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### Legislation

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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1858/2005**

**of 8 November 2005**

**imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, South Africa and Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation), and in particular Article 11(2) thereof,

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

Whereas:

## **1. PROCEDURE**

### **1.1. Measures in force**

- (1) In August 1999, by Regulation (EC) No 1796/1999<sup>(2)</sup> (the original Regulation), the Council imposed a definitive anti-dumping duty on imports of steel ropes and cables (SWR) originating in the People's Republic of China (PRC), Hungary, India, Mexico, Poland, South Africa and Ukraine. The investigation that led to these measures is hereinafter referred to as 'the original investigation'.
- (2) The measures applying to these imports consisted of an *ad valorem* duty, except for imports from one Indian, one

Mexican, one South African and one Ukrainian exporting producers from which undertakings were accepted by Commission Decision 1999/572/EC<sup>(3)</sup>. By Regulation (EC) No 1678/2003, the Commission withdrew the undertaking offered by the above Ukrainian exporting producer, and by Regulation (EC) No 1674/2003, the Council reimposed the corresponding *ad valorem* anti-dumping duty for this exporter.

- (3) Thereafter, it was found that circumvention of the original measures concerning imports from Ukraine and the PRC took place via respectively Moldova and via Morocco following investigations pursuant to Article 13 of the basic Regulation. Consequently, by Regulation (EC) No 760/2004<sup>(4)</sup>, the Council extended the definitive anti-dumping duty imposed on imports originating in the Ukraine to imports of the same steel ropes and cables consigned from Moldova. Similarly, the anti-dumping duty imposed on imports originating in the PRC was extended, by Council Regulation (EC) No 1886/2004<sup>(5)</sup>, to imports of the same steel ropes and cables consigned from Morocco, with the exception of those produced by a genuine Moroccan producer.

### **1.2. Investigation concerning another country**

- (4) On 20 November 2004, by a notice published in the *Official Journal of the European Union*<sup>(6)</sup>, the Commission initiated an anti-dumping proceeding concerning imports of the same product originating in the Republic of Korea, further to a complaint lodged by the Community industry showing *prima facie* evidence that such imports are being dumped and are thereby causing material injury to the Community industry. The investigation was terminated by Commission Decision 2005/739/EC<sup>(7)</sup> without imposing measures.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ L 217, 17.8.1999, p. 1. Regulation as amended by Regulation (EC) No 1674/2003 (OJ L 238, 25.9.2003, p. 1).

<sup>(3)</sup> OJ L 217, 17.8.1999, p. 63. Decision as amended by Regulation (EC) No 1678/2003 (OJ L 238, 25.9.2003, p. 13).

<sup>(4)</sup> OJ L 120, 24.4.2004, p. 1.

<sup>(5)</sup> OJ L 328, 30.10.2004, p. 1.

<sup>(6)</sup> OJ C 283, 20.11.2004, p. 6.

<sup>(7)</sup> OJ L 276, 21.10.2005, p. 62.

### 1.3. Request for a review

- (5) Following the publication of a notice of impending expiry of the anti-dumping measures in force of SWR originating in the PRC, Hungary, India, Mexico, Poland, South Africa and Ukraine <sup>(1)</sup>, the Commission received, on 17 May 2004, a request to review these measures pursuant to Article 11(2) of the basic Regulation.
- (6) The request was lodged by the Liaison Committee of European Union Wire Rope Industries (EWRIS) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of SWR. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.
- (7) In the absence of such evidence concerning imports originating in Mexico, the applicant did not request the initiation of an expiry review concerning imports originating in Mexico. Consequently, the measures applicable to imports originating in Mexico expired on 18 August 2004 <sup>(2)</sup>.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review <sup>(3)</sup>.

### 1.4. Investigation

- (9) The Commission officially advised the exporting producers, importers, users known to be concerned and their associations, the representatives of the exporting countries and the Community producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation.
- (10) In view of the large number of Community producers and of importers in the Community not related to an exporting producer in one of the countries concerned, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and,

if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation.

- (11) Seventeen Community producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. The sampling form requested, *inter alia*, information concerning the development of certain 'macro' injury indicators, namely production capacity, production volume, stocks, sales volumes and employment.
- (12) From the above 17 producers, 5 companies, which were found to be representative of the Community industry in terms of volume of production and sales of the product concerned in the Community, were selected for the sample.
- (13) Only one importer provided the information requested in the notice of initiation and expressed its willingness to further cooperate with the Commission services. In view of this situation, the Commission services decided not to apply sampling in the case of the unrelated importers, but to send a questionnaire to the aforementioned importer. Subsequently, the said importer failed to complete the questionnaire. It is therefore considered that no cooperation could be obtained from the unrelated importers. The Association representing the interests of the importers (EWRIA) made comments of a general nature, notably on the definition of the product concerned and the like product. These comments are addressed under recitals (19) and (20).
- (14) Questionnaires were therefore sent to the five sampled Community producers and to all known exporting producers. In addition, one producer in Turkey (analogue country) was contacted and received a questionnaire.
- (15) Replies to the questionnaires were received from the five sampled Community producers and three exporting producers in the countries concerned, as well as from two related importers and one producer in the analogue country.

<sup>(1)</sup> OJ C 272, 13.11.2003, p. 2.

<sup>(2)</sup> OJ C 203, 11.8.2004, p. 4.

<sup>(3)</sup> OJ C 207, 17.8.2004, p. 2.

- (16) Verification visits were carried out at the premises of the following companies:

Sampled Community producers:

- BTS Drahtseile GmbH (Germany),
- Cables y Alambres especiales, SA (Spain),
- CASAR Drahtseilwerk Saar GmbH (Germany),
- Manuel Rodrigues de Oliveira Sa & Filhos, SA (Portugal),
- Trefileurope (France).

Producer in the exporting country:

- Usha Martin Ltd (India).

Related importers in the Community:

- Usha Martin UK (United Kingdom),
- Usha Martin Scandinavia (Denmark).

Producer in the analogue country:

- Celik Halat (Turkey).

- (17) The investigation regarding the continuation and/or recurrence of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (investigation period or IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2001 up to the end of the IP (period considered).

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (18) The product concerned is the same as that in the original investigation which led to the imposition of measures currently in force, i.e. steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm. They are currently classifiable within CN codes ex 7312 10 82, ex 7312 10 84, ex 7312 10 86, ex 7312 10 88 and ex 7312 10 99.

### 2.2. Like product

- (19) As established in the original investigation, this review investigation confirmed that the product concerned and the products manufactured and sold by the exporting producers on the domestic market, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have the same basic physical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.
- (20) EWRIA reiterated the argument made in the original investigation that the product concerned differs substantially from the products manufactured and sold in the Community, and should not be compared. The argument has been addressed in depth in the original Regulations imposing provisional and definitive measures on imports of the product concerned and it was found that the Community-produced and imported SWR were alike. As EWRIA did not bring any new element showing that the basis on which these original findings were made had changed, the conclusions reached in the original definitive Regulation are confirmed.

## 3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

- (21) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

### 3.1. Preliminary remarks

- (22) During the IP, the total import volume, as recorded in Eurostat, of steel wire ropes from the PRC, India, South Africa and Ukraine (the countries concerned) amounted to 7 784 tonnes, representing 4,4 % of the Community market share.
- (23) The investigation period of the original investigation covered 15 months (1 January 1997 to 31 March 1998) and only covered imports into the Community prior to Enlargement. Therefore, import figures from the original investigation period and the IP are not directly comparable. In any case, total imports in EU-15 of the countries concerned in the original investigation period amounted to 21 102 tonnes, representing 14,3 % of the Community market share.

- (24) In India one exporting producer cooperated, covering 75 % of the export volumes recorded in Eurostat. In South Africa, the sole known exporting producer submitted information on its export sales to the Community during the IP, which represented all export sales of South Africa to the Community during the same period. As regards the PRC, one exporting producer cooperated which represented 75 % of export sales of the product concerned from the PRC to the Community. Finally, as regards Ukraine, none of the two known exporting producers cooperated in the present investigation.

### 3.2. Dumping of imports during the investigation period

- (25) In accordance with Article 11(9) of the basic Regulation, the same methodology was used as in the original investigation, whenever circumstances have not changed.

#### 3.2.1. India

- (26) During the IP, the total import volume, as recorded in Eurostat, of SWR from India amounted to 3 869 tonnes, representing 2,2 % of the Community market share.

##### 3.2.1.1. Normal value

- (27) As far as the determination of normal value is concerned, it was first established for the cooperating Indian exporting producer whether its total domestic sales of the like product were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume to the Community. In accordance with Article 2(2) of the basic Regulation, this was found to be the case.
- (28) Further to the disclosure, the cooperating Indian exporting producer objected to the method used by the Commission. He argued that for the representativity test the sales volume of the product concerned to the first independent customer in the Community and not to the related importer in the Community should have been used. However, Article 2(2) of the basic Regulation provides that for the determination whether domestic sales of the like product were representative, the domestic sales volume should be compared to the sales volume of the product concerned exported to the Community, without specifying whether export sales to the first independent customer or export sales to the related importer should be taken into consideration. Consequently, it was found that the method used by

the Commission was reasonable and in line with the basic Regulation. Therefore this claim had to be rejected.

- (29) The Commission subsequently identified those product types, sold domestically by the company concerned, that were identical or directly comparable to the types sold for export to the Community.
- (30) For each type sold by the exporting producer on its domestic market and found to be directly comparable with the type of SWR sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of SWR were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of SWR exported to the Community. This was the case for 31 % of all types exported to the Community.
- (31) An examination was also made as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the product type in question. In cases where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- (32) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(33) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value either because they had not been sold on the domestic market or not in the ordinary course of trade, another method had to be applied. In the absence of any other reasonable method, constructed normal value was used.

(34) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. In this regard and in accordance with Article 2(6) of the basic Regulation, the amounts for SG&A and profits were based on actual data pertaining to the production and sale, in the ordinary course of trade, of the like product on the domestic market.

(35) Further to the disclosure the cooperating Indian exporting producer argued that when calculating its domestic profit margin in accordance with Article 2(6) of the basic Regulation, the Commission wrongly included domestic sales of products outside the scope of the investigation, i.e. locked coil wire ropes. However, as indicated in recital (18), locked coil ropes are expressly included in the definition of the product concerned not only for the present investigation, but they were also included in the original investigation. Therefore this claim had to be rejected.

(36) The Indian exporting producer claimed that the normal value used to calculate its dumping margin during the IP would not reasonably reflect domestic prices and costs, since it was determined on an unrepresentative basis, i.e. on the basis of 4 months of the IP instead of 12. It should be noted that in the framework of an expiry review and in accordance with Article 11(2) of the basic Regulation, it is examined whether the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. As a result, definitive anti-dumping duties are either confirmed or repealed, while individual duty rates as such cannot be amended. Since the calculation of precise dumping margins in the framework of an expiry review is therefore not necessary, the examination of the continuation of dumping is based on a representative set of data during the IP. In the present proceeding, data were requested for the months at the end of each quarter and the exporting producers were invited to comment on their representativity. The exporting producer did not object to this approach within the requested deadline,

but only after the on-spot verification visit, i.e. at a time where the verification of a different set of data would not have been possible anymore. Furthermore, the exporting producer did not explain nor provide any evidence as to why, in this specific case, the selected periods would be unrepresentative. This claim had therefore to be rejected.

### 3.2.1.2. Export price

(37) Since all export sales of the product concerned to the Community were made to related companies in the Community, the export price was constructed in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments for all costs incurred between importation and resale, and for profits accruing, were made in order to establish a reliable export price, at the Community frontier level. In this regard, the related importer's SG&A were deducted from the resale price in the Community. As far as the profit margin is concerned and since there was no cooperation from unrelated importers, it was considered that, in the absence of any other more reliable information, the same profit margin as was used in the original investigation, i.e. 5 %, should be used. No information was available to show that this was not a reliable margin.

### 3.2.1.3. Comparison

(38) For the purpose of making a fair comparison by product type, on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transportation costs, insurance costs, banking and credit costs in accordance with Article 2(10) of the basic Regulation.

### 3.2.1.4. Dumping margin

(39) In order to calculate the dumping margin, the weighted average normal value was compared to the weighted average export price to the Community per product type. This comparison showed the existence of significant dumping for the exporting producer concerned, at the level of more than 10 %. This compares with a dumping margin of 39,8 % found in the original investigation. For non-cooperating exporting producers, an assessment of the level of dumping was made based on data relating to normal value and export prices, as provided by the applicant in the review request. This also showed a dumping margin of more than 20 %.

### 3.2.2. *The PRC*

- (40) During the IP, the total import volume, as recorded in Eurostat, of steel wire ropes from the PRC amounted to 1 942 tonnes, representing 1,1 % of the Community market share. As mentioned in recital (24), the sole cooperating exporting producer represented 75 % of the total Chinese imports.
- (41) In the original investigation four Chinese exporting producers cooperated, however none of them was granted market economy status or individual treatment.

#### 3.2.2.1. *Analogue country*

- (42) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third country in accordance with Article 2(7)(a) of the basic Regulation.
- (43) In the original investigation, Poland was used as analogue country for the purpose of establishing normal value. As Poland has been a member of the European Union since 1 May 2004, it can no longer be used as an analogue country for the purpose of anti-dumping investigations. For the present investigation the applicant proposed the United States of America (USA) as an analogue country.
- (44) One importer association objected to the choice of the USA and proposed South Korea as an appropriate analogue country. However, none of the producers in the USA and South Korea were willing to cooperate in the present expiry review.
- (45) The Commission services therefore explored other possible analogue countries such as Norway, Thailand, India and Turkey. As far as Norway and Thailand are concerned, likewise, none of the producers in these countries was willing to cooperate.
- (46) Only one producer of SWR in Turkey cooperated with the investigation by replying to the questionnaire and accepting an on-spot verification visit. The investigation showed that Turkey has a competitive market for SWR with two domestic producers supplying around 83 % of the market and competition from imports from other third countries. Import duties in Turkey are low and there are no other restrictions for imports of SWR into Turkey. The production volume in Turkey constituted more than five times the volume of Chinese exports of the product concerned to the Community. The Turkish market was therefore deemed sufficiently representative for the determination of normal value for the PRC.

Finally, as mentioned in recital (19), the product produced and sold on the Turkish domestic market was alike to the product exported by the Chinese exporting producer to the Community.

- (47) Subsequent to the disclosure one importer association objected to the choice of Turkey as analogue country. However, this claim was not substantiated and had therefore to be rejected.
- (48) It is therefore concluded that Turkey constitutes an appropriate analogue country for the purpose of establishing normal value in accordance with Article 2(7)(a) of the basic Regulation.

#### 3.2.2.2. *Normal value*

- (49) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the cooperating producer in the analogue country, i.e. on the basis of the price paid or payable on the domestic market of Turkey by unrelated customers, since these sales were found to be made in the ordinary course of trade.
- (50) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in Turkey.

#### 3.2.2.3. *Export price*

- (51) Given that the export sales of the cooperating exporter represented 75 % of the EC imports of the product concerned from the PRC in the IP, the determination of the export price was based on the information provided by the cooperating exporting producer in the PRC. Since all export sales of the product concerned were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

#### 3.2.2.4. *Comparison*

- (52) For the purpose of making a fair comparison by product type, on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transportation costs, insurance costs, banking and credit costs in accordance with Article 2(10) of the basic Regulation.

- (53) For certain product types sold on the domestic market in Turkey, adjustments had to be made in order to make them comparable with the Chinese exported types. Adjustments were made in order to take account of physical differences in accordance with Article 2(10)(b) of the basic Regulation such as diameter, tensile strength and core. The adjustments were based on the price differences of the types in question on the Turkish market.

#### 3.2.2.5. Dumping margin

- (54) In order to calculate the dumping margin, the weighted average normal value was compared to the weighted average export price to the Community per product type. This comparison showed the existence of significant dumping of imports of the product concerned by the cooperating exporter, at the level of more than 65 %. This compares with a dumping margin of 60,4 % found in the original investigation.

#### 3.2.3. South Africa

- (55) During the IP, the total import volume, as recorded in Eurostat, of SWR from South Africa amounted to 278 tonnes, representing 0,1 % of the Community market share, i.e. at a *de minimis* level. The sole known exporting producer represented 100 % of these imports.

- (56) In the absence of full cooperation from the South African exporting producer as outlined in recital (57), recourse had to be made to facts available in accordance with Article 18 of the basic Regulation.

- (57) The sole known exporting producer only submitted information regarding its export sales to the Community, but did not provide any information with regard to costs and prices of the like product on the domestic market. Therefore, no normal value could be established for the IP. Nevertheless, the exporting producer admitted that dumping was still taking place during the IP. On this basis and in the absence of any other more reliable information, it was concluded that dumping continued at significant levels during the IP.

#### 3.2.4. Ukraine

- (58) During the IP, the total import volume, as recorded in Eurostat, of SWR from Ukraine amounted to 1 695

tonnes, representing 1 % of the Community market share, which was considered as a *de minimis* market share.

- (59) In the absence of any cooperation from Ukraine, recourse had to be made to facts available, in accordance with Article 18 of the basic Regulation. On this basis normal value as established for the analogue country was compared with the export price as contained in the applicant's review request. As a result, a dumping margin of more than 65 % was established for the IP.

### 3.3. Developments of imports should measures be repealed

#### 3.3.1. Preliminary remarks

- (60) Out of the eight Indian exporting producers named in the complaint, one cooperated in the investigation. Of the two South African exporting producers named in the complaint, only one cooperated partially. There are no other known producers in South Africa. As far as Ukraine is concerned, neither of the two known exporting producers cooperated and likewise, no other producers are known in Ukraine. Of nine known Chinese exporting producers, only one cooperated with the investigation.

#### 3.3.2. India

##### 3.3.2.1. Preliminary remarks

- (61) Seven of the eight known producers in India did not cooperate during the present expiry review. It is noted that in the original investigation, six of these producers were selling SWR only on their domestic market or to other third country markets and they were therefore not subject to the original investigation. Furthermore, due to their non-cooperation in the present investigation, no information was available as to their production capacity and volume, stocks and sales to markets other than the Community. The examination of whether it would be likely that dumping continues should measures be repealed was therefore based on the information available, i.e. the information provided by the cooperating exporting producer. Information relating to the import prices from exporters other than the cooperating exporter, determined on the basis of Eurostat, was also examined. In order to establish whether dumping would be likely to continue should measures be repealed, the pricing behaviour of the cooperating exporting producer to other export markets, its export prices to the Community, its production capacity and stocks were examined. Also, the likely effect of a repeal of the measures on prices of other imports was also assessed.

### 3.3.2.2. Relationship between export prices to third countries and export prices to the Community

- (62) It was found that the average export price of sales to non-EU countries was significantly below the average export price to the Community and also below the prices on the domestic market, which indicated that exports to non-EU countries were very likely dumped at even higher levels than the export sales to the Community. It should be noted, however, that during the IP a minimum price undertaking was in force which required the exporting producer concerned to respect a certain price level for exports to the Community. Some prices were found to be slightly higher than the undertaking level, but the majority of the sales were at prices at the level of the undertaking. The exporter's sales to non-EU countries were made in significant quantities, accounting for 86 % of total export sales. Therefore, it was considered that the export price level to other third countries can be seen as an indicator as to the likely price level for export sales to the Community should measures be repealed. On this basis, and given the low price levels to third country markets, it was concluded that there is a likelihood that the cooperating exporter would reduce its export prices to the Community, which as a consequence would also increase the level of dumping.
- (63) It is noted that the margin of dumping found in the IP was significant. On this basis, it has to be assumed that even if price levels to the Community would remain the same or increase, it is very likely that dumping would still continue should the measures in force be repealed. In view of the company's export behaviour to the Community in the past (i.e. in the original investigation, it was found that the company exported high quantities to the EU at dumped levels), as well as its pricing strategies with regard to exports to other third country markets, it is more likely that any further exports to the Community would be made at lower, and consequently dumped price levels.

### 3.3.2.3. Relationship between export prices to third countries and the price level in the Community

- (64) It is also noted that export prices to third countries were found to be on average below the sales prices of the Community industry in the Community, which means that the prevailing price level for the product concerned in the Community market makes the Community market a very attractive one for exporters in India. On this basis, it was considered that there is indeed an economic incentive to shift exports from non-EU countries to the more profitable Community market in case of repeal of the measures in force.

### 3.3.2.4. Prices of non-cooperating exporters

- (65) Eurostat prices of all imports of the product concerned, excluding those of the cooperating exporter, are significantly below those of the cooperating exporter. In the absence of other information, based on the normal value of the cooperating exporter, these imports would be dumped at significantly high levels. In the absence of measures, there is no reason to consider that these imports would not be made at similar dumped prices but in higher quantities.

