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Contents

I *Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory*

REGULATIONS

Commission Regulation (EC) No 374/2007 of 3 April 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 375/2007 of 30 March 2007 amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations** (1) 3

★ **Commission Regulation (EC) No 376/2007 of 30 March 2007 amending Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks** (1) 18

★ **Commission Regulation (EC) No 377/2007 of 29 March 2007 concerning the classification of certain goods in the Combined Nomenclature** 20

DIRECTIVES

★ **Commission Directive 2007/20/EC of 3 April 2007 amending Directive 98/8/EC of the European Parliament and of the Council to include dichlofluanid as an active substance in Annex I thereto** (1) 23

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

DECISIONS

Council

2007/210/EC:

★ **Council Decision of 19 March 2007 on the signing and provisional application of the Agreement between the European Community and the Government of Malaysia on certain aspects of air services** 26

Agreement between the European Community and the Government of Malaysia on certain aspects of air services 28

(1) Text with EEA relevance

(Continued overleaf)

Price: EUR 18

EN

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

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

Contents (continued)

Commission

2007/211/EC:

★ **Commission decision of 27 March 2007 on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2007 under Regulation (EC) No 2037/2000 of the European Parliament and of the Council** *(notified under document number C(2007) 1285)* [1] ... 39

2007/212/EC:

★ **Commission Decision of 2 April 2007 amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina** *(notified under document number C(2007) 1428)* 52

2007/213/EC:

★ **Commission Decision of 2 April 2007 amending Decision 2007/31/EC laying down transitional measures as regards the dispatch of certain products of the meat and milk sectors covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council from Bulgaria to other Member States** *(notified under document number C(2007) 1443)* [1] 53

2007/214/EC:

★ **Commission Decision of 3 April 2007 terminating the anti-dumping proceeding concerning imports of pentaerythritol originating in the People's Republic of China, Russia, Turkey, Ukraine and the United States of America** 55

AGREEMENTS

Council

★ **Information concerning the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters** 70

★ **Information concerning the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters** 70

Corrigenda

★ **Corrigendum to Commission Directive 2007/19/EC of 30 March 2007 amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food and Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs (OJ L 91, 31.3.2007)** 71

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 374/2007

of 3 April 2007

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 April 2007.

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

Done at Brussels, 3 April 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

ANNEX

to Commission Regulation of 3 April 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	200,3
	MA	114,5
	SN	320,6
	TN	135,4
	TR	168,0
	ZZ	187,8
0707 00 05	JO	171,8
	MA	108,8
	TR	152,1
	ZZ	144,2
0709 90 70	MA	71,3
	TR	112,1
	ZZ	91,7
0709 90 80	EG	242,2
	IL	80,8
	ZZ	161,5
0805 10 20	CU	39,6
	EG	46,9
	IL	69,4
	MA	46,6
	TN	54,2
	TR	45,1
	ZZ	50,3
0805 50 10	IL	60,7
	TR	39,3
	ZZ	50,0
0808 10 80	AR	83,4
	BR	76,2
	CA	101,7
	CL	87,5
	CN	96,9
	NZ	127,7
	US	121,7
	UY	75,4
	ZA	91,5
	ZZ	95,8
0808 20 50	AR	79,4
	CL	110,0
	CN	54,2
	UY	68,0
	ZA	82,5
	ZZ	78,8

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

COMMISSION REGULATION (EC) No 375/2007

of 30 March 2007

amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency [1], and in particular Articles 5 and 6 thereof,

Whereas:

(1) Aircrafts subject to the provisions of Regulation (EC) No 1592/2002 must all be issued an airworthiness certificate or permit to fly in accordance with Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircrafts and related products, parts and appliances, as well as for the certification of design and production organisations [2] before 28 March 2007. In the absence of such a certificate or permit to fly they are not entitled to be used after that date by Community operators in the territory of Member States.

(2) According to article 2(3)(c) of Commission Regulation (EC) No 1702/2003, the European Aviation Safety Agency (hereinafter the Agency) is required to determine before 28 March 2007 the approved design necessary to issue the airworthiness certificates or permits to fly of aircrafts registered in Member States, which do not meet the requirements of its Article 2(3)(a). Such determination could not be done by the Agency within that time period for many aeronautical products because it had not received the necessary applications by their designers.

(3) While airworthiness certificates should only be issued when the Agency has been able, following a technical evaluation of the product, to approve their design restricted certificates of airworthiness can be issued for a limited period of time to allow the continued operation of these aircrafts and to enable the Agency to review their design.

(4) Time did not permit the adoption of specific airworthiness specifications by the Agency before 28 March 2007. It is however possible to determine an approved design by reference to that of the State of design as this was done for most aircrafts for which a type certificate had been issued by Member States before 28 September 2003.

(5) Such a determination should only be made for those aircrafts to which Member States had issued certificates of airworthiness, excluding restricted certificates of airworthiness and permits to fly, in order to ensure that such aircrafts meet at least the safety requirements as specified by the Convention on International Civil Aviation in its Annex 8.

(6) In order to minimise safety risks and limit distortions of competition the envisaged measure should apply only with respect to aircrafts to which a Member State had issued a certificate of airworthiness, and which was on the register of that Member State, by the date when Regulation (EC) No 1702/2003 became applicable in that Member State [3]. The owners of such aircrafts were not aware, at the time of registration, of the risk that it would not be allowed to continue operations after 28 March 2007. In contrast, the owners of aircrafts registered in a Member State after the date on which Regulation (EC) No 1703/2003 became applicable in that Member State were aware, at the time of registration, that such aircrafts would not be allowed to continue operating after 28 March 2007, unless the Agency was able to approve their design by that date.

(7) It is considered necessary to ensure that aircrafts eligible for the envisaged measure should exclusively be aircrafts for which the representative authority of the State of design accepts through a working arrangement in accordance with Article 18 of Regulation (EC) No 1592/2002 to assist the Agency in ensuring the continued oversight of the so determined approved design.

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[1] OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

[2] OJ L 243, 27.9.2003, p. 6. Regulation as amended by Regulation (EC) No 706/2006 (OJ L 122, 9.5.2006, p. 16).

[3] EUR 15: 28 September 2003; EUR 10: 1 May 2004; EUR 2: 1 January 2007.

(8) The envisaged measure should be of a temporary nature to mitigate the risks associated to the limited technical knowledge that the Agency has of the design of the affected products. It is also necessary to create an incentive for designers to assist the Agency in determining the necessary approved design to fully integrate their aircrafts in the Community system. In addition, the application of different regulatory regimes to aircrafts involved in the same operations raises issues of unfair competition in the internal market and cannot be perpetuated indefinitely. Therefore the validity of the measure should be limited to a 12-month period, which may be extended by a maximum of 18 months, provided that a certification process has been undertaken and can be concluded during that period.

(9) Article 2(3)(a) of Regulation (EC) No 1702/2003 only refers to aircrafts that were issued a type-certificate. However a number of aircrafts that should be eligible for the measure specified in that Article have never been issued a type-certificate because such documents were not required by ICAO Standards applicable at the time they were designed and certificated. Clarification is therefore needed to ensure that such aircrafts can continue to be issued a certificate of airworthiness.

(10) Regulation (EC) No 1702/2003 should be amended to avoid confusion and legal uncertainty with regard to Part 21A.173(b)(2) and Part 21A.184 of the Annex to that Regulation, which refer to 'specific certification specification' instead of 'specific airworthiness specification' as specified in Articles 5(3)(b) and 15(1)(b) of Regulation (EC) No 1592/2002.

(11) By derogation from the rules for issuance of certificates of airworthiness, Article 5 (3)(a) of Regulation (EC) No 1592/2002 provides for the issuance of a permit to fly. Such a permit is generally issued when a certificate of airworthiness is temporarily invalid, for example as the result of a damage, or when a certificate of airworthiness cannot be issued for instance when the aircrafts does not comply with the essential requirements for airworthiness or when compliance with those requirements has not yet been shown, but the aircrafts is nevertheless capable of performing a safe flight.

(12) Following the end of the transition period for permits to fly, it is necessary to adopt common requirements and administrative procedures for the issuance of these permits which will contain all the conditions necessary to mitigate the risk of deviations from the essential requirements, therefore ensuring recognition of the permits to fly by all Member States in accordance with Article 8 of Regulation (EC) No 1592/2002.

(13) The measures provided for in this Regulation are based on the opinions issued by the Agency [1] in accordance with Articles 12(2)(b) and 14(1) of Regulation (EC) No 1592/2002.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 54(3) of Regulation (EC) No 1592/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1702/2003 is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

Products, parts and appliances certification

1. Products, parts and appliances shall be issued certificates as specified in Part 21.

2. By way of derogation from paragraph 1, aircrafts, including any installed product, part and appliance, which are not registered in a Member State shall be exempted from the provisions of Subparts H and I of Part 21. They shall also be exempted from the provisions of Subpart P of Part 21 except when aircrafts identification marks are prescribed by a Member State.

3. Where reference is made in the Annex (Part 21) to apply and/or to comply with the provisions of Annex I (Part M) to Commission Regulation (EC) No 2042/2003 and a Member State has elected, pursuant to Article 7(3)(a) and (b) of that Regulation, not to apply that Part until 28 September 2008, the relevant national rules shall apply instead until that date.

Article 2a

Continued validity of type-certificates and related certificates of airworthiness

1. With regard to products which had a type-certificate, or a document allowing the issuing of a certificate of airworthiness, issued before 28 September 2003 by a Member State, the following provisions shall apply:

(a) the product shall be deemed to have a type-certificate issued in accordance with this Regulation when:

[1] Opinion 1/2007 of 30 January 2007 and Opinion 2/2007 of 8 February 2007.

(i) its type-certification basis was:

— the JAA type-certification basis, for products that have been certificated under JAA procedures, as defined in their JAA data sheet, or

— for other products, the type-certification basis as defined in the type-certificate data sheet of the State of design, if that State of design was:

— a Member State, unless the Agency determines, taking into account, in particular, airworthiness codes used and service experience, that such type-certification basis does not provide for a level of safety equivalent to that required by the Basic Regulation and this Regulation, or

— a State with which a Member State had concluded a bilateral airworthiness agreement or similar arrangement under which such products have been certificated on the basis of that State of design airworthiness codes, unless the Agency determines that such airworthiness codes or service experience or the safety system of that State of design do not provide for a level of safety equivalent to that required by Regulation (EC) No 1592/2002 and this Regulation.

The Agency shall make a first evaluation of the implication of the provisions of the second indent in view of producing an opinion to the Commission including possible amendments to this Regulation;

(ii) the environmental protection requirements were those laid down in Annex 16 to the Chicago Convention, as applicable to the product;

(iii) the applicable airworthiness directives were those of the State of design.

(b) The design of an individual aircrafts, which was on the register of a Member State before 28 September 2003, shall be deemed to have been approved in accordance with this Regulation when:

(i) its basic type design was part of a type-certificate referred to in point (a);

(ii) all changes to this basic type design, which were not under the responsibility of the type-certificate holder, had been approved; and

(iii) the airworthiness directives issued or adopted by the Member State of registry before 28 September 2003 were complied with, including any variations to the airworthiness directives of the State of design agreed by the Member State of registry.

(c) The Agency shall determine the type-certificate of the products not meeting the requirements of point (a) before 28 March 2007.

(d) The Agency shall determine the type-certificate data sheet for noise for all products covered by point (a) before 28 March 2007. Until such determination, Member States may continue to issue noise certificates in accordance with applicable national regulations.

2. With regard to products for which a type-certification process was proceeding through the JAA or a Member State on 28 September 2003, the following shall apply:

(a) if a product is under certification by several Member States, the most advanced project shall be used as the reference;

(b) 21A.15(a), (b) and (c) of Part 21 shall not apply;

(c) by way of derogation from 21A.17(a) of Part 21, the type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval;

(d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.20(a) and (b) of Part 21.

3. With regard to products that have a national type-certificate, or equivalent, and for which the approval process of a change carried out by a Member State was not finalised at the time when the type-certificate had to be in accordance with this Regulation, the following shall apply:

(a) if an approval process is being carried out by several Member States, the most advanced project shall be used as the reference;

(b) 21A.93 of Part 21 shall not apply;

(c) the applicable type-certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the approval of change;

(d) compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.103(a)(2) and (b) of Part 21.

4. With regard to products that had a national type-certificate, or equivalent, and for which the approval process of a major repair design carried out by a Member State was not finalised at the time when the type-certificate had to be determined in accordance with this Regulation, compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.433(a) of Part 21.

5. A certificate of airworthiness issued by a Member State attesting conformity with a type-certificate determined in accordance with paragraph 1 shall be deemed to comply with this Regulation.

Article 2b

Continued validity of supplemental type-certificates

1. With regard to supplemental type-certificates issued by a Member State under JAA procedures or applicable national procedures and with regard to changes to products proposed by persons other than the type-certificate holder of the product, which were approved by a Member State under applicable national procedures, if the supplemental type-certificate, or change, was valid on 28 September 2003, the supplemental type-certificate, or change shall be deemed to have been issued under this Regulation.

2. With regard to supplemental type-certificates for which a certification process was being carried out by a Member State on 28 September 2003 under applicable JAA supplemental type-certificate procedures and with regard to major changes to products, proposed by persons other than the type-certificate holder of the product, for which a certification process was being carried out by a Member State on 28 September 2003 under applicable national procedures, the following shall apply:

(a) if a certification process was being carried out by several Member States, the most advanced project shall be used as the reference;

(b) 21A.113 (a) and (b) of Part 21 shall not apply;

(c) the applicable certification basis shall be that established by the JAA or, where applicable, the Member State at the date of application for the supplemental type-certificate or the major change approval;

(d) the compliance findings made under JAA or Member State procedures shall be deemed to have been made by the Agency for the purpose of complying with 21A.115(a) of Part 21.

Article 2c

Continued operation of certain aircrafts registered by Member States

1. With regard to an aircrafts that cannot be deemed to have a type-certificate issued in accordance with Article 2a (1)(a) of this Regulation, that has been issued a certificate of airworthiness by a Member State before Regulation (EC) No 1702/2003 became applicable in that Member State [1], was on its register on that date, and was still on the register of a Member State on 28 March 2007, the combination of the following shall be deemed to constitute the applicable specific airworthiness specifications issued in accordance with this Regulation:

(a) the type-certificate data sheet and type-certificate data sheet for noise, or equivalent documents, of the State of design, provided that the State of design has concluded the appropriate working arrangement in accordance with Article 18 of Regulation (EC) No 1592/2002 with the Agency covering the continued airworthiness of the design of such an aircrafts;

(b) the environmental protection requirements laid down in Annex 16 to the Chicago Convention, as applicable to that aircrafts; and

(c) the mandatory continuing airworthiness information of the State of design.

2. The specific airworthiness specifications shall allow the continuation of the type of operations that the aircrafts concerned was entitled to perform on 28 March 2007 and shall be valid until 28 March 2008, unless these specifications are replaced before that date by a design and environmental approval issued by the Agency in accordance with this Regulation. Restricted certificates of airworthiness for the aircrafts concerned shall be issued by Member States pursuant to Part 21 Subpart H when conformity with these specifications is attested.

3. The Commission may extend the period of validity referred to in paragraph 2 by a maximum of 18 months for aircrafts of a certain type, provided that a certification process of that type of aircrafts has been undertaken by the Agency before 28 March 2008 and that the Agency determines that such process can be concluded within the additional period of validity. In such case the Agency will notify its determination to the Commission.

[1] For EUR 15: 28 September 2003; for EUR 10: 1 May 2004 and for EUR 2: 1.1.2007.

Article 2d

Continued validity of parts and appliances certificates

1. Approvals of parts and appliances issued by a Member State and valid on 28 September 2003 shall be deemed to have been issued in accordance with this Regulation.

