ISSN 1725-2555

Official Journal of the European Union

L 192

English edition

Legislation

Volume 51

19 July 2008

Contents

(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.

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 684/2008

of 17 July 2008

clarifying the scope of the anti-dumping measures imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

1. MEASURES IN FORCE

(1) By Regulation (EC) No 1174/2005 [2] (the original Regulation) the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts (HPT) originating in the People's Republic of China (PRC). The investigation that led to the aforesaid Regulation used as investigation period the period from 1 April 2003 to 31 March 2004 (the original investigation).

2. PRESENT INVESTIGATION

2.1. Procedure

(2) This partial interim review was initiated on the Commission's own initiative. The information at the Commission's disposal indicated that certain products, highlifters, stackers, scissorlifts and weighing trucks (HSSWT), which could allegedly fall under the product scope, appeared to be distinct from hand pallet trucks and their essential parts, i.e. chassis and hydraulics, inter alia, due to their specific functions (lifting, stacking or weighing of loads) and end uses. In order to fulfil these functions, there appeared to be differences in the strength and construction of the hydraulics and chassis. The aforementioned features underlined the differences in use — and there appeared to be no inter-changeability between these products and hand pallet trucks. Therefore, it was considered appropriate to review the case as far as a clarification of the scope of the product is concerned, with the conclusion thereon possibly having retroactive effect as of the date of the imposition of the relevant anti-dumping measures.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published in the *Official Journal of the European Union* [3] the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of the product scope.

2.2. Review investigation

(4) The Commission officially advised the authorities of the PRC (country concerned), and all other parties known to be concerned, i.e. exporting producers in the country concerned, users and importers in the Community and producers in the Community, of the initiation of the partial review investigation. Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation.

[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 L 189, 21.7.2005, p. 1.

[3] OJ C 184, 7.8.2007, p. 11.

(6) In view of the scope of the partial review, no investigation period was set for the purpose of this partial review. The information received in the questionnaire replies covered the period from 2003 to 2006 (period considered), i.e. it covered also the investigation period of the original investigation. For the period considered, information concerning sales/purchases volume and value, production volume and capacity for HPT and HSSWT was requested. In addition, the parties concerned were asked to comment on any differences or similarities between HPT and HSSWT with respect to their production process, technical characteristics, end-uses, interchangeability etc.

(7) Sufficiently complete questionnaire replies were received from two Chinese exporting producers of HPT/HSSWT, four Community producers of HPT or HSSWT, one user and 14 importers of HPT/HSSWT in the Community.

(8) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there is a need for clarification/amendment of the scope of the existing anti-dumping measures and carried out investigations at the premises of the following companies:

— BT Products AB, Mjölby, Sweden,

— Franz Kahl GmbH, Lauterbach, Germany,

— RAVAS Europe B.V., Zaltbommel, the Netherlands.

2.3. **Product concerned**

(9) The product concerned is, as uniformly defined in the original Regulation, hand pallet trucks, not self-propelled, used for the handling of materials normally placed on pallets, and their essential parts, i.e. chassis and hydraulics, originating in the PRC, normally declared within CN codes ex 8427 90 00 and ex 8431 20 00. There are different types of hand pallet trucks and their essential parts depending mainly on the lift capacity, length of the forks, type of steel used for the chassis, type of hydraulics, type of wheels and existence of brakes.

2.4. **Findings**

(10) It is recalled that the original investigation covered hand pallet trucks and their essential parts, i.e. chassis and hydraulics which are used for handling and moving manually loads normally placed on pallets. By definition, HPT need to be pushed and pulled by man power. Therefore, HPT provide a mechanism allowing the user to manually lift the load just enough to move it from a place to another.

(11) HSSWT, which allegedly have been classified as product concerned subject to the anti-dumping measures by some national customs authorities, can be self-propelled or moved manually. They are used to move and to lift the loads in order to place them higher, assist in storage of loads (highlifters), to stack one pallet above the other (stackers), to lift the load to a working level (scissorlifts) or to lift and to weigh the loads (weighing trucks).

(12) Only HPT as defined under recital 10 above were considered as the product concerned investigated under the original Regulation. It is pertinent to note that for the purposes of the original investigation the Commission has never requested from cooperating parties to provide information on HSSWT and has not verified any information on HSSWT. Thus, all data and information presented under the original Regulation and the results of the original investigation, including the imposition of the definitive anti-dumping measures, were purely based on HPT.

(13) Account taken of the situation described under recital 2 and in order to establish whether HSSWT are distinct from HPT, both HSSWT and HPT were examined with respect to their physical and technical characteristics, their production process, their typical end-uses and their interchangeability.

2.4.1. *Physical and technical characteristics of HPT/HSSWT*

(14) There are different types of HPT and their essential parts, i.e. hydraulics and chassis, depending mainly on the lift capacity, length of the forks, type of steel used for the chassis, type of hydraulics, type of wheels and existence of brakes. These different types have, however, the same basic physical characteristics and uses and they were therefore all considered as the product concerned in the original investigation.

(15) The review investigation has shown that HSSWT share some of the HPT characteristics, e.g. they have chassis with forks and a hydraulics system. However, they have additional functions for lifting the load higher, stacking, operating as work table/level or weighing the load, which require clearly more advanced or additional technical components. In order to fulfil the aforesaid specific HSSWT functions, the requirements in the strength and construction of forks, chassis and hydraulics are different than for HPT. In addition, in order to fulfil these additional functions, HSSWT are significantly more expensive than HPT (up to 10 times).

2.4.2. *Production process*

(16) It was established by the review investigation that there are significant differences in the production process of HPT and HSSWT since the latter need additional components and thus different production steps compared with HPT. Indeed, the review investigation revealed that in highlifters and stackers the frame of the chassis needs to be significantly higher and the hydraulic system different to enable lifting the load higher whereas in weighing trucks, a weighing scale is incorporated in the chassis with the latter having a totally different forks structure compared to HPT.

2.4.3. *Typical end-uses of HPT/HSSWT*

(17) HPT are widely used in load handling activities, in distribution and warehousing of goods. They are used both in the manufacturing industries as well as in retail shops. HPT are designed to be manually pushed, pulled and steered, on smooth, level, hard surfaces, by a pedestrian operator using an articulated tiller. The hand pallet trucks are only designed to raise a load, by pumping the tiller, to a height sufficient for transporting the load, for example in distribution vehicles, warehouses, manufacturing sites, or even inside retail sales shops. The typical maximum lifting capacity of HPT is around 210 millimetres. In addition, HPT are commonly considered as necessary compliment to other load handling devices, such as forklifts. No specific training is needed to use HPT.

(18) The review investigation has shown that HSSWT are mainly used by the same users as HPT, however, their uses are different, e.g. lifting the load higher, stacking the load, functioning as work level or weighing the load. Due to their specific characteristics and uses, HSSWT are not as widely used as HPT. This is why their sales volume is around one tenth of HPT sales in the EC market. In addition, unlike HPT, the use of HSSWT requires specific training.

2.4.4. *Interchangeability*

(19) The review investigation has shown that HSSWT have significantly more specific uses than HPT. Indeed, highlifters/stackers are used to lift the load higher, to assist in storage of loads, to stack one pallet above the other, scissorlifts are used to lift the load to a working level and weighing trucks to weigh the load.

(20) To some very limited extent some types of HSSWT (e.g. weighing trucks) can lift and move the load as HPT. However, replacing HPT with HSSWT does not make any practical or economic sense because HPT are easier to use for only lifting and moving the load and HSSWT are significantly more expensive than HPT and require specific training in using them. In addition in some cases permanent use of HSSWT instead of HPT can destroy the main functions of HSSWT, e.g. in the case of weighing tracks where the weighing scale device is so delicate that it would be defected from the moment of the weighing truck is used for lifting and moving loads.

(21) On the other hand it was established during the review investigation that HPT cannot be used to replace HSSWT. The functions of the latter refer to a specific and distinguished market with different requirements and end-user needs and perceptions.

(22) The Commission also examined whether the essential parts, i.e. chassis and hydraulics, of HPT and HSSWT are interchangeable. In this respect, the review investigation has shown that both chassis and hydraulics are not interchangeable between HPT and HSSWT due to their different construction and characteristics.

2.5. **Conclusion on the product scope**

(23) The review investigation has established that due to different and additional technical characteristics, different end-uses and different production process, HSSWT do not fall within the product scope of HPT and their essential parts which are subject to the anti-dumping measures in force. This was the reason why the Commission did not considered HSSWT as part of the product scope of the original investigation.

(24) It is therefore considered appropriate to clarify that HSSWT differ from HPT and their essential parts and do not fall within the product scope subject to anti-dumping measures.

(25) Interested parties were informed of the above conclusions.

(26) One party claimed that HSSWT and HPT should be regarded as one technical entity but the information on file does not warrant such a conclusion. All the remaining parties that submitted representations accepted the findings of the Commission.

(27) Given the above, it is considered appropriate to amend the original Regulation to clarify the product definition.

(28) Since the present review investigation is limited to the clarification of the product scope and since HSSWT were not covered by the original investigation and the consequent anti-dumping measure, it is considered appropriate that the findings be applied from the date of the entry into force of the original Regulation, including any imports subject to provisional duties between 29 January 2005 and 21 July 2005. The Commission has not found any overriding reason preventing the application of such retroactive provision.

(29) Consequently, for goods not covered by Article 1(1) of Regulation (EC) No 1174/2005 as amended by this Regulation, the definitive anti-dumping duty paid or entered in the accounts pursuant to Article 1(1) of Regulation (EC) No 1174/2005 and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation should be repaid or remitted.

(30) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

(31) This review does not affect the date on which Regulation (EC) No 1174/2005 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 1174/2005 is hereby replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, falling within CN code ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10), originating in the People's Republic of China. For the purpose of this Regulation, hand pallet trucks shall be trucks with wheels supporting lifting fork arms for handling pallets, designed to be manually pushed, pulled and steered, on smooth, level, hard surfaces, by a pedestrian operator using an articulated tiller. The hand pallet trucks are only designed to raise a load, by pumping the tiller, to a height sufficient for transporting and do not have any other additional functions or uses such as for example (i) to move and to lift the loads in order to place them higher or assist in storage of loads (highlifters), (ii) to stack one pallet above the other (stackers), (iii) to lift the load to a working level (scissorlifts) or (iv) to lift and to weigh the loads (weighing trucks).'

Article 2

For goods not covered by Article 1(1) of Regulation (EC) No 1174/2005 as amended by this Regulation, the definitive anti-dumping duties paid or entered into account pursuant to Article 1(1) of Regulation (EC) No 1174/2005 in its initial version and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. In duly justified cases, the time limit of three years provided in Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1] shall be extended for a period of one year.

Article 3

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

It shall apply from 22 July 2005.

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

Done at Brussels, 17 July 2008.

For the Council
The President
E. WOERTH

[1] 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).

COUNCIL REGULATION (EC) No 685/2008

of 17 July 2008

repealing the anti-dumping duties imposed by Regulation (EC) No 85/2006 on imports of farmed salmon originating in Norway

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation (the original investigation), by Regulation (EC) No 85/2006 [2] imposed a definitive anti-dumping duty on imports of farmed salmon originating in Norway. The definitive duty was imposed in the form of a minimum import price (MIP).

2. Request for review and initiation

(2) On 20 February 2007, the Commission received a request for a partial interim review lodged by the following Member States: Italy, Lithuania, Poland, Portugal and Spain (the applicants) pursuant to Article 11(3) of the basic Regulation.

(3) The applicants have provided *prima facie* evidence that the basis on which the measures were established has changed and that these changes are of a lasting nature. The applicants alleged and provided *prima facie* evidence showing that a comparison between a constructed normal value and export prices would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing levels is no longer necessary to offset dumping. This evidence was considered sufficient to justify the opening of a proceeding.

(4) Accordingly, after having consulted the Advisory Committee, the Commission on 21 April 2007 initiated, by the publication of a notice in the *Official Journal of the European Union* [3], a partial interim review of anti-dumping measures in force on imports of farmed salmon originating in Norway in accordance with Article 11(3) of the basic Regulation (the notice of initiation).

(5) This review was limited in scope to the aspects of dumping with the objective of assessing the need for the continuation, removal or amendment of the existing measures.

3. Parties concerned by the proceeding

(6) The Commission officially advised all known exporters/producers in Norway, traders, importers and associations known to be concerned, and representatives of the Kingdom of Norway, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

4. Sampling

(7) Section 5(a) of the notice of initiation indicated that the Commission may decide to apply sampling in accordance with Article 17 of the basic Regulation. In response to the request pursuant to Section 5(a)(i) of the notice of initiation, 267 companies provided the information requested within the specified deadline. Of these, 169 were exporting producers of farmed salmon. Exports were made either directly or indirectly via related and independent traders.

[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 L 15, 20.1.2006, p. 1.
[3] OJ C 88, 21.4.2007, p. 26.

(8) In view of the large number of companies involved, it was decided to make use of the provisions for sampling and, for this purpose, a sample of producing companies, with the largest export volumes to the Community (exporting producers) was chosen, in consultation with the representatives of the Norwegian industry. The representatives of the Norwegian industry proposed to include into the sample (i) a producing company which did not export on its own but only via unrelated traders in Norway and (ii) two exporters but not producers of the product concerned. This could not be accepted because as far as the producing company is concerned there were no sufficient guarantees that export sales to the Community via unrelated traders could indeed be identified. As for the exporters without own production of salmon, no normal value could be established and therefore no duty could be determined for these companies.

(9) In accordance with Article 17 of the basic Regulation, the selected sample covered the largest possible representative volume of exports that could reasonably be investigated within the time available. The exporting producers selected in the final sample represented almost 60 % of the reported volume of the product concerned exported to the Community.

(10) As far as importers are concerned, and in order to enable the Commission to decide whether sampling is necessary, Section 5(a)(ii) of the notice of initiation requested importers in the Community to submit the information specified in this section. Only four importers in the Community replied to the sampling form. Given this low number of cooperating importers no sampling was necessary in this case.

(11) The Commission sought and verified all information deemed necessary for the determination of dumping. To this end, the Commission invited all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation to cooperate in the present proceeding and to fill in the relevant questionnaires. In this regard, 267 producers and exporters in Norway, the representatives of the Community salmon producers and the Governments of Ireland and Scotland cooperated with the Commission and made their views known. Furthermore, four importers and the six sampled Norwegian exporting producers submitted full questionnaire replies within the deadlines set.

(12) The Commission carried out verifications at the premises of the following companies:

(a) *importers/processors/users*

— Laschinger GmbH, Bischofmais, Germany,

— Gottfried Friedrichs KG (GmbH & Co.), Hamburg, Germany,

— Rodé Vis B.V., Urk, The Netherlands,

— Hätälä Oy, Oulu, Finland;

(b) *Exporting producers in Norway (Group level)*

— Marine Harvest AS, Bergen, Norway,

— Hallvard Leroy AS, Bergen, Norway.

(13) The two largest Norwegian exporting producers, i.e. Marine Harvest AS and Hallvard Leroy AS represented over 44 % of the total production reported by the cooperating Norwegian producers and 45 % of the Norwegian exports to the Community.

(14) The information supplied by the other four companies selected in the sample was subject to an in-depth desk analysis and it was found that their costs of production and export prices were generally in line with those of the visited companies.

(15) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

5. **Investigation period**

(16) The investigation of dumping covered the period from 1 January 2006 to 31 December 2006 (review investigation period or RIP).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product under review is the same as in the original investigation, i.e. farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, originating in Norway (the product concerned). The definition excludes other similar farmed fish products such as large (salmon) trout, biomass (live salmon) as well as wild salmon and further processed types such as smoked salmon.

(18) The product is currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 19 13 and ex 0304 29 13 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets).

2. **Like product**

(19) As established in the original investigation and confirmed by this investigation, the product concerned and the product produced and sold on the domestic market in Norway were found to have the same basic physical characteristics and had the same use. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to dumping, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. **DUMPING**

1. **General**

(20) The Norwegian producers of farmed salmon were making sales of the product concerned to the Community either directly, or via related and unrelated traders. Only identifiable sales destined for the Community market made directly or via related companies based in Norway were used to calculate an export price at the level of the producer.

2. **Normal value**

(21) For the determination of normal value the Commission first established, for each of the exporting producers included in the sample, whether its total domestic sales of farmed salmon were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(22) In order to determine whether domestic sales were representative, sales to unrelated traders located in Norway and owning an export licence during the RIP were disregarded since the final destination of these sales could not be established with certainty. Indeed, the investigation indicated that these sales were overwhelmingly destined for export to third country markets and therefore not sold for domestic consumption.

(23) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(24) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(25) An examination was also made as to whether the domestic sales of each type of the product concerned 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 the type in question. This was done by establishing the proportion of profitable domestic sales to independent customers of each exported product type, on the domestic market during the investigation period, as follows:

(26) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic prices. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the RIP, irrespective of whether these sales were profitable or not.

(27) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(28) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(29) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied.

(30) First, it was examined whether normal value could be established on the basis of domestic prices of other producers in Norway in accordance with Article 2(1) of the basic Regulation. Since in this case, no more reliable prices of other producers were available, the constructed normal value was used in accordance with Article 2(3) of the basic Regulation.

(31) Therefore, in accordance with Article 2(3) of the basic Regulation, the Commission instead calculated a constructed normal value as follows. Normal value was constructed by adding to each exporting producer's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(32) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(33) None of the six exporting producers concerned for which the normal value had to be constructed had representatives domestic sales. Therefore, the method as described in Article 2(6) chapeau could not be used. Article 2(6)(a) could not be applied since none of the exporting producers concerned had representative domestic sales. Article 2(6)(b) was not applicable either, because sales of the general category of products on the domestic markets were found not to be made in the ordinary course of trade. Therefore, SG&A and profits were established pursuant to Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method. In this regard, and in the absence of any other more reliable information available, it was considered that a profit margin of 30 % and SG&A of 3 % would be reasonable taking into account the figures reported by the six exporting producers during the RIP regarding their domestic sales.

(34) The Norwegian exporting producers questioned the use of a profit margin of 30 % claiming that it would not correspond to any actual figures reflecting normal margins in the fish farming sector. However, there was no indication in the file that the amounts for profits established, as described above, exceeded the profit normally realised by other exporting producers on sales of products of the same general category on the domestic market of the country of origin in the RIP. Indeed, as mentioned above, the profit margin used was based on actual verified figures. This argument had therefore to be rejected.

3. **Export price**

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

(36) Where export sales were made via related traders, the export price was constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related traders' actual SG&A during the RIP were used. As far as profit is concerned, it was determined on the basis of information available, and in the absence of any other more reliable information, that 2 % profit was reasonable for a trader in this business sector.

(37) As mentioned above in recital (21), in cases where sales were made via unrelated traders, it was not possible to determine with certainty the final destination of the product exported. Therefore, it could not be established whether a certain sale was made to a customer in the Community or to another third country, and it was therefore decided to disregard sales to unrelated traders. The Community industry objected to this approach claiming that such sales should have been investigated alleging that salmon was sold via independent traders which entered the Community at prices below the MIP.

(38) It is recalled that, when establishing the export price, sales to the first independent customer should be taken into consideration in accordance with Article 2(8) of the basic Regulation and that therefore, in the context of the determination of dumping, re-sales prices from the first independent customers are irrelevant. This argument had therefore to be rejected.

4. **Comparison**

(39) The comparison between normal value and export prices was made on an ex-works basis.

(40) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance was made in the form of adjustments 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. On this basis, allowances were made for differences in discounts, rebate, transport, insurance, handling, loading and ancillary costs, packing, credit and import duties.

5. **Dumping**

5.1. *Sampled companies*

(41) For the exporting producers which were included in the sample, an individual dumping margin was calculated. For these companies, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.

5.2. *Non-sampled companies*

(42) Regarding those cooperating exporting producers not included in the sample, it was found that, for the bulk of their sales, their export prices were generally in line with those of the sampled exporters. In the absence of any information indicating the contrary, it was considered that the sampling results are representative for all other exporters.

5.3. *Non-cooperating companies*

(43) Given the high level of cooperation, i.e. almost 100 %, it was also concluded that the dumping margins found for the sampled cooperating exporting producers were representative for Norway.

