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Legislation

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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1244/2009

of 30 November 2009

amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The composition of the lists of third countries in Annexes I and II to Regulation (EC) No 539/2001 ⁽²⁾ should be, and should remain, consistent with the criteria laid down in recital 5 thereto. Some third countries, for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.
- (2) With five Western Balkan countries — Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia — Visa Facilitation Agreements entered into force on 1 January 2008, as a first concrete step forward along the path set out by the Thessaloniki agenda towards a visa-free travel regime for the citizens of Western Balkan countries. With each of these countries, a visa liberalisation dialogue was opened in 2008 and roadmaps for visa liberalisation have been established. In its assessment of the implementation of the roadmaps of May 2009, the Commission considered that the former Yugoslav Republic of Macedonia had met all the benchmarks set out in its roadmap and, in its assessment of November 2009, that Montenegro and Serbia also meet all the benchmarks set out in their respective roadmaps.

- (3) Therefore the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be transferred to Annex II to Regulation (EC) No 539/2001. The visa requirement exemption should only apply to holders of biometric passports issued by each of the three countries concerned.

- (4) For persons residing in Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 (referred to as Kosovo (UNSCR 1244)) and persons whose citizenship certificate has been issued for the territory of Kosovo (UNSCR 1244), a specific Coordination Directorate in Belgrade will be in charge of collecting their passport applications and the issuance of passports. However, in view of security concerns regarding in particular the potential for illegal migration, the holders of Serbian passports issued by that specific Coordination Directorate should be excluded from the visa-free regime for Serbia.

- (5) For reasons of legal clarity and security, and in accordance with Article 1(3) of Regulation (EC) No 539/2001, Kosovo (UNSCR 1244) should be added to Annex I to that Regulation. This is without prejudice to the status of Kosovo (UNSCR 1244).

- (6) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾ which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁴⁾.

⁽¹⁾ Opinion of 12 November 2009 (not yet published in the Official Journal).

⁽²⁾ OJ L 81, 21.3.2001, p. 1.

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

- (7) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 4(1) of Decision 2008/146/EC ⁽²⁾.
- (8) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2008/261/EC ⁽³⁾.
- (9) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request by the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the

Schengen *acquis* ⁽⁵⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (11) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession.
- (12) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 4(1) of the 2005 Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 539/2001 is hereby amended as follows:

1. Annex I shall be amended as follows:

(a) in Part 1, the references to the former Yugoslav Republic of Macedonia, Montenegro and Serbia shall be deleted;

(b) in Part 2, the following reference shall be inserted:

'Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999';

2. in Annex II, Part 1, the following references shall be inserted:

'former Yugoslav Republic of Macedonia (*)

Montenegro (*)

Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)) (*)

(*) The visa requirement exemption applies only to holders of biometric passports.'

Article 2

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

It shall apply from 19 December 2009.

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽³⁾ Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 83, 26.3.2008, p. 3).

⁽⁴⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁵⁾ OJ L 64, 7.3.2002, p. 20.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 30 November 2009

on the conclusion of the Agreement between the European Community and the Government of Mongolia on certain aspects of air services

(2009/974/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (2) On behalf of the Community, the Commission has negotiated an Agreement between the European Community and the Government of Mongolia on certain aspects of air services (the Agreement) in accordance with the mechanisms and directives in the Annex to the Council Decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.

- (3) The Agreement was signed on behalf of the Community on 3 April 2009 subject to its conclusion at a later date.

- (4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of Mongolia on certain aspects of air services is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to make the notification provided for in Article 7 of the Agreement.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK

⁽¹⁾ Opinion of 15 September 2009 (not yet published in the Official Journal).

AGREEMENT**between the European Community and the Government of Mongolia on certain aspects of air services**

THE EUROPEAN COMMUNITY

of the one part, and

THE GOVERNMENT OF MONGOLIA

of the other part

(hereinafter referred to as 'the Parties')

NOTING that bilateral air service agreements have been concluded between several Member States of the European Community and Mongolia containing provisions contrary to Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and Mongolia, which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and Mongolia and to preserve the continuity of such air services,

RECOGNISING that when a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Mongolia under the safety provisions of the agreement between the Member State that has designated the air carrier and Mongolia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

NOTING that it is not a purpose of the European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and Mongolia, to affect the balance between Community air carriers and air carriers of Mongolia, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Community and Mongolia which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers in the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers in the relevant routes may render ineffective the competition rules applicable to undertakings,

HAVE AGREED AS FOLLOWS:

*Article 1***General provisions**

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Community.

2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.

3. References in each of the agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

4. This Agreement shall not create additional traffic rights beyond those laid down in bilateral arrangements between the respective Member States and Mongolia. The granting of traffic rights will continue to be carried out through bilateral arrangements between the respective Member States and Mongolia.

*Article 2***Designation by a Member State**

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex II(a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Mongolia, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, Mongolia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

- (i) the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law;
- (ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and
- (iii) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member

States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states.

3. Mongolia may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- (i) the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community law;
- (ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation;
- (iii) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states;
- (iv) the air carrier is already authorised to operate under a bilateral agreement between Mongolia and another Member State and Mongolia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in another Member State, the air carrier would be circumventing restrictions on traffic rights imposed by a bilateral agreement between Mongolia and that other Member State; or
- (v) the air carrier holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between Mongolia and that Member State, and that Member State has denied traffic rights to the air carriers designated by Mongolia.

In exercising its right under this paragraph, Mongolia shall not discriminate between Community air carriers on the grounds of nationality.

*Article 3***Safety**

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II(c).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Mongolia under the safety provisions of the agreement between the Member State that has designated the air carrier and Mongolia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

Article 4

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex I shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the agreements listed in Annex I that are incompatible with paragraph 1 of this Article shall not be applied.

Article 5

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

Article 6

Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent.

