the basic Regulation.

(34) Fees necessarily incurred to obtain the subsidy were deducted from the credits received to arrive at the subsidy amount as the numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(35) In accordance with Article 7(2) of the basic Regulation, the subsidy amount has been allocated over the total export turnover during the review investigation period as the appropriate denominator, as the subsidy is contingent on export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. Garware benefited from this scheme during the investigation period and obtained a subsidy of 10,3 %.

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

(a) Legal basis

(36) The details of these schemes are contained in Chapters 6 (EOUS) and 7 (SEZS) respectively of the EXIM policy 2002-07 and HOP I 2002-07.

(b) Eligibility

(37) Garware was not found to be set up under either of these schemes during the investigation period, therefore no further analysis of their countervailability is necessary.

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

(a) Legal basis

(38) A detailed description of the EPCGS can be found in Chapter 5, EXIM Policy 2002-07 and in Chapter 5, HOP I 2002-07.

(b) Eligibility

(39) Any manufacturer-exporter and merchant-exporter tied to a supporting manufacturer or service provider is eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical implementation

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

(d) Conclusion on the EPCGS

(41) The EPCGS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would otherwise be due. In addition, the duty reduction confers a benefit upon the exporter because the duties saved upon importation improve its liquidity.

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

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

(e) Calculation of the subsidy amount

(44) The numerator was established as follows: the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of unpaid customs duty on imported capital goods spread over a period which reflects the normal depreciation period of such capital goods in the PET film industry. Interest was added to this amount in order to reflect the full value of the benefit over time. Fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation.

(45) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the review investigation period as the appropriate denominator, as the subsidy is contingent upon export performance. The subsidy obtained by Garware is 1,8 %.

5. *Income Tax Exemption Scheme (ITES)*

(a) Legal basis

(46) The legal basis for this scheme is contained in the Income Tax Act 1961, amended yearly by the Finance Act. The latter sets out, every year, the basis for the collection of taxes, as well as various exemptions and deductions which can be claimed. Exporting companies may claim income tax exemptions under sections 10A, 10B and 80HHC of the Income Tax Act 1961.

(b) Practical implementation

(47) As Garware was not found to have availed of any benefits under the ITES, no further analysis of the countervailability of this scheme is necessary.

6. *Export Credit Scheme (ECS)*

(a) Legal basis

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

(b) Eligibility

(49) Manufacturing-exporters and merchant-exporters are eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical implementation

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

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

(d) Conclusion on the ECS

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

(e) Calculation of the subsidy amount

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

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

(a) Legal basis

(54) The legal basis for this scheme is contained in paragraphs 4.2.1 to 4.2.7 of the EXIM Policy 2002-07 and in paragraphs 4.31 to 4.36 of the HOP I 2002-07.

(b) Practical Implementation

(55) As Garware was not found to have availed of any benefits under the DFRC, no further analysis of the countervailability of this scheme is necessary.

III. **Regional schemes**

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

(a) Legal basis

(56) In order to encourage the dispersal of industries to less developed areas of the State, the GOM has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package Scheme of Incentives'. The scheme has been amended several times since its introduction and the 1993 scheme was operative from 1 October 1993 to 31 March 2001, whereas the latest amendment, the 2001 scheme, was introduced on 31 March 2001 and foreseen to be operative up to 31 March 2006. The PSI of the GOM is composed of several sub-schemes, the main being the exemption from local sales tax and the refund of octroi tax.

(b) Eligibility

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

(c) Practical implementation

(58) Exemption from local sales tax: Goods are normally subject to central sales tax (for inter-State sales) or State sales tax (for intra-State sales) at varying levels, depending upon the State(s) in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Whereas the sales transaction does not confer any benefit on the designated selling unit, the purchase transaction does confer a benefit to the designated purchasing unit. Garware was found to have benefited from this exemption during the investigation period.

(59) Refund of the Octroi Tax: Octroi is a tax levied by local Governments in India, including the GOM, on goods that enter the territorial limits of a town or district. Industrial enterprises are entitled to a refund of the octroi tax from the GOM, if their facility is located in certain specified towns and districts within the territory of the State. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. Garware was found to have benefited from this refund during the investigation period.

(d) Conclusion on the PSI of the GOM

(60) The PSI of the GOM provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The two sub-schemes examined constitute a financial contribution by the GOM, since this concession decreases the GOM's revenue which would be otherwise due. In addition, this exemption/refund confers a benefit upon the company, as it improves its liquidity.

(61) The company submitted that the sales tax was abolished on 1 April 2005 and that the GOM has since introduced a value added tax regime, under which the company is obliged to pay the full rate. However, this alleged change occurred after the end of the investigation period, therefore the effects and relevance of this change could not be verified. In any event, no relevant evidence was submitted relating to the regime and the company's obligations thereunder. In accordance with Article 5 of the basic Regulation, this claim has to be rejected.

(62) The scheme is only available to companies which have invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. It is not available to companies located outside these areas. The level of the benefit is different according to the area concerned. The scheme is specific, in accordance with Articles 3(2)(a) and 3(3) of the basic Regulation and therefore countervailable.

(e) Calculation of the subsidy amount

(63) Concerning the tax exemption, the subsidy amount was calculated on the basis of the amount of sales tax normally due during the review investigation period, but which remained unpaid under the scheme. Similarly, as far as octroi is concerned, the benefit to the exporter was calculated as the amount of octroi tax refunded during the investigation period. Pursuant to Article 7(2) of the basic Regulation, these amounts of subsidy (numerator) have then been allocated over the total sales during the review investigation period as the appropriate denominator, as the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. During this period, Garware benefited from these schemes and obtained subsidies of 1,6 %.

IV. **Amount of countervailable subsidies**

(64) The amount of countervailable subsidies determined in accordance with the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is 14,9 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

(in %)

Scheme	DEPB	EPCG	ECS	PSI of GOM	Total
Garware	10,3	1,8	1,2	1,6	14,9

(65) It is therefore considered that, pursuant to Article 19 of the basic Regulation, the measures currently in force are no longer sufficient to counteract the countervailable subsidies which are causing the injury to the Community industry.

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

(66) In accordance with Article 19(2) of the basic Regulation, it was examined whether the continuation of the existing measure would not be sufficient to counteract the countervailable subsidy which is causing injury.

(67) It was established that, during the investigation period, Garware continued to benefit from countervailable subsidisation by the Indian authorities. Further, the subsidy rate found during this review is considerably higher than that established during the original investigation. The subsidy schemes analysed above give recurring benefits. With the exception of the DEPBS and the sales tax refund, there is no allegation that these programmes will be phased out in the foreseeable future. According to Garware, a replacement scheme to the DEPBS was planned to enter into force on 1 April 2006. No confirmation was given by the company whether this in fact took place. The situation arising from the replacement of the DEBPS by an allegedly WTO compatible scheme, on which the Commission has no information, will have to be assessed in due time. In the absence of any substantiated evidence of the replacement of the DEBPS, it is considered that, for the need of the present review, the DEPBS is still in place. Similarly, the company did not provide any details of the VAT-like scheme which allegedly replaced the sales tax in the GOM after the end of the investigation period and therefore it was considered that, for the need of the present review, the sales tax scheme is still in place.

