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

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

REGULATIONS

COUNCIL REGULATION (EC) No 450/2007

of 16 April 2007

on the conclusion of the Fisheries Partnership Agreement between the Gabonese Republic and the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) The Community and the Gabonese Republic have negotiated and initialled a Fisheries Partnership Agreement providing Community fishermen with fishing opportunities in the waters falling within the sovereignty of the Gabonese Republic.

(2) It is in the Community's interest to approve that Agreement.

(3) The method for allocating the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Partnership Agreement between the Gabonese Republic and the European Community is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

Article 2

The fishing opportunities set out in the Protocol to the Agreement shall be allocated among the Member States as follows:

Fishing category	Type of vessel	Member State	Licences or quota
Tuna fishing	Surface long-liners	Spain	13
		Portugal	3
Tuna fishing	Freezer tuna seiners	Spain	12
		France	12

If licence applications from these Member States do not exhaust all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels fish under this Agreement shall notify the Commission of the quantities of each stock caught within the Gabonese fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas [1].

Article 4

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

[1] OJ L 73, 15.3.2001, p. 8.

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

Done at Luxembourg, 16 April 2007.

For the Council
The President
H. SEEHOFER

FISHERIES PARTNERSHIP AGREEMENT

between the Gabonese Republic and the European Community

THE GABONESE REPUBLIC, hereinafter referred to as 'Gabon',

and

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

hereinafter referred to as 'the Parties',

CONSIDERING the close working relationship between the Community and Gabon, particularly in the context of the Cotonou Agreement, and their mutual desire to intensify that relationship,

CONSIDERING the desire of the two Parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea,

DETERMINED to apply the decisions and recommendations of the International Commission for the Conservation of Atlantic Tunas, hereinafter referred to as 'ICCAT',

AWARE of the importance of the principles established by the Code of conduct for responsible fisheries adopted at the FAO Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, to these ends, to commence a dialogue on the sectoral fisheries policy adopted by the Government of Gabon and to identify the appropriate means of ensuring that this policy is effectively implemented and that economic operators and civil society are involved in the process,

DESIROUS of establishing terms and conditions governing the fishing activities of Community vessels in Gabonese waters and Community support for the introduction of responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities through the setting up and development of joint enterprises involving companies from both Parties,

HEREBY AGREE AS FOLLOWS:

Article 1

Scope

This Agreement establishes the principles, rules and procedures governing:

— economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible fishing in Gabonese waters to ensure the conservation and sustainable exploitation of fisheries resources and develop the Gabonese fisheries sector,

— the conditions governing access by Community fishing vessels to Gabonese waters,

— cooperation on the arrangements for policing fisheries in Gabonese waters with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation and management of fish stocks are effective and that illegal, undeclared and unregulated fishing is prevented,

— partnerships between companies aimed at developing economic activities in the fisheries sector and related activities, in the common interest.

Article 2

Definitions

For the purposes of this Agreement:

(a) 'Gabonese authorities' means the Government of Gabon;

(b) 'Community authorities' means the European Commission;

(c) 'Gabonese waters' means the waters over which Gabon has sovereignty or jurisdiction;

(d) 'fishing vessel' means any vessel equipped for commercial exploitation of living aquatic resources;

(e) 'Community vessel' means a fishing vessel flying the flag of a Member State of the Community and registered in the Community;

(f) 'Joint Committee' means a committee made up of representatives of the Community and Gabon, as specified in Article 9 of this Agreement;

(g) 'transhipment' means the transfer in port or at sea of some or all of the catch from one fishing vessel to another vessel;

(h) 'unusual circumstances' means circumstances, other than natural phenomena, which are beyond the reasonable control of one of the Parties and are such as to prevent fishing activities in Gabonese waters.

Article 3

Principles and objectives underlying the implementation of this Agreement

1. The Parties hereby undertake to promote responsible fishing in Gabonese waters on the basis of the principles of non-discrimination between the different fleets fishing in those waters, without prejudice to the agreements concluded between developing countries within a geographical region, including reciprocal fisheries agreements.

2. The Parties shall cooperate with a view to implementing a sectoral fisheries policy adopted by the Government of Gabon and to that end shall initiate a policy dialogue on the necessary reforms. They shall consult with a view to adopting potential measures in this area.

3. The Parties shall also cooperate in carrying out *ex ante*, ongoing and *ex post* evaluations, both jointly and unilaterally, of measures, programmes and actions implemented on the basis of this Agreement.

4. The Parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.

5. In particular, the employment of Gabonese and/or ACP seamen on board Community vessels shall be governed by the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, which shall apply as of right to the corresponding contracts and general terms of employment. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Article 4

Scientific cooperation

1. During the period covered by this Agreement, the Community and Gabon shall endeavour to monitor the evolution of resources in the Gabonese fishing zone.

2. The two Parties, on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

3. The parties undertake to consult one other, either directly, including at subregional level within COREP (Regional Fisheries Committee for the Gulf of Guinea (COREP), or within the competent international organisations, to ensure the management and conservation of living resources in the Atlantic Ocean, and to cooperate in the relevant scientific research.

Article 5

Access by Community vessels to the fisheries in Gabonese waters

1. Gabon undertakes to authorise Community vessels to engage in fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex thereto.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in force in Gabon. The Gabonese authorities shall notify the Commission of any amendments to that legislation.

3. Gabon shall take all the appropriate steps required for the effective application of the fisheries monitoring provisions in the Protocol. Community vessels shall cooperate with the Gabonese authorities responsible for carrying out such monitoring.

4. The Community undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the waters over which Gabon has jurisdiction.

Article 6

Licences

1. Community vessels may fish in the Gabonese fishing zone only if they are in possession of a fishing licence issued under this Agreement and the Protocol hereto.

2. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

Article 7

Financial contribution

1. The Community shall grant Gabon a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annexes. This single contribution shall be based on two elements, namely:

(a) access by Community vessels to Gabonese waters and fisheries resources, and

(b) the Community's financial support for promoting responsible fishing and the sustainable exploitation of fisheries resources in Gabonese waters.

2. The element of the financial contribution referred to in paragraph 1(a) above shall be determined in the light of objectives identified by common accord between the Parties in accordance with the Protocol, to be achieved in the context of the sectoral fisheries policy drawn up by the Gabonese Government and an annual and multiannual programme for its implementation.

3. The financial contribution granted by the Community shall be paid each year in accordance with the Protocol and subject to this Agreement and the Protocol in the event of any change to the amount of the contribution as a result of:

(a) unusual circumstances;

(b) a reduction in the fishing opportunities granted to Community vessels, made by mutual agreement for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice;

(c) an increase in the fishing opportunities granted to Community vessels, made by mutual agreement between the Parties, where the best available scientific advice concurs that the state of resources so permits;

(d) a reassessment of the terms of financial support for implementing a sectoral fisheries policy in Gabon, where this is warranted by the results of the annual and multiannual programming observed by both Parties;

(e) termination of this Agreement under Article 12;

(f) suspension of the application of this Agreement under Article 13.

Article 8

Promoting cooperation among economic operators and in civil society

1. The Parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to coordinating the different measures that might be taken to this end.

2. The Parties undertake to promote exchanges of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.

3. The Parties shall endeavour to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.

4. The Parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest which shall systematically comply with Gabonese and Community legislation.

Article 9

Joint Committee

1. A Joint Committee shall be set up to monitor the application of this Agreement. The Joint Committee shall perform the following functions:

(a) monitoring the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 7(2) and evaluation of its implementation;

(b) providing the necessary liaison for matters of mutual interest relating to fisheries;

(c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement;

(d) reassessing, where necessary, the level of fishing opportunities and, consequently, of the financial contribution;

(e) any other function which the Parties decide on by mutual agreement.

2. The Joint Committee shall meet at least once a year, alternately in Gabon and in the Community, and shall be chaired by the Party hosting the meeting. It shall hold a special meeting at the request of either of the Parties.

Article 10

Geographical area to which the Agreement applies

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community applies, under the conditions laid down in that Treaty, and, on the other, to the territory of Gabon.

Article 11

Duration

This Agreement shall apply for six years from the date of its entry into force; it shall be tacitly renewed for additional periods of six years, unless notice of termination is given in accordance with Article 13.

Article 12

Suspension

1. Application of this Agreement may be suspended at the initiative of one of the Parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement. Suspension of application of the Agreement shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect. On receipt of this notification, the Parties shall enter into consultations with a view to resolving their differences amicably.

2. Payment of the financial contribution referred to in Article 7 shall be reduced proportionately and *pro rata temporis*, according to the duration of the suspension.

Article 13

Termination

1. This Agreement may be terminated by either Party in the event of unusual circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, or failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing.

2. The Party concerned shall notify the other Party in writing of its intention to withdraw from the Agreement at least six months before the date of expiry of the initial period or each additional period.

3. Dispatch of the notification referred to in the previous paragraph shall open consultations by the Parties.

4. Payment of the financial contribution referred to in Article 7 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

Article 14

Protocol and Annex

The Protocol and the Annex shall form an integral part of this Agreement [1].

Article 15

National law

The activities of Community vessels operating in Gabonese waters shall be governed by the applicable law in Gabon, unless otherwise provided in this Agreement, the Protocol and the Annex and Appendices thereto.

Article 16

Repeal

On the date of its entry into force, this Agreement repeals and replaces the Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon which entered into force on 3 December 1998.

However, the Protocol setting out for the period from 3 December 2005 to 2 December 2011 the fishing opportunities and financial contribution provided for in the Fisheries Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon shall remain in force during the period referred to in Article 1(1) thereof and shall become an integral part of the present Agreement.

Article 17

Entry into force

This Agreement, drawn up in duplicate in the Czech, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic, shall enter into force on the date on which the Parties notify each other in writing that they have completed the necessary internal procedures to that end.

[1] OJ L 319, 18.11.2006, p. 17.

COUNCIL REGULATION (EC) No 451/2007

of 23 April 2007

terminating the partial interim review of the anti-dumping measures applicable to imports of hand pallet trucks and their essential parts originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 1174/2005 [2], imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China ('PRC').

2. *Ex officio* initiation of a review

(2) On the basis of information at the Commission's disposal following certain changes after the original investigation in the structure of one Chinese exporting producer which was not granted market economy treatment in that investigation, namely Ningbo Ruyi Joint Stock Co., Ltd. ('Ningbo Ruyi'), it appeared that market economy conditions prevailed for this company. In effect, there was sufficient *prima facie* evidence suggesting that Ningbo Ruyi fulfilled the criteria of Article 2(7)(c) of the basic Regulation. In this context, the circumstances on the basis of which the existing measures were established were considered to have changed and these changes seemed to be of a lasting nature.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation, the Commission published a notice ('notice of initiation') [3] and commenced an investigation on its own initiative, limited in scope to determine whether Ningbo Ruyi operates under market economy conditions and, if so, to determine whether its individual dumping margin and duty rate should be based on its own costs/domestic prices.

3. Parties concerned by the investigation

(4) The Commission officially advised Ningbo Ruyi and its related importer Jungheinrich AG, as well as the representatives of the exporting country and the Community industry of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(5) The Commission also sent a claim form for market economy treatment ('MET') and a questionnaire to Ningbo Ruyi and received replies within the deadlines set for that purpose. The Commission sought all the information it deemed necessary for the determination of MET and dumping, analysed the information provided and carried out verification visits at the premises of the related companies:

— Ningbo Ruyi Joint Stock Co., Ltd, Ninghai,

— Ruyi Industries (Hong Kong) Co., Ltd. ('Ruyi Hong Kong'), Hangzhou,

— Jungheinrich Lift Trucks (Shanghai) Co., Ltd. ('Jungheinrich Shanghai'), Shanghai.

4. Review investigation period

(6) The investigation of dumping covered the period from 1 April 2005 to 31 March 2006 ('review investigation period' or 'RIP').

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 189, 21.7.2005, p. 1.
[3] OJ C 127, 31.5.2006, p. 2.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(7) The definition of the product concerned corresponds to the one that was used in the original investigation mentioned under recital (1). The product concerned is hand pallet trucks ('HPT'), not self-propelled, used for the handling of materials normally placed on pallets, and their essential parts, i.e. chassis and hydraulics, originating in the PRC, currently classifiable within CN codes ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10).

