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I

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REGULATIONS

COUNCIL REGULATION (EC) No 637/2008

of 23 June 2008

amending Regulation (EC) No 1782/2003 and establishing national restructuring programmes for the cotton sector

THE COUNCIL OF THE EUROPEAN UNION,

schemes for farmers⁽⁴⁾ as inserted by Article 1(20) of Council Regulation (EC) No 864/2004⁽⁵⁾ sets out rules for the specific crop payment for cotton.

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the Act of Accession of 1979, and in particular paragraph 6 of Protocol 4 on cotton⁽¹⁾ annexed thereto, hereinafter 'Protocol 4',

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽²⁾,

Having regard to the Opinion of the European Economic and Social Committee⁽³⁾,

Whereas:

(1) Chapter 10a of Title IV of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support

(2) By judgment of the Court of Justice of the European Communities of 7 September 2006 in case C-310/04⁽⁶⁾ Chapter 10a of Title IV of Regulation (EC) No 1782/2003 was annulled for breach of the principle of proportionality, in particular with reference to the circumstance that 'the Council, the author of Regulation (EC) No 864/2004, [had] not shown before the Court that in adopting the new cotton support scheme established by that Regulation it actually exercised its discretion, involving the taking into consideration of all the relevant factors and circumstances of the case, including all the labour costs linked to cotton growing and the viability of the ginning undertakings, which it was necessary to take into account for assessing the profitability of that crop' and that the Court had not been enabled 'to ascertain whether the Community legislature [had been] able, without exceeding the bounds of the broad discretion it enjoys in the matter, to reach the conclusion that fixing the amount of the specific aid for cotton at 35 % of the total existing aid under the previous support scheme would suffice to guarantee the objective set out in recital 5 in the preamble to Regulation (EC) No 864/2004, namely to ensure the profitability and hence the continuation of that crop, an objective reflecting that laid down in paragraph 2 of Protocol 4'. The Court also ordered that the effects of the annulment be suspended until the adoption, within a reasonable time, of a new Regulation.

(3) A new scheme of specific payment for cotton needs to be adopted in conformity with the Court's judgement in case C-310/04.

⁽¹⁾ OJ L 291, 19.11.1979, p. 174. Protocol as last amended by Regulation (EC) No 1050/2001 (OJ L 148, 1.6.2001, p. 1).

⁽²⁾ Opinion of 14 February 2008 (not yet published in the Official Journal).

⁽³⁾ Opinion of 8 May 2008 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 479/2008 (OJ L 148, 6.6.2008, p. 1).

⁽⁵⁾ OJ L 161, 30.4.2004, p. 48, as corrected by OJ L 206, 9.6.2004, p. 20.

⁽⁶⁾ 2006 ECR I-7285.

- (4) All the relevant factors and circumstances pertaining to the specific situation of the cotton sector, including all the elements necessary to assess the profitability of that crop, should be taken into consideration. To this end, an evaluation and consultation process was launched: two studies were carried out on the socioeconomic and on the environmental impact on the cotton sector in the Community of the future cotton support scheme and specific seminars and an Internet consultation were organised with stakeholders.
- (5) The new scheme should meet the objectives set out in paragraph 2 of Protocol 4: to support the production of cotton in regions of the Community where it is important for the agricultural economy, to permit the producers concerned to earn a fair income, and to stabilise the market by structural improvements at the level of supply and marketing.
- (6) The scheme should also be consonant with a policy of income support for farmers, which is the main guiding principle of the reformed common agricultural policy (CAP).
- (7) The de-coupling of direct producer support and the introduction of the single payment scheme are essential elements in the process of reforming the CAP. Regulation (EC) No 1782/2003 introduced those elements for several agricultural products.
- (8) In order to meet the objectives underlying the reform of the CAP as well as the objectives set out in Protocol 4, the support for cotton should be largely de-coupled and integrated into the single payment scheme. Since those objectives cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for common action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (9) The complete and immediate integration into the single payment scheme of the support scheme in the cotton sector is likely to bring a significant risk of production disruption to the cotton producer regions of the Community. Part of the support should therefore continue to be linked to the cultivation of cotton through a crop-specific payment per eligible hectare. Its amount should be calculated in such a way as to achieve the objectives set out in paragraph 2 of Protocol 4 while also bringing the cotton scheme into the mainstream of the CAP reform simplification process. To that end, in the light of the evaluation carried out, it is justified that the total available aid per Member State is set at 35 % of the national share of the aid that went indirectly to the producers. Such a rate allows the cotton sector to move towards long-term viability, promotes the sustainable development of the cotton-producing regions and ensures a fair income for farmers.
- (10) The remaining 65 % of the national share of the aid that went indirectly to the producers should be available for the single payment scheme.
- (11) For environmental reasons, a base area per producer Member State should be established. In addition, the eligible areas should be restricted to those authorised by the Member States.
- (12) A fixed yield per hectare should be established per producer Member State. It will determine, together with the base area requirement, the overall capping of the funds and the mainly decoupled nature of the scheme, the programme production limiting character while at the same time fulfilling the objectives of Protocol 4.
- (13) In order to meet the needs of the ginning industry eligibility for the aid should be related to a minimum quality of cotton actually harvested.
- (14) Furthermore, the establishment of inter-branch organisations, to be approved by the Member States, should be encouraged to allow producers and ginners to enhance the quality of the cotton. The Community should contribute indirectly to the activities of those organisations by increasing the aid to those farmers who are members of the organisations.
- (15) Regulation (EC) No 1782/2003 should therefore be amended accordingly.
- (16) Besides the new regime on the specific payment for cotton, it would seem appropriate to adopt another set of rules with the purpose of helping the cotton sector to stabilise in the new legal and market context.

- (17) To the extent that the presence of the ginning industry appears necessary in the producer regions, the needs of that industry would be sufficiently satisfied, *inter alia*, by means of setting a minimum quality of cotton actually harvested and by allowing inter-branch organisations to enhance the quality of cotton. Moreover, considering the significant over-capacity of the ginning industry, it is appropriate to provide for additional measures to support their restructuring process with a view to improved market orientation.
- (18) Furthermore, it seems appropriate that market orientation measures supporting specific quality schemes and related promotion activities be introduced. Therefore, national programmes for restructuring in the cotton sector should be established. While the relevant measures should be financed by the Community, it should be left to Member States to select the right mix for the needs of their respective constituencies, taking regional particularities into account, where necessary.
- (19) The restructuring programmes should be submitted to the Commission for verification of the compliance of the measures with the conditions laid down in this Regulation and its implementing rules. Member States should be responsible for the implementation of such restructuring programmes.
- (20) The measures should be complementary to already existing measures in Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽¹⁾.
- (21) The measures in such programmes may include the full and permanent dismantling of part of the ginning processing facilities to ensure a more viable ginning industry. Support may also be provided for investments in the ginning industry, geared towards improving the economic performance of the enterprises as such. Furthermore, aid may be made available to machinery contractors affected as a consequence of the restructuring of the cotton sector.
- (22) To enhance the quality of European cotton, farmers who participate in specific quality schemes should receive, in the framework of such programmes, specific support to cover some of the related costs. Equally, information and promotion actions for cotton covered by these quality schemes should be supported.
- (23) The allocation of the funds for the national restructuring programmes among Member States should be based on

the specific needs for restructuring and adaptation in the main cotton production regions. In view of the temporary aim to restructure and adapt the cotton sector, the programmes may be terminated on request of the Member States, after which the annual budget for restructuring programmes may be added to the national ceiling of the Member State concerned for decoupled payments as established in Annex VIII to Regulation (EC) No 1782/2003.

- (24) In view of the absence of ginning industry in Portugal and the application of the Single Area Payment Scheme in Bulgaria, there is no need to allocate budget to national programmes for restructuring in these two Member States.
- (25) In order to apply the new cotton aid scheme and the scheme restructuring the cotton sector from the start of the production season, this Regulation should apply as from calendar year 2009,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

CROP SPECIFIC PAYMENT FOR COTTON

Article 1

Amendment to Regulation (EC) No 1782/2003

Regulation (EC) No 1782/2003 is hereby amended as follows:

1. In Title IV, Chapter 10a shall be replaced by the following

'CHAPTER 10a

CROP SPECIFIC PAYMENT FOR COTTON

Article 110a

Scope

Aid shall be granted to farmers producing cotton falling within CN code 5201 00 under the conditions laid down in this Chapter.

Article 110b

Eligibility

1. The aid shall be granted per hectare of eligible area of cotton. In order to be eligible, the area shall be located on agricultural land authorised by the Member State for cotton production, sown under authorised varieties and actually harvested under normal growing conditions.

⁽¹⁾ OJ L 277, 21.10.2005, p. 1. Regulation as last amended by Regulation (EC) No 146/2008 (OJ L 46, 21.2.2008, p. 1).

The aid referred to in Article 110a shall be paid for cotton of sound and fair merchantable quality.

2. Member States shall authorise the land and the varieties as referred to in paragraph 1 of this Article in accordance with detailed rules and conditions adopted in accordance with the procedure referred to in Article 144(2).

Article 110c

Base areas, fixed yields and reference amounts

1. The national base areas are hereby established as follows:

- Bulgaria: 3 342 ha,
- Greece: 250 000 ha,
- Spain: 48 000 ha,
- Portugal: 360 ha.

2. Fixed yields in the reference period are hereby established as follows:

- Bulgaria: 1,2 tonne/ha,
- Greece: 3,2 tonne/ha,
- Spain: 3,5 tonne/ha,
- Portugal: 2,2 tonne/ha.

3. The amount of the aid per eligible hectare is established by multiplying the yields laid down in paragraph 2 with the following reference amounts:

- Bulgaria: EUR 671,33,
- Greece: EUR 251,75,
- Spain: EUR 400,00,
- Portugal: EUR 252,73.

4. If the eligible area of cotton in a given Member State and in a given year exceeds the base area laid down in paragraph 1, the aid referred to in paragraph 3 for that Member State shall be reduced proportionately to the overrun of the base area.

5. Detailed rules for the implementation of this Article shall be adopted in accordance with the procedure referred to in Article 144(2).

Article 110d

Approved inter-branch organisations

1. For the purpose of this Chapter, an “approved inter-branch organisation” shall mean a legal entity made up of farmers producing cotton and at least one ginner, carrying out activities such as:

- helping to coordinate better the way cotton is placed on the market, particularly through research studies and market surveys,
- drawing up standard forms of contract compatible with Community rules,
- orientating production towards products that are better adapted to market needs and consumer demand, particularly in aspects of quality and consumer protection,
- updating methods and means to improve product quality,
- developing marketing strategies to promote cotton via quality certification schemes.

2. The Member State in whose territory the ginner is established shall approve inter-branch organisations that respect criteria to be adopted in accordance with the procedure referred to in Article 144(2).

Article 110e

Payment of aid

1. Farmers shall be granted the aid per eligible hectare pursuant to Article 110c.

2. Farmers who are members of an approved inter-branch organisation shall be granted an aid per eligible hectare, within the base area laid down in Article 110c(1), increased by an amount of EUR 2.;

2. in Article 156(2)(g) shall be replaced by the following:

‘(g) Title IV, Chapter 10a, shall apply as from 1 January 2009 for the cotton sown as from that date.’

CHAPTER 2

NATIONAL RESTRUCTURING PROGRAMMES FOR THE COTTON SECTOR*Article 2***Scope**

1. This Chapter lays down the rules governing the attribution of Community funds to Member States and the use of those funds by Member States through national restructuring programmes (hereinafter restructuring programmes) to finance specific restructuring measures to assist the cotton sector.

2. No support shall be granted:

(a) for research projects and measures to support research projects;

(b) for measures which are eligible for Community support under Regulation (EC) No 1698/2005.

*Article 3***General requirements**

1. The restructuring programmes must be compatible with Community law and consistent with the activities, policies and priorities of the Community.

2. Member States shall be responsible for the restructuring programmes and ensure that they are internally consistent and drawn up and implemented in an objective manner, taking into account the economic situation of the producers and processors concerned and the need to avoid unjustified unequal treatment between producers and/or processors.

Member States shall be responsible for providing for and carrying out the necessary controls and penalties in case of non-compliance with the restructuring programmes.

*Article 4***Submission and application of restructuring programmes**

1. Each producer Member State shall, every four years and for the first time by 1 January 2009, submit to the Commission a draft four-year restructuring programme containing measures in accordance with this Chapter.

Before being submitted to the Commission the restructuring programme shall be subject to consultation with the competent authorities and organisations in the cotton sector.

Each Member State shall submit one single draft programme which may accommodate regional particularities.

2. Restructuring programmes shall become applicable three months after their submission to the Commission.

However, if the submitted programme does not comply with the conditions laid down in this Chapter and its implementing rules, the Commission shall inform the Member State thereof. In such a case, the Member State shall submit a revised programme to the Commission. The revised programme shall become applicable two months after its submission unless an incompatibility persists in which case this paragraph shall apply.

3. Paragraph 2 shall apply *mutatis mutandis* to changes in respect of restructuring programmes submitted by Member States.

*Article 5***Budgetary allocation**

1. The annual budget for the restructuring programme per Member State from the financial year 2010 onwards shall be as follows:

— Greece: EUR 4,0 million,

— Spain: EUR 6,134 million.

2. Each Member State may decide to terminate its use of the restructuring programme to permanently transfer its annual budget referred to in paragraph 1 of this Article, to its national ceiling as determined in Annex VIII to Regulation (EC) No 1782/2003. This decision shall be communicated to the Commission at the latest by 1 August of a given year and shall apply to the direct payments granted under the following calendar year. The communication shall also report on the implementation of the restructuring programme and the achievement of its objectives.

3. The transfer in paragraph 2 of this Article, as well as the corresponding modification of paragraph 1 of this Article, shall be adopted in accordance with the procedure referred to in Article 144(2) of Regulation (EC) No 1782/2003 after the Commission's assessment of the implementation of the restructuring programme in light of its objectives.

*Article 6***General rules concerning the financing of the restructuring programmes**

1. Community support shall only relate to eligible expenditure incurred after the submission of the relevant restructuring programme as referred to in Article 4(1).

2. Member States shall not contribute to the costs of the measures financed by the Community under the restructuring programmes.

Article 7

Eligible measures and beneficiaries

1. Restructuring programmes shall only contain one or more of the following measures:

- (a) full and permanent dismantling of ginning facilities;
- (b) investments in the ginning industry;
- (c) participation of farmers in cotton quality schemes;
- (d) information and promotion activities;
- (e) aid to machinery contractors, not exceeding losses incurred.

2. Beneficiaries of the restructuring programmes shall be:

- (a) the beneficiaries of aid under Chapter IV of Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton⁽¹⁾ in the marketing year 2005/06, for aid under the measures referred to in paragraph 1(a), (b) and (d) of this Article;
- (b) the beneficiaries of aid under Chapter 10a of Regulation (EC) No 1782/2003, for aid under the measures referred to in paragraph 1(c) and (d) of this Article;
- (c) the approved inter-branch organisations, as defined in Chapter 10a of Regulation (EC) No 1782/2003, for aid under the measure referred to in paragraph 1(d) of this Article;
- (d) machinery contractors, for aid under the measure referred to in paragraph 1(e) of this Article, which:
 - are private persons or enterprises having worked under contract of growers or ginners in the marketing year

2005/06 with their agricultural machinery for the harvest of cotton,

- have harvested cotton, which has been delivered to ginning facilities affected by dismantling as referred to in paragraph 1(a) of this Article,

and

- have incurred demonstrable losses as a result of the shortage of cotton to be harvested.