2. With regard to parts and appliances for which an approval or authorisation process was being carried out by a Member State on 28 September 2003, the following shall apply:

(a) if an authorisation process was being carried out by several Member States, the most advanced project shall be used as the reference;

(b) 21A.603 of Part 21 shall not apply;

(c) the applicable data requirements under 21A.605 of Part 21 shall be those established by the relevant Member State, at the date of application for the approval or authorisation;

(d) compliance findings made by the relevant Member State shall be deemed to have been made by the Agency for the purpose of complying with 21A.606(b) of Part 21.

Article 2e

Permit to fly

The conditions determined before 28 March 2007 by the Member States for permits to fly or other airworthiness certificate issued for aircrafts which did not hold a certificate of airworthiness or restricted certificate of airworthiness issued under this Regulation, are deemed to be determined in accordance with this Regulation, unless the Agency determines before 28 March 2008 that such conditions do not provide for a level of safety equivalent to that required by Regulation (EC) No 1592/2002 or this Regulation.

The permit to fly or other airworthiness certificate issued by Member States before 28 March 2007 for aircrafts which did not hold a certificate of airworthiness or restricted certificate of airworthiness issued under this Regulation, are deemed to be a permit to fly issued in accordance with this Regulation until 28 March 2008.'

2. The Annex (Part 21) to Commission Regulation (EC) No 1702/2003 is amended as set out in the Annex to this Regulation.

Article 2

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, 30 March 2007.

For the Commission
Jacques BARROT
Vice-President

ANNEX

The Annex to Regulation (EC) No 1702/2003 is amended as follows:

1. In paragraph 21A.139 the following subparagraph (b)(1)(xvii) is added:

   '(xvii) Issue of permit to fly and approval of associated flight conditions.'

2. In paragraph 21A.163 the following subparagraph (e) is added:

   '(e) Under procedures agreed with its competent authority for production, for an aircraft it has produced and when the production organisation itself is controlling under its POA the configuration of the aircraft and is attesting conformity with the design conditions approved for the flight, to issue a permit to fly in accordance with 21A.711(c) including approval of the flight conditions in accordance with 21A.710(b).'

3. In paragraph 21A.165 the following subparagraphs (j) and (k) are added:

   '(j) Where applicable, under the privilege of 21A.163(e), determine the conditions under which a permit to fly can be issued.

   (k) Where applicable, under the privilege of 21A.163(e), establish compliance with 21A.711(b) and (d) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.'

4. The title of Subpart H of Section A is replaced by the following:

   'SUBPART H — CERTIFICATES OF AIRWORTHINESS AND RESTRICTED CERTIFICATES OF AIRWORTHINESS'

5. In paragraph 21A.173 (b) (2), the words 'specific certification specifications' are replaced by the words 'specific airworthiness specifications'.

6. In paragraph 21A.173 subparagraph (c) is deleted.

7. In paragraph 21A.174 subparagraph (d) is deleted.

8. Subparagraph (b) of paragraph 21A.179 is replaced by the following:

   '(b) Where ownership of an aircraft has changed, and the aircraft has a restricted certificate of airworthiness not conforming to a restricted type-certificate, the airworthiness certificates shall be transferred together with the aircraft provided the aircraft remains on the same register, or issued only with the formal agreement of the competent authority of the Member State of registry to which it is transferred.'

9. In paragraph 21A.184, the words 'specific certification specifications' are replaced by the words 'specific airworthiness specifications'.

10. Paragraph 21A.185 is deleted.

11. In paragraph 21A.263, subparagraph (b) is replaced by the following:

   '(b) Subject to 21A.257(b), the Agency shall accept without further verification the following compliance documents submitted by the applicant for the purpose of obtaining:

      1. the approval of flight conditions required for a permit to fly; or

      2. a type-certificate or approval of a major change to a type design; or

      3. a supplemental type-certificate; or

      4. an ETSO authorisation under 21A.602B(b)(1); or

      5. a major repair design approval.'

12. In paragraph 21A.263 (c), the following subparagraphs (6) and (7) are added:

'6. To approve the conditions under which a permit to fly can be issued in accordance with 21A.710(a)(2),

(i) except for initial flights of:

— a new type of aircraft, or

— an aircraft modified by a change that is or would be classified as a significant major change or significant STC, or

— an aircraft whose flight and/or piloting characteristics may have been significantly modified;

(ii) except for permits to fly to be issued for the purpose of 21A.701(a)(15).

7. To issue a permit to fly in accordance with 21A.711(b) for an aircraft it has designed or modified, and when the design organisation itself is controlling under its DOA the configuration of the aircraft and is attesting conformity with the design conditions approved for the flight.'

13. In paragraph 21A.265 the following subparagraphs (f) and (g) are added:

'(f) Where applicable, under the privilege of 21A.263(c)(6), determine the conditions under which a permit to fly can be issued.

(g) Where applicable, under the privilege of 21A.263(c)(7), establish compliance with 21A.711(b) and (d) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.'

14. Subpart P of Section A is replaced by the following:

'SUBPART P — PERMIT TO FLY

21A.701 Scope

Permits to fly shall be issued in accordance with this Subpart to aircraft that do not meet, or have not been shown to meet, applicable airworthiness requirements but are capable of safe flight under defined conditions and for the following purposes:

1. development;

2. showing compliance with regulations or certification specifications;

3. design organisations or production organisations crew training;

4. production flight testing of new production aircraft;

5. flying aircraft under production between production facilities;

6. flying the aircraft for customer acceptance;

7. delivering or exporting the aircraft;

8. flying the aircraft for Authority acceptance;

9. market survey, including customer's crew training;

10. exhibition and air show;

11. flying the aircraft to a location where maintenance or airworthiness review are to be performed, or to a place of storage;

12. flying an aircraft at a weight in excess of its maximum certificated takeoff weight for flight beyond the normal range over water, or over land areas where adequate landing facilities or appropriate fuel is not available;

13. record breaking, air racing or similar competition;

14. flying aircraft meeting the applicable airworthiness requirements before conformity to the environmental requirements has been found;

15. for non-commercial flying activity on individual non-complex aircraft or types for which a certificate of airworthiness or restricted certificate of airworthiness is not appropriate.

21A.703 Eligibility

Any natural or legal person shall be eligible as an applicant for a permit to fly except for a permit to fly requested for the purpose of 21A.701(a)(15) where the applicant shall be the owner. A person eligible for an application for permit to fly is also eligible for application for the approval of the flight conditions.

21A.705 Competent Authority

Notwithstanding 21.1, for the purpose of this Subpart, the "Competent Authority" shall be:

(a) the authority designated by the Member State of registry; or

(b) for unregistered aircraft, the authority designated by the Member State which prescribed the identification marks.

21A.707 Application for permit to fly

(a) Pursuant to 21A.703 and when the applicant has not been granted the privilege to issue a permit to fly, an application for a permit to fly shall be made to the Competent Authority in a form and manner established by that authority.

(b) Each application for a permit to fly shall include:

1. the purpose(s) of the flight(s), in accordance with 21A.701;

2. the ways in which the aircraft does not comply with the applicable airworthiness requirements;

3. the flight conditions approved in accordance with 21A.710.

(c) Where the flight conditions are not approved at the time of application for a permit to fly, an application for approval of the flight conditions shall be made in accordance with 21A.709.

21A.708 Flight conditions

Flight conditions include:

(a) the configuration(s) for which the permit to fly is requested;

(b) any condition or restriction necessary for safe operation of the aircraft, including:

1. the conditions or restrictions put on itineraries or airspace, or both, required for the flight(s);

2. the conditions and restrictions put on the flight crew to fly the aircraft;

3. the restrictions regarding carriage of persons other than flight crew;

4. the operating limitations, specific procedures or technical conditions to be met;

5. the specific flight test programme (if applicable);

6. the specific continuing airworthiness arrangements including maintenance instructions and regime under which they will be performed;

(c) the substantiation that the aircraft is capable of safe flight under the conditions or restrictions of sub-paragraph (b);

(d) the method used for the control of the aircraft configuration, in order to remain within the established conditions.

21A.709 Application for approval of flight conditions

(a) Pursuant to 21A.707(c) and when the applicant has not been granted the privilege to approve the flight conditions, an application for approval of the flight conditions shall be made:

1. when approval of the flight conditions is related to the safety of the design, to the Agency in a form and manner established by the Agency; or

2. when approval of the flight conditions is not related to the safety of the design, to the Competent Authority in a form and manner established by that authority.

(b) Each application for approval of the flight conditions shall include:

1. the proposed flight conditions;

2. the documentation supporting these conditions; and

3. a declaration that the aircraft is capable of safe flight under the conditions or restrictions of paragraph 21A.708(b).

21A.710 Approval of flight conditions

(a) When approval of the flight conditions is related to the safety of the design, the flight conditions shall be approved by:

1. the Agency; or

2. an appropriately approved design organisation, under the privilege of 21A.263(c)(6).

(b) When approval of the flight conditions is not related to the safety of the design, the flight conditions shall be approved by the Competent Authority, or the appropriately approved organisation that will also issue the permit to fly.

(c) Before approving the flight conditions, the Agency, the Competent Authority or the approved organisation must be satisfied that the aircraft is capable of safe flight under the specified conditions and restrictions. The Agency or the Competent Authority may make or require the applicant to make any necessary inspections or tests for that purpose.

21A.711 Issue of a permit to fly

(a) The Competent Authority shall issue a permit to fly:

1. upon presentation of the data required by 21A.707; and

2. when the conditions of 21A.708 have been approved in accordance with 21A.710; and

3. when the Competent Authority, through its own investigations, which may include inspections, or through procedures agreed with the applicant, is satisfied that the aircraft conforms to the design defined under 21A.708 before flight.

(b) An appropriately approved design organisation may issue a permit to fly (EASA Form 20b, see Appendix) under the privilege granted under 21A.263(c)(7), when the conditions of 21A.708 have been approved in accordance with 21A.710.

(c) An appropriately approved production organisation may issue a permit to fly (EASA Form 20b, see Appendix) under the privilege granted under 21A.163(e), when the conditions of 21A.708 have been approved in accordance with 21A.710.

(d) The permit to fly shall specify the purpose(s) and any conditions and restrictions approved under 21A.710.

(e) For permits issued under subparagraph (b) or (c), a copy of the permit to fly shall be submitted to the Competent Authority.

(f) Upon evidence that any of the conditions specified in 21A.723(a) are not met for a permit to fly that an organisation has issued pursuant to subparagraph (b) or (c), that organisation shall revoke that permit to fly.

21A.713 Changes

(a) Any change that invalidates the flight conditions or associated substantiation established for the permit to fly shall be approved in accordance with 21A.710. When relevant an application shall be made in accordance with 21A.709.

(b) A change affecting the content of the permit to fly requires the issuance of a new permit to fly in accordance with 21A.711.

21A.715 Language

The manuals, placards, listings, and instrument markings and other necessary information required by applicable certification specifications shall be presented in one or more of the official language(s) of the European Community acceptable to the Competent Authority.

21A.719 Transferability

(a) A permit to fly is not transferable.

(b) Notwithstanding subparagraph (a) for a permit to fly issued for the purpose of 21A.701(a)(15), where ownership of an aircraft has changed, the permit to fly shall be transferred together with the aircraft provided the aircraft remains on the same register, or issued only with the agreement of the competent authority of the Member State of registry to which it is transferred.

21A.721 Inspections

The holder of, or the applicant for, a permit to fly shall provide access to the aircraft concerned at the request of the Competent Authority.

21A.723 Duration and continued validity

(a) A permit to fly shall be issued for a maximum of 12 months and shall remain valid subject to:

1. compliance with the conditions and restrictions of 21A.711(d) associated to the permit to fly;

2. the permit to fly not being surrendered or revoked under 21B.530;

3. the aircraft remaining on the same register.

(b) Notwithstanding subparagraph (a), a permit to fly issued for the purpose of 21A.701(a)(15) may be issued for unlimited duration.

(c) Upon surrender or revocation, the permit to fly shall be returned to the Competent Authority.

21A.725 Renewal of permit to fly

Renewal of the permit to fly shall be processed as a change in accordance with 21A.713.

21A.727 Obligations of the holder of a permit to fly

The holder of a permit to fly shall ensure that all the conditions and restrictions associated with the permit to fly are satisfied and maintained.

21A.729 Recordkeeping

(a) All documents produced to establish and justify the flight conditions shall be held by the holder of the approval of the flight conditions at the disposal of the Agency and Competent Authority and shall be retained in order to provide the information necessary to ensure the continued airworthiness of the aircraft.

(b) All documents associated to the issue of permits to fly under the privilege of approved organisations, including inspection records, documents supporting the approval of flight conditions and the permit to fly itself, shall be held by the related approved organisation at the disposal of the Agency or the Competent Authority and shall be retained in order to provide the information necessary to ensure the continued airworthiness of the aircraft.'

15. Paragraph 21B.20 is replaced by the following:

'21B.20 Obligations of the competent authority

Each competent authority of the Member State is responsible for the implementation of Section A, Subparts F, G, H, I and P only for applicants, or holders, whose principal place of business is in its territory.'

16. In paragraph 21B.25 subparagraph (a) is replaced by the following:

'(a) General:

The Member State shall designate a competent authority with allocated responsibilities for the implementation of Section A, Subparts F, G, H, I and P with documented procedures, organisation structure and staff.'

17. The title of Subpart H of Section B is replaced by the following:

'SUBPART H — CERTIFICATES OF AIRWORTHINESS AND RESTRICTED CERTIFICATES OF AIRWORTHINESS'

18. In paragraph 21B.325 subparagraph (a) is replaced by the following:

'(a) The competent authority of the Member State of registry shall, as applicable, issue, or amend a Certificate of Airworthiness (EASA Form 25, see Appendix) or Restricted Certificate of Airworthiness (EASA Form 24, see Appendix) without undue delay when it is satisfied that the applicable requirements of Section A, Subpart H are met.'

19. Paragraph 21B.330 is replaced by the following:

'21B.330 Suspension and revocation of certificates of airworthiness and restricted certificates of airworthiness

(a) Upon evidence that any of the conditions specified in 21A.181(a) is not met, the competent authority of the Member State of registry shall suspend or revoke an airworthiness certificate.

(b) Upon issuance of the notice of suspension and revocation of a certificate of airworthiness or restricted certificate of airworthiness the competent authority of the Member State of registry shall state the reasons for the suspension or revocation and inform the holder of the certificate on its right to appeal.'

20. Subpart P of Section B is replaced by the following:

'SUBPART P — PERMIT TO FLY

21B.520 Investigation

(a) The Competent Authority shall perform sufficient investigation activities to justify the issuance, or revocation of the permit to fly.

(b) The Competent Authority shall prepare evaluation procedures covering at least the following elements:

1. evaluation of the eligibility of the applicant;

2. evaluation of the eligibility of the application;

3. evaluation of the documentation received with the application;

4. inspection of the aircraft;

5. approval of the flight conditions in accordance with 21A.710(b).

21B.525 Issue of permits to fly

The Competent Authority shall issue a permit to fly (EASA Form 20a, see Appendix) when it is satisfied that the applicable requirements of Section A, Subpart P are met.

21B.530 Revocation of permits to fly

(a) Upon evidence that any of the conditions specified in 21A.723(a) are not met for a permit to fly it has issued, the Competent Authority shall revoke that permit to fly.

(b) Upon issuance of the notice of revocation of a permit to fly the Competent Authority shall state the reasons for the revocation and inform the holder of the permit to fly on the right to appeal.

21B.545 Record keeping

(a) The Competent Authority shall operate a system of record keeping that provides adequate traceability of the process for the issue and revocation of each individual permit to fly.

(b) The records shall at least contain:

1. the documents provided by the applicant;

2. documents established during the investigation, in which the activities and the final results of the elements defined in 21B.520(b) are stated; and

3. a copy of the permit to fly.

(c) The records shall be kept for a minimum of six years after the permit ceases to be valid.'

