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

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

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

III *Acts adopted under the EU Treaty*

EN

[1] Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 393/2009

of 11 May 2009

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain candles, tapers and the like originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 1130/2008 of 14 November 2008 imposing a provisional anti-dumping duty on imports of certain candles, tapers and the like originating in the People's Republic of China [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain candles, tapers and the like originating in the People's Republic of China (PRC).

1.2. Subsequent procedure

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

(3) The Commission continued its investigation with regard to Community interest aspects and carried out further analyses of information provided by importers, retailers and trade associations in the Community after the imposition of the provisional anti-dumping measures.

(4) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly. To this end further verification visits were carried out at the following companies:

Unrelated importers in the Community:

— Koopman International BV, Amsterdam, Netherlands,

— Salco Group PLC, Essex, UK.

Verification visits were also carried out at the premises of the companies mentioned in recital 31.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of certain candles, tapers and the like originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 306, 15.11.2008, p. 22.

(6) It is recalled that the investigation of dumping and injury covered the period from 1 January 2007 to 31 December 2007 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 2004 to the end of the IP (period considered).

(7) Some interested parties argued that the choice of the year 2007 as investigation period was flawed because certain events, such as changing export subsidy and labour policies of the PRC, and fluctuations in exchange rates, which took place in 2007 and 2008, played a role in the injury analysis.

(8) It should be noted that according to Article 6(1) of the basic Regulation, the investigation period should cover a period immediately prior to the initiation of the proceeding. It is recalled that the present investigation was initiated on 16 February 2008. As to the examination of trends relevant for the assessment of injury, this normally covers three or four years prior to initiation, ending in line with the dumping investigation period. Consequently, the claim was rejected.

(9) One interested party contested the percentage mentioned in recital 2 of the provisional Regulation which represents the complainants in terms of total Community production.

(10) After examination of the claim, it should be noted that the figure of 60 % indicated in recital 2 of the provisional Regulation refers to the overall support for the investigation, including complainants and Community producers who supported the complaint and agreed to cooperate in the investigation, rather than to the percentage of the Community production covered by the complainants only. This is confirmed by recital 92 of the provisional Regulation. As to the percentage in recital 2 of the provisional Regulation, this should read '34 %'.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(11) The product concerned was provisionally defined as certain candles, tapers and the like, other than memory lights and other outdoor burners, exported to the Community and originating in the PRC ('candles' or 'product concerned').

(12) For the purpose of imposing provisional measures, although the various types of candles could differ in size, shape, colour, and other features such as scent, etc., it was considered that all the types of candles included in the definition of the product concerned share the same basic chemical and technical characteristics and uses and they would be to a large extent interchangeable.

(13) Comments made at that time by interested parties did not justify the exclusion of certain types of candles from the scope of the investigation, in particular the so-called 'fancy' or 'decorative' candles. The parties did not make any submission identifying dividing features which would have allowed to clearly distinguishing between the various types of candles which should be included and those which should be excluded from the scope of the investigation. In addition, contrary to certain claims, the investigation did not point to findings of dumping and injury within the sampled companies investigated varying significantly according to the types of candles. It was therefore provisionally considered that all candle types covered by the present investigation were part of the same product and should be covered by the investigation.

(14) Following the imposition of provisional measures, it was claimed again that exporting producers in the PRC were producing to a large extent handmade or decorative candles with further refining operations. It was repeated that they were labour-intensive and that they were produced in limited quantities by Community producers. It was also reiterated that the customer perception towards decorative candles was different compared to classical and standard types of candles. For example, it was argued that unlike classical candles, decorative types are not destined to be burned or used to provide heat but were intended to be kept as decorative items as long as possible unaltered.

(15) It was also claimed that it would be relatively easy to discern decorative candles from other types of candles, such as tea lights and tapered candles, taking into account that decorative candles have at least one of the following features: (i) are multicoloured and have multiple layers; (ii) have special shapes; (iii) have carved surface with decorations and (iv) have additional decorations of material other than wax/paraffin.

(16) Other interested parties claimed that 'birthday' candles are not manufactured in the Community but almost exclusively in the PRC and should therefore also be excluded from the present proceeding.

(17) It was also argued that the so-called tea lights could replace candles for the purpose of producing light, but other types of candles could not replace tea lights for the purpose of producing heat. Therefore these two product types would lack interchangeability as is the case between memory lights and other outdoor burners which are not part of the product concerned and other types of candles, including tea lights. Consequently it was claimed that tea lights should also be excluded from the present proceeding.

(18) Concerning the claim on decorative candles, the distinguishing features mentioned by the parties are very general and would not allow for a clear distinction to be made between the types of candles which should be included and those that should be excluded from the scope of the investigation and not made subject to measures. Many standard types of candles have more than one colour, they may have a specific shape or one or more additional decorations, for example on the occasion of specific celebrations during the year. In addition, the information provided by the parties and collected in the investigation, in particular on the product types and the product control numbers as they were defined, would not always allow for a clear distinction between the various types of candles based on the above-mentioned features. It should be firstly noted that the fact that certain product types are, allegedly, not produced by Community producers would not automatically lead to the exclusion of these types from the definition of the product concerned. Secondly, it cannot be ruled out that certain types of candles are not produced by Community producers because of injurious dumping. In the case of the so-called birthday candles, the parties concerned did not provide any evidence that these types of candles were actually not produced in the Community, nor did they explain the reasons why such candles would not be produced in the Community. In addition, as is the case for the decorative candles, no clear dividing lines between the birthday candles and the other types of candles were provided to allow an eventual exclusion of these product types. These comments are also valid for the so-called handmade candles. It is noteworthy that, as mentioned in recital 26, the claim that handmade candles are not produced in the Community was not correct.

(19) Concerning the claim made on the use of certain candles types, namely to produce light and/or heat, it is recalled that in recital 26 of the provisional Regulation it was mentioned that interchangeability between various types of candles existed and that candles were largely used for interior decoration purposes and not for the main purpose of producing heat. No information which would contradict this statement was provided by parties. Concerning the claims made on memory lights and outdoor candles, it is confirmed that these products can be distinguished from other types of candles on the basis of the technical and chemical criteria mentioned in recital 17 of the provisional Regulation.

(20) In summary, it was considered that the claims made by the parties were not sufficiently specific and were not supported by substantiating evidence showing that the product concerned was not correctly defined in the provisional Regulation. It is recalled that all types of candles included in the product concerned share the same basic chemical and technical characteristics. In addition, in the present case, it was found that candles had the same or similar uses and that they are in many instances interchangeable. They are produced by candle producers in the PRC and exported via the same sales channels and are thus part of the same product.

(21) In the absence of any further comments concerning the definition of the product concerned, recitals 15 to 23 of the provisional Regulation are hereby confirmed.

2.2. **Like product**

(22) Certain parties contested the findings made in recital 28 of the provisional Regulation where the criteria applied in the determination of the 'like product' were mainly based on the technical and chemical characteristics, as well as the end uses or functions of the product. Other factors, such as the shape, scent, colour or other features stated by the interested party, were not considered to be relevant for the definition of the like product. Indeed, possible variations in terms of size have no incidence on the definition of the product concerned and the like product, in particular because no clear distinction could be made between the product types belonging to the same product in relation to their main basic technical and chemical characteristics, to the end use and to the perception of the users.

(23) In this context, it should be underlined that the parties did not contest the fact that all types of candles share the same basic chemical and technical characteristics or that all types of candles are all made of the same raw material, mainly wax, that they are produced by the same producers and upon export they are sold via the same sales channels or to similar customers on the Community market.

(24) The main arguments made by interested parties relied on the fact that the types of candles produced in the PRC and exported to the Community are not like the types manufactured in the Community by Community producers. All claims were carefully examined, but did not provide any new substantial element in comparison to the claims made and addressed at the provisional stage.

(25) The claim stated in recital 14 for the definition of the product concerned was also made in the context of the like product. It was argued that exporting producers in the PRC produce to a large extent handmade, or labour-intensive decorative candles with further refining operations and various different shapes which are not produced or are produced in limited quantities by Community producers. Hence, it was claimed that these types of candles are not like those produced by Community producers.

(26) The investigation has shown that this statement is not correct. Whilst the producers included in the definition of the Community industry may be concentrating on the standard candles segment of the market, available information indicates that there are a large number of producers in the Community which produce decorative candles, including handmade and labour-intensive candles, in certain Member States such as Estonia, France, Germany, Greece, Italy, Poland and Slovenia.

(27) In view of the claims made and the evidence provided by interested parties and all other information available from the investigation, it is considered that the product concerned and candles produced and sold by the exporting producers on their domestic market and by producers in the Community, which also served as an analogue country for the purpose of establishing the normal value with respect to the PRC, could be considered as like products in accordance with Article 1(4) of the basic Regulation. These products have essentially the same basic technical and chemical characteristics and the same or similar basic uses.

3. SAMPLING

3.1. Sampling of Community producers, importers and exporting producers in the PRC

(28) In the absence of any comments concerning the sampling of Community producers, importers and exporting producers in the PRC, which would alter the provisional findings, recitals 31 to 40 of the provisional Regulation are hereby confirmed.

3.2. Individual examination

(29) As indicated in recitals 41 to 43 of the provisional Regulation a request for individual examination (IE) pursuant to Article 17(3) of the basic Regulation by one exporting producer could not be accepted at the provisional stage as it would have prevented the timely completion of the investigation at that stage.

(30) However, in the circumstances of the case, it was considered administratively possible to satisfy this sole substantiated request after the imposition of the provisional measures.

(31) Therefore, a verification visit was carried out at the premises of the following company in the PRC:

— M.X. Candles and Gifts (Taicang) Co., Ltd, Taicang.

Moreover, verification visits were carried out to its following related importers in the Community:

— Müller Fabryka Świec S.A., Grudziądz, Poland,

— Gebr. Müller Kerzenfabrik AG, Straelen, Germany.

4. DUMPING

4.1. Application of Article 18 of the basic Regulation

(32) Subsequent to the provisional disclosure, the company to which Article 18 of the basic Regulation was applied contested the Commission findings. It essentially reiterated its claims made at the provisional stage without providing any substantiated evidence that could justify changes to the provisional findings.

(33) In view of the above, recitals 44 to 47 of the provisional Regulation are hereby confirmed.

4.2. Market economy treatment (MET)

(34) Following the provisional disclosure, five Chinese exporting producers which were not granted MET contested the provisional findings.

(35) In the case of the exporter that could not demonstrate that it met criteria 1 and 3 set out in Article 2(7)(c) of the basic Regulation, it was submitted that criterion 1 of that provision would be fulfilled since a financial contribution received from the State to construct for instance a technology centre by a small and medium size company would also be available in market economy countries. It also claimed that in another anti-dumping case, subsidies received by another company did not deprive the company of its MET status.

(36) With regard to the first claim it has to be noted that the Community institutions conduct the MET assessment on the basis of Article 2(7)(c) of the basic Regulation rather than on general comparisons of market conditions of companies operating in the PRC and firms operating in market economy countries. Therefore this claim had to be rejected. With regard to the second claim, it has to be underlined that the investigation of each anti-dumping case is conducted separately and that the conclusions of each investigation are drawn in the context and circumstances of the particular case. Furthermore, the nature, the frequency and the economic environment in which the State contributions were given in the present case showed that criterion 1 of Article 2(7)(c) of the basic Regulation was not fulfilled. Therefore the argument had to be rejected.

(37) The same exporter claimed that in relation to criterion 3 of Article 2(7)(c) of the basic Regulation all relevant documents provided would have demonstrated that the price paid for the land use rights would have been the result of a free negotiation with the local authorities and therefore, the price would be based on market values.