2. **Like product**

(8) The current review has shown that the HPT produced in the PRC by Ningbo Ruyi and sold on the Chinese market have the same basic physical characteristics and the same uses as those exported to the Community. Therefore, these products are considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

C. **RESULTS OF THE INVESTIGATION**

(9) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

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

— no distortions carried over from the non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(10) Ningbo Ruyi requested MET pursuant to Article 2(7)(b) of the basic Regulation. It is the Community's consistent practice to examine whether a group of related companies involved in the production and/or sale of the product concerned as a whole fulfils the conditions for MET. According to Ningbo Ruyi, there was only one such related company in the PRC — Jungheinrich Shanghai. Ningbo Ruyi replied to the MET claim form within the given deadline.

(11) In the course of the investigation, the Community industry claimed that there seemed to be various companies related to Ningbo Ruyi which were not duly disclosed by the company in the information submitted to the Commission, including in the audited financial statements. According to the Community industry, the non-disclosure of related companies in financial statements is a breach of IAS 24 (Related Party Disclosures) and it requested the Commission to verify this issue.

(12) It was found during the verification visits that there were related companies which were not disclosed in the audited financial statements (breach of IAS 24) or in the replies to the MET claim form and to the questionnaire. In this respect, it is worth noting that both the MET claim form and the questionnaire requested Ningbo Ruyi to describe its worldwide corporate structure and affiliations, including parent companies, subsidiaries or other related companies, whether or not involved in the production and/or sale of the product concerned. Furthermore, Ningbo Ruyi was requested to submit a MET claim form for each subsidiary or other related company in the PRC which was a producer and/or exporter of HPT and to provide details about all other related companies.

(13) According to Ningbo Ruyi's Auditor's Report and Financial Statements for the year ended 31 December 2005 ('Report 2005') and the replies to the MET form and the questionnaire, Ningbo Ruyi only had three related companies in the RIP: Jungheinrich AG, Jungheinrich Shanghai and Ruyi Hong Kong. The investigation, however, showed that the Chinese shareholders of Ningbo Ruyi have also controlling shareholdings in Ningbo CFA Co., Ltd. ('Ningbo CFA') and Ningbo Free Trade Zone Ruyi International Trading Co., Ltd. ('NFTZ').

(14) There are also other companies owned by relatives of the Chinese shareholders of Ningbo Ruyi: CFA Tools Co., Ltd. ('CFA Tools'), a company incorporated in Hong Kong, and Zhejiang Tianyou Import & Export Co., Ltd. ('Tianyou').

(15) All the abovementioned companies not disclosed by Ningbo Ruyi are thus related to Ningbo Ruyi for the purposes of the current review. Three of them were traders of HPT in the RIP and all have a business licence allowing them to trade HPT. They seem to have exported mainly to countries outside the Community. At least three quarters of the sales volumes reported by Ningbo Ruyi as domestic sales were in fact export sales channelled through non-disclosed domestic related customers and unrelated customers.

(16) Finally, the nature of the transactions between Ningbo Ruyi and Ningbo Jinmao Import & Export Co., Ltd. ('Ningbo Jinmao'), which was reported as a related company in the original investigation (Ningbo Ruyi sold its shareholding in November 2003), is an indication that the two companies still have close links in the HPT business. Ningbo Jinmao bought more than half of the HPT reported by Ningbo Ruyi as domestic sales in the RIP and then resold a significant quantity to NFTZ, which exported them. NFTZ did not buy any HPT directly from Ningbo Ruyi. The fact that Ningbo Jinmao is one of Ningbo Ruyi's main customers and sells a large quantity of its purchases to NFTZ shows that Ningbo Ruyi knew or should have known that most sales to Ningbo Jinmao could not be domestic sales as NFTZ, a related company, was exporting the products bought by Ningbo Jinmao.

(17) Some time after the on-the-spot verification visit, Ningbo Ruyi submitted some new information concerning the MET status of certain of these non-disclosed related companies arguing that a MET determination for the whole group could still be made. This was on the grounds that the non-disclosure was not intentional and because the involvement of these related parties with sales of the product under investigation was not significant. For the same reasons, Ningbo Ruyi's partner, Jungheinrich AG, also argued that this new information should be considered and MET granted.

(18) Whether or not there was any intent to impede the investigation by the timely non-disclosure of related parties, the fact is that questionnaire responses were substantially incomplete to a degree which made it impossible to verify the existence or otherwise of market economy conditions for the Ningbo Ruyi group during the verification visits which were carried out in the PRC. With no verification visits possible at the premises of the non-disclosed related parties, the extent to which the Ningbo Ruyi group was involved with HPT can only remain a matter of conjecture.

(19) In any event, Ningbo Ruyi's failure to disclose in its financial statements all its related parties is a breach of IAS 24. The objective of IAS 24 is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties. In the framework of an anti-dumping investigation, such disclosure is necessary to allow the institutions to examine whether a group of related companies as a whole fulfils the conditions for MET.

(20) The breach of IAS 24 shows that the audit of Ningbo Ruyi's financial statements was not carried out in accordance with IAS and casts doubts on the reliability of Ningbo Ruyi's accounts. This would lead to the failure of Ningbo Ruyi to meet the second criterion laid down in Article 2(7)(c) of the basic Regulation.

(21) Although the provisions of Article 18 of the basic Regulation concerning non-cooperation could apply in this review, it is noted that the Commission initiated this review on its own initiative because it had *prima facie* evidence that market economy conditions prevailed for Ningbo Ruyi, something that Ningbo Ruyi subsequently failed to demonstrate. Consequently, it is considered that there is no need to invoke Article 18 of the basic Regulation, but suffices to terminate the review and maintain the existing measure in force.

D. **TERMINATION OF THE REVIEW**

(22) In the light of the results of the investigation, the review should be terminated without amending the level of the duty applicable to Ningbo Ruyi, which should be maintained at the level of the definitive anti-dumping duty rate established in the original investigation, i.e. 28,5 %.

E. **DISCLOSURE**

(23) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present review and to maintain the existing anti-dumping duty on imports of HPT produced by Ningbo Ruyi. All parties were given an opportunity to comment. The comments received were not of a nature to change the conclusions.

(24) Following disclosure, the Community industry claimed that the non-cooperation provisions of the basic Regulation (Article 18) should be applied and Ningbo Ruyi should be penalised with the 46,7 % residual duty as a non-cooperating exporting producer.

(25) Jungheinrich AG and Ningbo Ruyi considered that Ningbo Ruyi's failure to disclose all its related companies was minor and unintentional and had no impact on Ningbo Ruyi's financial situation. Therefore, Ningbo Ruyi should be granted MET or at least a revised lower individual duty rate.

(26) The failure to disclose all related companies, in particular since three out of the four non-disclosed related companies were involved in HPT business and the other one has a business licence that allows it to trade HPT, cannot be considered minor because it did not allow a determination of whether it has been shown that all MET criteria are met (and not only the second criterion concerning accounting) for all companies, in line with the Community's standard practice. Furthermore, whether the failure to disclose all these related companies was unintentional is irrelevant. The uncontested fact is that these related companies were not even disclosed in the financial statements of Ningbo Ruyi and this by itself showed that at least the second criterion of Article 2(7)(c) of the basic Regulation was not met. Consequently, the claim that the failure to disclose these related companies was minor, unintentional and without any impact cannot be accepted.

(27) Finally, as set out in recital (3), this review is limited in scope to determine whether Ningbo Ruyi operates under market economy conditions and, only if MET had been granted to Ningbo Ruyi, would a new dumping margin be calculated. Thus, since MET is not granted, no new dumping margin, higher or lower than the existing one, can be established for Ningbo Ruyi through this review.

(28) This review should therefore be terminated without any amendment to Regulation (EC) No 1174/2005,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of hand pallet trucks and their essential parts originating in the People's Republic of China, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated without amending the anti-dumping measures in force.

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

Done at Luxembourg, 23 April 2007.

For the Council
The President
F.-W. STEINMEIER

COUNCIL REGULATION (EC) No 452/2007

of 23 April 2007

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 30 October 2006, the Commission imposed by Regulation (EC) No 1620/2006 [2] (the provisional Regulation) a provisional anti-dumping duty on imports into the Community of ironing boards originating in the People's Republic of China and Ukraine (the countries concerned). This Regulation entered into force on 1 November 2006.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 (the investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 2002 to the end of the IP (the period considered).

2. Subsequent procedure

(3) Following the imposition of a provisional anti-dumping duty on imports of ironing boards from the countries concerned, all parties received a disclosure of the essential facts and considerations on which the provisional Regulation was based (the provisional disclosure). All parties were granted a period within which they could make written and oral representations in relation to this disclosure.

(4) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty (the final disclosure). The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(6) It is recalled that, as set out in recital 12 of the provisional Regulation, the product concerned by this proceeding is ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and Ukraine (the product concerned).

(7) One party argued that the ironing boards with a steam soaking and/or heating top and/or blowing top should be excluded from the scope of the measures, since such models are sold at a minimum retail price of EUR 200, whilst the average retail price of an ironing board is EUR 35. It was also argued that the aforesaid models are often sold to the consumer as a package including a steam iron, in which case the average retail price is about EUR 500. As far as the price element is concerned, it is noted that prices per se, and in particular retail prices, are not a factor to be considered when assessing whether or not two or more product types (models) should be considered as one single product for the purpose of an anti-dumping proceeding. It is the basic physical characteristics and uses which are considered for this purpose and, to this end, such types are considered similar to those without steam soaking and/or heating top. As far as retail sales of ironing boards together with irons or steam irons are concerned, the investigation established that such retail sales method is occasionally being used for all different types of ironing boards and, in any event, the different prices of the various combinations cannot justify the exclusion of any ironing board type from the product scope of this proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 300, 31.10.2006, p. 13.

(8) The same party also argued that the essential parts of the ironing boards should not be included in the scope of the measures, since there is allegedly no market for these parts in the Community and there are apparently no manufacturers of these parts in the People's Republic of China (the PRC) and Ukraine. This argument, which is as such not decisive for the definition of a product, was in any event not confirmed by the investigation. It was in fact established that a certain market for the essential parts of the ironing boards exists and that at least two known Chinese producers of ironing boards exported essential parts thereof to the Community.

(9) In view of the above, it is concluded that all types of ironing boards and the essential parts thereof mentioned in recital 6 above share the same basic physical and technical characteristics, have the same basic end-uses and compete with one another on the Community market. On this basis, recitals 12 and 13 of the provisional Regulation are hereby confirmed.

2. **Like product**

(10) In the absence of any comments, recital 14 of the provisional Regulation is hereby confirmed.

(11) In view of the above, it is definitively concluded that, in accordance with Article 1(4) of the basic Regulation, the product concerned and ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and the essential parts thereof produced and sold in the analogue country Turkey, as well as those produced and sold by the Community industry on the Community market are alike.

C. **DUMPING**

1. **Market economy treatment (MET)**

(12) Following the imposition of provisional measures, one Chinese cooperating exporting producer claimed that it should have been granted MET. The company reiterated that the accounting practices set out in recital 25 of the provisional Regulation, which led to the rejection of MET of five Chinese exporting producers (three were rejected only for this reason), were not sufficiently material to affect the reliability of the accounts, which were in fact complete, and do not impact on the determination of the dumping margin.

(13) In this respect, it is noted that the aforesaid accounting practices used by the company were found during the on-the-spot verification visit to be in clear breach of the International Accounting Standards (IAS), namely IAS No 1, and could not be considered immaterial. No new evidence which could alter the findings set out in recital 25 of the provisional Regulation was submitted.

(14) In the absence of any other relevant and substantiated comment, recitals 15 to 28 of the provisional Regulation are hereby confirmed.

2. **Individual treatment**

(15) In the absence of any comments, recitals 29 to 34 of the provisional Regulation concerning individual treatment are hereby confirmed.

3. **Normal value**

3.1. *Analogue country*

(16) In the absence of any comments on the choice of Turkey as the analogue country, recitals 35 to 40 of the provisional Regulation are hereby confirmed.

3.2. *Determination of normal value for the exporting producers granted MET*

(17) It is recalled that the normal value determination for one Chinese and the sole Ukrainian exporting producer granted MET was based on the data these companies submitted on domestic sales and cost of production. These data were verified at the premises of the companies concerned.