21. The list of Appendices is replaced by the following:

'Appendix I — EASA Form 1 Authorised release Certificate

Appendix II — EASA Form 15a Airworthiness Review Certificate

Appendix III — EASA Form 20a Permit to Fly

Appendix IV — EASA Form 20b Permit to Fly (issued by approved organisations)

Appendix V — EASA Form 24 Restricted Certificate of Airworthiness

Appendix VI — EASA Form 25 Certificate of Airworthiness

Appendix VII — EASA Form 45 Noise Certificate

Appendix VIII — EASA Form 52 Aircraft Statement of Conformity

Appendix IX — EASA Form 53 Certificate of Release to Service

Appendix X — EASA Form 55 Production Organisation Approval Certificate

Appendix XI — EASA Form 65 Letter of Agreement [Production without POA]'

22. EASA Form 20 is replaced by the following:

‘

Competent authority logo	**PERMIT TO FLY**

(*)	
This permit to fly is issued pursuant to Regulation (EC) No 1592/2002, Article 5(3)(a) and certifies that the aircraft is capable of safe flight for the purpose and within the conditions listed below and is valid in all Member States This permit is also valid for flight to and within non-Member States provided separate approval is obtained from the competent authorities of such States:	1. Nationality and registration marks:
2. Aircraft manufacturer/type:	3. Serial No:
4. The permit covers: *[purpose in accordance with 21A.701(a)]*	
5. Holder: *[in case of a permit to fly issued for the purpose of 21A.701(a)(15) this should state: 'the registered owner']*	
6. Conditions/remarks:	
7. Validity period:	
8. Place and date of issue:	9. Signature of the competent authority representative:

EASA Form 20a.

(*) For use by State of Registry.’

23. The following EASA Form 20b is added:

'

Member State of the Competent Authority having issued the organisation approval under which the permit to fly is issued; or 'EASA' when approval issued by EASA	**PERMIT TO FLY**

Name and Address of the organisation issuing the permit to fly	(*)
This permit to fly is issued pursuant to Regulation (EC) No 1592/2002, Article 5(3)(a) and certifies that the aircraft is capable of safe flight for the purpose and within the conditions listed below and is valid in all Member States. This permit is also valid for flight to and within non-Member States provided separate approval is obtained from the competent authorities of such States.	1. Nationality and registration marks:
2. Aircraft manufacturer/type:	3. Serial No:
4. The permit covers: *[purpose in accordance with 21A.701(a)]*	
5. Holder: *[Organisation issuing the permit to fly]*	
6. Conditions/remarks:	
7. Validity period:	
8. Place and date of issue:	9. Authorised signature: Name: Approval Reference No:

EASA Form 20b

(*) For use by Organisation Approval holder.'

24. Sheet B of EASA Form 55 is replaced by the following:

‘

Competent authority of a Member State of the European Union or EASA	**Terms of Approval**	TA: NAA.21G.XXXX

This document is part of Production Organisation Approval No NAA.21G.XXXX issued to

Company name:

Section 1. **SCOPE OF WORK:**

PRODUCTION OF PRODUCTS/CATEGORIES

For details and limitations refer to the Production Organisation Exposition, Section xxx

Section 2. **LOCATIONS:**

Section 3. **PRIVILEGES:**

The Production Organisation is entitled to exercise, within its Terms of Approval and in accordance with the procedures of its Production Organisation Exposition, the privileges set forth in 21A.163. Subject to the following:

[keep only applicable text]

Prior to approval of the design of the product an EASA Form 1 may be issued only for conformity purposes.

A Statement of Conformity may not be issued for a non-approved aircraft.

Maintenance may be performed, until compliance with maintenance regulations is required, in accordance with the Production Organisation Exposition Section xxx.

Permits to fly may be issued in accordance with the Production Organisation Exposition Section yyy.

Date of original issue:	Date of this issue:	Signed: For the competent authority or EASA

EASA Form 55 — POA Certificate of Approval — Sheet B’

COMMISSION REGULATION (EC) No 376/2007

of 30 March 2007

amending Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency [1] and in particular Articles 5 and 6 thereof,

Whereas:

(1) Until 28 March 2007, in a transition period during which Member States were fully responsible for all aspects related to the issuance of permit to fly, Commission Regulation (EC) No 2042/2003 [2] did not apply to the aircraft flying under such a permit and those aircrafts were therefore maintained in accordance with applicable national rules.

(2) Due to the nature of permits to fly which are issued on a case by case basis for aircraft which cannot comply with the rules for issuance of certificates of airworthiness for various reasons, it is impossible to establish general rules for the maintenance of those aircrafts. Instead the applicable maintenance provisions should be defined in the flight conditions approved for the particular case.

(3) It is necessary to complement the adoption of new requirements and administrative procedures in Commission Regulation (EC) No 1702/2003 of 24 September 2003, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations [3], with regard to the issuance of permits to fly, by amending Regulation (EC) No 2042/2003, in order to exempt the aircraft operating under a permit to fly from the application of that Regulation and referring instead to the maintenance provisions contained in the approved flight conditions associated with the permit to fly.

(4) Regulation (EC) No 2042/2003 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are based on the opinion issued by the European Aviation Safety Agency [4] in accordance with Articles 12(2)(b) and 14(1) of Regulation (EC) No 1592/2002.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 54(3) of Regulation (EC) No 1592/2002,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 2042/2003, Article 3(3) is replaced by the following:

'3. By derogation from paragraph 1, the continuing airworthiness of aircraft holding a permit to fly shall be ensured on the basis of the specific continuing airworthiness arrangements as defined in the permit to fly issued in accordance with the Annex (Part 21) to Commission Regulation (EC) No 1702/2003.'.

Article 2

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

[1] OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

[2] OJ L 315, 28.11.2003, p. 1. Regulation as amended by Regulation (EC) No 707/2006 (OJ L 122, 9.5.2006, p. 17).

[3] OJ L 243, 27.9.2003, p. 6. Regulation as amended by Regulation (EC) No 706/2006 (OJ L 122, 9.5.2006, p. 16).

[4] Opinion 02-2007.

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

Done at Brussels, 30 March 2007.

For the Commission
Jacques BARROT
Member of the Commission

COMMISSION REGULATION (EC) No 377/2007

of 29 March 2007

concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

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

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column 2.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

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

Done at Brussels, 29 March 2007.

For the Commission
László KOVÁCS
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 301/2007 (OJ L 81, 22.3.2007, p. 11).

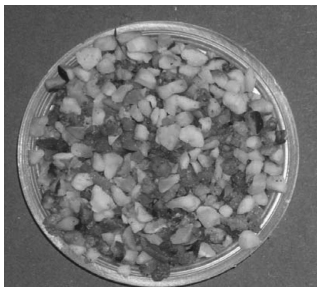
[2] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. Hazelnut preparation consisting of a mixture of hazelnuts and sugar, presented in the form of grains (% by weight) (*), Hazelnut kernels 40 Added sugar 60 Hazelnuts kernels are roasted at 140 °C for 20 to 25 minutes. Sugar is roasted separately at the same temperature for 15 to 17 minutes. Roasted hazelnuts and sugar are then mixed and roasted together for 12 to 15 minutes. The preparation is then cooled and chopped into a particle size of 1 to 4 mm. It is then packed in bags of at least 10 kg for wholesale. This preparation is an intermediate product not intended for immediate consumption but used in the manufacture of chocolates, ice-cream, confectionery and pastry.	2008 19 19	Classification is determined by General Rules 1 and 6 on the interpretation of the CN, the wording of CN codes 2008, 2008 19 and 2008 19 19. This product is not classified in Chapter 17 because it is a sweetened food preparation consisting of a mixture of hazelnuts and sugar (HSEN to Chapter 17, General, paragraph (b)). Heading 1704 does not apply to this sweetened hazelnut preparation as it is not marketed or intended for use as sugar confectionery in its own right (HSEN to heading 1704, first paragraph). This product is covered by Chapter 20 as it is prepared or preserved by a process not specified in Chapter 8 (Note 1(a) to Chapter 20 and CNEN to subheadings 2008 11 10 to 2008 19 99). Being nuts mixed with sugar and having undergone a preparation (roasting), this product is classified in subheading 2008 19 19 (CNEN to subheadings 2008 11 10 to 2008 19 99).
(*) Photograph No 1 is purely for information.		
2. Hazelnut preparation consisting of a mixture of hazelnuts and sugar, presented in the form of powder (% by weight) (**), Hazelnut kernels 40 Added sugar 60 Hazelnuts kernels are roasted at 140 °C for 20 to 25 minutes. Sugar is roasted separately at the same temperature for 15 to 17 minutes. Roasted hazelnuts and sugar are then mixed and roasted together for 12 to 15 minutes. The preparation is then cooled and chopped into a particle size of 1 to 4 mm before being ground to a size of 20 to 30 microns. It is then packed in bags of at least 12,5 kg for wholesale. This preparation is an intermediate product not intended for immediate consumption but used in the manufacture of chocolates, ice-cream, confectionery and pastry.	2008 19 19	Classification is determined by General Rules 1 and 6 on the interpretation of the CN, the wording of CN codes 2008, 2008 19 and 2008 19 19. This product is not classified in Chapter 17 because it is a sweetened food preparation consisting of a mixture of hazelnuts and sugar (HSEN to Chapter 17, General, paragraph (b)). Heading 1704 does not apply to this preparation, as it is a semi-manufactured product, which is not transformed solely into a certain type of sugar confectionery of this heading (HSEN to heading 1704, first paragraph and CNEN to subheadings 1704 90 51 to 1704 90 99, 2nd paragraph). This product is covered by Chapter 20 as it is prepared or preserved by a process not specified in Chapter 8 (Note 1(a) to Chapter 20 and CNEN to subheadings 2008 11 10 to 2008 19 99). Being nuts mixed with sugar and having undergone a preparation (roasting), this product is classified in subheading 2008 19 19 (CNEN to subheadings 2008 11 10 to 2008 19 99).
(**) Photograph No 2 is purely for information.		

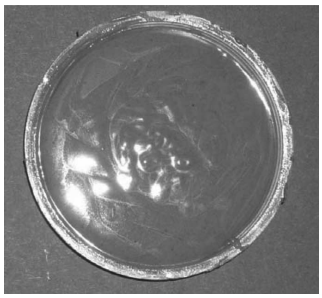
(1)	(2)	(3)
3. Hazelnut preparation consisting of a mixture of hazelnuts and sugar, presented in the form of paste (% by weight) (***), Hazelnut kernels 40 Added sugar 60 Hazelnuts kernels are roasted at 140 °C for 20 to 25 minutes. Sugar is roasted separately at the same temperature for 15 to 17 minutes. Roasted hazelnuts and sugar are then mixed and roasted together for 12 to 15 minutes. The preparation is then cooled and chopped into a particle size of 1 to 4 mm before being ground to a size of 20 to 30 microns. The ground preparation is mixed until it reaches the form of a homogeneous paste. It is then packed in bags of at least 20 kg for wholesale. This preparation is an intermediate product not intended for immediate consumption but used in the manufacture of chocolates, ice-cream, confectionery and pastry.	2008 19 19	Classification is determined by General Rules 1 and 6 on the interpretation of the CN, the wording of CN codes 2008, 2008 19 and 2008 19 19. This product is not classified in Chapter 17 because it is a sweetened food preparation consisting of a mixture of hazelnuts and sugar (HSEN to Chapter 17, General, paragraph (b)). Heading 1704 does not apply to this preparation, as it is a semi-manufactured product, which is not transformed solely into a certain type of sugar confectionery of this heading (HSEN to heading 1704, first paragraph, ix, and CNEN to subheadings 1704 90 51 to 1704 90 99, 2nd paragraph). This product is covered by Chapter 20 as it is prepared or preserved by a process not specified in Chapter 8 (Note 1(a) to Chapter 20 and CNEN to subheadings 2008 11 10 to 2008 19 99). Being nuts mixed with sugar and having undergone a preparation (roasting), this product is classified in subheading 2008 19 19 (CNEN to headings 2008 11 10 to 2008 19 99).

(***) Photograph No 3 is purely for information.



Photograph No 1

Photograph No 2



Photograph No 3

DIRECTIVES

COMMISSION DIRECTIVE 2007/20/EC

of 3 April 2007

amending Directive 98/8/EC of the European Parliament and of the Council to include dichlofluanid as an active substance in Annex I thereto

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular Article 16(2) second subparagraph thereof,

Whereas:

(1) Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 [2] establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes dichlofluanid.

(2) Pursuant to Regulation (EC) No 2032/2003, dichlofluanid has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 8, wood preservatives, as defined in Annex V to Directive 98/8/EC.

(3) In accordance with Article 5(2) of Regulation (EC) No 2032/2003, the United Kingdom was designated as Rapporteur Member State. The United Kingdom submitted the competent authority report, together with a recommendation, to the Commission on 13 September 2005 in accordance with Article 10(5) and (7) of that Regulation.

(4) The competent authority report has been reviewed by the Member States and the Commission. In accordance with Article 11(4) of Regulation (EC) No 2032/2003, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 28 November 2006, in an assessment report.

(5) The review of dichlofluanid did not reveal any open questions or concerns to be addressed by the Scientific Committee on Health and Environmental Risks (SCHER).

(6) It appears from the various examinations made that biocidal products used as wood preservatives and containing dichlofluanid may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC, in particular with regard to the uses which were examined and detailed in the assessment report. It is therefore appropriate to include dichlofluanid in Annex I to Directive 98/8/EC, in order to ensure that in all Member States authorisations for biocidal products used as wood preservatives and containing dichlofluanid can be granted, modified, or cancelled in accordance with Article 16(3) of Directive 98/8/EC.

(7) It is important that the provisions of this Directive should be applied simultaneously in all the Member States in order to ensure equal treatment of biocidal products on the market containing the active substance dichlofluanid and also to facilitate the proper operation of the biocidal products market in general.

(8) In the light of the findings of the assessment report, it is appropriate to require that products authorised for industrial use must be used with appropriate personal protective equipment and that instructions are provided to indicate that treated timber must be stored after treatment on impermeable hard standing to prevent direct losses to soil and allow losses to be collected for re-use or disposal, in accordance with Article 10(2)(i)(d) of Directive 98/8/EC.

[1] OJ L 123, 24.4.1998, p. 1. Directive as last amended by Commission Directive 2006/140/EC (OJ L 414, 30.12.2006, p. 78).

[2] OJ L 307, 24.11.2003, p. 1. Regulation as last amended by Regulation (EC) No 1849/2006 (OJ L 355, 15.12.2006, p. 63).

(9) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

(10) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC, and in particular, to grant, modify or cancel authorisations of biocidal products in product-type 8 containing dichlofluanid to ensure that they comply with Directive 98/8/EC.

(11) Directive 98/8/EC should therefore be amended accordingly.

(12) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 29 February 2008 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 March 2009.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 3 April 2007.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

The following entry 'No 2' shall be added in the table in Annex I to Directive 98/8/EC

No	Common name	IUPAC name Identification numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
'2	dichlofluanid	N-(Dichlorofluoro-methylthio)-N′,N′-dimethyl-N-phenylsul-famide EC No: 214-118-7 CAS No: 1085-98-9	> 96 % w/w	1 March 2009	28 February 2011	28 February 2019	8	Member States shall ensure that authorisations are subject to the following conditions: (1) Products authorised for industrial and/or professional use must be used with appropriate personal protective equipment. (2) In view of the risks identified for the soil compartment appropriate risk mitigation measures must be taken to protect that compartment. (3) Labels and/or safety-data sheets of products authorised for industrial use indicate that freshly treated timber must be stored after treatment on impermeable hard standing to prevent direct losses to soil and that any losses must be collected for re-use or disposal.

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: http://ec.europa.eu/comm/environment/biocides/index.htm'

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 19 March 2007

on the signing and provisional application of the Agreement between the European Community and the Government of Malaysia on certain aspects of air services

(2007/210/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.

(2) On behalf of the Community, the Commission has negotiated an Agreement with the Government of Malaysia on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council Decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.