(38) In this regard it has to be noted that the relevant documents on which the purchase price of the land use rights were based date back to 1997 and enabled this exporter to acquire these rights for an indefinite period of time at a price fixed at that date. By not taking into account any price increase between 1997 and the date of the actual transfer of the land use rights and in the absence of any land appraisal or evaluation report, this exporter could not explain on what basis the transfer price for the land use rights was established.

(39) From the above it is concluded that for this exporter neither criteria 1 nor 3 of Article 2(7)(c) of the basic Regulation are met and that therefore the conclusions reached at the provisional stage have to be confirmed.

(40) One exporter that did not meet criterion 2 of Article 2(7)(c) of the basic Regulation, claimed that it did meet that criterion since the financial contributions given to two members of the management should not be considered as 'loans' contrary to what was established at the provisional stage (recital 53 of the provisional Regulation). Rather, these contributions, it claimed, should be regarded as reserve funds.

(41) In this regard it should be noted that a reserve fund is a type of account on a balance sheet that is reserved for long-term capital investment projects or any other large and anticipated expenses that will be incurred in the future. Once recorded on the balance sheet, these funds are only to be spent on the capital expenditure projects for which they were initially intended, excluding any unforeseen circumstances.

(42) From the minutes of the Board of Directors meeting it is clear that such purposes were not intended. Moreover, the respective entries have been booked in the balance sheet under 'other receivables' which is normally used for short-term owner and employee loans and advances.

(43) Therefore it can be concluded that the financial means provided to two individuals were not destined to serve as capital reserve, but to provide money without any proper legal basis, in particular without a contract specifying any dates of repayments or interests incurred. In any event such a transaction has to be considered as a financial instrument within the meaning of international accounting standard (IAS) 32. Moreover, the disclosure of these transactions was not made in accordance with IAS 24, as the financial statements of the company did not disclose (i) the amount of transactions, (ii) their terms and conditions, including whether they are secured, and (iii) the nature of the consideration to be provided in the settlement and details of any guarantees given or received.

(44) From the above it is concluded that this exporter failed to meet criterion 2 of Article 2(7)(c) of the basic Regulation and therefore the conclusions reached at the provisional stage are hereby confirmed.

(45) The other exporter that did not meet the requirements of criterion 2 of Article 2(7)(c) of the basic Regulation did not contest the fact that errors in its accounting books took place, but considered that some were of minor importance and that others that took place in previous years did not affect the clarity of the company's accounts.

(46) In this regard it should be noted that the mistakes were found on randomly selected bookkeeping documents and were not mentioned by the auditors in the audit report which casts serious doubts as to whether the whole accounting records were audited in line with IAS. In addition, the erroneous booking of fixed assets in previous years continues to distort the cost structure of the company and cannot be considered as being in line with IAS 1 and 38.

(47) Consequently, the determination made at the provisional stage that this exporting producer did not meet criterion 2 of Article 2(7)(c) of the basic Regulation is hereby confirmed.

(48) The cooperating exporter whose MET claim was rejected because it could not demonstrate that it met criterion 1 of Article 2(7)(c) of the basic Regulation, provided a written confirmation issued by Chinese local authorities which, according to the exporter, proved that the company was not subject to any restrictions in its purchasing and selling activities.

(49) However, since the confirmation provided is in contradiction with the Articles of Association (AoA) of this particular exporting producer and the evidence provided could no longer be verified, the MET claim has also to be rejected at the definitive stage.

(50) The cooperating exporter for which it was established that it did not meet criteria 1 to 3 of Article 2(7)(c) of the basic Regulation, claimed regarding criterion 1 of that provision that the purchasing and selling restrictions in its AoA were not followed by the company in practice. Regarding criterion 2 of that provision, it did not contest the findings but claimed that the accounting errors of the company were due to incorrect practices of its accountants and/or instructions from the local tax authorities. Regarding criterion 3 of that provision, while the company provided certain explanations concerning the discount received by the State which was considered as an improper evaluation of land use rights, it did not submit any evidence that it met the conditions for the discount.

(51) With regard to criterion 1 of Article 2(7)(c) of the basic Regulation, it is noted that Chinese Company Law provides that the AoA of companies are binding on the company, shareholders, directors, supervisors and senior management and, therefore, the comments of the company were rejected. Moreover, with regard to criteria 2 and 3 of that provision, the comments of the company could not justify a change of the relevant provisional findings. Therefore, recital 54 of the provisional Regulation is hereby confirmed.

(52) In relation to recital 57 of the provisional Regulation, it is noted that the analysis of the information received after the disclosure of MET findings does not justify any change in the determination of the companies that were granted MET.

(53) The company to which IE was granted demonstrated that it fulfilled the criteria of Article 2(7)(c) and could, therefore, be granted MET.

4.3. **Individual treatment (IT)**

(54) One interested party claimed that anti-competitive practices and State interference would encourage circumvention of the measures and therefore none of the Chinese producers should be granted IT.

(55) In this regard it is noted that this party did not provide any substantiated evidence with regard to its claim. However, in order to minimise the risks of circumvention due to the significant difference in duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties (see recitals 149 and 150).

(56) In the absence of any other comments with regard to IT, recitals 58 to 60 of the provisional Regulation are hereby confirmed.

4.4. **Normal value**

4.4.1. *Cooperating exporters granted MET*

(57) For the company in the PRC to which IE and subsequently MET was granted (the 'IE company') it was established that it had no sales on the domestic market. Therefore, normal value for this company was constructed in accordance with Article 2(3) of the basic Regulation by applying the same methodology for cooperating exporters without representative domestic sales as described in recitals 67 to 69 of the provisional Regulation.

(58) In the absence of any other comments with regard to normal value for exporters granted MET, recitals 61 to 69 of the provisional Regulation are hereby confirmed.

4.4.2. *Exporting producers not granted MET and analogue country*

(59) Certain parties contested the choice of the Community industry as an analogue country mainly due to the fact that there are differences in the labour markets and thus in labour cost. As explained in detail in recitals 70 to 76 of the provisional Regulation, considerable efforts were exerted in order to obtain cooperation from an analogue country. Given the absence of cooperation, it was considered that the data available for the Community industry could be used for the purpose of establishing normal value in a market economy country. The argument concerning differences in the labour market is not relevant in the context of the data in the analogue country. Moreover, the arguments and remarks by these parties were provided without any substantiation or any concrete alternative proposals regarding the choice of the analogue country. Hence, these comments had to be disregarded and the provisional findings can be confirmed.

(60) In the absence of any other comments concerning the analogue country, recitals 70 to 76 of the provisional Regulation are hereby confirmed.

4.5. **Export price**

(61) As the IE company was making its export sales to the Community through related companies located in the Community, sales export prices were established on the basis of the resale prices to the first independent customers in the Community, pursuant to Article 2(9) of the basic Regulation.

(62) In the absence of any comments concerning the export price, which would alter the provisional findings, recitals 77 and 78 of the provisional Regulation are hereby confirmed.

4.6. **Comparison**

(63) For the IE company the adjustments as described in recitals 81 to 83 of the provisional Regulation were made for the purpose of ensuring a fair comparison between the normal value and the export price in accordance with Article 2(10) of the basic Regulation.

(64) One exporting producer requested a currency conversion adjustment to its export price in accordance with Article 2(10)(j) of the basic Regulation. It quantified this adjustment as the net exchange losses (resulting as the difference from its exchange gains and losses) incurred during the IP for its export sales of the product concerned to the Community. However, since this exporter failed to substantiate that there was a sustained movement in exchange rates during the IP, the claim had to be disregarded.

(65) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recitals 79 to 83 of the provisional Regulation are hereby confirmed.

4.7. **Dumping margins**

(66) Subsequent to the provisional disclosure, certain exporting producers which were granted IT claimed that according to Article 2(11) of the basic Regulation, all their export transactions should have been used to establish their dumping margin.

(67) In view of these comments and in order to ensure that normal values could be established for the vast majority of types exported from the PRC, in particular because the data of the analogue country was used, it was considered appropriate to adjust the criteria used to identify the different product types accordingly. The dumping calculations were, therefore, revised on the basis of the adjusted criteria.

(68) For one exporting producer an additional adjustment for physical characteristics based on the market value of the difference between the raw materials, in accordance with Article 2(10)(a) of the basic Regulation, was granted.

(69) Pursuant to Articles 2(11) and (12) of the basic Regulation, for the companies granted IT, the weighted average normal value was then compared with the weighted average export price of the corresponding type of product concerned as identified above.

(70) On this basis, the definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Community frontier price, duty unpaid, are the following:

Company	Definitive dumping margin
Aroma Consumer Products (Hangzhou) Co., Ltd	47,7 %
Dalian Bright Wax Co., Ltd	13,8 %
Dalian Talent Gift Co., Ltd	48,4 %
Gala-Candles (Dalian) Co., Ltd	0 %
M.X. Candles and Gifts (Taicang) Co., Ltd	0 %
Ningbo Kwung's Home Interior & Gift Co., Ltd	14,0 %
Ningbo Kwung's Wisdom Art & Design Co., Ltd	0 %
Qingdao Kingking Applied Chemistry Co., Ltd	18,8 %
Cooperating non-sampled	31,8 %

(71) In view of the changes in the dumping margins of the sampled companies, the weighted average dumping margin of the cooperating exporters not included in the sample was recalculated in accordance with the methodology described in recital 86 of the provisional Regulation and, as indicated above, it was established at 31,8 % of the CIF Community frontier price, duty unpaid.

(72) The basis for establishing the country-wide dumping margin was set out in recitals 87 and 88 of the provisional Regulation, which, taking into account the revised calculations, as explained in recital 67, decreased from 66,1 % to 62,9 %.

(73) One party questioned the legal basis on which the non-cooperating exporters were attributed a higher dumping margin than the cooperating non-sampled exporting producers. In this regard it is clarified that the methodology described in recital 87 of the provisional Regulation which is based on facts available was applied under the provisions of Article 18 of the basic Regulation.

(74) On this basis the country-wide level of dumping was definitively established at 62,9 % of the CIF Community frontier price, duty unpaid.

5. **INJURY**

5.1. **Community production**

(75) In the absence of any comments and any new findings concerning the Community production, recitals 90 and 91 of the provisional Regulation are hereby confirmed.

5.2. **Definition of the Community industry**

(76) In the absence of any comments concerning the definition of the Community industry, which would have altered the provisional findings, recital 92 of the provisional Regulation is hereby confirmed.

5.3. **Community consumption**

Table

Community Consumption	2004	2005	2006	IP
Tonnes	511 103	545 757	519 801	577 332
Index	100	107	102	113

Source: Eurostat and questionnaire replies.

(77) In the absence of any comments concerning the Community consumption as shown in the above table, recitals 93 and 94 of the provisional Regulation are hereby confirmed.

5.4. **Imports into the Community from the PRC**

5.4.1. *Volume, price and market share of dumped imports*

(78) The table below shows the total imports into the Community market made by Chinese exporting producers during the period considered.

Table

All imports from PRC	2004	2005	2006	IP
Imports (tonnes)	147 530	177 662	168 986	199 112
Index	100	120	115	135
Prices (EUR/tonne)	1 486	1 518	1 678	1 599
Index	100	102	113	108
Market share	28,9 %	32,6 %	32,5 %	34,5 %
Index	100	113	112	119

Source: Eurostat.

(79) As indicated in recital 97 of the provisional Regulation, when using sampling to establish dumping, it is the Commission's practice to then examine whether there is positive evidence showing whether or not all the companies which were not sampled were effectively dumping their products on the Community market during the IP.