### 3.3.2.5. Unused capacity and stocks

- (66) The cooperating Indian producer, despite increasing capacity utilisation over the last years, still has significant spare capacities representing almost five times the export quantity to the Community during the IP. Furthermore, stocks — although decreasing in terms of volume — are significant and, at the end of the IP, represented a major portion of the volume exported to the Community. Therefore, the capacity to significantly increase export quantities to the EC exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production. In this regard, it should be noted that it is very unlikely that the domestic market in India, due to the presence of eight competing producers, would be able to absorb all of the spare capacity of this exporting producer. In fact, according to the review request, spare capacities of all Indian producers were estimated at 35 000 tonnes, representing almost 20 % of Community consumption.

### 3.3.3. PRC

#### 3.3.3.1. Preliminary remarks

- (67) As mentioned in recital (41), none of the Chinese companies was granted market economy status or individual treatment in the original investigation, i.e. all companies are subject to the single countrywide anti-dumping duty at a rate of 60,4 %. Import volumes from the PRC decreased significantly, i.e. from 11 484 tonnes during the IP of the original investigation (EU-15) to 1 942 tonnes during the IP (EU-25). The current market share of the PRC is slightly above *de minimis*, i.e. 1,1 %. It is, however, noted that Chinese imports have, since 2001, an increasing trend. The exports to the EC of the sole cooperating Chinese exporting producer represented 75 % of total Chinese exports, amounting to 1 456 tonnes during the IP. There are seven other exporting producers which exported only small quantities to the Community during the IP.

- (68) In order to establish whether dumping would be likely to continue should the measures be repealed, the pricing behaviour of the cooperating exporting producer to other export markets, its export prices to the Community, the likely effect on prices of other imports, its production capacity and stocks were examined. Information relating to the import prices from exporters other than the cooperating exporter was determined on the basis of Eurostat.

### 3.3.3.2. Relationship between export prices to third countries and export prices to the Community

- (69) Export prices from the PRC to the USA, one of the major export markets of the Chinese exporting producers and a market in which no measures are in force, were, on average, significantly below the export prices to the Community. Since, as concluded in recital (54), export sales from the PRC to the Community were made at dumped levels, this indicated that exports to the USA and other third country markets were likely dumped at even higher levels than the export sales to the Community. It was also considered that the export price level to the USA and to other third countries can be seen as an indicator as to the likely price level for export sales to the Community should measures be repealed. On this basis, and given the low price levels to third country markets it was concluded that there is a considerable margin to reduce export prices to the Community, which as a consequence would also increase the dumping.

### 3.3.3.3. Relationship between export prices to third countries and the price level in the Community

- (70) It was also found that the price level of sales by the Community industry in the Community was on average considerably higher than the export price level of the cooperating Chinese exporter's prices to other third country markets. As indicated already in recital (64) for India, the fact that the generally prevailing price level for the product concerned in the Community market makes the Community market a very attractive one, applies also for the PRC. The higher price level on the Community market is an incentive for increasing exports to the Community.

### 3.3.3.4. Prices of non-cooperating exporters

- (71) Eurostat prices of all imports of the product concerned, excluding those of the cooperating exporter, are below those of the cooperating exporter. Based on the normal

value calculated for the analogue country, these imports would be dumped at significantly high levels. In the absence of measures, there is no reason to consider that these imports would not be made at similar dumped prices but in higher quantities.

### 3.3.3.5. Unused capacity and stocks

- (72) The cooperating Chinese producer, despite slightly increasing capacity utilisation over the last years, has still significant spare capacities representing almost four times the export quantity to the Community during the IP. According to the review request, spare capacities of all exporting producers in the PRC were estimated at 270 000 tonnes. Thus, the capacity to increase export quantities to the Community exists, in particular, because there are no indications that third country markets or the domestic market could absorb any additional production. In this regard it should be noted that it is very unlikely that the domestic market in PRC, due to the presence of a considerable number of competing producers would be able absorb any spare capacities.

### 3.3.3.6. Circumvention practices

- (73) It is noted that the measures in force on imports of the product concerned from the PRC were found to have been circumvented by means of imports transhipped via Morocco. This indicates the clear interest in the Community market of sellers of Chinese SWR and their inability to compete on the Community market at non-dumped levels. This was considered as a further indication that Chinese exports would likely increase in volume and enter the Community market at dumped prices should measures be repealed.

### 3.3.4. South Africa

#### 3.3.4.1. Preliminary remarks

- (74) There is only one known producer in South Africa. This producer partially cooperated in this review investigation.
- (75) Imports from South Africa dropped considerably since the imposition of definitive measures. The market share of imports from South Africa was below the *de minimis* threshold (1 %) during the IP. Thus, total exports from South Africa during the IP amounted to 278 tonnes of which major quantities were shipped to a bond store in Rotterdam, whereby these goods were eventually re-exported and not customs cleared in the EU. Only minor quantities of the product concerned were released for free circulation in the EU.

(76) As mentioned in recitals (57) and (60), recourse was made to facts available, in particular as regards the situation of the South African domestic market. Since little information is known about the South African industry, the following conclusions rely on the information contained in the applicant's review request and publicly available export trade statistics.

(77) In order to establish whether dumping would recur should measures be repealed information provided by the cooperating exporter relating to export prices to the Community and to third countries, unused capacity and stocks were examined.

#### 3.3.4.2. Relationship between export prices to third countries and prices in the exporting country

(78) As already explained in recital (76), no information regarding domestic prices was provided. Therefore, the information on domestic prices, as contained in the request, was used. As to the prices in export markets other than the Community, five major export destinations were analysed. In all instances, the export prices to third countries were below domestic prices. Assuming that these export prices will serve as a bottom line which the exporter may accept when coming back to the Community market, it is clear that these exports would likely continue to be at dumped prices.

#### 3.3.4.3. Relationship between export prices to third countries and the export price level to the Community

(79) An examination of the average export sales prices to the five major export markets other than the Community showed that these sales were made at prices significantly lower than export prices to the Community. As in the case of India, this is at least partly due to the fact that, during the IP, a minimum price undertaking was in force which required the exporting producer concerned to respect a certain price level for exports into the Community. All prices were found to be slightly higher than the undertaking level.

(80) Therefore, it was considered that the export price level to these five export markets outside the Community can be seen as an indicator as to the likely price level for export sales to the Community should measures be repealed. On this basis, it was concluded that there is a considerable margin for the sole South African exporter to reduce

export prices to the Community, which as a consequence would also increase the level of dumping.

#### 3.3.4.4. Relationship between export prices to third countries and the price level in the Community

(81) It was furthermore found that prices on the Community market were on average substantially higher than the export prices to the five major exporting countries outside the Community. As indicated already in recital (64) for India and recital (70) for the PRC, this makes the Community market a very attractive one for the future should measures be repealed. In this regard, it was considered that the higher price level on the Community market is an incentive for increasing exports to the Community market.

#### 3.3.4.5. Unused capacity and stocks

(82) Since the imposition of the definitive duty, the partly cooperating exporting producer accumulated significant stocks and spare capacities, the latter of over more than 40 % of the level of installed capacity. According to the request, spare capacities were estimated at 23 000 tonnes to 25 000 tonnes. Thus, the capacity to increase export quantities to the Community exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.

#### 3.3.5. Ukraine

##### 3.3.5.1. Preliminary remarks

(83) Given the absence of any cooperation from the two known Ukrainian exporting producers, findings were based on facts available, in accordance with Article 18 of the basic Regulation. Since little information is known about the Ukrainian industry, the following conclusions rely on the information contained in the applicant's review request and publicly available trade statistics. It is noted that there are no other known producers in the Ukraine and that the following considerations regarding in particular production capacities, relate to the two known exporting producers.

(84) In order to establish whether dumping would be likely to recur should measures be repealed, the export prices to third countries, unused capacity and stocks were examined.

### 3.3.5.2. Relation between export prices to third countries and the export price level to the Community

- (85) In the absence of any other more reliable information, the information provided in the request with regard to exports to Russia and the USA, which was based on publicly available statistics, has been taken into account. An analysis of the figures available revealed that the average export prices to these countries were significantly below the average export prices to the Community. As already explained above in the case for India, the PRC and South Africa, export prices to other third countries were considered as an indicator as to the likely price level for export sales to the Community should measures be repealed. On this basis it was concluded that there is a considerable margin to reduce export prices to the Community, and very likely to dumped levels.

### 3.3.5.3. Unused capacity

- (86) According to the evidence available in the request, the estimated production capacity in the Ukraine amounts to 100 000 tonnes, of which only 50 % is used for actual production. A spare capacity of 50 000 tonnes would represent the highest spare capacity of all countries concerned and amount to more than one third of the Community consumption. Therefore, the capacity to increase export quantities to the Community is, in the case of Ukraine, by far the most imminent from all countries concerned, in particular because there are no indications that third country markets or the domestic market could absorb any additional production.

### 3.3.5.4. Violation of an undertaking and circumvention of the measures

- (87) In 1999, in the framework of the original investigation, the Commission accepted an undertaking offered by one of the Ukrainian exporters. Subsequently, the Commission found a breach of this undertaking in two respects. Firstly, the Ukrainian exporter concerned provided misleading declarations of origin and secondly, the exporter issued undertaking invoices for product types not falling within the scope of the undertaking, thereby unduly benefiting from the exemption of the payment of the anti-dumping duties. Consequently, by Regulation (EC) No 1678/2003, the Commission withdrew its acceptance of the undertaking.
- (88) Moreover, following the imposition of the existing measures on imports of SWR from the Ukraine, it was found that these measures were being circumvented by

imports of SWR from Moldova. As mentioned in recital (3), the existing measures were accordingly extended to imports of SWR consigned from Moldova.

- (89) Although the violation of an undertaking and circumvention practices in the past do not *per se* justify the conclusion of dumping practices in the future, it was considered that in this case such practices were additional factors indicating the exporters' interest in entering the Community market and their inability to compete on the Community market at non-dumped levels.

## 3.4. Conclusion

- (90) Continuation of significant dumping was found in all cases, albeit import volumes for South Africa and the Ukraine were at *de minimis* levels.
- (91) For the examination as to whether it would be likely that dumping would continue or recur should the anti-dumping measures be repealed, spare capacities and unused stocks as well as pricing and export strategies in different markets were analysed. This examination revealed that there were important spare capacities and accumulated stocks in all exporting countries concerned. It was further found that export prices to other third countries were generally of a significant lower level than those to the Community market and that therefore the Community remained an attractive market for the exporting producers of all countries concerned. It was therefore concluded that exports from the countries concerned to third countries would very likely be redirected to the Community should the access to the Community market be without anti-dumping measures. The available spare production capacities would also likely lead to increased imports from all countries concerned.
- (92) An analysis of the pricing strategies of all countries concerned revealed furthermore, that these exports would most likely be made at dumped prices. In the case of the PRC and Ukraine, these conclusions were reinforced by the fact that the existing measures were found to have been circumvented by imports via other countries which indicated that exporting countries were not able to compete in the Community market at fair prices.

- (93) Considering the above, it was established for all countries concerned that dumping would likely continue or recur in significant quantities should measures be allowed to expire.

— Trefileurope (France),

— WADRA GmbH (Germany),

— Westfälische Drahtindustrie GmbH (Germany).

As indicated under recital (12), a sample consisting of five companies was selected.

#### 4. DEFINITION OF THE COMMUNITY INDUSTRY

##### 4.1. Community production

- (94) Within the Community, the product concerned is manufactured by 30 producers which constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

- (96) These companies fully cooperated in the investigation. The five sampled Community producers accounted for 30 % of the total Community production during the IP, whilst the above 17 Community producers accounted for 68 % of the total Community production during the IP.

##### 4.2. Community industry

- (95) It should be noted that in the original investigation the Community industry consisted of 20 producers. Nine of these companies did not cooperate in the review investigation. Conversely, six companies which were not part of the Community industry in the original investigation, both supported the review request and agreed to cooperate in the review investigation. Accordingly, the following 17 producers supported the complaint and agreed to cooperate:

— Bridon International Ltd (United Kingdom),

— BTS Drahtseile GmbH (Germany),

— Cables y Alambres especiales, SA (Spain),

— CASAR Drahtseilwerk Saar GmbH (Germany),

— D. Koronakis SA (Greece),

— Drahtseilwerk GmbH (Germany),

— Drahtseilwerk Hemer GmbH and Co. KG (Germany),

— Drahtseilerei Gustav Kocks GmbH (Germany),

— Drumet SA (Poland),

— Hamburger Drahtseilerei A. Steppuhn GmbH (Germany),

— Iscar Funi Metalliche Srl (Italy),

— Manuel Rodrigues de Oliveira Sa & Filhos, SA (Portugal),

— Metalcavi wire ropes Srl (Italy),

— Metal Press Srl (Italy),

- (97) It is therefore considered that the above 17 Community producers account for a major proportion of the total Community production of the like product. The above 17 Community producers are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and are hereinafter referred to as the 'Community industry'.

#### 5. SITUATION ON THE COMMUNITY MARKET

##### 5.1. Consumption in the Community market

- (98) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales volumes of the other Community producers on the Community market, and Eurostat data for all EU imports.

- (99) Between 2001 and the IP, Community consumption decreased by 9 %. Specifically, it decreased by 3 % between 2001 and 2002, and by a further 6 % between 2002 and 2003. It then remained broadly stable at this level in the IP.

	2001	2002	2003	IP
Total EC consumption (tonnes)	194 547	187 845	176 438	177 825
Index (2001=100)	100	97	91	91

## 5.2. Imports from the countries concerned

### 5.2.1. Cumulation

(100) In the original investigation imports of SWR originating in the PRC, India, South Africa and Ukraine were assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It was examined whether a cumulative assessment was also appropriate in the current investigation.

(101) In this respect, it was found that the margin of dumping established in relation to the imports from each country was above the *de minimis* level. As regards the quantities exported by each of the four countries concerned, as stated in recitals (22) to (24), it was considered that, if the measures were repealed, imports from each of the countries concerned would be likely to increase to levels significantly above those reached in the IP and certainly exceed the negligibility threshold.

(102) As regards the conditions of competition, the investigation has found that SWR imported from the countries concerned, considered on a type-by-type basis, were alike in all their essential physical and technical characteristics. Furthermore, these types of SWR were interchangeable with other types imported from the countries concerned and those produced in the Community and they were marketed in the Community during the same period, through comparable sales channels under similar commercial conditions. The imported SWR were therefore considered to compete with each other and with the SWR produced in the Community.

(103) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met. The imports from the four countries concerned were therefore examined cumulatively.

### 5.2.2. Volume, market share and prices of imports

(104) With respect to the four countries concerned, the import volumes, market shares and average prices developed as set out below. The following price trends are based on Eurostat import prices and include anti-dumping duties and estimated post-importation costs.

(105) The volume of imports originating in the four countries concerned first increased and reached a level of 9 153 tonnes in 2002, corresponding to a market share of 4,9 %, before declining to 7 784 tonnes during the IP, corresponding to a market share of 4,4 %. During the IP of the original investigation, the cumulated market share of the four countries concerned was 14,3 %.

(106) Prices of imports from the four countries concerned decreased on average from 1 364 EUR/tonne in 2001 to 1 296 EUR/tonne in the IP.

(107) The investigation showed that imports from the countries concerned were undercutting those of the Community industry by 36 to 68 % in the IP.

	2001	2002	2003	IP
Volume of imports from the four countries concerned (tonnes)	7 951	9 153	7 168	7 784
Market share of imports from the four countries concerned	4,1 %	4,9 %	4,1 %	4,4 %
Prices of imports from the four countries concerned (EUR/tonne)	1 364	1 450	1 331	1 296

## 5.3. Imports found to be circumventing

(108) As mentioned in recital (3), it was further found that circumvention of the original measures concerning Ukraine and the PRC took place respectively via Moldova and Morocco. Consequently, the anti-dumping duty imposed on imports originating in the PRC was extended to imports of the same steel ropes and cables consigned from Morocco, with the exception of those produced by a genuine Moroccan producer. Similarly, the definitive anti-dumping duty imposed on imports originating in the Ukraine was extended to imports of the same steel ropes and cables consigned from Moldova.

	2001	2002	2003	IP
Volume of imports from Moldova (tonnes)	1 054	1 816	0	0
Market share of imports from Moldova	0,5 %	1,0 %	0,0 %	0,0 %
Prices of imports from Moldova (EUR/tonne)	899	843	0	0
Index (2001=100)	100	94	0	0
Volume of imports from Morocco (tonnes)	231	1 435	2 411	1 904
Market share of imports from Morocco	0,1 %	0,8 %	1,4 %	1,1 %
Prices of imports from Morocco (EUR/tonne)	963	955	1 000	1 009
Index (2001=100)	100	99	104	105

(109) While the volume of imports from Moldova stood at zero in the years before 2000, it rose sharply to 1 816 tonnes in 2002. Subsequently it dropped to zero again, probably as a consequence of the initiation of the aforementioned anti-circumvention investigation in the course of 2003. Imports from Moldova were made at very low prices in 2001 and 2002, i.e. 899 EUR/tonne in 2001 and 843 EUR/tonne in 2002.

(110) During the investigation period of the original investigation, the market share of imports from Morocco was 0 %. The volume of imports from Morocco rose sharply from 231 tonnes in 2001 to 2 411 tonnes in 2003. It declined to 1 904 tonnes during the IP. The above anti-circumvention investigation evidenced that a limited volume of imports from Morocco (around 100 tonnes) was attributed in 2003 to a genuine Moroccan producer. Imports from Morocco were made at very low prices between 2001 and the IP, i.e. around 1 000 EUR/tonne.

#### 5.4. Imports from other countries

##### 5.4.1. The Republic of Korea (South Korea)

(111) On 20 November 2004, the Commission initiated an anti-dumping proceeding concerning imports of the same product originating in the Republic of Korea, further to a complaint lodged by the Community industry showing *prima facie* evidence that such imports are being dumped and are thereby causing material injury to the Community industry.

(112) The evolution of imports from the Republic of Korea is as follows:

	2001	2002	2003	IP
Volume of imports from the Republic of Korea (tonnes)	13 582	16 403	22 400	25 835
Market share of imports from the Republic of Korea	7,0 %	8,7 %	12,7 %	14,5 %
Prices of imports from the Republic of Korea (EUR/tonne)	1 366	1 256	1 187	1 123
Index (2001=100)	100	92	87	82

(113) The volume of imports from the Republic of Korea rose from 13 582 tonnes in 2001, corresponding to a market share of 7 %, to 25 835 tonnes in the IP, corresponding

to a market share of 14,5 %. Average prices of imports from the Republic of Korea declined by 18 % between 2001 and the IP, i.e. from 1 366 EUR/tonne to 1 123 EUR/tonne. As no dumping was evidenced as regards imports from the Republic of Korea, this proceeding was terminated (see recital (4)).

##### 5.4.2. Mexico

(114) As indicated in recital (7), the measures imposed on imports originating in Mexico by the original definitive Regulation expired on 18 August 2004. The volume of imports originating in Mexico remained very limited since 2001 through the IP. It was nil in 2001 and during the IP, and reached an annual level ranging from around 700 to 400 tonnes in 2002 and 2003, corresponding to a market share of respectively 0,4 % and 0,2 %.

(115) Prices of imports from Mexico reached around 2 400 EUR/tonne in 2002 and 2003.

	2001	2002	2003	IP
Volume of imports from Mexico (tonnes)	0	669	433	0
Market share of imports from Mexico	0,0 %	0,4 %	0,2 %	0,0 %
Prices of imports from Mexico (EUR/tonne)	n/a	2 358	2 434	n/a
Index (2001=100)	n/a	100	103	n/a

##### 5.4.3. Other countries concerned by anti-dumping measures

(116) By Regulation (EC) No 1601/2001<sup>(1)</sup>, the Council imposed anti-dumping measures on imports of similar products originating, *inter alia*, in Russia, Thailand and Turkey.

(117) The rate of the duty applicable to imports from Russia ranged between 36,1 % and 50,7 %, except for imports from one Russian exporter from whom a price undertaking was accepted. The volume of imports from Russia declined from 3 630 tonnes in 2001, corresponding to a market share of 1,9 %, to 2 101 tonnes in the IP, corresponding to a market share of 1,2 %. Average prices of imports from Russia remained relatively stable between 2001 and the IP, at around 1 000 EUR/tonne.

<sup>(1)</sup> OJ L 211, 4.8.2001, p. 1. Regulation as last amended by Regulation (EC) No 564/2005 (OJ L 97, 15.4.2005, p. 1).