Article 7

Entry into force

This Agreement shall enter into force on the day following the date of receipt of the last notification of the Parties in writing through diplomatic channels that their respective internal procedures necessary for its entry into force have been completed.

Article 8

Termination

1. Any of the Parties may at any time terminate this Agreement by giving the other Party a written notification through diplomatic channels. The termination shall be effective after six (6) months following the date of receipt of such notification by the other Party.

2. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

3. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

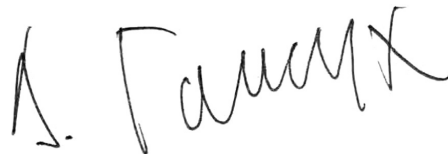
IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at Ulan Bator in duplicate, on the third day of April in the year two thousand and nine, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Mongolian languages.

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



Za Правителството на Монголия
Por el Gobierno de Mongolia
Za vládu Mongolska
For Mongoliets regering
Für die Regierung der Mongolei
Mongoolia valitsuse nimel
Για την Κυβέρνηση της Μογγολίας
For the Government of Mongolia
Pour le gouvernement de la Mongolie
Per il governo della Mongolia
Mongolijas valdības vārdā
Mongolijos Vyriausybės vardu
Mongólia kormány részéről
Għall-Gvern tal-Mongolja
Voor de Regering van Mongolië
W imieniu Rządu Mongolii
Pelo Governo da Mongólia
Pentru Guvernul Mongoliei
Za vládu Mongolska
Za vlado Mongolije
Mongolian hallituksen puolesta
För Mongoliets regering
Монгол Улсын Засгийн Газрыг төлөөлж



ANNEX I

List of agreements referred to in Article 1 of this Agreement

Air service agreements between Mongolia and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or initialled, as amended:

- Air Transport Agreement between the Austrian Federal Government and the Government of Mongolia, signed at Vienna on 2 October 2007, hereinafter referred to 'Mongolia-Austria Agreement' in Annex II,
 - Agreement between the Government of the Kingdom of Denmark and the Government of Mongolia relating to Air Services, done at Beijing on 19 June 1997, hereinafter referred to 'Mongolia-Denmark Agreement' in Annex II,
 - Air Services Agreement between the Government of the Republic of Finland and the Government of Mongolia, done at Helsinki on 10 February 2000, hereinafter referred to 'Mongolia-Finland Agreement' in Annex II,
 - Air Services Agreement between the Government of the Federal Republic of Germany and the Government of Mongolia, done at Bonn on 29 May 1998, hereinafter referred to 'Mongolia-Germany Agreement' in Annex II,
 - Air Services Agreement between the Government of the Republic of Hungary and the Government of Mongolia, done at Ulan Bator on 13 September 1994, hereinafter referred to 'Mongolia-Hungary Agreement' in Annex II,
 - Agreement between the Government of the Grand Duchy of Luxembourg and the Government of Mongolia for Air Services, done at Luxembourg on 18 March 1995, hereinafter referred to 'Mongolia-Luxembourg Agreement' in Annex II,
 - Agreement between the Government of the Kingdom of the Netherlands and the Government of Mongolia for air services, done at The Hague on 9 March 1995, hereinafter referred to 'Mongolia-Netherlands Agreement' in Annex II,
 - Agreement between the Government of the Polish People's Republic and the Government of the Mongolian People's Republic on air services, done at 26 May 1989 in Ulan Bator, hereinafter referred to 'Mongolia-Poland Agreement' in Annex II,
 - Agreement between the Government of Romania and The Government of Mongolia concerning air services, done at Ulan Bator on 10 July 1990, hereinafter referred to 'Mongolia-Romania Agreement' in Annex II,
 - Agreement between the Government of the Kingdom of Sweden and The Government of Mongolia relating to Air Services, done at Beijing on 19 June 1997, hereinafter referred to 'Mongolia-Sweden Agreement' in Annex II,
 - Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mongolia concerning air services, done at London on 1 March 2000, hereinafter referred to 'Mongolia-United Kingdom Agreement' in Annex II.
-

ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 and 3 of this Agreement

(a) Designation by a Member State:

- Article 3, paragraph 5 of the Mongolia-Austria Agreement,
- Article 3, paragraph 4 of the Mongolia-Denmark Agreement,
- Article 3, paragraph 4 of the Mongolia-Germany Agreement,
- Article 3, paragraph 4 of the Mongolia-Hungary Agreement,
- Article 3, paragraph 4 of the Mongolia-Luxembourg Agreement,
- Article 3, paragraph 4 of the Mongolia-Netherlands Agreement,
- Article 3, paragraph 2 of the Mongolia-Poland Agreement,
- Article 3, paragraph 4 of the Mongolia-Sweden Agreement,
- Article 4, paragraph 4 of the Mongolia-United Kingdom Agreement.

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

- Article 4, paragraph 1(a) of the Mongolia-Austria Agreement,
- Article 4, paragraph 1(a) of the Mongolia-Denmark Agreement,
- Article 5, paragraph 1(a) of the Mongolia-Finland Agreement,
- Article 4 of the Mongolia-Germany Agreement,
- Article 4, paragraph 1(a) of the Mongolia-Hungary Agreement,
- Article 4, paragraph 1(a) of the Mongolia-Luxembourg Agreement,
- Article 4, paragraph 1(a) of the Mongolia-Netherlands Agreement,
- Article 3, paragraph 3 of the Mongolia-Poland Agreement,
- Article 3, paragraph 4(a) of the Mongolia-Romania Agreement,
- Article 4, paragraph 1(a) of the Mongolia-Sweden Agreement,
- Article 5, paragraph 1(a) of the Mongolia-United Kingdom Agreement.