(80) In view of the definitive findings concerning dumping, and the fact that two additional companies were found not to be dumping their products on the Community market, the total volume and price of dumped imports had to be reassessed. To this end, the export prices charged by the cooperating exporting producers not included in the sample and the export prices of the non-cooperating exporters were re-investigated on the basis of Eurostat data, the questionnaire responses of the sampled exporting producers in the PRC and the replies to the sampling forms provided by all the cooperating companies in the PRC.

(81) Following the methodology which was used at the provisional stage, it was considered that by adding the average dumping margin found on the basis of the sampled exporting producers to the average export prices established for the sampled exporting producers found to be dumping, the level of non-dumped export prices would be set. The export prices established for the non-sampled exporting producers were then compared with the non-dumped export prices.

(82) This price comparison showed that both (i) the cooperating exporting producers which were not included in the sample and (ii) the exporting producers which did not cooperate in the investigation had average export prices which were in all cases below the average non-dumped prices established for the sampled exporting producers. This was sufficient indication that the imports from all companies that were not sampled, namely the cooperating and non-cooperating ones, could be considered as being dumped.

(83) As mentioned in recital 80, it was found that three exporting producers in the PRC, two of them included in the sample and one to which individual examination was granted, were not dumping their products on the Community market. Accordingly, their exports were excluded from the analysis concerning the development of dumped imports on the Community market.

(84) The table below comprises all imports of candles originating in the PRC which were found or considered to be dumped on the Community market during the period considered.

Table

Dumped imports PRC	2004	2005	2006	IP
Imports (tonnes)	137 754	159 979	152 803	181 043
Index	100	116	111	131
Prices (EUR/tonne)	1 420	1 470	1 610	1 560
Index	100	104	113	110
Market share	27,0 %	29,3 %	29,4 %	31,4 %
Index	100	109	109	116

Source: Eurostat and questionnaire replies.

(85) Overall, dumped imports from the PRC significantly increased from 137 754 tonnes in 2004 to 181 043 tonnes in the IP, i.e. by 31 % or by more than 43 000 tonnes, over the period considered. The increase of the corresponding market share (+ 4,4 percentage points) was less pronounced because of the increase in Community consumption. In addition, despite a general downturn in consumption in the period between 2005 and 2006, dumped imports did not lose any share of the market they were holding.

(86) Average prices of dumped imports from the PRC showed an increase of 10 % during the period considered but were strong indications that they were made at significantly dumped prices, of over 40 % on average, during the IP. The average price of dumped imports decreased by over 3 % between 2006 and the IP and, as explained below, was undercutting the Community industry's prices in that period.

(87) Overall, the observations made in recitals 97 to 105 of the provisional Regulation remain valid and can be confirmed.

5.4.2. *Price undercutting*

(88) The methodology described in recital 106 of the provisional Regulation to establish price undercutting is confirmed. However, following the verification visits at the premises of the unrelated importers after the imposition of provisional measures, the adjustment for post-importation costs has been revised in light of the verified data obtained from these importers.

(89) Following the provisional disclosure, several exporters which were granted IT, as well as the Community industry, questioned the low level of comparability in the price comparison exercise. As was the case for the dumping calculations, the parties asked to increase the level of comparability. As a consequence, it was considered appropriate to apply the same criteria to increase the comparability as those applied in the dumping calculations, as described in recital 67. The undercutting calculations were thus revised accordingly.

(90) In addition, some parties mentioned that some clerical errors were made in their provisional calculations. These errors were corrected, where warranted.

(91) On the basis of the above, the average price undercutting margin in the IP, expressed as a percentage of the Community industry's weighted average ex-work prices, was found to be 15,7 %.

5.5. **Economic situation of the Community industry**

(92) As mentioned in recitals 130 to 134 of the provisional Regulation, it was found that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

(93) Indeed, the provisional analysis showed that the performance of the Community industry improved as regards some volume indicators, but that all the indicators related to the financial situation of the Community industry significantly deteriorated during the period considered. Notwithstanding the Community industry's ability to raise capital for investments, return on investments became negative in the IP and cash flow declined significantly over the period considered. Average sales prices decreased by 9 % over the period considered and losses were encountered during the IP. In addition, other injury indicators pertaining to the Community industry also developed negatively during the period considered and the Community industry was prevented from benefitting from the 13 % market increase as it could only increase its sales volume by 3 %.

(94) As regards the stocks of the Community industry, one interested party claimed that the increased level of end-year stocks and the injury found was the result of over-production, which allegedly also led to the lodging of the complaint by the Community industry.

(95) As mentioned in recital 119 of the provisional Regulation, although stocks increased during the IP in absolute terms, in percentage terms they remained relatively stable at around 25 % of the production volume of the Community industry. Furthermore, stocks were not considered to be a meaningful injury factor in the analysis which led to the conclusion that the Community industry was suffering material injury. In addition, this party did not provide any evidence to substantiate its claim and no comments were made on the facts and considerations which led to the conclusion that the Community industry was suffering material injury as described in recitals 130 to 134 of the provisional Regulation. Based on the above, the claim was rejected.

(96) In the absence of any other comments on the provisional findings concerning the economic situation of the Community industry, recitals 109 to 129 of the provisional Regulation are hereby confirmed.

(97) The conclusion that the Community industry suffered material injury, as set out in recitals 130 to 134 of the provisional Regulation, is also confirmed.

6. **CAUSATION**

6.1. **Effect of the dumped imports**

(98) Following the finding that two additional exporting producers in the PRC were not dumping their products in the Community market, it was reassessed whether the findings and conclusions described in recitals 136 to 142 of the provisional Regulation remained valid.

(99) The reassessment confirmed that the candles exported from the PRC to the Community market were sold at significantly dumped prices during the IP. As mentioned in recital 71, it was found that the cooperating exporting producers in the PRC were selling the product concerned with an average dumping margin of 31,8 %. The finding that around 55 % of Chinese exporters did not cooperate in the investigation is confirmed. As mentioned in recital 82, the investigation found sufficient indication that these exporting producers were also dumping their products on the Community market.

(100) Dumped imports on the Community market increased in volume by 31 % during the period considered. This increase was made at significantly dumped prices undercutting the prices of the Community industry by 15,7 % during the IP. Accordingly, the market share held by exporting producers whose imports were found or considered to be dumped grew from around 27 % to around 31,4 %, an increase of 4,4 percentage points over the period considered.

(101) Based on the above facts and considerations, the fact that two additional exporting producers were not dumping their product on the Community market does not change the analysis made in recitals 136 to 142 of the provisional Regulation.

(102) It is therefore confirmed that the surge of low-priced dumped imports from the PRC had a considerable negative impact on the economic situation of the Community industry during the IP.

6.2. **Effect of other factors**

(103) In the absence of any comments concerning the development of demand on the Community market, the imports of candles by the Community industry, the imports from other third countries or the performance of other candle producers in the Community, recitals 143 to 151 of the provisional Regulation are confirmed.

6.2.1. *Export performance of the Community industry*

(104) One party argued that the Community industry could not follow the expansion of the Community market due to the fact that it had increased its export sales during the IP.

(105) Based on Eurostat data and questionnaire replies from the sampled Community producers, total exports of candles outside the Community by the Community producers increased by 10 % or by around 5 000 tonnes between 2006 and the IP. It was provisionally found that this relatively good export performance was particularly beneficial for the Community industry during the IP.

(106) To fully examine the claim, it is necessary to look at the level of stocks, the production capacity and the rate of utilisation of the production capacity of the Community industry. As mentioned in recital 118 of the provisional Regulation, the level of stocks available to the Community industry represented on average around 25 % of production and was as high as 56 000 tonnes during the IP. The stocks even increased by around 2 400 tonnes between 2006 and the IP. Moreover, as shown in Table 3 of the provisional Regulation, the production capacity of the Community industry was continuously increased during the period considered and the rate of utilisation of the production capacity of the Community industry was at 76 % during the IP whereas it was 82 % in 2005. Hence, the Community industry could have produced and sold more of its products on the Community market.

(107) Based on the above facts and considerations, the claim that the increase in export sales by the Community industry would have explained the fact that the Community industry could not follow the expansion of consumption is rejected. Consequently, the conclusion in recital 153 of the provisional Regulation that the export performance of the Community industry did not contribute to the material injury is confirmed.

6.2.2. *Imports of candles by the Community industry and relocation of production by the Community industry*

(108) In the absence of any comments regarding imports of candles by the Community industry and the relocation of production by the Community industry, recitals 154 to 160 of the provisional Regulation are confirmed.

6.2.3. *Impact of the existence of a cartel among European paraffin wax producers*

(109) One party reiterated its concerns about the existence of a cartel among certain Community paraffin wax producers, as established by the Directorate-General for Competition based on its investigation which began in early 2005. However it did not submit any new elements which would contest the provisional conclusion that the cartel did not have any impact on the injury suffered by the Community industry.

(110) It is recalled that, based on information available, it was found that the impact, if any, of this cartel on the economic situation of the Community industry during the IP, i.e. the year 2007, was negligible. Although price levels for paraffin wax increased in the Community during the IP, it was found that in cases where the Community producers purchased identical paraffin types from cartel members or other suppliers, there were no substantial price differences. Moreover, the purchase prices of the Community producers were found to be in line with those observed for the cooperating producers in the PRC. Finally, no differences pointing to any lasting effectiveness of the price agreements made back in the period 2004-2005 could be found during the IP.

(111) In view of the above and in the absence of any other comment or new finding, recitals 161 to 169 of the provisional Regulation are hereby confirmed.

6.2.4. *Conclusion on causation*

(112) In the light of the foregoing and in the absence of any other comments recitals 170 to 173 of the provisional Regulation are hereby confirmed.

7. **COMMUNITY INTEREST**

7.1. **Community industry**

(113) In the absence of any comments concerning the interest of the Community industry, recitals 175 to 178 of the provisional Regulation are confirmed.

7.2. **Impact on retailers and importers**

(114) As mentioned in recital 179 of the provisional Regulation, of the six questionnaire replies received, out of the 32 questionnaires sent to assess the possible impact of the proposed measures on the activity of retailers and importers, only two replies were received which could be considered to be meaningful for the purpose of the Community interest analysis. These two replies were received from importers of candles.

(115) It is recalled that the Community market is composed of large retailers, which mainly import candles directly from the PRC and subsequently resell them to consumers, and of importers, which generally sell to other intermediary parties in the distribution chain, mainly retailers or wholesalers, before the product reaches the end-customer. The analysis of the Community market showed that within the distribution chain, the consumer price is in general set by the large retailers. This, however, did not provide any meaningful information in the context of the investigation which would allow to accurately assess the likely impact of the anti-dumping measures on their activity.

(116) Certain parties claimed that there are two separate retail markets for candles in the Community and that the Community producers predominantly supply the upper-end market while the lower-end market is supplied by candles imported from the PRC. They argued that with the imposition of anti-dumping duties, the latter would disappear as retailers would choose to drop candles from their product range.

(117) It should first be noted that the findings of the investigation did not support the above claim that there would be two separate retail markets in the Community or that this aspect could have been a relevant factor to take into account in the analysis of Community interest issues. Secondly, even if a lower-end market existed, contrary to the claim made by these parties, it is considered that even with anti-dumping measures in place, the retailers would still have the possibility to purchase at least part of their candles without being subject to anti-dumping duties. Indeed, on the one hand, there are various sources of supply available in the Community market and, on the other hand, certain Chinese exporting producers are either not subject to anti-dumping duties or are subject to anti-dumping duties the level and form of which are likely to keep the imports from the PRC still competitive, although at non-injurious prices. Finally, considering the level of the margins achieved by the retailers on the product concerned on the basis of the available information, the claim did not appear to be justified and was therefore rejected.