(3) Subject to its possible conclusion at a later date, the Agreement negotiated by the Commission should be signed and provisionally applied,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement between the European Community and the Government of Malaysia on certain aspects of air services is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community, subject to its conclusion.

Article 3

Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose.

Article 4

The President of the Council is hereby authorised to make the notification provided for in Article 9(2) of the Agreement.

Done at Brussels, 19 March 2007.

For the Council
The President
Horst SEEHOFER

AGREEMENT

between the European Community and the Government of Malaysia on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE GOVERNMENT OF MALAYSIA (hereinafter Malaysia)

of the other part

(hereinafter referred to as the Parties)

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and Malaysia, which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and Malaysia and to preserve the continuity of such air services,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Community and the Malaysia which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes, may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of the European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and Malaysia, to affect the balance between Community air carriers and air carriers of Malaysia, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Community.

2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.

3. References in each of the agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

Article 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the Articles listed in Annex II(a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Malaysia, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, Malaysia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(i) the air carrier is established, under the Treaty establishing the European Community, in the territory of the designating Member State and has a valid Operating Licence in accordance with European Community law; and

(ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and

(iii) the air carrier has its principal place of business in the territory of the Member State from which it has received the valid Operating Licence; and

(iv) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex III and/or nationals of such other States.

3. Malaysia may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

(i) the air carrier is not established, under the Treaty establishing the European Community, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with European Community law; or

(ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

(iii) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other States listed in Annex III and/or nationals of such other States; or

(iv) the air carrier is already authorised to operate under a bilateral agreement between Malaysia and another Member State and Malaysia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement; or

(v) the air carrier designated holds an Air Operators Certificate issued by a Member State and no bilateral air services agreement is in force between Malaysia and that Member State and that Member State has denied traffic rights to the air carriers designated by Malaysia.

In exercising its right under this paragraph, Malaysia shall not discriminate between Community air carriers on the grounds of nationality.

Article 3

Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(c).

2. Where a Member State (the first Member State) has designated an air carrier whose regulatory control is exercised and maintained by a second Member State, the rights of Malaysia under the safety provisions of the agreement between the first Member State that has designated the air carrier and Malaysia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that second Member State and in respect of the operating authorisation of that air carrier.

Article 4

Taxation of aviation fuel

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(d).

2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex II(d) shall prevent a Member State from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of Malaysia that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.

Article 5

Tariffs for carriage within the European Community

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(e).

2. The tariffs to be charged by the air carrier(s) designated by Malaysia under an agreement listed in Annex I containing a provision listed in Annex II(e) for carriage wholly within the European Community shall be subject to European Community law.

Article 6

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex I shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the agreements listed in Annex I that are incompatible with paragraph 1 of this Article shall not be applied.

Article 7

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

Article 8

Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent.

Article 9

Entry into force and provisional application

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

3. Agreements and other arrangements between Member States and Malaysia which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

Article 10

Termination

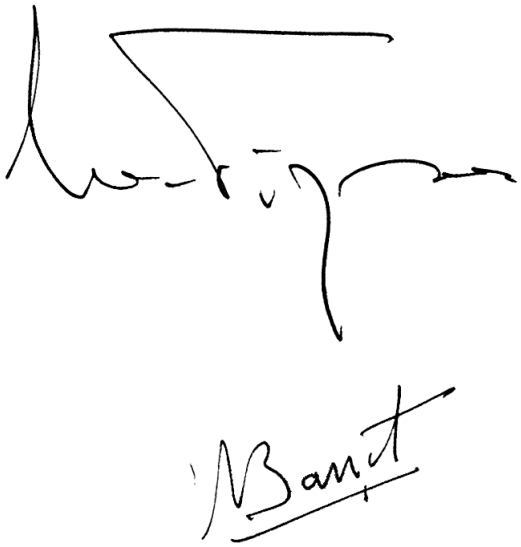
1. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

2. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

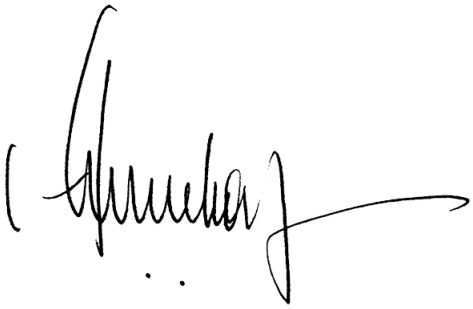
IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at Brussels in duplicate, on the twenty-second day of March in the year two thousand and seven, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Bahasa Melayu languages.

За Европейската общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen



За правителството на Малайзия
Por el Gobierno de Malasia
Za vládu Malajsie
For Malaysias regering
Für die Regierung Malaysias
Malaisia valitsuse nimel
Για την Κυβέρνηση της Μαλαισίας
For the Government of Malaysia
Pour le gouvernement de la Malaisie
Per il governo della Malaysia
Malaizijas valdības vārdā
Malaizijos Vyriausybės vardu
Malajzia Kormánya részéről
Għall-Gvern tal-Malażja
Voor de Regering van Maleisië
W imieniu Rządu Malezji
Pelo Governo da Malásia
Pentru Guvernul Malaeziei
Za vládu Malajzie
Za Vlado Malezije
Malesian hallituksen puolesta
För Malaysias regering



ANNEX I

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between Malaysia and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally;

— Agreement between the Austrian Federal Government and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 22 November 1976, hereinafter referred to 'Malaysia — Austria Agreement' in Annex II;

modified by Memorandum of Understanding done at Vienna on 23 August 1990;

last modified by Note Verbale done at Kuala Lumpur on 14 September 1994,

— Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de Malaisie, relatif aux services aériens entre leurs territoires respectifs et au-delà, signed at Kuala Lumpur on 26 February 1974, hereinafter referred to 'Malaysia — Belgium Agreement' in Annex II;

modified by Agreed Minutes done at Brussels on 25 July 1978;

last modified by Agreed Minutes done at Kuala Lumpur on 14 October 1993,

— Agreement between the Government of the Czechoslovak Socialist Republic and the Government of Malaysia for air services between and beyond their respective territories, signed at Prague on 2 May 1973, hereinafter referred to 'Malaysia — Czech Republic Agreement' in Annex II;

to be read together with Memorandum of Understanding signed at Prague on 2 May 1973,

— Agreement between the Government of the Kingdom of Denmark and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 19 October 1967, hereinafter referred to 'Malaysia — Denmark Agreement' in Annex II,

— Draft Air Services Agreement between the Government of the Kingdom of Denmark and the Government of Malaysia, initialled 1997 and 2002, hereinafter referred to 'Draft Malaysia — Denmark Agreement' in Annex II,

— Agreement between the Government of the Republic of Finland and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 6 November 1997, hereinafter referred to 'Malaysia — Finland Agreement' in Annex II;

to be read together with Memorandum of Understanding done at Kuala Lumpur on 15 September 1997,

— Accord entre le Gouvernement de la République française et le Gouvernement de Malaysia relatif aux transports aériens, signed at Kuala Lumpur on 22 May 1967, hereinafter referred to 'Malaysia — France Agreement' in Annex II,

— Agreement between the Federal Republic of Germany and Malaysia for Air Services between and beyond their respective territories, signed at Kuala Lumpur on 23 July 1968, hereinafter referred to 'Malaysia — Germany Agreement' in Annex II,

— Agreement between the Government of the Republic of Hungary and the Government of Malaysia for air services between and beyond their territories, signed at Kuala Lumpur on 19 February 1993, hereinafter referred to 'Malaysia — Hungary Agreement' in Annex II,

— Agreement between the Government of Ireland and the Government of Malaysia on air transport, signed at Shannon on 17 February 1992, hereinafter referred to 'Malaysia — Ireland Agreement' in Annex II,

— Agreement between the Government of Malaysia and the Government of Republic of Italy concerning air services, signed at Kuala Lumpur on 23 March 1995, hereinafter referred to 'Malaysia — Italy Agreement' in Annex II;

to be read together with Confidential Memorandum of Understanding done at Rome on 30 November 1994;

modified by Confidential Memorandum of Understanding done at Kuala Lumpur on 18 July 1997;

modified by Agreed Record of discussions between Malaysia and Italy, done at Rome on 18 May 2005;

last modified by Memorandum of Understanding done at London on 18 July 2006,

— Air Services Agreement between the Government of Malaysia and the Government of the Grand Duchy of Luxembourg, initialled at Kuala Lumpur on 19 July 2002, as Attachment II of Confidential Memorandum of Understanding, signed at Kuala Lumpur on 19 July 2002; hereinafter referred to 'Malaysia — Luxembourg Agreement' in Annex II,

— Agreement between the Government of Malta and the Government of Malaysia for air services between and beyond their respective territories, signed at Malaysia on 12 October 1993, hereinafter referred to 'Malaysia — Malta Agreement' in Annex II;

to be read together with Memorandum of Understanding done at Valletta on 28 February 1984,

— Agreement between the Government of the Kingdom of the Netherlands and the Government of Malaysia for air services between and beyond their respective territories, signed at Kuala Lumpur on 15 December 1966, hereinafter referred to 'Malaysia — Netherlands Agreement' in Annex II;

modified by Exchange of Notes of 25 March 1988;

modified by Confidential Memorandum of 23 October 1991;

modified by Exchange of Notes done at Kuala Lumpur on 10 May 1993;

last modified by Confidential Memorandum of Understanding attached as Appendix A to the Agreed Minutes done at Kuala Lumpur on 19 September 1995;

last amended by Exchange of Notes done at Kuala Lumpur on 23 May 1996,

— Agreement between the Government of the Polish People's Republic and the Government of Malaysia concerning civil air transport, signed at Kuala Lumpur on 24 March 1975, hereinafter referred to 'Malaysia — Poland Agreement' in Annex II;

to be read together with the Protocol to the Civil Air Transport Agreement between the Government of the Polish People's Republic and the Government of Malaysia, done at Kuala Lumpur on 5 July 1974,

— Agreement between the Government of Malaysia and the Portuguese Republic for air services between and beyond their respective territories, initialled and attached as Attachment II to the Memorandum of Understanding done at Kuala Lumpur on 19 May 1998, hereinafter referred to 'Malaysia — Portugal Agreement' in Annex II,

— Civil Air Transport Agreement between the Government of the Socialist Republic of Romania and the Government of Malaysia, done at Kuala Lumpur on 26 November 1982, hereinafter referred to 'Malaysia — Romania Agreement' in Annex II,

— Agreement between the Government of the Republic of Slovenia and the Government of Malaysia for air services between and beyond their respective territories, signed at Ljubljana on 28 October 1997, hereinafter referred to 'Malaysia — Slovenia Agreement' in Annex II,

— Air transport agreement between the Government of Spain and the Government of Malaysia, signed at Kuala Lumpur on 23 March 1993, hereinafter referred to 'Malaysia — Spain Agreement' in Annex II,

— Agreement between the Government of the Kingdom of Sweden and the Government of Malaysia for Air Services between and beyond their respective territories, signed at Kuala Lumpur on 19 October 1967, hereinafter referred to 'Malaysia — Sweden Agreement' in Annex II,

— Draft Air Services Agreement between the Government of the Kingdom of Sweden and the Government of Malaysia, initialled 1997 and 2002, hereinafter referred to 'Draft Malaysia — Sweden Agreement' in Annex II,

— Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for air services between and beyond their respective territories, signed at London on 24 May 1973, hereinafter referred to 'Malaysia — United Kingdom Agreement' in Annex II;

modified by Exchange of Notes done at Kuala Lumpur on 14 September 1993;

last modified by Memorandum of Understanding done at London on 18 January 2006;

(b) Air service agreements and other arrangements initialled or signed between Malaysia and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally;

— Agreement between the People's Republic of Bulgaria and the Government of Malaysia for air services between and beyond their respective territories, initialled at Sofia on 23 February 1984, hereinafter referred to 'Malaysia — Bulgaria Agreement' in Annex II; to be read together with the Confidential Memorandum of Understanding done at Kuala Lumpur on 2 October 1991,

— Draft Memorandum of Understanding attached as Appendix 1 to the Agreed Record done in Kuala Lumpur on 15 December 2004, modifying the Malaysia-United Kingdom Agreement.

ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 to 6 of this Agreement

(a) Designation by a Member State:

— Article 3(1-3) of the Malaysia — Austria Agreement;

— Article 2 of the Malaysia — Belgium Agreement;

— Article 3(1-3) of the Malaysia — Bulgaria Agreement;

— Article 3(1-3) of the Malaysia — Czech Republic Agreement;

— Article II of the Malaysia — Denmark Agreement;

— Article 3 of the Draft Malaysia — Denmark Agreement;

— Article 3(1-3) of the Malaysia — France Agreement;

— Article 3(1-3) of the Malaysia — Germany Agreement;

— Article 3 of the Malaysia — Finland Agreement;

— Article 3(1-3) of the Malaysia — Hungary Agreement;

— Article 3(1-2) of the Malaysia — Ireland Agreement;

— Article 4 of the Malaysia — Italy Agreement;

— Article 3 of the Malaysia — Malta Agreement;

— Article 3(1-3) of the Malaysia — Netherlands Agreement;

— Article 3 of the Malaysia — Poland Agreement;

— Article 3(1-3) of the Malaysia — Portugal Agreement;

— Article 3(1-3) of the Malaysia — Romania Agreement;

— Article 3(1-3) of the Malaysia — Slovenia Agreement;

— Article 3 of the Malaysia — Spain Agreement;

— Article II of the Malaysia — Sweden Agreement;

— Article 3 of the Draft Malaysia — Sweden Agreement;

— Article 3(1-3) of the Malaysia — United Kingdom Agreement;

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

— Article 3(4-7) of the Malaysia — Austria Agreement;

— Article 3 of the Malaysia — Belgium Agreement;

— Article 3(4-6) of the Malaysia — Bulgaria Agreement;

— Article 3(4-6) of the Malaysia — Czech Republic Agreement;

— Article III of the Malaysia — Denmark Agreement;

— Article 4 of the Draft Malaysia — Denmark Agreement;

— Article 4 of the Malaysia — Finland Agreement;

— Article 3(4-6) of the Malaysia — France Agreement;

— Article 3(4-6) of the Malaysia — Germany Agreement;

— Article 3(4-6) of the Malaysia — Hungary Agreement;

— Article 3(3-6) of the Malaysia — Ireland Agreement;

— Article 5 of the Malaysia — Italy Agreement;

— Article 4 of the Malaysia — Malta Agreement;

— Article 3(4-6) of the Malaysia — Netherlands Agreement;

— Article 4 of the Malaysia — Poland Agreement;

— Article 3(4-6) of the Malaysia — Portugal Agreement;

— Article 3(4-6) of the Malaysia — Romania Agreement;

— Article 3(4-6) of the Malaysia — Slovenia Agreement;

— Article 4 of the Malaysia — Spain Agreement;

— Article III of the Malaysia — Sweden Agreement;

— Article 4 of the Draft Malaysia — Sweden Agreement;

— Article 3(4-6) of the Malaysia — United Kingdom Agreement;

(c) Safety:

— Article 7 of the Malaysia — Belgium Agreement;

— Article 15 of the Draft Malaysia — Denmark Agreement;

— Article 9 of the Malaysia — Hungary Agreement;

— Article 10 of the Malaysia — Italy Agreement;

— Article 6 of the Malaysia — Luxembourg Agreement;

— Article 11 of the Malaysia — Portugal Agreement;

— Article 7 of the Malaysia — Romania Agreement;

— Article 11 of the Malaysia — Spain Agreement;

— Article 15 of the Draft Malaysia — Sweden Agreement;

— Article 9A of the Malaysia — United Kingdom Agreement;

(d) Taxation of aviation fuel:

— Article 4 of the Malaysia — Austria Agreement;

— Article 4 of the Malaysia — Belgium Agreement;

— Article 4 of the Malaysia — Bulgaria Agreement;

