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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1151/2008

of 20 November 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 21 November 2008.

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

Done at Brussels, 20 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

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 | AL | 25,7 |
| | MA | 63,1 |
| | TR | 76,2 |
| | ZZ | 55,0 |
| 0707 00 05 | JO | 167,2 |
| | MA | 51,9 |
| | TR | 85,5 |
| | ZZ | 101,5 |
| 0709 90 70 | MA | 61,8 |
| | TR | 118,9 |
| | ZZ | 90,4 |
| 0805 20 10 | MA | 59,4 |
| | ZZ | 59,4 |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | CN | 56,6 |
| | HR | 50,0 |
| | IL | 68,6 |
| | MA | 82,1 |
| | TR | 62,4 |
| | ZZ | 63,9 |
| 0805 50 10 | MA | 65,5 |
| | TR | 78,1 |
| | ZA | 71,3 |
| | ZZ | 71,6 |
| 0808 10 80 | CA | 87,1 |
| | CL | 67,1 |
| | CN | 55,8 |
| | MK | 33,4 |
| | US | 104,9 |
| | ZA | 94,4 |
| | ZZ | 73,8 |
| 0808 20 50 | CL | 58,0 |
| | CN | 65,1 |
| | KR | 112,1 |
| | TR | 103,0 |
| | ZZ | 84,6 |

⁽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 1152/2008**of 20 November 2008****granting no export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

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 164(2), in conjunction with Article 4, thereof,

Whereas:

(1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a permanent tender.

(2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for fixing export refunds for certain agricultural products ⁽³⁾ and following

an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 18 November 2008.

(3) 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:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 18 November 2008 no export refund shall be granted for the products and destinations referred to in Article 1(1) of that Regulation.

Article 2

This Regulation shall enter into force on 21 November 2008.

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

Done at Brussels, 20 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

COMMISSION REGULATION (EC) No 1153/2008**of 20 November 2008****granting no export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

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 164(2), in conjunction with Article 4, thereof,

Whereas:

- (1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a standing invitation to tender procedure.
- (2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for

fixing export refunds for certain agricultural products ⁽³⁾ and following an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 18 November 2008.

- (3) 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:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 18 November 2008, no export refund shall be granted for the product and destinations referred to in Article 1(1) of that Regulation.

Article 2

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

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

Done at Brussels, 20 November 2008.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

COMMISSION REGULATION (EC) No 1154/2008
of 20 November 2008
fixing the export refunds on eggs

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⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XIX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in eggs, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products which are authorised to move freely within the Community and

comply with requirements under Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs⁽²⁾ and of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽³⁾, as well as marking requirements under point A of Annex XIV to Regulation (EC) No 1234/2007.

- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004 and those defined in point A of Annex XIV to Regulation (EC) No 1234/2007.

Article 2

This Regulation shall enter into force on 21 November 2008.

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

Done at Brussels, 20 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

⁽³⁾ OJ L 139, 30.4.2004, p. 55. Corrected version in OJ L 226, 25.6.2004, p. 22.

ANNEX

Export refunds on eggs applicable from 21 November 2008

| Product code | Destination | Unit of measurement | Amount of refund |
|-----------------|-------------|---------------------|------------------|
| 0407 00 11 9000 | A02 | EUR/100 pcs | 0,78 |
| 0407 00 19 9000 | A02 | EUR/100 pcs | 0,39 |
| 0407 00 30 9000 | E09 | EUR/100 kg | 0,00 |
| | E10 | EUR/100 kg | 16,00 |
| | E19 | EUR/100 kg | 0,00 |
| 0408 11 80 9100 | A03 | EUR/100 kg | 16,75 |
| 0408 19 81 9100 | A03 | EUR/100 kg | 8,38 |
| 0408 19 89 9100 | A03 | EUR/100 kg | 8,38 |
| 0408 91 80 9100 | A03 | EUR/100 kg | 10,59 |
| 0408 99 80 9100 | A03 | EUR/100 kg | 2,68 |

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

The other destinations are defined as follows:

E09 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR, Russia and Turkey.

E10 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines.

E19 all destinations except Switzerland and those of E09 and E10.

COMMISSION REGULATION (EC) No 1155/2008
of 20 November 2008
fixing the export refunds on poultrymeat

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 ⁽¹⁾, and in particular Article 164(2), last subparagraph, and Article 170 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.
- (2) In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and criteria provided for in Articles 162 to 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

- (4) Refunds should be granted only on products which are authorised to move freely in the Community and bear the identification mark provided for in Article 5(1)(b) of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾. Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾.
- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

1. The products on which the export refunds provided for in Article 164 of Regulation (EC) No 1234/2007 may be paid, subject to the conditions laid down in paragraph 2 of this Article, and the amounts of those refunds are specified in the Annex to this Regulation.

2. The products on which a refund may be paid under paragraph 1 shall meet the requirements under Regulations (EC) Nos 852/2004 and 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the identification marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

This Regulation shall enter into force on 21 November 2008.

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

Done at Brussels, 20 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55.

⁽³⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

ANNEX

Export refunds on poultrymeat applicable from 21 November 2008

| Product code | Destination | Unit of measurement | Amount of refund |
|-----------------|-------------|---------------------|------------------|
| 0105 11 11 9000 | A02 | EUR/100 pcs | 0,47 |
| 0105 11 19 9000 | A02 | EUR/100 pcs | 0,47 |
| 0105 11 91 9000 | A02 | EUR/100 pcs | 0,47 |
| 0105 11 99 9000 | A02 | EUR/100 pcs | 0,47 |
| 0105 12 00 9000 | A02 | EUR/100 pcs | 0,94 |
| 0105 19 20 9000 | A02 | EUR/100 pcs | 0,94 |
| 0207 12 10 9900 | V03 | EUR/100 kg | 30,00 |
| 0207 12 90 9190 | V03 | EUR/100 kg | 30,00 |
| 0207 12 90 9990 | V03 | EUR/100 kg | 30,00 |

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

The other destinations are defined as follows:

V03 A24, Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

COMMISSION REGULATION (EC) No 1156/2008
of 20 November 2008
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN codes indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

(5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on the 20th day following 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, 20 November 2008.