Article 8

Financial resources

The measures provided for in this Chapter shall constitute intervention to regulate agricultural markets as referred to in Article 3(1)(b) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁽²⁾.

Article 9

Implementing rules

Detailed rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 195(2) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁽³⁾.

Article 10

Entry into force and application

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

It shall apply as from 1 January 2009.

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

Done at Luxembourg, 23 June 2008.

For the Council

The President

I. JARC

⁽¹⁾ OJ L 148, 1.6.2001, p. 3. Regulation repealed by Regulation (EC) No 1782/2003.

⁽²⁾ OJ L 209, 11.8.2005, p. 1. Regulation as last amended by Regulation (EC) No 479/2008.

⁽³⁾ OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

COMMISSION REGULATION (EC) No 638/2008**of 4 July 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade

negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 July 2008.

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

Done at Brussels, 4 July 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

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

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 4 July 2008 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	39,1
	MK	32,3
	TR	90,8
	ZZ	54,1
0707 00 05	MK	11,6
	TR	62,0
	ZZ	36,8
0709 90 70	TR	84,4
	ZZ	84,4
0805 50 10	AR	102,4
	US	79,5
	ZA	116,6
	ZZ	99,5
0808 10 80	AR	85,3
	BR	98,5
	CL	99,1
	CN	93,8
	NZ	116,7
	US	88,2
	UY	135,9
	ZA	91,9
	ZZ	101,2
0808 20 50	AR	96,9
	CL	98,1
	CN	96,2
	NZ	142,3
	ZA	118,0
	ZZ	110,3
0809 10 00	TR	196,2
	US	284,0
	ZZ	240,1
0809 20 95	TR	368,7
	US	486,8
	ZZ	427,8
0809 30	TR	197,2
	ZZ	197,2
0809 40 05	IL	154,1
	ZZ	154,1

⁽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 639/2008

of 24 June 2008

amending Regulation (EC) No 1043/2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) Recent reductions in export refund rates, due to the combined effects of the reform of the common agricultural policy and of the movements in agricultural commodity prices on the world market, have led to reduced levels of applications for refund certificates, consequently easing the pressure on the Community budget for export refunds on goods not covered by Annex I to the Treaty. In those circumstances where the Community is not in danger of breaching its international commitments, it is appropriate to simplify the system of granting export refunds on certain agricultural products in the form of goods not covered by Annex I to the Treaty, therefore reducing the administrative burden on operators exporting those goods.

(2) Pursuant to Article 27(1) of Commission Regulation (EC) No 1043/2005 ⁽²⁾ rights deriving from refund certificates may be transferred under certain conditions. In order to ensure consistency in the treatment of licences and certificates the procedure for those transfers should, where possible be aligned with the provisions relating to transfers of rights deriving from licences or certificates laid down in Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽³⁾.

(3) Article 32(2) of Regulation (EC) No 1043/2005 lays down the period within which the authority responsible

for payment has to record the amounts of export refunds requested on the refund certificate. However, in view of the time required to process documentation in respect of export refunds differentiated by destination, this period may not be sufficient and should therefore be extended.

(4) Article 38a(2) of Regulation (EC) No 1043/2005 lays down the conditions for the notification of applications to the Commission by the Member States and the subsequent issue of refund certificates. Since more efficient reporting and communication systems have been introduced the time-limits concerned should be adjusted.

(5) Article 33 of Regulation (EC) No 1043/2005 provides for a system of tranches for issuing refund certificates. The period of validity applicable to those refund certificates is laid down in Article 39 of that Regulation. To facilitate the operation of the system of refund certificates the period of validity of certificates issued under the first tranche and certificates applied for pursuant to Article 38a should be extended.

(6) In order to be able to benefit from a reduction of the amount of security to be forfeited, Article 45(2) of Regulation (EC) No 1043/2005 provides that unused certificates or extracts of certificates must be returned to the issuing authorities not later than 30 June of the budget period, in respect of which the certificates or extracts have been issued. The introduction of more efficient reporting systems allows this deadline to be extended.

(7) Article 47 of Regulation (EC) No 1043/2005 lays down specific conditions under which small exporters may be granted export refunds. In the interest of simplification small exporters should be entitled to use refund certificates without losing the status of small exporter and, in addition, the payment threshold should be raised.

(8) In order to have the measures provided for in this Regulation operational in due time the date of its entry into force should be on the day following publication in the *Official Journal of the European Union*.

(9) Regulation (EC) No 1043/2005 should therefore be amended accordingly.

⁽¹⁾ OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

⁽²⁾ OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 246/2008 (OJ L 75, 18.3.2008, p. 64).

⁽³⁾ OJ L 114, 26.4.2008, p. 3.

- (10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I to the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1043/2005 is amended as follows:

1. Article 27 is replaced by the following:

'Article 27

1. Obligations deriving from certificates shall not be transferable. Rights deriving from certificates may be transferred by their titular holder during the period of their validity, provided that the rights deriving under each certificate or extract therefrom are transferred to a single transferee only. Such transfer shall relate to the amounts not yet attributed to the certificate or extract.

2. Transferees may not further transfer their rights but may transfer them back to the titular holder. Transfers back to the titular holder shall relate to quantities not yet attributed to the certificate or extract.

In such cases, one of the entries set out in Annex VIII shall be made by the issuing authority in box 6 of the certificate.'

2. In Article 32(2), the second subparagraph is replaced by the following:

'The authority responsible for payment shall record that amount on the refund certificate within six months of the date of receipt of the specific application.'

3. In Article 38a, paragraph 2 is replaced by the following:

'2. Applications lodged in the course of each week shall be notified by Member States to the Commission on the following Monday. The corresponding certificates may be issued from the Wednesday following the notification, unless the Commission issues instructions to the contrary.'

4. In Article 39, paragraph 2 is replaced by the following:

'2. Subject to the second and the third subparagraph, refund certificates shall be valid until the last day of the fifth month following the month in which the application for the certificate was made, or, until the last day of the budget period, whichever is the earlier.

Refund certificates applied for in compliance with point (a) of Article 33 or Article 38a, at the latest on 7 November, shall be valid until the last day of the tenth month following the month in which the application for the certificate was made.

The refund certificates referred to in Article 40 shall be valid until the last day of the fifth month following the month in which the application for the certificate was made.

If refund rates are fixed in advance in accordance with Article 29, those rates shall remain valid until the last day of the period of validity of the certificate.'

5. In Article 45, paragraph 2 is replaced by the following:

'2. Paragraph 1 shall apply only to certificates and extracts from certificates returned to the issuing authority during the budget period in respect of which the certificates have been issued, provided that they are returned not later than 31 August of that period.'

6. In Article 47(2), the first subparagraph is replaced by the following:

'2. Article 46 shall apply to exports for which the applications submitted by the operator on the terms set out in Article 32(1) during the budget year, including the submission of the application for the export in question, shall not give rise to payment of more than EUR 100 000.'

Article 2

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

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

Done at Brussels, 24 June 2008.

For the Commission
Günter VERHEUGEN
Vice-President

COMMISSION REGULATION (EC) No 640/2008**of 4 July 2008****amending Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Articles 113(1)(a) and 121(h) in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis ⁽²⁾ defines the chemical and organoleptic characteristics of olive and olive-residue oil and stipulates methods of assessing these characteristics.
- (2) Under the 10th indent of Article 2(1) of Regulation (EEC) No 2568/91, evaluation of the organoleptic characteristics of virgin olive oil is to be carried out in accordance with the method set out in Annex XII to that Regulation.
- (3) A revised method for the organoleptic assessment of virgin olive oil was adopted by the International Olive Council (IOC) in November 2007. This revision updated the descriptions of the positive and negative attributes of virgin olive oil and the description of the method. It also amended the maximum limit for the perception of defects in virgin olive oil.

- (4) The IOC's revised method for the organoleptic assessment of virgin olive oil also specifies the conditions for the optional use, on labels, of certain terms and expressions relating to the organoleptic characteristics of virgin olive oil. Panel heads should be given the possibility of certifying that oil conforms to the definitions given for the use of those terms and expressions.
- (5) Regulation (EEC) No 2568/91 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2568/91 is hereby amended as follows:

1. In the 11th column of the table set out in Annex I ('Organoleptic evaluation median defect (Md)'), '2,5' is replaced by '3,5' in the second line, the third line and Footnote 2.
2. Annex XII is replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 1 October 2008.

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

Done at Brussels, 4 July 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

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

⁽²⁾ OJ L 248, 5.9.1991, p. 1. Regulation as last amended by Regulation (EC) No 702/2007 (OJ L 161, 22.6.2007, p. 11).

ANNEX

'ANNEX XII

THE INTERNATIONAL OLIVE COUNCIL'S METHOD FOR THE ORGANOLEPTIC ASSESSMENT OF VIRGIN OLIVE OIL**1. PURPOSE AND SCOPE**

This method is based on Decision No DEC-21/95-V/2007 of 16 November 2007 on the International Olive Council's revised method for the organoleptic assessment of virgin olive oil. Its purpose is to determine the procedure for assessing the organoleptic characteristics of virgin olive oil within the meaning of point 1 of Annex XVI to Regulation (EC) No 1234/2007 and to establish the method for its grading on the basis of those characteristics. It also provides indications for optional labelling.

The method described is applicable only to virgin olive oil and to the grading or labelling of such oil according to the intensity of the defects perceived, their fruitiness and other positive attributes, as determined by a group of tasters selected, trained and monitored as a panel.

2. GENERAL

For the general basic vocabulary, the tasting room, the tasting glass and any other matters relating to this method, compliance with the stipulations of the International Olive Council, and in particular with Decision No DEC-21/95-V/2007 of 16 November 2007 on the revised method for the organoleptic assessment of virgin olive oil, is recommended.

3. SPECIFIC VOCABULARY**3.1. Positive attributes**

Fruity: range of smells (dependent on variety) characteristic of oil from healthy fresh fruit, green or ripe, perceived directly and/or retronasally.

Fruitiness is qualified as *green* if the range of smells is reminiscent of green fruit and is characteristic of oil from green fruit.

Fruitiness is qualified as *ripe* if the range of smells is reminiscent of ripe fruit and is characteristic of oil from green and ripe fruit.

Bitter: characteristic primary taste of oil from green olives or olives turning colour. It is detected by the circumvallate papillae in the "V" region of the tongue.

Pungent: tingling sensation characteristic of oil made at the beginning of the season mainly from olives that are still green. It can be perceived throughout the mouth cavity, particularly in the throat.

3.2. Negative attributes

Fusty/muddy sediment: characteristic flavour of oil from olives that have been piled or stored in such a way as to have reached an advanced stage of anaerobic fermentation, or of oil which has been left in contact with the sediment that settles in underground tanks and vats and which has also undergone a process of anaerobic fermentation.

Musty/humid: characteristic flavour of oil from olives in which large numbers of fungi and yeasts have developed as a result of storage for several days in humid conditions.

Winey-vinegary/acid-sour: characteristic flavour of certain oils reminiscent of wine or vinegar. This flavour is mainly due to the aerobic fermentation of the olives or of olive paste left on pressing mats which have not been properly cleaned, leading to the formation of acetic acid, ethyl acetate and ethanol.

Metallic: flavour reminiscent of metal, characteristic of oil that has been in prolonged contact with metallic surfaces during crushing, mixing, pressing or storage.

Rancid: flavour of oil that has undergone an intense process of oxidation.

Heated or burnt: characteristic flavour caused by excessive and/or prolonged heating during production, particularly by thermo-mixing of the paste in unsuitable conditions.

Hay/wood: characteristic flavour of certain oils from dry olives.

Rough: thick and pasty mouthfeel produced by certain old oils.

Greasy: flavour reminiscent of diesel, grease or mineral oil.

Vegetable water: flavour acquired by the oil as a result of prolonged contact with vegetable water which has undergone fermentation.

Brine: flavour of oil extracted from olives which have been preserved in brine.

Esparto: characteristic flavour of oil from olives pressed in new esparto mats. The flavour may vary depending on whether the mats are made of green or dried esparto.

Earthy: flavour of oil from olives collected with earth or mud on them and not washed.

Grubby: flavour of oil from olives heavily attacked by grubs of the olive fly (*Bactrocera oleae*).

Cucumber: characteristic flavour of oil kept too long in hermetically sealed containers, notably in tins, attributed to formation of 2,6-nonadienal.

Wet wood: characteristic flavour of oil extracted from olives damaged by frost while on the tree.

3.3. Optional terminology for labelling purposes

Upon request, the panel head may certify that the oils which have been assessed comply with the definitions and ranges that correspond to the following adjectives according to the intensity and perception of the attributes:

- (a) for each of the positive attributes mentioned under point 3.1 (*fruity* — whether *green* or *ripe* — *pungent* or *bitter*):
 - (i) the term “intense” may be used where the median of the attribute concerned is greater than 6;
 - (ii) the term “medium” may be used where the median of the attribute concerned is between 3 and 6;
 - (iii) the term “light” may be used where the median of the attribute concerned is less than 3;
 - (iv) the attributes in question may be used without the adjectives given in points (i), (ii) and (iii) where the median of the attribute concerned is 3 or more;
- (b) the term “well balanced” may be used where the oil does not display a lack of balance, which is defined as the smell, taste and feel that oil has when the median of the *bitter* and/or *pungent* attributes is two points higher than the median of its *fruitiness*;
- (c) the term “mild oil” may be used where the median of the *bitter* and *pungent* attributes is 2 or less.

4. PANEL

The panel consists of a panel head and from eight to 12 tasters.

The panel head must be a soundly trained expert in the various types of oil. He or she is responsible for the panel and its organisation and operation, including preparation, coding and presentation of the samples to the tasters and collection and processing of the data.

He or she selects the tasters, sees to their training and checks that their performance remains of adequate standard.

The testers must be selected and trained on account of their skill in distinguishing between similar samples. The International Olive Council's manual on the selection, training and monitoring of qualified virgin olive oil tasters must be followed.

Panels must undertake to participate in national, Community and international organoleptic assessments organised for the purposes of periodic monitoring and harmonisation of perception criteria. In the case of panels approved in accordance with Article 4(1) of this Regulation, they must also provide the Member State concerned with full information each year on the composition of the panel and the number of assessments made in their capacity as an approved panel.

5. PROCEDURE FOR ORGANOLEPTIC ASSESSMENT AND GRADING

5.1. Use of profile sheet by taster

The profile sheet to be used by the taster is reproduced as Appendix A.

Tasters must each smell and then taste ⁽¹⁾ the oil submitted for examination, marking the intensity of their perception of each negative and positive attribute on the 10-cm scale provided on the profile sheet. If a taster perceives the fruitiness to be of a green or ripe character, he or she must tick the corresponding box on the profile sheet.