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

VI. **Conclusion**

(69) In view of the conclusions reached with regard to the level of subsidisation of Garware and the insufficiency of the current measures to counteract the countervailable subsidies found, the countervailing duty on Garware imports of the product concerned should be amended in order to reflect the new subsidisation levels found.

(70) The amended countervailing duty set out in recital 72 was established at the new rate of subsidisation found during the present review, as the injury margin calculated in the original investigation remains higher.

(71) Since, pursuant to Article 24(1) of the basic Regulation and Article 14(1) of Regulation (EC) No 384/96, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the countervailing duty found as a result of this review investigation to correspond to export subsidies (13,3 %) shall be deducted from the anti-dumping duty imposed on Garware by Regulation (EC) No 1676/2001. Following the amendment to the latter, introduced by Regulation (EC) No 366/2006, a dumping margin of 20,1 % was established for Garware. Of that, 2,7 % was deducted to reflect the countervailing duty then in force corresponding to export subsidies and thus an anti-dumping duty of 17,4 % was imposed on that company. As a result of the current review, a further 10,6 % shall be deducted from its individual anti-dumping duty, reflecting the countervailing duty corresponding to export subsidies found; the anti-dumping duty imposed on Garware should thus be reduced by that amount to 6,8 %.

(72) On the basis of the above, the proposed duty amounts concerning Garware, expressed on the CIF Community border price, customs duty unpaid, are as follows:

(in %)

	Export subsidy margin	Total subsidy margin	Dumping margin	CVD duty	AD duty	Total duty rate
Garware	13,3	14,9	20,1	14,9	6,8	21,7

(73) Garware, the GOI and the applicants were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the measures in force and had the opportunity to comment. No comments were received by Garware or the GOI; the applicant's comments reflect their agreement with the conclusions reached by the Commission.

(74) The individual company countervailing and anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the investigations which led to the adoption of Regulation (EC) No 367/2006 and Regulation (EC) No 366/2006, as well as of the findings of the present review. They reflect the situation found during this review with respect to Garware. These duty rates (as opposed to the country-wide duty applicable to all other companies) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to all other companies.

(75) Any claim requesting the application of these individual company countervailing and anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Company	Definitive duty (%)	TARIC additional code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	12,0	A026
India	Flex Industries Limited, A-1, Sector 60, Noida 201 301 (UP), India	12,5	A027
India	Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,9	A028
India	India Polyfilms Limited, 112 Indra Prakash Building, 21 Barakhamba Road, New Delhi 110 001, India	7,0	A029
India	Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	7,0	A030
India	MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031
India	Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	19,1	A032
India	All other companies	19,1	A999'

Article 2

Article 1(2) of Council Regulation (EC) No 1676/2001 shall be replaced by the following:

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

Country	Company	Definitive duty (%)	TARIC additional code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	17,3	A026
India	Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	0,0	A027

[1] European Commission, Directorate General for Trade, Directorate B, J-79 5/17, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

Country	Company	Definitive duty (%)	TARIC additional code
India	Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	6,8	A028
India	Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	0,0	A030
India	MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	18,0	A031
India	Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0	A032
India	All other companies	17,3	A999
Korea	Kolon Industries Inc., Kolon Tower, 1-23, Byulyang-dong, Kwacheon-city, Kyunggi-do, Korea	0,0	A244
Korea	SKC Co. Ltd, Kyobo Gangnam Tower, 1303-22, Seocho 4 Dong, Seocho Gu, Seoul 137-074, Korea	7,5	A224
Korea	Toray Saehan Inc. 17F, LG Mapo B/D, 275 Kongdug-Dong, Mapo-Gu, Seoul 121-721, Korea	0,0	A222
Korea	HS Industries Co. Ltd, Kangnam Building 5th Floor, 1321, Seocho-Dong, Seocho-Ku, Seoul, Korea	7,5	A226
Korea	Hyosung Corporation, 450, Kongduk-Dong, Mapo-Ku, Seoul, Korea	7,5	A225
Korea	KP Chemical Corporation, No 89-4, Kyungun-Dong, Chongro-Ku, Seoul, Korea	7,5	A223
Korea	All other companies	13,4	A999'

Article 3

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

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

Done at Brussels, 25 August 2006.

For the Council
The President
E. TUOMIOJA

COUNCIL REGULATION (EC) No 1289/2006

of 25 August 2006

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain side-by-side refrigerators originating in the Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 2 June 2005, the Commission published a notice [2] initiating an anti-dumping proceeding on imports into the Community of certain side-by-side refrigerators originating in the Republic of Korea. On 1 March 2006, the Commission, by Regulation (EC) No 355/2006 [3] ('the provisional Regulation') imposed a provisional anti-dumping duty on the same product.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

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

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain side-by-side refrigerators originating in the Republic of Korea and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations on the basis of which definitive measures are imposed.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(6) The same exporting producer as referred to under recitals 11 and 12 of the provisional Regulation reiterated and elaborated further its arguments on the issue of the product scope.

(7) In particular, this exporter claimed that the product scope should have covered all large capacity combined refrigerator-freezers ('CRF') with a capacity above 400 litres since a segmentation of those refrigerators would be inconsistent with the past practice of the Community institutions, would disregard evidence from other interested parties and would ignore market reality (claim (i)).

(8) This exporter further claimed that should claim (i) be rejected, any attempt to segment the CRF market should exclude three-door side-by-side models (as described in recital 12 of the provisional Regulation) from the scope of the product concerned. In essence, this exporter argued that it is not the external characteristics (notably the doors) of the models which are relevant, but the internal configuration. In particular, the exporter considered that the alignment of the fresh food and freezer compartments was the essential basic distinguishing characteristic of a side-by-side refrigerator (claim (ii)).

1. Claim (i)

(9) It is the standing practice of the Community institutions when defining the product concerned to consider primarily the basic physical and technical characteristics of the said product. Furthermore, models classified in different product segments are usually considered to form one single product unless clear dividing lines exist between the various segments.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 135, 2.6.2005, p. 4.
[3] OJ L 59, 1.3.2006, p. 12.