(c) Safety:

- Article 6 of the Mongolia-Austria Agreement,
 - Article 13 of the Mongolia-Finland Agreement,
 - Article 12 of the Mongolia-Germany Agreement,
 - Article 11 of the Mongolia-Hungary Agreement,
 - Article 7 of the Mongolia-Luxembourg Agreement,
 - Article 8 of the Mongolia-Netherlands Agreement,
 - Article 7 of the Mongolia-Romania Agreement.
-

*ANNEX III***List of other states referred to in Article 2 of this Agreement**

- (a) The Republic of Iceland (under the Agreement on the European Economic Area).
 - (b) The Principality of Liechtenstein (under the Agreement on the European Economic Area).
 - (c) The Kingdom of Norway (under the Agreement on the European Economic Area).
 - (d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).
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V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

ACTS WHOSE PUBLICATION IS OBLIGATORY

COMMISSION REGULATION (EU) No 1245/2009

of 17 December 2009

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 December 2009.

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

Done at Brussels, 17 December 2009.

*For the Commission,
On behalf of the President,*

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	44,1
	MA	76,0
	TN	125,1
	TR	69,3
	ZZ	78,6
0707 00 05	MA	59,4
	TR	102,6
	ZZ	81,0
0709 90 70	MA	44,2
	TR	98,1
	ZZ	71,2
0709 90 80	EG	175,4
	ZZ	175,4
0805 10 20	MA	56,0
	TR	67,7
	ZA	81,6
	ZZ	68,4
0805 20 10	MA	78,3
	TR	58,0
	ZZ	68,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	52,1
	IL	76,1
	TR	71,9
	ZZ	66,7
0805 50 10	TR	67,7
	ZZ	67,7
0808 10 80	CA	99,8
	CN	88,3
	MK	22,6
	US	91,1
	ZZ	75,5
0808 20 50	CN	47,6
	TR	97,0
	US	168,6
	ZZ	104,4

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EU) No 1246/2009**of 17 December 2009****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

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

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 1230/2009 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 December 2009.

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

Done at Brussels, 17 December 2009.

*For the Commission,
On behalf of the President,*

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 253, 25.9.2009, p. 3.

⁽⁴⁾ OJ L 330, 16.12.2009, p. 63.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 18 December 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	41,66	0,00
1701 11 90 ⁽¹⁾	41,66	2,41
1701 12 10 ⁽¹⁾	41,66	0,00
1701 12 90 ⁽¹⁾	41,66	2,11
1701 91 00 ⁽²⁾	45,73	3,75
1701 99 10 ⁽²⁾	45,73	0,62
1701 99 90 ⁽²⁾	45,73	0,62
1702 90 95 ⁽³⁾	0,46	0,24

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

COMMISSION REGULATION (EU) No 1247/2009**of 17 December 2009****imposing a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

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:

producer and other Community producers known to be concerned by the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

1. PROCEDURE**1.1. Initiation**

- (1) On 23 February 2009, the European Commission (Commission) received a complaint concerning imports of certain molybdenum wires, originating in the People's Republic of China ('the PRC' or 'the country concerned').
- (2) The complaint was lodged pursuant to Article 5 of the basic Regulation by the European Association of Metals (EUROMETAUX) ('the complainant') on behalf of a producer representing a major proportion, in this case more than 25 %, of the total Community production of molybdenum wires.
- (3) The complaint contained *prima facie* evidence of dumping and of material injury caused by such dumping which was considered sufficient to justify the opening of a proceeding.
- (4) On 8 April 2009, a proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union* ⁽²⁾.

- (6) In order to allow exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the authorities of the PRC. Only one group of companies, consisting of Jinduicheng Molybdenum Co., Ltd. and its related company Jinduicheng Molybdenum Mining Guangming Co., Ltd. ('Jinduicheng group'), came forward and requested IT.

- (7) In view of the apparent high number of exporting producers in the PRC and importers in the Community, the Commission indicated in the notice of initiation that sampling might be applied in accordance with Article 17 of the basic Regulation.

- (8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all known exporting producers in the PRC and importers in the Community 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.

- (9) Given the limited number of responses to the sampling exercise, it was decided that sampling was not necessary for the Chinese exporting producers or for the Community importers.

1.2. Parties concerned by the proceeding

- (5) The Commission officially advised the exporting producers in the PRC, importers, traders, users and associations in the Community known to be concerned, the authorities of the PRC, the complainant Community
- (10) Specific questionnaires were sent to all parties known to be concerned, namely the known exporting producers in the PRC, the Community producers, importers, traders and users in the Community. Replies were received from one group of exporting producers in the PRC, the complainant Community producer, one importer/trader and one user.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 84, 8.4.2009, p. 5.

- (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:

(a) *Exporting producers in the PRC*

Jinduicheng Group:

— Jinduicheng Molybdenum Co., Ltd, Xi'an,

— Jinduicheng Molybdenum Mining Guangming Co., Ltd, Zibo;

(b) *Producer in the Community*

— Plansee Metall GmbH, Reutte, Austria;

(c) *User in the Community*

— Praxair Surface Technologies Srl, Forno Taro, Italy.

- (12) In view of the need to establish a normal value for exporting producers in the PRC, none of which requested MET, a verification to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

— Global Tungsten & Powders Corp, Towanda.

1.3. Investigation period

- (13) The investigation of dumping and injury covered the period from 1 April 2008 to 31 March 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from March 2005 to the end of the investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (14) The product concerned is molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the PRC

('the product concerned' or 'molybdenum wire'), currently falling within CN code ex 8102 96 00.

- (15) Molybdenum wire is mainly used in the automotive sector for metal coating by thermal spraying of motor parts that are subject to heavy wear, such as piston rings, synchroniser rings or transmission components, to increase their abrasion resistance.

2.2. Like product

- (16) No differences were found between the product concerned and the molybdenum wire produced by the Community industry and sold on the Community market. Given that the PRC is an economy in transition and that no exporter requested MET, as mentioned in recital (6), normal value had to be established on the basis of information obtained in a market economy third country, the USA. According to the information available, molybdenum wire produced and sold on the US domestic market as well as molybdenum wire exported from the USA to other markets, has the same basic physical and chemical characteristics as the molybdenum wire produced in the PRC and exported to the Community.