	2001	2002	2003	IP
Volume of imports from Russia (tonnes)	3 630	2 557	2 198	2 101
Market share of imports from Russia	1,9 %	1,4 %	1,2 %	1,2 %
Prices of imports from Russia (EUR/tonne)	1 038	997	980	1 046
<i>Index (2001=100)</i>	100	96	94	101

- (118) The rate of the duty applicable to imports from Thailand ranged between 24,8 % and 42,8 %, except for imports from one exporter from whom a price undertaking was accepted. The volume of imports from Thailand declined from 1 039 tonnes in 2001, corresponding to a market share of 0,5 %, to 277 tonnes in the IP, corresponding to a market share of 0,2 %. Average prices of imports from Thailand increased from around 1 335 EUR/tonne in 2001 to 1 722 EUR/tonne in the IP.

	2001	2002	2003	IP
Volume of imports from Thailand (tonnes)	1 039	1 002	368	277
Market share of imports from Thailand	0,5 %	0,5 %	0,2 %	0,2 %
Prices of imports from Thailand (EUR/tonne)	1 335	1 433	1 593	1 722
<i>Index (2001=100)</i>	100	107	119	129

- (119) The rate of the duty applicable to imports from Turkey during the period considered ranged between 17,8 % and 31 %, except for imports from two Turkish exporters from whom a price undertaking was accepted in 2001 and subsequently withdrawn in 2003. The volume of imports from Turkey declined from 4 354 tonnes in 2001, corresponding to a market share of 2,2 %, to 1 457 tonnes in the IP, corresponding to a market share of 0,8 %. Average prices of imports from Turkey decreased from 1 448 EUR/tonne in 2001 to 1 302 EUR/tonne in the IP.

	2001	2002	2003	IP
Volume of imports from Turkey (tonnes)	4 354	4 448	2 248	1 457
Market share of imports from Turkey	2,2 %	2,4 %	1,3 %	0,8 %
Prices of imports from Turkey (EUR/tonne)	1 448	1 414	1 376	1 302
<i>Index (2001=100)</i>	100	98	95	90

#### 5.4.4. Other third countries not mentioned above

- (120) The volume of imports from other third countries not mentioned above declined from around 23 000 tonnes in 2001, corresponding to a market share of 12 %, to around 19 000 tonnes in the IP, corresponding to a market share of 10,5 %. Average prices of imports from other third countries not mentioned above increased from around 1 500 EUR/tonne in 2001 to around 1 900 EUR/tonne in 2003, before declining again to around 1 500 EUR/tonne in the IP.

	2001	2002	2003	IP
Volume of imports from countries not mentioned above (tonnes)	23 321	14 924	17 227	18 741
Market share of imports from countries not mentioned above	12,0 %	7,9 %	9,8 %	10,5 %
Prices of imports from countries not mentioned above (EUR/tonne)	1 472	1 749	1 895	1 497
<i>Index (2001=100)</i>	100	119	129	102

## 6. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

- (121) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

### 6.1. Preliminary remarks

- (122) In view of the fact that sampling had been used with regard to the Community industry, the injury has been assessed both on the basis of information collected at the level of the entire Community industry (C.I. in the appended tables) and on the basis of information collected at the level of the sampled Community producers (S.P. in the appended tables).

- (123) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, capacity, productivity, stocks, sales, market share, growth and employment) are analysed for the Community industry as a whole, while those injury indicators relating to the performance of individual companies, i.e. prices, costs of production, profitability, wages, investments, return on investment, cash flow, ability to raise capital are examined on the basis of the information collected at the level of the sampled Community producers.

## 6.2. Data relating to the Community industry as a whole

### (a) Production

- (124) The Community industry's production decreased by 10 % between 2001 and the IP, i.e. from a level of around 125 000 tonnes in 2001 to a level of around 112 000 tonnes in the IP. Specifically, production increased by 2 % in 2002, before declining by 5 percentage points in 2003 and by a further 7 percentage points in the IP.

	2001	2002	2003	IP
C.I. production (tonnes)	124 549	127 118	121 065	111 765
<i>Index (2001=100)</i>	100	102	97	90

### (b) Capacity and capacity utilisation rates

- (125) Production capacity increased marginally (by 2 %) between 2001 and the IP. As production declined, while at the same time capacity rose slightly, the resulting capacity utilisation declined, from a level of 67 % in 2001 to a level of 59 % in the IP.

	2001	2002	2003	IP
C.I. production capacity (tonnes)	184 690	185 360	188 430	189 150
<i>Index (2001=100)</i>	100	100	102	102
C.I. capacity utilisation	67 %	69 %	64 %	59 %
<i>Index (2001=100)</i>	100	102	95	88

### (c) Stocks

- (126) The level of closing stocks of the Community industry decreased progressively throughout the period considered. In the IP, the level of stocks was 14 % lower than in 2001.

	2001	2002	2003	IP
C.I. closing stock (tonnes)	31 459	30 222	29 336	26 911
<i>Index (2001=100)</i>	100	96	93	86

### (d) Sales volume

- (127) The sales by the Community industry on the Community market decreased by 10 % between 2001 and the IP. This development is in line with the evolution of the Community market, which declined by 9 % between 2001 and the IP.

	2001	2002	2003	IP
C.I. EC sales volume to unrelated customers (tonnes)	80 019	79 089	73 636	72 072
<i>Index (2001=100)</i>	100	99	92	90

### (e) Market share

- (128) The market share held by the Community industry decreased by 1 percentage point between 2001 and the IP. Specifically, it increased by 0,5 percentage points in 2002, declined by 0,3 percentage points in 2003 and finally declined by 1,2 percentage points in the IP.

	2001	2002	2003	IP
Market share of Community industry	42,8 %	43,3 %	43,0 %	41,8 %
<i>Index (2001=100)</i>	100	101	101	98
Market share of the four countries concerned	4,1 %	4,9 %	4,1 %	4,4 %
<i>Index (2001=100)</i>	100	119	99	107

### (f) Growth

- (129) Between 2001 and the IP, when the Community consumption decreased by 9 %, the sales volume of the Community industry decreased by 10 %. The Community industry thus lost a part of its market share, whereas the imports concerned gained 0,3 percentage points during the same period.

### (g) Employment

- (130) The level of employment of the Community industry declined by 4 % between 2001 and the IP.

	2001	2002	2003	IP
C.I. employment product concerned	2 049	2 028	1 975	1 975
<i>Index (2001=100)</i>	100	99	96	96

(h) *Productivity*

- (131) Productivity of the Community industry's workforce, measured as output per person employed per year, remained fairly stable between 2001 and 2003. In the IP, as the production volume dropped whilst employment remained flat, productivity dropped by 8 %.

	2001	2002	2003	IP
C.I. productivity (tonnes per employee)	61	63	61	57
<i>Index (2001=100)</i>	100	103	101	93

(i) *Magnitude of dumping margin*

- (132) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible, especially in transparent and thus highly price sensitive markets like the one of the product concerned.

(j) *Recovery from the effects of past dumping*

- (133) While the indicators examined above and below show some improvement in the economic and financial situation of the Community industry, further to the imposition of anti-dumping measures in 1999, they also evidence that the Community is still in a fragile and vulnerable situation.

### 6.3. Data relating to the sampled Community producers

(a) *Sales prices and factors affecting domestic prices*

- (134) Unit sales prices of the Community industry remained relatively stable between 2001 and the IP, and experienced a very limited increase towards the end of the period considered. This price development is broadly in line with that of the principal raw material, which also showed a rise at the end of the period considered.

	2001	2002	2003	IP
S.P. unit price EC market (EUR/tonne)	2 195	2 171	2 224	2 227
<i>Index (2001=100)</i>	100	99	101	101

(b) *Wages*

- (135) Between 2001 and the IP, the average wage per employee increased by 5 %, a moderate figure in comparison with the rate of increase of the average nominal unit labour costs (6 %) observed during the same period in the Community economy at large.

	2001	2002	2003	IP
S.P. annual labour cost per employee (1 000 EUR)	36,6	37,6	38,2	38,5
<i>Index (2001=100)</i>	100	103	104	105

(c) *Investments*

- (136) The annual flow of investments in the product concerned made by the five sampled producers stayed relatively stable at around EUR 4 million per annum. The big increase observed in 2003 corresponds to a large extent to an exceptional purchase of equipment made by one sampled company.

	2001	2002	2003	IP
S.P. net investments (1 000 EUR)	4 284	3 074	8 393	4 914
<i>Index (2001=100)</i>	100	72	196	115

(d) *Profitability and return on investments*

- (137) Profitability of the sampled producers, while showing a gradual improvement over the period considered, remained negative between 2001 (– 4,2 %) and the IP (– 0,3 %). The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the above profitability trend over the whole period considered.

	2001	2002	2003	IP
S.P. profitability of EC sales to unrelated (% of net sales)	- 4,2 %	- 1,7 %	- 1,5 %	- 0,3 %
S.P. ROI (profit in % of net book value of investments)	- 13,9 %	- 6,5 %	- 4,5 %	- 1,0 %

(e) *Cash flow and ability to raise capital*

- (138) The cash-flow situation improved between 2001 and the IP, as the above limited losses were more than offset by other non-cash items, such as assets depreciation and inventory movements.

	2001	2002	2003	IP
S.P. cash flow (EUR 1 000)	- 6 322	10 670	2 124	4 485

- (139) The investigation has shown that capital requirements of several sampled Community producers have been adversely affected by their difficult financial situation. Although several of these companies are part of large steel companies, capital requirements are not always met to the desired level, as financial resources are generally allocated within these groups to the most profitable entities.

#### 6.4. Conclusion

- (140) Between 2001 and the IP, the following indicators developed positively: production capacity of the Community industry increased and closing stocks decreased. Unit sales prices of the Community industry remained flat between 2001 and the IP, profitability improved to an almost break-even situation in the IP, while return on investment and cash-flow improved as well. Wages developed moderately and the Community industry continued to invest at a stable pace.
- (141) Conversely, the following indicators developed negatively: production and capacity utilisation declined, sales volumes decreased (in line though with the development of the market), employment and productivity dropped. The market share of the Community industry slightly decreased, although the loss was clearly less pronounced than in the period preceding the adoption of anti-dumping measures when a loss of 9 percentage points of market share had been observed.

- (142) Overall, the situation of the Community industry is characterised by mixed developments: while some indicators show positive trends, a number of others show a negative one. If one compares the above trends with the ones described in the Regulations imposing provisional and definitive measures, it is clear that the introduction of the anti-dumping measures in 1999 concerning imports from India, the PRC, Ukraine and South Africa had a positive impact on the economic situation of the Community industry. Had the measures not been circumvented by imports from Moldova and Morocco, the situation might have been even more favourable. In addition, further to the imposition of anti-dumping measures on imports from Russia, Thailand and Turkey, the respective market shares of these countries declined (see recitals (116) to (119)), which certainly alleviated the pressure on prices of the Community industry. Nevertheless, it should be stressed that even indicators showing positive developments, such as in particular profitability and return on investment, are still far from reaching levels that could be expected if the Community industry had fully recovered from the injury caused.

- (143) It is therefore concluded that the situation of the Community industry has improved, as compared to the period preceding the imposition of measures, but is still fragile.

#### 7. LIKELIHOOD OF RECURRENCE OF INJURY

- (144) As concluded under recital (91), the producers in the countries concerned have the potential to raise and/or redirect their export volumes to the Community market. The investigation showed that, on the basis of comparable product types, the cooperating exporting producers sold the product concerned at a significantly lower price than the Community industry's (58-68 % for the PRC, 47-55 % for India). As to Ukraine and South Africa, in the absence of cooperation and due to the variety of product types and thus import prices, no price comparison on a type-by-type basis could be carried out. However, the available facts indicate that both the average Ukrainian import price and the average South African import price (both without anti-dumping duty) are significantly lower than the domestic prices of the Community industry, i.e. respectively by 65 % and 25 %. These low prices would most likely continue to be charged by the countries concerned, also in order to regain their lost market shares. Such a price behaviour, coupled with the ability of the exporters in the countries concerned to deliver significant quantities of the product concerned on the Community market, would in all likelihood have the effect of reinforcing the price-depressive trend on the market, with an expected negative impact on the economic situation of the Community industry.

(145) As shown above, although the situation of the Community industry has improved as compared to the one prevailing before the imposition of existing anti-dumping measures, it remains vulnerable and fragile. It is likely that if the Community industry were exposed to increased volumes of imports from the countries concerned at dumped prices it would result in a deterioration of its financial situation as found in the original investigation. On this basis, it is therefore concluded, that the repeal of the measures would in all likelihood result in the recurrence of injury to the Community industry.

## 8. COMMUNITY INTEREST

### 8.1. Introduction

(146) According to Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved.

(147) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(148) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

### 8.2. Interest of the Community industry

(149) The Community industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of anti-dumping measures in 1999. In particular, the fact that the Community industry virtually stopped its loss of market share in the few years before the IP contrasts sharply with the situation preceding the imposition of the measures. Also, the Community industry improved its profit situation between 2001 and the IP. It is further recalled that circumvention had been found by imports from Moldova and Morocco. Had these developments not

occurred, the situation of the Community industry would have been even more favourable.

(150) It can reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by regaining market share and improving its profitability. Should the measures not be maintained, it is likely that the Community industry will start again to suffer injury from increased imports at dumped prices from the countries concerned and that its currently fragile financial situation will deteriorate further.

### 8.3. Interest of importers

(151) It is recalled that in the original investigation it was found that the impact of the imposition of measures would not be significant. As indicated above, no importer fully cooperated in this investigation. Therefore, it can accordingly be concluded that the maintenance of the measures will not have a significant negative effect on importers or traders.

### 8.4. Interest of users

(152) SWR are used in a wide variety of applications and therefore a large number of user industries might be concerned. The following list of user industries is only indicative: fishing, maritime/shipping, oil and gas industries, mining, forestry, aerial transport, civil engineering, construction, elevator. In examining the possible effect of the imposition of measures on users, it was concluded in the original investigation that given the negligible incidence of the cost of SWR on the user industries, any increase in these costs was unlikely to have a significant effect on the particular user industry. The fact that no user provided any information contradicting the above finding in the frame of the current review investigation tends to confirm that: (i) SWR represent a very small part of total production costs for these user industries, (ii) the measures currently in force did not have any substantial negative effect on their economic situation, and (iii) the continuation of measures would not adversely affect the financial interests of the user industries.

### 8.5. Interest of suppliers

(153) The original investigation concluded that suppliers of the Community industry would benefit from the imposition of measures. In the absence of any information to the contrary in the framework of this review, it is considered that the maintenance of the current measures would continue to have a positive impact on the suppliers.

## 8.6. Conclusion on Community interest

- (154) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

## 9. ANTI-DUMPING MEASURES

- (155) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. No comments were received which were of a nature to change the above conclusions.
- (156) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of SWR, originating in India, the PRC, Ukraine and South Africa should be maintained. It is recalled that these measures consist of *ad valorem* duties, with the exception of the imports of the product concerned which are manufactured and sold for export to the Community by one Indian company and one South African company from which undertakings have been accepted.
- (157) As outlined under recital (3), the anti-dumping duties in force on imports of the product concerned from Ukraine and the PRC were extended to cover, in addition, imports of SWR consigned from Moldova and Morocco respectively, whether declared as originating in Moldova or Morocco or not. The anti-dumping duty to be maintained on imports of the product concerned, as set out in recital (156), should continue to be extended to imports of SWR consigned from Moldova and Morocco, whether declared as originating in Moldova or Morocco or not. The Moroccan exporting producer who was exempted from the measures as extended by Regulation (EC) No 1886/2004 should also be exempted from the measures as imposed by this Regulation,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, falling within CN codes ex 7312 10 82 (TARIC code 7312 10 82 19), ex 7312 10 84 (TARIC code 7312 10 84 19), ex 7312 10 86 (TARIC code 7312 10 86 19), ex 7312 10 88 (TARIC code 7312 10 88 19) and ex 7312 10 99 (TARIC code

7312 10 99 19) and originating in India, the People's Republic of China, Ukraine and South Africa.

2. The rate of the definitive anti-dumping duty applicable to the CIF net, free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below shall be as follows:

Country	Company	Rate of duty (%)	TARIC additional code
India	Usha Martin Limited (formerly Usha Martin Industries & Usha Beltron Ltd) 2A, Shakespeare Sarani Calcutta — 700 071, West Bengal, India	23,8	8613
	All other companies	30,8	8900
People's Republic of China	All companies	60,4	—
Ukraine	All companies	51,8	—
South Africa	All companies	38,6	8900

3. The definitive anti-dumping duty applicable to imports from Ukraine, as set out in paragraph 2, is hereby extended to imports of the same steel ropes and cables consigned from Moldova, whether declared as originating in Moldova or not (TARIC codes 7312 10 82 11, 7312 10 84 11, 7312 10 86 11, 7312 10 88 11, 7312 10 99 11 respectively).

4. The definitive anti-dumping duty applicable to imports from the People's Republic of China, as set out in paragraph 2, is hereby extended to imports of the same steel ropes and cables consigned from Morocco, whether declared as originating in Morocco or not (TARIC codes 7312 10 82 12, 7312 10 84 12, 7312 10 86 12, 7312 10 88 12, 7312 10 99 12 respectively) with the exception of those produced by Remer Maroc SARL, Zone Industrielle, Tranche 2, Lot 10, Settat, Morocco (TARIC additional code A567).

5. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2.

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

*Article 2*

1. Imports declared for release into free circulation under the following TARIC additional codes which are produced and directly exported (i.e. shipped and invoiced) by the company below to a company in the Community acting as an importer shall be exempt from the anti-dumping duty imposed by Article 1 provided that such imports are imported in conformity with paragraph 2.

Country	Company	TARIC additional code
India	Usha Martin Limited (formerly Usha Martin Industries & Usha Beltron Ltd) 2A, Shakespeare Sarani Calcutta — 700 071, West Bengal, India	A024
South Africa	Haggie Lower Germiston Road Jupiter PO Box 40072 Cleveland South Africa	A023

2. Imports referred to in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

- (a) a valid undertaking invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and
- (b) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

*Article 3*

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

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

Done at Brussels, 8 November 2005.

*For the Council*  
*The President*  
G. BROWN

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## ANNEX

The following elements shall be indicated in the undertaking invoice accompanying the company's sales of steel ropes and cables to the Community which are subject to the undertaking.

1. The product reporting code number (PRC) (as established in the undertaking offered by the exporting producer in question), including type, number of strands, number of wires per strand and CN code.
2. The exact description of the goods, including:
  - the 'company product code' (CPC),
  - CN code,
  - the TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in this Regulation),
  - quantity (to be given in kilos),
  - minimum price applicable.
3. The description of the terms of the sale, including:
  - price per kilo,
  - the applicable payment terms,
  - the applicable delivery terms,
  - total discounts and rebates.
4. Name of the importer to which the invoice is issued directly by the company.
5. The name of the official of the company that issued the undertaking invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... [company], and accepted by the European Commission through Decision 1999/572/EC. I declare that the information provided in this invoice is complete and correct.'

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**COUNCIL REGULATION (EC) No 1859/2005**  
**of 14 November 2005**  
**imposing certain restrictive measures in respect of Uzbekistan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2005/792/CFSP of 14 November 2005 concerning restrictive measures against Uzbekistan <sup>(1)</sup>,

Having regard to the proposal from the Commission,

Whereas:

(1) On 23 May 2005, the Council strongly condemned the 'reported excessive, disproportionate and indiscriminate use of force by the Uzbek security forces in Andijan, Eastern Uzbekistan', earlier that month. The Council expressed its deep regret regarding the failure of the Uzbek authorities to respond adequately to the United Nations' call for an independent international inquiry. On 13 June 2005, it urged these authorities to reconsider their position by the end of June 2005.

(2) In view of the absence of any adequate response up to now, Common Position 2005/792/CFSP provides that certain restrictive measures should be imposed for an initial period of one year, during which period the measures will be kept under constant review.

(3) The restrictive measures provided for by Common Position 2005/792/CFSP include, *inter alia*, a ban on the export of equipment which might be used for internal repression and a ban on technical assistance, financing and financial assistance related to military activities, to arms and related materiel, and to equipment which might be used for internal repression.

(4) These measures fall within the scope of the Treaty and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary to implement them

as far as the Community is concerned. For the purposes of this Regulation, the territory of the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.

(5) In due course, the list of equipment which might be used for internal repression should be supplemented by the reference numbers taken from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(2)</sup>.

(6) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.

(7) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the purposes of this Regulation, the following definitions shall apply:

1. 'equipment which might be used for internal repression' means the goods listed in Annex I;
2. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance;
3. 'territory of the Community' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.

<sup>(1)</sup> See page 72 of this Official Journal.

<sup>(2)</sup> OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 493/2005 (OJ L 82, 31.3.2005, p. 1).