(10) Having paid careful attention to all the submissions made by all the interested parties to this proceeding, the investigation has identified that the CRF market is traditionally divided into three segments: the segment of the bottom-mount refrigerators (i.e. fresh-food compartment placed on top of the freezer compartment), the segment of the top-mount refrigerators (i.e. freezer compartment placed on top of the fresh-food compartment) and the segment of the side-by-side refrigerators (i.e. two doors side-by-side opening on two compartments placed side-by-side). This market categorisation into three distinct segments is undisputed and is familiar to all operators in this particular business. It has even been acknowledged by the said exporter in several written submissions. Furthermore, the claim based on the 'evidence from other interested parties' reflects in fact selective reading by this exporter of a fragment of a submission from a white goods producer that supports measures but does not manufacture the like product (see recitals 10 and 104 of the provisional Regulation). In this submission, the manufacturer of white goods indicates that it has faced negative knock-on effects on its sales of non-like products in the Community due to dumped imports. However, the fact that this manufacturer has allegedly suffered such a knock-on effect is not in itself conclusive evidence that all large capacity CRFs with a capacity above 400 litres should be considered to be the product concerned regardless of the segments as described above into which they fall. Indeed, it was established that the technological and physical characteristics underlying these two products are totally different.

(11) It is therefore considered that there exists a clear dividing line between the three segments constituting the universe of the CRF market. It is concluded that there is no justification for expanding the scope of the product concerned in order to encompass all CRFs as requested by the exporter concerned. As a consequence, claim (i) had to be rejected.

2. **Claim (ii)**

(12) In claim (ii), the same exporter seeks the exclusion from the scope of the product concerned of a particular model of CRF (hereafter referred to as 'the three-door model') which has already been described in recital 12 of the provisional Regulation.

(13) Since the start of this proceeding, the Commission had defined the scope of the product on the basis of external characteristics, namely the presence of at least two separate swing doors, placed side-by-side. This approach was deemed appropriate on both grounds of physical characteristics and consumer perception. As to physical characteristics, the presence of the two swing doors placed side-by-side was considered the most immediately visible feature. As to consumer perception, a key element was the fact that the claimant itself had repeatedly marketed and advertised the three-door model as a side-by-side refrigerator. The Commission was informed that inner compartments were placed differently in a typical side-by-side refrigerator and in a three-door model, but this distinction was not considered decisive for the exclusion of three doors side-by-side refrigerators from the product definition since no conclusive evidence had been submitted in this respect. On the basis of the information available at that time, the Commission had indicated in recital 14 of the provisional Regulation that 'there is no commonly used definition of side-by-side refrigerators'.

(14) This issue continued to be examined after provisional measures. Additional evidence supporting a definition of the segment of side-by-side refrigerators on the basis of the inner configuration of the compartments and not on the basis of the position of the doors was submitted by the above-mentioned exporter. After definitive disclosure, in the light of further evidence provided by the same exporter, the positions expressed by some leading research institutes and classification bodies, most of which classify side-by-side refrigerators on the basis of the inner configuration and not on the basis of the position of the doors, were further assessed. This lead to the conclusion that, from the point of view of physical characteristics, the three-door model cannot be considered as part of the side-by-side segment, as referred to under recital 10 above. As to consumer perception, both the claimant and the Community industry submitted consumer surveys supporting their respective views and contradicting each other. In this respect, therefore, no clear conclusion could be drawn in one direction or the other.

(15) It stems from the above that the three-door model should be regarded as belonging to the segment of the bottom-mount refrigerators and not to the segment of the side-by-side refrigerators. Claim (ii) was therefore accepted.

(16) As a consequence, it was deemed appropriate to revise the product scope definition as determined in the provisional Regulation. Therefore, the product concerned is definitively defined as combined refrigerator-freezers with a capacity exceeding 400 litres and with the freezer and refrigerator compartments placed side-by-side, originating in the Republic of Korea, currently classifiable within CN code ex 8418 10 20.

D. **DUMPING**

1. **Normal value**

(17) In the absence of any comments, the content of recitals 18 to 22 of the provisional Regulation concerning normal value is hereby confirmed.

2. **Export price**

(18) As stipulated in recital 23 of the provisional Regulation, the export price for sales into the Community made via related importers was constructed on the basis of the resale price to the first independent customer in accordance with Article 2(9) of the basic Regulation. In this export price construction, a profit margin of a company which was considered to be an independent importer of the product concerned had been used. After final disclosure was made to the interested parties, one exporting producer submitted that the company used for establishing this profit margin was not an unrelated importer but a first independent customer of one of its related importers. The claim was duly investigated and it was concluded that the company concerned indeed did not qualify as an unrelated importer. Consequently, it was decided that its profit margin could not be used in the construction of the export prices. Therefore, an alternative source had to be found to establish a reasonable margin for profit as required under Article 2(9) of the basic Regulation. No alternative independent importer's profit information could be acquired within the framework of this investigation. Therefore, in view of the fact the two products pertain to the same white goods sector and the Korean exporting producers concerned being the same, it was considered reasonable to revert for this purpose to the 5 % profit margin used in the microwave ovens anti-dumping proceeding [1].

(19) In the absence of any further comments, the contents of recitals 23 to 24 of the provisional Regulation concerning the determination of the export price are hereby confirmed.

3. **Comparison**

(20) As indicated in recital 26 of the provisional Regulation, in cases where no direct comparison between exported models and domestically sold models could be made and in order to establish the normal value as much as possible on the domestic sales of the exporting producers, adjustments were made to the normal values established for some models to reflect the market value of the different physical characteristics between the model sold domestically and the one exported, pursuant to Article 2(10)(a) of the basic Regulation. Two of the exporting producers contested the adjustment made at the provisional stage.

(21) One exporting producer claimed that no adjustment should have been made because even if there were differences in physical characteristics between the exported models and the domestically sold models proposed for comparison, these differences would have no impact on the market price. This claim had to be dismissed as the number of differences found between the exported models and those sold domestically and proposed for comparison ranged up to seven features and these differences often included important features like ice and water dispenser, door finishing and temperature control system. Therefore, following a normal economic logic, such differences should have an impact on the market value of these models.

(22) The other exporting producer for which, in order to properly reflect the market value of the differences in physical characteristics, an adjustment to the submitted values for these differences had been made by the Commission at the provisional stage, contested the resulting calculation. Subsequent to the final disclosure, the company pointed at some elements in the Commission's approach which might lead to distortions in the normal value thus calculated and requested that the normal value for exported models without corresponding domestic sales be constructed. This claim was investigated and it was found that certain adjustments made by the Commission to the physical characteristics claim of the company might have led to distorted normal values. It was therefore decided to construct normal values for this company in cases where no direct comparison between exported models and domestically sold models could be made, in accordance with Article 2(3) of the basic Regulation.

(23) All three exporting producers contested the provisional determination not to grant an adjustment, claimed under Article 2(10)(g) of the basic Regulation, for credit costs allegedly incurred on their domestic sales. The three exporters substantiated that the credit terms used had been contractually agreed and enforced by the companies. It was also demonstrated that invoices could be linked to payments. In view of the foregoing, the domestic credit costs were found to have an impact on price comparability as required by Article 2(10) of the basic Regulation and it was consequently decided to grant adjustments for these costs.