— Article 4 of the Malaysia — Czech Republic Agreement;

— Article IV of the Malaysia — Denmark Agreement;

— Article 6 of the Draft Malaysia — Denmark Agreement;

— Article 5 of the Malaysia — Finland Agreement;

— Article 4 of the Malaysia — France Agreement;

— Article 4 of the Malaysia — Germany Agreement;

— Article 4 of the Malaysia — Hungary Agreement;

— Article 11 of the Malaysia — Ireland Agreement;

— Article 6 of the Malaysia — Italy Agreement;

— Article 9 of the Malaysia — Luxembourg Agreement;

— Article 5 of the Malaysia — Malta Agreement;

— Article 4 of the Malaysia — Netherlands Agreement;

— Article 6 of the Malaysia — Poland Agreement;

— Article 4 of the Malaysia — Portugal Agreement;

— Article 4 of the Malaysia — Romania Agreement;

— Article 4 of the Malaysia — Slovenia Agreement;

— Article 5 of the Malaysia — Spain Agreement;

— Article IV of the Malaysia — Sweden Agreement;

— Article 6 of the Draft Malaysia — Sweden Agreement;

— Article 4 of the Malaysia — United Kingdom Agreement;

(e) Tariffs for carriage within the European Community:

— Article 7 of the Malaysia — Austria Agreement;

— Article 10 of the Malaysia — Belgium Agreement;

— Article 8 of the Malaysia — Bulgaria Agreement;

— Article 7 of the Malaysia — Czech Republic Agreement;

— Article VII of the Malaysia — Denmark Agreement;

— Article 11 of the Draft Malaysia — Denmark Agreement;

— Article 10 of the Malaysia — Finland Agreement;

— Article 7 of the Malaysia — France Agreement;

— Article 7 of the Malaysia — Germany Agreement;

— Article 7 of the Malaysia — Spain Agreement;

— Article 8 of the Malaysia — Hungary Agreement;

— Article 6 of the Malaysia — Ireland Agreement;

— Article 8 of the Malaysia — Italy Agreement;

— Article 11 of the Malaysia — Luxembourg Agreement;

— Article 10 of the Malaysia — Malta Agreement;

— Article 7 of the Malaysia — Netherlands Agreement;

— Article 10 of the Malaysia — Poland Agreement;

— Article 9 of the Malaysia — Portugal Agreement;

— Article 9 of the Malaysia — Romania Agreement;

— Article 8 of the Malaysia — Slovenia Agreement;

— Article VII of the Malaysia — Sweden Agreement;

— Article 11 of the Draft Malaysia — Sweden Agreement;

— Article 7 of the Malaysia — United Kingdom Agreement;

ANNEX III

List of other States referred to in Article 2 of this Agreement

(a) The Republic of Iceland (under the Agreement on the European Economic Area);

(b) The Principality of Liechtenstein (under the Agreement on the European Economic Area);

(c) The Kingdom of Norway (under the Agreement on the European Economic Area);

(d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).

COMMISSION

COMMISSION DECISION

of 27 March 2007

on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2007 under Regulation (EC) No 2037/2000 of the European Parliament and of the Council

(notified under document number C(2007) 1285)

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

(Text with EEA relevance)

(2007/211/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on Substances that Deplete the Ozone Layer [1], and in particular Article 3(1) thereof,

Whereas:

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

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

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

(4) Decision XV/8 of the Parties to the Montreal Protocol authorises the production and consumption necessary to satisfy essential uses of controlled substances listed in Annexes A, B and C (Group II and III substances) of the Montreal Protocol for laboratory and analytical uses as listed in Annex IV to the report of the Seventh Meeting of the Parties, subject to the conditions set out in Annex II to the report of the Sixth Meeting of the Parties, as well as Decisions VII/11, XI/15 and XV/5 of the Parties to the Montreal Protocol. Decision XVII/10 of the Parties to the Montreal Protocol authorises the production and consumption of the controlled substance listed in Annex E of the Montreal Protocol necessary to satisfy laboratory and analytical uses of methyl bromide.

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

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

[1] OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

[2] www.unep.org/ozone/Information_for_the_Parties/3Bi_dec12-2-3.asp

addition, Article 4(6) of Regulation (EC) No 2037/2000 prevents CFC-MDI products being imported and placed on the market unless the CFCs in these products are considered essential under the conditions described in Article 3(1).

(7) The Commission has published a Notice [1] on the 22 July 2006 to those companies in the Community of 25 Member States that request consideration by the Commission for the use of controlled substances for essential uses in the Community in 2007 and has received declarations on intended essential uses of controlled substances for 2007.

(8) For the purpose of ensuring that interested companies and operators may continue to benefit in due time from the licensing system, it is appropriate that the present decision shall apply from 1 January 2007.

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

HAS ADOPTED THIS DECISION:

Article 1

1. The quantity of controlled substances of Group I (chlorofluorocarbons 11, 12, 113, 114 and 115) subject to Regulation (EC) No 2037/2000 which may be used for essential medical uses in the Community in 2007 shall be 316 257,00 ODP [2] kilograms.

2. The quantity of controlled substances of Group I (chlorofluorocarbons 11, 12, 113, 114 and 115) and Group II (other fully halogenated chlorofluorocarbons) subject to Regulation (EC) No 2037/2000 which may be used for essential laboratory uses in the Community in 2007 shall be 65 900,9 ODP kilograms.

3. The quantity of controlled substances of Group III (halons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory use in the Community in 2007 shall be 718,7 ODP kilograms.

4. The quantity of controlled substances of Group IV (carbon tetrachloride) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2007 shall be 147 110 436 ODP kilograms.

5. The quantity of controlled substances of Group V (1,1,1-trichloroethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the European Union in 2007 shall be 672,0 ODP kilograms.

6. The quantity of controlled substances of Group VI (methyl bromide) subject to Regulation (EC) No 2037/2000 that may be used for laboratory and analytical uses in the Community in 2007 shall be 150,0 ODP kilograms.

7. The quantity of controlled substances of Group VII (hydrobromofluorocarbons) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2007 shall be 3,52 ODP kilograms.

8. The quantity of controlled substances of group IX (bromochloromethane) subject to Regulation (EC) No 2037/2000 that may be used for essential laboratory uses in the Community in 2007 shall be 12 048 ODP kilograms.

Article 2

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

Article 3

During the period 1 January to 31 December 2007 the following rules shall apply:

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

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

3. The allocation of essential laboratory use quotas for halons shall be to the companies indicated in Annex IV.

[1] OJ C 171, 22.7.2006, p. 27.
[2] Ozone-depleting potential.

4. The allocation of essential laboratory use quotas for carbon tetrachloride shall be to the companies indicated in Annex V.

5. The allocation of essential laboratory use quotas for 1,1,1-trichloroethane shall be to the companies indicated in Annex VI.

6. The allocation of laboratory and analytical critical use quotas for methyl bromide shall be to the companies indicated in Annex VII.

7. The allocation of essential laboratory use quotas for hydrobromofluorocarbons shall be to the companies indicated in Annex VIII.

8. The allocation of essential laboratory use quotas for bromochloromethane shall be to the companies indicated in Annex IX.

9. The essential use quotas for chlorofluorocarbons 11, 12, 113, 114 and 115, other fully halogenated chlorofluorocarbons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons and bromochloromethane shall be as set out in Annex X.

Article 4

This Decision shall apply from 1 January 2007 and shall expire on 31 December 2007.

Article 5

This Decision is addressed to the following undertakings:

3M Health Care Ltd 3M House Morley Street Loughborough Leicestershire LE11 1EP United Kingdom	Bespak Europe Ltd North Lynn Industrial Estate Bergen Way, King's Lynn Norfolk PE30 2JJ United Kingdom
Boehringer Ingelheim GmbH Binger Straße 173 D-55216 Ingelheim am Rhein	Chiesi Farmaceutici SpA Via Palermo 26/A I-43100 Parma (PR)
Inyx Pharmaceuticals Ltd Astmoor Industrial Estate 9 Arkwright Road Runcorn Cheshire WA7 1NU United Kingdom	IVAX Ltd Unit 301, Waterford Industrial Estate Weterford, Ireland
Laboratorio Aldo Union S.A. Baronesa de Maldá 73 Esplugues de Llobregat E-08950 Barcelona	SICOR SpA Via Terrazzano 77 I-20017 Rho (MI)
Valeas SpA Pharmaceuticals Via Vallisneri, 10 I-20133 Milano (MI)	Valvole Aerosol Research Italiana (VARI) SpA — LINDAL Group Italia Via del Pino, 10 I-23854 Olginate (LC)
Acros Organics bvba Janssen Pharmaceuticalaan 3a B-2440 Geel	Airbus France 316, route de Bayonne F-31300 Toulouse
Bie & Berntsen A-S Transformervej 8 DK-2730 Herlev	Carlo Erba Reactifs-SDS Z.I. de Valdonne, BP 4 F-13124 Peypin
Eras Labo 222, RN 90 F-38330 Saint-Nazaire-les-Eymes	Harp International Gellihirion Industrial Estate, Rhondda, Cynon Taff, UK-Pontypridd CF37 5SX
Health Protection Inspectorate-Laboratories Paldiski mnt 81 EE-10617 Tallinn	Honeywell Specialty Chemicals Wunstorfer Straße 40 Postfach 10 02 62 D-30918 Seelze

Institut scientifique de service public (ISSeP) Rue du Chéra, 200 B-4000 Liège	Ineos Fluor Ltd PO Box 13, The Heath Runcorn, Cheshire WA7 4QF United Kingdom
LGC Promochem GmbH Mercatorstr. 51 D-46485 Wesel	Mallinckrodt Baker BV Teugseweg 20 7418 AM Deventer Nederland
Mebrom NV Assenedestraat 4 B-9940 Rieme Ertvelde	Merck KgaA Frankfurter Straße 250 D-64271 Darmstadt
Mikro+Polo d.o.o. Zagrebška 22 SI-2000 Maribor	Ministry of Defense Directorate Material RNL Navy P.O. Box 2070 2500 ES The Hague Nederland
Panreac Química S.A. Pol. Ind. Pla de la Bruguera C/ Garraf 2 E-08211 Castellar del Vallès, Barcelona	Sanolabor d.d. Leskoškova 4 SI-1000 Ljubljana
Sigma Aldrich Chimie SARL 80, rue de Luzais L'Isle d'Abeau-Chesnes F-38297 Saint-Quentin-Fallavier	Sigma Aldrich Laborchemikalien Wunstorfer Straße 40 Postfach 10 02 62 D-30918 Seelze
Sigma Aldrich Logistik GmbH Riedstraße 2 D-89555 Steinheim	Tazzetti Fluids Srl Corso Europa, 600/a I-10088 Volpiano (TO)
VWR I.S.A.S. 201, rue Carnot F-94126 Fontenay-sous-Bois	

Done at Brussels, 27 March 2007.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX I

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

Table 1

Short acting beta agonist bronchodilators

Country	Salbutamol	Terbutaline	Fenoterol	Orciprenaline	Reproterol	Carbuterol	Hexoprenaline	Pirbuterol	Clenbuterol	Bitolterol	Procaterol
Austria	X	X	X	X	X	X	X	X	X	X	X
Belgium	X	X	X	X	X	X	X	X	X	X	X
Cyprus	X	X	X	X	X	X	X	X	X	X	X
Czech Republic	X	X	X	X	X	X	X	X	X	X	X
Denmark	X										
Estonia	X	X	X	X	X	X	X	X	X	X	X
Finland	X	X	X	X	X	X	X	X	X	X	X
France	X	X	X	X	X	X	X	X	X	X	X
Germany	X	X	X	X	X	X	X	X	X	X	X
Greece	X	X	X	X	X	X	X	X	X	X	X
Hungary	X	X	X	X	X	X	X	X	X	X	X
Ireland	X	X	X	X	X	X	X	X	X	X	X
Italy	X	X	X	X	X	X	X	X	X	X	X
Latvia	X	X	X	X	X	X	X	X	X	X	X
Lithuania	X	X	X	X	X	X	X	X	X	X	X
Luxembourg	X	X	X	X	X	X	X	X	X	X	X
Malta	X	X	X	X	X	X	X	X	X	X	X
Netherlands	X	X	X	X	X	X	X	X	X	X	X
Poland	X										
Portugal	X	X	X	X	X	X	X	X	X	X	X
Norway	X	X	X	X	X	X	X	X	X	X	X
Slovakia	X	X	X	X	X	X	X	X	X	X	X
Slovenia	X	X	X	X	X	X	X	X	X	X	X
Spain	X	X	X	X	X	X	X	X	X	X	X
Sweden	X	X	X	X	X	X	X	X	X	X	X
United Kingdom	X										

Table 2

Inhaled steroids

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

Table 3

Non steroidal anti inflammatories

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

Table 4

Anticholinergic bronchodilators

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

Table 5

Long acting beta agonist bronchodilators

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

Table 6

Combinations of active ingredients in a single MDI

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

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

ANNEX II

Essential medical uses

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

3 M Health Care Ltd (UK)
Bespak Europe Ltd (UK)
Boehringer Ingelheim GmbH (DE)
Chiesi Farmaceutici SpA (IT)
Inyx Pharmaceuticals Ltd (UK)
Ivax Ltd (IE)
Laboratorio Aldo Union SA (ES)
SICOR SpA (IT)
Valeas SpA Pharmaceuticals (IT)
Valvole Aerosol Research Italiana (VARI) SpA — LINDAL Group Italia (IT)

ANNEX III

Essential laboratory uses

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

Acros Organics bvba (BE)
Bie & Berntsen A-S (DK)
Carlo Erba Reactifs-SDS (FR)
Harp International (UK)
Honeywell Specialty Chemicals (DE)
Ineos Fluor (UK)
LGC Promochem (DE)
Mallinckrodt Baker (NL)
Merck KGaA (DE)
Mikro+Polo d.o.o. (SI)
Panreac Química S.A. (ES)
Sanolabor d.d. (SI)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Logistik (DE)
Tazzetti Fluids (IT)
VWR I.S.A.S. (FR)

ANNEX IV

Essential laboratory uses

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

Airbus France (FR)
Eras Labo (FR)
Ineos Fluor (UK)
Ministry of Defense (NL)
Sigma Aldrich Chimie (FR)

ANNEX V

Essential laboratory uses

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

Acros Organics (BE)
Bie & Berntsen A-S (DK)
Carlo Erba Reactifs-SDS (FR)
Health Protection Inspectorate-Laboratories (EE)
Honeywell Specialty Chemicals (DE)
Institut scientifique de service public (ISSeP) (BE)
Mallinckrodt Baker (NL)
Merck KGaA (DE)
Mikro+Polo d.o.o. (SI)
Panreac Química S.A. (ES)
Sanolabor d.d. (SI)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Laborchemikalien (DE)
Sigma Aldrich Logistik (DE)

ANNEX VI

Essential laboratory uses

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

Acros Organics (BE)
Bie & Berntsen A-S (DK)
Merck KGaA (DE)
Mikro+Polo d.o.o. (SI)
Panreac Química S.A. (ES)
Sanolabor d.d. (SI)
Sigma Aldrich Chimie (FR)
Sigma Aldrich Logistik (DE)

ANNEX VII

Laboratory and analytical critical uses

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

Mebrom NV (BE)
Sigma Aldrich Logistik (DE)

ANNEX VIII

essential laboratory uses

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

Ineos Fluor (UK)
Sigma Aldrich Chimie (FR)

ANNEX IX

Essential laboratory uses

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

Ineos Fluor (UK)
Sigma Aldrich Logistik (DE)

ANNEX X

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

COMMISSION DECISION

of 2 April 2007

amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina

(notified under document number C(2007) 1428)

(2007/212/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], and in particular Article 15(1) thereof,

Whereas:

(1) Under Directive 2000/29/EC, plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in non-European countries, other than Mediterranean countries, Australia, New Zealand, Canada and the continental states of the United States of America, may not in principle be introduced into the Community. However, that Directive permits derogations from that rule, provided that it is established that there is no risk of spreading harmful organisms.