If the tasters perceive any negative attributes not listed on the profile sheet, these must be noted under "Other", using the term or terms that describe them best from among those defined above.

5.2. Processing of data by panel head

The panel head collects the profile sheets completed by the tasters and scrutinises the intensities assigned to the various attributes. In the event of an anomaly he or she will ask tasters to re-examine their sheet and if necessary repeat the test.

The panel head may feed each tester's data into a computer programme to calculate the median in accordance with Appendix B. Input of each sample shall be made with the help of a grid with nine columns for the nine sensory attributes and one line for each panel member.

If a negative attribute is perceived and mentioned under "Other" by at least 50 % of the panel, the head must calculate the median for this attribute and grade accordingly.

The panel head may certify that the oil submitted for examination meets the conditions set out under point 3.3(a) for the use of the terms "green" and "ripe" only if at least 50 % of the panel perceived that the fruitiness had this character and noted it down.

For assessments intended to monitor compliance, one test shall be carried out. In the event of contradictory assessments, the panel head shall arrange for the assessment to be carried out in duplicate. For confirmation assessments, the assessment must be carried out in triplicate. In these cases, the median of the attributes shall be calculated from the average of the medians. Repeat tests must be carried out at different sessions.

5.3. Grading of oils

The oil is graded as follows in line with the median of the defects and the median for "fruity". The median of the defects is defined as the median of the defect perceived with the greatest intensity. The median of the defects and the median for "fruity" are expressed to one decimal place, and the value of the robust variation coefficient which defines them must be no greater than 20 %.

The oil is graded by comparing the median value of the defects and the median for "fruity" with the reference ranges given below. The error of the method was taken into account when determining the limits of these intervals, which are therefore considered to be absolute. The software packages allow visualised grading using a table of statistics or a graph.

- (a) *extra virgin olive oil*: the median of the defects is 0 and the median for "fruity" is above 0;
- (b) *virgin olive oil*: the median of the defects is above 0 but not above 3,5 and the median for "fruity" is above 0;
- (c) *lampante olive oil*: the median of the defects is above 3,5; or the median of the defects is not above 3,5 and the median for "fruity" is 0.

5.4. Special case

If the median of a positive attribute other than "fruity" is above 5,0, the panel head must note this on the analysis certificate.

⁽¹⁾ Tasters may refrain from tasting if they note some extremely intense negative attribute when smelling the oil, in which case they must note this exceptional circumstance on the profile sheet.

Appendix A

Profile sheet for virgin olive oil

INTENSITY OF PERCEPTION OF DEFECTS

Fusty/muddy sediment	_____ →
Musty-humid-earthly	_____ →
Winey-vinegary — acid-sour	_____ →
Metallic	_____ →
Rancid	_____ →
Other (specify)	_____ →

INTENSITY OF PERCEPTION OF POSITIVE ATTRIBUTES

Fruity	_____ →
	greenly <input type="checkbox"/> ripely <input type="checkbox"/>
Bitter	_____ →
Pungent	_____ →

Name of taster:**Sample code:****Date:****Comments:**

Appendix B

METHOD FOR CALCULATING THE MEDIAN AND CONFIDENCE INTERVALS

Median

$$Me = [P(X < X_m) \leq 1/2 \wedge P(X \leq X_m) \geq 1/2]$$

The median is defined as the real number X_m characterised by the fact that the probability (P) that the distribution values (X) are below that number (X_m) is not more than 0,5 and that simultaneously the probability (P) that the distribution values (X) are not above X_m is not less than 0,5. Another definition considers the median to be the 50th percentile of a distribution of numbers ranked in ascending order. In other words, the median is the central value of an ordered series with an uneven number of values or the average of the two central values of an ordered series with an even number of values.

Robust standard deviation

To obtain a reliable estimate of the variability that arises around the median, recourse is required to the Stuart and Kendall method of estimating the robust standard deviation. The following formula gives the asymptotic standard deviation, i.e. the robust estimate of the variability of the data under consideration, where N is the number of observations and IQR the interquartile range, which covers exactly 50 % of the cases of any probability distribution.

$$S^* = \frac{1,25 \text{ IQR}}{1,35\sqrt{N}}$$

The interquartile range is obtained by calculating the magnitude of the deviation between the 75th and the 25th percentiles.

$$\text{IQR} = 75\text{th percentile} - 25\text{th percentile}$$

The percentile is the value X_{pc} characterised by the fact that the probability (P) that the distribution values are below X_{pc} is not more than a determined hundredth and that simultaneously the probability (P) that the distribution values are not above X_{pc} is not less than the said hundredth. The hundredth indicates the distribution fraction used. For the median, this is 50/100.

$$\text{Percentile} = [P(X < X_{pc}) \leq \frac{n}{100} \wedge P(X \leq X_{pc}) \geq \frac{n}{100}]$$

In practice, the percentile is the distribution value corresponding to a determined area plotted from the distribution or density curve. For example, the 25th percentile is the distribution value corresponding to an area equal to 0,25 or 25/100.

Robust variation coefficient %

The rVC % is a pure number, i.e. without dimension, that indicates the percentage of variability of the series of numbers analysed. For that reason, it is very useful for verifying the reliability of the panel members.

$$\text{rVC \%} = \frac{S^*}{Me} 100$$

Confidence intervals at 95 % on the median

The confidence intervals at 95 % (value of the error of first kind equal to 0,05 or 5 %) represent the range in which the value of the median would be able to vary should it be possible to repeat the experiment an infinite number of times. In practice, this interval indicates the range of variability of the test under the operating conditions selected, based on the assumption that it is possible to repeat the test several times. As with the rVC %, the interval helps evaluate the reliability of the test.

$$\text{Upper C.I.} = Me + (c.S^*)$$

$$\text{Lower C.I.} = Me - (c.S^*)$$

where c is equal to 1,96 for a confidence interval of 0,95.

COMMISSION REGULATION (EC) No 641/2008**of 4 July 2008****amending Council Regulation (EC) No 40/2008 as regards the list of vessels engaged in illegal, unreported and unregulated fisheries in the North Atlantic**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required ⁽¹⁾, and in particular point 4 of Annex XIII thereof,

Whereas:

- (1) The European Community has, since 1981, been a Party to the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries ⁽²⁾.
- (2) In March 2008 the North-East Atlantic Fisheries Commission (NEAFC) made a recommendation to

amend the list of vessels that have been confirmed as having engaged in illegal, unreported and unregulated fisheries. Implementation of the recommendation in the Community legal order should be ensured.

- (3) Regulation (EC) No 40/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Appendix to Annex XIII to Regulation (EC) No 40/2008 is replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 4 July 2008.

For the Commission

Joe BORG

Member of the Commission

⁽¹⁾ OJ L 19, 23.1.2008, p. 1. Regulation as amended by Commission Regulation (EC) No 541/2008 (OJ L 157, 17.6.2008, p. 23).

⁽²⁾ OJ L 227, 12.8.1981, p. 21.

ANNEX

In Annex XIII to Regulation (EC) No 40/2008 the Appendix is replaced by the following:

'Appendix to Annex XIII

List of vessels with the following IMO numbers that have been confirmed by NEAFC and NAFO as having engaged in illegal, unreported and unregulated fisheries

IMO ⁽¹⁾ ship identification number	Vessel's name ⁽²⁾	Flag State ⁽²⁾
7436533	ALFA	Georgia
7612321	AVIOR	Georgia
8522030	CARMEN	ex-Georgia
7700104	CEFEY	Russia
8028424	CLIFF	Cambodia
8422852	DOLPHIN	Russia
7321374	ENXEMBRE	Panama
8522119	EVA	ex-Georgia
6719419	GORILERO	Sierra Leone
7332218	IANNIS I	Panama
8422838	ISABELLA	ex-Georgia
8522042	JUANITA	ex-Georgia
6614700	KABOU	Guinea Conakry
7385174	MURTOSA	Togo
8421937	NICOLAY CHUDOTVORETS	Russia
8914221	POLESTAR	Panama
8522169	ROSITA	ex-Georgia
7347407	SUNNY JANE	
8606836	ULLA	ex-Georgia

⁽¹⁾ International Maritime Organisation.

⁽²⁾ Any changes of names and flags and additional information on the vessels are available on the NEAFC website: www.neafc.org

COMMISSION REGULATION (EC) No 642/2008

of 4 July 2008

**imposing a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits
(namely mandarins, etc.) originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

registration under Regulation (EC) No 1295/2007 of 5 November 2007 ⁽³⁾.

Having regard to the Treaty establishing the European Community,

- (4) It is recalled that safeguard measures were in force against the same product until 8th November 2007. The Commission imposed provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) by Regulation (EC) No 1964/2003 of 7 November 2003 ⁽⁴⁾. Definitive safeguard measures followed by Regulation (EC) No 658/2004 of 7 April 2004 (the "Safeguards Regulation") ⁽⁵⁾. Both the provisional and definitive safeguard measures consisted of a tariff rate quota i.e. a duty was only due once the volume of duty free imports had been exhausted.

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1.2. Parties concerned by the proceeding

1. PROCEDURE

1.1. Initiation of the proceeding

- (1) On 20 October 2007 the Commission announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated as a result of a complaint lodged on 6 September 2007 by the Spanish National Federation of Associations of Processed Fruit and Vegetables (FNACV) ('the complainant') on behalf of producers representing 100 % of the total Community production of certain prepared or preserved citrus fruits (namely mandarins etc.). The complaint contained evidence of dumping of the product concerned and of material injury resulting thereof, which was considered sufficient to justify the initiation of a proceeding.
- (3) On 9 November 2007, the Commission made imports of the same product originating in the PRC subject to

- (5) The Commission officially advised the complaining Community producers and their association, the exporting producers and their association, suppliers and importers and their associations known to be concerned, and the authorities of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (6) The complainant producers, exporting producers, importers, and their respective associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (7) In the notice of initiation, the Commission indicated that sampling for the determination of dumping and injury in accordance with Article 17 of the basic Regulation may be applied. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 October 2006 to 30 September 2007).

⁽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 C 246, 20.10.2007, p. 15.

⁽³⁾ OJ L 288, 6.11.2007, p. 22.

⁽⁴⁾ OJ L 290, 8.11.2003, p. 3.

⁽⁵⁾ OJ L 104, 8.4.2004, p. 67.

- (8) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent MET and IT claim forms to the Chinese companies known to be concerned. Five companies/groups of related companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET. However, only one company claiming MET was selected in the sample (see recital (26) below). Nine companies/groups of related companies requested only IT.
- (9) The Commission sent questionnaires to all Community producers known to be concerned and to their association, to all importers selected in the sample and their associations, to suppliers known to be concerned and to the exporting producers selected in the sample. In addition, questionnaires were sent to all potential analogue country producers identified by the Commission (see recitals (40)-(41) below).
- (10) Questionnaire replies were received from four Community producers representing 100 % of the total Community production, from the six sampled unrelated importers in the Community and their respective associations. Replies were also received from all sampled Chinese exporting producers and their related companies. Finally, submissions were also received from the association of Chinese producers and one importers association.
- (11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

Exporting producers in the PRC:

- Yichang Rosen Foods Co., Ltd., Zhejiang
- Huangyan No.1 Canned Food Factory Zhejiang and its related trader Merry & Co., Ltd., Huangyan
- Zhejiang Xinshiji Foods Co., Ltd. and its related producer Hubei Xinshiji Foods Co., Ltd., Sanmen.

Community producers:

- Halcon Group SA, Murcia, Spain

- Cofrusa SA, Murcia, Spain
- Agricons SA, Valencia, Spain
- Videca SA, Valencia, Spain.

1.3. Investigation period (IP)

- (12) The investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 October 2002 to the end of the investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. General remarks

- (13) Mandarins are harvested in autumn and winter, with the harvesting and canning season starting early October and finishing around the end of January, the following year. The fresh product is destined for the fresh fruit market, for juicing or for canning. Practice in the mandarin canning industry is to use the season (the period from 1 October in one year to 30 September in the following year) as the basis for comparisons, and the Commission has adopted this practice in its analysis.

2.2. Product concerned

- (14) The product concerned is prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008. These are currently classified as follows: CN code 2008 30 55 covers the product concerned not containing added spirit but containing added sugar and in immediate packings of a net content exceeding 1 kg; CN code 2008 30 75 covers the product concerned not containing added spirit but containing added sugar and in immediate packings of a net content not exceeding 1kg. In addition, a part of ex CN code 2008 30 90 contains mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids prepared or preserved with no added spirit or added sugar (usually in water or its own juice).
- (15) The preliminary investigation shows that the product concerned is obtained by peeling and segmenting certain varieties of small citrus fruit (mainly satsumas) which are then packaged in a medium of sugar syrup, juice or water. Peeling and segmenting can either be carried out manually or by machine.

- (16) The product concerned is produced in various weights to meet the demands both of the consumer market and of the catering and food industries. The vast majority of the consumer market is taken by the 312 g net weight/ (175 g drained) size, although the share of sales taken by the larger 850 g/(480 g) size is increasing. Larger packaging sizes, particularly those of 2,65 kg/(1 500 g) and 3,1 kg/(1 700 g), are used by the catering and food industries, with the 2,65 kg format being the most popular.
- (17) Satsumas, clementines and other small citrus fruit are commonly known by the collective name 'mandarin'. Most of these different varieties of fruit are suitable to be used as fresh product or for juicing or canning. They are similar and their preparations or preservations are, thus, considered as one single product.

2.3. Like product

- (18) It was argued by one European importer that the product concerned imported from the PRC was of a higher quality as the Chinese mandarin orange contains less seeds/pips.
- (19) As in the Safeguards Regulation, some parties argued that there are differences between the product concerned and the product produced by the Community industry in terms of quality. Community producers argued that consumers have a preference for their products due to perceived higher hygiene standards during the canning process.
- (20) The Commission investigated these claims and found the following:
- (a) the imported product and the Community product shared the same or similar physical properties such as taste, size, shape and texture. There were some differences in terms of quality but these did not affect the basic characteristics of the product nor their perception by the user/consumer as a single product category;
- (b) the imported product and the Community product were sold via similar or identical sales channels. Price information was readily available to buyers and the product concerned and the product of the Community producers competed mainly on price;
- (c) the imported product and the Community product both serve the same or similar end-uses;
- (d) the imported product and the Community product were both perceived by consumers as interchangeable

and satisfy the same type of demand. In this respect, the differences identified by certain importers were of minor importance for the purposes of the analysis under this section.

- (e) the imported product and the Community product normally classified under the ex CN code 2008 30 90 (citrus fruit with no added spirit or added sugar usually in water or its own juice), which were not covered by the safeguard measures, serve also the same or similar end-uses and are perceived by consumers as fully interchangeable and alike in all basic characteristics with products normally classified under the other two CN codes, i.e. 2008 30 55 and 2008 30 75.

Given that 'likeness' does not require completely identical products, any minor variations were not sufficient to change the overall finding of likeness between the imported and Community products.