(24) One exporting producer requested the exclusion of its related importers' sales of damaged and/or malfunctioning products from the dumping calculation. These sales, which constituted a very minor part of the company's sales on the Community market, had been reported separately and had been verified during the on the spot verifications. It had been evidenced that these sales related indeed to malfunctioning or damaged products and that customers and prices of these products were entirely distinct as compared to customers and prices of regular sales. In view of the absence of comparable sales on the company's domestic market, no meaningful comparison could be made with regard to these sales. Therefore, this claim was accepted.

[1] See Council Regulation (EC) No 2041/2000 (OJ L 244, 29.9.2000, p. 33, recital 26).

(25) The same exporting producer contested the Commission's provisional determination to reject the reported ocean freight costs for the purpose of adjusting the export price pursuant to Article 2(10)(e) of the basic Regulation. The reported ocean freight costs were rejected because they were invoiced to the exporter by a related company. The exporting producer now demonstrated that the related company was a logistics entity that contracted the transport services to independent shipping companies. It was further proven that the related company invoiced to the exporter the actual cost of the freight as invoiced to it by the independent shipping companies plus a reasonable mark-up for its services. Therefore, it was decided that the reported ocean transport costs could be considered reliable and the calculations were amended accordingly.

(26) Apart from the adjustments made, as set out in recitals 22 to 25 of this Regulation, the contents of recitals 25 to 30 of the provisional Regulation in relation to the comparison of normal value and export prices, are hereby confirmed.

4. **Dumping margin**

(27) All three companies contested the methodology the Commission had used for calculating the dumping margin. As explained in recitals 31 to 34 of the provisional Regulation, in order to reflect in the calculation of the dumping the significant differences of export prices which constituted a pattern among different regions and because a comparison of either weighted average normal values with weighted average export prices or of individual export and domestic sales transactions would not have reflected the full degree of dumping being practiced, the weighted average normal value was compared to the prices of all individual export transactions to the Community. For all three exporting producers, it was confirmed that significant differences in sales prices amongst regions existed and that, for the reasons already set out in recitals 31 to 34 of the provisional Regulation, it was indeed warranted to compare the weighted average normal value to the prices of all individual export transactions to the Community. The claims of the exporting producers are therefore dismissed.

(28) In the light of the above adjustments, and after correction of some calculation errors, the amount of dumping finally determined, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, is as follows:

Daewoo Electronics Corporation	3,4 %
LG Electronics Corporation	12,2 %
Samsung Electronics Corporation	*de minimis*

E. **COMMUNITY PRODUCTION AND COMMUNITY INDUSTRY**

(29) In the absence of any new and substantiated information or argument in this particular respect, recitals 37 to 40 of the provisional Regulation are hereby confirmed.

F. **INJURY**

(30) After provisional measures the definition of the product scope was revised as explained at recital 16. Accordingly, data relating to the three-door model have been excluded from the injury analysis. In any event, it should be noted that, during the IP, the Community industry was not producing this type of product and the volume of imports of the three-door model from the Republic of Korea into the Community were negligible.

Imports from the country concerned

(31) Since it was found that Samsung Electronics Corporation ('Samsung') had a *de minimis* dumping margin during the IP (see recital 28), it is necessary to distinguish those imports from the remainder of the imports originating in the Republic of Korea. The latter is referred to as 'dumped imports' hereafter. Recitals 44 to 47 of the provisional Regulation are therefore superseded by the following considerations. In order to preserve confidentiality, data concerning the imports from the two remaining Korean producers are presented in an indexed format.

	2002	2003	2004	IP
Volume of dumped imports from the Republic of Korea (pieces)	cannot be disclosed			
Index (2002 = 100)	*100*	*183*	*336*	*366*
Market share of dumped imports from the Republic of Korea	cannot be disclosed			
Index (2002 = 100)	*100*	*121*	*164*	*170*
Prices of dumped imports from the Republic of Korea (EUR/piece)	cannot be disclosed			
Index (2002 = 100)	*100*	*92*	*95*	*95*

(32) On this basis, the volume of dumped imports increased sharply (by 266 %) between 2002 and the IP. It rose by 83 % between 2002 and 2003, by a further 153 percentage points in 2004 and by a further 30 percentage points in the IP. During the IP, the volume of dumped imports stood between 180 000 and 250 000 pieces.

(33) The corresponding market share held by dumped imports increased by around 20 percentage points between 2002 and the IP, to reach a level between 42 and 50 % during the IP. In terms of indices, the market share grew by 21 % in 2003, by a further 43 percentage points in 2004 and by 6 percentage points in the IP. Overall, the rise in market shares was 70 % between 2002 and the IP.

(34) Finally, average prices of dumped imports decreased by around 5 % between 2002 and the IP, and on a model-to-model comparison, dumped imports undercut the Community industry's prices by between 34,4 % and 42 %, depending on the exporter concerned.

(35) Similarly, recital 68 of the provisional Regulation is superseded as follows. The volume of dumped imports of the product concerned originating in the Republic of Korea increased significantly by 266 % between 2002 and the IP and the corresponding market share held by dumped imports increased by around 20 percentage points between 2002 and the IP. The average prices of dumped imports were consistently lower than those of the Community industry during the period considered. On a model-to-model weighted average comparison, dumped imports undercut the Community industry's prices by between 34,4 % and 42 %, depending on the exporter concerned, while for some models, price undercutting was even larger.

(36) In the absence of any further new and substantiated information or argument on the aspect of injury, recitals 41 to 71 of the provisional Regulation are hereby confirmed, with the exception of recitals 44 to 47 and recital 68 which have been addressed above.

G. **CAUSATION**

1. **Effects of the dumped imports**

(37) As stated above, it was found that Samsung had a *de minimis* dumping margin during the IP. However, the significant increase in the volume of dumped imports by 266 % between 2002 and the IP, the increase of the corresponding market share by around 20 percentage points, as well as the undercutting found coincided with the deterioration of the economic situation of the Community industry.

2. **Effects of other factors**

Imports of the product concerned manufactured by Samsung

(38) Since Samsung had a *de minimis* dumping margin during the IP, it was necessary to examine whether imports from Samsung could, nevertheless, have caused any injury to the Community industry. In order to preserve confidentiality, data concerning Samsung are presented below in an indexed format.

	2002	2003	2004	IP
Volume of imports from Samsung (pieces)	cannot be disclosed			
Index (2002 = 100)	*100*	*156*	*183*	*188*
Market share of imports from Samsung	cannot be disclosed			
Index (2002 = 100)	*100*	*103*	*90*	*88*
Prices of imports from Samsung (EUR/piece)	cannot be disclosed			
Index (2002 = 100)	*100*	*87*	*86*	*86*

(39) The volume of imports originating from Samsung increased by 88 % between 2002 and the IP. Specifically, it rose by 56 % between 2002 and 2003, by a further 27 percentage points in 2004 and by a further 5 percentage points in the IP. During the IP, the volume of imports originating from Samsung stood between 100 000 and 170 000 pieces.