For the Commission
László KOVÁCS
Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

ANNEX

| Description of the goods | Classification (CN code) | Reasons |
|---|--------------------------|--|
| (1) | (2) | (3) |
| <p>1. An apparatus for the recording, reproducing and displaying of still images (so-called 'digital photo frame'), with overall dimensions 17 (L) × 12,9 (W) × 12,3 (D) cm, consisting of the following main components in a single housing:</p> <ul style="list-style-type: none"> — a colour display of the liquid crystal device (LCD) type with a diagonal measurement of the screen of 13 cm (5,1 inches) and a resolution of 320 × 240 pixels, — a slot for a Subscriber Identity Module (SIM) card, — an infra-red interface, — an internal memory, and — control buttons. <p>The images are transferred to the internal memory of the apparatus from a compatible device (such as a mobile phone, automatic data-processing machine or digital camera) via an infra-red signal or with an SIM card through Multimedia Messaging Service (MMS).</p> <p>The images can also be transferred from the apparatus via the infra-red signal to a compatible device.</p> <p>The apparatus supports JPEG and GIF formats with a maximum resolution of 1 024 × 728 pixels.</p> <p>The images can be displayed in either single image or slideshow mode.</p> <p>Its internal memory can store up to 50 images.</p> | 8528 59 90 | <p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 3 to Section XVI and by the wording of CN codes 8528, 8528 59 and 8528 59 90.</p> <p>Since the apparatus is a composite machine in accordance with Note 3 to Section XVI, it is to be classified as if consisting only of that component which performs its principal function.</p> <p>Due to its capability of displaying images, the principal function of the apparatus is considered to be that of a monitor, which is an individual function specified in heading 8528.</p> <p>The fact that the signals are not displayed directly from external sources does not exclude classification under heading 8528 since monitors of that heading may be capable of receiving a variety of signals from different sources (see also the Harmonised System Explanatory Notes to heading 8528, third paragraph).</p> <p>Therefore, the apparatus is to be classified under CN code 8528 59 90 as a colour monitor.</p> |

| (1) | (2) | (3) |
|---|-------------------|---|
| <p>2. An apparatus for the recording, reproducing and displaying of still and video images, as well as for the recording and reproducing of sound (so-called 'digital picture frame'), with overall dimensions 33 (W) × 24,1 (H) × 4,1 (D) cm, consisting of the following main components in a single housing:</p> <ul style="list-style-type: none"> — a colour display of the liquid crystal device (LCD) type, with a diagonal measurement of the screen of 25,4 cm (10 inches) and a resolution of 800 × 480 pixels, — an internal memory with a storage capacity of 128 MB, — memory card slots, — built-in loudspeakers, — two USB interfaces, and — control buttons. <p>It supports the following formats:</p> <ul style="list-style-type: none"> — audio: MP3, — still image: JPEG, GIF, — video: MPEG1, MPEG4, MOV, AVI. <p>Different types of solid-state non-volatile storage devices can be inserted into the memory card slots.</p> <p>The images may be displayed in single image, slideshow or thumbnails mode.</p> <p>The apparatus can be connected to a compatible apparatus, for example, a digital camera, a printer or an automatic data-processing machine.</p> | <p>8528 59 90</p> | <p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 3 to Section XVI and by the wording of CN codes 8528, 8528 59 and 8528 59 90.</p> <p>Since the apparatus is a composite machine in accordance with Note 3 to Section XVI, it is to be classified as if consisting only of that component which performs its principal function.</p> <p>Given the design and the concept of the apparatus, its purpose is to display still and video images. Recording still and video images is to be considered as a secondary function of the apparatus. Therefore its principal function is considered to be that of a monitor, which is an individual function specified in heading 8528.</p> <p>The fact that the signals are not displayed directly from external sources does not exclude classification under heading 8528 since monitors of that heading may be capable of receiving a variety of signals from different sources (see also the Harmonised System Explanatory Notes to heading 8528, third paragraph).</p> <p>Therefore, the apparatus is to be classified under CN code 8528 59 90 as a colour monitor.</p> |

COMMISSION REGULATION (EC) No 1157/2008
of 20 November 2008
establishing a prohibition of fishing for Greenland halibut in NAFO 3LMNO by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2008.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2008.

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

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2008 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

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

Article 3

Entry into force

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

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

Done at Brussels, 20 November 2008.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 19, 23.1.2008, p. 1.

ANNEX

| | |
|--------------|---|
| No | 60/T&Q |
| Member State | ESP |
| Stock | GHL/N3LMNO |
| Species | Greenland halibut (<i>Reinhardtius hippoglossoides</i>) |
| Area | NAFO 3LMNO |
| Date | 11.10.2008 |

COMMISSION REGULATION (EC) No 1158/2008
of 20 November 2008
amending Regulation (EC) No 1134/2008 fixing the import duties in the cereals sector applicable
from 16 November 2008

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 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

(1) The import duties in the cereals sector applicable from 16 November 2008 were fixed by Commission Regulation (EC) No 1134/2008 ⁽³⁾.

(2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 1134/2008.

(3) Regulation (EC) No 1134/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1134/2008 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 21 November 2008.

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

Done at Brussels, 20 November 2008.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 306, 15.11.2008, p. 63.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 21 November 2008

| CN code | Description | Import duties ⁽¹⁾ (EUR/t) |
|---------------|--|---|
| 1001 10 00 | Durum wheat, high quality | 0,00 |
| | medium quality | 0,00 |
| | low quality | 0,00 |
| 1001 90 91 | Common wheat seed | 0,00 |
| ex 1001 90 99 | High quality common wheat, other than for sowing | 0,00 |
| 1002 00 00 | Rye | 24,22 |
| 1005 10 90 | Maize seed other than hybrid | 14,77 |
| 1005 90 00 | Maize, other than seed ⁽²⁾ | 14,77 |
| 1007 00 90 | Grain sorghum other than hybrids for sowing | 24,22 |

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

14.11.2008-19.11.2008

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

(EUR/t)

| | Common wheat ⁽¹⁾ | Maize | Durum wheat, high quality | Durum wheat, medium quality ⁽²⁾ | Durum wheat, low quality ⁽³⁾ | Barley |
|------------------------|-----------------------------|---------|---------------------------|--|---|--------|
| Exchange | Minnéapolis | Chicago | — | — | — | — |
| Quotation | 200,85 | 118,58 | — | — | — | — |
| Fob price USA | — | — | 239,24 | 229,24 | 209,24 | 123,19 |
| Gulf of Mexico premium | — | 12,15 | — | — | — | — |
| Great Lakes premium | 23,58 | — | — | — | — | — |

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

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

Freight costs: Gulf of Mexico–Rotterdam: 12,25 EUR/t

Freight costs: Great Lakes–Rotterdam: 10,08 EUR/t

COMMISSION REGULATION (EC) No 1159/2008**of 20 November 2008****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

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 143 thereof,

Having regard to Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽²⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices for poultrymeat and egg products and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and

for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin. The representative prices should therefore be published.

- (3) In view of the situation on the market, this amendment should be applied as soon as possible.
- (4) 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:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 20 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

to the Commission Regulation of 20 November 2008 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

| CN code | Description of goods | Representative price (EUR/100 kg) | Security under Article 3(3) (EUR/100 kg) | Origin ⁽¹⁾ |
|------------|---|--------------------------------------|--|-----------------------|
| 0207 12 10 | Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen | 111,1 | 0 | BR |
| | | 134,4 | 0 | AR |
| 0207 12 90 | Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen | 135,0 | 0 | BR |
| | | 135,3 | 0 | AR |
| 0207 14 10 | Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen | 231,0 | 21 | BR |
| | | 251,6 | 15 | AR |
| | | 301,8 | 0 | CL |
| 0207 14 50 | Fowls of the species <i>Gallus domesticus</i> , breasts, frozen | 191,2 | 6 | BR |
| 0207 14 60 | Fowl of the species <i>Gallus domesticus</i> , legs, frozen | 118,6 | 7 | BR |
| 0207 25 10 | Turkeys, not cut in pieces, presented as “80 % turkeys”, frozen | 189,8 | 0 | BR |
| 0207 27 10 | Turkeys, boneless cuts, frozen | 294,3 | 1 | BR |
| | | 335,8 | 0 | CL |
| 0408 91 80 | Eggs, not in shell, dried | 450,7 | 0 | AR |
| 1602 32 11 | Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked | 209,7 | 23 | BR |
| 3502 11 90 | Egg albumin, dried | 589,6 | 0 | AR |

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). The code “ZZ” represents “other origins”.