- (21) Therefore, the Commission concludes that the imported product and the Community product are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. SAMPLING

3.1. Sampling for exporting producers in the PRC

- (22) In view of the large number of exporting producers in the PRC, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17(1) of the basic Regulation.
- (23) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned. The authorities of the PRC and the producers' association were also consulted.
- 3.1.1. *Pre-selection of cooperating exporting producers*
- (24) Sixteen companies/groups of related companies in the PRC came forward and provided the requested information within the given deadline set in the notice of initiation. All of them reported exports to the Community during the IP and expressed a wish to participate in the sample.

(25) Exporting producers which did not make themselves known within the aforesaid period or did not provide the requested information in due time, were considered as non-cooperating with the investigation. However, a comparison between Eurostat import data and the volume of exports to the Community of the product concerned reported for the IP by the companies mentioned in recital (24) suggests that the co-operation of Chinese exporting producers was very high.

3.1.2. Selection of the sample

(26) In accordance with Article 17(1) of the basic Regulation, the size of the exporting producers with regard to export sales to the Community was taken into account in the selection of the sample. Based on this criterion, a sample of four exporting producers, two of them related, was chosen. Based on the sampling information, the chosen companies accounted, in the IP, for more than 60 % of the total volume of exports to the Community of the product concerned reported by the companies referred to in recital (24) above. In addition, one of them had also made substantial domestic sales of the product concerned in the IP. It was therefore considered that such sample would allow limiting the investigation to a reasonable number of exporting producers which could be investigated within the time available while ensuring a high level of representation. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and raised no objection within the time limit set for that purpose.

3.2. Individual examination

(27) None of the exporting producers which were not included in the sample claimed an individual dumping margin by providing the relevant information within the given deadline, with a view to the application of Article 17(3) of the basic Regulation. Therefore, an individual examination of exporting producers was not made in this investigation.

3.3. Sampling for importers

(28) In view of the large number of importers identified from the complaint itself and from the previous safeguard investigation, sampling was also envisaged in the notice of initiation in accordance with Article 17(1) of the basic Regulation. A large number of importers offered to cooperate. The six major importers in terms of volume of imports were selected for the sample. These importers represent slightly more than 60 % of total Community imports.

4. DUMPING

4.1. Market Economy Treatment

(29) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originat-

ing 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.

(30) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. Business decisions regarding prices and costs are made in response to market conditions and without State interference;
2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes;
3. There are no significant distortions carried over from the former non-market economy system;
4. Legal certainty and stability is provided by bankruptcy and property laws;
5. Currency exchanges are carried out at the market rate.

(31) In the present investigation, one of the exporting producers included in the sample (see recitals (22) to (26) above) replied to the MET claim form.

(32) This exporting producer cannot receive MET because it failed to show that it fulfils the conditions set out in the first, second and third criterion of Article 2(7)(c) of the basic Regulation. In particular, as far as criterion 1 is concerned, it was established on spot that the labour contracts of the company were signed by the workers blank, without any reference to remuneration and working hours. It was thus impossible to determine the conditions under which the workers were recruited and paid and consequently whether the labour cost reflected supply and demand. As far as criterion 2 is concerned, it was established on spot that fundamental International Accounting Standards were disregarded (i.e. accrual principle, offsetting, inconsistencies between the amounts reported in the accounts and the actual source accounting material, lack of faithful representations of transactions) both in the accounts and in their audit which put into question the reliability of the company's accounts. With regard to criterion 3, it was established that the company benefitted from a number of subsidies (e.g. refund of VAT never paid by the suppliers/farmers and certain export subsidies from the Fund for Provincial Foreign Trade Development Projects as well as an export bonus), which indicates that significant distortions from the former non-market economy system are still in place.

(33) In light of the foregoing, the sole Chinese exporting producer which has requested MET has not shown that that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

4.2. Individual treatment

(34) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(35) The sole exporting producer in the sample which requested MET, claimed also IT in the event that it would not be granted MET. The other exporting producers included in the sample also claimed IT.

(36) For all companies concerned, the preliminary examination of their IT claims showed that all met the requirements for IT as set forth in Article 9(5) of the basic Regulation.

(37) It was therefore concluded that IT should provisionally be granted to the following exporting producers in the PRC:

— Yichang Rosen Foods Co., Ltd., Zhejiang

— Huangyan No.1 Canned Food Factory Zhejiang, Huangyan

— Zhejiang Xinshiji Foods Co., Ltd. and its related producer Hubei Xinshiji Foods Co., Ltd., Sanmen.

4.3. Normal Value

(38) For the reasons stated above, no MET was granted to any exporting producer in the PRC.

(39) Therefore, normal value shall be determined for all Chinese exporting producers in accordance with Article 2(7)(a) of the basic Regulation.

(40) According to information contained in the complaint, the product concerned is not being produced in significant quantities outside the Community and the country concerned. It was therefore suggested in the notice of initiation to base the normal value on any

other reasonable basis, i.e. the prices actually paid or payable in the Community for the like product. Interested parties were invited to submit their comments in this respect. The Commission itself continued to seek any potential analogue countries after the publication of the notice of initiation. The Commission sought co-operation from two companies in Thailand. One of them initially agreed to co-operate in the investigation but failed to reply to the questionnaire later on. The other company did not react at all.

(41) Two exporting producers from the country concerned and an association of importers and wholesalers disagreed with basing the normal value on the prices paid or payable in the Community but did not offer any other solution which would comply with the basic Regulation.

(42) In view of the above, it was provisionally decided to determine normal value for all exporting producers in the sample on any other reasonable basis, in this case on the basis of the prices actually paid or payable in the Community for the like product, in accordance with Article 2(7)(a) of the basic Regulation.

(43) Following the choice of the prices paid or payable in the Community, normal value was calculated on the basis of the data verified at the premises of the co-operating Community producers listed in recital (11) above.

(44) The domestic sales of these Community producers of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers included in the sample.

(45) As the sales prices of the Community industry were loss-making, they had to be duly adjusted to include a reasonable profit margin, as foreseen under Article 2(7)(a) of the basic Regulation. The 6,8 % profit used was the level of profit achieved in the last canning season (2000/2001) before the huge increase in Chinese imports that led to the imposition of safeguard measures, i.e., the last season where market conditions were not influenced by injurious imports at abnormally low prices.

4.4. Export prices

(46) The export prices were based on the prices actually paid when sold to independent customers for export from the PRC to the Community.

4.5. Comparison

- (47) The comparison between normal value and export price was made on an ex-factory basis.
- (48) For the purpose of ensuring a fair comparison between the normal value and the export price, due adjustments were made for differences affecting prices and price comparison in accordance with Article 2(10) of the basic Regulation. Adjustments were made, whenever necessary, for differences in transport, insurance and any other transport related costs.

4.6. Dumping margin

- (49) In view of the foregoing, and pursuant to Article 2(11) and (12) of the basic Regulation, the provisional dumping margin for all exporters in the PRC was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type determined and adjusted as explained above. In accordance with consistent practice, a weighted average dumping margin was calculated for related exporting producers. For the co-operating not sampled exporting producers a weighted average dumping margin based on the dumping margins of the companies in the sample was calculated. Furthermore, since the co-operation of exporting producers was very high (see recital (25) above), the highest individual dumping margin of the companies in the sample was attributed to all other companies.
- (50) On this basis the provisional dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid are:

— Yichang Rosen Foods Co., Ltd., Zhejiang 139,6 %

— Huangyan No.1 Canned Food Factory Zhejiang, Huangyan 87,4 %

— Zhejiang Xinshiji Foods Co., Ltd. and its related producer Hubei Xinshiji Foods Co., Ltd., Sanmen 134,7 %

— Co-operating exporting producers not included in the sample 128,4 %

— All other companies 139,6 %.

5. INJURY

5.1. General Remarks

- (51) It should be recalled that the product in question was subject to safeguard measures during most of the period considered. This was justified by the fact that the Community industry suffered serious injury at the end of the period under scrutiny in the safeguard investigation (i.e. from 1998/1999 to 2002/2003).

5.2. Community production and Community industry

- (52) In the course of the present investigation it was found that the product concerned was manufactured in the Community by four Community producers on whose behalf the complaint was lodged (Halcon Group SA, Murcia, Spain; Cofrusa SA, Murcia, Spain; Agricons SA, Valencia, Spain; Videca SA, Valencia, Spain). None of these producers was related to any Chinese exporters or importers of the product concerned from the PRC.
- (53) The investigation showed that the Community producers had produced around 34 100 tonnes of the product concerned in the IP. This represents 100 % of the total volume of the like product produced in the Community. The aforementioned Community producers are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (54) It is noted that in the safeguards investigation there were eight cooperating producers in the Community. The fact that there only remain four producers in the Community reflects the closure of some firms and mergers of others.

5.3. Community Consumption

- (55) During the period considered the Community consumption developed as follows.

	2002/03	2003/04	2004/05	2005/06	IP
Community Consumption (in tonnes)	78 623	90 197	80 065	80 145	78 859
<i>Index (2002/03 = 100)</i>	100	115	102	102	100

- (56) Community consumption was established on the basis of the total volume of EU sales of the product concerned by the Community industry, plus EU sales of former Community producers who no longer produced during the IP, plus imports from all third countries. The figures concerning the total EU sales of the product concerned by the Community industry derive from verified data provided by the Community producers. Sales of former Community producers emanate from estimations by the complainant and have been verified with the results of the safeguard investigation including notice C322/06 published in the *Official Journal of the European Union* of 17 December 2005. Imported quantities were derived from Eurostat.
- (57) As presented in the table above, the consumption of the product concerned in the Community has been relatively stable over the period considered with the exception of the increase observed in 2003/04. This apparent increase in consumption may be explained essentially by the 'stockpiling' of the product concerned as described in the notice mentioned in the recital above. Eurostat data confirm this phenomenon in the new Member States, prior to their accession to the EU in May 2004. Indeed, imports in the new Member States reached almost 15 000 tonnes before their accession (during the season 2003/2004) and considerably lowered to ca. 4 000 tonnes/year on average during the seasons 2004/2005, 2005/2006 and 2006/2007. In the IP, consumption can be deemed stable at a level consistent with the preceding period of the years 2005 and 2006.

5.4. Imports into the Community from the PRC

5.4.1. Volume and market share of imports of the product concerned

- (58) The evolution of imports from the PRC, in volume and market share, has been the following:

Import volumes	2002/03	2003/04	2004/05	2005/06	IP
PRC in tonnes	51 193	65 878	49 584	61 456	56 108
<i>Index (2002/03 = 100)</i>	100	129	97	120	110

Source: Eurostat

Market shares of consumption	2002/03	2003/04	2004/05	2005/06	IP
PRC	65,1 %	73 %	61,9 %	76,7 %	71,1 %

- (59) A similar surge in imports from the PRC can be seen in 2003/04 as observed above in Community consumption. These then fell back to lower levels in 2004/05 (post-accession of new Member States). The market share of imports from China remains consistently high, as China is the main exporter of this product to the EU and the rest of the world.

5.4.2. Prices of imports and price undercutting/underselling

	2002/03	2003/04	2004/05	2005/06	IP
Import prices from the PRC Source Eurostat (EUR/tonne)	595	525	531	612	596
<i>Index (2002 = 100)</i>	100	88	89	103	100

- (60) The above table shows the development of average import prices from the PRC. Over the period considered prices fell only in 2003/04. In the IP, they recovered back to their original level in 2002/2003.
- (61) A comparison of selling prices on the Community market during the IP was made between the prices of Community industry and imports from the country concerned. In this market, the point which serves as a reference for delivery of imports and Community production is Hamburg. For this reason the relevant sales prices of Community industry were those to independent customers, adjusted where necessary to a Hamburg-delivered level, after deduction of discounts and rebates. These prices were compared with the sales prices charged by the Chinese exporting producers net of discounts and adjusted where necessary to cif Hamburg plus duty and customs clearance paid. The adjustments included, where appropriate, the safeguard duty paid of EUR 301/MT for exports which were not covered by the quota.
- (62) The comparison showed that during the IP, imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter ranging from 19,6 % to 35,2 % based on the data submitted by the sampled cooperating exporting producers. In addition, the analysis of the price development of the Community industry shows that substantial price suppression (and, during the IP, depression) has taken place (see *infra*).

5.5. Situation of the Community industry

- (63) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1 October 2002 to the IP.
- (64) The Community industry data below is the aggregated information from the four Community producers.

Production, production capacity and capacity utilisation

- (65) The table below indicates the evolution of production, production capacity and capacity utilisation of the Community producers:

	2002/03	2003/04	2004/05	2005/06	IP
Production (tonnes)	31 238	23 000	28 865	16 149	34 125
<i>Index (2002/03 = 100)</i>	100	73	92	52	109
Production capacity (tonnes)	74 380	74 380	74 380	66 380	68 380
<i>Index (2002/03 = 100)</i>	100	100	100	89	92
Capacity utilisation %	42 %	31 %	39 %	24 %	50 %
<i>Index (2002/03 = 100)</i>	100	74	93	57	119

- (66) As shown in the table above, production during the period varied as a result of smaller harvests in 2003/04 and 2005/06. Production capacity fell towards the end of the period considered. The capacity utilisation remained, irrespective of harvest fluctuations, at very low levels throughout the period.

Stocks

- (67) The figures below represent the volume of stocks of the Community industry at the end of each period.

	2002/03	2003/04	2004/05	2005/06	IP
Stocks (tonnes)	7 159	3 695	6 140	1 688	11 895
<i>Index (2002/03 = 100)</i>	100	52	86	24	166

- (68) It should be noted, that the product concerned has a long shelf life (of more than three years), preserving their characteristics in terms of taste and colour.
- (69) Stocks have fluctuated throughout the period but have increased considerably during the IP. This appears to be due to the pressure of dumped imports and to the expectation that safeguard measures would disappear, thus paving the way for importers to switch from Community industry to Chinese imports as a source of the product concerned.

Sales volume, market share and average sales prices

- (70) The figures below represent the sales volume, market share and average unit sales prices of the Community industry.

	2002/03	2003/04	2004/05	2005/06	IP
Sales volume Community Industry in tonnes	17 635	19 705	23 240	17 769	21 387
<i>Index (2002/03 = 100)</i>	100	112	132	101	121
Market share	22,4 %	21,8 %	29,0 %	22,2 %	27,1 %
<i>Index (2002/03 = 100)</i>	100	97	129	99	121
Average sales prices (EUR/tonne)	824,3	819,8	840,6	1 058,7	1 034,6
<i>Index (2002/03 = 100)</i>	100	99	102	128	125

- (71) Notwithstanding the existence of safeguard measures and the disappearance of a number of Community producers (whose market share decreased from 11,2 % in 2002/03 to 8,1 % in 2004/05 and disappeared afterward), the Community industry's sales volumes slightly increased in absolute terms, but remained low over the period considered. Indeed, Community industry's market share gained only 4,7 percentage points over the period considered. Average sales prices have increased in the period considered but not to the extent necessary to achieve a normal profit, underlining the impact on price levels by the substantial imports from China at very low prices.

Growth

- (72) Overall, it has to be noted that the Community industry's market share increased by around 5,2 % in the period considered reaching a modest 27,6 % in the IP and showing that the pressure of the Chinese imports did not allow the Community industry to substantially improve its performance.