(40) The corresponding market share held by imports originating from Samsung decreased by around 5 percentage points between 2002 and the IP, to reach a level comprised between 28 % and 36 % during the IP. In terms of indices, the market share grew by 3 % in 2003, but then declined by 13 percentage points in 2004 and by a further 2 percentage points in the IP. Overall, the decline in market shares was 12 % between 2002 and the IP.

(41) Finally, average prices of imports originating from Samsung decreased by around 14 % between 2002 and the IP, and on a model-to-model comparison, imports originating from Samsung undercut the Community industry's prices by 34,1 %.

(42) Given the rise in the volume of imports originating from Samsung and the undercutting found, it cannot be excluded that those imports contributed to the injury suffered by the Community industry. However, it is also observed that: (i) imports originating from Samsung increased at a far slower pace than other imports originating in the Republic of Korea during the period 2002 to the IP; (ii) in contrast to other Korean imports, imports originating from Samsung lost around 5 percentage points of market share between 2002 and the IP; (iii) the resulting presence, during the IP, of imports originating from Samsung on the Community market in terms of both volume and market share was substantially smaller than that of other Korean imports; and (iv) the model-to-model price comparison showed that Samsung's prices, albeit lower than those of the Community industry, were consistently higher than those of the other Korean imports.

(43) As a consequence, it is concluded that imports originating from Samsung contributed to the injury caused to the Community industry, but to a substantially lesser degree than that of dumped imports from the remaining two Korean producers. The impact linked to imports originating from Samsung is therefore considered not sufficient to break the causal link between dumped imports and the resulting injury experienced by the Community industry.

(44) In the absence of any further new and substantiated information or argument, recitals 72 to 96 of the provisional Regulation are hereby confirmed, with the exception of the first sentence of recital 73 as seen above.

H. **COMMUNITY INTEREST**

(45) In the absence of any new and substantiated information or argument in this particular respect, recitals 97 to 114 of the provisional Regulation are hereby confirmed.

I. **DEFINITIVE MEASURES**

(46) In view of the conclusions reached with regard to dumping, injury, causation and Community interest and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin presented in recital 119 of the provisional Regulation and confirmed in the present Regulation. As the injury margins were always higher than the dumping margins, the measures should be based on the latter.

(47) The definitive duties will therefore be as follows:

Company	Injury margin	Dumping margin	Proposed anti-dumping duty
Daewoo Electronics Corporation	98,5 %	3,4 %	3,4 %
LG Electronics Corporation	74,8 %	12,2 %	12,2 %
Samsung Electronics Corporation	66,3 %	*de minimis*	0 %
All other companies	98,5 %	12,2 %	12,2 %

J. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(48) In view of the magnitude of the dumping margins found for the exporting producers in the Republic of Korea and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the three-door model is now excluded from the product definition (see recitals 12 to 16) and definitive duties are lower than the provisional duties, amounts provisionally secured on imports of the three-door model or in excess of the definitive rate of anti-dumping duties shall be released.

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

(50) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with the freezer and refrigerator compartments placed side-by-side, falling within CN code ex 8418 10 20 (TARIC code 8418 10 20 91) and originating in the Republic of Korea.

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

Company	Anti-dumping duty (%)	TARIC additional code
Daewoo Electronics Corporation, 686 Ahyeon-dong, Mapo-gu, Seoul	3,4 %	A733
LG Electronics Corporation, LG Twin Towers, 20, Yeouido-dong, Yeong-deungpo-gu, Seoul	12,2 %	A734
Samsung Electronics Corporation, Samsung Main Bldg, 250, 2-ga, Taepyeong-ro, Jung-gu, Seoul	0 %	A735
All other companies	12,2 %	A999

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

Article 2

1. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with at least two separate external doors fitted side-by-side, produced by Samsung Electronics Corporation falling within CN code ex 8418 10 20 shall be released.

2. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of combined refrigerator-freezers of a capacity exceeding 400 litres, with two doors on the refrigerator compartment above and one door on the freezer compartment below, falling within CN code ex 8418 10 20 and originating in the Republic of Korea shall be released.

3. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with the freezer and refrigerator compartments placed side-by-side, falling within CN code ex 8418 10 20 and originating in the Republic of Korea shall be definitively collected. The amounts secured in excess of the definitive duties as set out in Article 1(2), shall be released.

Article 3

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

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

Done at Brussels, 25 August 2006.

For the Council
The President
E. TUOMIOJA

COMMISSION REGULATION (EC) No 1290/2006

of 30 August 2006

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 31 August 2006.

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

Done at Brussels, 30 August 2006.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 30 August 2006 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	87,3
	068	147,1
	999	117,2
0707 00 05	052	68,9
	999	68,9
0709 90 70	052	72,3
	999	72,3
0805 50 10	388	69,0
	524	44,8
	528	53,6
	999	55,8
0806 10 10	052	82,4
	220	123,4
	624	139,0
	999	114,9
0808 10 80	388	86,9
	400	90,8
	508	79,8
	512	93,3
	528	77,4
	720	82,6
	800	140,1
	804	100,8
	999	94,0
0808 20 50	052	124,0
	388	86,5
	999	105,3
0809 30 10, 0809 30 90	052	117,3
	096	12,8
	999	65,1
0809 40 05	052	96,4
	066	47,1
	098	45,7
	624	150,3
	999	84,9

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

COMMISSION REGULATION (EC) No 1291/2006

of 30 August 2006

amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular Article 145(c) and (d) thereof,

Whereas:

(1) Commission Regulation (EC) No 795/2004 [2] introduces the implementing rules for the single payment scheme as from 2005.

(2) Experience of the administrative and operational implementation of that scheme at national level has shown that in certain respects further detailed rules are needed and in other respects the existing rules need to be clarified and adapted.

(3) In order to facilitate the transfer of payment entitlements to farmers the creation of fractions of entitlements without land and their transfer should be provided for.

(4) In case payment entitlements whose unit value has been increased by more than 20 % by reference amounts from the national reserve have not been used in accordance with the second subparagraph of Article 42(8) of Regulation (EC) No 1782/2003 only the increase of the value shall revert immediately to the national reserve.

(5) Entitlements allocated from the national reserve in case of administrative acts or court's rulings in order to compensate farmers shall not be subject to the restrictions in accordance with Article 42(8) of Regulation (EC) No 1782/2003.

(6) In order to facilitate the circulation of payment entitlements farmers may give up voluntarily payment entitlements to the national reserve.

(7) Regulation (EC) No 795/2004 should therefore be amended accordingly.