COMMISSION REGULATION (EC) No 1160/2008**of 20 November 2008****fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty**

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 market and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾, and in particular Article 164(2) thereof,

Whereas:

- (1) Article 162(1) b of Regulation (EC) No 1234/2007 provides that the difference between prices in international trade for the products referred to in Article 1(1) (s) and listed in Part XIX of Annex 1 to of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed Part V of the Annex XX to that Regulation.
- (2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Part V of Annex XX to Regulation (EC) No 1234/2007.
- (3) In accordance with paragraph 2 (b) of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.
- (4) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.
- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Article 1(1)(s) of Regulation (EC) No 1234/2007, and exported in the form of goods listed in Part V of Annex XX to Regulation (EC) No 1234/2007, shall be fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 21 November 2008.

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

Done at Brussels, 20 November 2008.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 172, 5.7.2005, p. 24.

ANNEX

Rates of the refunds applicable from 21 November 2008 to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

| (EUR/100 kg) | | | |
|---------------|---|----------------------------|----------------|
| CN code | Description | Destination ⁽¹⁾ | Rate of refund |
| 0407 00 | Birds' eggs, in shell, fresh, preserved or cooked: | | |
| | – Of poultry: | | |
| 0407 00 30 | – – Other: | | |
| | (a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90 | 02 | 0,00 |
| | | 03 | 16,00 |
| | | 04 | 0,00 |
| | (b) On exportation of other goods | 01 | 0,00 |
| 0408 | Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter: | | |
| | – Egg yolks: | | |
| 0408 11 | – – Dried: | | |
| ex 0408 11 80 | – – – Suitable for human consumption: not sweetened | 01 | 16,75 |
| 0408 19 | – – Other: | | |
| | – – – Suitable for human consumption: | | |
| ex 0408 19 81 | – – – – Liquid: not sweetened | 01 | 8,38 |
| ex 0408 19 89 | – – – – Frozen: not sweetened | 01 | 8,38 |
| | – Other: | | |
| 0408 91 | – – Dried: | | |
| ex 0408 91 80 | – – – Suitable for human consumption: not sweetened | 01 | 10,59 |
| 0408 99 | – – Other: | | |
| ex 0408 99 80 | – – – Suitable for human consumption: not sweetened | 01 | 2,68 |

⁽¹⁾ The destinations are as follows:

01 Third countries. For Switzerland and Liechtenstein these rates are not applicable to the goods listed in Tables I and II to Protocol No 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972,

02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Turkey, Hong Kong SAR and Russia,

03 South Korea, Japan, Malaysia, Thailand, Taiwan and the Philippines,

04 all destinations except Switzerland and those of 02 and 03.

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 20 May 2008

on the State aid implemented by the Netherlands in order to promote and facilitate the restructuring of the horticultural sector (C 74/03 ex N 450/01)

(notified under document number C(2008) 1847)

(Only the Dutch text is authentic)

(2008/875/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments, in accordance with the provisions referred to above ⁽¹⁾ and having taken those comments into account,

Whereas:

(2) Written details were submitted to the Commission by the Dutch authorities by letters dated 11 March 2002, 15 July 2002, 17 December 2002 and 21 October 2003, registered on 12 March 2002, 18 July 2002, 26 December 2002, and 25 October 2003 respectively.

(3) By letter dated 10 December 2003 ⁽²⁾ the Commission notified The Netherlands of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty with regard to the above-mentioned notification.

(4) The decision by the Commission to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments within one month. The Commission did not receive any comments from interested parties.

(5) Additional written information was submitted by the Dutch authorities by letter dated 11 January 2004, registered on 21 January 2004. During 2004 several meetings took place between the Dutch authorities and the Commission. The Dutch authorities also commented, by letter dated 18 May 2005, registered on 23 May 2005, on the initiation of the procedure.

I. PROCEDURE

(1) By letter of 27 June 2001, registered on 4 July 2001, the Dutch Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the EC Treaty, of participation in a limited liability company purchasing land and premises in the greenhouse cultivation sector (registered under number N 450/01).

⁽¹⁾ OJ C 15, 21.1.2004, p. 24.

⁽²⁾ C(2003) 4477 final.

⁽³⁾ See footnote 1.

II. DESCRIPTION

Background to the measure

- (6) In 2001 Land- en Tuinbouw Organisatie Nederland, the Dutch Agricultural and Horticultural Organisation (LTO-Nederland) ⁽⁴⁾ and the private limited company Ontwikkelings- en Participatiebedrijf Publiek Private Sector BV (OPP) announced their intention to form a company, 'Stallingsbedrijf Glastuinbouw Nederland Beheer BV' (SGN). The company would be involved in the purchase, temporary management and sale of land and premises in the greenhouse cultivation sector in order to promote and facilitate restructuring within the horticultural sector.
- (7) After SGN was set up, the Product Board for Horticulture (Productschap Tuinbouw, PT) ⁽⁵⁾, the Ministry of Agriculture, Nature and Food Quality, OPP and SGN would enter into a limited partnership. Within this limited partnership, SGN would act as managing partner, with the others as silent partners. The limited partnership would be involved in the purchase, temporary management and sale of land and premises in the greenhouse cultivation sector in order to promote and facilitate restructuring within the horticultural sector.
- (8) In order to set up this limited partnership, start-up capital was required, as follows:
- Ministry of Agriculture, Nature and Food Quality (through the Bureau Beheer Landbouwgronden, the Land Management Service (BBL)): capital: EUR 2 268 500; junior loans, market value: EUR 2 268 500,
 - PT ⁽⁶⁾: capital: EUR 2 722 500; junior loans, market value: EUR 2 722 500,
 - OPP: capital: EUR 4 991 000,
 - SGN: capital: EUR 150 000.
- (9) The return on the capital invested in the partnership and the junior loans was set at 15 % per annum in cash for the duration of the project (15 years). The shareholders receive an annual dividend. The return and dividend are established on the basis of the market rate.
- (10) The limited partnership and SGN were to be set up in order to promote spatial restructuring in the horticultural sector. The aim behind this was to concentrate horticulturists in specific areas, enabling the sector to adapt better to town and country planning and environmental sustainability requirements.
- (11) According to its articles of association, the limited partnership cannot be involved in property development activities or in speculation that could influence the price of land. Its activities are limited to the acquisition, sale and temporary management of properties. The purchase, sale and temporary management and sale of land by the limited partnership and its managing partner SGN must be in line with market price; acquisition, sale or temporary management below market price is prohibited under the articles of association. Private undertakings in the sector are not obliged or encouraged by the government to cooperate (specifically) with the limited partnership.
- (12) According to the Dutch authorities, horticulturalists will not benefit directly or indirectly from the measure in a way that will influence or limit competition, since the limited partnership will always have to sell the land or premises at market price if it wishes to maintain its profit margin and remain viable and continue its activities.
- (13) The measure is valid for 15 years and may not be cumulated with any other aid measures. The total budget available to the aid measure will be EUR 15 123 000.