Profitability, return on investments

- (73) The pre-tax profit margin shown below relates to sales of the Community industry and reflects the fact that the industry remained loss making, helped somewhat by the imposition of safeguard measures but also jeopardised by the avoidance of measures due to stockpiling which was taking place in parallel (see recital 57). The positive effect of safeguard measures is therefore particularly reflected towards the end of the period considered.

	2002/03	2003/04	2004/05	2005/06	IP
Pre-tax Profit Margin	- 3 %	- 17,6 %	- 17,3 %	- 12,6 %	- 4,3 %
Index (2002 = 100)	100	585	575	420	141
Return on Investments (RoI)	- 3 %	7,2 %	4,3 %	- 31,2 %	- 28,9 %

- (74) The RoI above shows a trend towards decline after 2003/04. Deteriorating return on investment is also an indication of the deterioration of the situation of the Community producers.

Cash flow

	2002	2003	2004	2005	2006
Cash flow (% of total sales)	8,7 %	- 0,5 %	- 1,6 %	- 4,6 %	3,2 %

- (75) As Community producers can other kind of fruits, cash flow could only be examined at total company activity rather than in relation to the product concerned only. This indicator is therefore less meaningful and is shown in terms of the financial years (calendar years). Nevertheless it can be seen that a progressive deterioration took place until 2005 and a limited recovery occurred during the IP.

Investment in the product concerned and the ability to raise capital

- (76) The trend for the investments of the Community industry is shown in the following table.

EUR	2002/03	2003/04	2004/05	2005/06	IP
Investments	698 358	837 152	994 242	1 110 304	785 109
Index (2002/03 = 100)	100	120	142	159	112

- (77) Despite the negative development seen for profitability above, the Community industry has increased its investments in the product concerned in order to further improve its competitiveness in respect of the product concerned. The investments were mainly made in machinery. These steps have significantly contributed to improving the sampled Community industry's efficiency.

- (78) There is evidence of a reduced ability to raise capital over the period considered, *inter alia* given the negative profit margins involved in production and the importance of the product in the overall activity of the companies at hand.

Employment and productivity

	2002/03	2003/04	2004/05	2005/06	IP
Number of employees	1 975	1 965	1 837	1 546	2 091
<i>Index (2002/03 = 100)</i>	100	99	93	78	106
Productivity (hours worked/tonne produced)	17	16,8	16	16,5	15,5
<i>Index (2002/03 = 100)</i>	100	99	94	97	91
Total hours worked during the season	531 000	386 000	462 000	266 000	529 000
<i>Index (2002/03 = 100)</i>	100	74	88	60	116

- (79) It should be recalled that the canning of the product concerned is by nature a seasonal activity lasting 4 or 5 months and that the bulk of the production is carried on by seasonal workers. Therefore the ratio indicating the number of employees is less meaningful, while the total hours worked during the season should be seen as the main employment indicator. As shown in the above table, the Community industry has progressively improved its productivity. In the IP, productivity achieved its best level in the whole period. As a result the number of hours worked to produce 1 tonne of finished product decreased from 17 in 2002/03 to 15,5 in the IP (– 9 %). The number of employees peaked during the IP as a result of the return to high production volumes following the low volumes manufactured in 2005/06. This was matched also by more hours worked during the IP season. Indeed, productivity achieved by the Community industry in the IP confirms the efforts made to further improve its efficiency in front of the massive inflow of dumped imports from China.

Wages

- (80) It has to be noted that data on wages, expressed in absolute figures, are not meaningful, due to high fluctuations of the production level. The cost of wages per tonne produced is more indicative and shows that, notwithstanding a natural increase of the wage per hour due to inflation, the gains of productivity allowed the Community industry to decrease the wage per tonne produced by 3 percentage points.

	2002/03	2003/04	2004/05	2005/06	IP
Wages (EUR)	5 022 165	3 927 820	4 558 624	3 350 390	5 317 744
<i>Index</i>	100	78	91	67	106
Wages per tonne produced (EUR)	161	171	158	207	155
<i>Index</i>	100	106	98	129	97

Magnitude of dumping

- (81) The country-wide provisional dumping margin specified in recital (50) above is clearly above *de minimis* level. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

Effects of past dumping or subsidization

- (82) There is no evidence of past dumping or subsidization for this product. However, it should be noted that the Community industry is recovering from the effects of the greatly increased quantities of imports that caused it serious injury and which led the Commission to impose both provisional and definitive safeguard measures in 2003 and in 2004 (see recital (4)). As mentioned above in recitals (57) and (70), these safeguard measures helped the industry to slightly improve their position notwithstanding some stock-piling in 2003/2004, and, in the absence of injurious dumping, would have been expected to generate a much more substantial overall improvement of the situation of the Community industry.

5.6. Conclusion on injury

- (83) The above analysis of the situation of the Community industry has to be seen in the light of the fact that there existed a much larger number of Community producers and a significantly larger production capacity at the beginning of the period. According to Reg 658/2004 and notice C 322/06 capacity then reached ca. 129 000 MT. The aforementioned restructuring of the sector led to a drop in production capacity of over 45 %. In this context, and due also to the existence of safeguard measures, it would have been expected that the remaining four producers would have experienced an overall improvement, whereby they would have, *inter alia*, taken up a significant proportion of the sales lost by the companies exiting the market, substantially increased production and capacity utilisation, and enjoyed much more enhanced price/cost differentials that allowed for profits to be accrued.
- (84) To the contrary, production has increased only by 9 %, capacity utilisation remained low (and increased only because of a drop in capacity itself) and sales volumes remained weak notwithstanding a concentration in the sector, with stocks increasing by no less than 66 %. Losses have continued (- 4,3 %) and return on investment has become even more negative (- 28,9 %), notwithstanding continuing investments to further increase its competitiveness and a 9 % productivity rise.
- (85) It is recalled that, during the period considered, the volume of dumped imports of the product concerned from the PRC had increased by almost 10 % whilst the sales price was practically the same as in 2002, notwithstanding the increase in the cost of raw materials. Moreover, in the IP, the sales prices of the Community industry were substantially undercut by those of the dumped imports of the product concerned.
- (86) Taking into account all of these factors, the provisional conclusion reached is that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

6. CAUSATION

6.1. Preliminary remark

- (87) In accordance with Article 3(6) and (7) of the basic Regulation, it was also examined whether there is a causal link between the dumped imports from the PRC and the injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that any possible injury caused by these other factors was not attributed to the dumped imports.

6.2. Impact of the imports from the PRC

- (88) It is recalled that import volumes from the PRC continued to constitute no less than 70 % of the Community market. In practice, given their clear market dominance, the impact of Chinese imports is unmistakably a major cause of the deterioration of the situation of the Community industry.
- (89) This is even more so given the fact that Chinese prices have continued to significantly undercut those of the Community industry — and to be made at levels significantly below Community industry costs, indicating a predatory intent. The Community industry reacted to the large import volumes at very low price levels, by trying to maintain a reasonable market share and capping their prices. They were, thus, unable to achieve normal profitability.
- (90) It is therefore clear that there is a strong causal link between the significant increase in imports volumes at ever lower prices and the injury suffered by the Community industry.

6.3. Impact of imports from other third countries

- (91) The volume of non-Chinese imports represented less than 2 % in the IP of total EU imports. It is for this reason that their impact (if any) is considered marginal. It has been alleged that such imports were in fact re-sales of Chinese products. This is reinforced by the absence of sufficient production in other countries, as demonstrated by the lack of an appropriate analogue country (see recitals (40)-(41) above).

6.4. Impact of changes in export performance of the Community industry

- (92) As can be seen from the table below, exports made by the Community industry decreased over the 'period considered'.

	2002/03	2003/04	2004/05	2005/06	IP
Export Sales Volume (tonnes)	15 376	6 959	3 638	2 630	2 344
Index (2002 = 100)	100	45	24	17	15

- (93) The Community industry once supplied the product concerned to the USA as a traditional market. Today, however, the main source of exports to the USA (and indeed to most importing countries) is China, which appears to follow a similar strategy of dumping and significant undercutting of Community industry exports to the USA.
- (94) Even if the Community industry had maintained similar levels of exports volumes and prices, the sheer degree of the penetration of the Chinese imports, as well as the size of price undercutting, point to a significant material impact of the aforesaid imports upon the situation of the Community industry. Rather than breaking the causal link, the drop in export performance by the Community industry might be considered as a prediction of what would well happen to Community sales of industry if the pressure of dumped imports continues.

6.5. Impact of currency fluctuations

- (95) Another factor which the Community industry) claimed to have caused injury is the falling currency exchange rate of the Chinese RMB against the Euro. Between October 2002 and September 2007 there was a fall of more than 40 % in the exchange rate of the US Dollar to the Euro. As the Chinese RMB is pegged against the US Dollar, this gave Chinese exports a competitive advantage over European exports of the product concerned. To this purpose it is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the levels of those prices.

6.6. Supply and price of raw materials

- (96) Several parties have claimed that injury is not caused by dumped imports but by insufficient supply and high prices of raw materials as a result of a bad harvest. The injury investigation period includes a number of different harvests, with lower and higher raw material production — and prices. However, these fluctuations are not correlated to the general situation of the Community industry as can be seen, for example, from the table below. In fact, the situation of the Community industry has deteriorated *throughout* the period considered regardless of raw material supply and prices. This points to the existence of other explanatory factors for injury.

	2002/03	2003/04	2004/05	2005/06	IP
Unit cost of raw materials (EUR/tonne)	120,8	143,7	163,2	204,5	155,9
Pre-tax Profit Margin (see recital (76))	- 3 %	- 17,6 %	- 17,3 %	- 12,6 %	- 4,3 %

- (97) On these grounds, there is no indication that this factor is of such a nature that it could have broken the causal link between the dumped imports from China and the deterioration of the situation of the Community industry.

6.7. Investments

- (98) Some parties claimed that the situation of the Community industry is a result of overinvestment. This allegation appears however to be unfounded. Investments made by the Community industry mainly concern improvement of machinery in order to increase efficiency. These investments contributed to productivity gains which would tend to compensate potential short term unit costs increases. These investments can not therefore be considered as a factor having contributed to injury. Therefore, this argument is rejected.

6.8. Quality differences

- (99) Some parties claimed that the situation of the Community industry is a result of the lower quality of Community products. As explained above in recitals (18) to (21), the Commission closely examined comparability of products and found that both Community product and Chinese product are alike. The differences encountered between the two products were minor and did not support the allegation. In any event, if any, such minor differences would appear to favour the Chinese products, leading to higher undercutting and under-selling. Therefore, this argument is rejected.

6.9. Conclusion on causation

- (100) In conclusion, it is confirmed that the material injury of the Community industry, which is characterized by weak sales, low utilisation of capacity and negative financial results was caused by the dumped imports concerned. Indeed, the effect of other imports, of export performance of the Community industry, of currency fluctuations, of supply of raw materials, of quality differences or of investments on the Community industry's negative developments was only limited, if any.
- (101) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community Industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

7. COMMUNITY INTEREST

7.1. General considerations

- (102) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping duties against imports from the PRC. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, importers and suppliers.

7.2. Interest of the Community industry

- (103) The Community industry has been suffering from injurious dumped imports of the product concerned from the PRC. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results during the period considered. The imposition of safeguard measures (see recital (4)) allowed for some partial mitigation of the effects of Chinese imports. Taking into account the nature of the injury (i.e. recurrent losses, loss of domestic sales), a further and substantial deterioration in the situation of Community industry would be unavoidable in the absence of measures.
- (104) The investigation showed that the Community production consists of four producers in the prepared or preserved citrus fruits (namely mandarins, etc.) industry, which employs around 2 000 workers for the production and sales of the product concerned. The product concerned corresponded to approximately 30 % of their output. Should measures not be imposed, prices would continue to decrease and the Community producers would incur further big losses, which would be unsustainable in the medium to long-term. In addition, this would result in negative effects for the remaining activity of the companies concerned. In view of the investment made in production systems, it can be expected that some Community producers would be unable to recover their investments should measures not be imposed. Based on the above, the Community industry would obviously benefit from the adoption of anti-dumping measures.
- (105) Should anti-dumping measures be imposed, the Community industry would in all likelihood be able to increase its selling prices to a level that ensures a reasonable profit margin.
- (106) It is therefore provisionally concluded that anti-dumping measures would be in the interest of the Community industry.

7.3. Interest of unrelated importers

- (107) Certain importers opposed measures. However, others, and in particular the six unrelated importers which were sampled and provided answers to the questionnaire, agreed with the principle of imposing measures given the need to maintain a dual source of supply in a product subject to potential harvest-linked production fluctuations. They also underlined the need for stability of the market.
- (108) The Commission also analysed the data submitted by the cooperating importers in reply to the questionnaires. In all cases, the activity of importing the product concerned from China represents only a minor proportion of their total activity. Any measure on imports of the product concerned from China is therefore not likely to have such an impact on the situation of the importer sector as to be over-proportional to the benefits accrued by the Community industry.

7.4. Interest of users

- (109) It is recalled that the product concerned, which is used primarily as a food for private consumption as a dessert or accompaniment, is mainly sold to the retail sector. When presented in larger containers, the product is mainly sold directly to the catering industry which absorbs 25 % of the consumption. However, no catering company cooperated in the investigation.
- (110) Both the retail sector and the catering industry purchase, in the framework of their current activity, a wide range of products, among which the product concerned represents only a minor proportion of their needs and, as a consequence, of their costs. Any measure on imports of the product concerned from China is therefore not likely to have such an impact on the situation of the user sector as to be disproportional to the benefits accruing to the Community industry.

- (111) In addition it is recalled that, in the short and medium term, non-imposition of measures could well lead to the scaling down or outright termination of Community industry activity. This would imply that only one source of supply would exist — and one which in addition is subject by nature to harvest-linked fluctuations. This would not be in the interest of users.
- (112) No submission pointing to the contrary was received during the investigation.

7.5. Interest of consumers

- (113) No cooperation was forthcoming from consumer organisations. Even with large impacts on prices, the product

concerned is such a small proportion of household food expenditure that the impact on consumers would be negligible.

- (114) In addition it is recalled that, in the short and medium term, non-imposition of measures could well lead to the scaling down or outright termination of Community industry activity. This would imply that only one source of supply would exist — and one which, in addition, is subject by nature to harvest-linked fluctuations. This would not be in the interest of consumers.

7.6. Interest of suppliers

- (115) The increase in dumped imports from the PRC is prejudicial to suppliers and the measures are in their interest. The volume of raw material they supply to Community producers is an important source of their turnover. Significant disruption of agricultural activity in the Spanish region concerned would occur if production were to cease, particularly because canning is the major outlet for certain varieties of citrus given their taste and texture.

7.7. Conclusion on Community interest

- (116) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC.

8. PROVISIONAL ANTI-DUMPING MEASURES

8.1. Injury elimination level

- (117) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain an overall profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. A pre-tax profit margin of 6,8 % was used provisionally for this calculation. This was the profit that the sector achieved prior to the increase in imports which led to a serious injury of the industry. It is considered that this level of profit is representative of the Community industry's profitability that would be achieved for the product concerned in the absence of injurious dumping.