(118) Following the provisional disclosure, certain large retailers and also some other parties contested the method used to estimate the retailers' gross profit margin on the product concerned and hence the conclusion, reached in recital 185 of the provisional Regulation, that in view of the high gross margins, the anti-dumping duties would have a limited impact, if any, on retailers.

(119) After examination of the claim, it should be noted that the wording in the relevant recital of the provisional Regulation should be revised. The word 'gross profit margins' in the first sentence of recital 185 of the provisional Regulation should in fact be read as 'mark up'. This change in the wording does not, however, alter the conclusions concerning the possible impact of the measures on retailers. The result of the calculations made in the provisional Regulation remains valid.

(120) Moreover, these parties did not substantiate their claims, nor did they come forward with any evidence that would have allowed a more accurate profit margin for the definitive determinations on Community interest to be established. In addition, no alternative method was proposed by these parties to assess the impact of duties on retailers. Based on the above, the calculations made in recital 185 of the provisional Regulation are hereby confirmed.

(121) In the absence of any other comments, recitals 183 to 187 of the provisional Regulation are confirmed.

(122) As regards the impact of measures on importers, which, as explained in recital 115, mainly supply retailers and wholesalers with candles imported, inter alia, from the PRC, the investigation showed that candles are often purchased or imported and then packaged with various other related articles, such as glass and ceramic candle holders. The investigation showed that candles can also be sold at a relatively low price to stimulate the sales of other products related to candles on which higher profits are made. Under these circumstances, assessing the impact of the measures on the activity relating to candles only, has proven to be difficult.

(123) However, based on the verified data of the two cooperating importers, it was found that the overall gross profit margins of these companies exclusively on the product concerned were not low (significantly above 25 %). A profit margin for a category of products, including all candle-related products would be even higher. In addition, it is considered that any price increase, or at least part of the possible price increase linked to the imposition of anti-dumping measures on candles, could likely be passed on to the distribution chain. It was thus considered that any impact of anti-dumping measures is not likely to be significant on the overall candle-related activity.

(124) A further analysis of the data supplied by importers confirmed that the product concerned represents on average only 3,4 % of their overall turnover. For one of the two importers this share was somewhat higher and therefore it cannot be excluded that the imposition of measures could have a negative impact on this importer. However, considering all the interests at stake in the case, it was concluded that on average the impact of the anti-dumping duties on the total company activity of the importers cannot be considered significant.

(125) Based on the above, the conclusion, as set out in recital 182 of the provisional Regulation, is hereby confirmed.

7.3. **Impact on consumers**

(126) The claim mentioned in recital 116, that two separate retail markets exist and that, as a consequence of the anti-dumping measures, the lower-end market could disappear, also referred to the impact on consumers since the choice for the consumer of candles with a lower quality would be limited.

(127) However, this claim has not been substantiated. It was considered that in view of the structure of the retail market, the margins achieved by retailers and the level and form of the anti-dumping duties, it is reasonable to expect that there should be no risk for the disappearance of a lower-end market, as importers and retailers should be able to absorb the duty, without passing it on to consumers.

(128) It is also recalled that, as mentioned in recital 131, the purpose of anti-dumping measures is to restore effective trade conditions on the Community market to the benefit of all operators, including consumers. The above facts and considerations and all the information available in this case do not point to any significant impact on consumers.

(129) In the absence of any reaction from consumer associations after the imposition of provisional anti-dumping duties, the conclusion reached in recital 191 of the provisional Regulation that anti-dumping duties should have no material impact on consumers is confirmed.

7.4. **Competition and trade distorting effects**

(130) One party claimed that, on the basis of the figures provided in the provisional Regulation, the Community production alone would not meet the demand for candles in the Community. Hence imported candles from the PRC would be needed to meet the Community demand and measures would allegedly prevent these candles from being present on the market.

(131) While the total Community production alone may not be sufficient to meet the demand for candles on the Community market, it is recalled that there are imports from other third countries and that some exporting producers in the PRC are not subject to measures. It should also be stressed that the aim of the imposition of anti-dumping measures is to restore effective trade conditions and not to close the market to imports. Hence, the supply of candles from all the operators currently present in the Community market would continue and should be sufficient to satisfy the demand in a market where the negative effects of injurious dumping have been removed. Hence the claim is considered to be unfounded.

(132) In view of the above, and in the absence of any other comments, recitals 194 and 195 of the provisional Regulation are hereby confirmed.

7.5. **Conclusion on Community interest**

(133) Based on the above, it is concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Injury elimination level

(134) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.

(135) In the absence of comments following the provisional disclosure, the same methodology as mentioned in recital 199 of the provisional Regulation has been used to obtain the non-injurious prices. However, the same revisions as described in recitals 89 and 90 have been applied also for the calculation of the injury margins, which have been adjusted accordingly.

8.2. Form and level of the duties

(136) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at a level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found.

(137) In view of the comments received by certain interested parties following the provisional disclosure and in view of the revisions described in this Regulation, certain margins have been amended.

(138) The dumping and injury rates established are as follows:

Company	Dumping margin	Injury elimination margin
Aroma Consumer Products (Hangzhou) Co., Ltd	47,7 %	28,3 %
Dalian Bright Wax Co., Ltd	13,8 %	11,7 %
Dalian Talent Gift Co., Ltd	48,4 %	25,9 %
Gala-Candles (Dalian) Co., Ltd	0 %	N/A
M.X. Candles and Gifts (Taicang) Co., Ltd	0 %	N/A
Ningbo Kwung's Home Interior & Gift Co., Ltd	14,0 %	0 %
Ningbo Kwung's Wisdom Art & Design Co., Ltd	0 %	N/A
Qingdao Kingking Applied Chemistry Co., Ltd	18,8 %	0 %
Cooperating non-sampled	31,8 %	25,5 %
All other companies	62,9 %	37,1 %

(139) As indicated in recital 203 of the provisional Regulation, in view of the fact that very often candles are imported in sets together with pillars, holders or other items, it was considered appropriate to determine the duties as fixed amounts on the basis of fuel content, wick included, of the candles.

(140) Certain parties claimed that measures should be based on an *ad valorem* duty as the form of measure on the basis of the weight of fuel content of the candles would be burdensome for importers and would cause significant confusion and distortion on the market.

(141) In this respect it is recalled that sets containing candles were being classified upon importation as candles. This means that an eventual *ad valorem* duty would be applied to the whole value of the set. For this purpose it was considered more appropriate to determine the duties as fixed amounts on the basis of fuel content of the candles in order to avoid unduly targeting with anti-dumping duties imported goods that are currently classified as candles, but in which the candle can be a fraction of the weight or the value of the imported product. On this basis, this claim was not accepted.

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

(143) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, BELGIUM.

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

(145) In order to ensure equal treatment between any new exporting producers and the cooperating companies not included in the sample, mentioned in Annex I, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise not be entitled to a review pursuant to Article 11(4) of the basic Regulation, as that provision does not apply where sampling has been used.

8.3. **Undertakings**

(146) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, one non-sampled exporting producer in the PRC offered a price undertaking in accordance with Article 8(1) of the basic Regulation.

(147) In this regard it is noted that the product concerned is characterised by hundreds of different product types, with varying characteristics and significant price variations between them. The exporting producer offered only one minimum import price (MIP) for all products at a level that would have not guaranteed the elimination of injurious dumping for all products. Moreover, it is also noted that the significant number of product types makes it virtually impossible to establish meaningful minimum prices for each product type which could be properly monitored by the Commission even if the exporting producer had offered different MIPs for each of them. Under these circumstances, it was concluded that the undertaking offer had to be rejected as impractical.

8.4. **Definitive collection of provisional duties and special monitoring**

(148) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

(149) In order to minimise the risks of circumvention due to the significant difference in duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporting producers.

(150) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

(151) Certain corrections to the denominations of the companies listed in the Annex to the provisional Regulation were deemed necessary following comments and relevant information received from the companies concerned. Accordingly these changes have been incorporated to the list of companies listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of candles, tapers and the like, other than memory lights and other outdoor burners, falling within CN codes ex 3406 00 11, ex 3406 00 19 and ex 3406 00 90 (TARIC codes 3406 00 11 90, 3406 00 19 90 and 3406 00 90 90) and originating in the People's Republic of China.

For the purposes of this Regulation, 'memory lights and other outdoor burners' means candles, tapers and the like which have one or more of the following characteristics:

(a) their fuel contains more than 500 ppm of toluene;

(b) their fuel contains more than 100 ppm benzene;

(c) they have a wick with a diameter of at least 5 mm;

(d) they are individually contained in a plastic container with vertical walls of at least 5 cm in height.

2. The rate of the definitive anti-dumping duty shall be a fixed amount of euro per tonne of fuel content (usually but not necessarily in the form of tallow, stearin, paraffin wax or other waxes, including the wick) of the products manufactured by the companies as shown below:

Company	Amount of duty EUR per tonne of fuel	TARIC additional code
Aroma Consumer Products (Hangzhou) Co., Ltd	321,83	A910
Dalian Bright Wax Co., Ltd	171,98	A911
Dalian Talent Gift Co., Ltd	367,09	A912
Gala-Candles (Dalian) Co., Ltd	0	A913
M.X. Candles and Gifts (Taicang) Co., Ltd	0	A951
Ningbo Kwung's Home Interior & Gift Co., Ltd	0	A914
Ningbo Kwung's Wisdom Art & Design Co., Ltd, and its related company Shaoxing Koman Home Interior Co., Ltd	0	A915
Qingdao Kingking Applied Chemistry Co., Ltd	0	A916
Companies listed in Annex I	345,86	A917
All other companies	549,33	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1], the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. The application of the individual duty rates specified for the companies mentioned in paragraph 2 and Annex I shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

[1] OJ L 253, 11.10.1993, p. 1.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1130/2008 on imports of certain candles, tapers and the like falling within CN codes ex 3406 00 11, ex 3406 00 19 and ex 3406 00 90 (TARIC codes 3406 00 11 90, 3406 00 19 90 and 3406 00 90 90) and originating in the People's Republic of China shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

Where any party from the People's Republic of China provides sufficient evidence to the Commission that it:

(a) did not export the goods referred to in Article 1(1) originating in the People's Republic of China during the period of investigation, that is 1 January 2007 to 31 December 2007;

(b) is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Community after the end of the period of investigation;

the Council, acting by simple majority on a proposal by the Commission, after consulting the Advisory Committee, may amend Article 1(2) in order to attribute to that party the duty applicable to cooperating producers not in the sample, i.e. EUR 345,86 per tonne of fuel.

Article 4

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

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

Done at Brussels, 11 May 2009.