(8) Due to the fact that the cases addressed by Articles 1(2) and 1(4) may have occurred as from 1 January of respectively 2005 and 2006, it is appropriate to provide that these Articles apply retroactively from those dates.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 795/2004 is amended as follows:

1. Article 3 is amended as follows:

(a) Paragraph 3 is replaced by the following:

'3. Where the size of a parcel which is transferred with an entitlement in accordance with Article 46(2) of Regulation (EC) No 1782/2003 amounts to a fraction of a hectare, the farmer may transfer the part of the entitlement concerned with the land at a value calculated to the extent of the same fraction. The remaining part of the entitlement shall remain at the disposal of the farmer at a value calculated correspondingly.

Without prejudice to Article 46(2) of that Regulation if a farmer transfers a fraction of an entitlement without land the value of the two fractions shall be calculated proportionally';

(b) Paragraph 4 is deleted.

[1] OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 953/2006 (OJ L 175, 29.6.2006, p. 1).

[2] OJ L 141, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1134/2006 (OJ L 203, 26.7.2006, p. 4).

2. In Article 6(3), the third subparagraph is replaced by the following:

'The first subparagraph of Article 42(8) of Regulation (EC) No 1782/2003 shall apply to payment entitlements whose unit value has been increased by more than 20 % in accordance with the second subparagraph of this paragraph. The second subparagraph of Article 42(8) of that Regulation shall apply only to the extent of the increased value to payment entitlements whose unit value has been increased by more than 20 % in accordance with the second subparagraph of this paragraph.'

3. In Article 23(a) the following sentence is added:

'Article 42(8) of that Regulation shall not apply to payment entitlements allocated under this Article.'

4. In Article 24, the following paragraph is added:

'3. Farmers may give up voluntarily payment entitlements to the national reserve with the exception of set-aside payment entitlements.'

5. Article 50 is replaced by the following:

'*Article 50*

1. Member States shall communicate, by electronic means, to the Commission each year:

(a) by 15 September of the first year of application of the single payment scheme at the latest and, in the following years, by 1 September at the latest, the total number of applications under the single payment scheme for the current year, together with the corresponding total amount of the payment entitlements which have been claimed for payments and the total number of accompanying eligible hectares;

(b) by 1 September at the latest, definitive data on the total number of applications under the single payment scheme accepted for the preceding year and the corresponding total amount of the payments which have been granted, after application, as the case may be, of the measures referred to in Articles 6, 10, 11, 24 and 25 of Regulation (EC) No 1782/2003 as well as the total sum of the amounts remaining in the national reserve by the 31 December of the preceding year.

2. In case of regional implementation of the single payment scheme as provided for in Article 58 of Regulation (EC) No 1782/2003, Member States shall communicate the corresponding part of the ceiling established in accordance with Paragraph 3 of that Article by 15 September of the first year of implementation.

For the first year of application of the single payment scheme, the information referred to in paragraph 1(a) shall be based on the provisional payment entitlements. The same information based on the definitive payment entitlements shall be communicated by 1 March of the following year.

3. In case of application of measures under Article 69 of Regulation (EC) No 1782/2003, Member States shall communicate the total number of applications for the current year together with the corresponding total amount for each of the sectors concerned by the retention under that Article by 1 September.

By 1 September, definitive data on the total number of applications under Article 69 of that Regulation accepted for the preceding year and the corresponding total amount of the payments which have been granted for each of the sectors concerned by the retention under that Article.'

Article 2

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

It shall apply as of the date of entry into force, except Article 1(2) which shall apply from 1 January 2005 and Article 1(4) which shall apply from 1 January 2006.

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

Done at Brussels, 30 August 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 1292/2006

of 30 August 2006

establishing a prohibition of fishing for cod in ICES zone I, II (Norwegian waters) by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1], and in particular Article 26(4) thereof,

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

Whereas:

(1) Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2006.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2006.

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

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2006 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

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

Article 3

Entry into force

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

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

Done at Brussels, 30 August 2006.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 16, 20.1.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1262/2006 (OJ L 230, 24.8.2006, p. 4).

ANNEX

No	18
Member state	Spain
Stock	COD/1N2AB.
Species	Cod (*Gadus morhua*)
Zone	I, II (Norwegian waters)
Date	17 July 2006

COMMISSION REGULATION (EC) No 1293/2006

of 30 August 2006

establishing a prohibition of fishing for anglerfish in ICES zone IV (Norwegian waters) by vessels flying the flag of Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1], and in particular Article 26(4) thereof,

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

Whereas:

(1) Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2006.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2006.

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

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2006 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

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

Article 3

Entry into force

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

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

Done at Brussels, 30 August 2006.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 16, 20.1.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1262/2006 (OJ L 230, 24.8.2006, p. 4).

ANNEX

No	19
Member State	Germany
Stock	ANF/04-N.
Species	Anglerfish (*Lophiidae*)
Zone	IV (Norwegian waters)
Date	12 July 2006

COMMISSION REGULATION (EC) No 1294/2006

of 30 August 2006

establishing a prohibition of fishing for tusk in ICES zone IV (Norwegian waters) by vessels flying the flag of Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1], and in particular Article 26(4) thereof,

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

Whereas:

(1) Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required [3], lays down quotas for 2006.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2006.

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

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2006 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

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

Article 3

Entry into force

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

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

Done at Brussels, 30 August 2006.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries and Maritime Affairs

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).
[3] OJ L 16, 20.1.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1262/2006 (OJ L 230, 24.8.2006, p. 4).

ANNEX

No	20
Member state	Germany
Stock	USK/04-N.
Species	Tusk (*Brosme brosme*)
Zone	IV (Norwegian waters)
Date	8 July 2006

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 24 August 2006

on the digitisation and online accessibility of cultural material and digital preservation

(2006/585/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1) On 1 June 2005 the Commission presented the i2010 initiative, which seeks to optimise the benefits of the new information technologies for economic growth, job creation and the quality of life of European citizens. The Commission has made digital libraries a key aspect of i2010. In its Communication 'i2010: digital libraries' of 30 September 2005 ([1]), it set out its strategy for digitisation, online accessibility and digital preservation of Europe's collective memory. This collective memory includes print (books, journals, newspapers), photographs, museum objects, archival documents, audiovisual material (hereinafter 'cultural material').

(2) Measures applying that strategy with a view to optimising, by means of the Internet, the economic and cultural potential of Europe's cultural heritage should be recommended to the Member States.

(3) In that context, the development of digitised material from libraries, archives and museums should be encouraged. The online accessibility of the material will make it possible for citizens throughout Europe to access and use it for leisure, studies or work. It will give Europe's diverse and multilingual heritage a clear profile on the Internet. Moreover, the digitised material can be re-used in industries such as tourism and the education industry, as well as in new creative efforts.