(118) The necessary price increase was then determined on the basis of a comparison of average import price, as established for the price undercutting calculations (see recitals (62) to (64)), with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the aforementioned profit margin. The difference resulting from this comparison, when expressed as a percentage of the total cif import value, amounted per company to the following levels which are less than the dumping margin found:

- Yichang Rosen Foods Co., Ltd., Zhejiang 91 %
- Huangyan No.1 Canned Food Factory Zhejiang, Huangyan 44,6 %
- Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen 81,6 %
- Co-operating exporting producers not included in the sample 81,1 %
- All other companies 91 %.

8.2. Provisional measures

(119) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed at the level of the lowest of the dumping margin and the injury elimination level found, in accordance with the lesser duty rule. Since the injury elimination level is lower than the dumping margin in all cases, the former should be the basis for the overall level of the measures.

(120) The purpose of anti-dumping measures is to remove the effects of the injurious dumping. The form of measures is an integral element to this end. Depending on the specificities of the product in question and its market, the form of the measures should be defined so as to be effective in removing the aforesaid effects.

(121) With regard to the present case and as alleged by both Community producers and a significant number of importers, the specificities of the product and of the market that must be taken into account are the following.

(122) The form of the measures should avoid the phenomena which have been detected in the course of the safeguards investigation/measures, as well as by the current investigation. These phenomena, which showed a certain determination to undermine any measures wherever possible, are set out below.

(123) A first phenomenon was a process of stockpiling in the new Member States just before accession, as mentioned above. Prior to enlargement of the EU in 2004, Chinese exporters shipped important quantities of the product concerned to the future Member States; these goods thus entered the Community market without being subject to safeguard measures when these Member States joined the EU.

(124) A second phenomenon was the introduction of new product types which nominally fell outside the safeguard measures, but which shared the same physical and technical characteristics. As explained in recitals 14 above, these are now part of the product concerned by the current anti-dumping case.

(125) A third phenomenon was that of price compensation. EU operators tend to source not only the product concerned, but different kind of processed food products from Chinese traders.

(126) This implies the risk that the effect of a classical measure such as an *ad valorem* duty might be compensated via higher prices charged for other imported food products. In light of the above, a measure is needed whose form minimises such phenomena which would significantly impair the effectiveness of the measures. Under these circumstances, the duty should be imposed in the form of a specific amount per tonne in order to ensure the efficiency of the measures and to discourage any absorption of the anti-dumping measure through a decrease in the export prices. This amount results from the application of the injury elimination margin to the export prices used in the calculation of the dumping during the IP for each company during the IP. As far as the specific duty for all co-operating exporting producers not included in the sample is concerned, it is calculated as an average of the respective data from each of the sampled companies. The specific duty for all other companies is the highest individual duty of the companies in the sample. On these grounds specific duty amounts to the following:

	Fixed duty (EUR/ton)
Yichang Rosen Foods Co., Ltd., Zhejiang	482,2
Huangyan No.1 Canned Food Factory Zhejiang, Huangyan	330
Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen	440,7
Co-operating exporting producers not included in the sample	455,1
All other companies	482,2

- (127) The individual company anti-dumping specific duties 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'.
- (128) 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 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. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (129) The variance of the individual duty rates is significant and there are a number of exporting producers. All these elements may facilitate attempts to re-channel the export flows through the traditional exporters benefiting from the lowest duty rates. Consequently, should the exports by one of the companies benefiting from lower individual duty rates increase by more than 30 % in volume, the individual measures concerned would be considered as being likely to be insufficient to counteract the injurious dumping found. Consequently, and provided that the requisite elements are met, an investigation may be initiated in order to correct appropriately the measures in their form or level.
- (130) In view of the foregoing, and also of the comments made both by Community industry and a number of importers concerning the modalities of the form of the measures, this matter may be revisited at definitive stage, if warranted.
- (131) It is recalled that by Regulation (EC) No 1295/2007 of 5 November 2007, the Commission made imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration in view of the possible retroactive application of anti-dumping measures, pursuant to Article 7(1) of the basic Regulation. Community industry has requested the retroactive application of measures. This matter is under examination. At this stage, it is noted that available statistics of imports of the product concerned from China did increase by more than 60 % in the period November 2007 to February 2008 as compared to the same period in the preceding years (from 16 300 tonnes to 27 300 tonnes). This increase was accompanied with a 4 % decrease of the average price of the corresponding imports.

9. FINAL PROVISION

- (132) In accordance with Article 7(7) of the basic Regulation, provisional measures should be imposed for a period of six months.
- (133) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

A provisional anti-dumping duty is hereby imposed on imports of prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, originating in the People's Republic of China, falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67, 2008 30 90 69).

Article 2

The rate of the provisional anti-dumping duty applicable to the products described in Article 1 produced by the following manufacturers shall be as follows:

Company	EUR/tonne net product weight	TARIC additional code
Yichang Rosen Foods Co., Ltd., Yichang, Zhejiang	482,2	A 886
Huangyan No.1 Canned Food Factory, Huangyan, Zhejiang	330	A 887
Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen, Zhejiang	440,7	A 888
Co-operating exporting producers not included in the sample as set out in the Annex	455,1	A 889
All other companies	482,2	A 999

Article 3

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of Article 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

2. The release for free circulation in the Community of the product referred to in Article 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Done at Brussels, 4 July 2008.

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

Article 4

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 5

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Regulation (EC) No 1295/2007.

Data collected regarding products which were entered for consumption not more than 90 days prior to the date of entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 6

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply for a period of six months.

For the Commission

Peter MANDELSON

Member of the Commission

⁽¹⁾ OJ L 253, 11.1.1993, p. 3. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

ANNEX

Co-operating exporting producers not included in the sample

Hunan Pointer Foods Co., Ltd., Yongzhou, Hunan
Yichang Jiayuan Foodstuffs Co., Ltd., Yichang, Hubei
Huangyan No.2 Canned Food Factory, Huangyan, Zhejiang
Zhejiang Xinchang Best Foods Co., Ltd., Xinchang, Zhejiang
Guangxi Guiguo Food Co., Ltd., Guilin, Guangxi
Zhejiang Juda Industry Co., Ltd., Quzhou, Zhejiang
Zhejiang Iceman Group Co., Ltd., Jinhua, Zhejiang
Ningbo Guosheng Foods Co., Ltd., Ninghai
Yi Chang Yin He Food Co., Ltd., Yidu, Hubei
Yongzhou Quanhui Canned Food Co., Ltd., Yongzhou, Hunan
Ningbo Orient Jiuzhou Food Trade & Industry Co., Ltd., Yinzhou, Ningbo
Guangxi Guilin Huangguan Food Co., Ltd., Guilin, Guangxi
Ningbo Wuzhouxing Group Co., Ltd., Mingzhou, Ningbo

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 December 2007

on State aid C 12/07 (ex N 799/06) planned by the Slovak Republic for Glunz&Jensen s.r.o.

(notified under document number C(2007) 6045)

(Only the Slovak version is authentic)

(Text with EEA relevance)

(2008/551/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(2) A request for information was sent on 26 January 2007 (D/50360). The Slovak authorities replied by letter dated 20 February 2007 (A/31585).

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

(3) By letter dated 24 April 2007 (hereinafter 'the opening decision') the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

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

(4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* (?). The Commission called on interested parties to submit their comments.

Having called on interested parties to submit their comments pursuant to those provisions⁽¹⁾ and having regard to their comments,

(5) The Commission did not receive any comments from interested parties or from the Slovak Republic.

Whereas:

II. DETAILED DESCRIPTION OF THE MEASURE

II.1. Aim of the measure

I. PROCEDURE

(1) By electronic notification dated 29 November 2006, registered as received by the Commission on 30 November 2006 under reference number A/39718, the Slovak authorities, in accordance with Article 88(3) of the EC Treaty, notified the Commission of their intention to grant regional ad hoc investment aid in favour of the company Glunz&Jensen s.r.o.

(6) The aim of the aid measure is to promote regional development in the Prešov region (eastern Slovakia), which was an assisted area under Article 87(3)(a) of the EC Treaty in accordance with the Slovak regional aid map⁽³⁾ applicable at the date of the notification, with a regional aid ceiling of 50 % net grant equivalent (NGE).

⁽²⁾ Idem.

⁽³⁾ SK 72/2003 — Slovak Republic — 'Regional State aid map of the Slovak Republic'; C(2004) 1757/7, 28.4.2004.

⁽¹⁾ OJ C 189, 14.8.2007, p. 2.

- (7) The proposed project constitutes an ad hoc aid measure notified by the Slovak authorities. The aid in question is not being granted under an existing scheme (i.e. its legal basis is not listed in the Accession Treaty as an existing aid scheme, nor was it the subject of the so-called interim mechanism, nor has the Commission approved an aid scheme based on these legal provisions since Slovakia's accession to the EU).

II.2. The form and nature of the aid

- (8) The notified aid is to be provided in the form of a tax exemption, applied on an annual basis between 2007-2010, of up to 100 % of the corporate tax liability of the aid recipient, Glunz&Jensen s.r.o. The total amount of the tax exemption is limited to SKK 42 million at present value ⁽¹⁾ (approx. EUR 1,15 million). The aid cannot be cumulated with aid received from other sources for the same investment project.

II.3. Legal basis of the ad hoc aid

- (9) The legal basis of the ad hoc aid is State Aid Act No 231/1999, as amended; Income Tax Act No 595/2003, as amended; and Income Tax Act No 366/1999, as amended at 31 December 2003, in particular Section 52(3) of Income Tax Act No 595/2003, as amended, under the conditions laid down in Section 35a of Income Tax Act No 366/1999, as at 31 December 2003 ⁽²⁾.

II.4. Beneficiaries

- (10) The beneficiary of the aid, Glunz&Jensen s.r.o., is a large enterprise, i.e. not an SME within the meaning of Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽³⁾. Glunz&Jensen s.r.o. is the Slovak subsidiary of Glunz&Jensen A/S (hereinafter 'Glunz&Jensen') which has its headquarters in Ringsted (Denmark), with other subsidiaries at the time of notification in Virginia (USA) and in Thetford (UK).
- (11) Glunz&Jensen is the world's leading manufacturer and distributor of graphic arts pre-press processing equipment for offset printing plates and plateline equipment, with a market share of approximately [...] % ⁽⁴⁾ in Europe.

⁽¹⁾ Expressed in terms of the 2007 value and calculated at a reference rate of 5,62 %, the rate applicable at the date of notification.

⁽²⁾ Zákon č. 231/1999 Z.z. o štátnej pomoci, v znení neskorších predpisov, Zákon č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov a Zákon č. 366/1999 Z.z. o daniach z príjmov, v znení neskorších predpisov, v znení účinnom k 31. decembru 2003, najmä §52 ods.3 zákona č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov, za podmienok uvedených v §35a zákona č. 366/1999 Z.z. o daniach z príjmov, v znení účinnom k 31. decembru 2003.

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ Confidential information.

II.5. Investment project

- (12) In 2004, Glunz&Jensen s.r.o. started work on an initial investment in Slovakia involving an investment volume of SKK 213 million (approx. EUR 5,8 million). The investment project is being implemented over the period 2004-2009, according to the Slovak authorities, in two phases: 2004-2006 and 2007-2009.
- (13) The project aims to relocate the production activities that existed in 2004 in the UK and Denmark to Prešov. As a result of the relocation project, the Thetford plant was closed down at the end of 2006.
- (14) The Prešov plant is to be developed into the firm's main production centre. In fact, as indicated by the Slovak authorities, all machinery to be installed in the Slovak plant is being transferred directly from Denmark and the UK. The eligible costs of the project therefore include only the buildings and some minor additional equipment.
- (15) The first step of the 2004-2006 investment phase consisted in the purchase of a production hall and a greenfield site for future expansion. The subsequent second step involved renovating the facilities and purchasing equipment (not directly linked to production). The total amount for the first phase of the investment was SKK 128 million (approx. EUR 3,5 million). As stated in declarations annexed to the notification, Glunz&Jensen s.r.o. did not receive any State aid for this part of the project, nor is any application pending.
- (16) The second phase of the investment, to be carried out over the period 2007-2009, is the project notified by the Slovak authorities on 29 November 2006. This part covers continuation of the initial project with the construction of further buildings and the purchase of further equipment (IT, trucks and office equipment) for a total of SKK 84 million at present value (approx. EUR 2,3 million).
- (17) The production unit in Slovakia opened in April 2005. Since then, production at the factory has increased markedly and productivity has improved considerably ⁽⁵⁾.

III. GROUNDS FOR INITIATING THE PROCEDURE

- (18) The Commission, in its decision to initiate the formal investigation procedure in the present case, noted that it had doubts as to the compatibility of the aid with the common market based on Article 87(3)(a) of the EC Treaty and on the Guidelines on National Regional Aid ⁽⁶⁾ (hereinafter referred to as 'RAG 1998') for the following reasons:

⁽⁵⁾ Information from the Annual Report 2005-2006, available on Glunz&Jensen's website.

⁽⁶⁾ OJ C 74, 10.3.1998, p. 9.

- First, it appeared that the two phases of the investment belong to the same investment project since they constitute part of an overall plan to accommodate the production lines to be relocated gradually from Denmark and the UK. In the submitted notification the Slovak authorities themselves also referred to the two phases as one single investment project. ‘The investment project submitted by the company Glunz&Jensen is being implemented over the period 2004-2009 in two phases: 2004-2006, 2007-2009’.

Furthermore, on page 6 of the ‘Application for the provision of State aid in the form of tax relief’ submitted by the beneficiary to the Slovak authorities, which was annexed to the notification, Glunz&Jensen s.r.o. indicated that the investment period runs from 2004 till 2008 ⁽¹⁾, and the total investment costs amount to ‘more than SKK 200 million’, which is the amount corresponding to the total investment made by Glunz&Jensen s.r.o. in Slovakia.

In light of the above, it appeared that the notified project concerned the second phase of a single comprehensive investment project which had already started in 2004.

Moreover, since the aid application by the beneficiary itself did not distinguish between the two phases of investment, the Commission could not rule out the possibility that the investment period was artificially split into two phases so that the beneficiary would be eligible to apply for the aid in 2006.

- Second, according to the information provided by the Slovak authorities, the application for aid, signed on 29 of June 2006, was not submitted until November 2006, i.e. after the first stage of the investment had started in 2004.

Consequently, the Commission had doubts whether the condition regarding the incentive effect of the aid as laid down in point 4.2 of RAG 1998 was being respected. The Commission underlined that, as a general principle, State aid which distorts or threatens to distort competition and affects trade between Member States can only be approved if these negative effects are more than outweighed by the aid’s positive contribution to a Community objective (here: regional development). The Commission considered that an aid applied for at the end of 2006 could not retrospectively trigger

an investment decision which led to work starting in 2004 and production activities getting under way in April 2005.

- Third, the idea that the availability of the aid was not a decisive factor for the beneficiary’s decision to start work on relocation, seemed to be confirmed by the beneficiary’s own statement in its aid application which explained the reasons for relocating its activities to Slovakia: ‘The Board (of Glunz&Jensen) decided during the course of 2003 to investigate the possibility of establishing a production unit in a low-cost country. The objective was to lower the production cost, develop sub-suppliers in central and eastern Europe ... Glunz&Jensen has conducted a comparative analysis of 11 central and eastern European countries to decide on the optimal location of the subsidiary Out of these 11 countries, the Czech Republic, the Slovak Republic and Bulgaria were investigated. The conclusion was that the Slovak Republic was deemed the most appropriate location considering Glunz&Jensen’s business and the factor combinations on the assessed markets ⁽²⁾’.