*Article 2*

It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in, Uzbekistan;
- (b) to provide, directly or indirectly, technical assistance related to the equipment referred to in point (a), to any natural or legal person, entity or body in, or for use in, Uzbekistan;
- (c) to provide, directly or indirectly, financing or financial assistance related to the equipment referred to in point (a), to any natural or legal person, entity or body in, or for use in, Uzbekistan;
- (d) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in points (a), (b) or (c).

*Article 3*

It shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts of the aforementioned, to any natural or legal person, entity or body in, or for use in, Uzbekistan;
- (b) to provide, directly or indirectly, financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any provision of related technical assistance and other services, to any natural or legal person, entity or body in, or for use in, Uzbekistan;
- (c) to participate, knowingly and intentionally, in activities the object or effect of which is to promote the transactions referred to in points (a) and (b).

*Article 4*

1. By way of derogation from Articles 2 and 3, the competent authorities of the Member States as listed in Annex II, may authorise:

(a) the sale, supply, transfer or export of equipment which might be used for internal repression, provided it is intended

(i) for use by the forces in Uzbekistan of contributors to the International Security Assistance Force (ISAF) and 'Operation Enduring Freedom' (OEF), or

(ii) solely for humanitarian or protective use;

(b) the provision of financing, financial assistance or technical assistance related to equipment referred to in point (a);

(c) the provision of financing, financial assistance and technical assistance related to:

(i) non-lethal military equipment intended solely for humanitarian or protective use, for institution building programmes of the United Nations, the European Union and the Community, or for EU and UN crisis management operations; or

(ii) military equipment for use by the forces in Uzbekistan of contributors to the ISAF and the OEF.

2. No authorisations shall be granted for activities that have already taken place.

*Article 5*

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Uzbekistan by United Nations personnel, personnel of the European Union, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

*Article 6*

The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

*Article 7*

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

*Article 8*

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

The Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

*Article 9*

This Regulation shall apply:

- (a) within the territory of the Community, including its airspace;

- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;

- (c) to any natural person inside or outside the territory of the Community who is a national of a Member State;

- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

- (e) to any legal person, entity or body in respect of any business done, in whole or in part, within the Community.

*Article 10*

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

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

Done at Brussels, 14 November 2005.

*For the Council*

*The President*

T. JOWELL

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## ANNEX I

**List of equipment which might be used for internal repression referred to in Articles 1(1) and 2(a)**

The list below does not comprise articles that have been specially designed or modified for military use.

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefore.
2. Specially designed fingerprint equipment.
3. Power-controlled searchlights.
4. Construction equipment provided with ballistic protection.
5. Hunting knives.
6. Specially designed production equipment to make shotguns.
7. Ammunition hand-loading equipment.
8. Communications intercept devices.
9. Solid-state optical detectors.
10. Image-intensifier tubes.
11. Telescopic weapon sights.
12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; *except*:
  - signal pistols;
  - air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefore.
14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefore.
15. Body armour, other than that manufactured to military standards or specifications, and specially designed components therefore.
16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
17. Water cannon and specially designed or modified components therefor.
18. Vehicles equipped with a water cannon.
19. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings, *except*
    - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
  22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
  23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shock batons, electric shock shields, stun guns and electric shock dart guns) and components therefor specially designed or modified for that purpose.
  24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor, *except*
    - TV or X-ray inspection equipment.
  25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
  26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor, *except*
    - those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflators, electric-surge arresters of fire sprinkler actuators).
  27. Equipment and devices designed for explosive ordnance disposal; *except*:
    - bomb blankets;
    - containers designed for folding objects known to be, or suspected of being improvised explosive devices.
  28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefore.
  29. Linear cutting explosive charges.
  30. Explosives and related substances as follows:
    - amatol,
    - nitrocellulose (containing more than 12,5 % nitrogen),
    - nitroglycol,
    - pentaerythritol tetranitrate (PETN),
    - picryl chloride,
    - tinitorphenylmethylnitramine (tetryl),
    - 2,4,6-trinitrotoluene (TNT).
  31. Software specially designed and technology required for all listed items.
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## ANNEX II

## List of competent authorities referred to in Article 4

## BELGIUM

Federal Authority in charge of sales, purchases and technical assistance by Belgian defence forces and security services, and of financial and technical services in relation to the production or delivery of weapons and military and paramilitary equipment:

Federale Overheidsdienst Economie, KMO, Middenstand en Energie/Service Public Fédéral Economie, PME, Classes Moyennes et Energie

Algemene Directie Economisch Potentieel/Direction générale du Potentiel économique  
Vergunningen/Licences  
K.B.O. Beheerscel/Cellule de gestion B.C.E  
44, Leuvensestraat/rue de Louvain  
B-1000 Brussel/Bruxelles  
Tel.: 0032 (0) 2 548 67 79  
Fax: 0032 (0) 2 548 65 70.

Regional Authorities in charge of other export, import and transit licences for weapons, military and paramilitary equipment:

Brussels Hoofdstedelijk Gewest/Région de Bruxelles — Capitale:  
Directie Externe Betrekkingen/Direction des Relations extérieures  
City Center  
Kruidtuinlaan/Boulevard du Jardin Botanique 20  
B-1035 Brussel/Bruxelles  
Tel.: (32-2) 800 37 59 (Cédric Bellemans)  
Fax: (32-2) 800 38 20  
e-mail: cbellemans@mrbc.irisnet.be

Région wallonne:  
Direction Générale Economie et Emploi  
Direction Gestion des Licences  
Chaussée de Louvain 14  
5000 Namur  
Tel.: 081/649751  
Fax: 081/649760  
e-mail: m.moreels@mrw.wallonie.be

Vlaams Gewest:  
Administratie Buitenlands Beleid  
Cel Wapenexport  
Boudewijnlaan 30  
B-1000 Brussel  
Tel.: (32-2) 553 59 28  
Fax: (32-2) 553 60 37  
e-mail: wapenexport@vlaanderen.be

## CZECH REPUBLIC

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Na Františku 32  
110 15 Praha 1  
Tel.: + 420 2 24 06 27 20  
Tel.: + 420 2 24 22 18 11

Ministerstvo financí  
Finanční analytický útvar  
P.O. BOX 675  
Jindřišská 14  
111 21 Praha 1  
Tel.: + 420 2 5704 4501  
Fax: + 420 2 5704 4502

Ministerstvo zahraničních věcí  
Odbor Společné zahraniční a bezpečnostní politiky EU  
Loretánské nám. 5  
118 00 Praha 1  
Tel.: + 420 2 2418 2987  
Fax: + 420 2 2418 4080

## DENMARK

Justitsministeriet  
Slotsholmsgade 10  
DK-1216 København K  
Tel.: (45) 33 92 33 40  
Fax: (45) 33 93 35 10

Udenrigsministeriet  
Asiatisk Plads 2  
DK-1448 København K  
Tel.: (45) 33 92 00 00  
Fax: (45) 32 54 05 33

Erhvervs- og Byggestyrelsen  
Langelinie Allé 17  
DK-2100 København Ø  
Tel.: (45) 35 46 62 81  
Fax: (45) 35 46 62 03

## GERMANY

For authorisations concerning the provision of financing and financial assistance according to Article 4 paragraph 1(b) and (c):

Deutsche Bundesbank  
Servicezentrum Finanzsanktionen  
Postfach  
D-80281 München  
Tel.: (49) 89 28 89 38 00  
Fax: (49) 89 35 01 63 38 00

For authorisations according to Article 4 paragraph 1(a), according to Article 4 paragraph 1(b) concerning related technical assistance, and according to Article 4 paragraph 1(c) concerning the provision of technical assistance:

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)  
Frankfurter Straße 29—35  
D-65760 Eschborn  
Tel.: (49) 6196/908-0  
Fax: (49) 6196/908-800

#### ESTONIA

Eesti Välisministeerium  
Islandi väljak 1  
15049 Tallinn  
Tel.: + 372 6317 100  
Fax: + 372 6317 199

#### GREECE

Ministry of Economy and Finance  
General Directorate for Policy Planning and Management  
Address Kornarou Str.  
105 63 Athens  
Tel.: + 30 210 3286401-3  
Fax: + 30 210 3286404

Υπουργείο Οικονομίας και Οικονομικών  
Γενική Δ/νση Σχεδιασμού και Διαχείρισης Πολιτικής  
Δ/νση: Κορνάρου 1, Τ.Κ.  
105 63 Αθήνα — Ελλάδα  
Τηλ.: + 30 210 3286401-3  
Φαξ: + 30 210 3286404

#### SPAIN

Ministerio de Industria, Turismo y Comercio  
Secretaría General de Comercio Exterior  
Paseo de la Castellana, 162  
E-28046 Madrid  
Tel.: (34) 913 49 38 60  
Fax: (34) 914 57 28 63

#### FRANCE

Ministère de l'économie, des finances et de l'industrie  
Direction générale des douanes et des droits indirects  
Cellule embargo — Bureau E2  
Tel.: (33) 1 44 74 48 93  
Fax: (33) 1 44 74 48 97

Direction générale du Trésor et de la politique économique  
Service des affaires multilatérales et du développement  
Sous-direction Politique commerciale et investissements  
Service Investissements et propriété intellectuelle  
139, rue du Bercy  
F-75572 Paris Cedex 12  
Tel.: (33) 1 44 87 72 85  
Fax: (33) 1 53 18 96 55

Ministère des affaires étrangères  
Direction générale des affaires politiques et de sécurité  
Direction des Nations Unies et des organisations internationales  
Sous-direction des affaires politiques  
Tel.: (33) 1 43 17 59 68

Fax: (33) 1 43 17 46 91  
Service de la politique étrangère et de sécurité commune  
Tel.: (33) 1 43 17 45 16  
Fax: (33) 1 43 17 45 84

#### IRELAND

Department of Foreign Affairs  
(United Nations Section)  
79-80 Saint Stephen's Green  
Dublin 2  
Tel.: + 353 1 478 0822  
Fax: + 353 1 408 2165

Central Bank and Financial Services Authority of Ireland  
(Financial Markets Department)  
Dame Street  
Dublin 2  
Tel.: + 353 1 671 6666  
Fax: + 353 1 679 8882

Department of Enterprise, Trade and Employment  
(Export Licensing Unit)  
Lower Hatch Street  
Dublin 2  
Tel.: + 353 1 631 2534  
Fax: + 353 1 631 2562

#### ITALY

Ministero degli Affari Esteri  
Piazzale della Farnesina, 1  
I-00194 Roma  
D.G.EU. — Ufficio IV  
Tel.: (39) 06 3691 3645  
Fax: (39) 06 3691 2335  
D.G.C.E. — U.A.M.A.  
Tel.: (39) 06 3691 3605  
Fax: (39) 06 3691 8815

#### CYPRUS

1. Import-Export Licencing Unit  
Trade Service  
Ministry of Commerce, Industry and Tourism  
6, Andrea Araouzou  
1421 Nicosia  
Tel.: 357 22 867100  
Fax: 357 22 316071

2. Supervision of International Banks, Regulations and  
Financial Stability Department  
Central Bank of Cyprus  
80, Kennedy Avenue  
1076 Nicosia  
Tel.: 357 22 714100  
Fax: 357 22 378153

#### LATVIA

Latvijas Republikas Ārlietu ministrija  
Brīvības iela 36  
Rīga LV 1395  
Tel.: (371) 7016 201  
Fax: (371) 7828 121

## LITHUANIA

Ministry of Foreign Affairs  
Security Policy Department  
J. Tumo-Vaizganto 2  
LT-01511 Vilnius  
Tel.: + 370 5 2362516  
Fax: + 370 5 2313090

## LUXEMBOURG

Ministère de l'économie et du commerce extérieur  
Office des licences  
BP 113  
L-2011 Luxembourg  
Tel.: (352) 478 23 70  
Fax: (352) 46 61 38  
e-mail: office.licences@mae.etat.lu

Ministère des affaires étrangères et de l'immigration  
Direction des affaires politiques  
5, rue Notre-Dame  
L-2240 Luxembourg  
Tel.: (352) 478 2421  
Fax: (352) 22 19 89

Ministère des Finances  
3 rue de la Congrégation  
L-1352 Luxembourg  
Fax: 00352 475241

## HUNGARY

Hungarian Trade Licencing Office  
Margit krt. 85.  
H-1024 Budapest  
Hungary  
Postbox: H-1537 Budapest Pf.: 345  
Tel.: + 36-1-336-7327

Magyar Kereskedelmi Engedélyezési Hivatal  
Margit krt. 85.  
H-1024 Budapest  
Magyarország  
Postafiók: 1537 Budapest Pf.: 345  
Tel.: + 36-1-336-7327

## MALTA

Bord ta' Sorveljanza dwar is-Sanzjonijiet  
Ministeru ta' l-Affarijiet Barranin  
Palazzo Parisio  
Triq il-Merkanti  
Valletta CMR 02  
Tel.: + 356 21 24 28 53  
Fax: + 356 21 25 15 20

## NETHERLANDS

Ministerie van Economische Zaken  
Belastingdienst/Douane Noord  
Postbus 40200  
NL-8004 De Zwolle  
Tel.: (31-38) 467 25 41  
Fax: (31-38) 469 52 29

## AUSTRIA

Bundesministerium für Wirtschaft und Arbeit  
Abteilung C2/2 (Ausfuhrkontrolle)  
Stubenring 1  
A-1010 Wien  
Tel.: (+ 43-1) 711 00-0  
Fax: (+ 43-1) 711 00-8386

## POLAND

Ministry of Economic Affairs and Labour  
Department of Export Control  
Plac Trzech Krzyży 3/5  
00-507 Warsaw  
Poland  
Tel.: (+ 48 22) 693 51 71  
Fax: (+ 48 22) 693 40 33

## PORTUGAL

Ministério dos Negócios Estrangeiros  
Direcção-Geral dos Assuntos Multilaterais  
Largo do Rílas  
P-1350-179 Lisboa  
Tel.: (351) 21 394 67 02  
Fax: (351) 21 394 60 73

Ministério das Finanças  
Direcção-Geral dos Assuntos Europeus e Relações Inter-  
nacionais  
Avenida Infante D. Henrique, n.º 1, C 2.º  
P-1100 Lisboa  
Tel.: (351) 21 882 3390/8  
Fax: (351) 21 882 3399

## SLOVENIA

1. Ministrstvo za zunanje zadeve  
Sektor za mednarodne organizacije in človekovo  
varnost  
Prešernova cesta 25  
SI-1001 Ljubljana  
Tel.: 00 386 1 478 2206  
Fax: 00 386 1 478 2249
2. Ministrstvo za notranje zadeve  
Sektor za upravne zadeve prometa, zbiranja in  
združevanja, eksplozivov in orožja  
Bethovnova ulica 3  
SI-1501 Ljubljana  
Tel.: 00 386 1 472 47 59  
Fax: 00 386 1 472 42 53
3. Ministrstvo za gospodarstvo  
Komisija za nadzor izvoza blaga za dvojno rabo  
Kotnikova 5  
SI-1000 Ljubljana  
Tel.: 00 386 1 478 3223  
Fax: 00 386 1 478 3611
4. Ministrstvo za obrambo  
Direktorat za Logistiko  
Kardeljeva ploščad 24  
SI-1000 Ljubljana  
Tel.: 00 386 1 471 20 25  
Fax: 00 386 1 512 11 03

## SLOVAKIA

Ministerstvo hospodárstva Slovenskej republiky  
Mierová 19  
827 15 Bratislava 212  
Tel.: 00421/2/4854 1111  
Fax: 00421/2/4333 7827

Tel.: (+46-8) 406 31 00  
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## UNITED KINGDOM

Sanctions Licensing Unit  
Export Control Organisation  
Department of Trade and Industry  
Kingsgate House  
66-74 Victoria Street  
London SW1E 6SW  
Tel.: (44) 20 7215 4544  
Fax: (44) 20 7215 4539

## FINLAND

Ulkoasiainministeriö/Utrikesministeriet  
PL/PB 176  
FI-00161 Helsinki/Helsingfors  
Tel.: (358-9) 16 00 5  
Fax: (358-9) 16 05 57 07

## EUROPEAN COMMUNITY

Puolustusministeriö/Försvarsministeriet  
Eteläinen Makasiinikatu 8/Södra Magasinsgatan 8  
PL/PB 31  
FI-00131 Helsinki/Helsingfors  
Tel.: (358-9) 16 08 81 28  
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Commission of the European Communities  
Directorate-General for External Relations  
Directorate Common Foreign and Security Policy (CFSP)  
and European Security and Defence Policy (ESDP):  
Commission Coordination and contribution  
Unit A.2: Legal and institutional matters, CFSP Joint  
Actions, Sanctions, Kimberley Process  
CHAR 12/163  
B-1049 Bruxelles/Brussel  
Belgium  
Tel.: (32-2) 296 25 56  
Fax: (32-2) 296 75 63  
e-mail: relex-sanctions@cec.eu.int.

## SWEDEN

Inspektionen för strategiska produkter (ISP)  
Box 70 252  
107 22 Stockholm

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**COMMISSION REGULATION (EC) No 1860/2005****of 15 November 2005****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 16 November 2005.

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

Done at Brussels, 15 November 2005.

*For the Commission*

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and  
Rural Development*

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

## ANNEX

to Commission Regulation of 15 November 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	052	56,5
	096	36,8
	204	33,9
	999	42,4
0707 00 05	052	117,1
	204	23,8
	999	70,5
0709 90 70	052	108,4
	204	70,2
	999	89,3
0805 20 10	204	66,2
	388	85,5
	999	75,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	62,7
	624	88,1
	999	75,4
0805 50 10	052	61,2
	388	71,6
	999	66,4
0806 10 10	052	104,4
	400	228,2
	508	233,6
	624	162,5
	720	99,7
	999	165,7
0808 10 80	388	104,6
	400	106,2
	404	90,4
	512	131,2
	800	155,4
	999	117,6
0808 20 50	052	102,4
	720	56,5
	999	79,5

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

**COMMISSION REGULATION (EC) No 1861/2005****of 15 November 2005****amending Regulation (EC) No 1064/2005 as regards the quantity covered by the standing invitation to tender for the export of common wheat held by the Lithuanian intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 6 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1064/2005 <sup>(2)</sup> opened a standing invitation to tender for the export of 150 000 tonnes of common wheat held by the Lithuanian intervention agency.
- (2) On account of unfavourable weather conditions at the time of the 2005 harvest, the quantity of common wheat of bread-making quality is insufficient in Lithuania to meet domestic demand. Lithuania has therefore informed the Commission of its intervention agency's intention to reduce the quantity put out to tender for export in order to encourage resale on the domestic market. In view of this request, of the quantities available and of the market situation, the maximum quantity covered by the standing invitation to tender opened by Regulation (EC) No 1064/2005 should be adjusted.

- (3) Regulation (EC) No 1064/2005 should therefore be amended.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 2 of Regulation (EC) No 1064/2005 is replaced by the following:

*'Article 2*

The invitation to tender shall cover a maximum of 120 000 tonnes of common wheat for export to third countries with the exception of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Liechtenstein, Romania, Serbia and Montenegro (\*) and Switzerland.

(\*) Including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.'

*Article 2*

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

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

Done at Brussels, 15 November 2005.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

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<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 174, 7.7.2005, p. 42.

**COMMISSION REGULATION (EC) No 1862/2005****of 15 November 2005****opening a standing invitation to tender for the resale on the Community market of common wheat held by the Lithuanian intervention agency for processing into flour in the Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1993 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at a selling price which is not below the price recorded on the market at the place of storage or, failing that, on the nearest market, account being taken of transport costs, for an equivalent quality and for a representative quantity preventing market disturbance.

(2) Due to adverse weather conditions at the time of the 2005 harvest, the forecast quantity of common wheat in Lithuania is insufficient to meet internal demand. Moreover, Lithuania has intervention stocks of common wheat, outlets for which are hard to find and which should therefore be disposed of. Sales on the Community market may therefore be organised by tendering procedure with a view to processing the common wheat into flour.

(3) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender. In addition, provision must be made for an award coefficient for tenders offering the minimum selling price.

(4) To enable checks on the particular destination of the stocks covered by tendering procedures, provision should be made for specific monitoring of the delivery of the common wheat and its processing into flour. To permit this monitoring, application of the procedures laid down by Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention <sup>(3)</sup>, should be made compulsory.

(5) To guarantee proper performance, tenderers should be asked to lodge a security which, in view of the nature of the operations concerned, should be fixed by derogation from Regulation (EEC) No 2131/93, in particular as regards its level, which must be sufficient to guarantee the proper use of the products, and the conditions for its release, which must include proof of processing of the products into flour.