⁽⁴⁾ LTO-Nederland is a private business organisation in the agricultural sector.

⁽⁵⁾ Dutch agriculture and agro-industry have a series of 'product boards', organisations which provide a form of representation additional to non-governmental organisations, and which consist of one vertical public law organisation per sector. These product boards are mainly active in the areas of food safety, animal welfare, quality, promotion and working conditions. Their activities include the implementation of European legislation. The regulations issued by the Product Board for Poultry and Eggs that impose levies on producers and undertakings to achieve a specific goal mentioned in these regulations, need to be approved by the Minister for Agriculture, Nature and Food Quality.

⁽⁶⁾ The Product Board for Horticulture's involvement will be financed exclusively using its own resources; no parafiscal charges will be levied on the production, processing or marketing of horticultural products.

Grounds for initiating the procedure

- (14) The Commission initiated the procedure in respect of the notified aid measure because the information provided was insufficient to enable it to assess the compatibility of the measure with Article 87 of the Treaty. In the decision to initiate the procedure, the Commission had explained what information was needed in order to assess whether the notified measure constituted State aid and, if so, whether the aid would be compatible with the internal market.

(15) The notification included information on the establishment of SGN, which would finance 50 % of its start-up capital using State resources⁽⁷⁾. The government would also be the primary source of the limited partnership's initial capital. At the time that the procedure was initiated, the Commission was unable to ascertain whether the 'market economy investor' principle had been observed when establishing the Dutch authorities' involvement and if the scheme would be used to save companies in difficulty. Therefore the Commission maintained the view that the investment of public capital in SGN and the limited partnership could benefit the Dutch greenhouse cultivation sector and therefore constituted aid within the meaning of Article 87(1) of the EC Treaty.

III. COMMENTS FROM THE NETHERLANDS

(16) By letter dated 18 May 2005 the Commission received comments from the Dutch authorities on the initiation of the procedure. Additional information was also provided by letters dated 11 January 2004 and during various bilateral meetings held in 2004.

(17) In their letter dated 11 January 2004, the Dutch authorities provided the following information:

— SGN's management had specified that the sale and lease-back of land and premises was excluded and that this would be specifically stated in sales contracts,

— the feasibility study relating to sale and spatial restructuring had been carried out (by Deloitte & Touche, an audit company). This study included calculations on the economic viability of the investment policy and an indication of anticipated return,

— SGN's management had stated and guaranteed that the calculations and indications of return in the Deloitte & Touche report had formed the basis of the anticipated return of 15 % (in line with market expectations) as stated in the business plan.

(18) During the bilateral meetings the Dutch authorities explained that the 15 % dividend would be distributed

⁽⁷⁾ The resources in the form of capital and junior loans provided by the Product Board for Horticulture, Ontwikkelings- en Participatiebedrijf Publieke Sector b.v. (OPP) and the Dutch Ministry of Agriculture, Nature and Food Quality can be regarded as State resources. The Product Board for Horticulture is a public body. OPP is a subsidiary of a bank which is wholly owned by the government.

according to the different levels of risk accepted by the various shareholders, i.e. 50 % in the case of OPP and 25 % each for PT and the Ministry of Agriculture, Nature and Food Quality.

(19) LTO-Nederland and OPP each have a 50 % share in SGN, the limited partnership's managing partner. In the event of SGN making a profit, this profit would also be distributed equally between LTO-Nederland and OPP.

(20) In their letter dated 18 May 2005, the Dutch authorities provided information on the limited partnership and its activities. They stated that the feasibility study had been carried out after LTO's initiative to start a land company and that the study had been used as the basis for the business plan and indication of anticipated return; all financial risks were included in the business plan. Both private and public partners had been asked to participate in the venture. The private investors asked to participate as a partner were unfamiliar with the *modus operandi* and approach of the activities suggested by SGN⁽⁸⁾. In the end this was too great an uncertainty for these private investors and they chose not to invest in the limited partnership. However, since the feasibility report indicated return on investment for the activities to be carried out by the limited partnership, and these would not involve a risk higher than that found on the market, the public partners decided to participate in the project.

(21) The Dutch authorities confirmed that the limited partnership was the market 'player'. Since silent partners cannot by definition be involved in management, SGN as managing partner performs these activities and therefore acts on behalf of the limited partnership in these matters.

(22) The Dutch authorities explained that, in terms of the management of the limited partnership, the activities of SGN would almost only concern small- and medium-sized companies. The public partners only provide the limited partnership with capital and junior loans. Investment decisions must be taken based on the prospect of return and the business plan is used as a guide for investment. Since this would involve project-based activities, other private investors will participate in later stages as well. Apart from capital and junior loans no other aid can be granted for the same purpose.

⁽⁸⁾ The private partners had never been actively involved in restructuring activities before and were not aware that they would only be able to purchase, sell and manage land and not permitted to be involved in other (investment) activities. They also preferred junior loans over the investment of capital. Capital was also required in order to set up the limited partnership. The public partners involved had sufficient experience in the reconstruction of land and premises and were familiar with the markets involved.

(23) The Dutch authorities explained that the purpose of the limited partnership was not to assist individual undertakings, but to support Dutch town and country planning policy and to promote sustainable development in the greenhouse cultivation sector in specific areas. In order to achieve this, the limited partnership would purchase and sell property in strategic areas⁽⁹⁾. The sale and re-sale of the land and properties must be in line with market prices in order to ensure the partnership earns a return⁽¹⁰⁾. The limited partnership does not invest in companies in difficulty and 'sale and lease-back' contracts are specifically excluded.

(24) Finally, the Dutch authorities gave assurances that procurement rules are complied with, given the involvement of certified appraisers in the purchase of land and property by the limited partnership, transfers will not exceed the EUR 206 000 limit laid down in Article 7 of Directive 2004/18/EC⁽¹¹⁾ and the appraiser has to be chosen in consultation with the other party involved in the purchase or sale of the property.

IV. ASSESSMENT OF THE AID

(25) The limited partnership and its managing partner SGN were to be active in the greenhouse cultivation sector in the purchase of land and property to be used for the production of horticultural products. It must first be established whether participation in the limited partnership and its managing partner SGN can be considered to be State aid within the meaning of Article 87(1) of the Treaty and if so, whether such aid would be compatible with the common market.

(26) Article 87(1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(27) As indicated in the case-law of the Court of Justice of the European Communities, aid to an undertaking may

⁽⁹⁾ Strategic areas are those where all conditions for greenhouse cultivation (e.g. possibility of reconstruction, water and road infrastructure) are met. This would be achieved due to third parties, since the limited partnership and its managing partner SGN cannot be involved in such activities.

⁽¹⁰⁾ The return is achieved by acquiring different plots of land, restructuring them and selling them at a higher price. Any increase in value is not due to the supply of capital but merely to the location and local possibilities. Furthermore, changes in market price can usually be beneficial.

⁽¹¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

adversely affect trade between Member States and distort competition, if that undertaking operates in a market open to intra-Community trade⁽¹²⁾. The limited partnership and its managing partner SGN are active on the market in trade of land and, specifically, in land meant to be used for horticultural production. Active intra-Community trade is present within both these markets⁽¹³⁾.