- Fourth, the Slovak authorities explained why the beneficiary did not apply for aid for the first phase of the investment project. According to their explanation, the company assumed that prior to the Slovak Republic’s accession to the EU it was not necessary to seek authorisation for State aid in the form of tax relief. In their understanding, the application for the aid had to be submitted only in the tax declaration for the year in which the company first incurred a tax liability.

According to the Slovak authorities, this means that Glunz&Jensen s.r.o. planned to apply for state aid from the very beginning of the investment project’s implementation in 2004.

In the Commission’s view, the fact that the beneficiary did not know the proper procedure to be followed cannot be taken into account. It should be stressed that the aid under Section 35a of Slovak Income Tax Act No 366/1999, as amended, was not granted automatically prior to Slovakia’s accession, nor is it granted automatically now, since there is no existing aid scheme referring to the above mentioned Section. Consequently, this type of aid was and remains individually notifiable to the Commission as ad hoc aid, as is shown by approximately 40 ad hoc notifications submitted by Slovakia applying this legal base under the so-called interim procedure.

⁽¹⁾ 2008 seems to be a typing error made by the beneficiary in the application for the aid. In all other documents submitted the year 2009 is indicated as the end of the project.

⁽²⁾ Point 3 of the Application for the provision of State Aid in the form of tax relief.

— Finally, even if the aid had had an incentive effect, substantial doubts would need to be raised: in fact, RAG 1998 (point 2) takes a negative stance towards ad hoc aid unless it can be proved that the regional contribution of the measure outweighs the distortion of competition and the effects on trade. In this context, the Commission noted the following:

— Although the measure provides a significant contribution to regional development (155 direct jobs, some 30 indirect jobs), its negative effects seem to be equally substantial.

— The relevant product market of the beneficiary is graphic arts pre-press processing equipment, in particular computer-to-plate (CtP) processors. The Commission noted that the aid is to be granted to a company which has a market share of approximately [...] % on the European market. The closest competitors of Glunz&Jensen in Europe along with their market shares are: Height Design [...] %, Agfa (Lastra) Belgium [...] %, E-graf, Italy [...] %, Haase, Germany [...] % and Ovit, Italy [...] %. Given the market position of the beneficiary, the Commission was of the opinion that the planned measure could have a major impact on competition in the relevant, very specific market in which the beneficiary is active.

— Furthermore, the project concerns the relocation of production activity and machinery from Denmark and the UK. Because it was solely a production facility, the plant in Thetford in the UK was closed down at the end of 2006, following the transfer of production to Slovakia. According to information found on the company's web site, 77 employees were made redundant in Thetford. The Danish company will focus in future on sales, customer services, R&D and the operation of a pilot plant. The relocation therefore has a significant effect on trade between Member States.

IV. COMMENTS FROM THE SLOVAK REPUBLIC AND INTERESTED PARTIES

- (19) No comments were received from the Slovak authorities or from third parties to allay the doubts which were raised when the formal investigation was initiated.

V. ASSESSMENT OF THE MEASURE

V.1. Legality of the measure

- (20) By notifying the aid measure with a standstill clause until authorised by the Commission, the Slovak authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty.

V.2. State aid character of the measure

- (21) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty for the following reasons, already indicated in the opening decision.

V.2.1. Presence of state resources

- (22) State resources are involved since an exemption from the payment of corporate income tax is planned.

V.2.2. Economic advantage

- (23) The measure would relieve the beneficiary of the aid from costs which it would have had to bear under normal market conditions. It would therefore provide an advantage to Glunz&Jensen s.r.o. over other companies.

V.2.3. Presence of selectivity

- (24) The measure is selective since it relates to only one undertaking.

V.2.4. Distortion of competition and trade

- (25) The measure affects trade between Member States since (i) the beneficiary is active in a sector where strong intra-Community trade exists and (ii) the relocation of activities from Denmark and the UK has a strong effect on sectoral trade flows.

V.3. Compatibility

- (26) Insofar as the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility must be assessed in the light of the exceptions provided for in Article 87(2) and (3) of the EC Treaty. The exceptions provided for in Article 87(2) of the EC Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case. The measure cannot be considered an important project of common European interest or a measure intended to remedy a serious disturbance in the Slovak economy, as provided for by Article 87(3)(b) of the EC Treaty. Nor does the measure qualify for the exception allowed by Article 87(3)(c) of the EC Treaty, which provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas if the aid does not adversely affect trading conditions to an extent contrary to the common interest. In the same way, it does not have as its objective the promotion of culture and heritage conservation as provided for by Article 87(3)(d) of the EC Treaty.

- (27) Article 87(3)(a) of the EC Treaty provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The Prešov region (eastern Slovakia) is an eligible region under that derogation.
- (28) In its decision to open the formal investigation procedure, the Commission explained the reasons, summarised in Part III of this Decision, for which it doubted that the measure could qualify for the derogation under Article 87(3)(a) of the EC Treaty. In the absence of any comments from the Slovak Republic or third parties, the Commission can only find that these doubts are confirmed.

VI. CONCLUSION

- (29) The Commission finds that the measure notified by the Slovak Republic, as set out under paragraphs 6 to 9 above, is not compatible with the common market under any derogation laid down in the EC Treaty and must be prohibited. According to the Slovak authorities, the aid has not been granted, and therefore there is no need for it to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The notified tax exemption constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

The State aid which the Slovak Republic is planning to implement for Glunz&Jensen s.r.o., amounting to SKK 42 million (EUR 1,15 million), is incompatible with the common market.

The aid may therefore not be implemented.

Article 2

The Slovak Republic shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Slovak Republic.

Done at Brussels, 11 December 2007.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 24 June 2008

amending Decision 2007/716/EC as regards certain establishments in the meat and milk sectors in Bulgaria

(notified under document number C(2008) 2931)

(Text with EEA relevance)

(2008/552/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 42 thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Whereas:

- (1) Commission Decision 2007/716/EC of 30 October 2007 laying down transitional measures ⁽²⁾ for structural requirements of certain establishments in the meat and milk sectors in Bulgaria provided for in Regulations (EC) No 852/2004 and (EC) No 853/2004 of the European Parliament and of the Council. As long as those establishments are in transition, products originating from those establishments should only be placed on the domestic market or used for further processing in Bulgarian establishments in transition.
- (2) Decision 2007/716/EC has been amended by Commission Decisions 2008/290/EC ⁽³⁾ and 2008/330/EC.
- (3) According to an official declaration from the Bulgarian competent authority certain establishments in the meat

and milk sectors have ceased their activities or have completed their upgrading process and are now in full compliance with Community legislation. Those establishments should therefore be deleted from the list of establishments in transition.

- (4) The Annex to Decision 2007/716/EC should therefore be amended accordingly.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

The establishments listed in the Annex to this Decision are deleted from the Annex to Decision 2007/716/EC.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 June 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council (OJ L 157, 30.4.2004, p. 33, as corrected by OJ L 195, 2.6.2004, p. 12).

⁽²⁾ OJ L 289, 7.11.2007, p. 14. Decision as last amended by Decision 2008/330/EC (OJ L 114, 26.4.2008, p. 94).

⁽³⁾ OJ L 96, 9.4.2008, p. 35.

ANNEX

List of establishments to be deleted from the Annex to Decision 2007/716/EC

Meat processing establishments

No	Veterinary No	Name of establishment	Town/street or village/region
41.	BG 1201006	„Monti-Miyt“ AD	gr. Montana Nova promishlena zona
53.	BG 1601017	ET „Vet – 33 Gyokchen Rasim“	gr. Asenovgrad mestnost „Gorna voda“ kv. Gorni Voden obl. Plovdiv
70.	BG 2001021	ET „Iva Kris-Stayko Ivanov“	gr. Nova Zagora Kv.Industrialen
78.	BG 2501009	„Rodopa-2005“ OOD	gr. Targovishte
111.	BG 0802043	„Ptitseklanitsa“ AD	gr. Dobrich industrialna zona
130.	BG 2302002	„Polo Komers“ OOD	gr. Kostinbrod IKHT
154.	BG 0805011	„Kati“ OOD	gr. Dobrich, bul. „3 ti mart“ 57
245.	BG 0804006	„Ani-I“ OOD	gr. Dobrich ul. „Angel Stoyanov“ 1
298.	BG 1604046	ET „Hristo Darakiev“	gr. Plovdiv Zemlishte „Plovdiv Zapad“ 24A
308.	BG 1904002	„Aktual“ OOD gr. Silistra	gr. Silistra Promishlena zona-Iztok
319.	BG 2204013	„Salam i KO“ OOD	gr. Sofia ul. „Prof. Tsvetan Lazarov“ 13
332.	BG 2204087	ET „SIAT-Slavcho Iliev“	gr. Sofia ul. „Moma Irina“ 4

Milk processing establishments

No	Veterinary No	Name of establishment	Town/street or village/region
1.	BG 0112004	„Matand“ EOOD	s. Eleshnitsa
28.	BG 1812002	„Laktis-Byala“ AD	gr. Byala ul. „Stefan Stambolov“ 75
30.	BG 1912004	„Merone – N“ EOOD	gr. Alfatar
49.	BG 1212001	„S i S – 7“ EOOD	gr. Montana „Vrachansko shose“ 1
82.	BG 0712004	„Cheh-99“ OOD	s. Sokolovo obsht. Dryanovo
84.	BG0712028	ET „Mik“	gr. Dryanovo ul. „Shipka„ 226
99.	BG 1312002	„Milk Grup“ EOOD	s. Yunacite
162.	BG 2312026	„Dyado Liben“ OOD	gr. Koprivshitsa bul. „H. Nencho Palaveev“
195.	BG 0218009	„Helios milk“ EOOD	gr. Aytos

COMMISSION DECISION

of 30 June 2008

repealing Decision 2008/377/EC concerning certain protection measures relating to classical swine fever in Slovakia*(notified under document number C(2008) 3223)***(Text with EEA relevance)**

(2008/553/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Outbreaks of classical swine fever have occurred in Slovakia.
- (2) Commission Decision 2008/377/EC of 8 May 2008 concerning certain protection measures relating to classical swine fever in Slovakia ⁽²⁾ was adopted in order to reinforce the measures taken by Slovakia within the framework of Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽³⁾.
- (3) The information provided by Slovakia indicates that the outbreaks of classical swine fever in that Member State

have been eradicated and the results of the epidemiological investigation show that classical swine fever has not spread further.

- (4) Decision 2008/377/EC should therefore be repealed.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/377/EC is repealed.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 30 June 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

⁽²⁾ OJ L 130, 20.5.2008, p. 18. Decision as amended by Decision 2008/419/EC (OJ L 147, 6.6.2008, p. 65).

⁽³⁾ OJ L 316, 1.12.2001, p. 5. Directive as last amended by Commission Decision 2007/729/EC (OJ L 294, 13.11.2007, p. 26).

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

Budget for Europol for 2009 ⁽¹⁾

(2008/554/JHA)

Europol

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary
1	REVENUE				
10	Contributions				
100	Member States' contributions	51 936 872	51 374 870	55 685 934	Of the amount for 2009, EUR 7 700 000 shall initially not be called up. Notwithstanding Article 38(1) of the Financial Regulation, this amount shall only be called up once the Management Board unanimously decides so.
101	Balance from the financial year t-2	9 472 669	9 193 630	6 672 066	
	<i>Total Chapter 10</i>	61 409 541	60 568 500	62 358 000	
11	Other revenue				
110	Interest	1 542 845	1 150 000	650 000	
111	Proceeds of taxation of Europol staff	1 974 351	2 102 500	2 345 000	
112	Miscellaneous	50 340	100 000	55 000	
	<i>Total Chapter 11</i>	3 567 536	3 352 500	3 050 000	
12	Funding from third parties				
121	Project funding from the European Commission and other involved parties	—	p.m.	p.m.	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 321). This Article may also include contributions from participants. Europol's own contribution to any projects will be financed out of other Articles.

⁽¹⁾ Adopted by the Council on 5 June 2008.

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary
122	Other funding from third parties	—	p.m.	p.m.	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 322). This Article may also include contributions from participants. Europol's own contribution to any projects will be financed out of other Articles.
	<i>Total Chapter 12</i>	—	p.m.	p.m.	
	TOTAL TITLE 1	64 977 077	63 921 000	65 408 000	
2	PERSONNEL				
20	Salary related costs				See Annex A. Under this Chapter also fall temporary staff recruited from external bureaux in case this staff fills up a vacancy and trainees.
200	Europol staff	35 833 740	42 106 000	41 185 000	
201	Local staff	541 421	655 000	1 345 000	Of this amount, EUR 650 000 shall initially not be called up. See Article 100 and Annex C.
202	Salary adjustments	—	380 000	395 000	
	<i>Total Chapter 20</i>	36 375 161	43 141 000	42 925 000	
21	Other personnel related costs				
210	Recruitment	423 037	490 000	520 000	Of this amount, EUR 30 000 shall initially not be called up. See Article 100 and Annex C.
211	Training Europol staff	551 851	460 000	720 000	
	<i>Total Chapter 21</i>	974 888	950 000	1 240 000	
	TOTAL TITLE 2	37 350 049	44 091 000	44 165 000	Of this amount, EUR 5 025 000 shall initially not be called up. See Article 100 and Annex C.
3	OTHER EXPENDITURE				
30	Activity related costs				
300	Meetings	650 702	710 000	762 500	Of this amount, EUR 10 000 shall initially not be called up. See Article 100 and Annex C.
301	Translations	911 112	500 000	669 000	
302	Printing	177 695	160 000	212 000	Of this amount, EUR 11 000 shall initially not be called up. See Article 100 and Annex C.
303	Travel	1 124 024	1 085 000	1 470 000	
304	Studies, consultancy (other than ICT)	118 089	550 000	429 000	Of this amount, EUR 40 000 shall initially not be called up. See Article 100 and Annex C.
305	Expertise training	50 308	65 000	79 500	

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary
306	Technical equipment	23 088	5 000	23 000	
307	Operational subsidies	120 659	150 000	150 000	
	<i>Total Chapter 30</i>	3 175 677	3 225 000	3 795 000	Of this amount, EUR 147 000 shall initially not be called up. See Article 100 and Annex C.
31	General support				
310	Building costs	889 158	860 000	1 040 000	Of this amount, EUR 12 000 shall initially not be called up. See Article 100 and Annex C.
311	Vehicles	212 050	250 000	280 000	
314	Documentation and open sources	250 618	280 000	300 000	Of this amount, EUR 1 000 shall initially not be called up. See Article 100 and Annex C.
315	Subsidies	468 298	480 000	545 000	Of this amount, EUR 10 000 shall initially not be called up. See Article 100 and Annex C.
316	Other acquisitions	42 964	100 000	25 000	
317	Other running costs	377 873	450 000	465 000	Of this amount, EUR 25 000 shall initially not be called up. See Article 100 and Annex C.
318	New building	269 799	—	—	From 2008 onwards the budget for the new building has, for consistency reasons, been included under the relevant budget Articles to which the specific costs relate.
	<i>Total Chapter 31</i>	2 510 761	2 420 000	2 655 000	Of this amount, EUR 48 000 shall initially not be called up. See Article 100 and Annex C.
32	Expenditure financed by third parties				
321	Project expenditure funded by the European Commission and other involved parties	—	p.m.	p.m.	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 121). Europol's own contribution to any projects will be financed out of other Articles. This Article is intended for expenditure in relation to projects funded from EU programmes.
322	Expenditure funded by other third parties	—	p.m.	p.m.	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 122). Europol's own contribution to any projects will be financed out of other Articles.
	<i>Total Chapter 32</i>	—	p.m.	p.m.	
	TOTAL TITLE 3	5 686 438	5 645 000	6 450 000	Of this amount, EUR 800 000 shall initially not be called up. See Article 100 and Annex C.