(2) Commission Decision 2003/248/EC [2] authorises Member States to provide for temporary derogations from certain provisions of Directive 2000/29/EC in order to permit the import of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

(3) The circumstances justifying this derogation are still valid and there is no new information giving cause for revision of the specific conditions.

(4) The Member States should therefore be authorised to permit the introduction into their territory of such plants subject to specific conditions for a further limited period.

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

HAS ADOPTED THIS DECISION:

Article 1

In Article 1, second paragraph, of Decision 2003/248/EC the following points (e) to (h) are added:

'(e) 1 June 2007 to 30 September 2007;

(f) 1 June 2008 to 30 September 2008;

(g) 1 June 2009 to 30 September 2009;

(h) 1 June 2010 to 30 September 2010.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 2 April 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

[1] OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2006/35/EC (OJ L 88, 25.3.2006, p. 9).

[2] OJ L 93, 10.4.2003, p. 28.

COMMISSION DECISION

of 2 April 2007

amending Decision 2007/31/EC laying down transitional measures as regards the dispatch of certain products of the meat and milk sectors covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council from Bulgaria to other Member States

(notified under document number C(2007) 1443)

(Text with EEA relevance)

(2007/213/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 42 thereof,

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

Whereas:

(1) Commission Decision 2007/31/EC [2] lays down transitional measures as regards the dispatch from Bulgaria to other Member States of certain products of the meat and milk sectors, covered by Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [3]. Those products should be dispatched from Bulgaria only if obtained in a processing establishment listed in the Annex to that Decision.

(2) Bulgaria is carrying out an assessment of all processing establishments in those sectors. In that context, Bulgaria has requested the deletion of certain establishments listed in the Annex to Decision 2007/31/EC. Therefore, the list in that Annex should be updated accordingly. For the sake of clarity, it is appropriate to replace it by the Annex to this Decision.

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

HAS ADOPTED THIS DECISION:

Article 1

The Annex of Decision 2007/31/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 2 April 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

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

[2] OJ L 8, 13.1.2007, p. 61.

[3] OJ L 139, 30.4.2004, p. 55, corrected by OJ L 226, 25.6.2004, p. 22. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

'ANNEX

List of processing establishments authorised to dispatch products of the sectors referred to in Article 1 from Bulgaria to the other Member States

MEAT ESTABLISHMENTS

No	Vet. No	Name and address of establishment	Site of premises concerned
1	BG 0401028	"Mesokombinat-Svishtov" EOOD	gr. Svishtov ul. "33-ti Svishtovski polk" 91
2	BG 1201011	"Mesotsentrala — Montana" OOD	gr. Montana bul. "Treti mart" 216
3	BG 1204013	"Kompas" OOD	s. Komarevo obsht. Berkovitsa
4	BG 1604039	"Evropimel" OOD	gr. Plovdiv bul. "V. Aprilov"
5	BG 1701003	"Mesokombinat — Razgrad" AD	gr. Razgrad, Industrialen kvartal, ul. "Beli Lom" 1
6	BG 1901021	"Mekom" AD	gr. Silistra Industrialna zona — Zapad
7	BG 2204099	"Tandem-V" OOD	gr. Sofia bul. "Iliantsi" 23
8	BG 2501002	"Tandem — Popovo" OOD	s. Drinovo obsht. Popovo

POULTRY MEAT ESTABLISHMENTS

No	Vet. No	Name and address of establishment	Site of premises concerned
1	BG 1202005	"Gala M" OOD	gr. Montana
2	BG 1602001	"Galus — 2004" EOOD	s. Hr. Milevo obl. Plovdiv
3	BG 1602045	"Deniz 2001" EOOD	gr. Parvomay ul. "Al. Stamboliiski" 23
4	BG 1602071	"Brezovo" AD	gr. Brezovo ul. "Marin Domuschiev" 2
5	BG 2402001	"Gradus-1" OOD	gr. Stara Zagora kv. "Industrialen"
6	BG 2802076	"Alians Agrikol" OOD	s. Okop obl. Yambolska

MILK PROCESSING ESTABLISHMENTS

No	Vet. No	Name and address of establishment	Site of premises concerned
1	BG 0412010	"Bi Si Si Handel" OOD	gr. Elena ul. "Treti Mart" 19
2	BG 0512025	"El Bi Bulgarikum" EAD	"El Bi Bulgarikum" EAD
3	BG 0612012	OOD "Zorov — 97"	gr. Vratsa
4	BG 0612027	"Mlechen ray — 99" EOOD	gr. Vratsa
5	BG 0612043	ET "Zorov-91-Dimitar Zorov"	gr. Vratsa
6	BG 1112006	"Kondov Ekoproduktsia" OOD	s. Staro selo
7	BG 1312001	"Lakrima" AD	gr. Pazardzhik
8	BG 1912013	"ZHOSI" OOD	s. Chernolik
9	BG 1912024	"Buldeks" OOD	s. Belitsa
10	BG 2012020	"Yotovi" OOD	gr. Sliven kv. "Rechitsa"
11	BG 2012042	"Tirbul" EAD	gr. Sliven Industrialna zona
12	BG 2212001	"Danon — Serdika" AD	gr. Sofia ul. "Ohridsko ezero" 3
13	BG 2212003	"Darko" AD	gr. Sofia ul. "Ohridsko ezero" 3
14	BG 2212022	"Megle-Em Dzhey" OOD	gr. Sofia ul. "Probuda" 12–14
15	BG 2512020	"Mizia-Milk" OOD	gr. Targovishte Industrialna zona
16	BG 2612047	"Balgarsko sirene" OOD	gr. Haskovo bul. "Saedinenie" 94'

COMMISSION DECISION

of 3 April 2007

terminating the anti-dumping proceeding concerning imports of pentaerythritol originating in the People's Republic of China, Russia, Turkey, Ukraine and the United States of America

(2007/214/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 2 December 2005, the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by CEFIC (European Chemical Industry Council) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of pentaerythritol.

(2) This complaint contained evidence of dumping of pentaerythritol from the People's Republic of China (PRC), Ukraine, Russia, Turkey and the United States of America (USA) and of material injury resulting there from, which was considered sufficient to justify the opening of a proceeding.

(3) On 17 January 2006, the proceeding was initiated by the publication of a notice of initiation [2] in the *Official Journal of the European Union*.

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the Community producers, the exporting producers, importers, users, suppliers and associations known to be concerned and the representatives of the exporting countries concerned of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

(6) In order to allow exporting producers in the PRC and Ukraine to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese and Ukrainian authorities and to the exporting producers in those two countries known to be concerned. One company in the PRC requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they do not meet the conditions for MET. The sole Ukrainian producer requested only IT.

(7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation for exporters/producers in the PRC. However, since only one company cooperated and indicated its willingness to be included in the sample, sampling was not required.

(8) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from three Community producers, one of them having two production plants, three unrelated importers, five users, one supplier, one exporting producers in the PRC, one exporting producer in Turkey, one exporting producer in Ukraine and one producer which accepted to cooperate in a possible analogue country, Chile.

[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 11, 17.1.2006, p. 4.

(9) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers*

— Perstorp Specialty Chemicals AB, Perstorp, Sweden,

— Perstorp Chemicals GmbH, Arnsberg, Germany,

— Chemza AS Strazske, Strazske, Slovakia,

— S.A. Polialco, Barcelona, Spain;

(b) *Exporting producers in the PRC*

— Hubei Yihua Chemical Industry Co., Ltd., Yichang;

(c) *Exporting producers in Ukraine*

— Rubezhnoye State Chemical Plant (Zarja), Rubezhnoye;

(d) *Exporting producers in Turkey*

— MKS Marmara Entegre Kimya Sanayi A.Ş., Beşiktaş.

(10) In view of the need to establish a normal value for exporting producers in the PRC and Ukraine to which MET might not be granted, a verification to establish normal value on the basis of data from a possible analogue country, Chile in this case, took place at the premises of the following company:

— Oxiquim, Viña del Mar;

(e) *Industrial user in the Community*

— Nuplex Resins BV, Bergen op Zoom, The Netherlands.

3. **Investigation period**

(11) The investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product concerned is pentaerythritol (penta), classified under CN code 2905 42 00. It is an odourless, white, crystalline, solid compound, produced from formaldehyde and acetaldehyde, and the most widely used polyol for production of alkyd resins around the world. Main raw materials used are methanol, which is used for the production of formaldehyde, acetaldehyde and sodium hydroxide.

(13) Alkyd resins, used mainly in coatings account for approximately 60 to 70 % of the end use of the product concerned. Other applications include synthetic lubricants for refrigeration compressors, rosin esters used in adhesives as tackifiers and pentaerythritol tetranitrate (PETN).

(14) There are a three main grades produced worldwide, the most commonly produced being penta mono grade. The other two grades are technical and nitration grade. The grade depends on the degree of purity, which is defined by the content of mono- and di-pentaerythritol. For example penta mono grade has a monopentaerythritol content of 98 % compared to 87 % in the technical grade. The investigation has shown that the production process is largely the same for the most common grades of penta and thus also the cost of production was found to be identical for all different grades. Moreover, it was found that all grades share the same basic chemical and physical characteristics and are basically used for the same purposes.

(15) Penta mono and penta technical grades are in a few cases also supplied in a micronized form, which means that the product is submitted to milling after the production process. Chemically speaking micronized penta is exactly the same product but due to the milling, it has a slightly higher cost and sales price.

(16) The Turkish exporting producer argued against the use of only one type of penta, which combines the three different grades: mono, technical and nitration grade. It claimed that in particular the micronized penta should be considered as a different type. The latter claim could be accepted and micronized penta, which represents a very small part of the Community industry's production and which was not found to be exported to the Community from any of the countries concerned, was disregarded from the product scope in the framework of this investigation. However, it was considered that there was no reason to separate the three different grades produced into different types, since their cost and price levels are identical. It should also be stressed that penta is to a large extent a commodity, perceived by the end-customer as one and the same product. Therefore this claim was rejected and one single type was maintained.

(17) Based on the physical, chemical and technical characteristics, the production process and the substitutability of the different types of the product from the perspective of the user, all grades of penta is considered to constitute a single product for the purpose of the proceeding.

2. **Like product**

(18) The product concerned and the penta produced and sold on the domestic market of the countries concerned, and on the domestic market of Japan, which was initially considered to serve as analogue country, as well as the penta produced and sold in the Community by the Community industry were found to have the same basic chemical and physical characteristics and uses.

(19) It was therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **General methodology**

(20) The general methodology is described below. The subsequent presentation of the findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

2. **Normal value**

(21) In accordance with Article 2(2) of the basic Regulation, it was first examined for each cooperating exporting producer whether its domestic sales of penta were representative, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume of the producer to the Community.

(22) The Commission subsequently examined whether the domestic sales of penta, sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of this product. In cases where the sales volume of penta, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume, and where the weighted average price was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of penta represented 80 % or less of the total sales volume of that product, or where the weighted average price was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume of penta.

(23) In cases where the volume of profitable sales of penta represented less than 10 % of the total sales volume of that product, it was considered that the product was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. Wherever domestic prices of penta sold by a producer could not be used in order to establish normal value, another method had to be applied.

(24) In accordance with Article 2(3) of the basic Regulation, normal value was constructed on the basis of each producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative (SG&A) expenses and for profit.

(25) Therefore, the Commission examined whether the SG&A incurred and the profit realised by each of the producers concerned on the domestic market constituted reliable data.

(26) Actual domestic SG&A expenses were considered reliable where the domestic sales volume of the company concerned could be regarded as representative as defined in Article 2(2) of the basic Regulation. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

(27) In all cases where these conditions were not met, the Commission examined whether data of other exporters or producers in the domestic market of the country of origin could be used in accordance with Article 2(6)(a) of the basic Regulation. Where reliable data were only available for one exporting producer, no average as set out in Article 2(6)(a) of the basic Regulation could be established and it was examined whether the conditions of Article 2(6)(b) were fulfilled, i.e. the use of data with regard to the production and sales of the same general category of products for the exporter or producer in question. Where these data were not available or were not provided by the producer, SG&A and profits were established in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method.

3. **Export price**

(28) In all cases when sales of the product concerned were exported to independent customers in the Community the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(a) *Comparison*

(29) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(b) *Dumping margin*

(30) According to Article 2(11) and (12) of the basic Regulation the dumping margin for each exporting producer was established on the basis of a comparison between the weighted average normal value with the weighted average export price.

4. **Turkey**

(31) A questionnaire reply was received from the sole known exporting producer.

(a) *Normal value*

(32) The producer had overall representative sales of the like product on the domestic market and all sales could be regarded as having been made in the ordinary course of trade.

(33) Moreover, it was found that the domestic prices varied significantly according to the month of sale.

(34) Given the above, and in order to properly reflect the normal value of the product concerned during the IP, it was considered appropriate in this particular case to determine a monthly normal value for the product concerned.

(35) For each month, domestic prices were considered as an appropriate basis for the establishment of the normal value. Therefore, normal value was based on the actual prices paid or payable, by independent customers in the Turkish domestic market during each month of the IP.

(b) *Export price*

(36) In all cases the product concerned was sold to independent customers in the Community. Consequently the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(37) In order to ensure a proper comparison given the variations of normal value during the IP, it was considered appropriate to establish a weighted average export price per month during the IP.

(c) *Comparison*

(38) Adjustments were made in respect of differences in transportation, insurance, loading and credit costs, as well as for discounts, commissions and rebates.

(39) It was found that the reported insurance costs, rebates granted and packing charges slightly deviated from the data as contained in the bookkeeping of the exporting producer. The amounts of the adjustments were therefore corrected accordingly.

(40) The investigation further revealed that the exporting producer paid a significant amount for consultancy services. The company claimed that such fees do not justify for an adjustment and should therefore neither be deducted from the export price nor from the domestic sales price. However, it was found that this expense had an impact on costs and prices of the product concerned and therefore affected price comparability. Therefore the respective amount was allocated on basis of quantity to the sales in question (domestic sales, EC sales and sales to third countries) and deducted from the sales prices as an adjustment within the meaning of Article 2(10)(i) of the basic Regulation.

(41) Regarding credit costs it was found that the reported interest rate for the IP did not reflect the actual short term financing cost incurred by the company. Therefore, credit costs were adjusted accordingly.

(d) *Dumping margin*

(42) Given the existence of a clear pattern of export prices differing by time period, it was considered that such element should be taken into account in the calculation of the dumping margin. Therefore, the comparison was made on a monthly basis between the weighted average export price and the weighted average normal value for the product concerned.

(43) On the basis of the above, the dumping margin found for the cooperating exporting producer, expressed as a percentage of the cif net free-at-Community-frontier price, was below the *de minimis* threshold set out in Article 9(3) of the basic Regulation.

(44) It is noted that the dumping margin would also be *de minimis*, if the comparison had been carried out between a weighted average normal value and individual export transactions. However, such a comparison was not found to be appropriate. While there was indeed a pattern of export prices which differed significantly per month (a difference up to 20 % of the export price could be observed between different months of the IP — with significant lower levels from May to October 2005), monthly normal values followed the same trend. This development was due to the fact that the main raw materials, accounting for a significant proportion of the cost of production of the product concerned, followed the same evolution. Thus, the method described in recital 42 reflects the full amount of dumping taking place.

(45) Since the cooperating exporting producer appeared to account for all Turkish exports of the product concerned to the Community, there was no reason to believe that any exporting producer abstained from cooperating.

(46) Consequently, the proceeding should be terminated with regard to Turkey, as determined by Article 9(3) of the basic Regulation.

5. **People's Republic of China (PRC) and Ukraine**

(a) *Market economy treatment (MET)*

(47) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and Ukraine, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(48) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

(i) business decisions and costs are made in response to market conditions and without significant State interference;

(ii) firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

(iii) there are no significant distortions carried over from the former non-market economy system;

(iv) bankruptcy and property laws guarantee legal certainty and stability;

(v) exchange rate conversions are carried out at market rates.