(28) The capital and the junior loans are financed using the budgets of the Dutch Ministry of Agriculture, Nature and Food Quality (via the Land Management Service (BBL), a total of EUR 4 537 000), the Product Board for Horticulture (PT) (EUR 5 445 000), OPP (EUR 4 991 000) and SGN (EUR 150 000). The PT is a public body established by law, OPP is a limited liability partnership, wholly owned by public bodies and SGN is a limited liability partnership in which OPP has a 50 % share (the other 50 % being owned by LTO-Nederland, a private organisation). Given the structure of the capital investment in the limited partnership, it can be concluded that the government has a share in the limited partnership and that this capital comes, indirectly in parts, from State resources.

(29) The measure in question is selective, given that the investment is made in order to purchase, temporarily manage and re-sell land and premises in the horticultural sector in order to promote and facilitate spatial restructuring in the horticultural sector. These activities promote development in the sector and therefore also horticultural production.

(30) However, in accordance with Article 87(1) of the Treaty, measures cannot be considered to be aid if no advantage is conferred, given that in such cases, the measure does not distort competition or adversely affect trade between Member States. The impact of the measure must therefore be examined in order to ascertain whether the sectors concerned have benefited as a result.

(31) According to the Commission Communication on the application of Articles 92 and 93 (now Articles 87 and 88) of the EC Treaty and of Article 5 of Commission

⁽¹²⁾ See in particular the Court's ruling of 13 July 1988 in case C-102/87, *French Republic v Commission of the European Communities* [1988] ECR I-4067.

⁽¹³⁾ Land is a tradable asset; the high value of land and the possibilities to invest and develop land makes its sale attractive for investors operating in a Europe-wide or international scale. There is a high level of intra-Community trade in horticultural products: in 2005, intra-EU trade in fruit and vegetables amounted to EUR 7 099 million for vegetables and EUR 5 899 million for fruits (Source: Eurostat).

Directive 80/723/EEC to public undertakings in the manufacturing sector⁽¹⁴⁾ (referred to below as 'the 1993 Communication'), a capital injection is considered to be aid if it is made under circumstances unacceptable to a private investor operating under normal market conditions. Therefore, in order to ascertain whether this measure confers advantage, the market economy investor principle (MEIP) must be applied⁽¹⁵⁾.

- (32) The Commission notes that this decision in no way anticipates or prevents further analysis by the Commission on the subject of public procurement and legislation governing this area.
- (33) The effects of the measure must be examined on the following levels: the capital injection and the participation of public authorities in the limited partnership, the benefit for SGN, the other associates in the limited partnership and any future interested parties and advantage for third parties⁽¹⁶⁾.

Capital injection and public participation in the management of the limited partnership

- (34) A conservative planning approach has been used when preparing the models of the limited partnership's business plan. The first model was produced on the basis of planning over 10 years and the second model using a period of 15 years. On the basis of the calculations in the business plan and the financial risks identified, an investment period of 15 years was chosen.
- (35) The business plan covers an average land supply of 140 hectares, to be purchased gradually. In the first three years no land would be sold, only purchase and rental activities would be used to secure the investment (as collateral; a minimum level of available land would be guaranteed). After this initial period, the rate of sale would be restricted to 50 hectares per year. A minimum of EUR 27 million is set as ownership equity. In order to reduce risks, own capital is set slightly higher. However, this is done through junior loans rather than direct investment of capital. According to the calculations provided, the net present value of the investment is positive.
- (36) It has also been found necessary for the undertaking to be as flexible as possible and that it should work using a project-based approach in order to be able to respond to the economic cycle. The business plan refers to a return on investment of 17,13 % per annum. Taking into

account market risks, final return on investment is 15 % per annum for a total investment period of 15 years.

- (37) In case T-296/97 (*Alitalia v Commission*)⁽¹⁷⁾, it was established that the conduct of a private investor in a market economy is guided by prospects of profitability.
- (38) The Court of First Instance, in its ruling in case T-228/99 (*Westdeutsche Landesbank Girozentrale v Commission of the European Communities*)⁽¹⁸⁾ held that the average rate of return cannot be an automatic criterion for determining the existence and amount of State aid. The use of an average return must be consistent with the notion that an informed private investor, in other words, an investor wishing to maximise profits but without running excessive risks in comparison with other participants in the market, would, when calculating the appropriate return to be expected for the investment, in principle require a minimum return equivalent to the average return for the sector concerned. In its ruling in case C-305/89 (*Italian Republic v Commission of the European Communities*)⁽¹⁹⁾, the Court took the view that a private investor, whose involvement must be compared with that of a public investor pursuing economic policy aims, will not necessarily behave like an ordinary investor laying out capital with a view to seeing a return in the (more or less) short term, but must at least behave like a private holding company or a private group and undertakings pursuing a structural policy and is guided by the prospects of longer-term profitability.
- (39) Since the government has a share in a limited partnership, the State, as owner of (some of) the share capital will only be liable for the partnership's debts up to the liquidation value of the assets. The financial risk of the investment the government participates in would therefore be limited.
- (40) The business plan is well thought out and is based on moderate expectations. The limited partnership and SGN are both working on the basis of a long-term vision with a moderate growth model. The financial risks that depend on the economic cycle are therefore removed in order to enhance the possibility and the size of return on investment. The plan contains policy objectives, expected rates of return and financial risk calculations. On the basis of the conclusions of the Deloitte & Touche feasibility report, the project can be regarded as being viable. The reluctance within the private market to finance the project's start-up phase was caused by unfamiliarity with the restructuring of land and the specific features of the agricultural and greenhouse cultivation market.

⁽¹⁴⁾ Commission Communication — Application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

⁽¹⁵⁾ See the 1993 Communication.

⁽¹⁶⁾ Participants are individuals from whom property or land is bought and who manage or purchase this property or land.

⁽¹⁷⁾ Case T-296/97, *Alitalia v Commission* [2000] ECR II-3871, paragraph 84.

⁽¹⁸⁾ Case T-228/99, *Westdeutsche Landesbank Girozentrale v Commission* [2003] ECR II-435, see in particular paragraphs 251 and 255.

⁽¹⁹⁾ Case C-305/89, *Italy v Commission* [1991] ECR I-1603.

- (41) The capital injections were in this case based on reasonable anticipated rates of return in the medium to long term. The different parties required a return on their investment of 15 % per annum over a period of 15 years. This return was in line with average rates of return in the sector concerned ⁽²⁰⁾. The investors used the same criteria as providers of capital under normal market conditions.
- (42) The Commission does not see why a market economy investor should not provide capital, if it can be expected that these initial investments would help the company become profitable in the future.
- (43) It can therefore be considered that, by providing the start-up capital of EUR 15 123 000 the Dutch authorities did not confer an advantage on SGN and acted like a market economy investor and lender.