5.4. *Dumping margins*

(44) On the basis of the above, the dumping margins expressed as a percentage of the CIF net free-at-Community-frontier price, duty unpaid are as follows:

Marine Harvest AS	– 20,3 %
Norway Royal Salmon AS	– 5,9 %
Hallvard Leroy AS	– 13,0 %
Mainstream Norway AS	– 0,8 %
Norwell AS	– 0,8 %
Polar Quality AS	– 2,7 %

(45) The weighted average dumping margin for all six exporting companies is – 16,1 %.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **General**

(46) Since the dumping found during the RIP was *de minimis*, it was further examined whether there is a likelihood of recurrence of dumping should measures be allowed to lapse, in accordance with Article 11(3) of the basic Regulation, i.e. whether the circumstances during the RIP were of a lasting nature. In this regard, the following four aspects were examined in particular: (i) evolution of the normal value; (ii) development of export volumes and prices to the Community and other third countries; (iii) production volumes and capacities in Norway; and (iv) the situation of the Norwegian industry.

2. **Evolution of the normal value**

(47) For the vast majority of export sales, (i.e. for 99 %), the normal value was constructed in accordance with Article 2(3) of the basic Regulation on the basis of the manufacturing costs of the exporting producers concerned by adding an amount for SG&A and profit. Therefore, it was considered appropriate to examine the likely evolution of the cost of production in Norway as a surrogate for domestic prices, to determine the likely evolution of the normal value.

(48) The investigation revealed that the cost structure of the Norwegian exporting producers has remained stable throughout the RIP. In fact, during the RIP, the costs of production per unit of the investigated companies were on average 20 to 25 % below the MIP.

(49) As regards their likely evolution, several factors having an influence on the level of the unit costs were examined, such as costs of feed, costs of smolt, the impact of the consolidation process of the Norwegian salmon industry and the increased use of new increasingly cost efficient technologies.

(50) It was considered that the cost of feed which represents 50 to 60 % of the total cost is a reliable indicator regarding the total cost evolution. This is also confirmed by industry analysts specialised in this sector. Certain interested parties claimed that total costs would have increased after the RIP and are likely to increase further, i.e. by at least 30 % by the end of 2008 in comparison to the beginning of the RIP mainly due to alleged increases of feed prices. They further argued that a combination of an increasing normal value with falling export prices would result in recurrence of dumping.

(51) The interested parties concerned did not submit any particular evidence substantiating the alleged anticipated increase in feed cost by 30 %. An analysis of the possible cost development could furthermore not confirm these allegations. Thus, in contrast to what was claimed by these interested parties, the investigation revealed that the verified feed costs of the Norwegian exporting producers have remained more or less stable throughout the RIP and the first three quarters of 2007. Thus, Table (1) in recital (54) only shows a slight increase of feed costs between 2006 and 2007. The investigation also revealed that the feed price increase is mainly linked to the increase of the prices of some feed components (raw materials) such as fish oil and fish meals. It should be noted that fish oil and fish meals are to a certain extent substitutable by other lower cost raw material in the fish feed composition such as vegetable oils and meals. As a consequence, feed producers would normally switch the fish feed composition in order to keep the overall feed cost as low as possible. It is therefore expected that even if the cost of certain feed components increases, this will not have a direct linear impact on the overall feed cost, i.e. if there is an increase, such an increase will be at a significantly lower pace. It should also be noted that other cost factors as described below in recitals (52) and (55) to (63) will likely have a decreasing and therefore compensatory effect on the potential increase in the feed cost.

(52) As regards smolt prices, which represent about 15 % of the total cost of farming, the investigation showed that prices have decreased as shown in Table (1) below. Although it is difficult to precisely foresee the development of smolt costs, the persistent decreasing trend shown in Table (1) below was considered as a reliable indicator allowing to reasonably conclude that the same trends will be followed in the future. In any case, the investigation did not reveal, nor did any of the interested parties claim, a significant change of smolt costs developments in the future.

(53) Since both smolt and feed costs account for at least 65 % of the total costs and that fish oil and fish meals are to a certain extent substitutable by other lower cost raw material in fish feed composition (see recital (51)), it was concluded that total costs are not likely to increase significantly in the foreseeable future.

(54) Table (1): Evolution of costs of feed and smolt in Norwegian Kroner (per kilo of salmon — Head On Gutted (HOG) (source: Kontali Analyse AS [1] (2008))

Norway	2003	2004	2005	2006	2007 E
Feed	10,36	9,41	8,90	10,08	10,65
Smolt	2,10	2,00	1,94	1,72	1,70

(55) Subsequent to disclosure, the Community industry objected to the above findings by alleging that feed costs should have been allocated by generation, as feed costs during a certain year do not affect the cost of a harvest in that specific year but the costs of a future harvest. Otherwise, findings regarding the development of feed costs would not reflect appropriately the actual situation. This had to be rejected because actual verified feed costs aggregated by generation were used in the analysis.

(56) The Community industry also objected to the conclusions that higher prices in certain feed components can be compensated by substitution. In this respect it was argued that due to an increase in prices of other feed components on the one hand and the negative impact on the quality of the salmon flesh on the other hand such substitution would be limited. Regarding the increase in costs of other feed components, this was not supported by sufficient evidence and had therefore to be rejected. It is recognised that substitution of certain feed components is limited. However, as mentioned in recital (51), it was found that substitution is indeed possible to a certain extent. On this basis it was concluded that although feed costs may increase in future, they are not likely to increase to the same extent as the costs of fish oil and fish meal. The Community industry did not submit any evidence which could reverse these conclusions.

(57) The consolidation process is another factor contributing to the stabilisation of the costs of production. It should be noted that since the year 2000 the number of companies producing 80 % of the Atlantic salmon in Norway has been reduced from 55 to 31 in 2006. Although the Norwegian fish farming sector can still be seen as fragmented, the consolidation process has positive effects on the costs of production not only of the most important producers in Norway, which were also selected in the sampling, but also for the overall sector, as confirmed by specialised industry analysts. Indeed, new synergies, integration of production activities and economies of scale have enabled producers to control the cost increase on a per unit basis, despite the important increase of production volumes.

(58) The consolidation trend is expected to continue in the future, which will very likely have a further positive impact on the costs, through economies of scale.

[1] Kontali Analyse AS is a provider of statistics, mainly for aquaculture and fishing industry (www.kontali.no).

(59) Finally, the introduction of new technologies and equipment to fish farming activities has contributed to a containment of the cost increase on a per unit basis, despite the fact that production volumes have increased (see recital (64) and following recitals).

(60) Subsequent to disclosure, the Community industry contested that production cost would have decreased arguing that consolidation as such is not necessarily a cost reducing factor. Thus, it was claimed that, according to Norwegian statistics, the medium and small sized companies in Norway would be more efficient than the large groups. It was further argued that the conclusion of cost reductions would contradict the findings in recital (92) concerning the possible consequences of an outbreak of a disease and the expected lower yield per smolt in future which both would have a cost increasing effect.

(61) It is first of all noted that recital (92) does not refer to the consequences of an outbreak of a disease but to the normal mortality rate inherent to the production of salmon which does not have any impact on the cost as such. Secondly, the expected lower yield per smolt mentioned in this recital is not due to an exceptional situation and is not considered to be significant and therefore without any substantial impact on the overall cost. Recital (92) merely attempts to show that the increase in production volume cannot be translated one to one by the increase in the smolts production since other factors have also an influence of the harvested volume, which was not disputed by the Community industry.

(62) As far as the cost reducing effect of the consolidation process is concerned, the Community industry did not submit any evidence to support their objection. The Community arguments in this respect had therefore to be rejected.

(63) In conclusion, given the above, it is considered that the normal value is not likely to increase significantly in the foreseeable future. Rather, due in particular to the ongoing consolidation process, further cost reductions may be realised even though feed prices are on an upward trend (see recital (51)). Therefore, the constructed normal value, which is based on the cost of manufacturing, is considered to be of a lasting nature.

3. **Development of export prices and production volumes in Norway**

3.1. *Evolution of the production volume in Norway and exports to the EU*

(64) As shown in Table (2) in recital (65), the Norwegian production of salmon has increased steadily in the last three years and in 2007 in particular, mainly due to favourable biological conditions and as compared to a weak production year in 2006. However, as shown in Table (3) in recital (66) concerning the estimated total consumption in the Community, the Community market for the product concerned has also increased significantly, i.e. + 9,40 % from 2006 to 2007, and based on the past trends should further grow. The development in the consumption shown in Table (3) below includes all third country imports as well as the sales of the Community industry in the Community market.

(65) Table (2): Total production of salmon in tons Whole Fish Equivalent (WFE) between 2003 and 2007 (source: Kontali Analysis: Monthly Salmon Report January No 01/2008)

Norway	2003	2004	2005	2006	2007
	508 400	537 000	572 300	598 500	723 200
Y to Y		5,63 %	6,57 %	4,58 %	20,80 %

(66) Table (3) Development in consumption (supply from all sources including the Community industry) of Atlantic salmon in the Community from 2004 to 2007 (source: Kontali Analysis: Monthly Salmon Report January No 01/2008).

Year	2003	2004	2005	2006	2007
	579 200	603 100	634 600	651 000	712 200
Y to Y		3,94 %	5,22 %	2,58 %	9,40 %

(67) In 2007, according to public statistics (Kontali Analysis), the estimated market share in the Community of Norwegian salmon reached 71 % compared to 69 % in 2006. This is, however, especially due to the decrease of imports from Chile where production levels dropped between 3 % and 5 % (depending on the sources) between 2006 and 2007, due to a disease outbreak which is anticipated to have lasting effects on productions levels at least in 2008 and the following years.

(68) On the basis of the above, it was concluded that the increasing Community market will be able to absorb a large part of the production volumes in Norway without the Norwegian production necessarily taking over significant market shares from the Community industry. Furthermore, as outlined below in recital (78) and following recitals, parts of the Norwegian production volumes are likely to be increasingly exported to other third country markets where considerable growth has been observed. Finally, the reduced Chilean presence in the Community will very likely also contribute to further reducing the risks of oversupply of exports to the Community.

(69) Subsequent to disclosure, the Community industry claimed that the situation in Chile has no significant impact for the Community market, since Chilean salmon was mainly exported to the US market and thus the supply situation in the Community market is essentially determined by Norwegian exports. The Community industry further argued that market shares from Norway in the Community increased by an additional 2 % points, while imports from Chile in the Community would have increased by 5 % at the beginning of 2008.

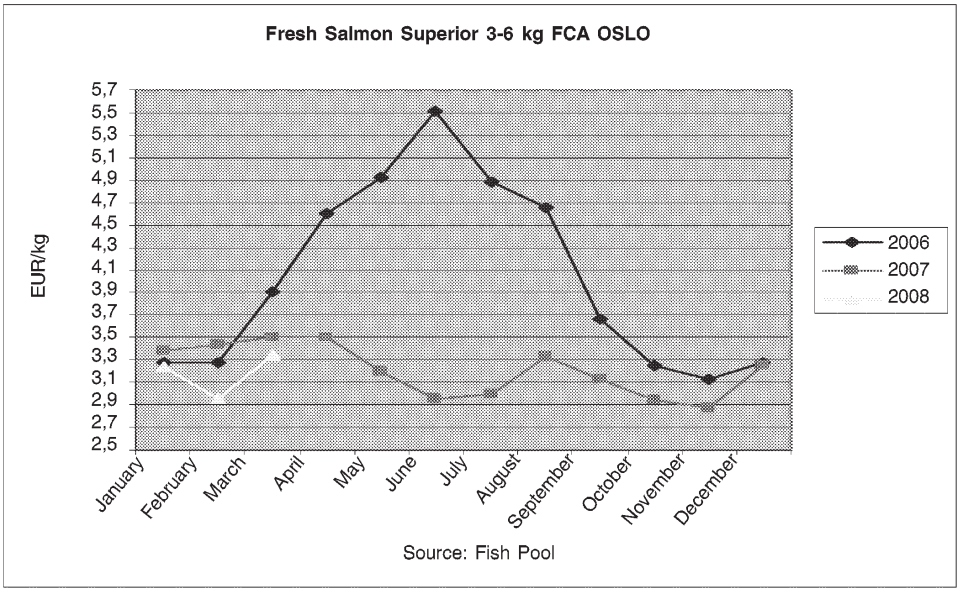
(70) It should first be noted that the data submitted by the Community industry only referred to two to three months of 2008 and therefore no meaningful conclusion can be drawn thereon. Indeed, in this kind of market, developments have to be looked at during a longer time span. Secondly, the disease situation in Chile should have an impact on the worldwide supply, which will indeed be reduced, and which will allow for Norwegian additional production volumes to be re-directed.

(71) As far as export prices to the Community are concerned, certain interested parties claimed that they have decreased significantly since the RIP and would reach a level of EUR 2,85/kg in 2008 which would result in dumping, in combination with the alleged increase in cost and thus in the normal value. This price was estimated on the basis of the average cross-section price reported on the Oslo market in 2007, i.e. EUR 3,13/kg by deducting an estimated average price decrease of between EUR 0,06/kg and EUR 0,28/kg.

(72) As far as the development of the normal value is concerned and as explained in recital (47) and following recitals, the arguments brought forward by the interested parties in question had to be rejected.

(73) As far as export prices to the Community are concerned, publicly available statistics show that the allegations of the above mentioned interested parties are not confirmed by the recent evolution of export prices as shown in Chart (1) below.

(74) Chart (1): Evolution of prices (FCA Oslo EUR/Kg of Fresh Salmon Superior — source Fish Pool) in 2006, 2007 and beginning of 2008.



(75) It follows from the above that prices to the Community in 2007 were indeed significantly lower than during large part of the RIP, i.e. in 2007 they were between EUR 2,88/kg and EUR 3,51/kg. However, the investigation established that these prices were still largely above the established cost of production and therefore also above the normal value and were therefore not considered to be made at dumped levels. Furthermore, based on the information available for the first three months of 2008, prices during that period were found to be between EUR 2,96/kg and EUR 3,35/kg, i.e. likewise, still above the established costs. Therefore, they were very likely not at dumped levels when considering that the normal value has remained stable as concluded in recital (47) and following recitals. The investigation has shown that prices continue to be influenced by the market demand but are currently set at a higher level. It is also noted that these price fluctuations are normal in this sector.

(76) The Community industry claimed that export prices after the RIP were influenced by the existence of the MIP and therefore kept at a relatively high level. They further argued that, therefore, should measures be allowed to lapse, the price level to the Community will decrease significantly. This conclusion is not confirmed by the findings of the current investigation, which showed that normal value should remain relatively stable, while the likelihood of significantly decreased export price levels to the Community was small. Latter findings were based on a thorough analysis of several aspects listed in recital (46), such as likely development of the production and export volumes from Norway to the Community and other third country markets. The Community industry did not submit any information or evidence which could devaluate the findings made in this respect.

(77) Considering the above, it was concluded that increasing imports of salmon to the Community from Norway should not be such as to create a risk of an oversupply in the Community market. Furthermore, given the situation of the cost of production and export prices to the Community, the risk of dumping appears to be remote.

3.2. *Export price and volume evolution to non-EU countries*

(78) The investigation showed that the Community is and is likely to remain the main market for Norwegian salmon, followed by Russia and Japan. In addition, there are also emerging markets for salmon where Norwegian exports have increased in the last few years, a trend which is expected to continue in the future (see recital (82) and following recitals). Indeed, the investigation has shown that Norwegian producers are prepared to supply these markets in future, since they were able to establish local customer relationships and distribution/sales operations which indicate the strong interest of the Norwegian exporting producers in these markets.

(79) Certain interested parties have argued that the Russian market has been historically volatile and that therefore it is not predictable whether demand in this market will indeed increase and whether the Norwegian exporting producers will therefore be able to export increased quantities to this market in the future. The same parties have also argued that export sales from Norway to Japan showed a falling trend over the last five years and that therefore, likewise, it is uncertain whether increased production volumes in Norway can indeed be exported to the Japanese market.

(80) However, as regards Russia, the investigation revealed that the market of around 61 000 tonnes has continued to increase and that there are no reasons to assume that it should not continue to do so in the foreseeable future.

(81) The total exports of salmon from different producer countries to Japan showed a decrease by 15 % in 2007 as compared to 2006. However, while some of the supplier countries have decreased their exports to Japan, Norway was able to increase its market share from 52 % in 2006 to 66 % in 2007 (Source: Kontali Analysis). As mentioned above in recital (67), Chile's production yield was largely affected by the disease situation and therefore export volumes in general, and thus also to Japan were significantly reduced. Norway has therefore been able to take over market shares from Chile, a situation which is expected to last at least until 2009, as already mentioned in recital (67).

(82) As shown in Table (4) in recital (85), Norwegian exports to other emerging markets of the world such as Eastern Europe (Ukraine, Belarus) and the Far East (China, South Korea, Hong Kong, Thailand) have also increased significantly and contrary to what has been claimed by the interested parties concerned, these markets will in all likelihood absorb an increasing part of the Norwegian production in the coming years.

(83) Export prices to the Community and to other third countries on a FCA Oslo basis were found to be at similar levels and it was therefore concluded that all markets are comparably attractive should there be sufficient demand. When sold as a fresh or chilled product, the product concerned is transported to the EU usually by truck. When sold to more distant destinations not accessible by truck within a certain time limit, the product concerned is transported by air.

(84) On the basis of the above, it is concluded that, other factors being equal, the deteriorating salmon production of 3 to 5 % in 2007 in Chile linked to the disease situation will contribute to the containment of global supply growth in 2008 and give market opportunities to Norwegian producers in markets such as Japan, the US and other emerging markets where Chilean producers hold significant market shares.

(85) Table (4): Market development (exports) for Atlantic Salmon from Norway — 2006 versus 2007 (volume in tons round weight) — (Source: Norwegian Seafood Export Council).

	Volume 2006	Volume 2007	Change
EU	438 569	509 273	16,1 %
Japan	26 703	28 846	8,0 %
Russia	39 998	61 248	53,1 %
USA	10 752	14 136	31,5 %
Ukraine	6 518	13 617	109 %
China	5 284	9 021	71 %
South Korea	6 037	7 613	26 %
Thailand	3 177	7 887	148 %

(86) The Community industry objected to the above findings by claiming that the development of export volumes from Norway to other third countries would have shown a different trend in the beginning of 2008, i.e. exports to these countries in absolute terms would have decreased and the total growth of exports would thus have been lower than in 2007 and lower than the export growth to the Community during the same period.

(87) The investigation has shown that import data for the beginning of 2008 depending on the source used varied significantly. Thus, Kontali Analysis showed increasing trends at a much higher degree for the same period. Furthermore, as mentioned above in recital (70), market developments should be looked at during a longer time span to show a conclusive picture. The arguments of the Community industry could not therefore devaluate the findings with regard to the development of export volumes to other third countries.

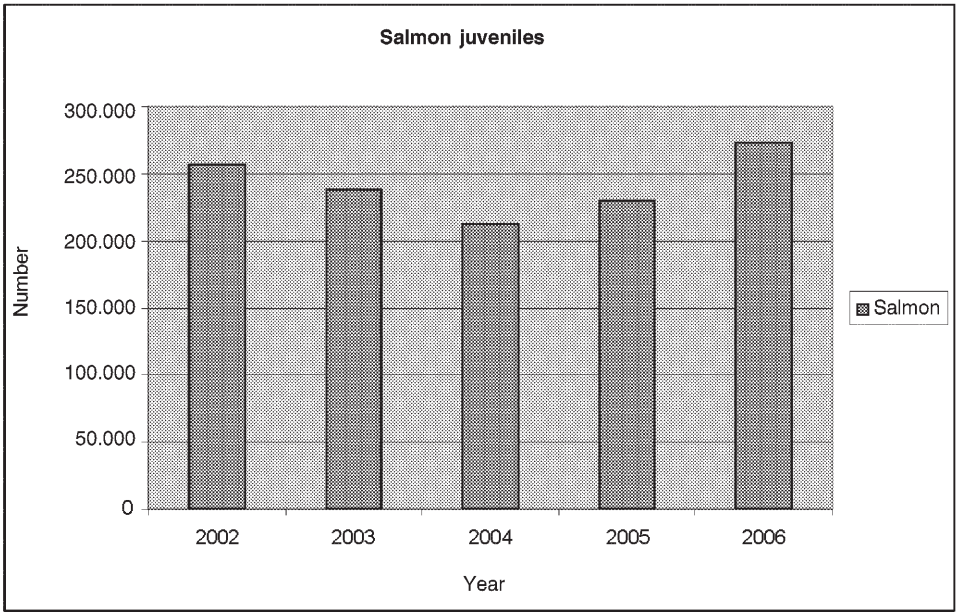
4. **Production volumes and capacities in Norway**

(88) The production level in Norway, i.e. maximum allowed biomass, is mainly determined by the number of production licenses which are granted by the Norwegian authorities, and the ability of the fish farmers to achieve the highest possible production within the limits of their licence. Other factors liable to increase the production of salmon are for example favourable biological and meteorological factors and the improvement of the fish farming processes with high-tech equipment. Conversely, the outbreak of a fish disease could harm the production significantly and lead to a decrease in harvested fish as was the case in Chile in 2007.