(6) It is also important that the Lithuanian intervention agency's notification to the Commission should maintain the anonymity of the tenderers.

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Lithuanian intervention agency shall open a standing invitation to tender for the sale on the Community market of 32 000 tonnes of common wheat held by it with a view to its processing into flour.

*Article 2*

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1169/2005 (OJ L 188, 20.7.2005, p. 19).

<sup>(3)</sup> OJ L 301, 17.10.1992, p. 17. Regulation as last amended by Regulation (EC) No 1169/2005.

However, notwithstanding:

- (a) Article 13(1) of that Regulation, tenders shall be drawn up by reference to the actual quality of the lot to which they apply;
- (b) the second paragraph of Article 10 of that Regulation, the minimum selling price shall be set at a level which does not disturb the cereals market.

#### Article 3

Tenders shall be valid only if they are accompanied by:

- (a) proof that the tenderer has lodged a security which, notwithstanding the second subparagraph of Article 13(4) of Regulation (EEC) No 2131/93, is set at EUR 10 per tonne;
- (b) the tenderer's written undertaking to use the common wheat for processing within the Community into flour within 60 days of its release from intervention storage and in any event before 31 August 2006 and to lodge a security of EUR 40 per tonne within two working days of the day on which the notice of award of contract is received;
- (c) an undertaking to keep stock records so that checks may be carried out to ensure that the quantities of common wheat awarded have been processed on Community territory into flour.

#### Article 4

1. The first partial invitation to tender shall expire at 15.00 (Brussels time) on 23 November 2005.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Wednesday at 15.00 (Brussels time), with the exception of 28 December 2005, 12 April 2006 and 24 May 2006, i.e. weeks when no invitation to tender shall be made.

The closing date for the submission of tenders for the last partial invitation to tender shall be 28 June 2006 at 15.00 (Brussels time).

2. Tenders must be lodged with the Lithuanian intervention agency at the following address:

The Lithuanian Agricultural and Food Products Market regulation Agency

L. Stuokos-Gucevičiaus Str. 9-12

Vilnius, Lithuania

Tel. (370-5) 268 50 49

Fax (370-5) 268 50 61.

#### Article 5

Within two hours of the expiry of the time-limit for the submission of tenders, the Lithuanian intervention agency shall notify the Commission of tenders received. This notification shall be made by e-mail, using the form in Annex I hereto.

#### Article 6

Under the procedure laid down in Article 25(2) of Regulation (EC) No 1784/2003 the Commission shall set the minimum selling price or decide not to award any quantities. In the event that tenders are submitted for the same lot and for a quantity larger than that available, the Commission may fix this price separately for each lot.

Where tenders are offering the minimum selling price, the Commission may fix an award coefficient for the quantities offered at the same time as it fixes the minimum selling price.

#### Article 7

1. The security referred to in Article 3(a) shall be released in full in respect of quantities for which:

(a) no award is made;

(b) payment of the selling price is made within the period set and the security referred to in Article 3(b) has been lodged.

2. The security referred to in Article 3(b) shall be released in proportion to the quantities of common wheat used for the production of flour in the Community.

#### Article 8

1. Proof that the undertakings referred to in Article 3(b) have been met shall be supplied in accordance with Regulation (EEC) No 3002/92.

2. In addition to the particulars provided for in Regulation (EEC) No 3002/92, box 104 of the control copy T5 shall refer to the undertaking provided for in Article 3(b) and (c) and contain one of the entries shown in Annex II.

*Article 9*

This Regulation shall enter into force on the third 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, 15 November 2005.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

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## ANNEX I

**Standing invitation to tender for the resale of 32 000 tonnes of common wheat held by the Lithuanian intervention agency**Form <sup>(1)</sup>

(Regulation (EC) No 1862/2005)

1	2	3	4
Serial numbers of tenderers	Lot No	Quantity (t)	Tender price EUR/tonne
1			
2			
3			
etc.			

<sup>(1)</sup> To be sent to DG AGRI (D2).

## ANNEX II

## Entries referred to in Article 8(2)

- *in Spanish:* Producto destinado a la transformación prevista en las letras b) y c) del artículo 3 del Reglamento (CE) n° 1862/2005
  - *in Czech:* Produkt určený ke zpracování podle čl. 3 písm. b) a c) nařízení (ES) č. 1862/2005
  - *in Danish:* Produkt til forarbejdning som fastsat i artikel 3, litra b) og c), i forordning (EF) nr. 1862/2005
  - *in German:* Erzeugnis zur Verarbeitung gemäß Artikel 3 Buchstaben b und c der Verordnung (EG) Nr. 1862/2005
  - *in Estonian:* määaruse (EÜ) nr 1862/2005 artikli 3 punktides b ja c viidatud töötlemiseks mõeldud toode
  - *in Greek:* Προϊόν προς μεταποίηση όπως προβλέπεται στο άρθρο 3, στοιχεία β) και γ), του κανονισμού (ΕΚ) αριθ. 1862/2005
  - *in English:* Product intended for processing referred to in Article 3(b) and (c) of Regulation (EC) No 1862/2005
  - *in French:* Produit destiné à la transformation prévue à l'article 3, points b) et c), du règlement (CE) n° 1862/2005
  - *in Italian:* Prodotto destinato alla trasformazione di cui all'articolo 3, lettere b) e c), del regolamento (CE) n. 1862/2005
  - *in Latvian:* Produkts paredzēts tādai pārstrādei, kā noteikts Regulas (EK) Nr. 1862/2005 3. panta b) un c) punktā
  - *in Lithuanian:* produktas, kurio perdirbimas numatytas Reglamento (EB) Nr. 1862/2005 3 straipsnio b ir c punktuose
  - *in Hungarian:* Az 1862/2005/EK rendelet 3. cikkének b) és c) pontja szerinti feldolgozásra szánt termék
  - *in Dutch:* Product bestemd voor de verwerking bedoeld in artikel 3, onder b) en c), van Verordening (EG) nr. 1862/2005
  - *in Polish:* Produkt przeznaczony do przetworzenia przewidzianego w art. 3 lit. b) i c) rozporządzenia (WE) nr 1862/2005
  - *in Portuguese:* Produto para a transformação a que se referem as alíneas b) e c) do artigo 3.º do Regulamento (CE) n.º 1862/2005
  - *in Slovak:* Produkt určený na spracovanie podľa článku 3 písm. b) a c) nariadenia (ES) č. 1862/2005
  - *in Slovenian:* Proizvod za predelavo iz člena 3(b) in (c) Uredbe (ES) št. 1862/2005
  - *in Finnish:* Asetuksen (EY) N:o 1862/2005 3 artiklan b ja c alakohdan mukaiseen jalostukseen tarkoitettu tuote
  - *in Swedish:* Produkt avsedda för bearbetning enligt artikel 3 b och c i förordning (EG) nr 1862/2005
-

**COMMISSION REGULATION (EC) No 1863/2005****of 15 November 2005****opening a standing invitation to tender for the resale on the Community market of common wheat held by the Latvian intervention agency for processing into flour in the Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 6 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2131/93 of 28 July 1993 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at a selling price which is not below the price recorded on the market at the place of storage or, failing that, on the nearest market, account being taken of transport costs, for an equivalent quality and for a representative quantity preventing market disturbance.
- (2) Due to adverse weather conditions at the time of the 2005 harvest, the forecast quantity of common wheat in Latvia is insufficient to meet internal demand. Moreover, Latvia has intervention stocks of common wheat, outlets for which are hard to find and which should therefore be disposed of. Sales on the Community market may therefore be organised by tendering procedure with a view to processing the common wheat into flour.
- (3) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender. In addition, provision must be made for an award coefficient for tenders offering the minimum selling price.
- (4) To enable checks on the particular destination of the stocks covered by tendering procedures, provision should be made for specific monitoring of the delivery of the common wheat and its processing into flour. To permit this monitoring, application of the procedures laid down by Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules

for verifying the use and/or destination of products from intervention <sup>(3)</sup> should be made compulsory.

- (5) To guarantee proper performance, tenderers should be asked to lodge a security which, in view of the nature of the operations concerned, should be fixed by derogation from Regulation (EEC) No 2131/93, in particular as regards its level, which must be sufficient to guarantee the proper use of the products, and the conditions for its release, which must include proof of processing of the products into flour.
- (6) It is also important that the Latvian intervention agency's notification to the Commission should maintain the anonymity of the tenderers.
- (7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Latvian intervention agency shall open a standing invitation to tender for the sale on the Community market of 24 276 tonnes of common wheat held by it with a view to its processing into flour.

*Article 2*

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

However, notwithstanding:

- (a) Article 13(1) of that Regulation, tenders shall be drawn up by reference to the actual quality of the lot to which they apply;

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1169/2005 (OJ L 188, 20.7.2005, p. 19).

<sup>(3)</sup> OJ L 301, 17.10.1992, p. 17. Regulation as last amended by Regulation (EC) No 1169/2005.

- (b) the second paragraph of Article 10 of that Regulation, the minimum selling price shall be set at a level which does not disturb the cereals market.

#### Article 3

Tenders shall be valid only if they are accompanied by:

- (a) proof that the tenderer has lodged a security which, notwithstanding the second subparagraph of Article 13(4) of Regulation (EEC) No 2131/93, is set at EUR 10 per tonne;
- (b) the tenderer's written undertaking to use the common wheat for processing within the Community into flour within 60 days of its release from intervention storage and in any event before 31 August 2006 and to lodge a security of EUR 40 per tonne within two working days of the day on which the notice of award of contract is received;
- (c) an undertaking to keep stock records so that checks may be carried out to ensure that the quantities of common wheat awarded have been processed on Community territory into flour.

#### Article 4

1. The first partial invitation to tender shall expire at 15.00 (Brussels time) on 23 November 2005.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Wednesday at 15.00 (Brussels time), with the exception of 28 December 2005 and 12 April and 24 May 2006, i.e. weeks when no invitation to tender shall be made.

The closing date for the submission of tenders for the last partial invitation to tender shall be 28 June 2006 at 15.00 (Brussels time).

2. Tenders must be lodged with the Latvian intervention agency at the following address:

Rural Support Service  
Republic Square 2,  
Riga, LV-1981  
Latvia  
Tel. (371) 702 78 93  
Fax (371) 702 78 92.

#### Article 5

The Latvian intervention agency shall send the Commission the tenders received, no later than two hours after expiry of the time-limit for submitting tenders. This notification shall be made by e-mail, using the form in Annex I hereto.

#### Article 6

Under the procedure laid down in Article 25(2) of Regulation (EC) No 1784/2003 the Commission shall set the minimum selling price or decide not to award any quantities. In the event that tenders are submitted for the same lot and for a quantity larger than that available, the Commission may fix this price separately for each lot.

Where tenders are offering the minimum selling price, the Commission may fix an award coefficient for the quantities offered at the same time as it fixes the minimum selling price.

#### Article 7

1. The security referred to in Article 3(a) shall be released in full in respect of quantities for which:

(a) no award is made;

(b) payment of the selling price is made within the period set and the security referred to in Article 3(b) has been lodged.

2. The security referred to in Article 3(b) shall be released in proportion to the quantities of common wheat used for the production of flour in the Community.

#### Article 8

1. Proof that the undertakings referred to in Article 3(b) have been met shall be supplied in accordance with Regulation (EEC) No 3002/92.

2. In addition to the particulars provided for in Regulation (EEC) No 3002/92, box 104 of the control copy T5 shall refer to the undertaking provided for in Article 3(b) and (c) and contain one of the entries shown in Annex II.

#### Article 9

This Regulation shall enter into force on the third 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, 15 November 2005.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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## ANNEX I

**Standing invitation to tender for the resale of 24 276 tonnes of common wheat held by the Latvian intervention agency**Form <sup>(1)</sup>

(Regulation (EC) No 1863/2005)

1	2	3	4
Serial numbers of tenderers	Lot No	Quantity (t)	Tender price EUR/tonne
1			
2			
3			
etc.			

<sup>(1)</sup> To be sent to DG AGRI (D2).

## ANNEX II

## Entries referred to in Article 8(2)

- *in Spanish:* Producto destinado a la transformación prevista en las letras b) y c) del artículo 3 del Reglamento (CE) n° 1863/2005
  - *in Czech:* Produkt určený ke zpracování podle čl. 3 písm. b) a c) nařízení (ES) č. 1863/2005
  - *in Danish:* Produkt til forarbejdning som fastsat i artikel 3, litra b) og c), i forordning (EF) nr. 1863/2005
  - *in German:* Erzeugnis zur Verarbeitung gemäß Artikel 3 Buchstaben b und c der Verordnung (EG) Nr. 1863/2005
  - *in Estonian:* määaruse (EÜ) nr 1863/2005 artikli 3 punktides b ja c viidatud töötlemiseks mõeldud toode
  - *in Greek:* Προϊόν προς μεταποίηση όπως προβλέπεται στο άρθρο 3, στοιχεία β) και γ), του κανονισμού (ΕΚ) αριθ. 1863/2005
  - *in English:* Product intended for processing referred to in Article 3(b) and (c) of Regulation (EC) No 1863/2005
  - *in French:* Produit destiné à la transformation prévue à l'article 3, points b) et c), du règlement (CE) n° 1863/2005
  - *in Italian:* Prodotto destinato alla trasformazione di cui all'articolo 3, lettere b) e c), del regolamento (CE) n. 1863/2005
  - *in Latvian:* Produkts paredzēts tādai pārstrādei, kā noteikts Regulas (EK) Nr. 1863/2005 3. panta b) un c) punktā
  - *in Lithuanian:* produktas, kurio perdirbimas numatytas Reglamento (EB) Nr. 1863/2005 3 straipsnio b ir c punktuose
  - *in Hungarian:* Az 1863/2005/EK rendelet 3. cikkének b) és c) pontja szerinti feldolgozásra szánt termék
  - *in Dutch:* Product bestemd voor de verwerking bedoeld in artikel 3, onder b) en c), van Verordening (EG) nr. 1863/2005
  - *in Polish:* Produkt przeznaczony do przetworzenia przewidzianego w art. 3 lit. b) i c) rozporządzenia (WE) nr 1863/2005
  - *in Portuguese:* Produto para a transformação a que se referem as alíneas b) e c) do artigo 3.º do Regulamento (CE) n.º 1863/2005
  - *in Slovak:* Produkt určený na spracovanie podľa článku 3 písm. b) a c) nariadenia (ES) č. 1863/2005
  - *in Slovenian:* Proizvod za predelavo iz člena 3(b) in (c) Uredbe (ES) št. 1863/2005
  - *in Finnish:* Asetuksen (EY) N:o 1863/2005 3 artiklan b ja c alakohdan mukaiseen jalostukseen tarkoitettu tuote
  - *in Swedish:* Produkt avsedda för bearbetning enligt artikel 3 b och c i förordning (EG) nr 1863/2005
-

**COMMISSION REGULATION (EC) No 1864/2005****of 15 November 2005****amending Regulation (EC) No 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, as regards International Financial Reporting Standard No 1 and International Accounting Standards Nos. 32 and 39****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards <sup>(1)</sup>, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council <sup>(2)</sup> all international standards and interpretations that were extant at 14 September 2002 except International Accounting Standards (IAS) 32, IAS 39 and the related interpretations were adopted. In the cases of IAS 32 and IAS 39, the degree of amendment was considered so important that it was considered inappropriate to adopt the extant versions of these standards at that time.
- (2) On 17 December 2003 the International Accounting Standard Board (IASB) published revised IAS 39 Financial Instruments: Recognition and Measurement as part of the IASB's initiative to improve fifteen standards in time for them to be used by companies adopting IAS for the first time in 2005. The purpose of the revision was the further improvement of the quality and consistency of the body of existing IASs.
- (3) IAS 39 as revised in December 2003 introduced an option that permitted entities to designate irrevocably on initial recognition any financial asset or financial liability as one to be measured at fair value with gains and losses recognised in profit or loss (the full 'Fair Value Option'). However, the European Central Bank (ECB), prudential supervisors represented in the Basel Committee as well as security regulators expressed

concerns that an unrestricted fair value option might be used inappropriately, in particular for financial instruments relating to a company's own liabilities.

- (4) The IASB recognised these concerns and therefore published an Exposure Draft on 21 April 2004 proposing an amendment to IAS 39 in order to restrict the scope of the fair value option.
- (5) In order to have substantive accounting guidance on financial instruments in time for application in 2005, the Commission endorsed IAS 39 with the exclusion of certain provisions relating to the full Fair Value Option and hedge accounting, by Commission Regulation (EC) No 2086/2004 of 19 November 2004 amending Regulation (EC) No 1725/2003 on the adoption of certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards the insertion of IAS 39 <sup>(3)</sup>. The Commission considered this exclusion as exceptional and of a temporary nature pending resolution of the outstanding issues by further consultation and discussion.
- (6) In the light of the comments received to the Exposure Draft published on 21 April 2004 and further discussions, in particular with the ECB and the Basle Committee, as well as a series of roundtables with interested parties in March 2005, the IASB published on 16 June 2005, *Amendments to IAS 39 Financial Instruments: Recognition and Measurement, The Fair Value Option*.
- (7) The revised IAS 39 Fair Value Option restricts application to situations where this results in more relevant information, because it either eliminates or reduces significantly a measurement or recognition inconsistency ('accounting mismatch'); or a group of financial assets or financial liabilities or both is managed in accordance with a documented risk management or investment strategy. In addition, the revised Fair Value Option permits an entire combined contract containing one or more embedded derivatives to be designated as a financial asset or financial liability at fair value through profit or loss in certain circumstances. Consequently, the application of the revised Fair Value Option is restricted to cases where certain principles or circumstances must be respected. Lastly, application should be supported by adequate disclosure.

<sup>(1)</sup> OJ L 243, 11.9.2002, p. 1.

<sup>(2)</sup> OJ L 261, 13.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 211/2005 (OJ L 41, 11.2.2005, p. 1).

<sup>(3)</sup> OJ L 363, 9.12.2004, p. 1.

- (8) Therefore, the provisions relating to the application of the fair value option to financial liabilities, which were excluded under Regulation (EC) No 2086/2004 should be inserted. Furthermore, the full fair value option with regard to financial assets as endorsed by Regulation (EC) No 2086/2004 should also be subject to a principles based approach.
- (9) The IASB acknowledges that for the purposes of prudential supervision, the revised standard does not prevent prudential supervisors from evaluating the rigour of the fair value measurement practices of a regulated financial institution and the robustness of its underlying risk management strategies, policies and practices and from taking appropriate action. Furthermore, the IASB agrees that certain disclosures would assist prudential supervisors in their evaluation of capital requirements. This is particularly the case regarding the recognition of gains arising from deterioration in own credit standing which are to be further studied within the context of broader improvements to IAS 39. The Commission will therefore monitor the future effects of *Amendments to IAS 39 Financial Instruments: Recognition and Measurement, The Fair Value Option* and examine its application within the scope of the Review described at Article 10 of Regulation (EC) No 1606/2002.
- (10) The adoption of amendments to IAS 39 implies, by way of consequence, amendments to International Financial Reporting Standard (IFRS) 1 and IAS 32 in order to ensure consistency between the accounting standards concerned.
- (11) In the light of the new principles based approach to the fair value option and the need for first time adopters to provide more meaningful initial financial statements and comparative information, it is appropriate to provide for the retroactive application of this Regulation as from 1 January 2005.
- (12) The consultation with technical experts in the field confirms that International Accounting Standard (IAS)

*Amendments to IAS 39 Financial Instruments: Recognition and Measurement, The Fair Value Option* meets the technical criteria for adoption set out in Article 3 of Regulation (EC) No 1606/2002, and in particular the requirement of being conducive to the European public good.

- (13) Regulation (EC) No 1725/2003 should therefore be amended accordingly.

- (14) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

#### Article 1

The Annex to Regulation (EC) No 1725/2003 is amended as follows:

1. International Accounting Standard (IAS) 39 is amended as set out in point A of the Annex to this Regulation;
2. The text of 'International Accounting Standard (IAS) *Amendments to IAS 39 Financial Instruments: Recognition and Measurement, The Fair Value Option*' as set out in point B of the Annex to this Regulation, is added to IAS 39.
3. International Financial Reporting Standard (IFRS) 1 and IAS 32 are amended as set out in point B of the Annex to this Regulation.

#### Article 2

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

It shall apply from 1 January 2005.

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

Done at Brussels, 15 November 2005.

For the Commission

Charlie McCREEVY

Member of the Commission

## ANNEX

A. International Accounting Standard No 39 Financial Instruments: Recognition and *Measurement* is amended as follows:

(a) in paragraph 35 the following text is inserted:

'If the transferred asset is measured at amortised cost, the option in this Standard to designate a financial liability as at fair value through profit or loss is not applicable to the associated liability.'