For the Council
The President
M. KOPICOVÁ

ANNEX I

Chinese cooperating exporting producers not sampled

TARIC Additional Code A917

Beijing Candleman Candle Co., Ltd	Beijing
Cixi Shares Arts & Crafts Co., Ltd	Cixi
Dalian All Bright Arts & Crafts Co., Ltd	Dalian
Dalian Aroma Article Co., Ltd	Dalian
Dalian Glory Arts & Crafts Co., Ltd	Dalian
Dandong Kaida Arts & Crafts Co., Ltd	Dandong
Dehua Fudong Porcelain Co., Ltd	Dehua
Dongguan Xunrong Wax Industry Co., Ltd	Dongguan
Fushun Hongxu Wax Co., Ltd	Fushun
Fushun Pingtian Wax Products Co., Ltd	Fushun
Future International (Gift) Co., Ltd	Taizhou
Greenbay Craft (Shanghai) Co., Ltd	Shanghai
Horsten Xi'an Innovation Co., Ltd	Xian
Ningbo Hengyu Artware Co., Ltd	Ningbo
Ningbo Junee Gifts Designers & Manufacturers Co., Ltd	Ningbo
Qingdao Allite Radiance Candle Co., Ltd	Qingdao
Shanghai Changran Industrial & Trade Co., Ltd	Shanghai
Shanghai Daisy Gifts Manufacture Co., Ltd	Shanghai
Shanghai EGFA International Trading Co., Ltd	Shanghai
Shanghai Huge Scents Factory	Shanghai
Shanghai Kongde Arts & Crafts Co., Ltd	Shanghai
Shenyang Shengwang Candle Co., Ltd	Shenyang
Shenyang Shengjie Candle Co., Ltd	Shenyang
Taizhou Dazhan Arts & Crafts Co., Ltd	Taizhou
Xin Lian Candle Arts & Crafts Factory	Zhongshan
Zhaoyuan Arts & Crafts Co., Ltd	Huangyan, Taizhou
Zhejiang Aishen Candle Arts & Crafts Co., Ltd	Jiaxing
Zhejiang Hong Mao Household Co., Ltd	Taizhou
Zhejiang Neeo Home Decoration Co., Ltd	Taizhou
Zhejiang Ruyi Industry Co., Ltd	Taizhou
Zhongshan Zhongnam Candle Manufacturer Co., Ltd and its related company Zhongshan South Star Arts & Crafts Manufacturing Co., Ltd	Zhongshan

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice must appear on the valid commercial invoice referred to in Article 1(4) of this Regulation. The declaration must include the following information:

1. The name and function of the official of the entity issuing the commercial invoice.

2. The following declaration:

'I, the undersigned, certify that the (volume) of candles, tapers and the like sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature'.

COMMISSION REGULATION (EC) No 394/2009

of 13 May 2009

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 14 May 2009.

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

Done at Brussels, 13 May 2009.

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	MA	55,4
	TN	115,0
	TR	101,9
	ZZ	90,8
0707 00 05	JO	155,5
	MA	41,9
	TR	149,3
	ZZ	115,6
0709 90 70	JO	216,7
	TR	120,2
	ZZ	168,5
0805 10 20	EG	43,3
	IL	54,0
	MA	43,1
	TN	49,2
	TR	102,3
	US	51,0
	ZZ	57,2
0805 50 10	AR	50,9
	TR	48,7
	ZA	62,5
	ZZ	54,0
0808 10 80	AR	81,3
	BR	72,1
	CA	127,2
	CL	85,0
	CN	99,5
	MK	42,0
	NZ	110,2
	US	131,7
	UY	71,7
	ZA	78,8
	ZZ	90,0

(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 395/2009

of 13 May 2009

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 945/2008 for the 2008/2009 marketing year

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

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2008/2009 marketing year are fixed by Commission Regulation (EC) No 945/2008 [3]. These prices and duties have been last amended by Commission Regulation (EC) No 368/2009 [4].

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 945/2008 for the 2008/2009, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 May 2009.

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

Done at Brussels, 13 May 2009.

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 178, 1.7.2006, p. 24.
[3] OJ L 258, 26.9.2008, p. 56.
[4] OJ L 112, 6.5.2009, p. 7.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 14 May 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 (1)	28,95	2,60
1701 11 90 (1)	28,95	7,06
1701 12 10 (1)	28,95	2,47
1701 12 90 (1)	28,95	6,63
1701 91 00 (2)	32,24	9,11
1701 99 10 (2)	32,24	4,67
1701 99 90 (2)	32,24	4,67
1702 90 95 (3)	0,32	0,34

(1) For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.
(2) For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.
(3) Per 1 % sucrose content.

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 January 2009

on State aid C 22/07 (ex N 43/07) as regards the extension to dredging and cable-laying activities of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers in Denmark

(notified under document number C(2008) 8886)

(Only the Danish text is authentic)

(Text with EEA relevance)

(2009/380/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 pursuant to the provision(s) cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 15 January 2007 [2], Denmark notified the Commission of an amendment to the regime exempting ship-owners from the payment in Denmark of the income tax of their seafarers (the so-called DIS regime). The DIS regime was authorised by Commission decision of 13 November 2002 [3].

(2) The notified amendment has been registered under N 43/07. By letter of 27 March 2007 [4], Denmark transmitted to the Commission new information that was requested by letter of 20 March 2007 [5].

(3) By letter dated 10 July 2007 [6], the Commission informed Denmark of the opening of a formal investigation procedure, pursuant to Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [7] (hereinafter the State Aid Procedure Regulation) Denmark submitted its comments by letter dated 5 September 2007 [8].

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [9]. By this decision, the Commission invited interested parties to submit their comments on the measures under examination.

[1] OJ C 213, 12.9.2007, p. 22.
[2] Registered under Reference TREN(2007) A/21157.
[3] The text of the decision in Case N 116/98 is available in the official language at the following Internet address: http://ec.europa.eu/community_law/state_aids/transports-1998/nn116-98.pdf
[4] Registered under Reference TREN(2007) A/28077.
[5] Registered under Reference TREN(2007) D/306985.
[6] Registered under Reference C(2007) 3219 final.
[7] OJ L 83, 27.3.1999, p. 1.
[8] Registered under Reference TREN(2007) A/41561.
[9] See footnote 1.

(5) The Commission received comments from the following interested parties: the European Dredgers' Association, the European Community Ship-owners Association, the Chamber of British Shipping, the Norwegian Ship-owner association, *Armateurs de France, Alcatel-Lucent* and the Danish Shipowners' Association. The Commission forwarded their respective comments to Denmark, which was given the opportunity to react. Denmark sent its comments by letter dated 9 January 2008 ([10]).

2. DETAILED DESCRIPTION OF THE NOTIFIED MEASURES

(6) The description of the notified measures was already set out in the aforementioned decision of 10 July 2007.

2.1. Description of the notified amendment to the DIS regime

(7) The main purpose of the notified measures (Bill No L 110 (2006-07), Section 11) is to extend the so-called DIS regime to seafarers working on board cable-layers and dredgers.

(8) With respect to cable-laying vessels, their activities have not been so far eligible for the DIS regime, although cable-layers were allowed to register in the DIS register under the Danish legislation.

(9) Denmark wants from now on to extend the full advantage of the DIS regime to cable-layers.

(10) With respect to dredgers, an Executive Order of 27 May 2005 implementing the DIS regime (hereinafter the Executive Order) specifies what can be considered as maritime transport for the dredging industry with a view to establishing rules for the eligibility of dredging activities. Pursuant to Section 13 of the Executive Order, the following activities of dredgers are regarded as maritime transport:

1. sailing between the port and the extraction site;

2. sailing between the place of extraction and the place where the extracted materials are to be unloaded, including the unloading itself;

3. sailing between the place of unloading and the port;

4. sailing at and between places of extraction;

5. sailing to provide assistance at the request of public authorities in connection with clearing up after oil spills etc.

(11) Under the current Danish law, sand dredgers cannot be registered in the DIS register. Sand dredgers therefore cannot meet the basic conditions for applying for the DIS regime. Since, in addition, sand dredgers are to a certain extent used for, e.g. construction work in territorial waters – Denmark has found it difficult to include sand dredgers in the general net wages scheme. Instead, Denmark decided to tax persons working on board sand dredgers according to the taxation general rules and subsequently to refund the tax to the vessel owners once the conditions for this are met.

(12) So dredging is indirectly covered by the DIS regime and benefits from the same advantages as those benefiting maritime transport companies operating vessels registered in the DIS register.

2.2. Description of the existing DIS regime

(13) The DIS regime was described in the aforementioned Commission decision of 10 July 2007 ([11]).

(14) The existing regime consists of an exemption – for shipowners — from the payment of social contributions and income tax of their seafarers working on board ships registered in the *Dansk Internationalt Skibsregister,* the Danish International Register of Shipping (hereinafter referred to as the DIS register) when the ships are used for the commercial transport of passengers or goods.

(15) The Commission recalls that the DIS register was introduced by Law No 408 of 1 July 1988 and entered into force on 23 August 1988. It was devised to combat flagging-out from the national Danish register to third countries.

(16) It is a condition that the tax exemption is taken into account when the wages are set. The tax benefit thus accrues to the shipping company and not to the individual seafarers.

([10]) Registered under Reference TREN(2008) A/80508.

([11]) Registered under Reference C(2007) 3219 final.

(17) The DIS regime was nevertheless approved by the Commission on 13 November 2002.

(18) Denmark also applies at present one other scheme in favour of maritime transport operators: the tonnage tax scheme ([12]).

2.3. **Budget**

(19) The entire budget of the DIS regime is around DKK 600 million.

3. **REASONS FOR OPENING THE INVESTIGATION PROCEDURE**

3.1. **Doubts about the compatibility of the measures concerning cable laying**

(20) In its opening decision, the Commission considered that it should examine the potential economic effects that the extension in question may have on the sector concerned. The sector concerned is the laying of telecom or energy cables on the sea bed and the repairing of existing cables on the sea bed.

(21) The Commission considered it impossible to divide a given maritime voyage into a part falling under the notion of maritime transport and a part excluded thereof. It supported rather the view that it is necessary for all kinds of maritime activities, to undertake a global assessment in order to conclude whether or not a voyage at sea examined falls entirely within the notion of maritime transport.

(22) As a consequence, the Commission expressed in the decision for formal opening of the procedure the opinion that the laying of cables at sea might not be construed as the superposition of a maritime transport service and of the effective laying of cables at sea.

(23) Cable-laying vessels do not usually transport cable drums from one port to another port or from one port to an off-shore installation, this being the definition of maritime transport set up in Council Regulations (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ([13]) and (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ([14]). Instead cable-layers lay cables, at the request of a client, from a determined point located on a coast to a determined point located on another coast. Therefore, cable-laying vessels do not appear to deliver straightforward maritime transport services, within the meaning of these EC Regulations, that is to say the carriage of goods by sea between any port of a Member State and any port or off-shore installation of another Member State. Even if such vessels may occasionally transport goods by sea, as provided for in the Regulations (EEC) No 4055/86 and (EEC) No 3577/92, this activity corresponding to the definition of maritime transport appears to be merely ancillary to their main activity which consists in laying cables.

(24) In addition, the Commission noted at that stage that it was not yet proven that cable-laying companies established within the Community suffered from the same competitive constraints as those of maritime transport operators on the world market. According to the Commission, it is not clear whether Community cable-layers face a competition, exerted by flags of convenience, of the same intensity as that characterizing maritime transport.

(25) The Commission thus considered in its opening decision that cable-laying might not be considered to constitute maritime transport and consequently might not be eligible for State aid to maritime transport within the meaning of the Community guidelines on State aid to maritime transport (hereinafter the Guidelines) ([15]).

3.2. **Doubts about the compatibility of the measures concerning dredging**

(26) The opening decision set out that the Commission had serious doubts as to whether all dredging activities covered by the scheme constitute maritime transport within the meaning of the Guidelines. The Commission thus considered that not all of these dredging activities might be eligible for State aid to maritime transport.

4. **COMMENTS FROM DENMARK ON THE DECISION OPENING THE INVESTIGATION**

4.1. **Comments with respect to cable-laying**

(27) With regard to cable-laying vessels, Denmark emphasises that the Commission services, in a letter dated 11 August 2006 ([16]), assured Denmark that cable-laying vessels could be covered by the State aid measures at stake provided that the requirement of 50 % maritime transport was fulfilled.

([12]) Case NN 116/98 approved by Commission decision of 13 November 2002. The text of the decision is available in the official language at the following Internet address: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transports-1998/nn116-98.pdf

([13]) OJ L 378, 31.12.1986, p. 1.