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary	
4	BODIES AND ORGANS					
40	Salary related costs				See Annex A. Under this Chapter also fall temporary staff recruited from external bureaux in case this staff fills up a vacancy and trainees.	
400	Europol staff	866 391	960 000	1 000 000		
401	Local staff	—	p.m.	p.m.		
402	Salary adjustment	—	10 000	10 000		
	<i>Total Chapter 40</i>	866 391	970 000	1 010 000		
41	Other running costs					
410	Management Board	1 955 885	1 835 000	2 390 000		Of this amount, EUR 450 000 shall initially not be called up. See Article 100 and Annex C.
411	Joint Supervisory Body	376 705	600 000	610 000		Of this amount, EUR 210 000 shall initially not be called up. See Article 100 and Annex C.
412	Appeals costs	—	p.m.	p.m.		A fund has been setup for appeals costs from the 2004 and 2005 budget. The amount in the fund (currently EUR 170 000) is reviewed annually.
413	Financial Controller	7 083	10 000	13 000		
414	Joint Audit Committee	35 943	45 000	45 000		
415	Police Chiefs Task Force	42 186	100 000	50 000		
	<i>Total Chapter 41</i>	2 417 802	2 590 000	3 108 000		
	TOTAL TITLE 4	3 284 193	3 560 000	4 118 000	Of this amount, EUR 660 000 shall initially not be called up. See Article 100 and Annex C.	
6	ICT (Including TECS)					
62	ICT					
620	Information technology	3 048 919	4 900 000	4 020 000	Of this amount, EUR 625 000 shall initially not be called up. See Article 100 and Annex C.	
621	Communication technology	4 619 972	3 030 000	3 130 000	Of this amount, EUR 210 000 shall initially not be called up. See Article 100 and Annex C.	
622	Consultancy	2 221 146	1 615 000	1 515 000	Of this amount, EUR 80 000 shall initially not be called up. See Article 100 and Annex C.	
623	Analysis, liaison, index and security systems	2 729 818	985 000	1 960 000	Of this amount, EUR 300 000 shall initially not be called up. See Article 100 and Annex C.	
624	Information system	551	95 000	50 000		
	<i>Total Chapter 62</i>	12 620 405	10 625 000	10 675 000		
	TOTAL TITLE 6	12 620 405	10 625 000	10 675 000	Of this amount, EUR 1 215 000 shall initially not be called up. See Article 100 and Annex C.	
	TOTAL REVENUE, PART A	64 977 077	63 921 000	65 408 000		
	TOTAL EXPENDITURE, PART A	58 941 085	63 921 000	65 408 000		
	BALANCE	6 035 992	—	—		

Host State

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary
7	REVENUE, HOST STATE				
70	Contributions				
700	Host State contribution, security	2 193 652	2 412 872	2 430 485	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Chapter 80). The proposal from the Director shall be in accordance with an agreement between Europol and the Host State.
701	Host State contribution, buildings	—	p.m.	p.m.	
702	Balance from the financial year t-2	266 348	111 128	162 515	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 810). The proposal from the Director shall be in accordance with an agreement between Europol and the Host State.
	<i>Total Chapter 70</i>	2 460 000	2 524 000	2 593 000	
71	Other revenue				
711	Miscellaneous	—	p.m.	p.m.	
	<i>Total Chapter 71</i>	—	p.m.	p.m.	
	TOTAL TITLE 7	2 460 000	2 524 000	2 593 000	
8	EXPENDITURE, HOST STATE				
80	Security				
800	Security costs	2 344 890	2 524 000	2 593 000	Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 700). The proposal from the Director shall be in accordance with an agreement between Europol and the Host State.
	<i>Total Chapter 80</i>	2 344 890	2 524 000	2 593 000	

Title Chapter Article	Description	Outturn 2007 (EUR)	Budget 2008 (EUR)	Budget 2009 (EUR)	Commentary
81	Building costs				Notwithstanding Article 35 of the Europol Convention and Article 16 of the Financial Regulation, the Management Board may, acting unanimously and on the basis of a proposal from the Director, amend the amount of appropriations provided the total revenue covers the total expenditure (see Article 701). The proposal from the Director shall be in accordance with an agreement between Europol and the Host State.
810	Building costs, Host State	—	p.m.	p.m.	
	<i>Total Chapter 81</i>	—	p.m.	p.m.	
	TOTAL TITLE 8	2 344 890	2 524 000	2 593 000	
	TOTAL REVENUE, PART C	2 460 000	2 524 000	2 593 000	
	TOTAL EXPENDITURE, PART C	2 344 890	2 524 000	2 593 000	
	BALANCE, PART C	115 110	—	—	

Note: Due to rounding off the 2007 totals might differ from the sum of the individual amounts.

ANNEX A

Establishment Plan 2009

Title 2

Scale	Budget 2008	Reallocations 2008	New posts	Budget 2009
1	1	—	—	1
2	3	—	—	3
3	3	—	—	3
4	20	—	1	21
5	61	—	1	62
6	83	- 2	4	85
7	108	+ 2	1	111
8	93	+ 1	3	97
9	45	- 1	1	45
10	—	—	—	—
11 (*)	3	—	—	3
12 (*)	5	—	—	5
13 (*)	—	—	—	—
Total	425	—	11	436

(*) The posts in these scales will be local in so far as required by the Staff Regulations.

Title 4

Scale	Budget 2008	Reallocations 2008	New posts	Budget 2008
1	—	—	—	—
2	—	—	—	—
3	—	—	—	—
4	2	—	—	2
5	2	—	—	2
6	—	—	—	—
7	2	—	—	2
8	2	—	—	2
9	—	—	—	—
10	—	—	—	—
11 (*)	—	—	—	—
12 (*)	—	—	—	—
13 (*)	—	—	—	—
Total	8	—	—	8

(*) The posts in these scales will be local insofar as required by the Staff Regulations.

Total, Title 2 and Title 4

Scale	Budget 2008	Reallocations 2008	New posts	Budget 2008
Total	433	—	11	444

ANNEX B

	GNI 2007 (EUR million)	GNI share 2007 for 27 MS (%)	GNI share 2007 for 25 MS (%)	Balance 2007 for 27 MS (EUR)	5/12th of Romania and Bulgaria (EUR)	7/12th Balance of Romania and Bulgaria to redistribute to 25 MS (EUR)	Actual 7/12th Balance redistri- bution to 25 MS (EUR)	Corrected Balance 2007 all 27 MS (EUR)	Contributions 2009 before deduction 2007 Corrected Balance 2007 (EUR)	Contributions 2009 after deduction 2007 Corrected Balance 2007 (EUR)
	a	$b = a / 116\,942\,340$	$c = a / 115\,663\,051$	$d = 6\,672\,066 \times b$	$e = d \times 5/12$	$f = d - e$	$g = 42\,577 \times c$	$h = d - f + g$	i	$j = i - h$
Austria	2 624 363	2,24	2,27	149 731			966	150 697	1 399 408	1 248 711
Belgium	3 254 093	2,78	2,81	185 660			1 198	186 858	1 735 203	1 548 345
Bulgaria (*)	250 734	0,21		14 305	5 961	8 345		5 961	133 701	127 740
Cyprus	147 960	0,13	0,13	8 442			54	8 496	78 898	70 402
Czech Republic	1 101 606	0,94	0,95	62 851			406	63 257	587 417	524 160
Denmark	2 259 663	1,93	1,95	128 924			832	129 755	1 204 936	1 075 181
Estonia	124 726	0,11	0,11	7 116			46	7 162	66 509	59 346
Finland	1 688 352	1,44	1,46	96 328			622	96 949	900 292	803 343
France	18 438 795	15,77	15,94	1 052 013			6 788	1 058 800	9 832 250	8 773 450
Germany	23 148 221	19,79	20,01	1 320 706			8 521	1 329 227	12 343 491	11 014 264
Greece	2 032 580	1,74	1,76	115 967			748	116 716	1 083 847	967 131
Hungary	878 113	0,75	0,76	50 100			323	50 423	468 242	417 819
Ireland	1 563 390	1,34	1,35	89 198			576	89 774	833 658	743 884
Italy	14 678 365	12,55	12,69	837 464			5 403	842 867	7 827 050	6 984 182
Latvia	166 638	0,14	0,14	9 507			61	9 569	88 858	79 289
Lithuania	244 476	0,21	0,21	13 948			90	14 038	130 364	116 325
Luxembourg	260 122	0,22	0,22	14 841			96	14 937	138 707	123 770
Malta	48 143	0,04	0,04	2 747			18	2 764	25 672	22 907
Netherlands	5 346 690	4,57	4,62	305 052			1 968	307 020	2 851 054	2 544 034
Poland	2 639 229	2,26	2,28	150 579			972	151 551	1 407 335	1 255 784
Portugal	1 544 415	1,32	1,34	88 116			569	88 684	823 539	734 855
Romania (*)	1 028 555	0,88		58 684	24 451	34 232	—	24 451	548 464	524 012
Slovakia	454 120	0,39	0,39	25 910			167	26 077	242 154	216 077
Slovenia	304 908	0,26	0,26	17 396			112	17 509	162 588	145 080
Spain	10 078 570	8,62	8,71	575 026			3 710	578 736	5 374 268	4 795 532

	GNI 2007 (EUR million)	GNI share 2007 for 27 MS (%)	GNI share 2007 for 25 MS (%)	Balance 2007 for 27 MS (EUR)	5/12th of Romania and Bulgaria (EUR)	7/12th Balance of Romania and Bulgaria to redistribute to 25 MS (EUR)	Actual 7/12th Balance redistri- bution to 25 MS (EUR)	Corrected Balance 2007 all 27 MS (EUR)	Contributions 2009 before deduction 2007 Corrected Balance 2007 (EUR)	Contributions 2009 after deduction 2007 Corrected Balance 2007 (EUR)
	a	$b = a / 116\,942\,340$	$c = a / 115\,663\,051$	$d = 6\,672\,066 \times b$	$e = d \times 5/12$	$f = d - e$	$g = 42\,577 \times c$	$h = d - f + g$	i	$j = i - h$
Sweden	3 120 578	2,67	2,70	178 042			1 149	179 191	1 664 008	1 484 817
United Kingdom	19 514 935	16,69	16,87	1 113 411			7 184	1 120 595	10 406 088	9 285 493
General Total	116 942 340	100,00	100,00	6 672 066	30 412	42 577	42 577	6 672 066	62 358 000	55 685 934
									Balance 2007	6 672 066
									Other revenue 2009	3 050 000
									Total revenue	65 408 000

Notes: The source of the GNI figures is Table 3 as used to determine the overall EU Budget 2007 as published in the *Official Journal of the European Union* L 203 of 3 August 2007, p. 46. Any deviation between the GNI figures used in the calculation shown above and the real 2007 GNI figures will be corrected when calling up the 2011 Budget. In case the Europol Convention will be replaced by a Council Decision, the GNI figures will be updated, and corrected if needed, when reimbursing the balance of 2008 and 2009 to the MS in 2010.

(*) It should be stated that since Romania and Bulgaria did only contribute partly to the 2007 Budget and the related Balance 2007, only 5/12th rights can be claimed on a deduction of the 2009 contributions. The 7/12th differences of respectively EUR 8 345 for Bulgaria and EUR 34 232 for Romania have to be redistributed to the other Member States depending upon their weighted GNI figure.

ANNEX C

Details regarding amounts subject to unanimous Management Board approval to call up

Per Title of the Budget		
Title	Description	Amount (EUR)
2	Personnel	5 025 000
3	Other expenditure	800 000
4	Bodies and Organs	660 000
6	ICT (including TECS)	1 215 000
	Total	7 700 000

ANNEX D

Details regarding initial and secondary call up of contributions Budget 2009

	Contributions 2009 after deduction 2007 Corrected Balance 2007 (EUR)	Possible call up related to uncertainties and JSB subject to unanimous MB decision (EUR)	Possible additional call up related to 10 % of Title 2, 3 and 4 (excluding DCD and New HQ Programmes) of the Budget subject to unanimous MB decision (EUR)	Initial amount to call up for 2009 (EUR)
	a = column J Annex B	b = 2 540 000 × column b Annex B	c = 5 160 000 × b Annex B	d = a - b - c
Austria	1 248 711	57 001	115 798	1 075 911
Belgium	1 548 345	70 679	143 585	1 334 081
Bulgaria (*)	127 740	5 446	11 063	111 231
Cyprus	70 402	3 214	6 529	60 659
Czech Republic	524 160	23 927	48 608	451 626
Denmark	1 075 181	49 080	99 706	926 395
Estonia	59 346	2 709	5 503	51 134
Finland	803 343	36 671	74 497	692 174
France	8 773 450	400 493	813 599	7 559 358
Germany	11 014 264	502 782	1 021 399	9 490 083
Greece	967 131	44 148	89 686	833 297
Hungary	417 819	19 073	38 746	360 000
Ireland	743 884	33 957	68 984	640 943
Italy	6 984 182	318 816	647 673	6 017 694
Latvia	79 289	3 619	7 353	68 317
Lithuania	116 325	5 310	10 787	100 228
Luxembourg	123 770	5 650	11 478	106 642
Malta	22 907	1 046	2 124	19 737
Netherlands	2 544 034	116 131	235 919	2 191 984
Poland	1 255 784	57 324	116 454	1 082 006
Portugal	734 855	33 545	68 146	633 164
Romania (*)	524 012	22 340	45 384	456 288
Slovakia	216 077	9 864	20 038	186 176
Slovenia	145 080	6 623	13 454	125 003
Spain	4 795 532	218 908	444 710	4 131 914
Sweden	1 484 817	67 779	137 693	1 279 344
United Kingdom	9 285 493	423 866	861 083	8 000 544
General Total	55 685 934	2 540 000	5 160 000	47 985 934

(*) It should be stated that since Romania and Bulgaria did only contribute partly to the 2007 Budget and the related Balance 2007, only 5/12th rights can be claimed on a deduction of the 2009 contributions. The 7/12th differences of respectively EUR 8 345 for Bulgaria and EUR 34 232 for Romania have to be redistributed to the other Member States depending upon their weighted GNI figure.