(18) It is furthermore recalled that the Chinese and the Ukrainian exporting producer granted MET did not have sufficient representative domestic sales and that normal value was established according to Article 2(3) of the basic Regulation, i.e. normal value was constructed by adding to the manufacturing costs a reasonable amount for selling, general and administrative (SG&A) expenses and a reasonable margin of profit.

3.2.1. People's Republic of China

(19) With reference to recital 44 of the provisional Regulation, the Commission further examined the cost of production, and in particular the purchase prices of certain raw materials made of steel, reported by the Chinese producer granted initially MET. In this respect, the allegations and additional evidence received from certain parties following the provisional disclosure were also considered and verified. No divergence of the purchase prices of steel reported by the company concerned from the corresponding world prices was confirmed. The cost of production submitted by this company is therefore definitively accepted.

(20) In the absence of any other comments concerning normal value for the Chinese exporting producer granted MET, the findings set out in recitals 43 to 46 of the provisional Regulation are hereby confirmed.

3.2.2. Ukraine

(21) Following the imposition of provisional measures, the Ukrainian authorities requested the Commission to re-calculate normal value for the sole Ukrainian exporter on the basis of sales on the Ukrainian market. It should be recalled that, for the sole Ukrainian exporting producer, the overall domestic sales of the product concerned during the IP were not made in representative quantities pursuant to Article 2(2) of the basic Regulation and, thus, normal value had to be constructed as mentioned in recital 18 above and as explained in recital 47 of the provisional Regulation.

(22) In the absence of any other comments concerning normal value for the sole Ukrainian exporting producer, the findings set out in recitals 47 to 49 of the provisional Regulation are hereby confirmed.

3.3. *Determination of normal value in the analogue country*

(23) One importer argued that the information received from just one producer in Turkey, the analogue country, does not suffice for the purpose of the determination of normal value and that given such insufficient grounds no anti-dumping duties shall be imposed. In this respect, it is noted that the basic Regulation, and in particular Article 2(7) thereof, does not preclude the imposition of the measures in case of low or no cooperation from producers in analogue countries. It is however added that, for the sake of ensuring as accurate a finding as possible, the Commission nevertheless compared the information received from the sole cooperating producer in the analogue country with the information received from another Turkish producer and from one US producer, which did not fully cooperate in the investigation but agreed to provide certain information on prices, costs and volume of sales, and from the Community industry. Such comparison confirmed that the data from the cooperating Turkish producer constitute an appropriate reasonable basis for the determination of normal value. This argument is therefore rejected. In the absence of any other comments in this respect, recitals 50 to 52 of the provisional Regulation are confirmed.

4. **Export price**

4.1. *People's Republic of China*

(24) Following the imposition of provisional measures, one exporting producer from the PRC referred to in recital 57 of the provisional Regulation maintained that its export sales via unrelated trading companies should not be excluded from the export price determination. However, the company failed to provide any additional verifiable evidence supporting its claims; in particular, the company failed to substantiate the final destinations of its sales via unrelated parties. The claim is therefore rejected.

(25) One other exporting producer from the PRC argued that its sales to the EC via its related Hong Kong based trading company should not have been disregarded. The company reiterated its initial claim on the non-exclusion of these particular sales from the calculation of the export prices, but it was not able to provide any new and verifiable information or explanation. It could not demonstrate that the reported export prices to independent customers in the Community were actually paid. Also, the Hong Kong trader's purchases were not reconcilable with its audited accounts. The claim is therefore rejected.

(26) The same party argued that the Commission should have used its own exchange rates when calculating export prices. In this respect, it is noted that the company reported all its transactions for each month using the exchange rate of the first working day of the month. This claim is rejected as the monthly average exchange rate used by the Commission in its calculations represents more accurately the real situation because it neutralises the effect of the use of a fixed rate of one only day in converting transactions that took place within a whole month.

(27) The Community industry alleged that the export prices reported by the cooperating exporting producers, and in particular the company referred to in recital 69 of the provisional Regulation, are wrong. However, the evidence submitted in this respect was either irrelevant or unverifiable or it did not show any discrepancies. The allegations are thus considered unfounded.

(28) In the absence of any other comments in this respect, recitals 53 to 58 of the provisional Regulation are hereby confirmed.

4.2. *Ukraine*

(29) Following the imposition of provisional measures, the Ukrainian authorities and the sole Ukrainian exporting producer claimed that when determining the export price, no deduction should be made for the related company's SG&A and profit, as Article 2(9) of the basic Regulation is not applicable in the present case. It was argued that Article 2(9) of the basic Regulation only applies to related importers located in the Community as its wording makes a clear distinction between 'importation and resale'. The sole Ukrainian exporting producer submitted that its related company acts as an export department, and both interested parties argued that the export price should be established on the basis of Article 2(8) of the basic Regulation. Furthermore, they argued that if the related company could not be considered as an export department of the exporting producer it should be considered as a sales agent.

(30) In reply to this, it should be noted that, for sales of the product concerned to the Community, the sole Ukrainian exporting producer consigned the product concerned directly to the Community, invoiced its related company in Switzerland for each consignment and received a relevant payment. Thus, the exporting producer performed all functions of an exporter. The related company in Switzerland negotiated sales contracts and invoiced the first independent buyer in the Community. The related company also performed all import functions in respect of the goods entering into free circulation in the Community, i.e. it undertook the customs clearing of the goods into the Community and incurred any costs for transporting the goods to the independent buyer in the Community as well as any warehousing in the Community where applicable. In this respect, this related company, though formally established outside the Community, has an EU VAT number and operates, inter alia, through its sales offices and several warehousing facilities in the Community. It should thus be considered as performing the functions of a related importer as set out in recital 59 of the provisional Regulation and not those of an exporter or a sales agent. Consequently, the claim should be rejected and the provisional findings confirmed.

(31) In the absence of any other comments in this respect, recital 59 of the provisional Regulation is hereby confirmed.

5. **Comparison**

(32) Following the imposition of provisional measures, one Chinese exporting producer argued that certain important price differentials (e.g. the actual weight of the ironing board) were disregarded in comparing the normal value and the export price of different product types. In this respect, it is noted that the different product types were grouped in order to reflect the major physical characteristics and cost/pricedrivers on the one hand and to permit sufficiently representative matching of the exported types with the types sold by the cooperating Turkish producer on its domestic market on the other hand. The following main characteristics were considered for comparison purposes: type, size, construction and material of top, material of legs, presence and type of iron rest, presence of accessories like sleeve board, linen rack, socket. The weight and other criteria mentioned by the exporting producer in question are indirectly reflected in certain criteria considered for the comparison (by way of example, the weight is reflected in size of the top of the ironing board and its construction material). Consequently, the claim could not be accepted.

(33) Following the imposition of provisional measures, several parties requested more information concerning the adjustments to the normal value used for the exporting producers not granted MET. In this respect, it is noted that the specific disclosure documents communicated to each cooperating party gave an exhaustive list of the various adjustments granted and that as in all cases adjustments were made where this was proven to be warrant. In particular, the normal value based on the analogue country was adjusted downwards in order to eliminate the effects of (a) the differences in the physical characteristics described in recital 62 of the provisional Regulation, (b) the differences in the level of trade also described in recital 62 of the provisional Regulation and (c) the differences in the cost of the credit granted for the domestic sales under consideration. No other differences were established and, thus, no other adjustments were made.

(34) The sole Ukrainian exporting producer claimed that the Commission, when determining for comparison purposes the adjustments to the export price, made certain non-justified deductions in relation to certain elements concerning transport and credit costs. The Commission accepted the claim and revised the relevant adjustments accordingly.

(35) In the absence of any other comments in this respect, recitals 60 to 62 of the provisional Regulation are hereby confirmed.

6. **Dumping margins**

6.1. *People's Republic of China*

(36) In the light of the above, the definitive dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid, are the following:

— Foshan City Gaoming Lihe Daily Necessities Co. Ltd., Foshan 34,9 %

— Guangzhou Power Team Houseware Co. Ltd., Guangzhou 36,5 %

— Since Hardware (Guangzhou) Co., Ltd., Guangzhou 0 %

— Foshan Shunde Yongjian Housewares and Hardware Co. Ltd., Foshan 18,1 %

— Zhejiang Harmonic Hardware Products Co. Ltd., Guzhou 26,5 %

— all other companies 38,1 %.

6.2. *Ukraine*

(37) The revised definitive dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid, are the following:

— Eurogold Industries Ltd, Zhitomir 9,9 %

— all other companies 9,9 %.

D. **INJURY**

1. **Community production**

(38) In the absence of any comments in this respect, recitals 72 and 73 of the provisional Regulation are hereby confirmed.

2. **Definition of the Community industry**

(39) In the absence of any comments in this respect, recitals 74 to 76 of the provisional Regulation are hereby confirmed.

3. **Community consumption**

(40) In the absence of any comments in this respect, recitals 77 and 78 of the provisional Regulation are hereby confirmed.

4. **Imports from the countries concerned**

(41) Following the imposition of provisional measures, one of the parties referred to in recital 83 of the provisional Regulation reiterated its claim to analyse the influence of the dumped imports from Ukraine separately from the dumped imports from the PRC, because there allegedly are fundamental differences as far as the price level and the import volume development are concerned. However, no further justification was submitted to support the claim. As regards prices, it is recalled that the absolute difference in the level of the prices between the two countries is not decisive in the context of the cumulative assessment since it may reflect a number of factors, including a different product mix of the imports from each country; price trends followed however a similar trend (see recital 84 of the provisional Regulation). As regards volumes, the volume of imports from each country was significant in the IP and it had an increasing trend over the period considered. The fact that the Ukrainian producer only started its production operation in 2003 is not relevant in establishing any injury in the IP. Consequently, the claim should be rejected again, and the cumulative assessment of the effects of the dumped imports set out in recitals 79 to 86 of the provisional Regulation confirmed.

(42) One importer argued that the import prices of the cooperating exporting producers from the PRC, as established by the Commission for the undercutting calculation (see recital 92 of the provisional Regulation), do not reflect certain unavoidable additional costs borne on importation from the PRC, such as the palletisation costs and the costs for storage, dispatching and transport from a transition warehouse to the importer's warehouse. In the case of the palletisation costs, the investigation has confirmed that such costs are indeed born in the Community, since ironing boards are normally shipped loose in containers from the PRC. The claim was thus considered warranted and the import prices of the cooperating exporting producers from the PRC were amended accordingly. In the case of all other additional costs mentioned above, the claim could not be accepted since such costs are rather specific for the importer concerned and are not necessarily borne by other importers. Moreover, such costs may be borne by Community producers as well. The provisional undercutting margins for the dumped imports from the PRC were accordingly amended as follows:

Country	Price Undercutting
PRC	29,2 %-44,2 %

(43) No comments were received concerning the 6,6 % undercutting found for Ukraine, which is hereby confirmed. In the absence of any other comments concerning the dumped imports from the countries concerned, recitals 87 to 92 of the provisional Regulation are hereby confirmed.

5. **Situation of the Community industry**

(44) Following the imposition of provisional measures, the complainants argued that its profit margin during the IP should not reflect the extraordinary and temporary management remuneration cuts of certain Community producers in the IP (see recital 100 of the provisional Regulation). In order to reflect consistently during the period considered the economic situation of the Community industry and since verified evidence in this respect was available, the claim was accepted. The figures and the provisional conclusions on the profitability of the Community industry were accordingly amended as follows:

	2002	2003	2004	IP
Pre-tax profit margin	6,8 %	6,4 %	0,7 %	2,1 %
Index: 2002 = 100	100	94	10	31

Source: verified questionnaire replies

(45) Thus, over the period considered profitability of the Community industry deteriorated. Profit margin in the IP was by 69 % lower than in 2002.

(46) Consequently, the return on investment and cash flow of the Community industry were amended in order to reflect the above described corrections to the remunerations and profit in the IP. The revised figures in the table below present a worse development of these two injury indicators in the IP than that set out in recitals 102 and 103 of the provisional Regulation:

	2002	2003	2004	IP
Return on investment	61,98 %	68,19 %	4,77 %	13,72 %
Index: 2002 = 100	100	110	8	22
Cash flow (EUR)	3 463 326	4 184 515	1 246 671	2 565 562
Index: 2002 = 100	100	121	36	74

Source: verified questionnaire replies

(47) In the absence of any other comments concerning the situation of the Community industry, recitals 94 to 107 of the provisional Regulation, modified as set out in recitals 44 and 46 above, are hereby confirmed.