- (17) It is therefore provisionally concluded that all types of molybdenum wire are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment (MET)

- (18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

- (19) However, as explained in recital (6) above, the Jinduicheng group only requested Individual Treatment ('IT'). These criteria were therefore not investigated.

3.2. Individual treatment (IT)

- (20) As a general rule, 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 and therefore qualify to be granted IT.

- (21) Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

- (a) In the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
- (b) Export prices and quantities, and conditions and terms of sales are freely determined;
- (c) The majority of the shares belong to private persons. State officials appearing on the board of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference
- (d) Exchange rate conversions are carried out at the market rate.
- (e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (22) As regards criterion (c), it was found that the mother company, Jingduicheng Molybdenum Co., Ltd, was state-owned. Indeed, it emerged that during the IP only 20 % of the shares belonged to private persons and that these shares only represented 2,4 % of the voting rights. The remaining 80 % of the shares, with 97,6 % of the voting rights, belonged to state-owned enterprises.

- (23) On the basis of the above findings, it was provisionally established that the Jinduicheng group could not be granted IT as set forth in Article 9(5) of the basic Regulation.

3.3. Normal value

- (24) It was envisaged in the notice of initiation using the USA as an analogue country. A US producer, Global Tungsten & Powders Corp ('Global Tungsten'), agreed to co-operate and provided all the necessary information for the purpose of establishing normal value for the PRC. The Jinduicheng group contested this choice and proposed producers located in Mexico and India. However, the companies which were contacted in these countries either denied to cooperate, as in the case of India, or indicated that they did not produce the like product. Hence, the USA was confirmed as a suitable analogue

country for the purpose of establishing normal value for the PRC.

- (25) Pursuant to Article 2(7)(a) of the basic Regulation, it should be noted since that the analogue country producer made only marginal sales on the domestic US market, it was found unreasonable to use such sales data for the purposes of determining or constructing normal value. Consequently, the normal value for the PRC was provisionally established on the basis of export prices from the USA to other third countries, including the Community.

3.4. Export price

- (26) As explained in recital (9), only one group of companies, the Jinduicheng group, representing between 60 to 75 % ⁽¹⁾ of imports from the PRC to the Community, co-operated with the investigation. On this basis, the level of co-operation was deemed to be low. As a consequence, export prices for all Chinese exporters were provisionally established on the basis of the figures reported by the cooperating group, complemented with Eurostat import data, duly adjusted as explained in recital (34) below.

3.5. Comparison

- (27) The comparison between normal value and export price was made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, allowances for transport costs, ocean freight and insurance costs, handling, loading and ancillary costs and indirect taxation have been made where applicable and justified.

3.6. Dumping margin

- (28) As explained in recital (23) above, the Jinduicheng group did not fulfil the requirements for IT as set forth in Article 9(5) of the basic Regulation. As a consequence, a country-wide dumping margin was established for the PRC.
- (29) The country-wide level of dumping for the PRC was provisionally established at 68,4 % of the CIF Community frontier price, duty unpaid.

⁽¹⁾ Based on a comparison of the total exports of the Jinduicheng group with adjusted Eurostat data of the relevant CN code. For reasons of confidentiality, the proportion of its exports from the total quantity imported from the PRC is given in a range.

4. INJURY

4.1. Community production

- (30) The investigation established that there are two producers in the Community which manufacture the like product for the non-captive market. One producer expressed its neutral position regarding this proceeding and supplied general data on its production and sales. The other producer, on whose behalf the complaint was lodged, co-operated fully with the investigation and submitted a full questionnaire reply. Therefore, in order to protect the business confidential information of that producer, all the figures related to sensitive data provided below have been indexed or given in a range. Bracketed figures relate to negative figures.

- (31) In view of the above, the volume of Community production for the purpose of Article 4(1) of the basic Regulation was calculated by adding to the production of the fully cooperating Community producer the production volume provided by the other Community producer.

4.2. Definition of the Community industry

- (32) The investigation showed that the production of the Community producer that fully co-operated in the investigation represented more than 80 % of the molybdenum wire produced in the Community during the IP. It was therefore considered that this company qualified to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

- (33) Since that Community producer uses a fiscal year from 1 March to 28 February of the following year, all the data below are presented for fiscal years ('FY') rather than for calendar years (e.g. FY2005 covers the period from 1 March 2004 to 28 February 2005). However, data used for the IP, as stated in recital (13), covers the period from 1 April 2008 to 31 March 2009. The data concerning imports has been established on the same basis.

4.3. Community consumption

- (34) Community consumption was established by adding to the sales volume of the known producers in the Community all imports from third countries extracted from Eurostat. It is recalled that the CN code under which the product concerned is declared includes also products other than the product concerned. In the absence of specific import statistics for the product concerned, Eurostat data was adjusted in accordance with the method suggested in the complaint. This method was found to be reliable to obtain data relating to the product concerned.

- (35) The data described in table 1 below shows that demand of the product concerned in the Community decreased by 10 % over the period considered. It increased by 4 % until 2008, after which it dropped as a consequence of the economic crisis, affecting in particular the automotive sector.

Table 1

Community consumption	2005	2006	2007	2008	IP
Tonnes	397	405	412	411	358
Index	100	102	104	104	90

Source: Eurostat, complaint data and questionnaire replies.

4.4. Imports into the Community from the PRC

4.4.1. Volume and market share of the imports from the PRC

- (36) For the reasons stated in recital (34) above, the volume of Chinese imports of the product concerned during the period considered was based on data from Eurostat, adjusted in accordance with the method suggested in the complaint. On that basis, the evolution of Chinese imports has been the following:

Table 2

	2005	2006	2007	2008	IP
Volumes (tonnes)	36	65	69	116	97
Index	100	181	192	322	269
Market share					
Index	100	176	184	310	297
Prices (EUR/tonne)	46 712	62 644	56 236	53 019	50 892
Index	100	134	120	114	109

Source: Eurostat, complaint data.