([14]) OJ L 364, 12.12.1992, p. 7.

([15]) OJ C 13, 17.1.2004, p. 3.

([16]) Registered under Reference TREN(2006) D/212345.

(28) According to Denmark, the Commission stated that cable-laying activities could be equated with maritime transport with respect to that part of the activities involving the transport of cable drums from the port of loading to the location on the high sea where cable-laying was to start, implying that the ratio of maritime activities on all activities should be calculated on the basis of the distance the vessel sails without laying a cable.

(29) In addition, Denmark underlines that it has not understood why the Commission in its letter dated 10 July 2007 is of the view that cable-laying cannot be a combination of maritime transport and other activities and maintains that this view is contrary to the letter of the Commission services dated 11 August 2006.

4.2. **Comments with respect to dredging**

(30) According to Denmark, the Guidelines make is possible to divide the overall activity of dredgers into maritime transport and other activities. Therefore Denmark does not understand why a similar division cannot be made for cable-laying vessels.

(31) Denmark emphasises that the judgment of the Court of Justice in Case C-251/04, mentioned by the Commission in its opening decision, does not alter the basis for the assurance that the Commission has granted to Denmark by the aforementioned letter of 11 August 2006. According to Denmark, the Court clarified the question of whether tug boats' activities were covered by Regulation (EEC) No 3577/92, concluding that they were not. Denmark is of the opinion that the judgment in question is irrelevant to the application of the Guidelines to cable-laying vessels.

(32) The Danish authorities mention that the Guidelines deal not only with maritime transport as defined in Regulations (EEC) No 4055/86 and (EEC) No 3577/92 but, '[…] *also, in specific parts, relate to towage and dredging*'.

(33) According to the Guidelines at least 50 % of all activities constitute maritime transport which, for dredgers, is defined in the Guidelines, according to the Danish authorities, as '[…] *transport at sea of extracted materials* […]'. According to the Danish authorities, the Guidelines should be interpreted as qualifying the transport at sea of extracted materials as maritime transport.

(34) Denmark also disputes the initiative of the Commission to unilaterally extend the scope of an investigation procedure to cover areas that are not included in the notification which is the subject of the investigation as the Commission seems to be carrying out [17]. According to Denmark, there is no provision in Chapter II of the State Aid Procedure Regulation on notified aid allowing the Commission to include already existing State aid measures in the investigation. If the Commission wishes to investigate existing State aid measures it should, according to Denmark, do so under Chapter V on procedure regarding existing aid schemes of the said Regulation.

(35) Denmark states that it notified the amendments on 21 January 2005 in the form of two bills which the Government had put before Parliament on 12 January 2005 (Bill on taxation of seafarers and Bill amending the tonnage tax Act). According to Denmark, the two bills in question could be regarded as approved by the Commission for the two following reasons:

— firstly because, as alleged by the Danish authorities, the Commission did not react to the letter of 21 January 2005 from the Permanent Representation within the deadline set up by the State Aid Procedure Regulation,

— secondly, the Commission services subsequently confirmed that the amendments complied with the Guidelines.

(36) Therefore Denmark alleges that the Act on taxation of seafarers in its version of spring 2005 is an approved State aid measure under EU law.

(37) Therefore Denmark concludes that the investigation procedure can only cover the allegedly sole notified measure, i.e. the possible inclusion of seafarers on board cable-laying vessels in the DIS scheme.

(38) In relation to dredging vessels, the Danish government indicates that on 13 December 2006 it adopted the Act amending the Act on the taxation of seafarers. The amendment to the Act on taxation of seafarers in question was notified on 15 January 2007.

(39) Denmark considers the transport at deep sea of extracted materials to be maritime transport for the purpose of the Guidelines. Dredgers are therefore covered by the Guidelines regardless of the content of Regulations (EEC) No 4055/86 and (EEC) No 3577/92 where the dredgers are carrying out maritime transport (defined, according to Denmark, as '*transport at sea of extracted material*') for at least 50 % of their operational time.

[17] Commission press release IP/07/1047 of 10 July 2007.

(40) The Danish authorities add that activities in 'limited maritime traffic' are not covered by the Danish State aid schemes. 'Limited maritime traffic' is understood to be activities in ports and fjords, for example. Excavation or dredging work in and around ports and fjords therefore always falls outside the scope of the DIS regime. The same applies to cases where a vessel is lying stationary.

(41) The Danish authorities explain that, in practice, excavation and dredging work are (most) often carried out using bucket-chain dredgers which do not have their own engines and so fall outside the scope of the DIS regime for that reason too. Vessels with their own motive power can be covered. However vessels employed on contracting activities at sea are also excluded from the DIS regime. Contracting activities are understood to mean the construction and repair of ports, moles, bridges, oil rigs, wind farms and other installations at sea.

5. OBSERVATIONS EXPRESSED BY INTERESTED PARTIES

5.1. European Dredging Association, hereinafter (EUDA)

(42) According to EUDA, the Commission has introduced a much stricter regime for State aid to dredging activities than it was the case under the 1997 Guidelines. While supporting the objective of maintaining a dredging fleet within the Community, EUDA expresses two general concerns:

— firstly, EUDA supports the view that the maritime cluster of the European dredging industry should be able to benefit from State aid under the Guidelines in all cases where it is confronted with competition from third countries' vessels,

— secondly, EUDA thinks that State aid approved by the Commission on the basis of the Guidelines should not impose any unduly administrative burdens on the maritime cluster of the European dredging industry.

5.2. European Community Shipowners' Association (ECSA)

(43) ECSA considers that the approach of the Commission is very theoretical and does not take into account the objectives and the contents of the Guidelines.

(44) According to ECSA, it is already a precondition in the Guidelines that a substantial part of dredging activity consists of maritime transport. ECSA holds that dredgers and cable-layers transport respectively extracted materials and cables from point A to point B. In this respect the loading and unloading point would be irrelevant according to ECSA.

(45) ECSA emphasises that the coverage of the transport activities of dredgers and cable-layers by the Guidelines is fully in accordance with the objectives of the Guidelines since these specialised vessels also operate in a global market with fierce global competition and within a global labour market.

5.3. Chamber of British Shipping

(46) The *Chamber of British Shipping* underlines that the Guidelines acknowledges that eligible and non-eligible activities of dredgers could indeed be carried out by the same ship and must in consequence be differentiated. Therefore the *Chamber of British Shipping* expresses concerns at the statement that *'the Commission considers it impossible to divide a given activity into a part falling under the notion of maritime transport and a part excluded thereof'*.

(47) In the opinion of the *Chamber of British Shipping* there is no need to draw a distinction between the transport of goods or passengers that is carried out to or from a place which appears on a list of ports and installations and such transport to some other specific points at sea. It is concerned that a new test seems to be introduced, relating to the purpose for which the cargo or passenger is being transported. Therefore it holds that the motive of the customer is not relevant to the eligibility of a shipping operation. The *Chamber of British Shipping* clarifies that the specific destination of the material transported is mostly determined by the client in accordance with its future use and/or environmental or other licences.

(48) Concerning the description of the normal operation of a cable-layer in the notice published in the *Official Journal of the European Union*, the *Chamber of British Shipping* disagrees with the preliminary assessment of the Commission: according to it, cable-layers load their customer's cargo of cable at port facilities and transport it to a sequence of other locations, which may include other ports, where it is delivered through progressive laying on or in the seabed.

5.4. Norwegian Shipowners' Association

(49) According to the Norwegian Shipowners' Association, the Commission should interpret the concept of 'maritime transport' in a flexible manner, given that cable-laying and dredging companies have the same international mobility and are subject to the same forces of global competition as classic 'maritime transportation'.

(50) In their view the transport and the laying of a cable from point A to point B is a simultaneous and integrated operation, where the cable is gradually 'unloaded' on the seabed.

(51) Similarly, the Norwegian Shipowners' Association is of the opinion that transportation aiming at disposing of sludge resulting from a dredging operation must be considered as transportation, even if the dredging and/or unloading site is neither a port, nor an offshore installation.

5.5. **Armateurs de France**

(52) According to *Armateurs de France,* maritime transport is not defined identically in Regulations (EEC) No 4055/86 and (EEC) No 3577/92, as the Guidelines refer to. Therefore the definition for maritime transport concerning State aid matters does not have to be the same as the definition set out in the Regulations. *Armateurs de France* holds that nevertheless the definition provided for by Regulation (EEC) No 3577/92 is understood as not being exhaustive. According to *Armateurs de France,* the Guidelines do not thus exclude cable-laying and dredging activities.

(53) In the opinion of *Armateurs de France,* the judgment of the Court of Justice of 11 January 2007 in Case C-251/04 is not relevant for the activities in question as it does not exclude cable-laying or dredging activities from maritime transport. *Armateurs de France* emphasises that these activities are not services 'related, incidental or ancillary to the provision of maritime transport services', within the meaning of the judgment, but constitute rather a transport at sea of goods to or from offshore installations.

(54) *Armateurs de France* maintains that, if the Guidelines were to be interpreted so that only pure maritime transport could be eligible for aid to maritime transport, such an interpretation would in theory also exclude from the scope of the Guidelines vessels travelling empty on their way back from transporting goods. Since the Guidelines already cover towage and dredging vessels in the case that more than 50 % of the activity effectively carried out by a tug during a given year constitutes maritime transport, according to *Armateurs de France,* this concept should be extended to all service vessels, such as dredgers and cable-layers.

5.6. **Alcatel-Lucent**

(55) *Alcatel-Lucent* underlines the importance of cable-layers in the maritime labour market, taking into account the requirement of high level of technical knowledge in that field. In the opinion of *Alcatel-Lucent,* cable-layers employ the most qualified workers in the maritime labour market. Therefore the extension of the DIS regime to cable-layers fulfils the objective of State aid to maritime transport as defined in the Guidelines as it would safeguard high quality employment in Europe for European marine employees. Due to the crisis on the telecom market, the fleet of Community-flagged telecom cable vessels decreased from 80 to 35 vessels competing with vessels registered under flags of convenience.

(56) The market is global. It reached 100 000 km per year at the height of the Internet bubble, then decreased to 20 000 km per year between 2003 and 2006 and approaches at present 50 000 km to 70 000 km per year.

(57) Taking into account that cable connections include trans-oceanic journeys and that the biggest cable-laying vessels can only stock about 3 000 km of cable drums, *Alcatel-Lucent* is of the opinion that the most significant activity of cable-laying vessels consists of transporting cable drums from the cable drum factory to the point at sea where the cable has to be connected and from which it will be laid down on the sea bed. According to Alcatel, a cable-laying vessel falls within maritime transport, taking into consideration the constantly unload of cargo among the itinerary while navigating the vessel. Therefore the cabling operation has to be considered as transport of cargo.

(58) In the opinion of *Alcatel-Lucent*, Regulations (EEC) No 4055/86 and (EEC) No 3577/92 do not strictly limit the kinds of destinations at sea (between two ports or between a port and an off-shore installation). In its view, a certain point at sea should also be considered as a destination falling under the Guidelines. Furthermore it could be considered that with the first metre of cable-laying on seabed the cable-laying becomes an off-shore installation and therefore the following cable-laying is nothing else than transport to this off-shore installation.

(59) In the view of *Alcatel-Lucent,* the judgment of the Court of Justice of 11 January 2007 in Case C-251/04 indirectly allows the extension of the definition of maritime transport as long as it is covered by the objectives of the Guidelines. According to *Alcatel-Lucent,* their main objectives are safeguarding vessels under the Community flag and maintaining a competitive fleet on world markets. Therefore, even though cable-laying activities would be considered as the provision of a service (incidental or ancillary to the provision of maritime transport services), the Guidelines are applicable to cable-laying activities, since these activities also fulfil the objectives of the Guidelines.