6. **Conclusion on injury**

(48) The above revised factors, i.e. price undercutting, profitability, return on investment and cash flow of the Community industry in the IP, left unaffected the conclusions on all injury factors set out in the provisional Regulation confirming that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation. Therefore, and in the absence of any other comments in this respect, recitals 108 to 110 of the provisional Regulation are hereby confirmed.

E. **CAUSATION**

(49) Following the imposition of provisional measures, certain parties referred to in recital 134 of the provisional Regulation simply reiterated that the injury suffered by the Community Industry was self-inflicted. However, no new evidence and no new arguments were brought forward in this respect, and their claim was therefore rejected.

(50) In the light of the above and in the absence of any new comments concerning causation, recitals 111 to 141 of the provisional Regulation are hereby confirmed.

F. **COMMUNITY INTEREST**

1. **General remarks and Interest of the Community industry**

(51) In the absence of any comments in this respect, recitals 142 to 146 of the provisional Regulation are hereby confirmed.

2. **Interest of consumers**

(52) Following the provisional disclosure, one importer disagreed with certain assessments quoted in recital 148 of the provisional Regulation. In particular, it challenged the assumption made that (i) any burden of anti-dumping measures would be allocated evenly between the importers, retailers and consumers and, (ii) the total markup between import and retail price is around 500 %. It was argued that the burden will be fully passed on to consumers, since the importer's margin is already low and retailers are not likely to reduce their margin, although the latter is considerable. As far as the markup is concerned, it was argued that an ironing board imported at EUR 6,53 which is the average unit dumped import price at the Community frontier, will most likely be retailed at less than EUR 35, which is approximately the average retail price of an ironing board in the Community, and, thus, the analysis based on the average retail and import prices is misleading and shows unrealistic margins. It was also noted that the value added tax element was not considered in the calculation. According to this importer, the total markup would rather be at most 300 %.

(53) In respect of the impact on the consumers, it should be recalled that no representations were received from consumers' organisations, neither before nor after the publication of the provisional Regulation. Regarding the importer's comments set out in recital 52 above, the following should be noted. Firstly, the importer in question admitted that any impact of anti-dumping measures on the consumers would be negligible, considering the useful life of an ironing board. In fact, even if the burden would be fully passed on to consumers, the latter would have to pay in addition on average around EUR 1,5 for a durable good with a useful life of at least five years (estimate being based on 2005 market shares and prices and on the definitive duty rates). Secondly, given the keen competition in this market, it is highly unlikely that any of the operators involved in importation and sale of the product concerned would absorb any of the anti-dumping duty imposed. Therefore, the scenario according to which the burden would be distributed evenly appears to be more realistic. Indeed, no other party involved in this proceeding disputed such assessment. Thus, the conclusion drawn in recital 149 of the provisional Regulation can be confirmed.

(54) In respect of the markups applied by the operators, it is hereby recalled that no retailer cooperated in the investigation and, thus, no detailed and verifiable evidence on the retail prices and on the margins applied at this stage was available. The assessment could therefore only be based on a comparison between the price of dumped imports, known from the questionnaire replies, and the average retail price, estimated on the basis of the information received from importers and the Community industry. According to this information, the average retail price refers to all such sales in the Community, including inter alia value added tax. The total markup applied by importers, retailers and any other operator involved in distribution of dumped imports to consumers thus established is around 450 %. Finally, it is recalled and reconfirmed that the individual markups may vary significantly from one operator to the other, but they are on average substantial, in particular in the retail stage.

(55) One Chinese exporting producer argued that the Community consumers should not be deprived of the high quality Chinese products sold at the most reasonable price. In this respect, reference is made to recital 53 above and recital 59 below and it is concluded that the Community market would not be deprived of such products.

(56) In the absence of any other comments in this respect, recitals 147 to 150 of the provisional Regulation are hereby confirmed.

3. **Interest of distributors/retailers**

(57) In the absence of any comments in this respect, reference is made to recitals 52 to 54 above and recital 151 of the provisional Regulation is hereby confirmed.

4. **Interest of the unrelated importers in the Community**

(58) Following the provisional disclosure, two importers referred to in recital 152 of the provisional Regulation came forward with comments concerning their interest. No other comments were received in this respect.

(59) One of these importers disagreed with the assessment concerning the allocation of the burden of anti-dumping measures and the level of the markups applied at different stages of the sale (see recitals 52 to 54 above). It submitted that it will not be able to absorb any of the additional cost and, thus, it will have to pass it on in full to retailers. Consequently, it may see its Community sales of the product concerned decreased and may allegedly even be forced to lay off employees. However, given the small contribution of the product concerned on its total turnover (less than 5 %), the size of this company and its position on Community and export markets, as well as its different sources of supply for the product concerned, any adverse effect on its business would certainly be minor.

(60) The importer referred to in recital 154 of the provisional Regulation reiterated that the impact of the measures on its business may be significant, even though its total sales of ironing boards do not represent more than 10 % of its total turnover. It argued that any loss of the market of ironing boards would result in even higher loss of the market of the covers which are produced by this company. It explained that ironing boards and their covers are closely linked even when not sold together, since most retailers prefer to buy these products from the same supplier. Thus, any loss of sales of the imported ironing boards equipped with covers produced by this importer would result in corresponding loss of sales of the company's replacement covers. In this respect it is accepted that the impact of the measures on certain Community sales of this importer might be significant. However, the impact on its total turnover will remain limited since ironing boards and replacement covers taken together represent around 30 % of its total turnover. Moreover, the impact will in part depend on the importer's export performance, since its re-exports of the product concerned are not negligible and these sales should normally not be affected by the measures.

(61) In this respect and with reference to recitals 152 to 156 of the provisional Regulation and recitals 52 to 54 above, the following definitive conclusions are drawn in respect of the impact of the anti-dumping measures on the situation of unrelated importers of ironing boards in the Community: (i) the importers would likely bear a somewhat higher burden than the retailers, (ii) the situation of certain importers could be affected more significantly, however (iii) on average the adverse impact of the measures would not be decisive for their operations and not disproportionate when compared with the expected benefits for the Community industry.

5. **Conclusion on Community interest**

(62) The above additional analysis concerning the interest of the consumers and unrelated importers in the Community has not altered the provisional conclusions in this respect. Even if in certain cases the burden could be fully passed on to consumers, any negative financial impact on the latter would in any event be negligible. It was further confirmed that any adverse impact on certain importers would not be decisive for their business. On this basis, it is considered that the conclusions regarding the Community interest as set out in recitals 157 to 162 of the provisional Regulation are not altered. In the absence of any other comments, they are therefore definitively confirmed.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(63) The complainants argued that the injury elimination level, as provisionally set out, was not sufficient to eliminate the injury to the Community industry. In particular, it was argued that: (a) the pre-tax profit margin used in the calculation is lower than the margin that could be reasonably achieved under normal conditions of competition, and (b) the cost of production, as calculated by the Commission for establishing the injury elimination level, does not reflect the actual cost of production of the different product types. As regards the profit margin that could reasonably be expected in the absence of injurious dumping, it is recalled that the 7 % margin is based on the profitability of the Community industry before the influx of the dumped imports (see recital 44 above). Such margin is thus considered reasonable and the Community industry did not provide any evidence to refute this. Its claim is therefore rejected. As regards the cost of production, it is noted that no precise and verifiable details on the actual cost of production per product type was submitted by the Community industry for the IP. Therefore, the cost of production per product type can only be based on the actual prices of each Community producer adjusted by the actual overall profit it realised in the IP for the like product. Given that the profit margin of the Community industry was revised as explained in recital 44 above, the injury elimination level was amended accordingly.

(64) It is recalled that the import prices of the Chinese cooperating exporting producers were amended as explained in recital 42 above. Thus, the injury elimination level for these exporters was also amended accordingly.

(65) In the absence of any other comments concerning the injury elimination level, recitals 164 to 166 of the provisional Regulation are hereby confirmed.

2. **Form and level of measures**

(66) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for all the exporting producers concerned the injury elimination level was found to be higher than the dumping margin.

(67) On the basis of the above, the definitive duty rates for the PRC and Ukraine are as follows:

Country	Company	Anti-dumping duty
PRC	Foshan City Gaoming Lihe Daily Necessities Co. Ltd., Foshan	34,9 %
	Guangzhou Power Team Houseware Co. Ltd., Guangzhou	36,5 %
	Since Hardware (Guangzhou) Co., Ltd., Guangzhou	0 %
	Foshan Shunde Yongjian Housewares and Hardware Co. Ltd., Foshan	18,1 %
	Zhejiang Harmonic Hardware Products Co. Ltd., Guzhou	26,5 %
	All other companies	38,1 %
Ukraine	All companies	9,9 %

(68) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures, the sole exporting producer in Ukraine and four Chinese exporting producers not granted MET (one of which was not even granted individual treatment) proposed price undertakings in accordance with Article 8(1) of the basic Regulation. However, it is noted that the product concerned is characterised by a considerable number of product types, which often change depending on the orders of the customers and which have significant price variations between them. Moreover, the exporting producers sell together with the product concerned other products to the same customers thus creating a significant risk of cross compensation of prices. The nature of the product and its complex marketing make virtually impossible to establish meaningful minimum import prices for each product type, which could be properly monitored by the Commission without serious risk of circumvention. On the basis of the above, it was concluded that such undertakings are impractical and therefore they cannot be accepted. The parties were informed accordingly and given an opportunity to comment. However, their comments have not altered the above conclusion.

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

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

[1] European Commission, Directorate General for Trade, Directorate H, J-79 5/17, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

3. **Collection of provisional duty**

(71) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation, i.e. Regulation (EC) No 1620/2006, be collected definitively to the extent of the amount of the duty definitively imposed by the present Regulation. Where the definitive duty is lower than the provisional duty, the duty shall be recalculated and the amounts secured in excess of the definitive duty rate should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and Ukraine, falling within CN codes ex 3924 90 90, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 90 10, 4421 90 98 10, 7323 93 90 10, 7323 99 91 10, 7323 99 99 10, 8516 79 70 10 and 8516 90 00 51).

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

Country	Manufacturer	Rate of duty (%)	TARIC additional code
PRC	Foshan City Gaoming Lihe Daily Necessities Co. Ltd., Foshan	34,9	A782
	Guangzhou Power Team Houseware Co. Ltd., Guangzhou	36,5	A783
	Since Hardware (Guangzhou) Co., Ltd., Guangzhou	0	A784
	Foshan Shunde Yongjian Housewares and Hardware Co. Ltd., Foshan	18,1	A785
	Zhejiang Harmonic Hardware Products Co. Ltd., Guzhou	26,5	A786
	All other companies	38,1	A999
Ukraine	All companies	9,9	—

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1620/2006 on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and Ukraine, falling within CN codes ex 3924 90 90, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 90 10, 4421 90 98 10, 7323 93 90 10, 7323 99 91 10, 7323 99 99 10, 8516 79 70 10 and 8516 90 00 51) shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duty shall be released.

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 Luxembourg, 23 April 2007.

For the Council
The President
F.-W. STEINMEIER

COUNCIL REGULATION (EC) No 453/2007

of 25 April 2007

laying down the weightings applicable from 1 July 2006 to the remuneration of officials, temporary staff and contract staff of the European Communities serving in third countries and of certain officials remaining in post in the two new Member States for a maximum period of 19 months after accession

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Staff Regulations of Officials of the European Communities and the Conditions of employment of other servants of the Communities laid down by Regulation of the Council (EEC, Euratom, ECSC) No 259/68 [1], and in particular the first paragraph of Article 13 of Annex X thereto,

Having regard to the 2005 Act of Accession, and in particular Article 27(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) It is necessary to take account of changes in the cost of living in countries outside the Community and to determine accordingly the weightings applicable from 1 July 2006 to remuneration paid in the currency of the country of employment to officials serving in third countries.

(2) The weightings in respect of which payment has been made on the basis of Regulation (EC, Euratom) No 351/2006 [2] may lead to retrospective upward or downward adjustments to remuneration.

(3) Provision should be made for back-payments in the event of an increase in remuneration as a result of the new weightings.

(4) Provision should be made for the recovery of sums overpaid in the event of a reduction in remuneration as a result of the new weightings for the period between 1 July 2006 and the date of entry into force of this Regulation.