- (37) The dumped imports from the PRC increased significantly from 36 tonnes in 2005 to 116 tonnes in 2008, i.e. more than three times. Following a peak in 2008, these imports decreased in the IP in line with the evolution of Community consumption. Nevertheless, the market share of the dumped imports in the Community market almost tripled between 2005 and the IP.
- (38) The average import price from the PRC was at its lowest level in 2005. It peaked in 2006 and then progressively decreased by 19 % between 2006 and the IP.

4.4.2. Price undercutting

- (39) For the purposes of analysing price undercutting, the weighted average sales prices of the Community industry to unrelated customers on the Community market, adjusted to ex-works level, were compared to the weighted average prices of the imports from the PRC to the first independent customer, established on a CIF basis, with an appropriate adjustment for post-importation costs and customs duties.
- (40) The comparison showed that during the IP import prices from the PRC undercut the Community industry's prices, when expressed as a percentage of the latter, by 30 to 35 %.

4.5. Economic situation of the Community industry

4.5.1. Preliminary remarks

- (41) 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 indicators for an assessment of the state of the Community industry from 2005 to the end of the IP.

4.5.2. Production, production capacity and capacity utilisation

Table 3

	2005	2006	2007	2008	IP
Production Index	100	98	96	73	67
Capacity Index	100	100	100	100	100
Capacity utilisation Index	100	98	96	73	67

Source: Questionnaire reply.

- (42) As shown in the above table, the production of the Community industry progressively decreased by 33 % over the period considered in line with a significant increase of Chinese imports by more than three times during the same period. In a first step, between 2005 and 2008 production of the Community industry was reduced by 27 %. This declining trend was confirmed between 2008 and the IP when production went down by an additional 8 %.
- (43) Since production capacity remained stable, capacity utilisation followed the same declining trend as production during the period considered.
- 4.5.3. Sales volume, market share, growth and average unit prices in the Community
- (44) The figures below represent the Community industry's sales to independent customers in the Community in indexed form.

Table 4

	2005	2006	2007	2008	IP
Sales volume in the Community market Index	100	99	92	75	68
Market share Index	100	97	89	72	76
Average sales prices Index	100	86	96	95	92

Source: Questionnaire reply.

- (45) The sales volume of the Community industry to independent customers on the Community market decreased significantly by 32 % during the period considered. This decrease was far higher than the decrease in consumption (– 10 %) during the same period. As a consequence the Community industry also lost significant market share in the same period.
- (46) Average ex-works sales price of the Community industry to unrelated customers on the Community followed a declining trend over the period considered. During this period, a slight increase was observed in 2007 compared to 2006, in line with the increase in the raw material prices in that particular year, after which the sales prices decreased again. Overall, the Community industry had to decrease its average sales prices on the Community market by 8 %.
- 4.5.4. Stocks
- (47) The figures below represent the volume of stocks at the end of each period.

Table 5

	2005	2006	2007	2008	IP
Stocks Index	100	179	72	253	233

Source: Questionnaire reply.

- (48) Stocks increased significantly by 133 % during the period considered, reflecting the industry's increasing difficulty in selling its products in the Community market. The observed decrease in stocks between 2006 and 2007 followed the trend of the Community consumption during the same period.
- 4.5.5. Employment, wages and productivity
- (49) The evolution of employment, labour costs and productivity of the Community industry were as follows.

Table 6

	2005	2006	2007	2008	IP
Employment — full-time equivalent (FTE) Index	100	109	100	73	68
Labour cost (EUR/FTE) Index	100	106	109	106	106
Productivity Index	100	90	96	100	98

Source: Questionnaire reply.

(50) The Community industry sharply decreased its number of employees between 2005 and the IP. This was the result of both a decline in output and the efforts carried out by the Community industry to rationalise production and boost productivity. The results of this rationalisation process within the Community industry was thus reflected in the productivity which was rather stable during the period considered.

(51) Average wage levels showed an increase in the beginning of the period considered but then decreased between 2007 and the IP.

4.5.6. Profitability and cash flow

(52) The levels of profits and cash flow from the sale of molybdenum wire by the Community industry showed a negative trend during the period considered, with the exception of the year 2007.

Table 7

	2005	2006	2007	2008	IP
Profitability Index	(100)	(214)	190	(117)	(151)
Cash flow Index	(100)	(344)	838	(41)	(97)

Source: Questionnaire reply.

(53) Profitability deteriorated significantly over the period considered, in particular between 2007 and the IP, when it reached its lowest level. The investigation indicated that the improved profitability in 2007 was linked to the positive development in Community consumption, the rationalisation efforts of the Community industry and the fact that the Community industry managed to increase its sales prices in that year.

(54) The trend of the cash flow, which is the ability of the industry to self-finance its activities, reflected to a large extent the evolution of profitability. Overall, the investi-

gation showed that cash flow deteriorated over the period considered.

4.5.7. Investments, return on investments and ability to raise capital

(55) At the beginning of the period considered, the Community industry invested significantly in the product concerned sector. However, starting in 2006, investments had to be reduced.

(56) The investigation showed that the Community industry's ability to raise capital was following the same trend as its profitability.

Table 8

	2005	2006	2007	2008	IP
Investments Index	100	41	6	5	6
Return on investments Index	(100)	(102)	158	(87)	(106)

Source: Questionnaire reply.

4.5.8. Magnitude of the actual margin of dumping

(57) The dumping margin found, indicated above in recital (32), was significantly above the *de minimis* level. Furthermore, given the volume and the price of the dumped imports in particular during the IP, the impact of the actual margin of dumping on the Community market could not be considered to be negligible.