(60) *Alcatel-Lucent* is finally of the view that, with regard to environmental considerations, it is important to maintain a large fleet of cable-layers under the Community flag.

5.7. **Danish Shipowners' Association**

(61) According to the Danish Shipowners' Association, cable-laying is an activity '*in its own right*' and not an assistance service along the lines of towage, which the ECJ judgment of 11 January 2007 in Case C-251/04 regarded as not covered by Regulations (EEC) No 4055/86 and (EEC) No 3577/92. Furthermore, the Danish Shipowners' Association considers it more important to take the objectives of the Guidelines into consideration. Therefore the Danish Shipowners' Association recalls that the European cable-laying industry provides jobs for many seafarers in Europe. Moreover, cable-laying can help providing safety rules and standards as well as registration of such vessels in Community registers.

(62) The Danish Shipowners' Association holds that cable-laying is exposed to the same competitive constraints as those known by Community maritime transport operators on the world market. To sail between continents is also the task of cable-layers.

(63) Furthermore the Danish Shipowners' Association is of the view that the Danish rules on sand-dredging are covered by the Guidelines, taking into account the similar wording. According to the Danish Shipowners' Association, excavation is not covered by the Danish legislation in question. Moreover dredging is eligible only when the requirement that at least 50 % of the activities concerned constitute maritime transport is complied with.

5.8. **Comments from Denmark on third parties' observations**

(64) In commenting on the observations submitted by interested parties, the Danish authorities reiterate their former arguments and stress that all interested parties have been supportive of covering cable-laying vessels by the Guidelines.

6. **ASSESSMENT OF THE MEASURES**

6.1. **Cable laying**

(65) Firstly, the Commission notes that, like maritime transport, cable-laying activities require qualified seafarers, with similar qualifications as those working onboard traditional maritime transport vessels. It further notes that seafarers on board cable-layers are governed by the same labour law and social framework as other seafarers.

(66) Secondly, the Commission recognises that cable-layers are sea-going vessels and that they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.

(67) Thirdly, the Commission agrees that there is a risk that cable-laying companies could relocate their on-shore activities outside the Community for the purpose of finding more accommodating fiscal climates and subsequently re-flag their vessels under flags of convenience. In this context, the Commission acknowledges that cable-laying is by nature a global market.

(68) The Commission further notes that the extension of the DIS regime to cable-laying activities at sea would help preserve Community employment on board sea-going cable-laying vessels controlled by Danish interests.

(69) The challenges that Community cable-laying has to face in terms of global competition and relocation of on-shore activities are similar to those of Community maritime transport. In the same vein, Community cable-laying activities are subject to the same legal environment in the labour, technical and safety fields that Community maritime transport. Finally, qualified and trained seafarers are necessary as is the case in maritime transport.

(70) These features are those which are at the origin of the Guidelines. Indeed, Section 2.2, first subparagraph, of the Guidelines mentions the improvement of safety at sea, the encouragement of flagging or re-flagging to Member States' registers, the contribution to the consolidation of the maritime cluster in the Member States, the safeguard and improvement of the maritime know-how and the promotion of employment of European seafarers as the main objectives pursued. This is especially the case as regards State aid in the form of reduction in labour-related costs (Section 3.2 of the Guidelines) considered as 'social measures to improve competitiveness' (see title of Section 3 of the Guidelines).

(71) Consequently, although the Commission still maintains that cable-laying activities do not fall within the definition of maritime transport as laid-down by the aforementioned regulations and the Guidelines, it considers that cable-laying should be associated by analogy with maritime transport for the purpose of applying Section 3.2 of the Guidelines and that cable-laying should be thus covered by the scope of the same provision.

(72) The Commission thus concludes that the extension of the DIS regime to cable-laying vessels could be accepted by applying Section 3.2 of the Guidelines to them by analogy and thus that this extension is compatible with the common market.

6.2. **Dredging**

(73) The Commission refutes the argument made by Denmark concerning the alleged abuse of power on the part of the Commission when it opened the investigation procedure on the provisions of the DIS regime concerning dredging. The aforementioned Executive Order was annexed to the notification: the Commission considers that it had the obligation to examine this enclosure too and determine whether or not the Executive Order was an alteration to the DIS regime approved by the Commission in its aforementioned decision of 12 December 2002 in Case NN 116/98 and to the measures communicated to the Commission by Denmark in 2005 to adapt the DIS regime to the 2004 Guidelines.

(74) In addition the Commission refutes the allegation that the two bills were approved by the letter from the Commission services of 18 May 2005. This letter made it clear that the acceptance by a Member State of appropriate measures proposed by the Commission through the Guidelines should not be considered, from a procedural perspective, as a notification of a new aid or of an amendment to an existing aid. In the said reply, the Commission also made it clear that the measures submitted by the Danish authorities constituted a mere transposition of the appropriate measures proposed in the Guidelines and that they did not necessitate a notification under Article 88(3) of the EC Treaty.

(75) Furthermore, the Executive Order, attached to the notification, substantially departs from the bill submitted by the aforementioned letter of 21 January 2008, by extending very widely the scope of eligible dredging activities beyond what was foreseen in the bill sent by the aforementioned submission. In opening an investigation, the Commission considered the provisions of the Executive Order not as a new aid (and illegal aid since they were already put into force) but as a misuse of an existing aid pursuant to Article 16 of the State Aid Procedure Regulation. Therefore the relevant chapter of the Regulation is not Chapter V on procedure regarding existing aid schemes, as assumed by the Danish authorities in their comments, but Chapter IV on procedure regarding misuse of aid.

(76) The Commission was therefore fully entitled to open the investigation procedure with respect to the Executive Order.

(77) Section 3.2, fifth subparagraph, of the Guidelines lays down the conditions under which State aid in the form of reductions in labour-related costs can be awarded to dredging activities. The conditions that seafarers must be Community seafarers working on board seagoing within the meaning of Section 3.2 third subparagraph of the Guidelines and that the dredgers must be registered in a Member State are already those of the DIS-regime.

(78) In addition, the Danish authorities have made it clear in their comments on the opening decision that only self-propelled dredgers are eligible to the DIS-regime and that, i.a., dredging activities carried out in and around ports and fjords are excluded from the DIS regime.

(79) As regards the condition that dredgers have to carry out maritime transport at sea for at least 50 % of their operational time, the Commission notes that 'maritime transport' in the case of dredging is defined by Section 3.1, 16th subparagraph of the Guidelines as '*the transport at deep sea of extracted materials*' and excludes '*extractions or dredging as such*'. In this context, the Commission observes that extraction or dredging as such are excluded from the definition of eligible dredging activities as described in the abovementioned Danish Order. The Commission further considers that '*sailing between the place of extraction and the place where the extracted materials are to be unloaded*' and '*sailing between places of extraction*' are indeed transporting the extracted materials. The Commission also accepts that in maritime transport ships do not always sail loaded because of imbalances on certain trades. It is therefore logical to consider by analogy that '*sailing between the port and the extraction site*' and '*sailing between the place of unloading and the port*' are maritime transport. Similarly 'unloading' is inherent to maritime transport. Finally, when dredgers provide assistance at the request of public authorities in deep sea, the time they spend directly and exclusively for that benefits maritime transport.

(80) The Commission therefore concludes that the activities of dredgers as defined by the Executive Order can benefit from the DIS regime except for activities corresponding to the '*sailing at places of extraction*', which cannot indeed be distinguished from extracting or dredging as such.

(81) The acceptation by the Commission of most of the activities defined by the Danish authorities in the abovementioned Order as eligible to the DIS-regime is also based on the following elements.

(82) Dredging requires qualified seafarers governed by the same labour-law and social framework as other seafarers.

(83) Dredgers are sea-going vessels and they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.

(84) Finally there is a risk that dredging companies would relocate their on-shore activities outside the Community for the purpose of finding more accommodating fiscal climates and regimes of social security and subsequently re-flag their vessels under flags of convenience.

(85) The Commission thus considers that DIS regime can apply to dredging at sea as defined by the Executive Order with the exception of the sailing at places of extraction.

6.3. **Limitation to the duration of the validity of Commission decisions in the field of State aid**

(86) In its recent practice, the Commission no longer approves open-ended State aid regimes – or amendments thereto – and thus requests now that schemes be notified for a duration of up to a maximum of 10 years.

(87) This is why the Commission is obliged to impose a termination on the notified measure, consistent with its current practice. Consequently the Commission must decide that the Danish authorities re-notify the amendment of the DIS scheme assessed in the present Decision under Article 88(3) of the EC Treaty at the latest 10 years after the date of notification of the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The measures which Denmark envisages to implement in favour of sea-going cable-laying vessels are compatible with the common market within the meaning of Article 87(1) of the EC Treaty.

2. The measures implemented by Denmark in favour of sea going dredging are compatible with the common market provided that sailing at places of extraction is excluded from the eligible activities.

Article 2

Denmark must re-notify the amendment of the DIS scheme assessed in the present Decision according to Article 88(3) of the EC Treaty within 10 years as from the date of notification of the present Decision.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 13 January 2009.

For the Commission

Antonio TAJANI

Vice-President

COMMISSION DECISION

of 13 May 2009

amending Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices

(notified under document number C(2009) 3710)

(Text with EEA relevance)

(2009/381/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) [1], and in particular Article 4(3) thereof,

Whereas:

(1) Commission Decision 2006/771/EC [2] harmonises the technical conditions for use of spectrum for a wide variety of short-range devices, including applications such as alarms, local communications equipment, door openers and medical implants. Short-range devices are typically mass-market and/or portable products which can easily be taken and used across borders; differences in spectrum access conditions therefore prevent their free movement, increase their production costs and create risks of harmful interference with other radio applications and services.

(2) Commission Decision 2008/432/EC [3] amended the harmonised technical conditions for short-range devices contained in Decision 2006/771/EC by replacing its Annex.

(3) However, due to rapid changes in technology and societal demands, new applications for short-range devices can emerge which require regular updates of spectrum harmonisation conditions.

(4) On 5 July 2006, the Commission issued a permanent mandate [4] to the European Conference of Postal and Telecommunications Administrations (CEPT), pursuant to Article 4(2) of Decision No 676/2002/EC, to update the Annex to Decision 2006/771/EC in response to the technological and market developments in the area of short-range devices.

(5) In its November 2008 report [5] submitted in response to that mandate, the CEPT advised the Commission to amend a number of technical aspects in the Annex to Decision 2006/771/EC.

(6) Decision 2006/771/EC should therefore be amended accordingly.

(7) Equipment operating within the conditions set in this Decision must also comply with Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [6] in order to use the spectrum effectively so as to avoid harmful interference, demonstrated either by meeting harmonised standards or by fulfilling alternative conformity assessment procedures.

(8) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2006/771/EC is replaced by the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 13 May 2009.

For the Commission

Viviane REDING

Member of the Commission

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[1] OJ L 108, 24.4.2002, p. 1.
[2] OJ L 312, 11.11.2006, p. 66.
[3] OJ L 151, 11.6.2008, p. 49.
[4] Permanent Mandate to CEPT regarding the annual update of the technical Annex to the Commission Decision on the technical harmonisation of radio spectrum for use by Short Range Devices (5 July 2006).
[5] CEPT Report 26, RSCOM 08-88.
[6] OJ L 91, 7.4.1999, p. 10.