(89) Certain interested parties claimed that the increase in production of juvenile fish in Norway since 2006 (allegedly an increase of 20 % between 2006 and 2008) gave a strong indication that Norwegian salmon production volume would increase significantly within the next two years and thus lead to a situation of over supply. On this basis, and taking into account the particularly high yield level achieved in 2007, these parties argued that in 2008 (and beyond) production volumes in Norway will be significantly higher and largely exceed the growth of its export markets, and in particular the Community market. They alleged that should the yield improvement experienced by the Norwegian salmon industry in 2007 be repeated in 2008, the surpluses or unsold volumes could reach between 20 000 and 91 000 tonnes resulting from an estimated production level of 870 000 tonnes WFE, i.e. 150 000 tonnes more than in 2007.

(90) The investigation did not confirm the above allegations. While it is true that there was an increase in the production of juvenile fish in 2006, this increase was in line with increases of prior years and cannot be regarded as exceptional, as shown in Chart (2) below.

(91) Chart (2) Number of produced salmon juveniles (in 1 000 pieces) — (Source: SSB Norway)



(92) In addition, based on a combination of various factors such as the mortality factors, government regulations ruling maximum allowed biomass and lower yield per smolt in 2008, according to Kontali Analysis, the estimated production of salmon in 2008 should increase by merely 6 %, i.e. from 723 000 tonnes WFE in 2007 to 770 000 tonnes in 2008, i.e. 47 000 tonnes WFE. The figures regarding the smaller development in the biomass in 2008 are supported by the feed sales data which show a significant drop in 2008 compared to 2007 (source Havbruksdata and FHL).

(93) Subsequent to disclosure, the Community industry reiterated its claim that production volume in Norway is likely to increase significantly and provided some further data concerning harvest quantities, stocks and juvenile fish relating to the beginning of 2008. As above, it was considered that data relating to only two months of the year are as such inconclusive and cannot therefore devaluate the findings with regard to the development of the production volume in Norway as outlined above.

(94) Therefore, and on the basis of the information available, although production volumes in Norway are on an upward trend, a dramatic increase in production in the near future, such as claimed by the abovementioned interested parties, is not likely to occur. In addition, as outlined in recital (82) and following recitals, any increased production volumes are not likely to be exported in their totality to the Community, but a large part will be very likely directed to other third country markets where demand is increasing significantly. Finally, for the reasons outlined in recital (71) and following recitals, exports to the Community are not expected to be made at dumped prices.

5. **The situation of the Norwegian industry**

(95) Finally, the situation of the Norwegian industry in general and during the RIP in particular has been given special consideration. The investigation thus revealed that, in contrast to what was found during the original investigation, the aquaculture sector in Norway is composed of highly profitable companies. This is partly due to the large and still ongoing consolidation process which has turned the sector highly efficient and healthy. This is also reflected in the ownership structure of the companies concerned, i.e. several Norwegian and global investments and pension funds are very well represented in the exporting producers' groups. This also was not the case during the original investigation.

(96) Furthermore, the investigation revealed that Norwegian producers are meanwhile also very well established in the Community market, where they represent approximately 80 to 90 % of the total production volume in the Community. These Norwegian related companies in the Community were found to produce and sell salmon to a large extent for and on the Community market.

(97) It should also be noted that the Norwegian mother companies were themselves exporting considerable quantities to the Community.

(98) On this basis, it was considered that the Norwegian mother companies of the producing companies located in the Community would at least be equally negatively affected by any significant price decrease in the Community market due to dumped imports from Norway. Indeed, on this basis, it was not unreasonable to assume that at least economically it would not make sense for the Norwegian exporting producers to contribute to a drop of the prices of farmed salmon in the Community via dumping practices. This would directly harm the profitability of the sector and would negatively affect the companies' shares which are traded in the stock exchange and have, as mentioned in recital (95), major investment and pension funds as shareholders.

(99) On the basis of the above, it was therefore reasonable to conclude that the Norwegian exporting producers have a vested interest in avoiding situations of market price collapse and to remain profit orientated. Consequently, the risk that the dumping practices by the Norwegian exporting producers would resume in foreseeable future was considered limited.

(100) The Community industry objected to the above findings by claiming that the healthy situation of the Norwegian producers found during the RIP was not of a lasting nature and that after the RIP, these producers faced financial problems and some of them even reported losses at the beginning of 2008. The Community industry also claimed that the vast majority of Norwegian producers do not have any subsidiaries in the Community market and that on this basis it cannot be concluded that dumping would not resume. Finally, it was alleged that Norwegian producers with subsidiaries in the Community would decrease their production in the Community market and increase production in Norway should measures be allowed to lapse.

(101) As far as the financial situation of the Norwegian producers is concerned, it is noted that the losses of some of the companies were linked to their investments in Chile and the outbreak of the disease in this country. These particular circumstances only concerned a small number of the total producers in Norway. In addition, the information related only to the beginning of the year 2008 and did not allow for any overall conclusions concerning the performance of these companies throughout the whole year. As far as the Norwegian owned production in the Community is concerned, and as also admitted by the Community industry, although the number of companies having subsidiaries in the Community is limited, they represent a major part of the total Norwegian production and are therefore considered as significant. The argument that Norwegian owned production capacities in the Community will be reduced should measures be repealed was not supported by any evidence. These arguments had therefore to be rejected.

6. **Conclusion**

(102) The investigation revealed that dumping during the RIP was at *de minimis* levels. The investigation further revealed that there are no reasons to believe that the production volume in Norway will increase above the traditional growth rate and thus lead to significantly increased export volumes from Norway to the Community. The investigation also established that the risk of a significant decrease in Norwegian export prices to dumped levels is limited in the foreseeable future, mainly due to the fact that a significant over-production in Norway, which may be the main trigger for such a decline in prices, is not expected. In particular, normal value, which was found to very likely remain stable, was significantly lower than the export price during the RIP, i.e. normal variations due to the fluctuating character of the market and therefore temporary decreases in the export price are not likely to automatically result in dumping. Finally, it was considered that the changed situation of the Norwegian aquaculture sector which has become highly profitable and the shares of which are traded at the stock exchange, as well as the important presence of Norwegian owned production in the Community, have made the recurrence of dumping practices in the foreseeable future unlikely. For all of the above reasons, it was concluded that the likelihood of recurrence of dumping is low and does not warrant the continued imposition of the anti-dumping measures in force.

(103) Consequently, the current interim review should be terminated and the measures in force on imports of farmed salmon originating in the Norway should be repealed.

E. **SPECIAL MONITORING**

(104) As explained above, it is expected that market conditions, i.e. demand and supply, remain stable in the foreseeable future and that there is therefore no apparent likelihood of recurrence of dumping. Indeed, all indicators examined show that it can be reasonably expected that the export volumes to the Community will not increase significantly and that export prices remain at non-dumped levels.

(105) However, given a certain unpredictability of market conditions mainly due to the nature of the product (perishable goods), it is considered appropriate to monitor the market closely and to review the situation should there be sufficient *prima facie* evidence that market conditions have changed significantly. In such case, consideration will be given to the initiation of an investigation on an *ex officio* basis, should it be deemed necessary.

(106) The monitoring should be limited in time until the original foreseen expiry of the definitive measures imposed by Regulation (EC) No 85/2006, should they have remained in place, i.e. until 21 January 2011.

F. **DISCLOSURE**

(107) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present interim review and to repeal the existing anti-dumping duty on imports of the product concerned. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 19 13 and ex 0304 29 13, originating in Norway, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated.

The definitive anti-dumping duty imposed by Regulation (EC) No 85/2006 on the abovementioned imports is hereby repealed.

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, 17 July 2008.

For the Council
The President
E. WOERTH

COMMISSION REGULATION (EC) No 686/2008

of 18 July 2008

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 19 July 2008.

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

Done at Brussels, 18 July 2008.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

---

[1] OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

[2] OJ L 350, 31.12.2007, p. 1. Regulation as last amended by Regulation (EC) No 590/2008 (OJ L 163, 24.6.2008, p. 24).

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	32,2
	MK	28,9
	TR	85,2
	ME	25,6
	XS	25,6
	ZZ	39,5
0707 00 05	TR	115,4
	ZZ	115,4
0709 90 70	TR	102,6
	ZZ	102,6
0805 50 10	AR	111,2
	US	62,5
	UY	72,4
	ZA	98,6
	ZZ	86,2
0808 10 80	AR	87,1
	BR	94,3
	CL	96,1
	CN	69,1
	NZ	110,1
	US	98,3
	UY	80,0
	ZA	94,5
	ZZ	91,2
0808 20 50	AR	83,1
	AU	143,2
	CL	91,1
	ZA	94,2
	ZZ	102,9
0809 10 00	TR	177,9
	XS	127,0
	ZZ	152,5
0809 20 95	TR	404,0
	US	436,1
	ZZ	420,1
0809 30	TR	157,0
	ZZ	157,0
0809 40 05	IL	154,3
	XS	99,1
	ZZ	126,7

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 687/2008

of 18 July 2008

establishing procedures for the taking-over of cereals by intervention agencies or paying agencies and laying down methods of analysis for determining the quality of cereals

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 43 in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 824/2000 of 19 April 2000 on establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals [2] has been substantially amended several times [3]. In the interests of clarity and rationality the said Regulation should be codified.

(2) The intervention price for common wheat, durum wheat, barley, maize and sorghum is fixed for qualities corresponding as far as possible to the average quality of the cereals harvested in the Community.

(3) In order to simplify the management of intervention operations and, in particular, to permit the establishment of homogeneous lots for each type of cereal offered to intervention, a minimum quantity, below which the paying agency or intervention agency is not obliged to accept the offer, should be fixed. However, it may be necessary to provide for a greater minimum tonnage in certain Member States, so that the agencies may take account of pre-existing conditions and practices of the wholesale trade in those countries.

(4) Methods of determining the quality of common wheat, durum wheat, barley, maize and sorghum must be defined.

(5) The second subparagraph of Article 11(1) of Regulation (EC) No 1234/2007 limits the quantities of maize which may be bought in by the paying agencies or intervention agencies throughout the Community to a total of 700 000 tonnes in the 2008/2009 marketing year and 0 tonnes from the 2009/2010 marketing year onwards.

(6) To ensure the satisfactory management of the system for intervention buying-in of maize, and to give economic operators in all Member States access to the intervention system under equivalent conditions, detailed procedures should be laid down specific to the award of the quantities of maize eligible for intervention. To this end, a mechanism should be introduced for the award of those quantities, covering the periods of the marketing year in which operators may submit offers, giving them sufficient time to submit their offers and allowing a uniform award coefficient to be fixed for all offerers where the quantities offered exceed those available. Provision should therefore be made for the offers to be examined in two periods, and timetables should be laid down for the submission of offers for maize and for deliveries and the associated takeovers.

(7) Taking into account the periods for intervention buying-in laid down in the first subparagraph of Article 11(1) of Regulation (EC) No 1234/2007, and to ensure equivalent treatment of operators, provision should be made for a first period for the submission of offers for maize running from 1 August in Greece, Spain, Italy and Portugal, from 1 December in Sweden and from 1 November in the other Member States, with 31 December as the last day for the submission of offers in all Member States. At the end of this first period the Commission will be obliged, where appropriate, to fix an award coefficient for the admissible offers submitted during this first period and to close the intervention for the remainder of the marketing year where the quantities offered exceed the quantity laid down in the second subparagraph of Article 11(1) of Regulation (EC) No 1234/2007. To avoid placing administrative and financial burdens on the paying agencies or intervention agencies and on operators, in particular by requiring securities to be lodged which could prove unnecessary in the absence of quantities to be awarded, provision should be made for a break in the submission of offers between 1 January and the date of publication in the *Official Journal of the European Union* of the quantity remaining available for intervention in the second period.

---

[1] OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

[2] OJ L 100, 20.4.2000, p. 31. Regulation as last amended by Regulation (EC) No 883/2007 (OJ L 195, 27.7.2007, p. 3).

[3] See Annex IX.

(8) Given the time needed to fix the award coefficient for the first period where necessary, the second period for the submission of offers should commence on the day following the date of publication in the *Official Journal of the European Union* of the quantity remaining available for intervention, this being the first day for the submission of offers in all Member States. In this second period, the acceptance of offers should take place once a week, starting the first Friday following the publication of that quantity, on the basis of offers submitted by operators by 12.00 (Brussels time) on the Friday at the latest. Each week, by Wednesday at the latest, the Commission should post on its Internet site information for operators as to the remaining quantity available for intervention. Where the quantity laid down in the second subparagraph of Article 11(1) of Regulation (EC) No 1234/2007 is exceeded, the Commission should fix and publish an award coefficient and close the intervention for the marketing year in question. In view of the intervention buying-in periods provided for in the first subparagraph of Article 11(1) of Regulation (EC) No 1234/2007, the second period for the submission of offers should in any case end at the latest by 30 April in Greece, Spain, Italy and Portugal, 30 June in Sweden and 31 May in the other Member States.

(9) To allow sound management of the award mechanism, it should be laid down that offers for maize may not be altered or withdrawn. Moreover, to ensure that offers are genuine, they should be subject to the lodging of a security, and the terms for checking that offers are genuine and for releasing the security should be laid down. To this end, this check should follow the same rules and conditions as those applicable to checks on stocks in public storage under Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States [1]. In addition, between the start of the submission of offers in the first period and 31 December, several months may elapse. To avoid placing a financial burden on operators submitting offers in this first period, it should be allowed for the security that has to be lodged on submission of the offers, when it is lodged in the form of a bank guarantee, not to be payable until the day following the final day for the submission of offers.

(10) Common wheat and durum wheat are covered by minimum quality criteria for human consumption and must satisfy the health standards laid down by Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food [2]. The other cereals are mainly intended for animal feed and must comply with Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed [3]. Provision should be made for those standards to be applicable when the products concerned are taken over under the present intervention scheme.

(11) Cereals of inadequate quality for use or storage should not be accepted into intervention. To this end, account should be taken of the situation regarding intervention, in particular the long-term storage of certain cereals and its effects on product quality.

(12) Therefore, in order to protect intervention products from deterioration and to maintain their suitability for subsequent use, the quality criteria for maize should be upgraded. To this end, the maximum moisture content and the maximum percentage of broken grains and grains overheated during drying should be reduced. Given the agronomic similarities of sorghum and maize, and in the interests of consistency, the same measures should be laid down for sorghum.

(13) To improve the quality of storage conditions and provide a guarantee of this from the time the offers are submitted, the places where the cereals are stored at the time of the offer should be such as to guarantee the best possible conservation, in particular over a long period as regards maize. It is therefore necessary to limit the possibility of taking over the cereals in the offerer's store and to authorise this kind of takeover only where the cereals are kept by storers within the meaning of Article 2(2)(a) of Regulation (EC) No 884/2006. In such cases, the offerer should undertake to apply *mutatis mutandis* in his relations with the storer, as from submission of his offer, the same rules and conditions of storage and control as are applicable under Regulation (EC) No 884/2006.

(14) The potential for mycotoxin formation has proved to be linked to specific conditions, identifiable essentially on the basis of the weather conditions recorded during the period of growth and, in particular, flowering of the cereals.

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

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

[3] OJ L 140, 30.5.2002, p. 10. Directive as last amended by Commission Directive 2006/77/EC (OJ L 271, 30.9.2006, p. 53).

(15) The risks entailed by exceeding the maximum thresholds for admissible contaminants can be identified by the paying agencies or intervention agencies on the basis of the information received from applicants and their own analysis criteria. In order to limit the financial costs, therefore, there is justification for requiring analyses, under the responsibility of the agencies prior to the taking-over of the products, only on the basis of a risk analysis enabling the quality of the products to be guaranteed on entry into the intervention scheme.

(16) The conditions under which cereals are offered to and taken over by the paying agencies or intervention agencies must be as uniform as possible throughout the Community in order to avoid any discrimination between producers.

(17) Intervention prices should be increased or reduced to reflect price differences observed on the market for different qualities.

(18) In addition to requiring an annual stock statement pursuant to Regulation (EC) No 884/2006, the Member States must check the state of preservation of the intervention stocks held.

(19) Article 2, Articles 6(2)(d) and 7(2)(b) of, and Annex XII(1) to Regulation (EC) No 884/2006, lay down the rules on responsibility. Those Articles and said Annex specify in particular that Member States are to take all measures necessary to ensure the proper preservation of products which have been the subject of Community intervention and that quantities which have deteriorated on account of the normal physical storage conditions or by reason of overlong preservation are to be recorded in the accounts as having left the intervention stock on the date when the loss or deterioration was established. They also specify that a product is to be deemed to have deteriorated if it no longer meets the quality requirements applicable when it was bought in. Consequently, only such deterioration as that laid down in those provisions may be covered by the Community budget. Where a decision taken by a Member State at the time of purchase of a product is inadequate in the light of the risk analysis required by these rules, that Member State should therefore be liable if it later emerges that the product did not comply with the minimum standards. Such a decision would not make it possible to guarantee the quality of the product and, therefore, ensure its proper preservation. Consequently, the circumstances in which a Member State is to be held liable should be specified.

(20) Details should be given of the information that Member States must forward to the Commission so that a fortnightly statistical report on the state of intervention stocks of cereals can be compiled.

(21) In the interests of sound management of the system, the information required by the Commission should be sent by electronic means.

(22) Specific information should also be obtained and listed on a standard regional basis. The regional levels set out in Council Regulation (EEC) No 837/90 of 26 March 1990 concerning statistical information to be supplied by the Member States on cereals production [1] should be used, and Member States should be asked to forward this information to the Commission.

(23) Equally, the information required by the Commission should be sent on the basis of models containing the information required to manage intervention, made available by the Commission to the Member States, and these models should apply once the Management Committee has been informed and then, where applicable, adapted and updated by the Commission under the same conditions.

(24) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

CHAPTER I

OFFERS AND TAKEOVERS OF CEREAL FOR INTERVENTION

Article 1

During the periods referred to in the first subparagraph of Article 11(1) of Regulation (EC) No 1234/2007, any holder of a homogeneous batch of not less than 80 tonnes of common wheat, barley, maize or sorghum or 10 tonnes of durum wheat, harvested within the Community, shall be entitled to offer the batch to the paying agency or intervention agency (hereinafter both referred to as the 'intervention agency').

However, the intervention agencies may fix a greater minimum tonnage.

[1] OJ L 88, 3.4.1990, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

Article 2

1. To be valid, all offers for intervention shall be made using a form issued by the intervention agency, containing in particular the following details:

(a) name of the applicant;

(b) cereal offered;

(c) place of storage of the cereal offered;

(d) quantity, main characteristics and harvesting year of the cereal offered;

(e) the intervention centre for which the offer is made and, where the second subparagraph of Article 6(1) of this Regulation is applied, the offerer's undertaking to ensure, in his relations with the storer, that the rules and conditions of storage and control provided for under Article 2(2)(a) of Regulation (EC) No 884/2006 are applied *mutatis mutandis* to the place of storage referred to in point (c) of this paragraph.

The form shall also contain a declaration that the products are of Community origin or, in the case of cereals admitted to intervention under specific conditions according to their zone of production, details of the region in which they were produced.

However, the intervention agency may regard as valid offers submitted in another written form, in particular telecommunications, provided that all the details to be shown on the form referred to in the first subparagraph are included.

Without prejudice to the validity from the date of presentation of an offer submitted in accordance with the third subparagraph, Member States may require that it be followed by the forwarding or direct submission to the competent agency of the form provided for in the first subparagraph.

2. Should an offer be inadmissible, the operator concerned shall be informed by the intervention agency accordingly within five working days following receipt.

3. Should an offer be admissible, operators shall be informed as soon as possible of the store at which the cereals are to be taken over and of the delivery schedule.

At the request of the offerer or the storekeeper, the said schedule may be amended by the intervention agency.

4. In the case of cereals offered into intervention other than maize, the final delivery shall be made not later than the end of the fourth month following the month during which the offer was received, without, however, being later than 1 July in Spain, Greece, Italy and Portugal and 31 July in the other Member States.

For maize, the delivery shall be made between 1 February and 30 April in the case of offers made in period 1 as laid down in Article 3, and not later than the end of the third month following the month in which the offer was received in the case of offers made in period 2 as laid down in Article 3, without, however, being later than 1 July in Spain, Greece, Italy and Portugal and 31 July in the other Member States.