4.6. Conclusion on injury

(58) Between 2005 and the IP, the volume of dumped imports of the product concerned from the PRC increased by over 150 %, reaching a market share of 27,0 % by the end of the period considered. During IP, the low-priced dumped imports from the PRC were substantially undercutting the sales prices of the Community. The weighted average price undercutting was as high ranging between 30 and 35 % during the IP.

(59) During the same period while the Community consumption decreased by 10 %, the sales volume of the Community industry decreased by 32 %. Its market share fell by 17 percentage points and its sales prices had to be reduced by 8 % to limit the erosion in sales and market share.

(60) As a consequence, the situation of the Community industry substantially deteriorated during the period considered. Production decreased by 33 %, as did capacity utilisation, reaching a very low level in the IP and the level of stock more than doubled. The deteriorating situation of the Community industry in the period considered was also confirmed by the negative development in profitability, cash flow, employment and investments.

- (61) In the light of the foregoing, it was provisionally concluded that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation.

5. CAUSALITY

5.1. Introduction

- (62) In accordance with Articles 3(6) and 3(7) of the basic Regulation, it was examined whether the dumped imports of the product concerned originating in the PRC caused injury to the Community industry to a degree that enabled it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effect of the dumped imports

- (63) The deterioration in the economic situation of the Community industry coincided with the surge of the dumped imports from the PRC. Their volume increased by over 150 % between 2005 and the IP and their market share almost tripled during the period considered. In that period, sales volumes of the Community industry decreased considerably by 32 %. At the same time a significant part of market share was lost and almost all the other injury indicators, such as production, capacity utilisation, investments, profitability, cash flow, employment showed significant declining trends during the period considered.
- (64) Even if the prices of the dumped imports increased at the beginning of the period considered, they continuously and significantly decreased by 19 % in the remainder of the period. Despite the fact that the Community industry decreased its prices by 8 %, dumped imports from the PRC remained constantly below the prices of the Community industry, undercutting them by 30 to 35 % during the IP.
- (65) In the context of a negative economic situation, in particular during the IP, linked to the economic crisis which affected in particular the automotive industry, the sales volumes of the Community industry decreased considerably three times more than the Community consumption. This resulted in a significant drop in market share which was entirely gained by the Chinese imports. At the same time production and capacity utilisation also declined sharply and stocks rose dramatically by over 100 %.
- (66) It was therefore considered that in the negative economic context, the high volume of low-priced dumped imports

from the PRC had a significant negative impact on the economic situation of the Community industry during the IP.

5.3. Effect of other factors

- (67) The other factors examined in the causality analysis were the development of the Community consumption, the evolution of the costs of the Community industry, and in particular the raw material (Moly-oxide) prices, its export performance and the imports from other third countries throughout the period considered.

5.3.1. Development of demand

- (68) The investigation showed that the demand in the Community market decreased by 10 % during the period considered. In a first step consumption rose by 4 % between 2005 and 2008 and then, in the context of the economic crisis and its impact on the automotive sector, it decreased by 14 % between 2008 and the IP.
- (69) As explained in recital (65) above, when the import volumes from the PRC increased dramatically during the period considered, the sales volumes of the Community industry decreased considerably more (– 32 %) than the Community consumption (– 10 %). The entire market share lost by the Community industry was gained by the Chinese imports. Hence, the negative evolution of consumption cannot explain the dramatic deterioration in the economic situation of the Community industry during the IP.

5.3.2. Prices of raw material in the Community market

- (70) During the period considered the Community industry managed to decrease its unit cost by 6 %. It should be noted that the price of Moly-oxide, the main raw material used in the production of the product concerned, showed a declining trend over the period considered. Therefore the negative economic situation and the financial losses incurred during the IP cannot be attributed to increased costs but rather to the decrease in sales prices (– 8 %) in the period.

5.3.3. Export performance of the Community industry

- (71) The investigation of injury focused on the analysis of the situation of the Community industry in the Community market, which is the core market of that industry. The analysis of its export performance as a factor that could have caused injury showed that the export sales made by the Community industry remained relatively modest during the period considered. They represented less than 10 % of its total sales during the IP.

Table 9

	2005	2006	2007	2008	IP
Export sales volumes <i>Index</i>	100	88	105	50	45
Average export sales prices <i>Index</i>	100	89	86	93	91

Source: Questionnaire reply.

- (72) Even if there was a declining trend of the export sales during the period considered in line with the negative worldwide situation in the automotive sector as from 2008, the Community market has always been the core market of the Community industry. Hence, any negative impact of the decrease in the export volumes on the economic situation of the Community industry could only be negligible.

5.3.4. Imports from other third countries

- (73) The number of producers of molybdenum wire is very limited worldwide. Apart from the PRC, the main source of imports into the Community is the USA. In addition there were negligible imports from India and Japan during the period considered.
- (74) Based on export data submitted by the sole US producer of the like product, who co-operated in the investigation, US imports of the product concerned represented between 15 to 20 % of the Community market during the IP but overall these imports decreased by 21 % over the period considered. The main decrease, which was as high as 17 %, occurred between 2008 and the IP. For reasons of confidentiality the data in table 9 below is presented in an indexed form.

Table 10

USA	2005	2006	2007	2008	IP
Imports (tonnes) <i>Index</i>	100	67	81	96	79
Market share <i>Index</i>	100	66	78	92	88
Average import price <i>Index</i>	100	91	81	87	84

Source: Data sole US exporter.

- (75) The investigation also showed that during the IP, the US import prices were not only significantly higher than the dumped Chinese import prices but were in the same range with the sales prices of the Community industry, which suggests that the US import prices may also have been affected by the Chinese dumped imports. Any

negative impact of the US imports on the Community market would therefore not be such as to break the causal link between the dumped imports from the PRC and the injury of the Community industry.