The benefit for SGN, the other partners in the limited partnership and any future interested parties

- (44) According to the information provided by the Dutch authorities, the purchase, management and re-sale of the land and premises took place at market price. The decision to participate in a partnership was based on the essential need for flexibility within the venture and the possibility of working on a project basis. This working method enables private investors to participate in individual projects, which reduces financial risk and ensures a return on the initial investment ⁽²¹⁾. The regulations establishing the limited partnership and SGN ensure that the market position of the limited partnership itself and SGN (acting on its behalf), does not differ from that of other investors and that they are only involved in the activities referred to above (with investing in the development of the sites concerned being expressly excluded). Furthermore, the market price for the land and property that the limited partnership and SGN (acting on its behalf) wish to purchase is that established with the help of independent appraisers appointed by the selling and buying parties. SGN, as the managing partner, can be held liable for all the shortcomings of the limited partnership.
- (45) According to the information provided by the Dutch authorities only the start-up capital was provided using State resources and no other aid or State resources were

made available to the limited partnership or its managing partner SGN.

- (46) As the limited partnership has to pay a normal rate of return to its investors, does not enjoy a beneficial or privileged market position and operates on the basis of freely-established market prices, the Commission is unable to establish the existence of a competitive advantage which the limited partnership could not have had under normal market conditions. The Commission takes the view that no advantage was conferred upon the limited partnership itself or its partners (LTO-Nederland) or any future interested parties.

Advantage for third parties

- (47) According to the information provided by the Dutch authorities, the purchase, management and re-sale of the land and the glasshouses on it take place at market rates. The market rates for land and property apply to land and property purchased by the limited partnership and are established with the help of independent assessors appointed by the various parties.
- (48) The regulations establishing the limited partnership and its managing partner SGN ensure that no other activities can be engaged in and that the limited partnership must strive towards a maximum return. The conferring of advantage to certain third parties is not in keeping with the objective laid down in these provisions. The possibility of the limited partnership purchasing, selling and managing property obtained at prices other than market price is excluded, which ensures that no help is given to companies in difficulty.
- (49) In order to establish the price of the land, certified appraisers are appointed. By using these and other services, the provisions of Directive 2004/18/EC are adhered to.
- (50) According to the information provided by the Dutch authorities, the limited partnership and SGN (acting on its behalf) behave like any other market player towards its clients (the individuals from whom the property or land is purchased, who maintain this property or land or who buy the property or land). It can therefore be concluded that the third parties involved in the activities of the limited partnership and its managing partner SGN do not have an advantage and therefore do not receive any form of aid.

V. CONCLUSION

- (51) On the basis of the above, the Commission's doubts, which prompted it to initiate the procedure and led to the provisional conclusions found in the decision initiating the procedure, have now been removed.

⁽²⁰⁾ Investments in land; the different private investors (NBM Amstelland, Arcadis, Grontmij, Groenfonds, ING, Fortis, Nationale Investerings Bank, Locatie Ontwikkelingsbedrijf, ABN AMRO, Rabobank) that were approached to participate in the project stated that investment in land would generally take place in the medium term (10 to 20 years) and that a profit of 15 % should be available for the investors when compared to generally comparable or similar investments in land.

⁽²¹⁾ These private investments will be made on a project basis and be related to the different phases of the project.

(52) The Commission therefore concludes that the involvement of the Dutch authorities in the limited partnership and SGN through the supply of capital and junior loans is in keeping with the market economy investor principle and does not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty,

of EUR 15 123 000, does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

HAS ADOPTED THIS DECISION:

Done at Brussels, 20 May 2008.

Article 1

The involvement of the Dutch authorities in the limited partnership in order to promote and facilitate the restructuring of the horticultural sector, amounting to a capital and junior loans

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION DECISION

of 6 November 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) 6431)

(Text with EEA relevance)

(2008/876/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) Duke University (DUKE), North Carolina, USA 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.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 6 November 2008.

For the Commission

Joaquín ALMUNIA

Member of the Commission

⁽¹⁾ OJ L 52, 22.2.1997, p. 1.

⁽²⁾ OJ L 133, 18.5.2002, p. 7.

⁽³⁾ OJ L 156, 30.4.2004, p. 1, as corrected by OJ L 202, 7.6.2004, p. 1.

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

Duke University (DUKE), North Carolina, USA'

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2008/877/CFSP

of 24 October 2008

concerning the conclusion of the Agreement between the European Union and Georgia on the status of the European Union Monitoring Mission in Georgia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 15 September 2008, the Council adopted Joint Action 2008/736/CFSP on the European Union Monitoring Mission in Georgia (EUMM Georgia) ⁽¹⁾.
- (2) An agreement on the status of the EUMM Georgia has been negotiated between the European Union and Georgia.
- (3) The Agreement should be approved on behalf of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union and Georgia on the Status of the European Union Monitoring Mission in Georgia is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union ⁽²⁾.

Article 3

This Decision shall take effect on the day of its adoption.

Article 4

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

Done at Luxembourg, 24 October 2008.

For the Council

The President

M. ALLIOT-MARIE

⁽¹⁾ OJ L 248, 17.9.2008, p. 26.

⁽²⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Union and Georgia on the status of the European Union Monitoring Mission in Georgia**

THE EUROPEAN UNION, hereinafter referred to as 'the EU',

of the one part, and

GEORGIA, hereinafter referred to as 'the Host State',

of the other part,

Together hereinafter referred to as 'the Parties',

TAKING INTO ACCOUNT:

- the invitation letter by President Mikheil Saakashvili of 11 September 2008,
- the Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia,
- that this Agreement will not affect the Parties' rights and obligations under international agreements and other instruments establishing international courts and tribunals, including the Statute of the International Criminal Court,

HAVE AGREED AS FOLLOWS:

*Article 1***Scope and definitions**

1. This Agreement shall apply to the European Union mission and its personnel.
2. This Agreement shall apply only within the territory of the Host State.
3. For the purposes of this Agreement:
 - (a) 'EUMM Georgia' shall mean the EU Monitoring Mission in Georgia, established by the Council of the European Union in Joint Action 2008/736/CFSP, including its components, forces, units, headquarters and personnel deployed in the territory of the Host State and assigned to EUMM Georgia;
 - (b) 'Head of Mission' shall mean the Head of Mission of EUMM Georgia, appointed by the Council of the European Union;
 - (c) 'EUMM Georgia personnel' shall mean the Head of Mission, personnel seconded by EU Member States and EU institutions and non-EU States invited by the EU to participate in EUMM Georgia, international staff recruited on a contractual basis by EUMM Georgia deployed for the preparation, support and implementation of the mission, and personnel on mission for a Sending State or an EU institution in the framework of the mission. It shall not include commercial contractors or personnel employed locally;
 - (d) 'Headquarters' shall mean the EUMM Georgia main headquarters in Tbilisi;
 - (e) 'Sending State' shall mean any EU Member State or non-EU State that has seconded personnel to EUMM Georgia;
 - (f) 'Facilities' shall mean all buildings, premises and land required for the conduct of the activities of EUMM Georgia, as well as for the accommodation of EUMM Georgia personnel;

(g) 'Personnel employed locally' shall mean personnel who are nationals of or holders of permanent resident permit in the Host State;

(h) 'Contractor' shall mean any person supplying to EUMM Georgia goods and/or services related to EUMM Georgia activities.

Article 2

General provisions

1. EUMM Georgia and EUMM Georgia personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the mission.

2. EUMM Georgia shall be autonomous with regard to the execution of its functions under the present Agreement. The Host State shall respect the unitary and international nature of EUMM Georgia.