Article 3

1. Without prejudice to Article 2 of this Regulation, the quantities of maize eligible for intervention in accordance with the second subparagraph of Article 11(1) of Regulation (EC) No 1234/2007, shall be awarded, for the marketing year 2008/2009, in two periods, 'period 1' and 'period 2', in accordance with the terms and procedures laid down in paragraphs 2 to 5 of this Article.

Period 1 shall start on 1 August in Greece, Spain, Italy and Portugal, 1 December in Sweden and 1 November in the other Member States and shall run until 31 December, the final day for the submission of offers for all Member States for this period.

Period 2 shall start on the day following the publication in the *Official Journal of the European Union* of the quantity which remains available for intervention in that period, as referred to in the second subparagraph of paragraph 2. That day shall be the first day for the submission of offers in all the Member States and that period shall end not later than 30 April in Greece, Spain, Italy and Portugal, 30 June in Sweden and 31 May in the other Member States.

2. At the end of period 1, the Commission shall enter in the accounts the admissible offers for maize submitted by operators to the intervention agencies of the Member States by 12.00 (Brussels time) on 31 December, on the basis of the notifications made each week by the Member States in accordance with Article 13(1)(a)(i).

If the total quantity offered exceeds the maximum quantities laid down in the second subparagraph of Article 11(1) of Regulation (EC) No 1234/2007, the Commission shall fix and publish, not later than 25 January, an award coefficient to six decimal places to be applied to the quantities. If there is no overrun, this award coefficient shall be 1 and the Commission shall publish the quantity which remains available for intervention in period 2.

Not later than 31 January, the intervention agency of the Member State shall notify the offerer that the offer has been accepted for a quantity equal to the quantity offered multiplied by the award coefficient.

3. From the first Wednesday in February, the Commission shall enter in the accounts each week the admissible offers for maize submitted by operators to the intervention agencies of the Member States by the Friday of the previous week at 12.00 (Brussels time), on the basis of the notifications made by the Member States in accordance with Article 13(1)(a)(i).

Where there is an overrun of the quantity which remains available for intervention, the Commission shall fix and publish not later than the fourth working day following the deadline for the submission of offers, an award coefficient to six decimal places to be applied to the quantities. If there is no overrun, this award coefficient shall be 1, the quantities offered shall be deemed to have been accepted and each week, by Wednesday at the latest, the Commission shall post on its Internet site http://ec.europa.eu/agriculture/markets/crops/index_en.htm information for operators as to the remaining quantity available for intervention in the week in question.

Not later than the ninth working day following the deadline for the submission of offers, the intervention agency of the Member State shall notify the offerer that the offer has been accepted for a quantity equal to the quantity offered multiplied by the award coefficient.

4. The offers referred to in paragraphs 2 and 3 shall be entered in the accounts by the competent intervention agency on the date of their receipt.

Once submitted, offers may not be altered or withdrawn.

5. To be admissible, the offers shall be accompanied by proof that the offerer has lodged a security of EUR 15 per tonne. This security shall be lodged on submission of the offer, but may be payable, if lodged during period 1 in the form of a bank guarantee, only from the day following the deadline for the submission of offers referred to in paragraph 2.

6. The security shall cover the quantities offered by the offerer in accordance with paragraphs 2 or 3.

Except in cases of *force majeure* or in exceptional circumstances, the security shall be fully forfeit to the Community budget where:

(a) the quantities present in the place of storage, between the submission of the offer and the takeover of the maize, are below the quantities declared by the offerer in accordance with Article 2(1), without prejudice to a 5 % margin of tolerance;

(b) the quantities awarded are not in fact supplied by the offerer for takeover by the intervention agency in accordance with Articles 4 and 6.

For the purposes of applying point (a) of the second subparagraph of this paragraph, the intervention agencies shall carry out checks on the quantities present in the places of storage by applying *mutatis mutandis* the rules and conditions laid down in Regulation (EC) No 884/2006 as regards checks on the physical presence of products stored under public storage operations, and more specifically those provided for under point B.III of Annex I to that Regulation. These controls shall be carried out on at least 5 % of the offers and 5 % of the quantities offered, on the basis of a risk analysis. These minimal control rates shall apply only during period 1.

The security shall be released in its entirety:

(a) for quantities offered but not awarded; and

(b) for quantities offered and awarded, from the moment that 95 % of the quantity awarded has actually been taken over by the intervention agency.

Article 4

1. In order to be accepted for intervention, the cereals must be sound, fair and of marketable quality.

2. The cereals shall be considered sound, fair and of marketable quality if they are of the typical colour of the cereal in question, are free from abnormal smell and live pests (including mites) at every stage of their development, if they meet the minimum quality requirements set out in Annex I hereto, and if their levels of contaminants, including radioactivity, do not exceed the maximum levels permitted under Community regulations. The maximum contaminant level which must not be exceeded shall be as follows:

(a) for common wheat and durum wheat, those permitted under Regulation (EEC) No 315/93, including the requirements regarding the Fusarium-toxin level for common wheat and durum wheat laid down in points 2.4 to 2.7 of Annex I to Commission Regulation (EC) No 1881/2006 ([1]);

(b) for barley, maize and sorghum, those set by Directive 2002/32/EC.

Member States shall check levels of contaminants, including radioactivity, on the basis of a risk analysis, taking account in particular of the information supplied by the applicant and the commitments of the latter regarding compliance with the standards set, especially in the light of the results of the analyses. If necessary, the rate and scope of the controls shall be determined in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, particularly where the market situation may be seriously disrupted by contaminants.

In addition, in cases where analyses indicate that the Zeleny index of a batch of common wheat is between 22 and 30, for this wheat to be deemed sound, fair and of marketable quality within the meaning of paragraph 1 of this Article, the dough obtained from it must be judged to be non-sticky and machinable.

3. For the purposes of this Regulation, matter other than basic cereals of unimpaired quality shall be as defined in Annex II.

Grains of basic cereals and other cereals which are damaged, affected by ergot or decayed shall be classified as 'miscellaneous impurities' even if they have defects which belong to other categories.

Article 5

To determine the quality of cereals offered for intervention under of Regulation (EC) No 1234/2007, the following methods shall be used:

(a) the standard method for determining matter other than basic cereals of unimpaired quality shall be that set out in Annex III;

(b) the standard method for determining moisture content shall be that set out in Annex IV. However, Member States may also use other methods based on the principle set out in Annex IV, method ISO 712:1998, or a method based on infrared technology. In case of dispute, only the results of using the method set out in Annex IV shall be accepted;

(c) the standard method for determining the tannin content of sorghum shall be method ISO 9648:1988;

(d) the standard method for determining the non-stickiness and machinability of the dough obtained from common wheat shall be that set out in Annex V;

(e) the standard method for determining the protein content of ground common wheat shall be that recognised by the International Association for Cereal Chemistry (ICC), the standards of which are laid down under heading No 105/2: 'method for the determination of the protein content of cereals and cereal products';

However, Member States may use any other method. In such a case, they must furnish the Commission with evidence of recognition by the ICC that the method in question gives equivalent results;

(f) the method for determining the Zeleny index of ground common wheat shall comply with method ISO 5529:1992;

(g) the method for determining the Hagberg falling number (amylase activity test) shall comply with method ISO 3093:2004;

(h) the standard method for determining the rate of loss of vitreous aspect of durum wheat shall be that set out in Annex VI;

(i) the standard method for determining the specific weight shall comply with method ISO 7971/2:1995;

(j) the sampling methods and reference analysis methods for determining mycotoxin rates shall be those mentioned in Annex I to Regulation (EC) No 1881/2006 and set out in Annexes I and II to Commission Regulation (EC) No 401/2006 ([2]).

([1]) OJ L 364, 20.12.2006, p. 5.

([2]) OJ L 70, 9.3.2006, p. 12.

Article 6

1. The cereals offered shall be taken over by the intervention agency when the quantity and the minimum required standards, as set out in Annex I, have been established by the intervention agency or its representative for the entire lot in respect of the goods delivered to the intervention store.

This takeover may take place in the store in which the cereals are being held at the time of the offer, provided that the storage is on the premises of a 'storer' within the meaning of Article 2(2)(a) of Regulation (EC) No 884/2006 and that the same rules and conditions as applicable to those premises, after takeover of the cereals for intervention, apply as from submission of the offer.

For maize, the quantity taken over may not exceed the quantity awarded in accordance with Article 3(2) and (3) of this Regulation.

2. The quality characteristics shall be established on the basis of a representative sample of the lot offered, consisting of samples taken at the rate of once every delivery for at least every 60 tonnes.

3. The quantity delivered must be weighed in the presence of the offerer and a representative of the intervention agency who is independent vis-à-vis the offerer.

The representative of the intervention agency may also be the storekeeper. In that case:

(a) within 45 days of takeover, the intervention agency shall itself conduct an inspection involving at least a volumetric check; any difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %;

(b) where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on when the cereals were taken over;

(c) where the tolerance is exceeded, the cereals shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the Member State, where it is more.

4. In the case of takeover in the store in which the cereals are being held at the time of the offer, the quantity may be established on the basis of the stock records, which must satisfy professional requirements and those of the intervention agency, and provided that:

(a) the stock records show the weight recorded on weighing, the physical quality characteristics at the time of weighing, and, in particular, the moisture content, transsilages if any, and treatments carried out; the weighing may not have been carried out more than 10 months previously;

(b) the storekeeper declares that the lot offered corresponds in all respects to the details contained in the stock records;

(c) the quality characteristics established at the time of weighing are the same as those of the representative sample made up from the samples taken by the intervention agency or its representative at a rate of one for every 60 tonnes.

5. Where paragraph 4 is applied:

(a) the weight to be recorded shall be that entered in the stock records, adjusted, where appropriate, to take account of any difference between the moisture content and/or the percentage of miscellaneous impurities (Schwarzbesatz) recorded at the moment of weighing and those determined on the basis of the representative sample. A difference between the percentages of miscellaneous impurities may only be taken into account to reduce the weight entered in the stock records;

(b) within 45 days of takeover the intervention agency shall make a further volumetric check; the difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %;

(c) where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on takeover;

(d) where the tolerance is exceeded, the cereals shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the European Agricultural Guarantee Fund, where it is more, account being taken of the tolerance provided for in the first indent of Annex XI(1) of Regulation (EC) No 884/2006.

6. The last takeover shall take place, in the case of cereals other than maize, at the latest at the end of the second month following the month of the final delivery referred to in the first subparagraph of Article 2(4) and, in the case of maize, not later than the end of the second month following each of the final deliveries referred to in the second subparagraph of Article 2(4), and in any event not later than 31 July in Spain, Greece, Italy and Portugal and 31 August in the other Member States.

Article 7

1. The intervention agency shall see that the physical and technical characteristics of the samples taken are analysed under its responsibility within 20 working days of the representative sample being made up.

2. The offerer shall bear the costs relating to:

(a) determination of the tannin content of sorghum;

(b) the amylasic activity (Hagberg) test;

(c) determination of the protein content of durum wheat and common wheat;

(d) the Zeleny test;

(e) the machinability test;

(f) analyses of contaminants.

3. If the analyses referred to in paragraph 1 show that the cereals offered do not meet the minimum quality required for intervention, those cereals shall be withdrawn at the offerer's expense. The offerer shall also bear all the costs incurred.

4. In cases of dispute, the intervention agency shall have the necessary tests on the cereals in question carried out again, the cost being met by the losing party.

Article 8

A takeover record shall be drawn up by the intervention agency for each lot. It shall indicate:

(a) the date on which the quantity and minimum characteristics were checked;

(b) the weight delivered;

(c) the number of samples taken to make up the representative sample;

(d) the physical characteristics established;

(e) the agency responsible for analysing the technological criteria and the results thereof.

The record shall be dated and sent to the storekeeper for countersigning.

CHAPTER II

RULES FOR PAYMENTS AND CHECKS

Article 9

1. Without prejudice to paragraph 2, the price payable to the offerer shall be the reference price referred to in Article 8(1)(a) of Regulation (EC) No 1234/2007, valid on the date specified as the first day of delivery when notice was given of acceptance of the offer, for goods delivered at warehouse, before unloading. This price shall be adjusted in accordance with the increases and reductions referred to in Article 10 of this Regulation.

However, where delivery takes place in a month in which the reference price is lower than that of the month of the offer, the higher price shall be paid. This provision shall not apply to sorghum offered in August and September.

2. On receipt of an offer, in compliance with Article 10(1)(a) of Regulation (EC) No 1234/2007, the intervention agency shall decide on the place and the first date for the cereals to be taken over.

Transport costs from the place where the goods are stored when the offer is made to the intervention centre to which they can be transported at least expense shall be borne by the offerer.

Should the intervention agency take over the goods at a place other than the intervention centre to which they may be transported at least expense, it shall determine and bear the additional transport costs. In this case, the transport costs referred to in the second subparagraph shall be determined by the intervention agency.

If the intervention agency, in agreement with the offerer, stores the goods at the place at which they are located at the time the offer is made, the costs referred to in the second sentence of the third subparagraph and the costs of removal from the warehouse, the latter being assessed on the basis of the rates actually recorded in the Member State concerned, shall be deducted from the intervention price.

3. Payment shall be made between the 30th and the 35th day following the date of takeover, as referred to in Article 6.

Article 10

The price increases or reductions by which the intervention price is increased or decreased shall be expressed in euro per tonne and applied jointly, as provided below:

(a) where the moisture content of cereals offered for intervention is less than 13 % for maize and sorghum and 14 % for other cereals, the price increases to be applied shall be those listed in Table I of Annex VII. Where the moisture content of these cereals offered for intervention is higher than 13 % and 14 % respectively, the price reductions to be applied shall be those listed in Table II of Annex VII;

(b) where the specific weight of cereals offered for intervention differs from the weight/volume ratio of 76 kg/hl for common wheat, and 64 kg/hl for barley, the reductions to be applied shall be those listed in Table III of Annex VII;

(c) where the percentage of broken grains exceeds 3 % for durum wheat, common wheat and barley, and 4 % for maize and sorghum, a reduction of EUR 0,05 shall be applied for each additional 0,1 percentage point;

(d) where the percentage of grain impurities exceeds 2 % for durum wheat, 4 % for maize and sorghum, and 5 % for common wheat and barley, a reduction of EUR 0,05 shall be applied for each additional 0,1 percentage point;

(e) where the percentage of sprouted grains exceeds 2,5 %, a reduction of EUR 0,05 shall be applied for each additional 0,1 percentage point;

(f) where the percentage of miscellaneous impurities (Schwarzbesatz) exceeds 0,5 % for durum wheat and 1 % for common wheat, barley, maize and sorghum, a reduction of EUR 0,1 shall be applied for each additional 0,1 percentage point;

(g) where the percentage of piebald grains in durum wheat exceeds 20 %, a reduction of EUR 0,2 shall be applied for each additional percentage point or fraction thereof;

(h) where the protein content of common wheat is less than 11,5 %, the reductions to be applied shall be those listed in Table IV of Annex VII;

(i) where the tannin content of sorghum offered for intervention is higher than 0,4 % of the dry matter, the reduction to be applied shall be calculated in accordance with the method laid down in Annex VIII.

Article 11

1. Any operator who stores bought-in products on behalf of the intervention agency shall monitor their presence and state of preservation regularly and inform the aforesaid agency without delay of any problem arising in that respect.

2. The intervention agency shall check the quality of the stored product at least once a year. Samples for that purpose may be taken when the inventory is established as provided for in point A.I of Annex I to Regulation (EC) No 884/2006.

3. Where the checks provided for under this Regulation are to be carried out on the basis of the risk analysis referred to in the second subparagraph of Article 4(2), the Member States shall be liable for the financial consequences of any failure to comply with the maximum admissible contaminant level. Such liability shall be established, without prejudice to any action which the Member State may itself take against the offerer or storekeeper, in the event of a failure to respect their commitments or obligations.

However, in the case of ochratoxin A and aflatoxin, if the Member State concerned is able to prove to the Commission's satisfaction that the standards were met on entry, that normal storage conditions were observed and that the storekeeper's other commitments were respected, the financial liability shall be borne by the Community budget.

Article 12

The intervention agencies shall, where necessary, adopt additional procedures and conditions for taking over, compatible with this Regulation, to take account of any special conditions existing in the Member State in question. In particular, they may request periodic stock returns.

CHAPTER III

INFORMATION TO BE FORWARDED TO THE COMMISSION

Article 13

1. For every cereal listed in Article 10(1)(a) of Regulation (EC) No 1234/2007, each Member State shall forward by electronic means the information required to manage intervention, and in particular:

(a) every Wednesday by 12.00 (Brussels time):

(i) the quantities of cereals offered into intervention submitted by operators not later than 12.00 (Brussels time) on the Friday of the previous week, in accordance with Articles 2 and 3 of this Regulation;

(ii) the quantities of cereals, other than maize, offered into intervention, for which the offer has been withdrawn by the offerer since the start of the intervention period;

(iii) the total quantities of cereals offered for intervention after the start of the intervention period, net of the quantities referred to in point (ii);

(iv) the total quantities of cereals taken over since the start of the intervention period, in accordance with Article 6 of this Regulation;

(b) on the Wednesday following the publication of the invitation to tender, the quantities of cereals put up for tender in accordance with Article 2(2) of Commission Regulation (EEC) No 2131/93 [1];

(c) on the Wednesday following the date on which the Member State defines the lots concerned, the quantities of cereals intended for distribution free of charge to the most deprived persons in the Community in accordance with Article 27 of Regulation (EC) No 1234/2007;

(d) by the end of the month following the takeover deadline referred to in Article 6(6) of this Regulation, by region set out in Annex III to Regulation (EEC) No 837/90, the average results of specific weight, moisture content, percentage of broken grains and protein content recorded for the lots of cereals taken over.

2. The notifications referred to in paragraph 1 shall be made even if no quantity has been offered. In the absence of any notification of the information referred to in paragraph 1(a)(i), the Commission shall consider that no offer has been submitted in the Member State concerned.

3. The form and content of the notifications referred to in paragraph 1 shall be defined on the basis of models made available by the Commission to the Member States. These models shall not apply until the Committee referred to in Article 195(1) of Regulation (EC) No 1234/2007 has been informed. They shall be adapted and updated by the Commission under the same conditions.

CHAPTER IV

FINAL PROVISIONS

Article 14

Regulation (EC) No 824/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation Table in Annex X.

Article 15

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

It shall apply from 1 July 2008.

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

Done at Brussels, 18 July 2008.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 191, 31.7.1993, p. 76.

ANNEX I

THE MINIMUM QUALITY REQUIREMENTS REFERRED TO IN ARTICLE 4(2)

	Durum wheat	Common wheat	Barley	Maize	Sorghum
A. Maximum moisture content	14,5 %	14,5 %	14,5 %	13,5 %	13,5 %
B. Maximum percentage of matter which is not basic cereal of unimpaired quality:	12 %	12 %	12 %	12 %	12 %
1. Broken grains	6 %	5 %	5 %	5 %	5 %
2. Impurities consisting of grains (other than indicated at 3)	5 %	7 %	12 %	5 %	5 %
of which:					
(a) shrivelled grains				—	—
(b) other cereals	3 %		5 %	—	—
(c) grains damaged by pests					
(d) grains in which the germ is discoloured			—	—	—
(e) grains overheated during drying	0,50 %	0,50 %	3 %	0,50 %	0,50 %
3. Mottled grains and/or grains affected with fusariosis,	5 %	—	—	—	—
of which:					
— grains affected with fusariosis	1,5 %	—	—	—	—
4. Sprouted grains	4 %	4 %	6 %	6 %	6 %
5. Miscellaneous impurities (Schwarzbesatz),	3 %	3 %	3 %	3 %	3 %
of which:					
(a) extraneous seeds:					
— noxious	0,10 %	0,10 %	0,10 %	0,10 %	0,10 %
— other					
(b) damaged grains:					
— grains damaged by spontaneous heating or too extreme heating during drying	0,05 %	0,05 %			
— other					
(c) extraneous matter					
(d) husks					
(e) ergot	0,05 %	0,05 %	—	—	—
(f) decayed grains			—	—	—
(g) dead insects and fragments of insects					

	Durum wheat	Common wheat	Barley	Maize	Sorghum
C. Maximum percentage of wholly or partially piebald grains	27 %	—	—	—	—
D. Maximum tannin content (1)	—	—	—	—	1 %
E. Minimum specific weight (kg/hl)	78	73	62		—
F. Minimum protein content (1):					
— 2002/2003 marketing year and onwards	11,5 %	10,5 %			
G. Hagberg falling number (seconds)	220	220			
H. Minimum Zeleny index (ml)	—	22	—	—	—

(1) As % of dry matter.