ANNEX

'ANNEX

Harmonised frequency bands and technical parameters for short-range devices

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Non-specific short-range devices (4)	6 765–6 795 kHz	42 dBµA/m at 10 metres			1 October 2008
	13,553–13,567 MHz	42 dBµA/m at 10 metres			1 October 2008
	26,957–27,283 MHz	10 mW effective radiated power (e.r.p.), which corresponds to 42 dBµA/m at 10 metres		Video applications are excluded	1 June 2007
	40,660–40,700 MHz	10 mW e.r.p.		Video applications are excluded	1 June 2007
	433,050–434,040 (5) MHz	1 mW e.r.p. and – 13dBm/10 kHz power density for bandwidth modulation larger than 250 kHz		Audio and voice signals, and video applications, are excluded	1 October 2008
		10 mW e.r.p.	Duty cycle (6): 10 %	Audio and voice signals, and video applications, are excluded	1 June 2007
	434,040–434,790 (5) MHz	1 mW e.r.p. and – 13dBm/10 kHz power density for bandwidth modulation larger than 250 kHz		Audio and voice signals, and video applications, are excluded	1 October 2008
		10 mW e.r.p.	Duty cycle (6): 10 %	Audio and voice signals, and video applications, are excluded	1 June 2007
			Duty cycle (6): 100 % subject to channel spacing up to 25 kHz	Audio and voice signals, and video applications, are excluded	1 October 2008
	863,000–868,000 MHz	25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Audio and voice signals, and video applications, are excluded	1 October 2008

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Non-specific short-range devices (4) (*continued*)	868,000–868,600 (5) MHz	25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 1 % may also be used	Video applications are excluded	1 October 2008
		25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Audio and voice signals, and video applications, are excluded	1 October 2008
	868,700–869,200 (5) MHz	25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Video applications are excluded	1 October 2008
		25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Audio and voice signals, and video applications, are excluded	1 October 2008

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Non-specific short-range devices (4) (*continued*)	869,400–869,650 (5) MHz	500 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 10 % may also be used Channel spacing must be 25 kHz, except that the whole band may also be used as a single channel for high-speed data transmission	Video applications are excluded	1 October 2008
		25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Audio and voice signals, and video applications, are excluded	1 October 2008
	869,700–870,000 (5) MHz	5 mW e.r.p.	Voice applications allowed with advanced mitigation techniques	Audio and video applications are excluded	1 June 2007
		25 mW e.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used. Alternatively a duty cycle (6) of 0,1 % may also be used	Audio and voice signals, and video applications, are excluded	1 October 2008
	2 400–2 483,5 MHz	10 mW equivalent isotropic radiated power (e.i.r.p.)			1 June 2007
	5 725–5 875 MHz	25 mW e.i.r.p.			1 June 2007
	24,150–24,250 GHz	100 mW e.i.r.p.			1 October 2008
	61,0–61,5 GHz	100 mW e.i.r.p.			1 October 2008

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Wideband data transmission systems	2 400–2 483,5 MHz	100 mW e.i.r.p. and 100 mW/100 kHz e.i.r.p. density applies when frequency hopping modulation is used, 10 mW/MHz e.i.r.p. density applies when other types of modulation are used	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used		1 November 2009
	57,0–66,0 (5) GHz	40 dBm e.i.r.p. and 13 dBm/MHz e.i.r.p. density		Outdoor applications are excluded	1 November 2009
		25 dBm e.i.r.p. and – 2 dBm/MHz e.i.r.p. density		Fixed outdoor installations are excluded	1 November 2009
Alarm systems	868,600–868,700 MHz	10 mW e.r.p.	Channel spacing: 25 kHz The whole frequency band may also be used as a single channel for high-speed data transmission Duty cycle (6): 1,0 %		1 October 2008
	869,250–869,300 MHz	10 mW e.r.p.	Channel spacing: 25 kHz Duty cycle (6): 0,1 %		1 June 2007
	869,300–869,400 MHz	10 mW e.r.p.	Channel spacing: 25 kHz Duty cycle (6): 1,0 %		1 October 2008
	869,650–869,700 MHz	25 mW e.r.p.	Channel spacing: 25 kHz Duty cycle (6): 10 %		1 June 2007
Social alarms (7)	869,200–869,250 MHz	10 mW e.r.p.	Channel spacing: 25 kHz Duty cycle (6): 0,1 %		1 June 2007
Inductive applications (8)	20,050–59,750 kHz	72 dBµA/m at 10 metres			1 June 2007
	59,750–60,250 kHz	42 dBµA/m at 10 metres			1 June 2007
	60,250–70,000 kHz	69 dBµA/m at 10 metres			1 June 2007
	70–119 kHz	42 dBµA/m at 10 metres			1 June 2007
	119–127 kHz	66 dBµA/m at 10 metres			1 June 2007

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Inductive applications (8) (*continued*)	127–140 kHz	42 dBμA/m at 10 metres			1 October 2008
	140–148,5 kHz	37,7 dBμA/m at 10 metres			1 October 2008
	148,5–5 000 kHz In the specific bands mentioned below, higher field strengths and additional usage restrictions apply:	– 15 dBμA/m at 10 metres in any bandwidth of 10 kHz Furthermore the total field strength is – 5 dBμA/m at 10 m for systems operating at bandwidths larger than 10 kHz			1 October 2008
	400–600 kHz	– 8 dBμA/m at 10 metres		This set of usage conditions applies to RFID (9) only	1 October 2008
	3 155–3 400 kHz	13,5 dBμA/m at 10 metres			1 October 2008
	5 000–30 000 kHz In the specific bands mentioned below, higher field strengths and additional usage restrictions apply:	– 20 dBμA/m at 10 metres in any bandwidth of 10 kHz Furthermore the total field strength is – 5 dBμA/m at 10 m for systems operating at bandwidths larger than 10 kHz			1 October 2008
	6 765–6 795 kHz	42 dBμA/m at 10 metres			1 June 2007
	7 400–8 800 kHz	9 dBμA/m at 10 metres			1 October 2008
	10 200–11 000 kHz	9 dBμA/m at 10 metres			1 October 2008
	13 553–13 567 kHz	42 dBμA/m at 10 metres			1 June 2007
		60 dBμA/m at 10 metres		This set of usage conditions applies to RFID (9) and EAS (10) only	1 October 2008
	26 957–27 283 kHz	42 dBμA/m at 10 metres			1 October 2008

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Active medical implants (11)	9–315 kHz	30 dBµA/m at 10 m	Duty cycle (6): 10 %		1 October 2008
	402–405 MHz	25 µW e.r.p.	Channel spacing: 25 kHz Individual transmitters may combine adjacent channels for increased bandwidth up to 300 kHz. Other techniques to access spectrum or mitigate interference, including bandwidths greater than 300 kHz, can be used provided they result at least in an equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC to ensure compatible operation with the other users and in particular with meteorological radiosondes.		1 November 2009
Wireless audio applications (12)	87,5–108,0 MHz	50 nW e.r.p.	Channel spacing up to 200 kHz		1 October 2008
	863–865 MHz	10 mW e.r.p.			1 June 2007
Radio determination applications (13)	2 400–2 483,5 MHz	25 mW e.i.r.p.			1 November 2009
	17,1–17,3 GHz	26 dBm e.i.r.p.	Techniques to access spectrum and mitigate interference that provide at least equivalent performance to the techniques described in harmonised standards adopted under Directive 1999/5/EC must be used.	This set of usage conditions applies to ground based systems only	1 November 2009
Tank Level Probing Radar (14)	4,5–7,0 GHz	24 dBm e.i.r.p. (15)			1 November 2009
	8,5–10,6 GHz	30 dBm e.i.r.p. (15)			1 November 2009
	24,05–27,0 GHz	43 dBm e.i.r.p. (15)			1 November 2009
	57,0–64,0 GHz	43 dBm e.i.r.p. (15)			1 November 2009
	75,0–85,0 GHz	43 dBm e.i.r.p. (15)			1 November 2009

Type of short-range device	Frequency band	Power limit/field strength limit/power density limit (1)	Additional parameters/spectrum access and mitigation requirements (2)	Other usage restrictions (3)	Implementation deadline
Model Control (16)	26 990–27 000 kHz	100 mW e.r.p.			1 November 2009
	27 040–27 050 kHz	100 mW e.r.p.			1 November 2009
	27 090–27 100 kHz	100 mW e.r.p.			1 November 2009
	27 140–27 150 kHz	100 mW e.r.p.			1 November 2009
	27 190–27 200 kHz	100 mW e.r.p.			1 November 2009
Radio Frequency Identification (RFID)	2 446–2 454 MHz	100 mW e.i.r.p.			1 November 2009

(1) Member States must allow the usage of spectrum up to the power, field strength or power density given in this table. In conformity with Article 3(3) of Decision 2006/771/EC, they may impose less restrictive conditions, i.e. allow the use of spectrum with higher power, field strength or power density.

(2) Member States may only impose these "additional parameters/spectrum access and mitigation requirements", and may not add other parameters or spectrum access and mitigation requirements. Less restrictive conditions within the meaning of Article 3(3) of Decision 2006/771/EC mean that Member States may completely omit the parameters/spectrum access and mitigation requirements in a given cell or allow higher values.

(3) Member States may only impose these "other usage restrictions", and may not add additional usage restrictions. As less restrictive conditions may be introduced within the meaning of Article 3(3) of Decision 2006/771/EC, Member States may omit one or all of these restrictions.

(4) This category is available for any type of application which fulfils the technical conditions (typical uses are telemetry, telecommand, alarms, data in general and other similar applications).

(5) For this frequency band Member States must make all the alternative sets of usage conditions possible.

(6) "Duty cycle" means the ratio of time during any one-hour period when equipment is actively transmitting. Less restrictive conditions within the meaning of Article 3(3) of Decision 2006/771/EC mean that Member States may allow a higher value for "Duty cycle".

(7) Social alarm devices are used to assist elderly or disabled people when they are in distress.

(8) This category covers, for example, devices for car immobilisation, animal identification, alarm systems, cable detection, waste management, personal identification, wireless voice links, access control, proximity sensors, anti-theft systems, including RF anti-theft induction systems, data transfer to handheld devices, automatic article identification, wireless control systems and automatic road tolling.

(9) This category covers inductive applications used for Radio Frequency Identification (RFID).

(10) This category covers inductive applications used for Electronic Article Surveillance (EAS).

(11) This category covers the radio part of active implantable medical devices, as defined in Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices (OJ L 189, 20.7.1990, p. 17).

(12) Applications for wireless audio systems, including: cordless loudspeakers; cordless headphones; cordless headphones for portable use, e.g. portable CD, cassette or radio devices carried on a person; cordless headphones for use in a vehicle, for example for use with a radio or mobile telephone, etc.; in-ear monitoring, for use at concerts or other stage productions.

(13) This category covers applications used for determining the position, velocity and/or other characteristics of an object, or for obtaining information relating to these parameters.

(14) Tank Level Probing Radars (TLPR) are a specific type of radiodetermination application, which are used for tank level measurements and are installed in metallic or reinforced concrete tanks, or similar structures made of material with comparable attenuation characteristics. The purpose of the tank is to contain a substance.

(15) The power limit applies inside a closed tank and corresponds with a spectral density of – 41,3 dBm/MHz e.i.r.p. outside a 500 litre test tank.

(16) This category covers applications used to control the movement of models (principally miniature representations of vehicles) in the air, on land or over or under the water surface.'

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

ADDENDUM

to POLITICAL AND SECURITY COMMITTEE DECISION ATALANTA/3/2009 of 21 April 2009 on the setting up of the Committee of Contributors for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) (2009/369/CFSP)

(Official Journal of the European Union L 112 of 6 May 2009)

The following Annex shall be added to Political and Security Committee Decision Atalanta/3/2009 of 21 April 2009:

'*ANNEX*

LIST OF THIRD STATES REFERRED TO IN ARTICLE 2 (1)

— Norway'

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