5.3.5. Other producer in the Community

- (76) Based on the information available, it appeared that the other Community producer had limited sales in the Community market. Accordingly, the presence of that producer in the Community market could not be the cause of the injury suffered by the Community industry.

5.4. Conclusion on causation

- (77) The injury suffered by the Community industry mainly materialised in the form of losses in production, sales volumes and market share. The loss of economies of scale due to the low capacity utilisation led to an overall negative economic situation of the Community industry. The investigation also showed that the price pressure exerted by dumped imports forced the Community industry to reduce its prices by 8 % and thus weakened its financial situation in particular during the IP.
- (78) The deterioration of the situation of the Community industry coincided with a sharp increase in import volumes from the PRC at prices constantly undercutting the prices of the Community industry. This explains why Chinese imports gained considerable market share on the Community market.
- (79) The examination of the other known factors which could have caused injury to the Community industry showed that none of them could have had a significant negative impact on that industry and could not break the causal link between dumped imports and the injurious situation of the Community industry, in particular during the IP.

- (80) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it was provisionally concluded that the imports from the PRC have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

6. COMMUNITY INTEREST

6.1. Preliminary remark

- (81) Pursuant to Article 21 of the basic Regulation, it was examined whether compelling reasons existed that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping measures on imports from the country concerned. The Commission sent questionnaires to all importers, traders and users which were mentioned in the complaint. Replies to the questionnaire were received from one trader and one user.

- (82) On the basis of the information received from the cooperating parties, the following provisional conclusions were reached.

6.2. Interest of the Community industry

- (83) Molybdenum wire is a crucial product in the whole business of the complainant producer. It is essentially a volume business where sufficient volumes are necessary to support the production of more value-added products in the same production chain, used for example in the lighting industry. The volume business is essentially needed to keep down the unit fixed costs.
- (84) In view of the above, the non-imposition of anti-dumping duties would have a further negative impact on the molybdenum wire business and could lead to a situation where the Chinese imports would push the Community industry out of the market with regard to molybdenum wire.
- (85) It is considered that the imposition of the proposed measures would allow the Community industry to increase production volumes, regain part of the market lost to the benefit of dumped imports and thus to recover from injurious dumping.
- (86) In conclusion, the imposition of provisional anti-dumping measures would allow the Community industry to secure the viability of its molybdenum wire business and consequently the entire sector which depends on the existence of this core product.

6.3. Interest of importers, traders and users in the Community

- (87) Despite the fact that numerous parties were contacted, including associations of importers and users and individual companies, the level of co-operation has been very low.
- (88) The investigation showed that there are traders which source molybdenum wire either from the Community industry or the Chinese producers and resell it directly to the automotive industry. Some other operators provide services to the automotive industry. It is noteworthy that not a single user within the automotive industry came forward in the investigation. This appeared to support the claim of the Community industry that the share of the cost of the product concerned in the total costs of the automotive industry is extremely low.
- (89) Questionnaires were sent to the three known importers mentioned in the complaint. Whilst one importer explicitly stated that it did not want to participate in the investigation, another importer did not show any

reaction to our solicitation. Only one trader, located in Germany, came forward and provided co-operation.

- (90) Questionnaires were also sent to the 18 users mentioned in the complaint. However only one user, located in Italy, which accounted for between 35 to 50 % of imports of molybdenum wire from the PRC during the IP, co-operated in the investigation.
- (91) As to importers and traders' interests, according to the data provided by the co-operating trader, it sourced its molybdenum wires exclusively from Community producers. Hence, the imposition of the proposed measures should not affect its activities.
- (92) The low interest shown by Community importers and traders of the product concerned for this investigation would suggest that the imposition of the proposed provisional anti-dumping measures would not have a significant impact on their activities.
- (93) Concerning the co-operating user located in Italy, the investigation showed that it imported large volumes of molybdenum wires from the PRC. This company provides coating services mainly for the automotive industry. The business involving the product concerned represents between 15 and 25 % of its total turnover.
- (94) The imposition of the proposed anti-dumping duty is thus likely to increase the costs of the coating division of that user. However this would not have a significant impact on the overall profit of the company. In the worst case scenario, assuming that this user would not be able to pass any of the cost increase to its customers, the profit achieved during the IP at the level of the division would become slightly negative, and at company level, the profit achieved during the IP would be reduced by a few percentage points.
- (95) Based on the above it is clear that the imposition of anti-dumping measures would have a negative impact on the coating division of this specific user which is exclusively sourcing its products from the PRC. However, given that this user has a strong position in this niche business, in terms of reliability and supply security towards its customers, it should be in a position to pass at least part of the cost increase to its customers and/or to purchase molybdenum wires from other sources. This would partly reduce the negative impact of the proposed measures.
- (96) Taken the above into consideration, it was provisionally concluded that, on balance, the effect of the anti-dumping measures, will not have a significant negative impact on the overall situation of users of the product concerned in the Community.

6.4. Competition and trade distorting effects

- (97) The investigation showed that there is a limited number of operators producing and selling the product concerned worldwide. Therefore it was examined whether there is any risk that the imposition of anti-dumping measures could lead to trade distorting effects in the Community market and in particular to shortages of supply. Even if it is likely that the imports of Chinese molybdenum wires would decrease with the imposition of anti-dumping measures, it seems that there would be no risk of a shortage on the Community market since the investigation showed that the Community industry has free capacity to meet the market demand. In addition some alternative sources of supply exist, such as the imports from the USA.
- (98) Given that the proposed anti-dumping duty would re-establish a level playing field, it could be expected that the Chinese exporting producers would be able to continue to sell the molybdenum wire in the Community, albeit at non-injurious prices.
- (99) On the other hand, if anti-dumping measures are not imposed, as explained in recital (86) above, the Community industry will not be able to sustain further losses in production and sales volumes in its core market. Its survival in a sector which goes beyond the like product would therefore be at stake. Given the fact that the Community industry supplies over 50 % of the Community market, its disappearance would very likely lead to a shortage of molybdenum wire in the Community market, at least until the point when the imports would have replaced the sales of the Community industry.