(b) in Appendix A, Application Guidance, the text of AG 31 is replaced by the following text:

'An example of a hybrid instrument is a financial instrument that gives the holder a right to put the financial instrument back to the issuer in exchange for an amount of cash or other financial assets that varies on the basis of the change in an equity or commodity index that may increase or decrease (a "puttable instrument"). Unless the issuer on initial recognition designates the puttable instrument as a financial liability at fair value through profit or loss, it is required to separate an embedded derivative (ie the indexed principal payment) under paragraph 11 because the host contract is a debt instrument under paragraph AG27 and the indexed principal payment is not closely related to a host debt instrument under paragraph AG 30(a). Because the principal payment can increase and decrease, the embedded derivative is a non-option derivative whose value is indexed to the underlying variable.'

B. The following text is added to IAS 39:

## INTERNATIONAL ACCOUNTING STANDARDS

IAS No	Title
IAS 39	<i>Financial Instruments: Recognition and Measurement</i> <b>with the addition of the provisions on the use of the fair value option</b>

## AMENDMENTS TO INTERNATIONAL ACCOUNTING STANDARD 39

**Financial Instruments: Recognition and Measurement****THE FAIR VALUE OPTION**

This document sets out amendments to IAS 39 *Financial Instruments: Recognition and Measurement* (IAS 39). The amendments relate to proposals that were contained in an Exposure Draft of Proposed Amendments to IAS 39 — *The Fair Value Option* published in April 2004.

Entities shall apply the amendments set out in this document for annual periods beginning on or after 1 January 2006.

In paragraph 9, part (b) of the definition of a financial asset or financial liability at fair value through profit or loss is replaced, as follows.

## DEFINITIONS

9. ...

**Definitions of Four Categories of Financial Instruments**

**A financial asset or financial liability at fair value through profit or loss is a financial asset or financial liability that meets either of the following conditions.**

(a) ...

(b) *Upon initial recognition it is designated by the entity as at fair value through profit or loss. An entity may use this designation only when permitted by paragraph 11A, or when doing so results in more relevant information, because either*

(i) *it eliminates or significantly reduces a measurement or recognition inconsistency (sometimes referred to as 'an accounting mismatch') that would otherwise arise from measuring assets or liabilities or recognising the gains and losses on them on different bases; or*

(ii) *a group of financial assets, financial liabilities or both is managed and its performance is evaluated on a fair value basis, in accordance with a documented risk management or investment strategy, and information about the group is provided internally on that basis to the entity's key management personnel (as defined in IAS 24 Related Party Disclosures (as revised in 2003)), for example the entity's board of directors and chief executive officer.*

*In IAS 32, paragraphs 66, 94 and AG40 require the entity to provide disclosures about financial assets and financial liabilities it has designated as at fair value through profit or loss, including how it has satisfied these conditions. For instruments qualifying in accordance with (ii) above, that disclosure includes a narrative description of how designation as at fair value through profit or loss is consistent with the entity's documented risk management or investment strategy.*

*Investments in equity instruments that do not have a quoted market price in an active market, and whose fair value cannot be reliably measured (see paragraph 46(c) and Appendix A paragraphs AG80 and AG81), shall not be designated as at fair value through profit or loss.*

*It should be noted that paragraphs 48, 48A, 49 and Appendix A paragraphs AG69-AG82, which set out requirements for determining a reliable measure of the fair value of a financial asset or financial liability, apply equally to all items that are measured at fair value, whether by designation or otherwise, or whose fair value is disclosed.*

Paragraph 11A is added, as follows.

#### EMBEDDED DERIVATIVES

**11A.** *Notwithstanding paragraph 11, if a contract contains one or more embedded derivatives, an entity may designate the entire hybrid (combined) contract as a financial asset or financial liability at fair value through profit or loss unless:*

- (a) the embedded derivative(s) does not significantly modify the cash flows that otherwise would be required by the contract; or*
- (b) it is clear with little or no analysis when a similar hybrid (combined) instrument is first considered that separation of the embedded derivative(s) is prohibited, such as a prepayment option embedded in a loan that permits the holder to prepay the loan for approximately its amortised cost.*

Paragraphs 12 and 13 are amended, as follows.

- 12.** *If an entity is required by this Standard to separate an embedded derivative from its host contract, but is unable to measure the embedded derivative separately either at acquisition or at a subsequent financial reporting date, it shall designate the entire hybrid (combined) contract as at fair value through profit or loss.*
- 13.** *If an entity is unable to determine reliably the fair value of an embedded derivative on the basis of its terms and conditions (for example, because the embedded derivative is based on an unquoted equity instrument), the fair value of the embedded derivative is the difference between the fair value of the hybrid (combined) instrument and the fair value of the host contract, if those can be determined under this Standard. If the entity is unable to determine the fair value of the embedded derivative using this method, paragraph 12 applies and the hybrid (combined) instrument is designated as at fair value through profit or loss.*

Paragraph 48A is added, as follows.

#### FAIR VALUE MEASUREMENT CONSIDERATIONS

- 48A.** *The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal business considerations. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique. The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (ie without modification or repackaging) or based on any available observable market data.*

#### EFFECTIVE DATE AND TRANSITION

Paragraph 105 is amended and paragraphs 105A-105D are added, as follows.

...

- 105.** *When this Standard is first applied, an entity is permitted to designate a previously recognised financial asset as available for sale. For any such financial asset the entity shall recognise all cumulative changes in fair value in a separate component of equity until subsequent derecognition or impairment, when the entity shall transfer that cumulative gain or loss to profit or loss. The entity shall also:*

- (a) restate the financial asset using the new designation in the comparative financial statements; and*
- (b) disclose the fair value of the financial assets at the date of designation and their classification and carrying amount in the previous financial statements.*

- 105A. An entity shall apply paragraphs 11A, 48A, AG4B-AG4K, AG33A and AG33B and the 2005 amendments in paragraphs 9, 12 and 13 for annual periods beginning on or after 1 January 2006. Earlier application is encouraged.
- 105B. An entity that first applies paragraphs 11A, 48A, AG4B-AG4K, AG33A and AG33B and the 2005 amendments in paragraphs 9, 12 and 13 in its annual period beginning before 1 January 2006
- (a) is permitted, when those new and amended paragraphs are first applied, to designate as at fair value through profit or loss any previously recognised financial asset or financial liability that then qualifies for such designation. When the annual period begins before 1 September 2005, such designations need not be completed until 1 September 2005 and may also include financial assets and financial liabilities recognised between the beginning of that annual period and 1 September 2005. Notwithstanding paragraph 91, any financial assets and financial liabilities designated as at fair value through profit or loss in accordance with this subparagraph that were previously designated as the hedged item in fair value hedge accounting relationships shall be de-designated from those relationships at the same time they are designated as at fair value through profit or loss.
  - (b) shall disclose the fair value of any financial assets or financial liabilities designated in accordance with subparagraph (a) at the date of designation and their classification and carrying amount in the previous financial statements.
  - (c) shall de-designate any financial asset or financial liability previously designated as at fair value through profit or loss if it does not qualify for such designation in accordance with those new and amended paragraphs. When a financial asset or financial liability will be measured at amortised cost after de-designation, the date of de-designation is deemed to be its date of initial recognition.
  - (d) shall disclose the fair value of any financial assets or financial liabilities de-designated in accordance with subparagraph (c) at the date of de-designation and their new classifications.
- 105C. An entity that first applies paragraphs 11A, 48A, AG4B-AG4K, AG33A and AG33B and the 2005 amendments in paragraphs 9, 12 and 13 in its annual period beginning on or after 1 January 2006
- (a) shall de-designate any financial asset or financial liability previously designated as at fair value through profit or loss only if it does not qualify for such designation in accordance with those new and amended paragraphs. When a financial asset or financial liability will be measured at amortised cost after de-designation, the date of de-designation is deemed to be its date of initial recognition.
  - (b) shall not designate as at fair value through profit or loss any previously recognised financial assets or financial liabilities.
  - (c) shall disclose the fair value of any financial assets or financial liabilities de-designated in accordance with subparagraph (a) at the date of de-designation and their new classifications.
- 105D. An entity shall restate its comparative financial statements using the new designations in paragraph 105B or 105C provided that, in the case of a financial asset, financial liability, or group of financial assets, financial liabilities or both, designated as at fair value through profit or loss, those items or groups would have met the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A at the beginning of the comparative period or, if acquired after the beginning of the comparative period, would have met the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A at the date of initial recognition.
-

In Appendix A, paragraphs AG4B-AG4K are added, as follows.

## Appendix A

### Application Guidance

#### DEFINITIONS (paragraphs 8 and 9)

##### *Designation as at Fair Value through Profit or Loss*

AG4B. Paragraph 9 of this Standard allows an entity to designate a financial asset, a financial liability, or a group of financial instruments (financial assets, financial liabilities or both) as at fair value through profit or loss provided that doing so results in more relevant information.

AG4C. The decision of an entity to designate a financial asset or financial liability as at fair value through profit or loss is similar to an accounting policy choice (although, unlike an accounting policy choice, it is not required to be applied consistently to all similar transactions). When an entity has such a choice, paragraph 14(b) of IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* requires the chosen policy to result in the financial statements providing reliable and more relevant information about the effects of transactions, other events and conditions on the entity's financial position, financial performance or cash flows. In the case of designation as at fair value through profit or loss, paragraph 9 sets out the two circumstances when the requirement for more relevant information will be met. Accordingly, to choose such designation in accordance with paragraph 9, the entity needs to demonstrate that it falls within one (or both) of these two circumstances.

*Paragraph 9(b)(i): Designation eliminates or significantly reduces a measurement or recognition inconsistency that would otherwise arise*

AG4D. Under IAS 39, measurement of a financial asset or financial liability and classification of recognised changes in its value are determined by the item's classification and whether the item is part of a designated hedging relationship. Those requirements can create a measurement or recognition inconsistency (sometimes referred to as an 'accounting mismatch') when, for example, in the absence of designation as at fair value through profit or loss, a financial asset would be classified as available for sale (with most changes in fair value recognised directly in equity) and a liability the entity considers related would be measured at amortised cost (with changes in fair value not recognised). In such circumstances, an entity may conclude that its financial statements would provide more relevant information if both the asset and the liability were classified as at fair value through profit or loss.

AG4E. The following examples show when this condition could be met. In all cases, an entity may use this condition to designate financial assets or financial liabilities as at fair value through profit or loss only if it meets the principle in paragraph 9(b)(i).

- (a) An entity has liabilities whose cash flows are contractually based on the performance of assets that would otherwise be classified as available for sale. For example, an insurer may have liabilities containing a discretionary participation feature that pay benefits based on realised and/or unrealised investment returns of a specified pool of the insurer's assets. If the measurement of those liabilities reflects current market prices, classifying the assets as at fair value through profit or loss means that changes in the fair value of the financial assets are recognised in profit or loss in the same period as related changes in the value of the liabilities.
- (b) An entity has liabilities under insurance contracts whose measurement incorporates current information (as permitted by IFRS 4 *Insurance Contracts*, paragraph 24), and financial assets it considers related that would otherwise be classified as available for sale or measured at amortised cost.
- (c) An entity has financial assets, financial liabilities or both that share a risk, such as interest rate risk, that gives rise to opposite changes in fair value that tend to offset each other. However, only some of the instruments would be measured at fair value through profit or loss (ie are derivatives, or are classified as held for trading). It may also be the case that the requirements for hedge accounting are not met, for example because the requirements for effectiveness in paragraph 88 are not met.
- (d) An entity has financial assets, financial liabilities or both that share a risk, such as interest rate risk, that gives rise to opposite changes in fair value that tend to offset each other and the entity does not qualify for hedge accounting because none of the instruments is a derivative. Furthermore, in the absence of hedge accounting there is a significant inconsistency in the recognition of gains and losses. For example:

- (i) the entity has financed a portfolio of fixed rate assets that would otherwise be classified as available for sale with fixed rate debentures whose changes in fair value tend to offset each other. Reporting both the assets and the debentures at fair value through profit or loss corrects the inconsistency that would otherwise arise from measuring the assets at fair value with changes reported in equity and the debentures at amortised cost.
- (ii) the entity has financed a specified group of loans by issuing traded bonds whose changes in fair value tend to offset each other. If, in addition, the entity regularly buys and sells the bonds but rarely, if ever, buys and sells the loans, reporting both the loans and the bonds at fair value through profit or loss eliminates the inconsistency in the timing of recognition of gains and losses that would otherwise result from measuring them both at amortised cost and recognising a gain or loss each time a bond is repurchased.

AG4F. In cases such as those described in the preceding paragraph, to designate, at initial recognition, the financial assets and financial liabilities not otherwise so measured as at fair value through profit or loss may eliminate or significantly reduce the measurement or recognition inconsistency and produce more relevant information. For practical purposes, the entity need not enter into all of the assets and liabilities giving rise to the measurement or recognition inconsistency at exactly the same time. A reasonable delay is permitted provided that each transaction is designated as at fair value through profit or loss at its initial recognition and, at that time, any remaining transactions are expected to occur.

AG4G. It would not be acceptable to designate only some of the financial assets and financial liabilities giving rise to the inconsistency as at fair value through profit or loss if to do so would not eliminate or significantly reduce the inconsistency and would therefore not result in more relevant information. However, it would be acceptable to designate only some of a number of similar financial assets or similar financial liabilities if doing so achieves a significant reduction (and possibly a greater reduction than other allowable designations) in the inconsistency. For example, assume an entity has a number of similar financial liabilities that sum to CU100 (\*) and a number of similar financial assets that sum to CU50 but are measured on a different basis. The entity may significantly reduce the measurement inconsistency by designating at initial recognition all of the assets but only some of the liabilities (for example, individual liabilities with a combined total of CU45) as at fair value through profit or loss. However, because designation as at fair value through profit or loss can be applied only to the whole of a financial instrument, the entity in this example must designate one or more liabilities in their entirety. It could not designate either a component of a liability (eg changes in value attributable to only one risk, such as changes in a benchmark interest rate) or a proportion (ie percentage) of a liability.

*Paragraph 9(b)(ii): A group of financial assets, financial liabilities or both is managed and its performance is evaluated on a fair value basis, in accordance with a documented risk management or investment strategy*

AG4H. An entity may manage and evaluate the performance of a group of financial assets, financial liabilities or both in such a way that measuring that group at fair value through profit or loss results in more relevant information. The focus in this instance is on the way the entity manages and evaluates performance, rather than on the nature of its financial instruments.

AG4I. The following examples show when this condition could be met. In all cases, an entity may use this condition to designate financial assets or financial liabilities as at fair value through profit or loss only if it meets the principle in paragraph 9(b)(ii).

- (a) The entity is a venture capital organisation, mutual fund, unit trust or similar entity whose business is investing in financial assets with a view to profiting from their total return in the form of interest or dividends and changes in fair value. IAS 28 *Investments in Associates* and IAS 31 *Interests in Joint Ventures* allow such investments to be excluded from their scope provided they are measured at fair value through profit or loss. An entity may apply the same accounting policy to other investments managed on a total return basis but over which its influence is insufficient for them to be within the scope of IAS 28 or IAS 31.
- (b) The entity has financial assets and financial liabilities that share one or more risks and those risks are managed and evaluated on a fair value basis in accordance with a documented policy of asset and liability management. An example could be an entity that has issued 'structured products' containing multiple embedded derivatives and manages the resulting risks on a fair value basis using a mix of derivative and non-derivative financial instruments. A similar example could be an entity that originates fixed interest rate loans and manages the resulting benchmark interest rate risk using a mix of derivative and nonderivative financial instruments.

(\*) In this Standard, monetary amounts are denominated in 'currency units' (CU)

- (c) The entity is an insurer that holds a portfolio of financial assets, manages that portfolio so as to maximise its total return (ie interest or dividends and changes in fair value), and evaluates its performance on that basis. The portfolio may be held to back specific liabilities, equity or both. If the portfolio is held to back specific liabilities, the condition in paragraph 9(b)(ii) may be met for the assets regardless of whether the insurer also manages and evaluates the liabilities on a fair value basis. The condition in paragraph 9(b)(ii) may be met when the insurer's objective is to maximise total return on the assets over the longer term even if amounts paid to holders of participating contracts depend on other factors such as the amount of gains realised in a shorter period (eg a year) or are subject to the insurer's discretion.
- AG4J. As noted above, this condition relies on the way the entity manages and evaluates performance of the group of financial instruments under consideration. Accordingly, (subject to the requirement of designation at initial recognition) an entity that designates financial instruments as at fair value through profit or loss on the basis of this condition shall so designate all eligible financial instruments that are managed and evaluated together.
- AG4K. Documentation of the entity's strategy need not be extensive but should be sufficient to demonstrate compliance with paragraph 9(b)(ii). Such documentation is not required for each individual item, but may be on a portfolio basis. For example, if the performance management system for a department — as approved by the entity's key management personnel — clearly demonstrates that its performance is evaluated on a total return basis, no further documentation is required to demonstrate compliance with paragraph 9(b)(ii).

After paragraph AG33, a heading and paragraphs AG33A and AG33B are added, as follows.

#### **Instruments containing Embedded Derivatives**

- AG33A. When an entity becomes a party to a hybrid (combined) instrument that contains one or more embedded derivatives, paragraph 11 requires the entity to identify any such embedded derivative, assess whether it is required to be separated from the host contract and, for those that are required to be separated, measure the derivatives at fair value at initial recognition and subsequently. These requirements can be more complex, or result in less reliable measures, than measuring the entire instrument at fair value through profit or loss. For that reason this Standard permits the entire instrument to be designated as at fair value through profit or loss.
- AG33B. Such designation may be used whether paragraph 11 requires the embedded derivatives to be separated from the host contract or prohibits such separation. However, paragraph 11A would not justify designating the hybrid (combined) instrument as at fair value through profit or loss in the cases set out in paragraph 11A(a) and (b) because doing so would not reduce complexity or increase reliability.
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## Appendix

**Amendments to other Standards**

*The amendments in this appendix shall be applied for annual periods beginning on or after 1 January 2006. If an entity applies the amendments to IAS 39 for an earlier period, the amendments in this appendix shall be applied for that earlier period.*

**Amendments to IAS 32****Financial Instruments: Disclosure and Presentation**

Paragraph 66 is amended, as follows.

66. In accordance with IAS 1, an entity provides disclosure of all significant accounting policies, including the general principles adopted and the method of applying those principles to transactions, other events and conditions arising in the entity's business. In the case of financial instruments, such disclosure includes:
- (a) the criteria applied in determining when to recognise a financial asset or financial liability and when to derecognise it;
  - (b) the basis of measurement applied to financial assets and financial liabilities on initial recognition and subsequently;
  - (c) the basis on which income and expenses arising from financial assets and financial liabilities are recognised and measured; and
  - (d) for financial assets or financial liabilities designated as at fair value through profit or loss:
    - (i) the criteria for so designating such financial assets or financial liabilities on initial recognition;
    - (ii) how the entity has satisfied the conditions in paragraph 9, 11A or 12 of IAS 39 for such designation. For instruments designated in accordance with paragraph 9(b)(i) of IAS 39, that disclosure includes a narrative description of the circumstances underlying the measurement or recognition inconsistency that would otherwise arise. For instruments designated in accordance with paragraph 9(b)(ii) of IAS 39, that disclosure includes a narrative description of how designation as at fair value through profit or loss is consistent with the entity's documented risk management or investment strategy;
    - (iii) the nature of the financial assets or financial liabilities the entity has designated as at fair value through profit or loss.

Paragraph 94 is amended, as follows, and subparagraphs (g)-(j) are renumbered as (j)-(m).

94. ...

**Financial assets and financial liabilities at fair value through profit or loss (see also paragraph AG40)**

...