ANNEX II

1. DEFINITION OF MATTER OTHER THAN BASIC CEREALS OF UNIMPAIRED QUALITY

1.1. **Broken grains**

All grains whose endosperm is partially uncovered shall be regarded as broken grains. Grains damaged by threshing and grains from which the germ has been removed also belong to this group.

For maize, 'broken grains' means pieces of grain or grains which pass through a sieve with a circular mesh 4,5 mm in diameter.

For sorghum, 'broken grains' means pieces of grain or grains which pass through a sieve with a circular mesh 1,8 mm in diameter.

1.2. **Grain impurities**

(a) *Shrivelled grains*

Grains which, after elimination from the sample of all other matter referred to in this Annex, pass through sieves with apertures of the following dimensions: common wheat 2,0 mm, durum wheat 1,9 mm, barley 2,2 mm.

Notwithstanding this definition, however:

— for barley from Estonia, Latvia, Finland and Sweden with a specific weight of at least 64 kilograms per hectolitre offered for intervention in those Member States, or

— for barley with a moisture content of 12,5 % or less,

'shrivelled grains' means grains which, after elimination of all other matter referred to in this Annex, pass through sieves with apertures of 2,0 mm.

In addition, grains damaged by frost and unripe grains (green) belong to this group.

(b) *Other cereals*

All grains which do not belong to the species of grain sampled.

(c) *Grains damaged by pests*

Grains which have been nibbled. Bug-ridden grains also belong to this group.

(d) Grains in which the germ is discoloured, mottled grains, grains affected with fusariosis

Grains in which the germ is discoloured are those of which the tegument is coloured brown to brownish black and of which the germ is normal and not sprouting. For common wheat, grains in which the germ is discoloured shall be disregarded up to 8 %.

For durum wheat:

— grains which show a brown to brownish black discoloration elsewhere than on the germ itself shall be considered as mottled grains,

— grains affected with fusariosis are grains whose pericarp is contaminated with Fusarium mycelium; such grains look slightly shrivelled, wrinkled and have pink or white diffuse patches with an ill-defined outline.

(e) Grains overheated during drying are those which show external signs of scorching but which are not damaged grains.

1.3. **Sprouted grains**

Sprouted grains are those in which the radicle or plumule is clearly visible to the naked eye. However, account must be taken of the general appearance of the sample when its content, of sprouted grains, is assessed. In some kinds of cereals the germ is protuberant, for example in durum wheat, and the germ tegument splits when the batch of cereals is shaken. These grains resemble sprouted grains but must not be included in that group. Sprouted grains are only those where the germ has undergone clearly visible changes which make it easy to distinguish the sprouted grain from the normal grain.

1.4. **Miscellaneous impurities (Schwarzbesatz)**

(a) *Extraneous seeds*

'Extraneous seeds' are seeds of plants, whether or not cultivated, other than cereals. They include seeds not worth recovering, seeds which can be used for livestock and noxious seeds.

'Noxious seeds' means seeds which are toxic to humans and animals, seeds hampering or complicating the cleaning and milling of cereals and seeds affecting the quality of products processed from cereals.

(b) *Damaged grains*

'Damaged grains' are those rendered unfit for human consumption and, as regards feed grain, for consumption by cattle, owing to putrefaction, mildew, or bacterial or other causes.

Damaged grains also include grains damaged by spontaneous heat generation or too extreme heating during drying. These 'heated' or 'smutty' grains are fully grown grains in which the tegument is coloured greyish brown to black, while the cross-section of the kernel is coloured yellowish-grey to brownish-black.

Grains attacked by wheat midge shall be considered damaged grains only when more than half the surface of the grain is coloured grey to black as a result of secondary cryptogamic attack. Where discoloration covers less then half the surface of the grain, they must be classed with grains damaged by pests;

(c) *Extraneous matter*

All matter in a sample of cereals retained by a sieve with apertures of 3,5 mm, (with the exception of grains of other cereals and particularly large grains of the basic cereal) and that passing through a sieve with apertures of 1,0 mm shall be considered extraneous matter. Also included are stones, sand, fragments of straw and other impurities in the samples which pass through a sieve with apertures of 3,5 mm and are retained by a sieve with apertures of 1,0 mm.

This definition does not apply to maize. For maize, all matter in a sample which passes through a sieve with apertures of 1 mm shall be considered extraneous matter, in addition to that referred to in the first subparagraph.

(d) Husks (for maize: cob fragments).

(e) Ergots.

(f) Decayed grains.

(g) Dead insects and fragments of insects.

1.5. **Live pests**

1.6. **Piebald grains which have lost their vitreous aspect (mitadiné or piebald)**

Mitadiné grains of durum wheat are grains whose kernel cannot be regarded as entirely vitreous.

2. SPECIFIC FACTORS TO TAKE INTO CONSIDERATION FOR EACH TYPE OF CEREAL FOR THE DEFINITION OF IMPURITIES

2.1. Durum wheat

Grain impurities means shrivelled grains, grains of other cereals, grains damaged by pests, grains in which the germ is discoloured, mottled grains of grains affected with fusariosis and grains overheated during drying.

Miscellaneous impurities means extraneous seeds, damaged grains, extraneous matter, husks, ergot, decayed grains, dead insects and fragments of insects.

2.2. Common wheat

Grain impurities means shrivelled grains, grains of other cereals, grains damaged by pests, grains in which the germ is discoloured and grains overheated during drying.

Miscellaneous impurities means extraneous seeds, damaged grains, extraneous matter, husks, ergot decayed grains, dead insects and fragments of insects.

2.3. Barley

Grain impurities means shrivelled grains, grains of other cereals, grains damaged by pests and grains overheated during drying.

Miscellaneous impurities means extraneous seeds, damaged grains, extraneous matter, husks, dead insects and fragments of insects.

2.4. Maize

Grain impurities means grains of other cereals, grains damaged by pests and grains overheated during drying.

For maize, all matter in a sample which passes through a sieve with apertures of 1,0 mm shall be considered extraneous matter.

All extraneous seeds, damaged grains, extraneous matter, husks, dead insects and fragments of insects shall be considered miscellaneous impurities.

2.5. Sorghum

Grain impurities means grains of other cereals, grains damaged by pests and grains overheated during drying.

Miscellaneous impurities means extraneous seeds, damaged grains, extraneous matter, husks, dead insects and fragments of insects.

ANNEX III

STANDARD METHOD FOR DETERMINING MATTER OTHER THAN BASIC CEREALS OF UNIMPAIRED QUALITY

1. For common wheat, durum wheat and barley, an average sample of 250 g shall be passed through two sieves, one with slotted perforations of 3,5 mm and the other with slotted perforations of 1,0 mm, for half a minute each.

   In order to ensure constant sifting, it is advisable to use a mechanical sieve, for example a vibrating table with fitted sieves.

   The matter retained by the sieve with slotted perforations of 3,5 mm and that passing through the sieve with slotted perforations of 1,0 mm must be weighed together and regarded as extraneous matter. Where the matter retained by the sieve with slotted perforations of 3,5 mm includes parts in the 'other cereals' group or particularly large grains of the basic cereal, those parts or grains shall be returned to the sifted sample. During sifting, in the sieve with slotted perforations of 1,0 mm, a close check must be made for live pests.

   From the sifted sample, a sample of 50 to 100 g shall be taken using a separator. This partial sample must be weighed.

   The partial sample should then be spread out on a table with tweezers or a horn spatula and broken grains, other cereals, sprouted grains, grains damaged by pests, grains damaged by frost, grains in which the germ is discoloured, mottled grains, extraneous seeds, ergots, damaged grains, decayed grains, husks and live pests and dead insects must be extracted.

   Where the partial sample includes grains still in the husk, they shall be husked by hand, the husks obtained being considered as pieces of husks. Stones, sand and fragments of straw shall be considered extraneous matter.

   The partial sample shall be passed for half a minute through a sieve with a mesh size of 2,0 mm for common wheat, 1,9 mm for durum wheat and 2,2 mm for barley. Matter which passes through this sieve shall be considered as shrivelled grains. Grains damaged by frost and unripe green grains shall belong to the 'shrivelled grains' group.

2. An average sample of 500 g in the case of maize and 250 g for sorghum, is shaken for half a minute in a sieve which has slotted perforations of 1,0 mm. Check for the presence of live pests and dead insects.

   Using tweezers or a horn spatula, extract from the matter retained by the sieve with slotted perforations of 1,0 mm stones, sand, fragments of straw and other extraneous matter.

   Add the extraneous matter thus extracted to the matter which has passed through the sieve with slotted perforations of 1,0 mm and weigh them together.

   Using a separator, prepare a partial sample of 100 to 200 g in the case of maize or 25 to 50 g for sorghum from the sample passed through the sieve. Weigh this partial sample. Spread it out in a thin layer on a table. Using tweezers or a horn spatula, extract the pieces of other cereals, grains damaged by pests, grains damaged by frost, sprouted grains, extraneous seeds, damaged grains, husks, live pests and dead insects.

   Next, pass this partial sample through a sieve with a 4,5 mm round mesh for maize and 1,8 mm round mesh for sorghum. The matter which passes through this sieve shall be considered as broken grains.

3. Groups of matter other than basic cereals of unimpaired quality, determined according to the methods referred to in 1 and 2 must be weighed very carefully to the nearest 0,01 g and distributed according to percentage over the average sample. The particulars entered in the analysis report shall be to the nearest 0,1 %. Check for live pests.

As a general rule, two analyses must be made for each sample. They must not differ by more than 10 % in respect of the total of the above mentioned matter.

4. The apparatus to be used for the operations referred to in 1, 2 and 3 is as follows:

(a) sample separator, for example a conical or grooved apparatus;

(b) precision or assay balance;

(c) sieves with slotted perforations of 1,0 mm, 1,8 mm, 1,9 mm, 2,0 mm, 2,2 mm and 3,5 mm and sieves with a 1,8 mm and 4,5 mm round mesh. The sieves may be fitted to a vibrating table.

ANNEX IV

STANDARD METHOD OF TESTING FOR MOISTURE CONTENT

1. **Principle**

The product is dried at a temperature of 130 to 133 °C under normal atmospheric pressure, for a period appropriate to the size of the particles.

2. **Scope**

This drying method applies to cereals crushed into particles of which at least 50 % pass through a sieve with 0,5 mm mesh and leave not more than 10 % residue on the sieve with a 1,0 mm round mesh. It also applies to flour.

3. **Apparatus**

Precision balance.

Crusher made of a material which does not absorb moisture, is easy to clean, enables crushing to be effected quickly and evenly without overheating, limits contact with the outside air to the minimum, and meets the requirements mentioned in 2 (for example a detachable roller mill).

Receptacle made of non-corrodible metal or glass, fitted with a sufficiently tight-fitting lid; working surface allowing distribution of the test sample at 0,3 g per cm^2.

Electrically heated isothermic heating chamber, set at a temperature of 130 to 133 °C [1] having adequate ventilation [2].

Dessicator with a metal or, failing metal, porcelain plate (thick, perforated), containing any suitable dessicant.

4. **Procedure**

Drying

Weigh to the nearest 1 mg a quantity slightly greater than 5 g of the crushed small-grained cereals or 8 g of the crushed maize in the pre-weighed receptacle. Place the receptacle in a heating chamber heated to a temperature of 130 to 133 °C. This should be done as quickly as possible, so as to prevent too great a drop in temperature. Leave small-grained cereals to dry for two hours and maize for four hours after the heating chamber regains a temperature of 130 to 133 °C. Remove the receptacle from the heating chamber, quickly replace the lid, leave to cool for 30 to 45 minutes in a dessicator and weigh (to the nearest 1 mg).

5. **Method of calculation and formulae**

E = the initial mass, in grams, of the test sample

M = the mass, in grams, of the test sample after preparation

M′ = the mass, in grams, of the test sample after crushing

m = the mass, in grams, of the dry test sample.

The moisture content as a percentage of the product is equal to:

— without previous preparation $(E - m) \times 100/E$,

— with previous preparation, $((M' - m)M/M' + E - M) \times 100/E = 100\ (1 - Mm/EM')$

Tests to be made in duplicate at least.

[1] Air temperature inside the heating chamber.

[2] Its heating capacity should be such that, when it has been pre-set to a temperature of 130 to 133 °C, that temperature can be regained in less than 45 minutes after the maximum number of test samples have been placed in the chamber to dry simultaneously. Ventilation should be such that, when small-grained cereals (common wheat, durum wheat, barley and sorghum) are dried for two hours and maize for four hours, the results from all the test samples of semolina or, as the case may be, maize that the heating chamber can hold differ by less than 0,15 % from the results obtained after drying small-grained cereals for three hours and maize for five hours.

6. **Repetition**

The difference between the values obtained from the two determinations carried out simultaneously or in rapid succession by the same analyst shall not exceed 0,15 g of moisture per 100 g of sample. If it does so, the determinations shall be repeated.

ANNEX V

METHOD FOR DETERMINING THE NON-STICKINESS AND MACHINABILITY OF THE DOUGH OBTAINED FROM COMMON WHEAT

1. **Title**

Method for test baking of wheat flour.

2. **Scope**

The method is applicable to flour, experimentally milled from wheat for the production of yeast-raised bread.

3. **Principle**

Dough is made from flour, water, yeast, salt and sucrose, in a specified mixer. After dividing and rounding, the pieces are given 30 minutes' rest; they are moulded, placed on baking sheets and baked after a final proof of fixed duration. Dough-handling properties are noted. The loaves are judged by volume and height.

4. **Ingredients**

4.1. *Yeast*

Active dry yeast of type *Saccharomyces cerevisiae* DHW-Hamburg-Wansbeck or a product having the same characteristics.

4.2. *Tap water*

4.3. *Sugar-salt-ascorbic acid solution*

Dissolve 30 ± 0,5 g of sodium chloride (commercial grade), 30 ± 0,5 g of sucrose (commercial grade), and 0,040 ± 0,001 g ascorbic acid in 800 ± 5 g of water. Prepare fresh daily.

4.4. *Sugar solution*

Dissolve 5 ± 0,1 g sucrose (commercial grade) in 95 ± 1 g of water. Prepare fresh daily.

4.5. *Enzyme active malt flour*

Commercial grade.

5. **Equipment and apparatus**

5.1. *Baking room*

Controlled to maintain a temperature of 22 to 25 °C.

5.2. *Refrigerator*

For maintaining a temperature of 4 ± 2 °C.

5.3. *Balance*

Maximum load 2 kg, accuracy 2 g.

5.4. *Balance*

Maximum load 0,5 kg, accuracy 0,1 g.

5.5. *Analytical balance*

Accuracy 0,1 × 10^{-3} g.

5.6. *Mixer*

Stephan UMTA 10, with mixing arm model 'Detmold' (Stephan Soehne GmbH) or similar equipment having the same characteristics.

5.7. *Proving cabinet*

Controlled to maintain a temperature of 30 ± 1 °C.

5.8. *Open plastic boxes*

Made from polymethylmethacrylate (Plexiglas, Perspex). Inside dimensions: 25 × 25 × 15 cm height, wall thickness 0,5 ± 0,05 cm.

5.9. *Square plastic sheets*

Made from polymethylmethacrylate (Plexiglas, Perspex). At least 30 × 30 cm, thickness 0,5 ± 0,05 cm.

5.10. *Moulder*

Brabender ball homogeniser (Brabender OHG) or similar equipment having the same characteristics.

6. **Sampling**

According to ICC Standard No 101.

7. **Procedure**

7.1. *Determination of water uptake*

Determine the water absorption according to ICC Standard No 115/1.

7.2. *Determination of malt flour addition*

Determine the 'falling number' of the flour according to ISO 3093-1982. If the 'falling number' is higher than 250, determine the malt flour addition required to bring it within the range 200 to 250, using a series of mixtures of the flour with increasing quantities of malt flour (4.5). If the 'falling number' is lower than 250, no malt flour is required.

7.3. *Reactivation of active dry yeast*

Adjust the temperature of the sugar solution (4.4) to 35 ± 1 °C. Pour one part by weight of the active dry yeast into four parts by weight of this tempered sugar solution. Do not stir. Swirl if necessary.

Allow to stand for 10 ± 1 minute, then stir until a homogeneous suspension is obtained. Use this suspension within 10 minutes.

7.4. *Temperature adjustment of the flour and the dough liquid*

The temperature of the flour and the water must be adjusted to give a dough temperature of 27 ± 1 °C after mixing.

7.5. *Dough composition*

Weigh, with a precision of 2 g, 10 y/3 g flour on as-is moisture basis (corresponding to 1 kg flour on a 14 % moisture basis), in which 'y' is the quantity of flour used in the farinograph test (see ICC Standard No 115/1). Weigh, with a precision of 0,2 g, the quantity of malt flour necessary to bring the 'falling number' within the range 200 to 250 (7.2).

Weigh 430 ± 5 g sugar-salt-ascorbic acid solution (4.3) and add water to a total mass of (x – 9) 10 y/3 g, (see 10.2) in which 'x' is the quantity of water used in the farinograph test (see ICC Standard No 115/1). This total mass (usually between 450 and 650 g) must be achieved with a precision of 1,5 g.

Weigh 90 ± 1 g yeast suspension (7.3).

Note the total mass of the dough (P), which is the sum of the masses of flour, sugar-salt-ascorbic acid solution plus water, yeast suspension and malt flour.

7.6. *Mixing*

Before starting, bring the mixer to a temperature of 27 ± 1 °C by use of a suitable quantity of tempered water.

Place the liquid dough ingredients in the mixer and place the flour plus malt flour on top.

Start the mixer (speed 1, 1 400 rev/min), and allow to run for 60 seconds. Twenty seconds after the start of mixing, turn the scraper attached to the lid of the mixing bowl two revolutions.

Measure the temperature of the dough. If it is outside the range 26 to 28 °C, discard the dough and mix a new one after adjustment of ingredient temperatures.

Note dough properties using one of the following terms:

— non-sticky and machinable, or

— sticky and non-machinable.

To be considered 'non-sticky and machinable' at the end of mixing, the dough should form a coherent mass which hardly adheres to the sides of the bowl and spindle of the mixer. It should be possible to collect the dough by hand and remove it from the mixing bowl in a single motion without noticeable loss.

7.7. *Dividing and rounding*

Weigh, with precision of 2 g, three pieces of dough according to the formula:

p = 0,25 P, where:

p = mass of scaled dough piece,

P = total mass of dough.

Immediately round the pieces for 15 seconds in the moulder (5.10) and place them for 30 ± 2 minutes on the square plastic sheets (5.9), covered by the inverted plastic boxes (5.8) in the proving cabinet (5.7).

Do not use dusting flour.

7.8. *Moulding*

Bring the pieces of dough on the plastic sheets, covered by the inverted boxes, to the moulder (5.10), and re-round each piece for 15 seconds. Do not remove cover from a piece of dough until immediately before rounding. Note dough properties again, using one of the following terms:

— non-sticky and machinable, or

— sticky and non-machinable.

To be considered as 'non-sticky and machinable' the dough should adhere hardly, or not at all, to the sides of the chamber so that it can freely rotate around itself and form a regular ball during the operation of the machine. At the end of the operation the dough should not stick to the sides of the dough-moulding chamber when the lid of the chamber is raised.

8. **Test report**

The test report should mention:

— dough-handling properties at the end of mixing, and at moulding,

— the 'falling number' of the flour without addition of malt flour,

— any anomalies observed.

It should further include:

— the method used,

— all details required for the identification of the sample.

9. **General remarks**

9.1. The formula for the calculation of the quantity of dough liquid is based on the following considerations:

Addition of x ml water to the equivalent of 300 g flour at 14 % moisture produces the required consistency. As in the baking test 1 kg of flour (14 % moisture basis) is used, whereas x is based on 300 g of flour, for the baking test x divided by three and multiplied by 10 g of water is needed, so 10 x/3 g.

The 430 g sugar-salt-ascorbic acid solution contains 15 g salt and 15 g sugar. This 430 g solution is included in the dough liquid. So to add 10 x/3 g water to the dough, (10 x/3 + 30) g dough liquid composed of the 430 g sugar-salt-ascorbic acid solution and an additional quantity of water must be added.

Although part of the water added with the yeast suspension is absorbed by the yeast, this suspension also contains 'free' water. It is arbitrarily supposed that 90 g yeast suspension contains 60 g 'free' water. The quantity of the dough liquid must be corrected for this 60 g of 'free' water in the yeast suspension, so 10 x/3 plus 30 minus 60 g must finally be added. This can be rearranged as follows: (10 x/3 + 30) – 60 = 10 x/3 – 30 = (x/3 – 3) 10 = (x – 9) 10/3, the formula given in 7.5. If, for example, a water addition x in the farinograph test was found of 165 ml, this value must be substituted in this formula, so to the 430 g sugar-salt-ascorbic acid solution water must be added to a total mass of:

(165 – 9) 10/3 = 156 × 10/3 = 520 g.