(5) Provision should be made for any such recovery to be restricted to a period of no more than six months preceding the date of entry into force of this Regulation and for its effects to be spread over a period of no more than 12 months following that date, as is the case with the weightings applicable within the European Community to remuneration and pensions of officials and other servants of the European Communities,

HAS ADOPTED THIS REGULATION:

Article 1

With effect from 1 July 2006, the weightings applicable to the remuneration of officials, temporary staff and contract staff of the European Communities serving in third countries payable in the currency of the country of employment shall be as shown in the Annex hereto.

The exchange rates used for the calculation of this remuneration shall be established in accordance with the detailed rules for the implementation of the Financial Regulation and correspond to the date of application of the weightings.

Article 2

1. The institutions shall make back-payments in the event of an increase in remuneration as a result of the weightings shown in the Annex.

2. The institutions shall make retrospective downward adjustments to remuneration in the event of a reduction of remuneration as a result of the weightings shown in the Annex for the period between 1 July 2006 and the date of entry into force of this Regulation.

Retrospective adjustments involving the recovery of sums overpaid shall be restricted to a period of no more than six months preceding the date of entry into force of this Regulation. Recovery shall be spread over no more than 12 months from that date.

[1] OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1895/2006 (OJ L 397, 30.12.2006, p. 6).
[2] OJ L 59, 1.3.2006, p. 1.

Article 3

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 Luxembourg, 25 April 2007.

For the Council
The President
F.-W. STEINMEIER

ANNEX

	Place of Employment	Weighting July 2006 (*)
(**)	Afghanistan	0
	Albania	82,7
	Algeria	84,5
	Angola	113,5
	Argentina	56,4
	Armenia	105,7
	Australia	99,1
	Bangladesh	43,7
	Barbados	125,7
	Benin	92,3
	Bolivia	48,4
	Bosnia and Herzegovina	77,7
	Botswana	62,1
	Brazil	76,2
	Bulgaria	76,4
	Burkina Faso	89,7
(**)	Burundi	0
	Cambodia	70,4
	Cameroon	110,1
	Canada	90,6
	Cape Verde	77,4
	Central African Republic	120,1
	Chad	131,2
	Chile	76,6
	China	76,7
	Colombia	63,2
	Congo	130,4
	Costa Rica	69,1
	Côte d'Ivoire	109,4
	Croatia	105,8
	Cuba	97,1
	Democratic Republic of Congo	132,4
	Djibouti	96,8
	Dominican Republic	71,9

	Place of Employment	Weighting July 2006 (*)
	Ecuador	70,8
	Egypt	51,0
	El Salvador	86,4
	Eritrea	49,4
	Ethiopia	85,7
	Fiji	71,3
	Former Yugoslav Republic of Macedonia	69,7
	Gabon	116,6
	Gambia	55,8
	Georgia	95,1
	Ghana	79,9
	Guatemala	80,6
	Guinea	56,4
	Guinea-Bissau	100,7
	Guyana	60,6
	Haiti	109,5
	Honduras	74,9
	Hong Kong	101,3
	India	45,3
(**)	Indonesia (Banda Aceh)	0
	Indonesia (Jakarta)	83,9
(**)	Iraq	0
	Israel	109,6
	Jamaica	91,3
	Japan (Naka)	113,7
	Japan (Tokyo)	119,9
	Jordan	72,3
	Kazakhstan (Almaty)	125,2
(**)	Kazakhstan (Astana)	0
	Kenya	77,8
	Kyrgyzstan	80,3
	Laos	71,3
	Lebanon	90,8
	Lesotho	61,8
(**)	Liberia	0
	Madagascar	72,3

	Place of Employment	Weighting July 2006 (*)
	Malawi	70,4
	Malaysia	74,8
	Mali	91,2
	Mauritania	67,7
	Mauritius	70,7
	Mexico	70,2
	Moldova	52,6
(**)	Montenegro	0
	Morocco	86,8
	Mozambique	69,3
	Namibia	72,8
	Nepal	68,8
	New Caledonia	134,5
	New Zealand	89,0
	Nicaragua	60,7
	Niger	89,3
	Nigeria	94,7
	Norway	131,7
	Pakistan	52,2
(**)	Panama	0
	Papua New Guinea	75,6
	Paraguay	70,8
	Peru	78,4
	Philippines	60,2
	Romania	62,7
	Russia	120,7
	Rwanda	87,1
	Saudi Arabia	88,8
	Senegal	80,7
	Serbia	61,1
	Sierra Leone	75,1
	Singapore	103,4
	Solomon Islands	88,7
(**)	Somalia	0
	South Africa	59,9
	South Korea	112,4

	Place of Employment	Weighting July 2006 (*)
	Sri Lanka	55,4
	Sudan	52,1
	Suriname	51,9
	Swaziland	62,6
	Switzerland	116,3
	Syria	65,5
	Taiwan	89,9
	Tajikistan	70,2
	Tanzania	58,8
	Thailand	60,3
(**)	Timor Leste	0
	Togo	92,4
	Trinidad and Tobago	70,4
	Tunisia	71,8
	Turkey	83,7
	Uganda	55,5
	Ukraine	104,6
	United States (New York)	104,8
	United States (Washington)	100,5
	Uruguay	72,9
	Vanuatu	114,5
	Venezuela	60,9
	Vietnam	54,2
	West Bank — Gaza Strip	92,7
	Yemen	68,2
	Zambia	69,3
	Zimbabwe	47,2

(*) Brussels = 100 %
(**) Not available.

COMMISSION REGULATION (EC) No 454/2007

of 25 April 2007

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 April 2007.

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

Done at Brussels, 25 April 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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

ANNEX

to Commission Regulation of 25 April 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	65,2
	TN	139,0
	TR	132,9
	ZZ	112,4
0707 00 05	JO	171,8
	MA	46,9
	TR	130,0
	ZZ	116,2
0709 90 70	MA	35,8
	TR	110,2
	ZZ	73,0
0709 90 80	EG	242,2
	ZZ	242,2
0805 10 20	CU	41,3
	EG	48,4
	IL	67,0
	MA	41,6
	TN	53,8
	ZZ	50,4
0805 50 10	AR	37,2
	IL	60,4
	TR	42,8
	ZZ	46,8
0808 10 80	AR	84,0
	BR	80,6
	CA	105,7
	CL	85,6
	CN	89,2
	NZ	125,2
	US	135,8
	UY	91,0
	ZA	88,1
	ZZ	98,4
0808 20 50	AR	78,5
	CL	90,5
	CN	36,6
	ZA	90,4
	ZZ	74,0

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

COMMISSION REGULATION (EC) No 455/2007

of 25 April 2007

concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on the twentieth 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, 25 April 2007.

For the Commission
László KOVÁCS
Member of the Commission

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

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

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. A preparation in the form of an alcoholic solution put up in pipettes for retail sale. The composition is as follows: — fipronil (ISO) 10 g — butylated hydroxyanisole (BHA, E 320) 0,02 g — butylated hydroxytoluene (BHT, E 321) 0,01 g — excipient q.s.p. 100 ml The preparation, containing a substance showing an insecticide and acaricide activity against parasites such as fleas, ticks and lice, is used externally on pets (dogs and cats).	3808 91 90	Classification is determined by General Rules 1, 3a and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 3808, 3808 91 and 3808 91 90. See also HS Explanatory Notes to heading 3808 and subheadings 3808 91 to 3808 99. The preparation does not have a therapeutic or prophylactic effect, within the meaning of heading 3004.
2. A preparation in the form of an alcoholic solution put up in spray (sprayer, pump) for retail sale. The composition is as follows: — fipronil (ISO) 0,25 g — excipient q.s.p. 100 ml The preparation, containing a substance showing an insecticide and acaricide activity against parasites such as fleas, ticks and lice, is used externally on pets (dogs and cats).	3808 91 90	Classification is determined by General Rules 1, 3a and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 3808, 3808 91 and 3808 91 90. See also HS Explanatory Notes to heading 3808 and subheadings 3808 91 to 3808 99. The preparation does not have a therapeutic or prophylactic effect, within the meaning of heading 3004. The preparation does not contain any ingredients which give the product the properties of a toilet preparation for animals. Consequently it is excluded from heading 3307.

COMMISSION REGULATION (EC) No 456/2007

of 25 April 2007

determining the allocation of export licences for certain milk products to be exported to the Dominican Republic under the quota referred to in Article 29 of Regulation (EC) No 1282/2006

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1],

Having regard to Commission Regulation (EC) No 1282/2006 of 17 August 2006 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards export licences and export refunds in the case of milk and milk products [2], and in particular Article 33(2) thereof,

Whereas:

Chapter III(3) of Regulation (EC) No 1282/2006 determines the procedure for allocating export licences for certain milk products to be exported to the Dominican Republic under a quota opened for that country. Applications submitted for the 2007/2008 quota year cover quantities greater than those available. As a result, allocation coefficients should be set for the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities covered by export licence applications for the products referred to in Article 29(2) of Regulation (EC) No 1282/2006 submitted for the period 1 July 2007 to 30 June 2008 shall be multiplied by the following allocation coefficients:

— 0,653853 for applications submitted for the part of the quota referred to in Article 30(1)(a) of Regulation (EC) No 1282/2006,

— 0,384549 for applications submitted for the part of the quota referred to in Article 30(1)(b) of Regulation (EC) No 1282/2006.

Article 2

This Regulation shall enter into force on 26 April 2007.

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

Done at Brussels, 25 April 2007.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

[2] OJ L 234, 29.8.2006, p. 4. Regulation as amended by Regulation (EC) No 1919/2006 (OJ L 380, 28.12.2006, p. 1).

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 19 March 2007

amending Decision 2001/822/EC on the association of the overseas countries and territories with the European Community

(2007/249/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 187 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (the Overseas Association Decision) [1] establishes the legal framework for promoting the economic and social development of the overseas countries and territories (OCTs) and for enhancing economic relations between them and the Community. The Overseas Association Decision applies until 31 December 2011. To coincide with the duration of the 10th European Development Fund (2008 to 2013) (10th EDF) and the multiannual financial framework 2007 to 2013, it should be extended until 31 December 2013.

(2) Annex II A of the Overseas Association Decision lays down the financial allocations for the period 2000 to 2007. In the light of the newly established 10th EDF, the amount for the period 2008 to 2013 should be allocated.

(3) Provisions should be made for rules governing the transition from the ninth EDF to the 10th EDF as far as the OCTs are concerned. Those rules should be established in accordance with the general rules on the commitment of funds of the ninth EDF and of previous EDFs after 31 December 2007 set out in Article 1 of Decision 2005/446/EC of the Representatives of the Governments of the Member States meeting within the Council of 30 May 2005 setting the deadline for the commitment of the funds of the ninth EDF [2] and in Article 1(3) and (4) of the Internal Agreement between the Representatives of the Government of Member States meeting within the Council, on the financing of Community aid under the multiannual framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and the allocation of financial assistance for the OCTs to which Part Four of the EC Treaty applies [3] (Internal Agreement establishing the 10th EDF).

(4) The Internal Agreement establishing the 10th EDF lays down an overall amount of EUR 286 million to be allocated to the OCTs. The apportionment of that amount between, on the one hand, the different instruments for development finance cooperation related to the EDF, and on the other hand, the criteria and elements for determining the beneficiary OCTs' initial indicative allocations, should be laid down.

(5) Regarding the apportionment between the different instruments for development finance cooperation related to the EDF, coordination should be ensured in particular between support to regional cooperation and integration and support at territorial level, to enhance the resilience of the OCTs towards the challenges that they are facing regardless of their GNP per capita or other elements used to determine the territorial allocations.

[1] OJ L 314, 30.11.2001, p. 1.

[2] OJ L 156, 18.6.2005, p. 19.

[3] OJ L 247, 9.9.2006, p. 32.

(6) The financial assistance to the OCTs should be allocated on the basis of standard, objective and transparent criteria. Such criteria should include, in particular, the level of GNP of an OCT, the size of its population and continuity with previous EDFs. Special treatment should be reserved for the least developed OCTs referred to in Annex I B of the Overseas Association Decision, as well as for OCTs which, due to geographical isolation or other constraints, have more difficulties in engaging in regional cooperation and integration.

(7) When reporting expenditure within the EDF to Member States and the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD), the Commission should distinguish between Official Development Assistance (ODA) and non-ODA activities.

(8) Special attention should be paid to strengthening the institutional capacities of the OCTs and to good governance, including in the financial, tax and judicial areas.