- (e) *An entity shall disclose the carrying amounts of:*
- (i) *financial assets that are classified as held for trading;*
  - (ii) *financial liabilities that are classified as held for trading;*

- (iii) *financial assets that, upon initial recognition, were designated by the entity as financial assets at fair value through profit or loss (ie those that are not financial assets classified as held for trading);*
- (iv) *financial liabilities that, upon initial recognition, were designated by the entity as financial liabilities at fair value through profit or loss (ie those that are not financial liabilities classified as held for trading).*
- (f) *An entity shall disclose separately net gains or net losses on financial assets or financial liabilities designated by the entity as at fair value through profit or loss.*
- (g) *If the entity has designated a loan or receivable (or group of loans or receivables) as at fair value through profit or loss, it shall disclose:*
  - (i) *the maximum exposure to credit risk (see paragraph 76(a)) at the reporting date of the loan or receivable (or group of loans or receivables);*
  - (ii) *the amount by which any related credit derivative or similar instrument mitigates that maximum exposure to credit risk;*
  - (iii) *the amount of change during the period and cumulatively in the fair value of the loan or receivable (or group of loans or receivables) that is attributable to changes in credit risk determined either as the amount of change in its fair value that is not attributable to changes in market conditions that give rise to market risk; or using an alternative method that more faithfully represents the amount of change in its fair value that is attributable to changes in credit risk;*
  - (iv) *the amount of the change in the fair value of any related credit derivative or similar instrument that has occurred during the period and cumulatively since the loan or receivable was designated.*
- (h) *If the entity has designated a financial liability as at fair value through profit or loss, it shall disclose:*
  - (i) *the amount of change during the period and cumulatively in the fair value of the financial liability that is attributable to changes in credit risk determined either as the amount of change in its fair value that is not attributable to changes in market conditions that give rise to market risk (see paragraph AG40); or using an alternative method that more faithfully represents the amount of change in its fair value that is attributable to changes in credit risk;*
  - (ii) *the difference between the carrying amount of the financial liability and the amount the entity would be contractually required to pay at maturity to the holder of the obligation.*
- (i) *The entity shall disclose:*
  - (i) *the methods used to comply with the requirement in (g)(iii) and (h)(i);*
  - (ii) *if the entity considers that the disclosure it has given to comply with the requirements in (g)(iii) or (h)(i) does not faithfully represent the change in the fair value of the financial asset or financial liability attributable to changes in credit risk, the reasons for reaching this conclusion and the factors the entity believes to be relevant.*

Paragraph AG40 is amended, as follows.

AG40. If an entity designates a financial liability or a loan or receivable (or group of loans or receivables) as at fair value through profit or loss, it is required to disclose the amount of change in the fair value of the financial instrument that is attributable to changes in credit risk. Unless an alternative method more faithfully represents this amount, the entity is required to determine this amount as the amount of change in the fair value of the financial instrument that is not attributable to changes in market conditions that give rise to market risk. Changes in market conditions that give rise to market risk include changes in a benchmark interest rate, commodity price, foreign exchange rate or index of prices or rates. For contracts that include a unit-linking feature, changes in market conditions include changes in the performance of an internal or external investment fund. If the only relevant changes in market conditions for a financial liability are changes in an observed (benchmark) interest rate, this amount can be estimated as follows:

- (a) First, the entity computes the liability's internal rate of return at the start of the period using the observed market price of the liability and the liability's contractual cash flows at the start of the period. It deducts from this rate of return the observed (benchmark) interest rate at the start of the period, to arrive at an instrument-specific component of the internal rate of return.
- (b) Next, the entity calculates the present value of the cash flows associated with the liability using the liability's contractual cash flows at the start of the period and a discount rate equal to the sum of the observed (benchmark) interest rate at the end of the period and the instrument-specific component of the internal rate of return at the start of the period as determined in (a).
- (c) The amount determined in (b) is then adjusted for any cash paid or received on the liability during the period and increased to reflect the increase in fair value that arises because the contractual cash flows are one period closer to their due date.
- (d) The difference between the observed market price of the liability at the end of the period and the amount determined in (c) is the change in fair value that is not attributable to changes in the observed (benchmark) interest rate. This is the amount to be disclosed.

The above example assumes that changes in fair value that do not arise from changes in the instrument's credit risk or from changes in interest rates are not significant. If, in the above example, the instrument contained an embedded derivative, the change in fair value of the embedded derivative would be excluded in determining the amount in paragraph 94(h)(i).

## Amendments to IFRS 1

### First-time Adoption of International Financial Reporting Standards

Paragraphs 25A and 43A are amended, as follows.

#### Designation of previously recognised financial instruments

25A. IAS 39 *Financial Instruments: Recognition and Measurement* permits a financial asset to be designated on initial recognition as available for sale or a financial instrument (provided it meets certain criteria) to be designated as a financial asset or financial liability at fair value through profit or loss. Despite this requirement exceptions apply in the following circumstances,

- (a) any entity is permitted to make an available-for-sale designation at the date of transition to IFRSs;
- (b) *an entity that presents its first IFRS financial statements for an annual period beginning on or after 1 September 2006* — such an entity is permitted to designate, at the date of transition to IFRSs, any financial asset or financial liability as at fair value through profit or loss provided the asset or liability meets the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A of IAS 39 at that date;

- (c) *an entity that presents its first IFRS financial statements for an annual period beginning on or after 1 January 2006 and before 1 September 2006* — such an entity is permitted to designate, at the date of transition to IFRSs, any financial asset or financial liability as at fair value through profit or loss provided the asset or liability meets the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A of IAS 39 at that date. When the date of transition to IFRSs is before 1 September 2005, such designations need not be completed until 1 September 2005 and may also include financial assets and financial liabilities recognised between the date of transition to IFRSs and 1 September 2005;
- (d) *an entity that presents its first IFRS financial statements for an annual period beginning before 1 January 2006 and applies paragraphs 11A, 48A, AG4B-AG4K, AG33A and AG33B and the 2005 amendments in paragraphs 9, 12 and 13 of IAS 39* — such an entity is permitted at the start of its first IFRS reporting period to designate as at fair value through profit or loss any financial asset or financial liability that qualifies for such designation in accordance with these new and amended paragraphs at that date. When the entity's first IFRS reporting period begins before 1 September 2005, such designations need not be completed until 1 September 2005 and may also include financial assets and financial liabilities recognised between the beginning of that period and 1 September 2005. If the entity restates comparative information for IAS 39 it shall restate that information for the financial assets, financial liabilities, or group of financial assets, financial liabilities or both, designated at the start of its first IFRS reporting period. Such restatement of comparative information shall be made only if the designated items or groups would have met the criteria for such designation in paragraph 9(b)(i), 9(b)(ii) or 11A of IAS 39 at the date of transition to IFRSs or, if acquired after the date of transition to IFRSs, would have met the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A at the date of initial recognition;
- (e) *for an entity that presents its first IFRS financial statements for an annual period beginning before 1 September 2006* — notwithstanding paragraph 91 of IAS 39, any financial assets and financial liabilities such an entity designated as at fair value through profit or loss in accordance with subparagraph (c) or (d) above that were previously designated as the hedged item in fair value hedge accounting relationships shall be de-designated from those relationships at the same time they are designated as at fair value through profit or loss.

#### **Designation of financial assets or financial liabilities**

- 43A. An entity is permitted to designate a previously recognised financial asset or financial liability as a financial asset or financial liability at fair value through profit or loss or a financial asset as available for sale in accordance with paragraph 25A. The entity shall disclose the fair value of financial assets or financial liabilities designated into each category at the date of designation and their classification and carrying amount in the previous financial statements.
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**COMMISSION REGULATION (EC) No 1865/2005****of 15 November 2005****fixing the import duties in the cereals sector applicable from 16 November 2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector <sup>(2)</sup>, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10 of Regulation (EC) No 1784/2003 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10(3) of Regulation (EC) No 1784/2003, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

- (3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Regulation (EC) No 1784/2003 as regards import duties in the cereals sector.

- (4) The import duties are applicable until new duties are fixed and enter into force.

- (5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

- (6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

*Article 2*

This Regulation shall enter into force on 16 November 2005.

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

Done at Brussels, 15 November 2005.

*For the Commission*

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

## ANNEX I

**Import duties for the products covered by Article 10(2) of Regulation (EC) No 1784/2003 applicable from  
16 November 2005**

CN code	Description	Import duty <sup>(1)</sup> (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	34,38
1005 10 90	Maize seed other than hybrid	54,07
1005 90 00	Maize other than seed <sup>(2)</sup>	54,07
1007 00 90	Grain sorghum other than hybrids for sowing	34,38

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

— EUR 3/t, where the port of unloading is on the Mediterranean Sea, or

— EUR 2/t, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

<sup>(2)</sup> The importer may benefit from a flat-rate reduction of EUR 24/t, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

**Factors for calculating duties**

period from 2.11.2005-14.11.2005

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

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	129,74 (***)	65,05	178,74	168,74	148,74	93,90
Gulf premium (EUR/t)	—	17,48	—			—
Great Lakes premium (EUR/t)	35,89	—	—			—

(\*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

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

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

Freight/cost: Gulf of Mexico–Rotterdam: 21,14 EUR/t; Great Lakes–Rotterdam: 29,45 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
- 
- 0,00 EUR/t (SRW2).

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 20 September 2005

**on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

(2005/790/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not bound by the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>, nor subject to their application.
- (2) By Decision of 8 May 2003, the Council authorised exceptionally the Commission to negotiate an agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of the abovementioned Regulation.
- (3) The Commission has negotiated such agreement, on behalf of the Community, with the Kingdom of Denmark.
- (4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are taking part in the adoption and application of this Decision.

(5) In accordance with Articles 1 and 2 of the abovementioned Protocol on the position of Denmark, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) The Agreement, initialled at Brussels on 17 January 2005, should be signed,

HAS DECIDED AS FOLLOWS:

*Article 1*

The signing of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

*Article 2*

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

Done at Brussels, 20 September 2005.

*For the Council*  
*The President*  
M. BECKETT

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<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

**AGREEMENT****between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE KINGDOM OF DENMARK, hereinafter referred to as 'Denmark',

of the other part,

DESIRING to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments within the Community,

WHEREAS on 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty establishing the European Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters <sup>(1)</sup> (the Brussels Convention), as amended by Conventions on the Accession of the new Member States to that Convention. On 16 September 1988 the Member States and the EFTA States concluded the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters <sup>(2)</sup> (the Lugano Convention), which is a parallel Convention to the Brussels Convention,

WHEREAS the main content of the Brussels Convention has been taken over in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(3)</sup> (the Brussels I Regulation),

REFERRING to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community (the Protocol on the position of Denmark) pursuant to which the Brussels I Regulation shall not be binding upon or applicable in Denmark,

STRESSING that a solution to the unsatisfactory legal situation arising from differences in applicable rules on jurisdiction, recognition and enforcement of judgments within the Community must be found,

DESIRING that the provisions of the Brussels I Regulation, future amendments thereto and the implementing measures relating to it should under international law apply to the relations between the Community and Denmark being a Member State with a special position with respect to Title IV of the Treaty establishing the European Community,

STRESSING that continuity between the Brussels Convention and this Agreement should be ensured, and that transitional provisions as in the Brussels I Regulation should be applied to this Agreement as well. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol <sup>(4)</sup> should remain applicable also to cases already pending when this Agreement enters into force,

<sup>(1)</sup> OJ L 299, 31.12.1972, p. 32; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1. For a consolidated text, see OJ C 27, 26.1.1998, p. 1.

<sup>(2)</sup> OJ L 319, 25.11.1988, p. 9.

<sup>(3)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

<sup>(4)</sup> OJ L 204, 2.8.1975, p. 28; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1. For a consolidated text see OJ C 27, 26.1.1998, p. 28.

STRESSING that the Brussels Convention also continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Agreement,

STRESSING the importance of proper coordination between the Community and Denmark with regard to the negotiation and conclusion of international agreements that may affect or alter the scope of the Brussels I Regulation,

STRESSING that Denmark should seek to join international agreements entered into by the Community where Danish participation in such agreements is relevant for the coherent application of the Brussels I Regulation and this Agreement,

STATING that the Court of Justice of the European Communities should have jurisdiction in order to secure the uniform application and interpretation of this Agreement including the provisions of the Brussels I Regulation and any implementing Community measures forming part of this Agreement,

REFERRING to the jurisdiction conferred to the Court of Justice of the European Communities pursuant to Article 68(1) of the Treaty establishing the European Community to give rulings on preliminary questions relating to the validity and interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the validity and interpretation of this Agreement, and to the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark,

CONSIDERING that the Court of Justice of the European Communities should have jurisdiction under the same conditions to give preliminary rulings on questions concerning the validity and interpretation of this Agreement which are raised by a Danish court or tribunal, and that Danish courts and tribunals should therefore request preliminary rulings under the same conditions as courts and tribunals of other Member States in respect of the interpretation of the Brussels I Regulation and its implementing measures,

REFERRING to the provision that, pursuant to Article 68(3) of the Treaty establishing the European Community, the Council of the European Union, the European Commission and the Member States may request the Court of Justice of the European Communities to give a ruling on the interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the interpretation of this Agreement, and the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark,

CONSIDERING that Denmark should, under the same conditions as other Member States in respect of the Brussels I Regulation and its implementing measures, be accorded the possibility to request the Court of Justice of the European Communities to give rulings on questions relating to the interpretation of this Agreement,

STRESSING that under Danish law the courts in Denmark should, when interpreting this Agreement including the provisions of the Brussels I Regulation and any implementing Community measures forming part of this Agreement, take due account of the rulings contained in the case law of the Court of Justice of the European Communities and of the courts of the Member States of the European Communities in respect of provisions of the Brussels Convention, the Brussels I Regulation and any implementing Community measures,

CONSIDERING that it should be possible to request the Court of Justice of the European Communities to rule on questions relating to compliance with obligations under this Agreement pursuant to the provisions of the Treaty establishing the European Community governing proceedings before the Court,

WHEREAS, by virtue of Article 300(7) of the Treaty establishing the European Community, this Agreement binds Member States; it is therefore appropriate that Denmark, in the case of non-compliance by a Member State, should be able to seize the Commission as guardian of the Treaty,

HAVE AGREED AS FOLLOWS:

#### Article 1

##### Aim

1. The aim of this Agreement is to apply the provisions of the Brussels I Regulation and its implementing measures to the relations between the Community and Denmark, in accordance with Article 2(1) of this Agreement.

2. It is the objective of the Contracting Parties to arrive at a uniform application and interpretation of the provisions of the Brussels I Regulation and its implementing measures in all Member States.

3. The provisions of Articles 3(1), 4(1) and 5(1) of this Agreement result from the Protocol on the position of Denmark.

#### Article 2

##### Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

1. The provisions of the Brussels I Regulation, which is annexed to this Agreement and forms part thereof, together with its implementing measures adopted pursuant to Article 74(2) of the Regulation and, in respect of implementing measures adopted after the entry into force of this Agreement, implemented by Denmark as referred to in Article 4 of this Agreement, and the measures adopted pursuant to Article 74(1) of the Regulation, shall under international law apply to the relations between the Community and Denmark.

2. However, for the purposes of this Agreement, the application of the provisions of that Regulation shall be modified as follows:

(a) Article 1(3) shall not apply.

(b) Article 50 shall be supplemented by the following paragraph (as paragraph 2):

‘2. However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the Member State addressed, claim the benefits referred to in the first paragraph if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the financial requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.’

(c) Article 62 shall be supplemented by the following paragraph (as paragraph 2):

‘2. In matters relating to maintenance, the expression “court” includes the Danish administrative authorities.’

(d) Article 64 shall apply to seagoing ships registered in Denmark as well as in Greece and Portugal.

(e) The date of entry into force of this Agreement shall apply instead of the date of entry into force of the Regulation as referred to in Articles 70(2), 72 and 76 thereof.

(f) The transitional provisions of this Agreement shall apply instead of Article 66 of the Regulation.

(g) In Annex I the following shall be added: ‘in Denmark: Article 246(2) and (3) of the Administration of Justice Act (*lov om rettens pleje*)’.

(h) In Annex II the following shall be added: ‘in Denmark, the “byret”’.

(i) In Annex III the following shall be added: ‘in Denmark, the “landsret”’.

(j) In Annex IV the following shall be added: ‘in Denmark, an appeal to the “Højesteret” with leave from the “Procesbevillingsnævnet”’.

#### Article 3

##### Amendments to the Brussels I Regulation

1. Denmark shall not take part in the adoption of amendments to the Brussels I Regulation and no such amendments shall be binding upon or applicable in Denmark.

2. Whenever amendments to the Regulation are adopted Denmark shall notify the Commission of its decision whether or not to implement the content of such amendments. Notification shall be given at the time of the adoption of the amendments or within 30 days thereafter.

3. If Denmark decides that it will implement the content of the amendments the notification shall indicate whether implementation can take place administratively or requires parliamentary approval.

4. If the notification indicates that implementation can take place administratively the notification shall, moreover, state that all necessary administrative measures enter into force on the date of entry into force of the amendments to the Regulation or have entered into force on the date of the notification, whichever date is the latest.

5. If the notification indicates that implementation requires parliamentary approval in Denmark, the following rules shall apply:

(a) Legislative measures in Denmark shall enter into force on the date of entry into force of the amendments to the Regulation or within 6 months after the notification, whichever date is the latest;

(b) Denmark shall notify the Commission of the date upon which the implementing legislative measures enter into force.

6. A Danish notification that the content of the amendments has been implemented in Denmark, in accordance with paragraphs 4 and 5, creates mutual obligations under international law between Denmark and the Community. The amendments to the Regulation shall then constitute amendments to this Agreement and shall be considered annexed hereto.

7. In cases where:

(a) Denmark notifies its decision not to implement the content of the amendments; or

(b) Denmark does not make a notification within the 30-day time-limit set out in paragraph 2; or

(c) Legislative measures in Denmark do not enter into force within the time-limits set out in paragraph 5,

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days or, in the situation referred to under (c), legislative measures in Denmark enter into force within the same period. Termination shall take effect three months after the expiry of the 90-day period.

8. Legal proceedings instituted and documents formally drawn up or registered as authentic instruments before the date of termination of the Agreement as set out in paragraph 7 are not affected hereby.

#### Article 4

##### Implementing measures

1. Denmark shall not take part in the adoption of opinions by the Committee referred to in Article 75 of the Brussels I Regulation. Implementing measures adopted pursuant to Article 74(2) of that Regulation shall not be binding upon and shall not be applicable in Denmark.

2. Whenever implementing measures are adopted pursuant to Article 74(2) of the Regulation, the implementing measures shall be communicated to Denmark. Denmark shall notify the Commission of its decision whether or not to implement the content of the implementing measures. Notification shall be given upon receipt of the implementing measures or within 30 days thereafter.

3. The notification shall state that all necessary administrative measures in Denmark enter into force on the date of entry into force of the implementing measures or have entered into force on the date of the notification, whichever date is the latest.

4. A Danish notification that the content of the implementing measures has been implemented in Denmark creates mutual obligations under international law between Denmark and the Community. The implementing measures will then form part of this Agreement.

5. In cases where:

(a) Denmark notifies its decision not to implement the content of the implementing measures; or

(b) Denmark does not make a notification within the 30-day time-limit set out in paragraph 2,

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days. Termination shall take effect three months after the expiry of the 90-day period.

6. Legal proceedings instituted and documents formally drawn up or registered as authentic instruments before the date of termination of the Agreement as set out in paragraph 5 are not affected hereby.

7. If in exceptional cases the implementation requires parliamentary approval in Denmark, the Danish notification under paragraph 2 shall indicate this and the provisions of Article 3(5) to (8) shall apply.

8. Denmark shall notify the Commission of texts amending the items set out in Article 2(2)(g) to (j) of this Agreement. The Commission shall adapt Article 2(2)(g) to (j) accordingly.

*Article 5***International agreements which affect the Brussels I Regulation**

1. International agreements entered into by the Community based on the rules of the Brussels I Regulation shall not be binding upon and shall not be applicable in Denmark.
2. Denmark will abstain from entering into international agreements which may affect or alter the scope of the Brussels I Regulation as annexed to this Agreement unless it is done in agreement with the Community and satisfactory arrangements have been made with regard to the relationship between this Agreement and the international agreement in question.
3. When negotiating international agreements that may affect or alter the scope of the Brussels I Regulation as annexed to this Agreement, Denmark will coordinate its position with the Community and will abstain from any actions that would jeopardise the objectives of a Community position within its sphere of competence in such negotiations.

*Article 6***Jurisdiction of the Court of Justice of the European Communities in relation to the interpretation of the Agreement**

1. Where a question on the validity or interpretation of this Agreement is raised in a case pending before a Danish court or tribunal, that court or tribunal shall request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of the Brussels I Regulation and its implementing measures referred to in Article 2(1) of this Agreement.
2. Under Danish law, the courts in Denmark shall, when interpreting this Agreement, take due account of the rulings contained in the case law of the Court of Justice in respect of provisions of the Brussels Convention, the Brussels I Regulation and any implementing Community measures.
3. Denmark may, like the Council, the Commission and any Member State, request the Court of Justice to give a ruling on a question of interpretation of this Agreement. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.
4. Denmark shall be entitled to submit observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provision referred to in Article 2(1).

5. The Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

6. If the provisions of the Treaty establishing the European Community regarding rulings by the Court of Justice are amended with consequences for rulings in respect of the Brussels I Regulation, Denmark may notify the Commission of its decision not to apply the amendments in respect of this Agreement. Notification shall be given at the time of the entry into force of the amendments or within 60 days thereafter.