9.2. The method is not directly applicable to wheat. The procedure to be followed for characterising the baking properties of wheat is as follows:

Clean the wheat sample, and determine the moisture content of the cleaned wheat. If the moisture content is within the range 15,0 % to 16,0 %, do not temper the wheat. If the moisture content is outside this range, adjust the moisture content to 15,5 ± 0,5 %, at least three hours prior to milling.

Mill the wheat into flour using a Buehler laboratory mill MLU 202 or a Brabender Quadrumat Senior mill or similar equipment having the same characteristics.

Choose a milling procedure that yields a flour of minimum 72 % extraction, with an ash content of 0,50 to 0,60 % on dry matter basis.

Determine the ash content of the flour according to Annex II to Commission Regulation (EC) No 1501/95 (OJ L 147, 30.6.1995, p. 7) and the moisture content according to this Regulation. Calculate the extraction rate by the equation:

$E = (((100 - f)\ F)/(100 - w)\ W) \times 100\ \%$

where:

E = extraction rate,

f = moisture of the flour,

w = moisture content of the wheat,

F = mass of flour produced with moisture content f,

W = mass of wheat milled with moisture content w.

Note: Information concerning the ingredients and equipment to be used is published in Document T/77.300 of 31 March 1977 from the Instituut voor Graan, Meel en Brood, TNO — Postbus 15, Wageningen, Netherlands.

ANNEX VI

DETERMINATION OF THE RATE OF LOSS OF VITREOUS ASPECT

1. **Principle**

Only part of the sample is used to determine the percentage of grains which have wholly or partially lost their vitreous aspect. The grains are cut using a Pohl grain cutter or an equivalent instrument.

2. **Equipment and apparatus**

— Pohl grain cutter or equivalent instrument,

— tweezers, scalpel,

— tray or dish.

3. **Procedure**

(a) The determination is carried out on a sample of 100 g after separation of any matter other than basic cereals of unimpaired quality.

(b) Spread the sample on a tray and homogenise well.

(c) Insert a plate in the grain cutter and spread a handful of grains on the grid. Tap firmly to ensure that there is only one grain in each hole. Lower the moveable section to hold the grains in place and then cut them.

(d) Prepare sufficient plates to ensure that a minimum of 600 grains are cut.

(e) Count the number of grains which have wholly or partially lost their vitreous aspect (mitadiné).

(f) Calculate the percentage of grains which have wholly or partially lost their vitreous aspect (mitadiné).

4. **Expression of results**

I = mass, in grams, of matter other than basic cereals of unimpaired quality.

M = percentage of cleaned grains examined which have wholly or partially lost their vitreous aspect (mitadiné).

5. **Result**

The percentage of grains which have wholly or partially lost their vitreous aspect (mitadiné) in the test portion is:

$(M \times (100 - I))/100 = \ldots$

ANNEX VII

TABLE I

Price increases for moisture content

Maize and sorghum		Other cereals	
Moisture content (%)	Increases (EUR/tonne)	Moisture content (%)	Increases (EUR/tonne)
—	—	13,4	0,1
—	—	13,3	0,2
—	—	13,2	0,3
—	—	13,1	0,4
—	—	13,0	0,5
—	—	12,9	0,6
—	—	12,8	0,7
—	—	12,7	0,8
—	—	12,6	0,9
—	—	12,5	1,0
12,4	0,1	12,4	1,1
12,3	0,2	12,3	1,2
12,2	0,3	12,2	1,3
12,1	0,4	12,1	1,4
12,0	0,5	12,0	1,5
11,9	0,6	11,9	1,6
11,8	0,7	11,8	1,7
11,7	0,8	11,7	1,8
11,6	0,9	11,6	1,9
11,5	1,0	11,5	2,0
11,4	1,1	11,4	2,1
11,3	1,2	11,3	2,2
11,2	1,3	11,2	2,3
11,1	1,4	11,1	2,4
11,0	1,5	11,0	2,5
10,9	1,6	10,9	2,6
10,8	1,7	10,8	2,7
10,7	1,8	10,7	2,8
10,6	1,9	10,6	2,9
10,5	2,0	10,5	3,0
10,4	2,1	10,4	3,1

Maize and sorghum		Other cereals	
Moisture content (%)	Increases (EUR/tonne)	Moisture content (%)	Increases (EUR/tonne)
10,3	2,2	10,3	3,2
10,2	2,3	10,2	3,3
10,1	2,4	10,1	3,4
10,0	2,5	10,0	3,5

TABLE II

Price reductions for moisture content

Maize and sorghum		Other cereals	
Moisture content (%)	Reduction (EUR/tonne)	Moisture content (%)	Reduction (EUR/tonne)
13,5	1,0	14,5	1,0
13,4	0,8	14,4	0,8
13,3	0,6	14,3	0,6
13,2	0,4	14,2	0,4
13,1	0,2	14,1	0,2

TABLE III

Price reductions for specific weight

Cereal	Specific weight (kg/hl)	Price reduction (EUR/tonne)
Common wheat	Less than 76 to 75	0,5
	Less than 75 to 74	1,0
	Less than 74 to 73	1,5
Barley	Less than 64 to 62	1,0

TABLE IV

Price reductions for protein content

Protein content [1] (N × 5,7)	Price reduction (EUR/tonne)
Less than 11,5 to 11,0	2,5
Less than 11,0 to 10,5	5

[1] As % of dry matter.

ANNEX VIII

Practical method for determining the reduction to be applied to the price of sorghum by intervention agencies

1. *Basic data*

P = the percentage of tannin in raw product,

0,4 % = the percentage of tannin above to which the reduction is to be applied,

11 % [1] = the reduction corresponding to 1 % tannin in the dry matter.

2. *Calculation of the reduction*

The reduction, expressed in euro to be applied to the reference price, shall be calculated in accordance with the following formula:

$$11\ (P - 0{,}40)$$

---

[1] Reduction to be applied to the price of sorghum on the basis of the tannin content of 1 000 g of dry matter:
(a) Poultry-metabolisable energy of 1 000 g of sorghum dry matter with a theoretical tannin content of 0 %: 3 917 K calories;
(b) Reduction of the poultry-metabolisable energy of 1 000 g of sorghum dry matter per additional percentage point of tannin: 419 K calories;
(c) Difference, expressed in percentage points, between the maximum tannin content laid down for sorghum accepted for intervention and the tannin content laid down for the standard quality: 1,0 – 0,30 = 0,70;
(d) Difference, expressed as a percentage, between the poultry-metabolisable energy of sorghum containing 1,0 % tannin and the poultry-metabolisable energy of sorghum with the same tannin content as the standard quality (0,30 %)

$$100 - \left(\frac{3\,917 - (419 \times 1{,}0)}{3\,917 - (419 \times 0{,}30)} \times 100 \right) = 7{,}74\ \%$$

(e) Reduction corresponding to a 1 % tannin content in the dry matter, in excess of 0,30 %

$$\frac{7{,}74}{0{,}70} = \text{EUR } 11$$

ANNEX IX

Repealed Regulation with list of its successive amendments

Commission Regulation (EC) No 824/2000 (OJ L 100, 20.4.2000, p. 31)	
Commission Regulation (EC) No 336/2003 (OJ L 49, 22.2.2003, p. 6)	
Commission Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50)	Only Article 1
Commission Regulation (EC) No 1068/2005 (OJ L 174, 7.7.2005, p. 65)	
Commission Regulation (EC) No 1572/2006 [1] (OJ L 290, 20.10.2006, p. 29)	
Commission Regulation (EC) No 883/2007 (OJ L 195, 27.7.2007, p. 3)	

[1] Regulation partly annulled by judgment of the Court of First Instance of 15 November 2007 in Case T-310/06.

ANNEX X

CORRELATION TABLE

Regulation (EC) No 824/2000	This Regulation
Article 1	Article 1
Article 2(1)	Article 4(1)
Article 2(2), first subparagraph, introductory sentences	Article 4(2), first subparagraph, introductory sentences
Article 2(2), first subparagraph, first indent	Article 4(2), first subparagraph, point (a)
Article 2(2), first subparagraph, second indent	Article 4(2), first subparagraph, point (b)
Article 2(2), second and third subparagraphs	Article 4(2), second and third subparagraphs
Article 2(3)	Article 4(3)
Article 3, introductory words	Article 5, introductory words
Article 3, point (3.1.)	Article 5, point (a)
Article 3, point (3.2.)	Article 5, point (b)
Article 3, point (3.3.)	Article 5, point (c)
Article 3, point (3.4.)	Article 5, point (d)
Article 3, point (3.5.)	Article 5, point (e)
Article 3, point (3.6.)	Article 5, point (f)
Article 3, point (3.7.)	Article 5, point (g)
Article 3, point (3.8.)	Article 5, point (h)
Article 3, point (3.9.)	Article 5, point (i)
Article 3, point (3.10.)	Article 5, point (j)
Article 3a	Article 3
Article 4	Article 2
Article 5	Article 6
Article 6	Article 7
Article 7	Article 8
Article 8	Article 9
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 11a	Article 13
Article 12	—
—	Article 14
Article 13	Article 15
Annex I	Annex I
Annex II	Annex II
Annex III	Annex III
Annex IV	Annex IV
Annex V	Annex V
Annex VI	Annex VI
Annex VII	Annex VII
Annex VIII	Annex VIII
—	Annex IX
—	Annex X

COMMISSION REGULATION (EC) No 688/2008

of 18 July 2008

amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector [1],

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector [2], and in particular of the Article 36,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2007/08 marketing year are fixed by Commission Regulation (EC) No 1109/2007 [3]. These prices and duties have been last amended by Commission Regulation (EC) No 644/2008 [4].

(2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 19 July 2008.

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

Done at Brussels, 18 July 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

---

[1] OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

[2] OJ L 178, 1.7.2006, p. 24. Regulation as last amended by Regulation (EC) No 1568/2007 (OJ L 340, 22.12.2007, p. 62).

[3] OJ L 253, 28.9.2007, p. 5.

[4] OJ L 179, 8.7.2008, p. 3.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 95 applicable from 19 July 2008

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 (1)	21,79	5,41
1701 11 90 (1)	21,79	10,69
1701 12 10 (1)	21,79	5,22
1701 12 90 (1)	21,79	10,21
1701 91 00 (2)	23,46	13,98
1701 99 10 (2)	23,46	8,98
1701 99 90 (2)	23,46	8,98
1702 90 95 (3)	0,23	0,41

(1) Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).
(2) Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.
(3) Fixed per 1 % sucrose content.

DIRECTIVES

COMMISSION DIRECTIVE 2008/74/EC

of 18 July 2008

amending, as regards the type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and access to vehicle repair and maintenance information, Directive 2005/55/EC of the European Parliament and of the Council and Directive 2005/78/EC

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles [1], and in particular Article 7 thereof,

Whereas:

(1) Following the change of scope of Directive 2005/55/EC introduced by Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information [2], it is necessary to further amend this Directive by transferring the relevant technical requirements. Consequently, it is also necessary to amend Commission Directive 2005/78/EC [3], which implements that Directive.

(2) As a consequence of the change of scope, it is necessary to introduce new requirements into the heavy-duty emissions legislation set up by Directive 2005/55/EC. These requirements include test procedures to enable type approval of heavy-duty engines and vehicles with petrol engines.

(3) In addition, it is necessary to introduce existing requirements for measuring the smoke opacity of diesel engines into Directive 2005/78/EC. This is due to the repeal of Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles [4] as provided by Regulation (EC) No 715/2007.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee — Motor Vehicles,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2005/55/EC is amended as follows:

1. Article 1 is replaced by the following:

'*Article 1*

For the purposes of this Directive the following definitions shall apply:

(a) "vehicle" means any motor vehicle as defined in Article 2 of Directive 70/156/EEC with a reference mass exceeding 2 610 kg;

(b) "engine" means the motive propulsion source of a vehicle for which type approval as a separate technical unit, as defined in Article 2 of Directive 70/156/EEC, may be granted;

[1] OJ L 275, 20.10.2005, p. 1.
[2] OJ L 171, 29.6.2007, p. 1.
[3] OJ L 313, 29.11.2005, p. 1. Directive as last amended by Directive 2006/81/EC (OJ L 362, 20.12.2006, p. 92.
[4] OJ L 190, 20.8.1972, p. 1.

(c) "enhanced environment-friendly vehicle (EEV)" means a vehicle propelled by an engine which complies with the permissive emission limit values set out in row C of the tables in Section 6.2.1 of Annex I.'

2. Annexes I, II, III and VI to Directive 2005/55/EC are amended in accordance with Annex I to this Directive.

Article 2

Directive 2005/78/EC is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

Measures for the implementation of Articles 3 and 4 of Directive 2005/55/EC are laid down in Annexes II to VII to this Directive.

Annex VI shall apply for the purposes of the type approval of vehicles with compression-ignition engines and of such engines.

Annex VII shall apply for the purposes of the type approval of vehicles with spark ignition engines and of such engines.'

2. In point 1 of Annex V, Section 2 is replaced by the following:

'Section 2: the number of the Directive — 2005/55/EC'.

3. Annexes VI and VII as set out in Annex II to this Directive are added.

Article 3

1. Member States shall adopt and publish, by 2 January 2009 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 3 January 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 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 18 July 2008.

For the Commission
Günter VERHEUGEN
Vice-President

ANNEX I

Amendments to Directive 2005/55/EC

1. Annex I is amended as follows:

(a) Section 1 is replaced by the following:

'1. This Directive applies to the control of gaseous and particulate pollutants, useful life of emission control devices, conformity of in-service vehicles/engines and onboard diagnostic (OBD) systems of all motor vehicles, and to engines as specified in Article 1 with the exception of those vehicles of category M_1, N_1, N_2 and M_2 for which type approval has been granted under Regulation (EC) No 715/2007 of the European Parliament and of the Council (*).

From 3 January 2009 up to the dates specified in Article 10(2) of Regulation (EC) No 715/2007 for new approvals and in Article 10(3) of that Regulation for extensions, type approvals may continue to be granted under this Directive for vehicles of category N_1, N_2 and M_2 with a reference mass below 2 610 kg.

(*) OJ L 171, 29.6.2007, p. 1.'

(b) In section 2.1, the following definitions are added:

' "reference mass" means the mass of the vehicle in running order less the uniform mass of the driver of 75 kg and increased by a uniform mass of 100 kg.

"mass of the vehicle in running order" means the mass described in Section 2.6 of Annex I to Directive 2007/46/EC.'

(c) The following point 4.5 is added:

'4.5. At the request of the manufacturer, the type approval of a completed vehicle given under this Directive shall be extended to its incomplete vehicle with a reference mass below 2 610 kg. Type approvals shall be extended if the manufacturer can demonstrate that all bodywork combinations expected to be built onto the incomplete vehicle, increase the reference mass of the vehicle to above 2 610 kg.'

(d) In point 6.2, the following subparagraphs are inserted after the fourth subparagraph:

'For petrol engines, the test procedures set out in Annex VII of Directive 2005/78/EC shall apply.

For diesel engines, the test procedure for smoke opacity in Annex VI of Directive 2005/78/EC shall apply.'

2. Annex II is amended as follows:

(a) In Appendix 1, the following points 8.4, 8.4.1, 8.4.1.1 and 8.4.1.2 are added:

'8.4. **Engine performances (for measurement of smoke opacity)**

8.4.1. Power at the six points of measurement referred to in paragraph 2 of Annex 4 of UN/ECE Regulation 24.

8.4.1.1. Power of the engine measured on the test bench: .....

8.4.1.2 Power measured on the wheels of the vehicle: .....

Engine speed (min^{-1})	Measured power (kW)
1.	.....
2.	.....
3.	.....
4.	.....
5.	.....
6.	.....'

(b) The following Appendix 6 is added:

'Appendix 6

Information required for roadworthiness testing

A. Measurement of carbon monoxide emissions (*)

3.2.1.6. Normal engine idling speed (including tolerance) ..... min^{-1}

3.2.1.6.1. High engine idling speed (including tolerance) ..... min^{-1}

3.2.1.7. Carbon monoxide content by volume in the exhaust gas with the engine idling (**) ..... % as stated by the manufacturer (positive ignition engines only)

B. Measurement of smoke opacity

3.2.13. Location of the absorption coefficient symbol (compression ignition engines only): .....

4. TRANSMISSION (v)

4.3. Moment of inertia of engine flywheel: .....

4.3.1. Additional moment of inertia with no gear engaged: .....

(*) Numbering of the information document is consistent with the numbering used in the Type Approval Framework Directive (2008/74/EC).
(**) Specify the tolerance.'

3. Appendix 1 of Annex III is amended as follows:

(a) In Section 2, point 2.7.4 is replaced by the following:

'2.7.4. Particulate sampling

A single filter shall be used for the complete test procedure. The modal weighting factors specified in the test cycle procedure shall be taken into account by taking a sample proportional to the exhaust mass flow during each individual mode of the cycle. This can be achieved by adjusting sample flow rate, sampling time, and/or dilution ratio, accordingly, so that the criterion for the effective weighting factors in Section 6.6 is met.

The sampling time per mode shall be at least four seconds per 0,01 weighting factor. Sampling shall be conducted as late as possible within each mode. Particulate sampling shall be completed no earlier than five seconds before the end of each mode.'

(b) In Section 6, the following points 6.5 and 6.6 are added:

'6.5. **Calculation of the specific emission**

The particulate emission shall be calculated in the following way:

$$PT = \frac{PT_{mass}}{\sum_{i=1}^{i=n} P_i \times W_{fi}}$$

6.6. **Effective weighting factor**

The effective weighting factor W_{fei} for each mode shall be calculated in the following way:

$$W_{fei} = \frac{m_{sepi} \times q_{medf}}{m_{sep} \times q_{medfi}}$$

The value of the effective weighting factors shall be within ± 0,003 (0,005 for the idle mode) of the weighting factors listed in Section 2.7.1 of this appendix.'

4. In Appendix 1 of Annex VI, the following points are added:

'1.5. Crankcase emissions test results: .....

1.6. **Carbon monoxide emissions test results**

Test	CO value (% vol)	Lambda (1)	Engine speed (min^{-1})	Engine oil temperature (°C)
Low idle test		N/A		
High idle test				

(1) Lambda formula: Appendix 1 to Annex IV

1.7. **Smoke opacity test results**

1.7.1. At steady speeds:

Engine speed (min^{-1})	Nominal flow G (litres/second)	Limit absorption values (m^{-1})	Measured absorption values (m^{-1})
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....

1.7.2. Free acceleration tests

1.7.2.1. Engine test in accordance with Section 4.3 of Annex VI to Directive 2005/78/EC

Percentage of maximum rpm	Percentage of maximum torque at rpm stated m^{-1}	Measured absorption value m^{-1}	Corrected absorption value m^{-1}

1.7.2.2. Under free acceleration

1.7.2.2.1. Measured value of the absorption coefficient: ..... m^{-1}

1.7.2.2.2. Corrected value of the absorption coefficient: ..... m^{-1}

1.7.2.2.3. Location of the absorption coefficient symbol on the vehicle: .....

1.7.2.3. Vehicle test according to section 3 of Annex VI to Directive 2005/78/EC

1.7.2.3.1. Corrected absorption value: ..... m^{-1}

1.7.2.3.2. Rpm at start: ..... rpm

1.7.3. Stated net maximum power ..... kW at ..... rpm

1.7.4. Make and type of opacimeter: .....

1.7.5. Principal characteristics of engine type

1.7.5.1. Engine working principle: four-stroke/two-stroke (*)

1.7.5.2. Number and layout of cylinders: .....

1.7.5.3. Cylinder capacity: ..... cm^3

1.7.5.4. Fuel feed: direct injection/indirect injection (*)

1.7.5.5. Supercharging equipment YES/NO (*)

(*) Delete where not applicable (there are cases where nothing needs to be deleted when more than one entry is applicable).'

ANNEX II

'ANNEX VI

Measurement of smoke opacity

1. INTRODUCTION

1.1. This Annex describes the requirements for measuring the opacity of exhaust emissions from compression ignition engines.

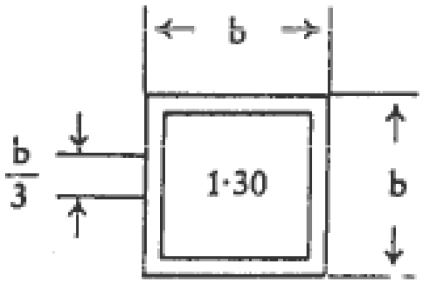
2. SYMBOL OF THE CORRECTED ABSORPTION COEFFICIENT

2.1. A symbol of the corrected absorption coefficient shall be affixed to every vehicle conforming to a vehicle type to which this test applies. The symbol shall be a rectangle surrounding a figure expressing in m^{-1} the corrected absorption coefficient obtained, at the time of approval, from the test under free acceleration. The test method is described in section 4.