(4) Furthermore, the Council Conclusions of 15-16 November 2004 on the Workplan for Culture 2005-2006 stress the contribution of creativity and creative industries to economic growth in Europe, and the need for a coordinated digitisation effort.

(5) The European Parliament and Council Recommendation of 16 November 2005 on film heritage and the competitiveness of related industrial activities ([2]) already recommended to Member States to adopt appropriate measures to increase the use of digital and new technologies in the collection, cataloguing, preservation and restoration of cinematographic works. In as far as cinematographic works are concerned the present Recommendation complements the Parliament and Council Recommendation on film heritage on a number of aspects.

(6) Digitisation is an important means of ensuring greater access to cultural material. In some cases it is the only means of ensuring that such material will be available for future generations. Thus, many digitisation initiatives are currently being undertaken in the Member States, but efforts are fragmented. Concerted action by the Member States to digitise their cultural heritage would lend greater coherence to the selection of material and would avoid overlap in digitisation. It would also lead to a more secure climate for companies investing in digitisation technologies. Overviews of current and planned digitisation activities and quantitative targets for digitisation would contribute to the achievement of those objectives.

(7) Private sector sponsoring of digitisation or partnerships between the public and private sectors can involve private entities in digitisation efforts and should be further encouraged.

([1]) COM(2005) 465 final.

([2]) OJ L 323, 9.12.2005, p. 57.

(8) Investments in new technologies and large scale digitisation facilities can bring down costs of digitisation while maintaining or improving quality and should therefore be recommended.

(9) A common multilingual access point would make it possible to search Europe's distributed — that is to say, held in different places by different organisations — digital cultural heritage online. Such an access point would increase its visibility and underline common features. The access point should build on existing initiatives such as The European Library (TEL), in which Europe's libraries already collaborate. It should where possible closely associate private holders of rights in cultural material and all interested stakeholders. A strong commitment by the Member States and cultural institutions to arrive at such an access point should be encouraged.

(10) Only part of the material held by libraries, archives and museums is in the public domain, in the sense that it is not or is no longer covered by intellectual property rights, while the rest is protected by intellectual property rights. Since intellectual property rights are a key tool to stimulate creativity, Europe's cultural material should be digitised, made available and preserved in full respect of copyright and related rights. Particularly relevant in this context are Articles 5(2)c, 5(3)n, and 5(5), as well as recital 40 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [1]. Licensing mechanisms in areas such as orphan works — that is to say, copyrighted works whose owners are difficult or even impossible to locate — and works that are out of print or distribution (audiovisual) can facilitate rights clearance and consequently digitisation efforts and subsequent online accessibility. Such mechanisms should therefore be encouraged in close cooperation with rightholders.

(11) Provisions in national legislation may contain barriers to the use of works which are in the public domain, for example by requiring an administrative act for each reproduction of the work. Any such barriers should be identified and steps taken to remove them.

(12) Council Resolution C/162/02 of 25 June 2002 on preserving tomorrow's memory — preserving digital content for future generations [2] proposes objectives and indicative measures for preserving digital content for future generations. However, at present no clear and comprehensive policies exist in the Member States on the preservation of digital content. The absence of such policies poses a threat to the survival of digitised material and may result in the loss of material produced in digital format. The development of effective means of digital preservation has far-reaching implications, not only for the preservation of material in public institutions but also for any organisation which is obliged or which wishes to preserve digital material.

(13) Several Member States have introduced or are considering legal obligations requiring producers of digital material to make one or more copies of their material available to a mandated deposit body. Effective collaboration between Member States is necessary to avoid a wide variety in the rules governing the deposit of digital material and should be encouraged.

(14) Web-harvesting is a new technique for collecting material from the Internet for preservation purposes. It involves mandated institutions actively collecting material instead of waiting for it to be deposited, thus minimising the administrative burden on producers of digital material, and national legislation should therefore make provision for it,

HEREBY RECOMMENDS THAT MEMBER STATES:

Digitisation and online accessibility

1. gather information about current and planned digitisation of books, journals, newspapers, photographs, museum objects, archival documents, audiovisual material (hereinafter 'cultural material') and create overviews of such digitisation in order to prevent duplication of efforts and promote collaboration and synergies at European level;

2. develop quantitative targets for the digitisation of analogue material in archives, libraries and museums, indicating the expected increase in digitised material which could form part of the European digital library and the budgets allocated by public authorities;

3. encourage partnerships between cultural institutions and the private sector in order to create new ways of funding digitisation of cultural material;

4. set-up and sustain large scale digitisation facilities, as part of, or in close collaboration with, competence centres for digitisation in Europe;

[1] OJ L 167, 22.6.2001, p. 10.
[2] OJ C 162, 6.7.2002. p. 4.

5. promote a European digital library, in the form of a multilingual common access point to Europe's distributed — that is to say, held in different places by different organisations — digital cultural material, by:

   (a) encouraging cultural institutions, as well as publishers and other rightholders to make their digitised material searchable through the European digital library,

   (b) ensuring that cultural institutions, and where relevant private companies, apply common digitisation standards in order to achieve interoperability of the digitised material at European level and to facilitate cross-language searchability;

6. improve conditions for digitisation of, and online accessibility to, cultural material by:

   (a) creating mechanisms to facilitate the use of orphan works, following consultation of interested parties,

   (b) establishing or promoting mechanisms, on a voluntary basis, to facilitate the use of works that are out of print or out of distribution, following consultation of interested parties,

   (c) promoting the availability of lists of known orphan works and works in the public domain,

   (d) identifying barriers in their legislation to the online accessibility and subsequent use of cultural material that is in the public domain and taking steps to remove them;

Digital preservation

7. establish national strategies for the long-term preservation of and access to digital material, in full respect of copyright law, which:

   (a) describe the organisational approach, indicating the roles and responsibilities of the parties involved and the allocated resources,

   (b) contain specific action plans outlining the objectives and a time-table for the specific targets to be met;

8. exchange information with each other on the strategies and action plans;

9. make provision in their legislation so as to allow multiple copying and migration of digital cultural material by public institutions for preservation purposes, in full respect of Community and international legislation on intellectual property rights;

10. when establishing policies and procedures for the deposit of material originally created in digital format take into account developments in other Member States in order to prevent a wide divergence in depositing arrangements;

11. make provision in their legislation for the preservation of web-content by mandated institutions using techniques for collecting material from the Internet such as web harvesting, in full respect of Community and international legislation on intellectual property rights;

Follow-up to this Recommendation

12. inform the Commission 18 months from the publication of this Recommendation in the *Official Journal of the European Union*, and every two years thereafter, of action taken in response to this Recommendation.

Done at Brussels, 24 August 2006.