3. The Head of Mission shall regularly inform the government of the Host State of the number of EUMM Georgia personnel stationed within the Host State's territory.

Article 3

Identification

1. EUMM Georgia personnel shall be provided with, and identified by, EUMM Georgia identification cards issued by the Ministry of Foreign Affairs of the Host State, which they shall be obliged to carry with them at all times. The relevant authorities of the Host State shall be provided with a specimen of an EUMM Georgia identification card.

2. Vehicles and other means of transport of EUMM Georgia shall bear distinctive EUMM Georgia identification markings, an example of which shall be provided to the relevant authorities of the Host State, and/or specific diplomatic licence plates issued by the relevant authorities of the Host State.

3. EUMM Georgia shall have the right to display the flag of the EU at its headquarters and elsewhere, alone or together with the flag of the Host State, as decided by the Head of Mission. National flags or insignia of the constituent national elements of EUMM Georgia may be displayed on EUMM Georgia premises, vehicles and uniforms, as decided by the Head of Mission.

Article 4

Border crossing and movement within the Host State's territory

1. EUMM Georgia personnel and EUMM Georgia assets and means of transport shall cross the border of the Host Party at official border crossings, sea ports and via international air corridors.

2. The Host Party shall facilitate the entry into and the departure from the territory of the Host State for EUMM Georgia and EUMM Georgia personnel. Except for passport control on entry into and departure from the territory of the Host State, EUMM Georgia personnel, with proof of membership of the Mission, shall be exempt from passport, customs control and procedures, visa and immigration regulations and any form of immigration inspection within the host territory.

3. EUMM Georgia personnel shall be exempt from the regulations of the Host State governing the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.

4. EUMM Georgia assets and means of transport entering, transiting or exiting the Host State's territory in support of EUMM Georgia shall be exempt from any customs control and procedure.

5. Vehicles and aircraft used in support of the Mission shall not be subject to local licensing or registration requirements. Relevant international standards and regulations shall continue to apply.

If required, supplementary arrangements as referred to in Article 20 shall be concluded.

6. EUMM Georgia personnel may drive motor vehicles, navigate vessels and operate aircraft within the territory of the Host State provided they have valid national or international driving licences, shipmasters' certificates or pilot licences, as appropriate. The Host State shall accept as valid, without tax or fee, driving licences or permits carried by EUMM Georgia personnel.

7. EUMM Georgia and EUMM Georgia personnel together with their vehicles, aircraft or any other means of transport, equipment and supplies shall enjoy free and unrestricted movement throughout the territory of the Host State, including its territorial sea and airspace. If necessary, supplementary arrangements may be concluded in accordance with Article 20 of the present Agreement.

8. For the purpose of the Mission, EUMM Georgia personnel, and local personnel employed by EUMM Georgia when travelling on official duties, may use roads, bridges ferries, airports and ports without payment of duties, fees, tolls, taxes or other charges. EUMM Georgia shall not be exempt from reasonable charges for services requested and received under the conditions that apply to those provided to the Host State's personnel.

9. EUMM Georgia assets and means of transport which entered, transited or exited the Host State's territory in support of EUMM Georgia before the entry into force of this Agreement shall be exempted from any customs control and procedure.

Article 5

Privileges and immunities of EUMM Georgia granted by the Host State

1. EUMM Georgia's facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the Head of Mission.

2. EUMM Georgia's facilities, their furnishings and other assets therein as well as their means of transport shall be immune from search, requisition, attachment or execution.

3. EUMM Georgia, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.

4. EUMM Georgia's archives and documents shall be inviolable at any time, wherever they may be.

5. The official correspondence of EUMM Georgia shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

6. In respect of purchased and imported goods, services provided and facilities used by it for the purposes of the mission, EUMM Georgia, shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUMM Georgia shall not be exempt from payment for services rendered.

7. The Host State shall permit the entry of articles for the mission and grant them exemption from all import, export and transit permissions, licences, customs duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services rendered.

Article 6

Privileges and immunities of EUMM Georgia personnel granted by the Host State

1. EUMM Georgia personnel shall not be liable to any form of arrest or detention, in accordance with international law.

2. Papers, correspondence and property of EUMM Georgia personnel shall enjoy inviolability, except in case of measures of execution which are permitted pursuant to paragraph 6 of this Article.

3. EUMM Georgia personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances. The immunity from criminal jurisdiction of EUMM Georgia personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be express.

4. EUMM Georgia personnel shall enjoy immunity from the civil and administrative jurisdiction of the Host State in respect of words spoken or written and all acts performed by them in the exercise of their official functions. If any civil proceeding is instituted against EUMM Georgia personnel before any Host State court, the Head of Mission and the competent authority of the Sending State or EU institution shall be notified immediately. Prior to initiation of the proceeding before the court, the Head of Mission and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was committed by EUMM Georgia personnel in the exercise of their official functions. If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 17 shall apply. If the act was not committed in the exercise of official functions, the proceeding may continue. The certification by the Head of Mission and the competent authority of the Sending State or EU institution is binding upon the jurisdiction of the Host State who may not contest it.

The initiation of proceedings by EUMM Georgia personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUMM Georgia personnel are not obliged to give evidence as witnesses.

6. No measures of execution may be taken in respect of EUMM Georgia personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUMM Georgia personnel, which is certified by the Head of Mission to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgement, decision or order. In civil proceedings EUMM Georgia personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

7. The immunity of EUMM Georgia personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.

8. EUMM Georgia personnel shall with respect to services rendered for EUMM Georgia be exempt from social security provisions which may be in force in the Host State.

9. EUMM Georgia personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUMM Georgia or the Sending States, as well as on any income received from outside the Host State.

10. The Host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on articles for the personal use of EUMM Georgia personnel. The Host State shall also allow the export of such articles. For goods and services purchased on the domestic market EUMM Georgia personnel shall be exempt from VAT (the price shall not include VAT) and taxes according to the laws of the Host Party.

11. The personal baggage of EUMM Georgia personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUMM Georgia personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the concerned EUMM Georgia personnel or of an authorised representative of EUMM Georgia.

Article 7

Personnel employed locally

Personnel employed locally shall enjoy privileges and immunities only to the extent admitted by the Host State. However, the Host State shall exercise its jurisdiction over that personnel in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 8

Tax exemptions for contractors

1. The supply of goods and/or services to EUMM Georgia by a contractor shall be exempt from indirect taxes (the price shall not include tax).

2. The import of goods by a contractor, purchased for activities of EUMM Georgia, shall be exempt from all customs duties, including VAT.

3. EUMM Georgia shall incur no liability or responsibility to the Host State authorities for any failure of contractors to comply with Georgian laws regarding taxes.

4. In cooperation with EUMM Georgia, the Ministry of Finance of Georgia shall elaborate arrangements for implementing the tax exemptions envisaged by this Article.

Article 9

Disciplinary powers

The competent authorities of a Sending State shall have the right to exercise, on the territory of the Host State, all disciplinary powers conferred on them by the law of the Sending State with regard to all EUMM Georgia personnel subject to the relevant law of the Sending State.

Article 10

Security

1. The Host State, through its own capabilities, shall assume full responsibility for the security of EUMM Georgia personnel.