2.2. The symbol shall be clearly legible and indelible. It shall be fixed in a conspicuous and readily accessible place, the location of which shall be specified in the Addendum to the type-approval certificate shown in Annex VI to Directive 2005/55/EC of the European Parliament and the Council (*).

2.3. Figure 1 gives an example of the symbol.

Figure 1



Minimum dimensions b = 5,6 mm

The above symbol shows that the corrected absorption coefficient is 1,30 $m^{\pm 1}$.

3. SPECIFICATIONS AND TESTS

3.1. The specifications and tests shall be those set out in Part III, section 24, of UN/ECE Regulation No 24 (**), with the exception described in section 3.2.

3.2. The reference to Annex 2 in paragraph 24.1 of UN/ECE Regulation No 24 shall be understood as reference to Annex VI to Directive 2005/55/EC.

4. TECHNICAL REQUIREMENTS

4.1. The technical requirements shall be those set out in Annexes 4, 5, 7, 8, 9 and 10 of UN/ECE Regulation No 24, with the exceptions described in Sections 4.2, 4.3 and 4.4.

4.2. Test at steady speeds over the full load curve.

4.2.1. The references to Annex 1 in paragraphs 3.1 of Annex 4 to UN/ECE Regulation No 24 shall be understood as references to Annex II of Directive 2005/55/EC.

4.2.2. The reference fuel specified in paragraph 3.2 of Annex 4 to UN/ECE Regulation No 24 shall be understood as reference to the reference fuel in Annex IV to Directive 2005/55/EC which is appropriate to the emission limits against which the vehicle/engine is being type approved.

4.3. Test under free acceleration.

4.3.1. The references to Table 2, Annex 2 in paragraph 2.2 of Annex 5 to UN/ECE Regulation No 24 shall be understood to refer to the table under point 1.7.2.1 of Annex VI to Directive 2005/55/EC.

4.3.2. The references to paragraph 7.3 of Annex 1 in paragraph 2.3 of Annex 5 to UN/ECE Regulation No 24 shall be understood as references to point 4 of Appendix 6 to Annex II to Directive 2005/55/EC.

4.4. "ECE" method of measuring the net power of C.I. engines.

4.4.1. The references in paragraph 7 of Annex 10 to UN/ECE Regulation No 24 to the Appendix to this Annex shall be understood as references to Annex II of Directive 2005/55/EC.

4.4.2. The references in paragraphs 7 and 8 of Annex 10 to UN/ECE Regulation No 24 to Annex 1 shall be understood as references to Annex II of Directive 2005/55/EC.

(*) OJ L 275, 20.10.2005, p. 1.
(**) OJ L 326, 24.11.2006, p. 1.

ANNEX VII

Requirements for the type-approval of s.i. engines fuelled by petrol

PART 1

Carbon monoxide emission test

1. INTRODUCTION

1.1. This appendix describes the procedure for the test, measuring carbon monoxide emissions at idling speeds (normal and high).

1.2. At normal engine idling speed, the maximum permissible carbon monoxide content in the exhaust gases is that stated by the vehicle manufacturer. However, the maximum CO content shall not exceed 0,3 % volume. At high idle speed, the carbon monoxide content by volume of the exhaust gases shall not exceed 0,2 %, with the engine speed being at least 2 000 min^{-1} and Lambda being 1 ± 0,03 in accordance with the manufacturer's specifications.

2. GENERAL REQUIREMENTS

2.1. The general requirements shall be those set out in sections 5.3.7.1 to 5.3.7.4 of UN/ECE Regulation No 83 (*).

2.2. The manufacturer shall complete the table set out in Annex VI to Directive 2005/55/EC based on the requirements set out in point 2.1.

2.3. The manufacturer shall confirm the accuracy of the Lambda value recorded at the time of type-approval in section 2.1 as being representative of typical production vehicles within 24 months of the date of the granting of type-approval by the technical service. An assessment shall be made on the basis of surveys and studies of production vehicles.

3. TECHNICAL REQUIREMENTS

3.1. The technical requirements shall be those set out in Annex 5 to UN/ECE Regulation No 83, with the exceptions set out in section 3.2.

3.2. The reference fuels specified in paragraph 2.1 of section 2 of Annex 5 to UN/ECE Regulation No 83 shall refer to the appropriate reference to fuel specifications contained in Annex IX to Regulation (Euro 5 and 6 implementing Regulation).

PART 2

Verifying emissions of crankcase gases

1. INTRODUCTION

1.1. This part describes the procedure for verifying emissions of crankcase gases.

1.2. When tested in accordance with this part, the engine's crankcase ventilation system shall not permit the emission of any of the crankcase gases into the atmosphere.

2. GENERAL REQUIREMENTS

2.1. The general requirements for conducting the test shall be those set out in section 2 of Annex 6 to UN/ECE Regulation No 83.

3. TECHNICAL REQUIREMENTS

3.1. The technical requirements shall be those set out in section 3 to 6 of Annex 6 to UN/ECE Regulation No 83.

(*) OJ L 70, 9.3.2007, p. 171.'

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 25 June 2008

amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes

(notified under document number C(2008) 3019)

(Text with EEA relevance)

(2008/595/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics [1], and in particular Article 20(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 831/2002 of 17 May 2002 implementing Council Regulation (EC) No 322/97 on Community Statistics, concerning access to confidential data for scientific purposes [2] establishes, for the purpose of enabling statistical conclusions to be drawn for scientific purposes, the conditions under which access to confidential data transmitted to the Community authority may be granted and the rules of cooperation between the Community and national authorities in order to facilitate such access.

(2) Commission Decision 2004/452/EC [3] has laid down a list of bodies whose researchers may access confidential data for scientific purposes.

(3) The Directorate for Research, Studies, Evaluation and Statistics (*Direction de la Recherche, des Études, de l'Évaluation et des Statistiques — DREES*) under the joint authority of the Ministry of Labour, Labour Relations and Solidarity, the Ministry of Health, Youth and Sports and the Ministry of the Budget, Public Accounts and the Civil Service, Paris, France, has to be regarded as a body fulfilling the required conditions and should therefore be added to the list of agencies, organisations and institutions referred to in Article 3(1)(e) of Regulation (EC) No 831/2002.

(4) The measures provided for in this Decision are in accordance with the opinion of the Committee on Statistical Confidentiality,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2004/452/EC is replaced by the text set out in the Annex to this Decision.

[1] OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

[2] OJ L 133, 18.5.2002, p. 7. Regulation as last amended by Regulation (EC) No 606/2008 (OJ L 166, 27.6.2008, p. 16).

[3] OJ L 156, 30.4.2004, p. 1, as corrected by OJ L 202, 7.6.2004, p. 1. Decision as last amended by Decision 2008/291/EC (OJ L 98, 10.4.2008, p. 11).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 June 2008.

For the Commission
Joaquín ALMUNIA
Member of the Commission

ANNEX

'ANNEX

Bodies whose researchers may access confidential data for scientific purposes

European Central Bank

Spanish Central Bank

Italian Central Bank

University of Cornell (New York State, United States of America)

Department of Political Science, Baruch College, New York City University (New York State, United States of America)

German Central Bank

Employment Analysis Unit, Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission

University of Tel Aviv (Israel)

World Bank

Center of Health and Wellbeing (CHW) of the Woodrow Wilson School of Public and International Affairs at Princeton University, New Jersey, United States of America

The University of Chicago (UofC), Illinois, United States of America

Organisation for Economic Cooperation and Development (OECD)

Family and Labour Studies Division of Statistics Canada, Ottawa, Ontario, Canada

Econometrics and Statistical Support to Antifraud (ESAF) Unit, Directorate General Joint Research Centre of the European Commission

Support to the European Research Area (SERA) Unit, Directorate General Joint Research Centre of the European Commission

Canada Research Chair of the School of Social Science in the Atkinson Faculty of Liberal and Professional Studies at York University, Ontario, Canada

University of Illinois at Chicago (UIC), Chicago, USA

Rady School of Management at the University of California, San Diego, USA

Directorate for Research, Studies and Statistics (*Direction de l'Animation de la Recherche, des Études et des Statistiques — DARES*) in the Ministry of Labour, Labour Relations and Solidarity, Paris, France

The Research Foundation of State University of New York (RFSUNY), Albany, USA

Finnish Centre for Pensions (*Eläketurvakeskus — ETK*), Finland

Directorate for Research, Studies, Evaluation and Statistics (*Direction de la Recherche, des Études, de l'Évaluation et des Statistiques — DREES*) under the joint authority of the Ministry of Labour, Labour Relations and Solidarity, the Ministry of Health, Youth and Sports and the Ministry of the Budget, Public Accounts and the Civil Service, Paris, France'

GUIDELINES

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 20 June 2008

on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets (recast)

(ECB/2008/5)

(2008/596/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community, and in particular to the third indent of Article 105(2) thereof,

Having regard to the third indent of Article 3.1 and Articles 12.1 and 30.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ESCB Statute),

Whereas:

(1) Pursuant to Article 30.1 of the ESCB Statute, the European Central Bank (ECB) is provided by the national central banks (NCBs) of the Member States that have adopted the euro with foreign reserve assets and has the full right to hold and manage the foreign reserves that are transferred to it.

(2) Pursuant to Articles 9.2 and 12.1 of the ESCB Statute, the ECB may manage certain of its activities through the euro area NCBs and has recourse to the euro area NCBs to carry out certain of its operations. Accordingly, the ECB considers that the euro area NCBs should manage the foreign reserves transferred to it as its agents.

(3) The involvement of the euro area NCBs in the management of the foreign reserve assets transferred to the ECB and the transactions relating to such management require specific documentation for operations involving the ECB's foreign reserves.

(4) Guideline ECB/2006/28 of 21 December 2006 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets [1] has already been amended once since its adoption. A number of drafting improvements have been suggested and it is proposed to recast Guideline ECB/2006/28 in the interests of clarity and transparency,

HAS ADOPTED THIS GUIDELINE:

Article 1

Definitions

For the purposes of this Guideline:

— 'euro area NCB' means the NCB of a Member State that has adopted the euro, and

— 'European jurisdictions' means the jurisdictions of all Member States that have adopted the euro in accordance with the Treaty, as well as Denmark, Sweden, Switzerland and the United Kingdom (England and Wales only).

[1] OJ C 17, 25.1.2007, p. 5. Guideline as amended by Guideline ECB/2007/6 (OJ L 196, 28.7.2007, p. 46).

Article 2

Management of foreign reserve assets by the euro area NCBs as the ECB's agents

1. Each euro area NCB shall be entitled to participate in the operational management of the foreign reserve assets transferred to the ECB. A euro area NCB may decide to abstain from such management or to pool such management with one or more other euro area NCBs. If a euro area NCB does not participate in the operational management of the ECB's foreign reserve assets, then the other euro area NCBs shall manage the assets that otherwise would have been managed by the abstaining euro area NCB.

2. The euro area NCBs shall carry out operations involving the foreign reserve assets of the ECB as agents of the ECB. By commencing such operations, a euro area NCB shall be deemed to acknowledge its status as the ECB's agent. In relation to all operations that the euro area NCBs conduct on the ECB's behalf, when agreeing on each operation such euro area NCBs shall disclose to all parties the ECB's status as principal both by name and by reference to an account number or identifier.

3. When carrying out operations involving the foreign reserve assets of the ECB as the ECB's agent, each euro area NCB shall subordinate its own interests, or the interests of any other entity for which it carries out operations, to the ECB's interests.

4. When asked by a counterparty of the ECB for proof of its authority to carry out operations involving the foreign reserve assets of the ECB as the ECB's agent, a euro area NCB shall provide such counterparty with proof of its mandate of agency.

Article 3

Legal documentation

1. All operations involving the foreign reserve assets of the ECB shall be conducted using standard legal documentation, as required by this Article and in such forms as may be approved or amended by the ECB from time to time. Before a euro area NCB may commence trading with a counterparty on behalf of the ECB, the legal documentation shall be signed by the counterparty and the originals lodged with the ECB.

2. Repurchase, reverse repurchase, buy/sell-back and sell/buy-back operations involving the foreign reserve assets of the ECB shall be documented using the following standard agreements:

(a) the FBE Master Agreement for Financial Transactions (Edition 2004) shall be used for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions and under the laws of Northern Ireland and Scotland;

(b) the Bond Market Association Master Repurchase Agreement, (September 1996 version) shall be used for operations with counterparties organised or incorporated under US federal or state laws; and

(c) the TBMA/ISMA Global Master Repurchase Agreement (2000 version) shall be used for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).

3. Over-the-counter derivatives operations involving the foreign reserve assets of the ECB shall be documented using the following standard agreements:

(a) the FBE Master Agreement for Financial Transactions (Edition 2004) shall be used for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions;

(b) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, New York law version) shall be used for operations with counterparties organised or incorporated under US federal or state laws; and

(c) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, English law version) shall be used for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).

4. The Executive Board may decide to use one of the standard agreements referred to in paragraphs 2(c) or 3(c) rather than the agreements referred to in paragraphs 2(a) or 3(a) in relation to a Member State when it adopts the euro, if no legal assessment that is both in form and in substance acceptable to the ECB is available regarding the use of the relevant standard agreement in that Member State. The Executive Board shall promptly inform the Governing Council of any decision taken under this provision.

5. Deposits involving the ECB's foreign reserve assets with counterparties which: (i) are eligible for the operations mentioned in paragraphs 2 and/or 3 above; and (ii) are organised or incorporated under the laws of any of the European jurisdictions, except Ireland, shall be documented using the FBE Master Agreement for Financial Transactions (Edition 2004). In cases not falling under points (i) and (ii) above, deposits involving the ECB's foreign reserve assets shall be documented using the master netting agreement as specified in paragraph (7) below.

6. A document in the format set out in Annex I (hereinafter the ECB Annex) shall be annexed to and form an integral part of every standard agreement under which repurchase, reverse repurchase, buy/sell-back, sell/buy-back, securities lending, triparty repo or over-the-counter derivatives operations involving the ECB's foreign reserve assets are conducted unless such operations are conducted under the FBE Master Agreement for Financial Transactions (Edition 2004).

7. A master netting agreement in one of the forms set out in Annex II shall be concluded with all counterparties, except counterparties: (i) with which the ECB has signed an FBE Master Agreement for Financial Transactions (Edition 2004); and (ii) which are organised or incorporated under the laws of any of the European jurisdictions, except Ireland, as follows:

(a) a master netting agreement governed by English law and drafted in English in the form set out in Annex IIa shall be concluded with all counterparties, with the exception of the counterparties specified in point (b), (c) and (d);

(b) a master netting agreement governed by French law and drafted in French in the form set out in Annex IIb shall be concluded with counterparties incorporated in France;

(c) a master netting agreement governed by German law and drafted in German in the form set out in Annex IIc shall be concluded with counterparties incorporated in Germany; and

(d) a master netting agreement governed by New York law and drafted in English in the form set out in Annex IId shall be concluded with counterparties incorporated in the United States.

8. The provision of financial services involving the foreign reserve assets of the ECB by financial intermediaries including, without limitation, banking, brokerage, custodial and investment services obtained from correspondents, custodians and depositories, settlement organisations and central clearers for exchange-traded derivatives shall be documented under such specific agreements as the ECB may approve from time to time.

Article 4

Entry into force

1. Guideline ECB/2006/28 is hereby repealed with effect from 25 June 2008.

2. References to Guideline ECB/2006/28 shall be construed as being made to this Guideline.

3. This Guideline shall enter into force on 25 June 2008.

Article 5

Addressees

This Guideline applies to the euro area NCBs.

Done at Frankfurt am Main, 20 June 2008.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

ANNEX I

ECB ANNEX [1]

1. The provisions of this Annex shall be supplemental terms and conditions applying to [*name the standard agreement to which this Annex applies*] dated [*date of agreement]* (the Agreement) between the European Central Bank (the ECB) and *[name of counterparty]* (the Counterparty). The provisions of this Annex shall be annexed to, incorporated in and form an integral part of the Agreement. If and to the extent that any provisions of the Agreement (other than the provisions of this Annex) or the ECB Master Netting Agreement dated as of *[date]* (the Master Netting Agreement) between the ECB and the Counterparty, including any other supplemental terms and conditions, Annex or schedule to the Agreement, contain provisions inconsistent with or to the same or similar effect as the provisions of this Annex, the provisions of this Annex shall prevail and apply in place of those provisions.

2. Except as required by law or regulation, the Counterparty agrees that it shall keep confidential, and under no circumstances disclose to a third party, any information or advice furnished by the ECB or any information concerning the ECB obtained by the Counterparty as a result of it being a party to the Agreement, including without limitation information regarding the existence or terms of the Agreement (including this Annex) or the relationship between the Counterparty and the ECB created thereby, nor shall the Counterparty use the name of the ECB in any advertising or promotional material.

3. The Counterparty agrees to notify the ECB in writing as soon as reasonably practicable of: (i) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; (ii) the appointment of any liquidator, receiver, administrator or analogous officer or the commencement of any procedure for the winding-up or reorganisation of the Counterparty or any other analogous procedure; or (iii) a change in the Counterparty's name.

4. There shall be no waiver by the ECB of immunity from suit or the jurisdiction of any court, or any relief against the ECB by way of injunction, order for specific performance or for recovery of any property of the ECB or attachment of its assets (whether before or after judgment), in every case to the fullest extent permitted by applicable law.

5. There shall not apply in relation to the ECB any event of default or other provision of any kind in which reference is made to the bankruptcy, insolvency or other analogous event of the ECB.

6. The Counterparty agrees that it has entered into the Agreement (including this Annex) as principal and not as agent for any other entity and that it shall enter into all transactions as principal.

---

[1] This Annex has been drawn up in English and is incorporated into master agreements drawn up in English which are governed by English or New York law.

ANNEX IIa

Master Netting Agreement governed by English law

MASTER NETTING AGREEMENT

Dated:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

1. **Scope of agreement**

1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.

1.2. In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 of this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the parties) from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a default termination) and the respective obligations of the parties under such agreement may be combined, aggregated or set-off against each other so as to produce a single net balance payable by one party to the other.

2. **General**

2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.

2.2. The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.

2.3. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.

2.4. This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the parties after the date of this Agreement shall be supplemental to this Agreement.

3. **Base currency**

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. **Cross acceleration**

Should any default termination occur under any netting agreement (including under Appendix 2 of this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. **Global netting**

5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 of this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.

5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

6. **Notices and other communications**

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

7. **Severability**

Each provision contained herein (including, without limitation, Appendix 2 of this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

8. **Non-assignability**

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

9. **Governing law and jurisdiction**

9.1. This Agreement shall be governed by and construed in accordance with English law.

9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

European Central Bank	**Name of Counterparty**
By _____	By _____
Title _____	Title _____
	[Address for the service of notices under this Agreement]
Date _____	Date _____

[In case of Luxembourg counterparties:

In addition to clause 9 of this Agreement the parties agree that for purpose of Article 1 of the Protocol annexed to the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1998 and without prejudice to the foregoing execution of this Agreement by the parties hereto, [Luxembourg counterparty] expressly and specifically confirms its agreement to the provisions of clause 9 of this Agreement, stipulating that the District Court (*Landgericht*) of Frankfurt am Main shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

Luxembourg counterparty

By _____

Title _____]

Appendix 1

to Master netting agreement

Netting agreements (*)

1. FBE Master Agreement for Financial Transactions (Edition 2004)

2. ISDA Master Agreement (Multi-currency — Cross border 1992)

3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)

4. The Bond Market Association Master Repurchase Agreement.

(*) This documentation is maintained by the ECB Legal Services and the legal departments of the national central banks.

Appendix 2

to Master netting agreement

Transactions not subject to any netting agreement

1. The provisions of this Appendix apply to transactions entered into between the parties that are not effectively subject to any other netting agreement.

2. Should:

   (a) a default termination occur under any netting agreement; or

   (b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,

   (any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'),

   then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the close-out date) shall be liquidated and closed out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.

3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.

4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.