For the Commission

Viviane REDING

Member of the Commission

COMMISSION DECISION

of 25 August 2006

recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of chromafenozide, halosulfuron, tembotrione, valiphenal and *Zucchini yellow mosaic virus* — weak strain in Annex I to Council Directive 91/414/EEC

(notified under document number C(2006) 3820)

(Text with EEA relevance)

(2006/586/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant-protection on the market [1], and in particular Article 6(3) thereof,

Whereas:

(1) Directive 91/414/EEC provides for the development of a Community list of active substances authorised for incorporation in plant protection products.

(2) A dossier for the active substance chromafenozide was submitted by Calliope SAS to the authorities of Hungary on 12 December 2004 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC. For halosulfuron a dossier was submitted by Nissan Chemical Europe SARL to the authorities of Italy on 19 May 2005 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC. For tembotrione a dossier was submitted by Bayer CropScience AG to the authorities of the Austria on 25 November 2005 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC. For valiphenal, a dossier was submitted by ISAGRO SpA to the authorities of the Hungary on 2 September 2005 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC. For *Zucchini yellow mosaic virus* — weak strain a dossier was submitted by Central Science Laboratory to the authorities of the United Kingdom on 16 March 2005 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC.

(3) The authorities of the United Kingdom, Austria, Italy and Hungary have indicated to the Commission that, on preliminary examination, the dossiers for the active substances concerned appear to satisfy the data and information requirements set out in Annex II to Directive 91/414/EEC. The dossiers submitted appear also to satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance concerned. In accordance with Article 6(2) of Directive 91/414/EEC, the dossiers were subsequently forwarded by the respective applicants to the Commission and other Member States, and were referred to the Standing Committee on the Food Chain and Animal Health.

(4) By this Decision it should be formally confirmed at Community level that the dossiers are considered as satisfying in principle the data and information requirements provided for in Annex II and, for at least one plant protection product containing the active substance concerned, the requirements set out in Annex III to Directive 91/414/EEC.

(5) This Decision should not prejudice the right of the Commission to request the applicant to submit further data or information in order to clarify certain points in the dossier.

(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

Without prejudice to Article 6(4) of Directive 91/414/EEC, the dossiers concerning the active substances identified in the Annex to this Decision, which were submitted to the Commission and the Member States with a view to obtaining the inclusion of those substances in Annex I to that Directive, satisfy in principle the data and information requirements set out in Annex II to that Directive.

[1] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2006/41/EC (OJ L 187, 8.7.2006, p. 24).

The dossiers also satisfy the data and information requirements set out in Annex III to that Directive in respect of one plant protection product containing the active substance, taking into account the uses proposed.

Article 2

The rapporteur Member States shall pursue the detailed examination for the dossiers concerned and shall report the conclusions of their examinations accompanied by any recommendations on the inclusion or non-inclusion of the active substance concerned in Annex I of Directive 91/414/EEC and any conditions related thereto to the European Commission as soon as possible and at the latest within a period of one year from the date of publication of this Decision in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 25 August 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

ACTIVE SUBSTANCES CONCERNED BY THIS DECISION

No	Common Name, CIPAC Identification Number	Applicant	Date of application	Rapporteur Member State
1	Chromafenozide CIPAC-No: not yet allocated	Calliope SAS	12 December 2004	HU
2	Halosulfuron CIPAC-No: not yet allocated	Nissan Chemical Europe SARL	19 May 2005	IT
3	Tembotrione CIPAC-No: not yet allocated	Bayer CropScience AG	25 November 2005	AT
4	Valiphenal CIPAC-No: not yet allocated	ISAGRO SpA	2 September 2005	HU
5	*Zucchini yellow mosaic virus* — weak strain CIPAC-No: not applicable	Central Science Laboratory	16 March 2005	UK

DOCUMENTS ANNEXED TO THE GENERAL BUDGET FOR THE EUROPEAN UNION

First amending budget of the European Medicines Agency (EMEA) for 2006

(2006/587/EC, Euratom)

Pursuant to Article 26(2) of the Financial Regulation of the European Medicines Agency (EMEA), adopted by the Management Board on 10 June 2004, 'the budget and amending budgets, as finally adopted, shall be published in the *Official Journal of the European Union*'.

The first amending budget of the EMEA for 2006 was adopted by the Management Board on 26 July 2006 (MB/275072/2006).

(in EUR)

Item	Description	Budget 2004	Budget 2005	Budget 2006	Amendments	Revised budget 2006
Revenue						
201	Special contribution for orphan medicinal products	3 985 264	5 000 000	4 000 000	2 400 000	6 400 000
521	Revenue from export certificates and parallel distributions and other similar administrative charges	1 900 995	2 106 000	3 175 000	2 200 000	5 375 000
600	Contributions to Community Programmes and revenue from services	91 105	250 000	550 000	210 000	760 000
601	Contribution to joint programmes from other regulatory agencies and industry stakeholders	—	p.m.	p.m.	315 000	315 000
					5 125 000	
	Total Budget	**99 385 425**	**111 835 000**	**123 551 000**	**5 125 000**	**128 676 000**
Expenditure						
1114	Contract Agents	6	560 000	1 147 000	250 000	1 397 000
1120	Training	543 790	702 000	617 000	150 000	767 000
1175	Interim staff	1 165 156	1 785 000	1 226 000	533 000	1 759 000
1630	Early childhood centres and other *crèches*	—	p.m.	p.m.	150 000	150 000
2111	Purchase of new software for the operation of the Agency	541 995	130 000	294 000	88 000	382 000
2115	Analysis, programming and technical assistance for the operation of the Agency	499 200	758 000	1 357 000	402 000	1 759 000
2125	Analysis, programming and technical assistance for specified projects	6 798 324	3 095 000	4 355 000	942 000	5 297 000
3011	Evaluation of designated orphan medicinal products	2 789 360	5 485 000	3 876 000	2 400 000	6 276 000
3050	Community programmes	—	250 000	550 000	210 000	760 000
					5 125 000	
	Total Budget	**96 714 409**	**111 835 000**	**123 551 000**	**5 125 000**	**128 676 000**

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1285/2006 of 29 August 2006 opening the procedure for the allocation of export licences for cheese to be exported to the United States of America in 2007 under certain GATT quotas

(Official Journal of the European Union L 235 of 30 August 2006)

On page 11, in Annex II, first line:

for: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1282/2006:',

read: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1285/2006:',

and the second line:

for: 'Name of group indicated in column 2 of Annex I to Regulation (EC) No 1282/2006:',

read: 'Name of group indicated in column 2 of Annex I to Regulation (EC) No 1285/2006:'.

On page 12, in Annex III, first line:

for: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1282/2006:',

read: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1285/2006:',

and the second line:

for: 'Name of group indicated in column 2 of Annex I to Regulation (EC) No 1282/2006:',

read: 'Name of group indicated in column 2 of Annex I to Regulation (EC) No 1285/2006:'.

On page 13, in Annex IV, heading of first column:

for: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1282/2006:',

read: 'Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1285/2006:'.