(9) Special attention should also be paid to strengthening cooperation between OCTs, ACP States and the outermost regions referred to in Article 299(2) of the Treaty or other actors in the respective regions in which OCTs are situated.

(10) The terms and conditions of financing in relation to the operations of the OCT Facility referred to in Annex II C of the Overseas Association Decision should be brought into line with the revision of the corresponding Articles in Annex II of the Partnership Agreement between, on the one hand the members of the African, Caribbean and Pacific Group of States, and on the other hand the European Community and its Member States, signed in Cotonou on 23 June 2000 [1] (the ACP-EC Partnership Agreement).

(11) It is crucial to ensure continuity as regards the eligibility of OCTs for funding from the general thematic budget lines of the General Budget of the European Union, outside the EDF. The thematic Regulations referred to in Annex II E of the Overseas Association Decision have been replaced by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation [2] from 1 January 2007. Annex II E should therefore be amended in order to replace references to those Regulations with a reference to the new financing instrument. In order to ensure continuity, such amendment should apply as from 1 January 2007.

(12) Taking into account the special relationship between the OCTs and the Member States to which they are linked, the possible participation of OCTs in horizontal Community programmes should be generalised so that the OCTs are allowed to participate in the programmes that are open to the Member Sates to which the OCTs are linked, subject to the rules and objectives of the programmes and the arrangements applicable to the Member States to which the OCTs are linked. In order to allow participation of the OCTs from the beginning of the new programming period, this amendment should be introduced from 1 January 2007.

(13) A review covering all aspects of European Union spending and resources, including OCTs funding, should be conducted on the basis of a report by the Commission in 2008 to 2009.

(14) The current technical amendments are without prejudice to subsequent revision of the Overseas Association Decision, in particular pursuant to Article 62 thereof,

HAS DECIDED AS FOLLOWS:

Article 1

Council Decision 2001/822/EC is hereby amended as follows:

1. in Article 23, the fourth subparagraph shall be replaced by the following:

'The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the ninth EDF shall be those laid down in the ninth EDF Financial Regulation. The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the 10th EDF shall be those laid down in the 10th EDF Financial Regulation.';

2. the following paragraph shall be added to Article 24:

'9. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall be applicable.';

3. in Article 25(1), the words 'the period from 2000 to 2007' shall be replaced by the words 'the periods from 2000 to 2007 and from 2008 to 2013';

[1] OJ L 317, 15.12.2000, p. 3. Agreement as last amended by Decision No 1/2006 of the ACP-EC Council of Ministers (OJ L 247, 9.9.2006, p. 22).

[2] OJ L 378, 27.12.2006, p. 41.

4. Article 31 shall be replaced by the following:

'*Article 31*

Technical assistance

1. On the initiative of or on behalf of the Commission, studies or technical assistance measures may be financed in order to ensure the preparation, monitoring, evaluation and supervision necessary for implementing this Decision and the overall evaluation of this Decision referred to in Article 1(1)(c) of Annex II A.

Such studies or technical assistance measures shall be financed by the overall grant allocation.

2. On the initiative of the OCTs, studies or technical assistance measures may be financed in relation to the implementation of the activities contained in the SPD, subject to the Commission's opinion.

In the framework of the 9th EDF, such studies or technical assistance measures shall be financed from the allocation of the OCTs concerned. In the framework of the 10th EDF, they shall be financed by the overall grant allocation.';

5. the following Article shall be inserted:

'*Article 33a*

1. After 31 December 2007, or after the date of entry into force of the Internal Agreement establishing the 10th EDF if this date falls later, balances from the ninth EDF or from previous EDFs shall no longer be committed, with the exception of the balances and funds decommitted after this date of entry into force resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (Stabex) under the EDFs prior to the ninth EDF and the remaining balances and reimbursements of the funds allocated under the ninth EDF to finance the resources of the Facility set out in Annex II C, excluding the related interest rate subsidies.

2. Funds decommitted from projects under the ninth EDF or from previous EDFs after 31 December 2007 shall no longer be committed, unless decided otherwise by the Council unanimously, on the basis of a proposal by the Commission, with the exception of the Stabex funds decommitted after this date of entry into force which shall be automatically transferred to the respective territorial indicative programmes financed in accordance with Article 3(1) of Annex II Aa and of the funds allocated under the ninth EDF to finance the resources of the Facility set out in Annex II C, excluding the related interest rate subsidies.';

6. Article 58 shall be replaced by the following:

'*Article 58*

Programmes open to the OCTs

Individuals from an OCT and, where applicable, the relevant public and/or private bodies and institutions in an OCT, shall be eligible for Community programmes, subject to the rules and objectives of the programmes and the arrangements applicable to the Member State to which the OCT is linked. The programmes shall apply to OCT nationals within the framework of the quota for the Member State to which the OCT concerned is linked, if the programme concerned uses such a quota.

The main programmes that are open to the OCTs are those listed in Annex II F, as well as any programme succeeding them.';

7. in Article 63, the year '2011' shall be replaced by '2013';

8. in Article 1(1)(c) of Annex II A, the words 'two years' shall be replaced by 'four years';

9. after Annex II A, a new Annex II Aa shall be inserted, the text of which appears in Annex I to this Decision;

10. Annex II B shall be amended as follows:

(a) Article 1 shall be replaced by the following:

'*Article 1*

1. An amount of up to EUR 20 million as laid down in Article 5 of the Internal Agreement establishing the ninth EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.

2. An amount of up to EUR 30 million as laid down in Article 3 of the Internal Agreement establishing the 10th EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.';

(b) in Article 2(2), point (c) shall be replaced by the following:

'(c) during the period covered by the ninth EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II A, Article 3(3)(d), and paid directly to the EIB;

during the period covered by the 10th EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II Aa, Article 1(1)(b), and paid directly to the EIB;

Interest subsidies may be capitalised or used in the form of grants to support project-related technical assistance, particularly for financial institutions in the OCTs.';

11. Annex II C shall be replaced by the text appearing in Annex II to this Decision;

12. Annex II E shall be replaced by the text appearing in Annex III to this Decision;

13. Annex II F shall be replaced by the text appearing in Annex IV to this Decision.

Article 2

Taking of effect

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

However, Article 1, points (6), (12) and (13) shall apply from 1 January 2007.

Done at Brussels, 19 March 2007.

For the Council
The President
H. SEEHOFER

ANNEX I

'ANNEX II Aa

COMMUNITY FINANCIAL ASSISTANCE: 10th EDF

Article 1

Allocation between the various instruments

1. For the purposes of this Decision, for the six-year period from 1 January 2008 to 31 December 2013, the overall amount of Community financial assistance of EUR 286 million under the 10th EDF fixed by the Internal Agreement establishing the 10th EDF shall be allocated as follows:

(a) EUR 250 million in the form of grants for programmable support for long-term development, humanitarian aid, emergency aid, refugee aid and additional support in the event of fluctuations in export earnings as well as for support for regional cooperation and integration;

(b) EUR 30 million to finance the OCT Investment Facility referred to in Annex II C and of which a maximum amount of EUR 1,5 million is set aside to fund the interest subsidies for operations to be financed by the EIB from its own resources, in accordance with Annex II B, or under the OCT Investment Facility;

(c) EUR 6 million to studies or technical assistance measures in accordance with Article 31 of this Decision.

2. The funds of the 10th EDF may no longer be committed after 31 December 2013, unless the Council decides otherwise unanimously, on a proposal from the Commission.

3. Should the funds provided for in paragraph 1 be exhausted before this Decision expires, the Council shall take the appropriate measures.

Article 2

Administration of resources

The EIB shall administer the loans made from its own resources referred to in Annex II B, as well as the operations financed under the OCT Investment Facility referred to in Annex II C. All other financial resources under this Decision shall be administered by the Commission.

Article 3

Allocation between the OCTs

The amount of EUR 250 million mentioned in Article 1(1)(a) shall be allocated on the basis of the needs and performance of the OCTs in accordance with the following criteria:

1. An amount A of EUR 195 million shall be allocated to the OCTs in particular to finance the initiatives referred to in the Single Programming Documents, including priority actions for social development and environmental protection, within the framework of the fight against poverty. Where appropriate, the Single Programming Documents shall pay particular attention to actions aimed at strengthening governance and the institutional capacities of the beneficiary OCTs and, where relevant, the likely timetable of the envisaged actions.

   The allocation of amount A shall take into account the size of the population, the level of Gross National Product (GNP), the level and use of previous EDF allocations, constraints due to geographical isolation and structural and other obstacles of the least developed OCTs mentioned in Article 3 of this Decision. Any allocation shall be such as to allow its effective use. It should be decided in conformity with the principle of subsidiarity.

   This amount shall, in principle, be allocated to the OCTs with a per capita GNP not exceeding the Community per capita GNP, according to the available statistical data.

2. EUR 40 million shall be allocated to support regional cooperation and integration in accordance with Article 16 of this Decision, including the dialogue and partnership actions laid down in Article 7, regional disaster preparedness and alleviation initiatives and, in coordination with other Community financial instruments, cooperation between the OCTs and the most remote regions referred to in Article 299(2) of the Treaty.

3. Paragraph 1 shall not apply to Greenland.

4. A non-allocated reserve B of EUR 15 million shall be set aside to:

   (a) finance humanitarian, emergency and refugee aid for the OCTs and, if necessary, the additional support in the event of fluctuations in export earnings, in accordance with Annex II D;

   (b) make new allocations in accordance with the development of the needs and performance of the OCTs referred to under paragraph 1.

   Performance shall be evaluated in an objective and transparent way, taking into account the use of the allocated resources, the effective implementation of the ongoing operations, the alleviation or reduction of poverty and the sustainable development measures adopted.

5. In accordance with the paragraphs 1, 2, 3 and 4, the indicative amounts allocated under the 10th EDF shall be adopted by the Commission, in accordance with Article 24 of this Decision.

6. The Commission, following a mid-term review, may decide on different allocation of any non-allocated funds mentioned in this Article. The procedures for this review and the decision on any new allocation shall be adopted in accordance with Article 24 of this Decision.'.

ANNEX II

'ANNEX II C

COMMUNITY FINANCIAL ASSISTANCE: THE OCT INVESTMENT FACILITY

Article 1

Objective

An OCT Investment Facility (the Facility) shall be set up to promote commercially viable enterprises, mainly in the private sector, but also those in the public sector supporting private sector development.

The terms and conditions of financing in relation to the operations of the Facility and the loans from own resources of the EIB shall be as laid down in this Annex and Annex II B. For the implementation of the ninth EDF, Articles 29 and 30 of the ninth EDF Internal Agreement shall apply. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall apply.

These resources may be channelled to eligible enterprises, either directly or indirectly, through eligible investment funds and/or financial intermediaries.

Article 2

Resources of the Facility

1. The resources of the Facility may be used, *inter alia*, to:

(a) provide risk capital in the form of:

(i) equity participation in OCT enterprises, including financial institutions;

(ii) quasi-capital assistance to OCT enterprises, including financial institutions;

(iii) guarantees and other credit enhancements which may be used to cover political and other investment-related risks, both for foreign and local investors or lenders;

(b) provide ordinary loans.

2. Equity participation shall, in general, be for non-controlling minority holdings and shall be remunerated on the basis of the performance of the project concerned.

3. Quasi-capital assistance may consist of shareholders' advances, convertible bonds, conditional, subordinated and participating loans or any other similar form of assistance. Such assistance may consist in particular of:

(a) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the performance of the project; in the specific case of conditional loans for pre-investment studies or other project-related technical assistance, servicing may be waived if the investment is not carried out;

(b) participating loans, the servicing and/or the duration of which shall be linked to the financial return of the project;

(c) subordinated loans, which shall be repaid only after other claims have been settled.

4. The remuneration of each operation shall be specified when the loan is made.

However:

(a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3 % and a variable component related to the performance of the project;

(b) in the case of subordinated loans, the interest rate shall be market related.

5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.

6. The interest rate of ordinary loans shall comprise a reference rate applied by the EIB for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the EIB.

7. Ordinary loans may be extended on concessional terms and conditions in the following cases:

(a) for infrastructure projects in the least developed OCTs, in post-conflict OCTs or in post-natural disaster OCTs that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %;

(b) for projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits. In such cases, loans may be extended with an interest rate subsidy the amount and form of which will be decided with respect to the particular characteristics of the project. However, the interest rate subsidy shall not be higher than 3 %.