5. The parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.

ANNEX IIb

Master netting agreement governed by French law

CONVENTION-CADRE DE COMPENSATION

Date:

Entre:

La Banque centrale européenne, Kaiserstrasse 29, D-60311 Francfort-sur-le-Main (ci-après dénommée la «BCE»), et

(ci-après dénommée la «contrepartie»)

1. **Champ d'application de la convention**

1.1. La présente convention (ci-après dénommée la «convention») a pour objet de permettre à la BCE de compenser l'ensemble des positions existantes dans le cadre de l'ensemble des transactions en cours effectuées entre la BCE et la contrepartie, sans distinction de l'agent ou des agents autorisés à agir pour le compte de la BCE par l'intermédiaire duquel ou desquels les transactions génératrices de ces positions ont pu être effectuées, y compris la banque centrale de tout État membre de l'Union européenne ayant adopté l'euro comme monnaie nationale, et sans distinction de l'établissement (y compris le siège social et l'ensemble des succursales) de la contrepartie impliqué dans ces transactions, et après prise en considération de l'incidence de toutes les dispositions existantes relatives à la compensation qui figurent dans la convention-cadre ou dans les autres conventions conclues entre la BCE et la contrepartie et/ou des dispositions de la législation applicable ayant un effet similaire et susceptibles de s'appliquer à certaines de ces transactions.

1.2. Dans la présente convention, on entend par «convention de compensation» toute convention en vigueur entre les parties (y compris, sans restriction, la présente convention et les conventions de l'espèce énumérées dans l'additif 1 de la présente convention), y compris les modifications et avenants aux textes susceptibles d'être convenus, s'il y a lieu, entre la BCE et la contrepartie (ci-après dénommées les «parties»), qui comporte des dispositions prévoyant, lors de la survenance d'un cas de défaillance tel que défini dans le cadre de cette convention, une possibilité de résiliation, d'exigibilité anticipées ou de «close out» des transactions ou des obligations afférentes aux transactions ou de tout événement analogue (une «résiliation pour défaillance»), les obligations respectives des parties dans le cadre de cette convention pouvant dès lors être regroupées, globalisées ou compensées réciproquement de manière à donner lieu à un solde net unique payable par l'une des parties à l'autre.

2. **Dispositions d'ordre général**

2.1. L'ensemble des transactions de toute nature (ci-après dénommées «transactions») conclues entre les parties à tout moment après la date de la présente convention sera régi par la présente convention, sauf si les parties en décident spécifiquement autrement.

2.2. Les parties reconnaissent que les termes de la présente convention, l'ensemble des transactions régies par elle, toutes les modifications apportées aux termes de ces transactions et le solde net unique payable dans le cadre de toute convention de compensation constituent une relation et un accord professionnels et contractuels uniques.

2.3. La contrepartie a conclu cette convention en son nom propre; elle déclare et atteste qu'elle a conclu et conclura toutes les transactions en son nom propre.

2.4. La présente convention complète les conventions antérieures de compensation conclues antérieurement entre les parties; toutes les autres conventions de l'espèce et transactions qui seront conclues ultérieurement entre les parties compléteront la présente convention.

3. **Devise de référence**

La devise de référence utilisée dans le cadre de cette convention sera le dollar des États-Unis ou, au choix de la BCE, une autre devise. Dans les cas où il sera nécessaire, conformément aux termes de la présente convention, de convertir les montants dans la devise de référence, la conversion s'effectuera au taux de référence quotidien publié par la BCE pour la devise à convertir dans la devise de référence ou, à défaut de ce taux de référence, au taux de change auquel la BCE peut acheter ou vendre, selon le cas, ces montants avec ou contre la devise de référence ce même jour, selon les conditions définies par la BCE.

4. **Clause de défaillance croisée**

Lors de la survenance d'une résiliation pour défaillance dans le cadre d'une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention), la BCE sera habilitée à prononcer, par notification écrite à la contrepartie, la résiliation pour défaillance de chacune des autres conventions de compensation pour lesquelles il n'y a pas eu résiliation pour défaillance dans les conditions prévues par les dispositions précitées.

5. **Compensation globale**

5.1. Lors de la survenance d'une résiliation pour défaillance, la BCE comptabilisera dans les meilleurs délais les montants dus par chacune des parties à l'autre au titre de chaque convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention) pour laquelle est intervenue une résiliation pour défaillance et globalisera les sommes dues par chaque partie à l'autre au titre de ces conventions de compensation (y compris dans le cadre de l'additif 2 de la présente convention) libellées ou converties dans tous les cas dans la devise de référence, seul le solde net étant payable par la partie débitrice du montant brut le plus élevé.

5.2. La clause 5.1 restera en vigueur dans la mesure du possible nonobstant le caractère inapplicable, en vertu de la loi en vigueur, de toute disposition pouvant être contenue dans une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention).

6. **Notifications et autres communications**

L'ensemble des notifications, instructions et autres communications à donner dans le cadre de la présente convention ne prendront effet qu'à la date de leur réception et seront adressées par écrit (y compris par les moyens électroniques).

7. **Gestion séparée**

Chacune des dispositions de la présente convention (y compris, sans restriction, l'additif 2 de ladite convention) sera traitée isolément des autres dispositions et sera applicable nonobstant le caractère inapplicable de ces autres dispositions.

8. **Incessibilité**

Les droits et obligations de la contrepartie dans le cadre de la présente convention ne peuvent être cédés, transférés ou autrement négociés par la contrepartie.

9. **Loi applicable, attribution de compétences**

9.1. La présente convention sera soumise au droit français et interprétée selon ledit droit.

9.2. Dans l'intérêt de la BCE, la contrepartie soumet irrévocablement par la présente convention tous les cas afférents à celle-ci ou s'y rapportant à la compétence de la juridiction du tribunal (*Landgericht*) de Francfort-sur-le-Main, Allemagne. Aucune disposition de cette clause 9 ne limitera le droit de la BCE d'entamer une procédure judiciaire devant les tribunaux compétents d'un autre pays.

Banque centrale européenne	**Contrepartie**
Par _____	Par _____
En qualité de _____	En qualité de _____
Date _____	Date _____

Annexe 1

à la convention-cadre de compensation

Conventions de compensation

1. FBE Master Agreement for Financial Transactions (Edition 2004)

2. ISDA Master Agreement (Multi-currency — Cross border 1992)

3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)

4. The Bond Market Association Master Repurchase Agreement (September 1996 version)

Additif 2

à la convention-cadre de compensation

Transactions non soumises à une convention de compensation

1. Les dispositions du présent Additif s'appliquent aux transactions conclues entre les parties qui ne sont pas effectivement soumises à une autre convention de compensation.

2. Lors de la survenance:

   (a) d'une résiliation pour défaillance dans le cadre d'une convention de compensation ou

   (b) d'un événement défini comme étant un cas de défaillance ou un événement analogue dans le cadre d'une quelconque convention de compensation, lequel événement, dans l'hypothèse où des transactions seraient en cours au titre de cette convention de compensation, amènerait ou habiliterait la BCE à prendre des mesures qui entraîneraient une résiliation pour défaillance dans le cadre de ladite convention,

   (les événements prévus en (a) ou en (b) étant dénommés dans le présent Additif «cas de défaillance»),

   l'ensemble des transactions concernées par le présent Additif (sans exception, sauf dans le cas où une transaction ne peut faire l'objet d'une résiliation dans ces conditions aux termes de la loi applicable) dans le cadre desquelles les obligations sont ou seraient arrivées à échéance à la date ou après la date de survenance de ce cas de défaillance (la «date de résiliation») pourront être résiliées par notification écrite de la BCE à la Contrepartie dans les conditions prévues aux paragraphes 3 et 4 du présent Additif et la BCE ne sera pas tenue d'effectuer, sans préjudice des paragraphes 3 et 4 du présent Additif, d'effectuer d'autres paiements ou livraisons au titre de ces transactions.

3. En cas de résiliation selon les termes du paragraphe 2 du présent Additif, la BCE comptabilisera dans les meilleurs délais les sommes dues par chacune des parties à l'autre, notamment, le cas échéant, en déterminant pour chaque transaction la perte ou le gain total de la BCE résultant de la résiliation de ladite transaction à la date de résiliation, le montant étant dans tous les cas libellé ou converti dans la devise de référence. La BCE globalisera ensuite ces gains et pertes et seul le solde net sera payable par la Contrepartie si le total des pertes excède celui des gains, ou par la BCE si le total des gains excède celui des pertes.

4. Pour déterminer, dans le cadre de chaque transaction, le montant total du gain ou de la perte de la BCE, celle-ci utilisera, sous réserve de la législation applicable, une méthode de calcul commercialement raisonnable (a) fondée, dans toute la mesure du possible, sur les cotations fournies par au moins quatre intervenants de premier rang du marché considéré et opérant dans le même centre financier et (b) prenant en compte, le cas échéant, la résiliation de la transaction intervenues antérieurement à la date de valeur ou de livraison prévus.

5. Les parties conviennent que le calcul de la somme nette aux termes des paragraphes 3 et 4 du présent Additif constituent une estimation raisonnable des pertes encourues.

ANNEX IIc

Master netting agreement governed by German law

EZB-AUFRECHNUNGSVERTRAG

(„Master netting agreement")

vom:

zwischen

der Europäische Zentralbank, Kaiserstraße 29, D-60311 Frankfurt am Main, Deutschland (im nachfolgenden „EZB") und

_____

(im nachfolgenden „Vertragspartner")

1. **Anwendungsbereich dieses Vertrages**

1.1. Der Zweck dieses Vertrages (im folgenden: „Vertrag") besteht darin, die Verrechnung aller bestehenden Positionen aus allen offenen Geschäften zwischen der EZB und dem Vertragspartner zu ermöglichen. Der Vertrag schließt Geschäfte ein, die die EZB über Stellvertreter (z. B. Teilnehmerzentralbanken) abschließt. Er umfasst auch ferner alle diejenigen Geschäfte, die über die Hauptverwaltung oder eine unselbständige Zweigniederlassung des Vertragspartners mit der EZB abgeschlossen werden. Der Vertrag berücksichtigt ferner alle sonst zwischen den Parteien bestehenden Rahmenverträge oder sonstigen Vereinbarungen, die Aufrechnungsklauseln enthalten, sowie zwingende gesetzliche Vorschriften mit ähnlichen Wirkungen.

1.2. Unter einem Aufrechnungsvertrag (Netting Agreement) im Sinne dieses Vertrages (im folgenden: „Aufrechungsvertrag") sind alle die zwischen den Parteien getroffenen (einschließlich dieses Vertrags sowie der im Anhang 1 zum Vertrag aufgeführten) Vereinbarungen in ihrer jeweiligen Fassung zu verstehen, die Klauseln enthalten, wonach im Fall eines wichtigen Grundes (event of default) insbesondere eine vorzeitige Beendigung eintritt oder eine Kündigung ausgesprochen werden kann (im folgenden: „Beendigung oder Kündigung aus wichtigem Grund"); ferner muss dort vereinbart sein, dass infolge einer Beendigung oder Kündigung Geschäfte oder Verpflichtungen fällig bzw. in verrechenbare, fällige Forderungen umgewandelt werden, die anschließend zusammengefasst, ver- oder aufgerechnet werden mit der Folge, dass lediglich ein einziger Nettosaldo durch eine der beiden Parteien geschuldet wird.

2. **Allgemeines**

2.1. Für alle Geschäfte, die die Parteien nach Unterzeichnung dieses Vertrages tätigen (in folgenden „Einzelabschlüsse"), gelten die nachfolgenden Bestimmungen, sofern die Parteien im Einzelabschluss nichts abweichendes vereinbaren.

2.2. Die Parteien sind sich darüber einig, daß dieser Vertrag in seiner jeweiligen Fassung, alle Einzelabschlüsse, die von diesem Vertrag erfasst werden, und die aus Aufrechnungsverträgen resultierenden Nettosalden ein einheitliches Vertragsverhältnis bilden.

2.3 Die Vertragsparteien sichern zu, daß sie den Vertrag in eigenem Namen abgeschlossen haben und alle Einzelabschlüsse ebenfalls in eigenem Namen tätigen werden.

3. **Vertragswährung („base currency")**

Vertragswährung ist der US-Dollar oder jede andere Währung, die die Parteien vereinbaren. Die Umrechnung von auf andere Währungen lautenden Beträgen in die Vertragswährung erfolgt jeweils zum täglichen Referenzkurs, den die EZB für die umzurechnende Währung veröffentlicht oder, hilfsweise, zum jeweiligen Marktkurs, zu dem die EZB an diesem Geschäftstag den umzurechnenden Währungsbetrag gegen die Vertragswährung kaufen oder verkaufen kann.

4. **Vertragsübergreifendes Kündigungs- oder Beendigungsrecht aus wichtigem Grund**

Sofern die EZB ein Kündigungs- oder Beendigungsrecht aus wichtigem Grund im Rahmen eines Aufrechnungsvertrages (sowie auch gemäß Anhang 2 zu diesem Vertrag) hat, erstreckt sich dieses Recht auch auf jeden anderen Aufrechnungsvertrag, auch wenn nach den dortigen Vereinbarungen ein vergleichbarer Kündigungs- oder Beendigungsgrund noch nicht gegeben ist.

5. **Allumfassende Aufrechnungsvereinbarung („global netting“)**

5.1. Sollte eine Beendigung oder Kündigung aus wichtigem Grund stattfinden, wird die EZB unverzüglich die aus den jeweiligen Aufrechnungsverträgen (sowie auch aus Anhang 2 zu diesem Vertrag) resultierenden Nettosalden errechnen und diese, nach Umrechnung in die Vertragswährung, zu einer einzigen Forderung oder Verbindlichkeit zusammenfassen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.

5.2. Z. 5.1 gilt ungeachtet dessen, dass Klauseln in Aufrechnungsverträgen (einschl. Anhang 2 zu diesem Vertrag) nach dem jeweils anwendbaren Recht nicht wirksam bzw. nichtig sind.

6. **Erklärungen und andere Mitteilungen**

Alle Erklärungen, Weisungen und anderen Mitteilungen im Rahmen dieses Vertrages sind nur dann wirksam, wenn sie in Schriftform oder in elektronischer Form übermittelt werden und der Gegenseite auch zugegangen sind.

7. **Teilbarkeit**

Sollte eine Bestimmung dieses Vertrages (einschließlich des Anhangs 2) ganz oder teilweise unwirksam sein oder werden, bleiben die übrigen Bestimmungen wirksam. An Stelle der unwirksamen Bestimmungen tritt eine wirksame Regelung, die dem wirtschaftlichen Zweck mit der unwirksamen Bestimmung soweit wie möglich Rechnung trägt.

8. Die Rechte und Pflichten aus dem Vertrag darf der Vertragspartner weder abtreten noch in sonstiger Weise hierüber verfügen.

9. 9.1. Dieser Vertrag unterliegt dem Recht der Bundesrepublik Deutschland.

9.2. Nicht ausschließlicher Gerichtsstand ist Frankfurt am Main.

Europäische Zentralbank	**Vertragspartner**
Name _____	Name _____
Titel _____	Titel _____
Ort, Datum _____	Ort, Datum _____

Anhang 1

zum EZB Aufrechnungsvertrag

Liste der Aufrechnungsverträge

1. FBE Master Agreement for Financial Transactions (Edition 2004)

2. ISDA Master Agreement (Multi-currency — Cross border 1992)

3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)

4. The Bond Market Association Master Repurchase Agreement.

Anhang 2

zum EZB-Aufrechnungsvertrag

Geschäfte, die keinem Aufrechnungsvertrag unterliegen:

1. Vorschriften dieses Anhangs finden Anwendung auf solche Einzelabschlüsse zwischen den Parteien, die von keinem anderen Aufrechnungsvertrag erfasst werden.

2. Sofern

   a) eine Beendigung oder Kündigung aus wichtigem Grund nach Maßgabe eines Aufrechnungsvertrages eintritt oder

   b) ein Beendigungs- oder Kündigungsgrund nach Maßgabe eines Aufrechnungsvertrages vorliegt, der zur Beendigung führen oder zur Kündigung durch die EZB berechtigen würde, sofern Einzelabschlüsse im Rahmen dieses Aufrechnungsvertrags getätigt worden wären,

   (im Folgenden: „beendigendes Ereignis im Sinne dieses Anhangs")

   und die EZB eine Kündigung im Hinblick auf diesen Anhang ausgesprochen hat, dann werden alle unter diesen Anhang fallenden Einzelabschlüsse gemäß den Ziffern 3 und 4 dieses Anhangs beendigt und abgerechnet, sofern diese Einzelabschlüsse Verpflichtungen enthalten, die im Zeitpunkt des Wirksamwerdens der Beendigung oder Kündigung noch nicht fällig sind. Die Hauptpflichten aus diesen Einzelgeschäften erlöschen, vorbehaltlich der nachfolgenden Ziffern 3 und 4 dieses Anhangs.

3. Sollte eine Beendigung oder Kündigung gemäß Ziffer 2 dieses Anhangs eintreten, wird die EZB unverzüglich die beiderseitigen Ansprüche ermitteln und hierbei, sofern erforderlich, den aus jedem Einzelabschluss für die EZB resultierenden Gewinn oder Verlust ermitteln, der sich aus der vorzeitigen Kündigung oder Beendigung an dem Tag ergibt, an dem die Kündigung oder Beendigung wirksam wird; sie wird ferner diese Positionen ggf. in die Vertragswährung umrechnen. Die EZB fasst dann diese Forderungen und Verbindlichkeiten zu einer einzigen Forderung oder Verbindlichkeit zusammen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.

4. Zur Ermittlung der Gewinne und Verluste der EZB aus den jeweiligen Einzelabschlüssen wird die EZB, vorbehaltlich des anwendbaren Rechtes, eine für beide Seiten angemessene Berechnungsmethode verwenden, die a), soweit möglich und vorhanden, auf den von mindestens vier bedeutenden Marktteilnehmern an dem maßgeblichen Finanzplatz gestellten Kursen oder Preisen beruht und b) hierbei in Rechnung stellt, dass die Beendigung oder Kündigung des jeweiligen Einzelabschlusses vorzeitig stattgefunden hat.

ANNEX IId

Master netting agreement governed by New York law

MASTER NETTING AGREEMENT

Dated as of:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

1. **Scope of agreement**

1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.

1.2. In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 of this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the parties) from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a default termination) and the respective obligations of the parties under such agreement may be combined, aggregated or netted against each other so as to produce a single net balance payable by one party to the other.

2. **General**

2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the ECB and the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.

2.2. The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.

2.3. Each party represents and warrants to the other that it is a financial institution for purposes of the U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (hereinafter referred to as FDICIA), and the parties agree that this Agreement shall be a netting contract, as defined in FDICIA, and that each receipt or payment obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation respectively, as defined in and subject to FDICIA.

2.4. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.

[2.5. The Counterparty represents and warrants to, and covenants and agrees with the ECB, that:

(a) it has the power to execute and deliver this Agreement and any other documentation relating to this Agreement to which it is a party and that it is required to deliver; it has the power to perform its obligations under this Agreement and any obligations under any netting agreement to which it is a party; it has taken all necessary action to authorise such execution, delivery and performance, including authorisations required under the U.S. Federal Deposit Insurance Act, as amended, including amendments effected by the U.S. Federal Institutions Reform, Recovery and Enforcement Act of 1989, and under any agreement, writ, decree or order entered into with a party's supervisory authorities; and

(b) at all times during the term of this Agreement, it will continuously include and maintain as part of its official written books and records this Agreement, the netting agreements and evidence of all necessary authorisations.] [1]

[2.5.][2.6.] This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the parties after the date of this Agreement shall be supplemental to this Agreement.

3. **Base currency**

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. **Cross acceleration**

Should any default termination occur under any netting agreement (including under Appendix 2 of this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. **Global netting**

5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 of this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.

5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

6. **Notices and other communications**

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

7. **Severability**

Each provision contained herein (including, without limitation, Appendix 2 of this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

8. **Non-assignability**

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

9. **Governing law and jurisdiction**

9.1. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

[1] Representation to be used where the counterparty is a U.S. depository institution.

European Central Bank	**[Name of Counterparty]** [1]
By _____	By _____
Title _____	Title _____
	[Address for the service of notices under this Agreement]
Date _____	Date _____

[1] In the case of US depository institution counterparties, to be executed by a bank officer at the level of Vice-President or higher.

Appendix 1

to Master netting agreement

Netting agreements

1. FBE Master Agreement for Financial Transactions (Edition 2004)

2. ISDA Master Agreement (Multi-currency — Cross border 1992)

3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)

4. The Bond Market Association Master Repurchase Agreement.

Appendix 2

to Master netting agreement

Transactions not subject to any netting agreement

1. The provisions of this Appendix apply to transactions entered into between the parties that are not effectively subject to any other netting agreement.

2. Should:

   (a) a default termination occur under any netting agreement; or

   (b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,

   (any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'),

   then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the close-out date) shall be liquidated and closed out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.

3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.

4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.

5. The parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.