(49) One exporting producer in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadline. The Commission sought and verified at the premises of this company all necessary information submitted in its MET application as deemed necessary.

(50) The investigation revealed that the MET claim had to be rejected for this company as the company did not meet the requirements of the above-mentioned criteria one, two and three.

(51) Due to the fact that the main shareholders are State-owned enterprises and that the directors appointed by these shareholders hold a disproportionate and controlling number of positions in the Board of Directors, it was found that the State could exert significant influence on the company's business decisions regarding day to day management as well as on profit distribution, issuing of new shares, capital increases, amendment of the Articles of Association and the dissolution of the company, and that therefore, such decisions were not made in response to market signals.

(52) In addition, the company's accounts did not reflect the true financial situation since the company made some reallocations for the depreciation of fixed assets without justification, which constitutes a violation of IAS 1-13. This, together with the fact that the auditors of the company did not express any reservations or explanations about the practices found, constituted a clear violation of international accounting standards.

(53) With regard to the valuation of initial assets, the company was not able to provide any explanation as to the basis on which such a valuation was made. Finally, the company could not provide any proof of payment of the rent of the office building. Both deficiencies indicated that there were significant distortions carried over from the former non-market economy system.

(54) The Advisory Committee was consulted and the parties directly concerned were given an opportunity to comment on the above findings. However, no comments were received. The Community industry was also given the opportunity to comment, and agreed with the MET determination.

(55) Following the above, it was concluded that MET should not be granted to the Chinese exporting producer.

(b) *Individual treatment (IT)*

(56) Pursuant to Article 2(7)(a) of the basic Regulation a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation for receiving individual treatment.

(57) The Chinese exporting producer to which MET could not be granted also claimed IT in the event it was not granted MET. However, as described in recital 51, the State was found to exert, via its representatives in the company's Board of Directors, significant influence with regard to export prices and quantities, as well as conditions and terms of sale, in such a way that these could not be considered to be freely determined. In addition, such State interference, relating to the day-to-day management of the company, meant that the risk of circumvention could not be excluded, if this exporter was to be given an individual duty rate.

(58) Consequently, and since it was found that the Chinese exporting producer did not meet all of the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation, IT had to be rejected.

(59) The sole cooperating exporting producer in Ukraine, not having claimed MET, requested only IT. However, there is no other known producer of penta in Ukraine, which is confirmed by the fact that exports of penta from Ukraine to the Community reported by the cooperating exporting producer were equivalent to the quantities indicated by Eurostat. Therefore, it was considered unnecessary to make a determination whether this exporting producer should be granted IT since a single country-wide duty would be imposed in any event.

(c) *Normal value*

(i) Analogue country

(60) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or a constructed normal value in an analogue country.

(61) In the notice of initiation, the Commission indicated its intention to use Japan as an appropriate analogue country for the purpose of establishing normal value for the PRC and Ukraine and interested parties were invited to comment on this. No interested parties objected to this proposal.

(62) The Commission contacted the known producer of penta in Japan and asked for its cooperation in the present proceeding. However, no cooperation could be obtained.

(63) Initially, countries concerned by the present proceeding were not selected because there was either no cooperation or because their domestic market could be distorted because of the dumping being practised. Therefore the Commission sought cooperation from all other known producers in Chile, Taiwan, Brazil and the Republic of Korea, the other countries where production of penta takes place.

(64) Only the producer in Chile agreed to cooperate. Although there was just one producer in Chile, the Chilean domestic market of penta was subject to significant competition during the IP due to imports from China, Taiwan, USA, Sweden and the Republic of Korea, as there are neither quotas nor any other quantitative import restrictions in place.

(65) In view of the foregoing it was provisionally concluded that Chile was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(66) A questionnaire was therefore sent to this producer requesting information on domestic sales prices and cost of production of the like product and the data submitted in its reply were verified on the spot.

(67) However, the investigation revealed that no dumping was practised by the cooperating Turkish exporting producer. There were no apparent distortions of the Turkish market of penta and the production process and raw materials used by the Turkish producer are more similar to those of the Chinese and Ukrainian exporting producers.

(68) Therefore, it was concluded that Turkey could be regarded as a reasonable analogue country for the purpose of this proceeding.

(ii) Determination of normal value in the analogue country

(69) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country.

(70) Normal value was determined as described above in recitals 32 to 35.

(d) *Export prices*

(71) All export sales to the Community by the Chinese and Ukrainian exporting producers were made directly to independent customers in the Community and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

(72) Since an average normal value for the whole IP was found not to be representative, for the reasons explained above in recitals 33 to 37, monthly average export prices were established.

(e) *Comparison*

(73) Adjustments were made in respect of transport, insurance, handling and ancillary costs, packing, credit and bank charges where applicable and justified.

(f) *Dumping margins*

(74) For each of the exporting producers not granted MET, the monthly weighted average normal value established for the analogue country was compared with the monthly weighted average export price to the Community, as provided under Article 2(11) of the basic Regulation.

(75) In the case of PRC, the volume of penta exported by the cooperating exporting producer represented significantly less than 70 % of the total volume of penta imported during the IP from that country, according to Eurostat data. Thus, for non-cooperating exporting producers in the PRC, the dumping margin had to be established on the basis of facts available, pursuant to Article 18 of the basic Regulation. Hence, it was considered necessary that the dumping margin be determined on the basis of the highest dumped transactions for the cooperating producer. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

(76) Therefore a countrywide average dumping margin was calculated using as a weighing factor the cif-value of both group of exporters, i.e. cooperators and non-cooperators.

(77) In the case of Ukraine, as explained above in recital 59, due to the high level of cooperation it was considered appropriate to establish the country-wide dumping margin at the same level as the one found for the cooperating exporting producer.

(78) The dumping margin, expressed as a percentage of the cif import price at the Community border, duty unpaid, is as follows:

Country	Dumping margin
PRC	18,7 %
Ukraine	10,3 %

6. **Russia and the United States of America (USA)**

(79) None of the producers in Russia and the United States of America cooperated in this investigation. Consequently, and in the absence of any other more appropriate basis, the country-wide dumping margin was provisionally established on the basis of facts available in accordance with Article 18 of the basic Regulation, i.e. data derived from the complaint.

(80) The dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are as follows:

Country	Dumping margin
Russia	25 %
USA	54 %

D. **INJURY**

1. **Community production**

(81) The investigation established that the like product is manufactured by five producers in the Community, one of which has two production sites. The complaint was lodged on behalf of two of these producers. After the initiation, a third producer decided to support the proceeding by cooperating fully in the investigation. Of the remaining two producers, both of which supplied general data on production and sales, both expressed their support for the proceeding.

(82) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding together the production volume of the three cooperating Community producers and the production volume of the two other producers, according to the data supplied by them. On this basis, the total Community production of the like product amounted to 115 609 tonnes in the IP.

2. **Definition of the Community industry**

(83) The production of the three Community producers that fully cooperated in the investigation represents 94 % of the like product produced in the Community. They are therefore considered to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. **Community consumption**

(84) Community consumption was established on the basis of the sales volumes of the known producers in the Community plus imports from all third countries under the relevant CN code according to Eurostat. In this respect it should be noted that only one of the two non-complainant Community producers provided sales figures for the whole period considered. Therefore sales of the other producer were not taken into account, as they were only provided for the IP. Since these sales volumes were low, excluding them does not affect the overall picture. As shown in the table below, the Community consumption of the product concerned and the like product decreased by 12 % over the period considered. The demand was stable between 2003 and 2004 whereas in the IP it dropped by 9 % compared to the previous year.

	2002	2003	2004	IP
Community consumption (tonnes)	83 195	80 697	80 403	73 025
Index	100	97	97	88

4. **Imports into the Community from the countries concerned**

(a) *Cumulation*

(85) The Commission considered whether the effects of imports of penta originating in the PRC, USA, Turkey, Russia and Ukraine should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It is recalled that imports from Turkey were not found to be made at dumped prices and therefore the proceeding should be terminated as regards imports from that country.

(b) *Margin of dumping and volume of imports*

(86) The average dumping margins established for each of the four remaining countries, after excluding Turkey, are above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation, and the volume of imports from each country is not negligible in the sense of Article 5(7) of the basic Regulation, their respective market shares attaining 1,8 % for the PRC, 1,5 % for Russia, 3,7 % for Ukraine and 1,9 % for the USA in the IP.

(c) *Conditions of competition*

(87) Import volumes from the PRC, Russia and Ukraine increased significantly over the period considered and price trends are similar, clearly undercutting the prices of the Community industry.

(88) As mentioned above, it has been established that the product concerned imported from the countries concerned and the like product produced and sold by the Community industry share the same basic technical, physical and chemical characteristics and end-uses. In addition, all products are sold via similar sales channels to the same customers, thus competing with each other.

(89) It was found that imports from the USA did not undercut the prices of the Community industry (see recital 141 below). In fact the pricing behaviour of the US exporters appeared to be completely different from that of the exporters in the other countries concerned. Indeed, USA managed to increase its market share on the Community market at prices above those of the other three countries. This can be explained by the fact that one US exporting producer has been very successful in a different market segment, where higher prices can be obtained. In these circumstances, it was considered that a cumulative assessment of imports from the USA with the dumped imports from the PRC, Russia and Ukraine was not appropriate in light of the conditions of competition between the imports from the USA and, on the one hand, the dumped imports from the three countries concerned and, on the other hand, the like Community product.

(90) On the basis of the above, it was concluded that the conditions justifying the cumulation of imports of penta originating in the PRC, Russia and Ukraine were met.

(d) *Cumulated volume and market share*

(91) Import volumes from the PRC, Russia and Ukraine, derived from Eurostat, increased significantly from 1 235 tonnes in 2002 to 5 136 tonnes in the IP. Their combined market share increased continually from 1 % to 7 % during the same period. This has to be seen against the background of a declining consumption.

	2002	2003	2004	IP
Import volumes (tonnes)	1 235	3 397	4 752	5 136
Index	100	275	385	416
Market share	1 %	4 %	6 %	7 %

(e) *Prices of imports and undercutting*

(92) Price information with regard to the total imports from the three countries concerned was derived from Eurostat. The following table shows the development of average import prices from the PRC, Russia and Ukraine. Over the period considered these prices dropped by 13 %.

	2002	2003	2004	IP
Import prices (EUR/tonne)	1 131	1 032	1 030	988
Index	100	91	91	87

(93) For the determination of price undercutting, the Commission analysed data referring to the IP. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the prices of imports from the three countries concerned. With regard to Russia, given that there was no cooperation, the weighted average export price was derived from Eurostat. As for the PRC and Ukraine the comparison was made against the export prices charged by the cooperating producers, net of discounts and adjusted, where necessary, to cif Community frontier prices with an appropriate adjustment for the customs clearance costs and post-importation costs. Prices were considered representative in both cases since in Ukraine there is only one producer of penta and with regard to the PRC, exports by the cooperating producer represent around half of all penta exported from the PRC to the EC.

(94) This comparison showed that during the IP, the weighted average undercutting margins were 11,3 % for the PRC, 6,2 % for Ukraine and 11,9 % for Russia.

5. **Situation of the Community industry**

(95) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an analysis of all economic factors and indices having a bearing on the state of the industry during the period considered.

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

(96) Production decreased by 3 % between 2002 and the IP. The increase in 2004 resulted from the increase of production capacity by one producer. The evolution of production volumes was as follows:

	2002	2003	2004	IP
Production (tonnes)	111 665	103 913	115 204	108 309
Index	100	93	103	97

(97) The production capacity was established on the basis of the nominal capacity of the production units of the Community industry, taking into account interruptions in production. Production capacity increased by 6 % during the period considered. The increase occurred mainly in 2004 and was the result of successful de-bottlenecking at one producer on the one hand and the reorganisation of the same producer's second production plant on the other hand.

(98) As a result of the decrease in production volumes and the slight increase in capacity, capacity utilisation decreased from 95 % in 2002 to 87 % in the IP.

	2002	2003	2004	IP
Production capacity (tonnes)	117 020	119 020	123 987	123 987
Index	100	102	106	106
Capacity utilisation	95 %	87 %	93 %	87 %

(b) *Stocks*

(99) Stocks more than doubled during the period considered, reflecting the Community industry's increasing difficulty in selling its products on the Community market.

	2002	2003	2004	IP
Stocks (tonnes)	3 178	6 598	6 910	7 122
Index	100	208	217	224

(c) *Sales volume, market shares and average unit prices in the Community*

(100) Sales of penta by the Community industry to independent customers on the Community market decreased steadily from 64 663 tonnes in 2002 to 54 543 tonnes in the IP, i.e. by 16 %. The decrease in sales volumes was therefore sharper than the decrease in the Community consumption which, as mentioned above, decreased by 12 % during the same period. Hence the industry experienced a loss of market share amounting to 3 percentage points. The market share dropped from 78 % in 2002 to 75 % in the IP.

	2002	2003	2004	IP
Sales volume in the EC (tonnes)	64 663	61 308	58 681	54 543
Index	100	95	91	84
Market share	78 %	76 %	73 %	75 %

(101) Average sales prices to unrelated customers in the Community market decreased by 11 % over the period considered. There was a slight price increase between 2002 and 2003 after which prices decreased again and hit a record-low level during the IP, when they stood at 1 040 EUR/tonne.

(102) The price decreases over the period considered should be seen in the light of the Community industry's attempts to compete with the dumped imports. Current price levels however are unsustainable since the Community industry is forced to sell below cost in order to stay on the market.

	2002	2003	2004	IP
Weighted average price (EUR/tonne)	1 163	1 203	1 151	1 040
Index	100	103	99	89

(d) *Profitability and cash flow*

(103) During the period considered profitability of the Community industry decreased sharply from 12,6 % in 2002 to – 11,5 % in the IP. In 2004 the Community industry still managed to make a small profit but the situation changed dramatically in the IP, when the industry started to make losses. The main reason for this development is that the increase in raw material prices, in particular methanol, which accounts for approximately 25 % of the cost of production could not be passed on to the end-customers due to the low price levels of imports from the countries concerned.

	2002	2003	2004	IP
Pre-tax profit margin	12,6 %	7,5 %	5,7 %	– 11,5 %

(104) Cash flow also deteriorated over the period considered, in line with the decrease in profitability and turned negative in the IP. The decrease in the absolute level of negative cash flow at the end of the period is due to the decrease in the production and sales volumes.

	2002	2003	2004	IP
Cash Flow (EUR)	16 189 720	9 427 189	4 441 120	– 3 012 661
Index	100	58	27	– 19

(e) *Investments, return on investments, and ability to raise capital*

(105) Investments showed a positive trend over the period considered. However, main investments were made in 2003 when the Community industry was still profitable. The investments in the IP concerned de-bottlenecking at one producer and upgrading of production equipment to conform to environmental requirements at another producer.

	2002	2003	2004	IP
Investments (EUR)	3 756 302	8 483 655	2 956 275	4 394 137
Index	100	226	79	117

(106) The return on investment from the production and sales of the like product was negative in the IP and decreased substantially during the period considered, reflecting the abovementioned negative trend in profitability.

	2002	2003	2004	IP
Return on investment	18,5 %	10,5 %	7,9 %	– 13,5 %
Index	100	57	43	– 73

(107) There were no indications that the Community industry, which consists of large companies also involved in the production of other products, encountered problems to raise capital for its activities and it was therefore concluded that the Community industry was in a position to raise capital for its activities throughout the period considered.

(f) *Employment, productivity and wages*

(108) The evolution of employment, productivity and wages was as follows:

	2002	2003	2004	IP
Number of employees	290	296	293	299
Index	100	102	101	103
Productivity (tonnes/employee)	385	351	393	362
Index	100	91	102	94
Labour costs per employee (EUR)	43 379	44 469	46 899	44 921
Index	100	103	108	104

(109) The number of employees increased by 3 % during the period considered. This was the result of the reorganisation at one Community producer, which resulted in an internal re-allocation of staff employed on penta, even if the total number of people employed by the company as a whole remained stable. As a result of the slight increase in the number of employees and the decreasing production volumes, productivity shows a negative trend during the period considered.