In such a case this Agreement shall be considered terminated. Termination shall take effect three months after the notification.

7. Legal proceedings instituted and documents formally drawn up or registered as authentic instruments before the date of termination of the Agreement as set out in paragraph 6 are not affected hereby.

*Article 7***Jurisdiction of the Court of Justice of the European Communities in relation to compliance with the Agreement**

1. The Commission may bring before the Court of Justice cases against Denmark concerning non-compliance with any obligation under this Agreement.
2. Denmark may bring a complaint before the Commission as to the non-compliance by a Member State of its obligations under this Agreement.
3. The relevant provisions of the Treaty establishing the European Community governing proceedings before the Court of Justice as well as the Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

*Article 8***Territorial application**

1. This Agreement shall apply to the territories referred to in Article 299 of the Treaty establishing the European Community.
2. If the Community decides to extend the application of the Brussels I Regulation to territories currently governed by the Brussels Convention, the Community and Denmark shall cooperate in order to ensure that such an application also extends to Denmark.

*Article 9***Transitional provisions**

1. This Agreement shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Agreement, judgments given after that date shall be recognised and enforced in accordance with this Agreement,

- (a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;
- (b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in this Agreement or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

*Article 10***Relationship to the Brussels I Regulation**

1. This Agreement shall not prejudice the application by the Member States of the Community other than Denmark of the Brussels I Regulation.

2. However, this Agreement shall in any event be applied:

- (a) in matters of jurisdiction, where the defendant is domiciled in Denmark, or where Article 22 or 23 of the Regulation, applicable to the relations between the Community and Denmark by virtue of Article 2 of this Agreement, confer jurisdiction on the courts of Denmark;
- (b) in relation to a *lis pendens* or to related actions as provided for in Articles 27 and 28 of the Brussels I Regulation, applicable to the relations between the Community and Denmark by virtue of Article 2 of this Agreement, when

proceedings are instituted in a Member State other than Denmark and in Denmark;

- (c) in matters of recognition and enforcement, where Denmark is either the State of origin or the State addressed.

*Article 11***Termination of the agreement**

1. This Agreement shall terminate if Denmark informs the other Member States that it no longer wishes to avail itself of the provisions of Part I of the Protocol on the position of Denmark, in accordance with Article 7 of that Protocol.

2. This Agreement may be terminated by either Contracting Party giving notice to the other Contracting Party. Termination shall be effective six months after the date of such notice.

3. Legal proceedings instituted and documents formally drawn up or registered as authentic instruments before the date of termination of the Agreement as set out in paragraph 1 or 2 are not affected hereby.

*Article 12***Entry into force**

1. The Agreement shall be adopted by the Contracting Parties in accordance with their respective procedures.

2. The Agreement shall enter into force on the first day of the sixth month following the notification by the Contracting Parties of the completion of their respective procedures required for this purpose.

*Article 13***Authenticity of texts**

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovene, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.

Hecho en Bruselas, el diecinueve de octubre del dos mil cinco.

V Bruselu dne devatenáctého října dva tisíce pět.

Udfærdiget i Bruxelles den nittende oktober to tusind og fem.

Geschehen zu Brüssel am neunzehnten Oktober zweitausendfünf.

Kahe tuhande viienda aasta oktoobrikuu üheksateistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα εννέα Οκτωβρίου δύο χιλιάδες πέντε.

Done at Brussels on the nineteenth day of October in the year two thousand and five.

Fait à Bruxelles, le dix-neuf octobre deux mille cinq.

Fatto a Bruxelles, addì diciannove ottobre duemilacinque.

Briselē, divtūkstoš piektā gada deviņpadsmitajā oktobrī.

Priimta du tūkstančiai penktų metų spalio devynioliktą dieną Briuselyje.

Kelt Brüsszelben, a kettőezer ötödik év október tizenkilencedik napján.

Magħmul fi Brussel, fid-dsatax jum ta' Ottubru tas-sena elfejn u ħamsa.

Gedaan te Brussel, de negentiende oktober tweeduizend vijf.

Sporządzono w Brukseli dnia dziewiętnastego października roku dwa tysiące piątego.

Feito em Bruxelas, em dezanove de Outubro de dois mil e cinco.

V Bruseli dňa devätnásteho októbra dvetisícpäť.

V Bruslju, devetnajstega oktobra leta dva tisoč pet.

Tehty Brysselissä yhdeksäntenätoista päivänä lokakuuta vuonna kaksituhattaviisi.

Som skedde i Bryssel den nittonde oktober tjugohundrafem.

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



Por el Reino de Dinamarca  
Za Dánské království  
For Kongeriget Danmark  
Für das Königreich Dänemark  
Taani Kuningriigi nimel  
Για το Βασίλειο της Δανίας  
For the Kingdom of Denmark  
Pour le Royaume de Danemark  
Per il Regno di Danimarca  
Dānijas Karalistes vārdā  
Danijos Karalystės vardu  
A Dán Királyság részéről  
Għar-Renju tad-Danimarka  
Voor het Koninkrijk Denemarken  
W imieniu Królestwa Danii  
Pelo Reino da Dinamarca  
Za Dánske kráľovstvo  
Za Kraljevino Dansko  
Tanskan kuningaskunnan puolesta  
På Konungariket Danmarks vägnar



## ANNEX

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended by Commission Regulation (EC) No 1496/2002 of 21 August 2002 amending Annex I (the rules of jurisdiction referred to in Article 3(2) and Article 4(2)) and Annex II (the list of competent courts and authorities) to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters and by Commission Regulation (EC) No 2245/2004 of 27 December 2004 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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# COMMISSION

## COMMISSION DECISION

of 14 November 2005

**authorising Germany to continue the experimental use of a new œnological practice**

(notified under document number C(2005) 4376)

**(Only the German text is authentic)**

(2005/791/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine <sup>(1)</sup>, and in particular Article 46(2)(f) thereof,

Whereas:

- (1) In accordance with Article 41(1) of Commission Regulation (EC) No 1622/2000 of 24 July 2000 laying down certain detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine and establishing a Community code of œnological practices and processes <sup>(2)</sup>, Germany has authorised experimental trials involving the use of oak wood chips and shavings in the ageing of wine.
- (2) These trials covered the use of several types of oak shavings and chips in contact with the wine, the study of aromatic compounds in the treated wine and the influence of these elements on the organoleptic qualities of the wine after ageing in various containers. It is important to continue these trials in order to clarify certain results of the experiments.
- (3) Germany has sent the Commission a communication concerning the trials which the Commission has forwarded to the Member States, together with a request for authorisation to extend the trials for a further three-year period in view of the positive results achieved. Germany has submitted the relevant justification in support of its request.

(4) Grapes from the 2005 harvest are now due to be vinified under those trials.

(5) In accordance with Article 41(3) of Regulation (EC) No 1622/2000, it is for the Commission to take a decision on this request.

(6) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS DECISION:

### *Article 1*

Germany is hereby authorised to continue to use, on a trial basis, oak wood chips and shavings in the wine ageing process until 31 July 2008, in accordance with the conditions laid down in Article 41(1) of Regulation (EC) No 1622/2000.

### *Article 2*

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 November 2005.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

<sup>(1)</sup> OJ L 179, 14.7.1999, p. 1. Regulation as last amended by the 2003 Act of Accession.

<sup>(2)</sup> OJ L 194, 31.7.2000, p. 1. Regulation as last amended by Regulation (EC) No 1163/2005 (OJ L 188, 20.7.2005, p. 3).

*(Acts adopted under Title V of the Treaty on European Union)*

**COUNCIL COMMON POSITION 2005/792/CFSP**  
**of 14 November 2005**  
**concerning restrictive measures against Uzbekistan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 23 May 2005 the Council strongly condemned the excessive, disproportionate and indiscriminate use of force by the Uzbek security forces during events in Andijan in May and expressed its deep regret regarding the failure of the Uzbek authorities to respond adequately to the UN's call for an independent international inquiry into these events.
- (2) On 13 June 2005 the Council condemned the Uzbek authorities' refusal to allow an independent international inquiry into the recent events in Andijan, reiterated its conviction that a credible independent international inquiry should be held and urged the Uzbek authorities to reconsider their position by the end of June 2005.
- (3) On 18 July the Council recalled its conclusions of May 23 and June 13 and expressed its regret that the Uzbek authorities had not reconsidered their position by the given deadline of the end of June. On that occasion the Council indicated that it would be examining measures against Uzbekistan, such as the introduction of an embargo on exports to Uzbekistan of arms, military equipment and equipment which might be used for internal repression as well as other targeted measures.
- (4) On 3 October 2005, the Council again expressed its profound concern at the situation in Uzbekistan and strongly condemned the Uzbek authorities' refusal to allow an independent international inquiry into the recent events in Andijan in May. It stated that it continued to place primary importance on a credible and transparent independent international inquiry.
- (5) In the light of the excessive, disproportionate and indiscriminate use of force by the Uzbek security forces during the Andijan events, the Council has decided to impose an embargo on exports to Uzbekistan of arms, military equipment and other equipment that might be used for internal repression.
- (6) The Council has also decided to implement restrictions on admission to the European Union aimed at those individuals who are directly responsible for the indiscriminate and disproportionate use of force in Andijan and for the obstruction of an independent inquiry.
- (7) The Council has decided to implement these measures for an initial period of one year. In the meantime, the Council will review the measures in the light of any significant changes to the current situation, in particular with regard to:
  - (i) the conduct and outcome of the ongoing trials of those accused of precipitating and participating in the disturbances in Andijan;
  - (ii) the situation regarding the detention and harassment of those who have questioned the Uzbek authorities' version of events in Andijan;
  - (iii) Uzbek cooperation with any independent, international rapporteur appointed to investigate the disturbances in Andijan;
  - (iv) the outcome of any independent, international inquiry,and any action that demonstrates the willingness of the Uzbek authorities to adhere to the principles of respect for human rights, rule of law and fundamental freedoms.
- (8) Action by the Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

#### *Article 1*

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to Uzbekistan by nationals of Member States, or from the territories of Member States, or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. The sale, supply, transfer or export of equipment, listed in Annex I, which might be used for internal repression to Uzbekistan shall be prohibited.

3. It shall be prohibited:

- (i) to provide technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, or related to equipment which might be used for internal repression, directly or indirectly to any natural or legal person, entity or body in, or for use in Uzbekistan.
- (ii) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services and other services, or related to equipment which might be used for internal repression, directly or indirectly to any natural or legal person, entity or body in, or for use in Uzbekistan.

#### *Article 2*

1. Article 1 shall not apply to:

- (i) the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the UN, the EU and the Community, or for EU and UN crisis management operations;
- (ii) the supply, transfer, or export of arms and equipment referred to in Article 1 for the forces in Uzbekistan of contributors to the International Security Assistance Force (ISAF) and 'Operation Enduring Freedom' (OEF);
- (iii) the sale, supply, transfer or export of equipment which might be used for internal repression, intended solely for humanitarian or protective use;

- (iv) the provision of financing, financial assistance or technical assistance related to equipment referred to at (i), (ii) and (iii),

on condition that such exports and assistance have been approved in advance by the relevant competent authority.

2. Article 1 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Uzbekistan by United Nations personnel, personnel of the EU, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

#### *Article 3*

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of those individuals, listed in Annex II, directly responsible for the indiscriminate and disproportionate use of force in Andijan and the obstruction of an independent inquiry.

2. Paragraph 1 does not oblige a Member State to refuse its own nationals entry into its territory.

3. Paragraph 1 shall be without prejudice to cases where a Member State is bound by an obligation of international law, namely:

- (i) as host country of an international intergovernmental organisation;
- (ii) as host country to an international conference convened by, or under the auspices of, the United Nations; or
- (iii) under a multilateral agreement conferring privileges and immunities; or
- (iv) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.

4. Paragraph 3 shall apply also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).

5. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 3 or 4.

6. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending inter-governmental meetings, including those promoted by the European Union, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in Uzbekistan.

7. A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within two working days of receiving notification of the proposed exemption. In the event that one or more of the Council members raises an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

8. In cases where pursuant to paragraphs 3, 4, 6 and 7, a Member State authorises the entry into, or transit through, its territory of persons listed in Annex II, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

#### *Article 4*

No technical meetings scheduled in accordance with the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States,

of the one part, and the Republic of Uzbekistan, of the other part <sup>(1)</sup>, shall take place.

#### *Article 5*

This Common Position shall apply for a period of 12 months. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

#### *Article 6*

This Common Position shall take effect on the date of its adoption.

#### *Article 7*

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

Done at Brussels, 14 November 2005.

*For the Council*  
*The President*  
T. JOWELL

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<sup>(1)</sup> OJ L 229, 31.8.1999, p. 3.

## ANNEX I

**List of equipment which might be used for internal repression**

Equipment for internal repression referred to in Article 1(2)

The list below does not comprise articles that have been specially designed or modified for military use.

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.
2. Specially designed fingerprint equipment.
3. Power controlled searchlights.
4. Construction equipment provided with ballistic protection.
5. Hunting knives.
6. Specially designed production equipment to make shotguns.
7. Ammunition hand-loading equipment.
8. Communications intercept devices.
9. Solid-state optical detectors.
10. Image-intensifier tubes.
11. Telescopic weapon sights.
12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
  - signal pistols;
  - air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
15. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
17. Water cannon and specially designed or modified components therefor.
18. Vehicles equipped with a water cannon.
19. Vehicles specially designed or modified to be electrified to repel borders and components therefor specially designed or modified for that purpose.
20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
    - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
  22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
  23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
  24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:
    - TV or X-ray inspection equipment.
  25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
  26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:
    - those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).
  27. Equipment and devices designed for explosive ordnance disposal; except:
    - bomb blankets;
    - containers designed for folding objects known to be, or suspected of being improvised explosive devices.
  28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.
  29. Linear cutting explosive charges.
  30. Explosives and related substances as follows:
    - amatol,
    - nitrocellulose (containing more than 12,5 % nitrogen),
    - nitroglycol,
    - pentaerythritol tetranitrate (PETN),
    - picryl chloride,
    - tinitorphenylmethylnitramine (tetryl),
    - 2,4,6-trinitrotoluene (TNT)
  31. Software specially designed and technology required for all listed items.
-

## ANNEX II

## List of persons referred to in Article 3 of this Common Position

1. **Surname, First Name:** Almatov, Zakirjan**Alias:****Sex:** Male**Title, Function:** Minister of Interior**Address** (No, street, postal code, town, country): Tashkent, Uzbekistan**Date of birth:** 10 October 1949**Place of birth** (town, country): Tashkent, Uzbekistan**Passport or ID Number** (including country that issued and date and place of issue): Passport No DA 0002600 (Diplomatic ppt)**Nationality:** Uzbek**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number): None2. **Surname, First Name:** Mullajonov, Tokhir Okhunovich**Alias:** Alternative spelling for surname: Mullajanov**Sex:** Male**Title, Function:** First Deputy Interior Minister**Address** (No, street, postal code, town, country): Tashkent, Uzbekistan**Date of birth:** 10 October 1950**Place of birth** (town, country): Ferghana, Uzbekistan**Passport or ID Number** (including country that issued and date and place of issue): Passport No DA 0003586 (Diplomatic ppt) expires 05/11/2009**Nationality:** Uzbek**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number): None3. **Surname, First Name:** Gulamov, Kadir Gafurovich**Alias:****Sex:** Male**Title, Function:** Defence Minister**Address** (No, street, postal code, town, country): Tashkent, Uzbekistan**Date of birth:** 17 February 1945**Place of birth** (town, country): Tashkent, Uzbekistan**Passport or ID Number** (including country that issued and date and place of issue): Passport No DA 0002284 (Diplomatic ppt) expires 24/10/2005**Nationality:** Uzbek**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number): None4. **Surname, First Name:** Ruslan Mirzaev**Alias:****Sex:** Male**Title, Function:** National Security Council State Adviser**Address** (No, street, postal code, town, country):**Date of birth:****Place of birth** (town, country):**Passport or ID Number** (including country that issued and date and place of issue):**Nationality:****Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):

5. **Surname, First Name:** Saidullo Begaliyevich Begaliyev  
**Alias:**  
**Sex:** Male  
**Title, Function:** Andizhan Regional Governor  
**Address** (No, street, postal code, town, country):  
**Date of birth:**  
**Place of birth** (town, country):  
**Passport or ID Number** (including country that issued and date and place of issue):  
**Nationality:**  
**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):
6. **Surname, First Name:** Kossimali Akhmedov  
**Alias:**  
**Sex:** Male  
**Title, Function:** Major General  
**Address** (No, street, postal code, town, country):  
**Date of birth:**  
**Place of birth** (town, country):  
**Passport or ID Number** (including country that issued and date and place of issue):  
**Nationality:**  
**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):
7. **Surname, First Name:** Ergashev, Ismail Ergashevitch  
**Alias:**  
**Sex:** Male  
**Title, Function:** Major General (Retired)  
**Address** (No, street, postal code, town, country): Not known  
**Date of birth:** 5 August 1945  
**Place of birth** (town, country): Vali Aitachaga, Uzbekistan  
**Passport or ID Number** (including country that issued and date and place of issue): No details  
**Nationality:** Uzbek  
**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number): None
8. **Surname, First Name:** Pavel Islamovich Ergashev  
**Alias:**  
**Sex:** Male  
**Title, Function:** Colonel  
**Address** (No, street, postal code, town, country):  
**Date of birth:**  
**Place of birth** (town, country):  
**Passport or ID Number** (including country that issued and date and place of issue):  
**Nationality:**  
**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):
9. **Surname, First Name:** Vladimir Adolfofovich Mamo  
**Alias:**  
**Sex:** Male  
**Title, Function:** Major General  
**Address** (No, street, postal code, town, country):  
**Date of birth:**

**Place of birth** (town, country):

**Passport or ID Number** (including country that issued and date and place of issue):

**Nationality:**

**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):

10. **Surname, First Name:** Gregori Pak

**Alias:**

**Sex:** Male

**Title, Function:** Colonel

**Address** (No, street, postal code, town, country):

**Date of birth:**

**Place of birth** (town, country):

**Passport or ID Number** (including country that issued and date and place of issue):

**Nationality:**

**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):

11. **Surname, First Name:** Valeri Tadzhiiev

**Alias:**

**Sex:** Male

**Title, Function:** Colonel

**Address** (No, street, postal code, town, country):

**Date of birth:**

**Place of birth** (town, country):

**Passport or ID Number** (including country that issued and date and place of issue):

**Nationality:**

**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number):

12. **Surname, First Name:** Inoyatov, Rustam Raulovich

**Alias:**

**Sex:** Male

**Title, Function:** Chief of SNB (National Security Service),

**Address** (No, street, postal code, town, country): Tashkent, Uzbekistan

**Date of birth:** 22 June 1944

**Place of birth** (town, country): Sherabad, Uzbekistan

**Passport or ID Number** (including country that issued and date and place of issue): Passport No DA 0003171 (Diplomatic ppt); also diplomatic passport No 0001892 (expired 15/09/2004)

**Nationality:** Uzbek

**Other information** (e.g. name of father and mother, fiscal number, telephone or fax number): None

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**COUNCIL COMMON POSITION 2005/793/CFSP****of 14 November 2005****concerning the temporary reception by Member States of the European Union of certain Palestinians**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 21 May 2002, the Council adopted Common Position 2002/400/CFSP concerning the temporary reception by Member States of the European Union of certain Palestinians <sup>(1)</sup> and granting them national permits for entry into, and stay in, their territory valid for a period of up to 12 months.
- (2) By Common Positions 2003/366/CFSP <sup>(2)</sup>, 2004/493/CFSP <sup>(3)</sup> and 2004/748/CFSP <sup>(4)</sup>, the Council decided that the validity of these permits should be extended by 12 months and, subsequently, by 6 and 12 months, respectively.
- (3) The validity of those permits should be extended for a further period of 12 months,

HAS ADOPTED THIS COMMON POSITION:

*Article 1*

The Member States referred to in Article 2 of Common Position 2002/400/CFSP shall extend the validity of the national permits

for entry and stay granted pursuant to Article 3 of that Common Position for a further period of 12 months.

*Article 2*

The Council shall evaluate the application of Common Position 2002/400/CFSP within 6 months of the adoption of this Common Position.

*Article 3*

This Common Position shall take effect on the day of its adoption.

*Article 4*

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

Done at Brussels, 14 November 2005.

*For the Council*  
*The President*  
T. JOWELL

<sup>(1)</sup> OJ L 138, 28.5.2002, p. 33.

<sup>(2)</sup> OJ L 124, 20.5.2003, p. 51.

<sup>(3)</sup> OJ L 181, 18.5.2004, p. 24.

<sup>(4)</sup> OJ L 329, 4.11.2004, p. 20.