The final rate of loans falling under (a) or (b) shall, in any case, never be less than 50 % of the reference rate.

8. The funds to be provided for these concessional purposes will be made available from the Facility and shall not exceed 5 % of the overall amount allocated for investment financing by the Facility and by the EIB from its own resources.

9. Interest subsidies may be capitalised or may be used in the form of grants. Up to 10 % of the budget for interest rate subsidies may be used to support project-related technical assistance, particularly for financial institutions in the OCTs.

Article 3

Operations of the Facility

1. The Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Facility shall:

(a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances;

(b) support the OCT financial sector and have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the OCTs;

(c) bear part of the risk of the projects it funds, its financial sustainability being ensured through the portfolio as a whole and not from individual operations; and

(d) seek to channel funds through OCT institutions and programmes that promote the development of small and medium-sized enterprises (SMEs).

2. The EIB shall be remunerated for the cost incurred in managing the Facility. For the first two years after the entry into force of the second financial protocol, this remuneration shall be up to an amount of 2 % a year of the total initial endowment of the Facility. Thereafter, the remuneration of the EIB shall include a fixed component of 0,5 % a year of the initial endowment and a variable component of an amount of up to 1,5 % a year of the portfolio of the Facility that is invested in projects in OCTs. The remuneration shall be financed out of the Facility.

3. On expiry of this Decision, and in the absence of a specific decision by the Council, the cumulative net reflows to the Facility shall be carried over to the next OCT Financial Instrument.

Article 4

Conditions for foreign exchange rate risk

In order to minimise the effects of exchange rate fluctuations, the problems of exchange rate risk shall be dealt with in the following way:

(a) in the case of equity participation designed to strengthen an enterprise's own funds, the exchange rate risk shall, as a general rule, be borne by the Facility;

(b) in the case of risk capital financing for SMEs, the exchange rate risk shall as a general rule be shared, on the one hand, by the Community, and on the other hand, by the other parties involved. On average, the foreign exchange rate risk shall be shared equally;

(c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local OCT currencies, thus taking the foreign exchange risk.'

ANNEX III

'ANNEX II E

COMMUNITY FINANCIAL ASSISTANCE: BUDGETARY AID FOR DEVELOPING COUNTRIES

Without prejudice to future amendments to budgetary provisions, the OCTs shall benefit from the following actions adopted for developing countries within the general budget of the European Union:

1. Thematic programmes covered by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing Instrument for Development Cooperation [1] (DCI) and providing direct support for the European Community development and cooperation policy.

2. Rehabilitation and reconstruction operations as covered by Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability [2].

3. Humanitarian aid as provided for by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid [3].

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[1] OJ L 378, 27.12.2006, p. 41.
[2] OJ L 327, 24.11.2006, p. 1.
[3] OJ L 163, 2.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).'.

ANNEX IV

'ANNEX II F

OTHER COMMUNITY ASSISTANCE: PARTICIPATION IN COMMUNITY PROGRAMMES

In accordance with Article 58 of this Decision, the following programmes and any programmes succeeding them, among others, shall apply to OCT nationals, within the framework of the quota for the Member State to which the OCT concerned is linked if the programme concerned uses such a quota:

1. Education and training programmes:

   — an action programme in the field of lifelong learning (2007 to 2013), established by Decision No 1720/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of lifelong learning ([1]);

   — the "Youth in Action" programme (2007 to 2013), established by Decision No 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the "Youth in Action" programme for the period 2007 to 2013 ([2]).

2. The programmes of the "Competitiveness and Innovation Framework" programme (CIP) (2007 to 2013), established by Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a "Competitiveness and Innovation Framework" programme (2007 to 2013) ([3]).

3. The programmes of the seventh framework programme of the European Community, established by Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ([4]).

4. Cultural and audiovisual programmes:

   — programme of support for the European audiovisual sector (MEDIA 2007), established by Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) ([5]);

   — Culture (2007 to 2013), established by Decision No 1903/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing the "Culture" programme (2007 to 2013) ([6]).

5. The HRTP Japan programme (human resources training programme in Japan) and topical missions, provided for by Council Decision 92/278/EEC of 18 May 1992 confirming the consolidation of the EC-Japan Centre for Industrial Cooperation ([7]).

([1]) OJ L 327, 24.11.2006, p. 45.
([2]) OJ L 327, 24.11.2006, p. 30.
([3]) OJ L 310, 9.11.2006, p. 15.
([4]) OJ L 412, 30.12.2006, p. 1.
([5]) OJ L 327, 24.11.2006, p. 12.
([6]) OJ L 378, 27.12.2006, p. 22.
([7]) OJ L 144, 26.5.1992, p. 19.'.

COUNCIL DECISION

of 16 April 2007

authorising the United Kingdom to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2007/250/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1], and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In a letter registered by the Secretariat-General of the Commission on 10 February 2006, the United Kingdom requested authorisation to introduce a special measure derogating from Article 21(1)(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of values added tax: uniform basis of assessment [2].

(2) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 18 July 2006 of the request made by the United Kingdom. By letter dated 19 July 2006, the Commission notified the United Kingdom that it had all the information it considered necessary for appraisal of the request.

(3) Directive 77/388/EEC has been recast and repealed by Directive 2006/112/EC. References to the provisions of the former are to be construed as references to the latter.

(4) The person liable for payment of the value added tax (VAT), under Article 193 of Directive 2006/112/EC, is the taxable person supplying the goods. The purpose of the derogation requested by the United Kingdom is to place that liability on the taxable person to whom the supplies are made, but only under certain conditions and exclusively in the case of mobile telephones and computer chips/microprocessors.

(5) Within that sector, a significant number of traders engage in tax evasion by not paying VAT to the tax authorities after selling the products. Their customers, however, being in receipt of a valid invoice, remain entitled to a tax deduction. In the most aggressive forms of this tax evasion, the same goods are, via a 'carousel' scheme, supplied several times without payment of the VAT to the tax authorities. By designating in those cases the person to whom the goods are supplied as the person liable for the VAT, the derogation would remove the opportunity to engage in that form of tax evasion. However, it would not affect the amount of VAT due.

(6) For the purposes of ensuring the effective operation of the derogation and preventing the tax evasion from being shifted to other products or towards the retail level, the United Kingdom should introduce appropriate control and reporting obligations. The Commission should be informed of the specific measures adopted, and the monitoring and overall evaluation of the operation of the derogation.

(7) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to a specific high risk sector comprising certain carefully defined products in relation to which the scale and size of the tax evasion has resulted in considerable tax losses. Furthermore, since that sector is a small one, the derogation cannot be considered equivalent to a general measure.

(8) The authorisation should be valid only for a short period, because it cannot be ascertained with certainty that the objectives of the measure will be achieved, nor can the impact of the measure on the functioning of the VAT system in the United Kingdom and in other Member States be gauged in advance; moreover, the impact of the measure and its implementation on the functioning of the internal market will have to be properly assessed.

(9) The derogation has no negative impact on the Community's own resources accruing from VAT,

[1] OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92).

[2] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, the United Kingdom is authorised to designate the taxable person to whom supplies of the following goods are made as the person liable to pay VAT:

1. mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use;

2. integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products.

The derogation shall apply in respect of supplies of goods for which the taxable amount is equal to or higher than GBP 5 000.

Article 2

The derogation provided for in Article 1 is subject to the United Kingdom introducing appropriate and effective control and reporting obligations on taxable persons that supply goods to which the reverse charge applies in accordance with this Decision.

Article 3

The United Kingdom shall inform the Commission where it has adopted the measures referred to in Articles 1 and 2 and shall, by 31 March 2009, submit a report to the Commission on the overall evaluation of the operation of the measures concerned, in particular as regards the effectiveness of the measure and any evidence of the shifting of tax evasion to other products or to the retail level.

Article 4

This Decision shall expire on 30 April 2009.

Article 5

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Luxembourg, 16 April 2007.

For the Council
The President
H. SEEHOFER

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 328/05/COL

of 20 December 2005

amending for the 53rd time the Procedural and Substantive Rules in the Field of State Aid by introducing a new Chapter 18C: State aid in the form of public service compensation

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area [1], in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [2], in particular to Article 24, Article 5(2)(b) and Article 1 in Part I of Protocol 3 and Articles 18 and 19 in Part II of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid;

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary;

RECALLING the Procedural and Substantive Rules in the Field of State Aid [3] adopted on 19 January 1994 by the EFTA Surveillance Authority [4];

WHEREAS, on 13 July 2005, the European Commission adopted a Communication framework setting out the rules for State aid in the form of public service compensation [5];

WHEREAS this Communication is also of relevance for the European Economic Area;

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area;

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the European Commission;

HAVING consulted the European Commission;

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States by letter dated 19 October 2005 on the subject,

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by introducing a new Chapter 18C, State aid in the form of public service compensation. The new chapter is contained in Annex I to this Decision. Appropriate measures, contained in Annex I to this Decision, are proposed.

[1] Hereinafter referred to as the EEA Agreement.
[2] Hereinafter referred to as the Surveillance and Court Agreement.
[3] Hereinafter referred to as the State Aid Guidelines.
[4] Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date, last amended by Decision No 313/05/COL of 7.12.2005 (not yet published).

[5] Community framework for State aid in the form of public service compensation (OJ C 297 of 29.11.2005, p. 4).

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex thereto. The EFTA States are requested to signify their agreement to the proposal for appropriate measures within one month from receipt of this proposal.

3. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including Annex I.

4. The Decision, including Annex I, shall be published in the EEA Section of and in the *EEA Supplement to the Official Journal of the European Union*.

5. In case the EFTA States accept the proposal for appropriate measures, a summary notice shall be published in the EEA Section of and in the *EEA Supplement to the Official Journal of the European Union* (attached in Annex II to this Decision).

6. The Decision is authentic in the English language.

Done at Brussels, 20 December 2005.

For the EFTA Surveillance Authority

Einar M. BULL	Kurt JÄGER
President	*College Member*

ANNEX

'18C. **STATE AID IN THE FORM OF PUBLIC SERVICE COMPENSATION** [1]

18C.1. **Purpose and scope**

(1) It is apparent from the caselaw of the Court of Justice of the European Communities [2], that public service compensation does not constitute State aid within the meaning of Article 87(1) of the EC Treaty if it fulfils certain conditions. However, if public service compensation does not meet these conditions and if the general criteria for the applicability of Article 87(1) of the EC Treaty are satisfied, such compensation constitutes State aid. In the Authority's view, this case law applies equally in the context of Article 61(1) of the EEA Agreement.

(2) The European Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest [3] lays down the conditions under which certain types of public service compensation constitute State aid compatible with Article 86(2) of the EC Treaty and exempts compensation satisfying those conditions from the prior notification requirement. The Decision has not yet been incorporated into the EEA Agreement [4]. Public service compensation which constitutes State aid and does not fall within the scope of Decision 2005/842/EC will still be subject to the prior notification requirement, also after that Decision has been adopted. The purpose of these guidelines is to spell out the conditions under which such State aid can be found compatible with the functioning of the EEA Agreement pursuant to Article 59(2) of the EEA Agreement.

(3) These guidelines are applicable to public service compensation granted to undertakings in connexion with activities subject to the rules of the EEA Agreement, with the exception of the transport sector, and the public service broadcasting sector covered by the EFTA Surveillance Authority's guidelines on the application of State aid rules to public service broadcasting [5].

(4) The provisions of these guidelines apply without prejudice to the stricter specific provisions relating to public service obligations contained in sectoral EEA rules and measures.

(5) These guidelines apply without prejudice to the provisions in force in the field of public procurement and competition (in particular Articles 53 and 54 of the EEA Agreement).

18C.2. **Conditions governing the compatibility of public service compensation that constitutes State aid**

18C.2.1. *General provisions*

(6) In its judgment in *Altmark* [6], the Court of Justice of the European Communities laid down the conditions under which public service compensation does not constitute State aid as follows:

> "[…] First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined […].

[1] This chapter corresponds to the Community framework for State aid in the form of public service compensation, OJ C 297, 29.11.2005, p. 4.

[2] Judgments in Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH*, [2003] ECR I-7747 and Joined Cases C-34/01 to C-38/01 *Enirisorse SpA* [2003] ECR I-14243.

[3] Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 312, 29.11.2005, p. 67.