(110) Average wage levels per employee increased by 4 % during the period considered which was less than the increase in inflation during the same period.

(g) *Growth*

(111) While the Community consumption decreased by 12 % over the period considered, the sales volume of the Community industry decreased by 16 % and in parallel the import volumes from the PRC, Russia and Ukraine increased by more than 300 % and those from the USA by over 700 %. This lead to the loss of market share by the Community industry, whereas the imports concerned managed to increase theirs.

(h) *Magnitude of the actual margin of dumping and recovery from past dumping*

(112) The dumping margins for the PRC, Russia, Ukraine and the USA are specified above in the dumping section. These margins are clearly above *de minimis*. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

(113) The Community is not recovering from the effects of past dumping or subsidisation since no investigations have been made before.

6. **Conclusion on injury**

(114) The analysis of the injury indicators shows that the situation of the Community industry deteriorated significantly after 2002 and reached its lowest point in the IP, when the industry made a loss of 11,5 %.

(115) In the context of a decreasing consumption during the period considered, the Community production decreased by 3 % and capacity utilisation by 8 % during the same period. Sales on the Community market decreased by 16 % in terms of volume and 25 % in terms of value. This development is also reflected by the increased stocks which almost doubled in the period considered. This led to a decrease in market share from 78 % in 2002 to

75 % in the IP. Average unit prices decreased by 11 % during the period considered, which did not reflect the increase in raw material costs during the same period. In order not to lose more market share and to keep the production running, the Community industry had no other option than to follow the price levels set by the dumped imports. This resulted in the significant drop in profitability in the IP.

(116) Most of the other injury indicators also confirm the negative situation of the Community industry. Return on investments and cash flows were negative and productivity decreased. Investments, however, showed a positive trend. Nevertheless, the investments made in the IP, which was the year of losses for the Community industry, were in fact de-bottlenecking and upgrading of machinery to correspond to environmental requirements rather than investments into new production equipment. The slight increase in the number of employees resulted from the reorganisation at one producer and did not involve recruiting any new staff by this producer at times when the economic situation was deteriorating.

(117) In the light of the foregoing, it can be concluded that the Community industry suffered material injury within the meaning of Article 3(6) of the basic Regulation.

E. **CAUSATION**

1. **Preliminary remark**

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

2. **Effect of the dumped imports**

(119) It is recalled that with regard to Turkey, whose market share amounted to 8,6 % during the IP, the dumping margin established was below the *de minimis* threshold. Therefore imports from Turkey were not considered for the analysis of the effect of dumped imports on the injury suffered by the Community industry. The combined market share of the remaining four countries amounted to 9 % in the IP.

(120) Import volumes from the PRC, Russia and Ukraine increased significantly over the period considered, both in absolute terms and in terms of market share. Indeed, in 2002 volumes were almost negligible, amounting to a mere 1 235 tonnes, whereas during the period considered they increased by 316 % to 5 136 tonnes in the IP. Their combined market share during the same period increased from 1 % to 7 %. The weighted average import prices decreased by 13 %, resulting in clear undercutting during the IP. Thus the substantial increase in the import volumes from the three countries concerned and their gain in market share during the period considered, at prices which remained well below those of the Community industry, coincided with the evident deterioration of the overall financial situation of the Community industry during the same period.

(121) The Community industry has argued that even with a low market share the dumped imports managed to cause severe disruption on the market, due to the nature of the business. Penta is a commodity and the lowest price quoted on the market determines to a large extent the market price, which other producers have to adapt to, if they wish to keep their orders. This is demonstrated by the decreasing trend in the Community industry's sales prices over the period considered, while prices of the main raw material, methanol, soared. The Community industry maintains that it was not in a position to pass on the increase in raw material prices to its customers due to the strong price pressure of the dumped imports. This led to a sharp decrease in profitability, return on investments and cash flow.

(122) Nevertheless, when looking at the development in more detail, it appears that the considerable deterioration of the Community industry's financial situation occurred during the IP. In the years prior to the IP, imports from the PRC, Russia and Ukraine increased massively from 1 235 tonnes in 2002 to 4 752 tonnes in 2004, i.e. by 285 %, while prices from these countries decreased by 9 % over the same period. However, the effect of this surge in imports on the situation of the Community industry was not dramatic, i.e. while sales volumes decreased by 9 % and prices by 1 %, the profit level achieved in 2004 remained at a reasonable level (5,7 %). In the IP, the decrease in sales by the Community industry of 7 % coincided with a further increase in imports from the countries concerned of 8 %, which was a relatively small increase compared to that achieved during the previous two years. However, it was only in the IP that the Community industry saw a huge decline in its profitability when it fell to – 11,5 % and a dramatic deterioration of its financial situation occurred.

(123) Based on the above considerations, it appears that when looking at all of period considered, there is some correlation between the development of the dumped imports and the injury suffered by the Community industry. However, the dumped imports alone do not seem to explain the sharp drop in the Community industry's profitability during the IP. Therefore, it cannot be concluded that the dumped imports would have played a determining role in the injurious situation of the Community industry, which culminated in the IP.

3. **Effect of other factors**

(a) *Decrease in EC consumption*

(124) Consumption of penta in the Community decreased by 12 % during the period considered. This decreasing trend appears be linked to the reduced demand of alkyd resins in the paint industry, which accounts for about 70 % of the end-use of penta on the Community market. A visit to an industrial user of penta, which produces alkyd resins for the paint industry, revealed that the demand for alkyds is expected to decline even sharper in the future due to the forthcoming changes in environmental legislation, which will impose restrictions on emissions of volatile organic compounds (VOC) from paint used for both architectural and industrial applications. Since alkyd resins are not as VOC friendly as other technologies, their use in paints is expected to decline.

(125) The Community industry's sales declined by 16 % in terms of volume and three percentage points in terms of market share, from 78 % in 2002 to 75 % in the IP. Import volumes from the PRC, Russia and Ukraine increased by 316 % during the period considered leading to an increase in their market share from 1 % to 7 %, thus taking over the Community industry's lost market share. Therefore, the declining demand of penta in the Community as such does not explain the deterioration of the situation of the Community industry over the period considered.

(126) However, the annual development of consumption shows that the decrease in consumption was much sharper between 2004 and the IP, when it went down by 9 %, compared to the previous years. Indeed, consumption remained stable between 2003 and 2004 whereas it increased by 3 % between 2002 and 2003. Therefore, given that the decrease in consumption coincides with the period when the Community industry turned loss-making, it cannot be excluded that the decreasing demand of penta on the Community market has had an impact on the injurious situation of the Community industry.

(b) *Imports from other third countries*

(127) Imports from other third countries (five largest) were as follows:

	2002	2003	2004	IP
Chile				
Volume (tonnes)	1 600	536	1 032	1 384
Index	100	34	65	87
Prices (EUR/tonne)	1 141	1 245	1 128	981
Index	100	109	99	86
India				
Volume (tonnes)	0	119	390	551
Index	0	100	328	141
Prices (EUR/tonne)	0	1 167	1 085	1 253
Index	0	100	87	84
Taiwan				
Volume (tonnes)	343	657	1 840	863
Index	100	192	536	252
Prices (EUR/tonne)	1 071	1 060	1 003	1 004
Index	100	99	94	94
Turkey				
Volume (tonnes)	6 300	7 065	8 957	6 730
Index	100	112	142	107
Prices (EUR/tonne)	1 292	1 339	1 277	1 097
Index	100	104	99	85
Japan				
Volume (tonnes)	0	20	58	65
Index	0	100	290	112
Prices (EUR/tonne)	0	3 905	3 334	2 731
Index	0	100	85	82

(128) According to Eurostat and the information collected during the investigation, the main third countries from which penta is imported are Chile, India and Taiwan. When adding imports from Turkey into imports from other third countries, the total volume imported from other third countries increased by 12 % from 8 586 tonnes in 2002 to 9 636 tonnes in the IP. This corresponds to an increase of their combined market share from 10 % to 13 %. The price levels of third country imports remained well above those of the Community industry throughout the period considered. Thus, imports from other third countries, competing with the dumped imports, managed to increase their market share by three percentage points, at prices which were above those of the Community industry.

(129) It should be noted, however, that imports from other third countries followed a different trend compared to that of the dumped imports in the sense that the peak in imports from other third countries occurred in 2004, whereas in the IP, which was the year of losses for the Community industry, third country imports dropped again by 22 % compared to the previous year. Also their average prices decreased by 11 % during the same period and their market share dropped by two percentage points. This would seem to indicate that as of 2004, also producers in other third countries were affected by the low market prices. Nevertheless, their prices remained above those of the Community industry also during the IP.

(c) *Export performance of the Community industry*

(130) It was also examined whether exports by the Community industry to non-EC countries may have contributed to the injury suffered during the period considered. Exports to unrelated customers in non-EC countries represented almost half of the Community industry's sales of the like product during the period considered. Export volumes increased by 3 %, between 2002 and the IP whereas average export prices decreased by 7 %.

	2002	2003	2004	IP
Sales volume in non-EC markets (tonnes)	44 333	35 376	46 460	45 587
Index	100	80	105	103
Average sales prices in non-EC markets (EUR/tonne)	1 034	1 090	1 001	958
Index	100	105	97	93

(131) Even if export sales increased slightly in terms of volume, the fact that the average export prices were lower than the average sales prices on the Community market throughout the period considered and moreover, below the unit cost of production has certainly had a negative effect on the overall financial situation of the Community industry, even if it does not directly affect the profitability on the Community market. Therefore it cannot be ruled out, that the injury suffered by the Community industry has also been indirectly caused by the negative development in profitability on export markets, since this would have an effect for example on the Community industry's ability to make new investments or hire new staff.

(d) *Other Community producers*

(132) Sales volumes by the non-complainant Community producer who provided data for the whole period concerned decreased even sharper than that of the Community industry. Therefore it seems that this producer is in a similar situation as the complaining Community producers. It is thus clear that this producer has not contributed to the injury suffered by the Community industry.

(e) *Increase in raw material prices*

(133) Prices of the main raw material methanol have increased considerably over the period considered. According to statistics published on the web-site of Methanex, the world's largest producer and marketer of methanol, the European contract price increased from 125 EUR/tonne in January 2002 to 235 EUR/tonne in December 2005. This has contributed to the increase of 10 % in the unit cost of production during the period considered and consequently to the drop in profitability, given that unit sales prices decreased by 13 % during the same period.

(134) Soaring raw material prices as such cannot be considered as having had an injurious effect on the Community industry. The negative development in profitability was rather due to the fact that the Community producers were not able to pass on these higher raw material costs to their customers by increasing their sales prices because of the low price level on the Community market. However, while methanol prices increased by 88 % over the period considered, the increase was only 2 % during the IP. Therefore, even if the market price of penta was low in the IP, the simultaneous price development of the main raw material methanol does not explain why the Community industry turned loss-making with such a magnitude in the IP.

4. **Conclusion on causation**

(135) The data available suggests that even with a low market share the dumped imports from the PRC, Russia, and Ukraine have exerted a price pressure on the Community industry's prices. However, a more detailed analysis does not allow for the establishment of a material causal link between the deterioration of the Community industry's financial situation and the development of the dumped imports.

(136) The significant drop in the Community industry's profitability and its overall financial situation occurred between 2004 and the IP, when volumes of the dumped imports increased by only 8 % compared to an increase of 285 % over the previous three years, when the Community industry was still making profits. Moreover the drop in the demand of penta on the Community market coincided with the deterioration of the Community industry's financial situation. It also appears that the price increase of the main raw material methanol was far less marked in the IP compared to the previous years and therefore does not explain the sudden and dramatic drop in profitability in the IP.

(137) The fact that the Community industry exports almost half of its production at prices below cost, has to be seen as a factor which has further contributed to the overall negative situation of the Community industry, even if it does not directly affect the profitability on the Community market.

(138) Therefore, it cannot be concluded that the dumped imports taken in isolation have caused material injury. Indeed, the examination of other factors in accordance with Article 3(7) of the basic Regulation revealed that the injury could be attributed also to the decrease in consumption, the export performance of the Community industry as well as imports from other third countries.

5. **Imports from the USA**

(139) Import volumes from the USA increased from 169 tonnes in 2002 to 1 355 tonnes in the IP. This lead to an increase in market share from 0,2 % to 1,9 % during the same period.

(140) Average import prices from the USA decreased over the period considered but were above those charged by producers in the PRC, Russia and Ukraine:

	2002	2003	2004	IP
Import prices (EUR/tonne)	1 935	2 212	1 251	1 244
Index	100	114	65	64

(141) Price undercutting was determined as described in recital 93 above. The weighted average undercutting margin for the USA was – 19,5 % in the IP, i.e. the average import price was significantly higher than the price charged by the Community industry on the Community market. As explained below, there was also no price depression by US imports.

(142) In parallel to the growth in imports from the USA, the Community industry saw, *inter alia*, its sales, market share and prices decrease over the period considered, leading to the conclusion as set out in recital 117 above that the Community industry had suffered material injury. However, it is noted that the prices of imports from the USA did not undercut those of the Community industry but were, in fact, sold at significantly higher prices than those of the Community industry. Furthermore, an additional comparison was made of the import prices from the USA with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price was obtained by adjusting the sales price of the Community industry in order to reflect a profit margin which the Community industry could be expected to obtain in the absence of injurious dumping. This comparison showed that the level of underselling was *de minimis*. On this basis, it is concluded that these imports did not contribute to the injury suffered by the Community industry.

F. **TERMINATION OF THE PROCEEDING**

(143) In the absence of a significant causal link between the dumped imports and the injury suffered by the Community industry, the present anti-dumping proceeding should be terminated in accordance with Articles 9(2) and 9(3) of the basic Regulation.

(144) The complainant and all other interested parties were informed of the essential facts and considerations on the basis of which the Commission intends to terminate this proceeding. Subsequently the complainants made known their views which, however, were not of a nature to change the above conclusions,

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of pentaerythritol, falling within CN code 2905 42 00, originating in the People's Republic of China, Russia, Turkey, Ukraine and the USA, is hereby terminated.

Article 2

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

Done at Brussels, 3 April 2007.

For the Commission

Peter MANDELSON

Member of the Commission

AGREEMENTS

COUNCIL

Information concerning the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters

The Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters [1] signed in Brussels on 19 October 2005 will enter into force on 1 July 2007 in accordance with Article 10(2) of the Agreement.

[1] OJ L 300, 17.11.2005, p. 55.

Information concerning the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

The Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] signed in Brussels on 19 October 2005 will enter into force on 1 July 2007 in accordance with Article 12(2) of the Agreement.

[1] OJ L 299, 16.11.2005, p. 62.

CORRIGENDA

Corrigendum to Commission Directive 2007/19/EC of 30 March 2007 amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food and Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs

(Official Journal of the European Union L 91 of 31 March 2007)

In the Contents, on page 17, in the title, and on page 22, in the signature, the date of adoption:

for: '30 March 2007',

read: '2 April 2007';

On page 22, in Article 3(1), first sub-paragraph:

for: 'by 1 April 2008',

read: 'by 4 April 2008';

On page 22, in Article 3(1)(a):

for: 'from 1 April 2008',

read: 'from 4 April 2008';

On page 22, in Article 3(1)(b):

for: 'from 1 June 2008',

read: 'from 4 June 2008';

On page 22, in Article 3(1)(c):

for: 'from 1 June 2008',

read: 'from 4 June 2008';

On page 22, in Article 3(1)(d):

for: 'from 1 April 2009',

read: 'from 4 April 2009';

On page 22, Article 4 should read:

'This Directive shall enter into force on the 20th day following 3 April 2007'.