2. To that end, the Host State shall take all necessary measures for the protection, safety and security of EUMM Georgia and EUMM Georgia personnel. Any specific provisions, proposed by the Host State, shall be agreed with the Head of Mission before implementation. The Host State shall permit and support free of any charge activities relating to the medical evacuation of EUMM Georgia personnel. If required, supplementary arrangements as referred to in Article 20 shall be concluded.

Article 11

Uniform

1. EUMM Georgia personnel shall wear national uniform or civilian dress with distinctive EUMM Georgia identification.

2. The wearing of uniform shall be subject to rules issued by the Head of Mission.

Article 12

Cooperation and access to information

1. The Host State shall provide full cooperation and support to EUMM Georgia and EUMM Georgia personnel.

2. If requested and necessary for the accomplishment of the EUMM Georgia mission, the Host State shall provide EUMM Georgia personnel with effective access to:

— buildings, facilities, locations and official vehicles owned, leased or occupied by the Host State relevant to the mandate of EUMM Georgia,

— necessary documents, materials and information, within the control of the Host State, for the fulfilment of the mandate of EUMM Georgia.

If required, supplementary arrangements as referred to in Article 20 shall be concluded.

3. The Head of Mission and the Host State shall consult regularly and take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Host State may appoint a liaison officer to EUMM Georgia.

Article 13

Host State support and contracting

1. The Host State agrees, if requested, to assist EUMM Georgia in finding suitable facilities.

2. The Host State shall provide free of charge, if required and available, facilities owned by the Host State, in so far as such facilities are requested for the conduct of administrative and operational activities of EUMM Georgia.

3. Within its means and capabilities, the Host State shall assist in the preparation, establishment and execution of and support for the Mission, including co-location facilities and equipment for EUMM Georgia experts.

4. The Host State's assistance and support of the mission shall be provided under the same conditions as the assistance and support given to the Host State's citizens.

5. EUMM Georgia shall have the necessary legal capacity under the laws and regulations of the Host State in order to fulfil its mission, and in particular for the purpose of opening bank accounts and to acquire or dispose of movable property and to be party to legal proceedings.

6. The law applicable to contracts concluded by EUMM Georgia in the Host State shall be determined by the respective contracts.

7. The contract may stipulate that the dispute settlement procedure referred to in Article 17(3) and (4) shall be applicable to disputes arising from the application of the contract.

8. The Host State shall facilitate the implementation of contracts concluded by EUMM Georgia with commercial entities for the purpose of the operation.

Article 14

Change to facilities

1. EUMM Georgia shall be authorised to construct, alter or otherwise modify facilities as requested for its operational requirements.

2. No compensation shall be requested from EUMM Georgia by the Host State for those constructions, alterations or modifications.

Article 15

Deceased EUMM Georgia personnel

1. The Head of Mission shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUMM Georgia personnel, as well of their personal property.

2. No autopsy shall be performed on any deceased members of EUMM Georgia without the agreement of the State concerned, and the presence of a representative of EUMM Georgia and/or the State concerned.

3. The Host State and EUMM Georgia shall cooperate to the fullest extent possible with a view to early repatriation of deceased EUMM Georgia personnel.

Article 16

Communications

1. EUMM Georgia may install and operate radio sending and receiving stations, as well as satellite systems. They shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies. The Host State shall grant access to the frequency spectrum free of charge.

2. EUMM Georgia shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile and other means, as well as the right to install the equipment necessary for the maintenance of such communications within and between EUMM Georgia facilities, including the laying of cables and land lines for the purpose of the operation.

3. Within their own facilities EUMM Georgia may make the arrangements necessary for the conveyance of mail addressed to and from EUMM Georgia and/or EUMM Georgia personnel.

*Article 17***Claims for death, injury, damage and loss**

1. EUMM Georgia and EUMM Georgia personnel shall not be liable for any damage to or loss of civilian or government property which are related to operational necessities or caused by activities in connection with civil disturbances or protection of EUMM Georgia.

2. With a view to reaching an amicable settlement, claims for damage to or loss of civilian or government property not covered by paragraph 1, as well as claims for death of or injury to persons and for damage to or loss of EUMM Georgia property, shall be forwarded to EUMM Georgia via the competent authorities of the Host State, as far as claims brought by legal or natural persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUMM Georgia are concerned.

3. Where no amicable settlement can be found, the claim shall be submitted to a claims commission composed on an equal basis of representatives of EUMM Georgia and representatives of the Host State. Settlement of claims shall be reached by common agreement.

4. Where no settlement can be reached within the claims commission, the dispute shall:

(a) for claims up to and including EUR 40 000, be settled by diplomatic means between the Host State and EU representatives;

(b) for claims above the amount referred to in point (a), be submitted to an arbitration tribunal, the decisions of which shall be binding.

5. The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUMM Georgia and the third one being appointed jointly by the Host State and EUMM Georgia. Where one of the parties does not appoint an arbitrator within two months or where no agreement can be found between the Host State and EUMM Georgia on the appointment of the third arbitrator, the arbitrator in question shall be appointed by the President of the Court of Justice of the European Communities.

6. An administrative arrangement shall be concluded between EUMM Georgia and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the tribunal, the procedure applicable within these bodies and the conditions under which claims are to be lodged.

*Article 18***Liaison and disputes**

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of EUMM Georgia and the Host State's competent authorities.

2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between the Host State and EU representatives.

*Article 19***Other provisions**

1. Whenever this Agreement refers to the privileges, immunities and rights of EUMM Georgia and of EUMM Georgia personnel, the government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.

2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUMM Georgia under other agreements.

*Article 20***Implementing arrangements**

For purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the Head of Mission and the Host State's administrative authorities.

*Article 21***Final provisions**

1. This Agreement shall enter into force on the date of receiving, through diplomatic channels, of the last written notification about the fulfilment by the Parties of internal procedures necessary for the entry into force of this Agreement.

2. Notwithstanding paragraph 1, the provisions contained in Articles 4(8), 5(1) to (3), 5(6), 5(7), 6(1), 6(3), 6(4), 6(6), 6(8) to (10), 14 and 17 shall be deemed to have applied from the date on which the first EUMM Georgia personnel were deployed if that date was earlier than the date of entry into force of this Agreement.

3. Changes and amendments to this Agreement shall be made by the mutual consent of the Parties in writing. Changes and amendments shall be executed as separate protocols, which form an integral part of this Agreement and shall enter into force in accordance with the rule of Article 21(1) of this Agreement.

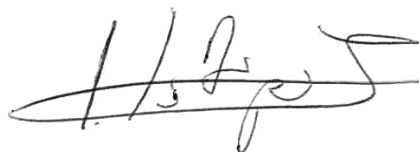
4. This Agreement shall remain valid unless either Party informs the other Party in writing of its desire to terminate this Agreement. The termination of this Agreement shall enter into force after six months from the date of receiving such notification. Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at *Brussels*, on *3rd November 2008*, in two original copies, in the English language.

For the European Union

A handwritten signature in black ink, appearing to be 'Jan Peter', with a long horizontal stroke extending to the right.

For Georgia

A handwritten signature in black ink, appearing to be 'I. Z. J.', with a large loop at the end.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.