[4] Hence, until the decision has been incorporated into the EEA legal framework, these types of public service compensations are subject to the general notification requirements as stipulated in Article 1(3) in Part I and Article 2 in Part II of Protocol 3 to the Surveillance and Court Agreement.

[5] Chapter 24C of the State Aid Guidelines.

[6] See footnote 2.

[…] Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings. […] Payment by a Member State of compensation for the loss incurred by an undertaking without the parameters of such compensation having been established beforehand, where it turns out after the event that the operation of certain services in connection with the discharge of public service obligations was not economically viable, therefore constitutes a financial measure which falls within the concept of State aid within the meaning of Article 87(1) of the Treaty.

[…] Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit […].

[…] Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations."

(7) Where these four criteria are met, public service compensation does not constitute State aid, and Articles 61 of the EEA Agreement and Article 1 in Part I of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court (hereinafter: the "Surveillance and Court Agreement") do not apply. If the EFTA States do not respect these criteria and if the general criteria for the applicability of Article 61(1) of the EEA Agreement are met, public service compensation constitutes State aid.

(8) The Authority considers that at the current stage of development of the EEA Agreement, such State aid may be declared compatible with the EEA Agreement under Article 59(2) of the EEA Agreement if it is necessary to the operation of the services of general economic interest and does not affect the development of trade to such an extent as would be contrary to the interests of the Contracting Parties. The following conditions should be met in order to achieve such balance.

18C.2.2. *Genuine service of general economic interest within the meaning of Article 59 of the EEA Agreement*

(9) It is apparent from the caselaw of the Court of Justice of the European Communities that with the exception of the sectors in which there are rules of the EEA Agreement governing the matter, the EFTA States have a wide margin of discretion regarding the nature of services that could be classified as being services of general economic interest. Thus, the Authority's task is to ensure that this margin of discretion is applied without manifest error as regards the definition of services of general economic interest.

(10) It transpires from Article 59(2) of the EEA Agreement that undertakings ([7]) entrusted with the operation of services of general economic interest are undertakings entrusted with "a particular task". When defining public service obligations and in assessing whether those obligations are met by the undertakings concerned, the EFTA States are encouraged to consult widely, with a particular emphasis on users.

([7]) "Undertaking" is to be understood as any entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. "Public undertaking" is to be understood as any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it, as defined in Article 2(1)(b) of the Act referred to under point 1 of Annex XV to the EEA Agreement, Commission Directive 80/723/EEC on the transparency of financial relations between Member States and undertakings (OJ L 195, 29.7.1980, p. 35, as last amended by Directive 2000/52/EC, OJ L 193, 29.7.2000, p. 75, incorporated into Annex XV to the EEA Agreement by Joint Committee Decision 6/2001, OJ L 66, 8.3.2001, p. 48, and EEA Supplement No 12, 8.3.2001, p. 6, e.i.f. 1.6.2002).

18C.2.3. *Need for an instrument specifying the public service obligations and the methods of calculating compensation*

(11) The concept of service of general economic interest within the meaning of Article 59 of the EEA Agreement means that the undertakings in question have been entrusted with a special task by the State ([8]). Public authorities remain responsible — with the exception of the sectors in which there are EEA rules governing the matter — for setting the framework of criteria and conditions for the provision of services, regardless of the legal status of the provider and of whether the service is provided on the basis of free competition. Accordingly, a public service assignment is necessary in order to define the obligations of the undertakings in question and of the State. The term "State" covers the central, regional and local authorities.

(12) Responsibility for operation of the service of general economic interest must be entrusted to the undertaking concerned by way of one or more official acts, the form of which may be determined by each EFTA State. The act or acts must specify, in particular:

(a) the precise nature and the duration of the public service obligations;

(b) the undertakings and territory concerned;

(c) the nature of any exclusive or special rights assigned to the undertaking;

(d) the parameters for calculating, controlling and reviewing the compensation;

(e) the arrangements for avoiding and repaying any overcompensation.

(13) When defining public service obligations and in assessing whether those obligations are met by the undertakings concerned, the EFTA States are invited to consult widely, with particular emphasis on users.

18C.2.4. *Amount of compensation*

(14) The **amount of compensation** may not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging those obligations. The amount of compensation includes all the advantages granted by the State or through State resources in any form whatsoever. The reasonable profit may include all or some of the productivity gains achieved by the undertakings concerned during an agreed limited period without reducing the level of quality of the services entrusted to the undertaking by the State.

(15) In any event, compensation must be actually used for the operation of the service of general economic interest concerned. Public service compensation granted for the operation of a service of general economic interest, but actually used to operate on other markets is not justified, and consequently constitutes incompatible State aid. The undertaking receiving public service compensation may, however, enjoy a reasonable profit.

(16) The **costs to be taken into consideration** include all the costs incurred in the operation of the service of general economic interest. Where the activities of the undertaking in question are confined to the service of general economic interest, all its costs may be taken into consideration. Where the undertaking also carries out activities falling outside the scope of the service of general economic interest, only the costs associated with the service of general economic interest may be taken into consideration. The costs allocated to the service of general economic interest may cover all the variable costs incurred in providing the service of general economic interest, an appropriate contribution to fixed costs common to both the service of general economic interest and other activities and an adequate return on the own capital assigned to the service of general economic interest ([9]). The costs linked with investments, notably concerning infrastructure, may be taken into account when necessary for the functioning of the service of general economic interest. The costs linked to any activities outside the scope of the service of general economic interest must cover all the variable costs, an appropriate contribution to fixed common costs and an adequate return on capital. These costs may, under no circumstances, be imputed to the service of general economic interest. The calculation of costs must follow the criteria which have previously been defined and be based on generally accepted cost accounting principles which must be brought to the knowledge of the Authority in the context of the notification in accordance with provisions of Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

([8]) See, in particular, the judgment in Case C-127/73 *BRT* v *SABAM* [1974] ECR-313.
([9]) See Joined Cases C-83/01P, C-93/01P and C-94/01P *Chronopost* SA [2003] ECR I-6993.

(17) The **revenue to be taken into account** must include at least the entire revenue earned from the service of general economic interest. If the undertaking in question holds special or exclusive rights linked to a service of general economic interest that generates profit in excess of the reasonable profit, or benefits from other advantages granted by the State, these must be taken into consideration, irrespective of their classification for the purposes of Article 61 of the EEA Agreement, and are added to its revenue. The EFTA State may also decide that the profits accruing from other activities outside the scope of the service of general economic interest must be allocated in whole or in part to the financing of the service of general economic interest.

(18) "Reasonable profit" should be taken to mean a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking by virtue of the intervention by the EFTA State, particularly if the latter grants exclusive or special rights. This rate must normally not exceed the average rate for the sector concerned in recent years. In sectors where there is no undertaking comparable to the undertaking entrusted with the operation of the service of general economic interest, a comparison may be made with undertakings situated in other EEA States, or if necessary, in other sectors, provided that the particular characteristics of each sector are taken into account. In determining what amounts to a reasonable profit, the EFTA State may introduce incentive criteria relating, among other things, to the quality of service provided and gains in productive efficiency.

(19) When a company carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts must show separately the costs and receipts associated with the service of general economic interest and those associated with other services, as well as the parameters for allocating costs and revenues. Where an undertaking is entrusted with the operation of several services of general economic interest either because the authority assigning the service of general economic interest is different or because the nature of the service of general economic interest is different, the undertaking's internal accounts must make it possible to ensure that there is no overcompensation at the level of each service of general economic interest. These principles are without prejudice to the provisions of the Act mentioned under point 1 of Annex XV to the EEA Agreement (Commission Directive 80/723/EEC on the transparency of financial relations between Member States and certain undertakings, as amended) in cases where that Act applies.

18C.3. **Overcompensation**

(20) The EFTA States must check regularly, or arrange for checks to be made, to ensure that there has been no overcompensation. Since overcompensation is not necessary for the operation of the service of general economic interest, it constitutes incompatible State aid that must be repaid to the State, and for the future, the parameters for the calculation of the compensation must be updated.

(21) Where the amount of overcompensation does not exceed 10 % of the amount of annual compensation, such overcompensation may be carried forward to the next year. Some services of general economic interest may have costs that vary significantly each year, notably as regards specific investments. In such cases, exceptionally, overcompensation in excess of 10 % in certain years may prove necessary for the operation of the service of general economic interest. The specific situation which may justify overcompensation in excess of 10 % should be explained in the notification to the Authority. However, the situation should be reviewed at intervals determined on the basis of the situation in each sector which, in any event, should not exceed four years. All overcompensation discovered at the end of that period should be repaid.

(22) Any overcompensation may be used to finance another service of general economic interest operated by the same undertaking, but such a transfer must be shown in the undertaking's accounts and be carried out in accordance with the rules and principles set out in these guidelines, notably as regards prior notification. The EFTA States must ensure that such transfers are subjected to proper control. The transparency rules laid down in the Act referred to under point 1 of Annex XV to the EEA Agreement (Commission Directive 80/723/EEC, as amended) apply.

(23) The amount of overcompensation cannot remain available to an undertaking on the ground that it would rank as aid compatible with the EEA Agreement (for example environmental aid, employment aid and aid for small and medium-sized enterprises). If an EFTA State wishes to grant such aid, the prior notification procedure laid down in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement should be complied with. Aid may be disbursed only if it has been authorised by the Authority. If such aid is compatible with a block exemption regulation, the conditions of the relevant block exemption regulation must be fulfilled.

18C.4. **Conditions and obligations attached to Decisions of the Authority**

(24) According to Article 7(4) in Part II of Protocol 3 to the Surveillance and Court Agreement ([10]), the Authority may attach to a positive decision conditions subject to which an aid may be considered compatible with the functioning of the EEA Agreement, and lay down obligations to enable compliance with the decision to be monitored. In the field of services of general economic interest, conditions and obligations may be necessary notably to ensure that aid granted to the undertakings concerned does not actually lead to overcompensations. In this context, periodical reports or other obligations may be necessary, in the light of the specific situation of each service of general economic interest.

18C.5. **Application of the Guidelines**

(25) These guidelines will apply as of their adoption by the Authority. Their validity will end six years after its entry into force. The Authority may, after consulting the EFTA States, amend these guidelines before their date of expiry for important reasons linked to the development of the functioning of the EEA Agreement. Four years after the date of adoption of these guidelines, the Authority will undertake an impact assessment based on factual information and the results of wide consultations conducted by the Authority on the basis, notably, of data provided by the EFTA States. The results of the impact assessment will be made available to the EFTA States.

(26) The Authority will apply the provisions of these guidelines to all aid projects notified to it and will take a decision on those projects after adoption of the guidelines, even if the projects were notified prior to adoption. In the case of non-notified aid, the Authority will apply:

— the provisions of these guidelines if the aid was granted after the adoption of these guidelines;

— the provisions in force at the time the aid was granted, in all other cases.

18C.6. **Appropriate measures**

(27) The Authority proposes as appropriate measures for the purposes of Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement that the EFTA States bring their existing schemes regarding public service compensation into line with these guidelines, within 18 months following the notification of the decision to the EFTA State. The EFTA States should confirm to the Authority within one month of the notification of the decision to them that they agree to the appropriate measures proposed. In the absence of any reply, the Authority will take it that the EFTA State concerned does not agree.

([10]) Corresponding to Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty.'

CORRIGENDA

Corrigendum to Decision 2006/609/EC fixing an indicative allocation by Member State of the commitment appropriations for the European territorial cooperation objective for the period 2007-2013

(Official Journal of the European Union L 247 of 9 September 2006)

Due to a material error (in table 1 of the Annex, two amounts concerning Latvia and Lithuania had been inversed), the entries for Latvia and Lithuania in table 1 of the Annex to Decision 2006/609/EC of 4 August 2006 are hereby replaced by the following:

On page 28, the entries for Latvia and Lithuania in table 1 of the Annex should read as follows:

Member State	TABLE 1 — Amount of appropriations (EUR, 2004 prices)						
	Regions eligible under the European territorial cooperation objective					Additional funding referred to in Annex II of Council Regulation (EC) No 1083/2006 under paragraph:	
	Cross-border				Transnational	§21	§22
	Internal	Transfer ENPI	Transfer IPA	Total			
'Latvija	50 791 319	21 417 000		72 208 319	7 617 737		
Lietuva	60 432 203	25 380 000		85 812 203	11 299 892'		