6.5. Conclusion on Community interest

- (100) In view of the above, it was provisionally concluded that overall, based on the information available concerning the Community interest, there are no compelling reasons against the imposition of provisional measures on imports of molybdenum wire originating in the PRC.

7. PROVISIONAL ANTI-DUMPING MEASURES

7.1. Injury Elimination Level

- (101) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports from the PRC.
- (102) For the purpose of determining the level of these duties, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

- (103) 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 a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Community. It is recalled that the year 2007 was a year during the period considered when the Community industry made a profit. Hence, the pre-tax profit margin used for this calculation was in the range of 0-5 %, based on the profit achieved in the abovementioned year. On this basis, a non-injurious price was calculated for the Community industry for the like product.

- (104) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, adjusted for the post importation costs and customs duties, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the total imported value.

7.2. Provisional measures

- (105) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed on imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury margin found.

- (106) The proposed anti-dumping duty is the following:

PRC	Injury elimination margin	Dumping margin	Anti-dumping duty rate
All companies	64,3 %	68,4 %	64,3 %

8. DISCLOSURE

- (107) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. Furthermore, it should be stated that the findings concerning the imposition of anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 10).

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the product described in paragraph 1 shall be 64,3 %.

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

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

Article 2

Without prejudice to Article 20 of 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 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 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 17 December 2009.

For the Commission

The President

José Manuel BARROSO

COMMISSION REGULATION (EU) No 1248/2009**of 17 December 2009****fixing the maximum reduction in the duty on maize imported under the invitation to tender issued
in Regulation (EC) No 676/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO' Regulation) ⁽¹⁾, and in particular Article 144(1) in conjunction with Article 4 thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on maize imported into Spain from third countries was opened by Commission Regulation (EC) No 676/2009 ⁽²⁾.
- (2) Under Article 8 of Commission Regulation (EC) No 1296/2008 of 18 December 2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal ⁽³⁾ the Commission, in accordance the procedure laid down in Article 195(2) of Regulation (EC) No 1234/2007, may decide to fix a maximum

reduction in the import duty. In fixing this maximum the criteria provided for in Articles 7 and 8 of Regulation (EC) No 1296/2008 must be taken into account.

- (3) A contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.
- (4) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders lodged from 4 December to 17 December 2009 under the invitation to tender issued in Regulation (EC) No 676/2009, the maximum reduction in the duty on maize imported shall be 16,60 EUR/t for a total maximum quantity of 91 450 t.

Article 2

This Regulation shall enter into force on 18 December 2009.

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

Done at Brussels, 17 December 2009.

*For the Commission,
On behalf of the President,*

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 196, 28.7.2009, p. 6.

⁽³⁾ OJ L 340, 19.12.2008, p. 57.

COMMISSION REGULATION (EU) No 1249/2009**of 17 December 2009****fixing the maximum reduction in the duty on maize imported under the invitation to tender issued
in Regulation (EC) No 677/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1) in conjunction with Article 4 thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on maize imported into Portugal from third countries was opened by Commission Regulation (EC) No 677/2009 ⁽²⁾.
- (2) Under Article 8 of Commission Regulation (EC) No 1296/2008 of 18 December 2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal ⁽³⁾ the Commission, in accordance the procedure laid down in Article 195(2) of Regulation (EC) No 1234/2007, may decide to fix a maximum

reduction in the import duty. In fixing this maximum the criteria provided for in Articles 7 and 8 of Regulation (EC) No 1296/2008 must be taken into account.

- (3) A contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty.
- (4) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders lodged from 4 December 2009 to 17 December 2009 under the invitation to tender issued in Regulation (EC) No 677/2009, the maximum reduction in the duty on maize imported shall be EUR 15,60/t for a total maximum quantity of 31 000 t.

Article 2

This Regulation shall enter into force on 18 December 2009.

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

Done at Brussels, 17 December 2009.

*For the Commission,
On behalf of the President,*

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 196, 28.7.2009, p. 7.

⁽³⁾ OJ L 340, 19.12.2008, p. 57.

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

COMMISSION DIRECTIVE 2009/159/EU

of 16 December 2009

amending, for the purpose of adaptation to technical progress, Annex III to Council Directive 76/768/EEC concerning cosmetic products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products ⁽¹⁾, and in particular Article 8(2) thereof,

After consulting the Scientific Committee on Consumer Safety,

Whereas:

(1) According to the safety assessment strategy for hair dye substances, it was agreed with the Member States and stakeholders that the date of 31 December 2007 would be appropriate for the submission to the Scientific Committee on Consumer Safety (hereinafter 'SCCS') of the scientific data on the reaction products formed by oxidative hair dye substances on the scalp and their safety for the consumer.

(2) Presently, there are 31 hair dye substances which are provisionally allowed for use in cosmetic products until 31 December 2009 under the restrictions and conditions laid down in Part 2 of Annex III to Directive 76/768/EEC. The requested scientific data on the safety of reaction products formed by oxidative hair dye substances were submitted by the cosmetics industry to the SCCS before the agreed deadline of 31 December 2007.

(3) The submitted safety data were evaluated by the SCCS. In January 2009, the SCCS concluded in its opinion that it is not in the position to finally assess the risk of reaction products of oxidative hair dyes due to the incompleteness of the dossier submitted by the industry. The cosmetics industry provided the missing data by the end of September 2009.

(4) In view of the above, the risk assessment of the submitted additional data and the final opinion given by the SCCS on the safety of the reaction products will still require a period of time exceeding the provisional deadline of 31 December 2009 for the substances listed in Part 2 of Annex III.

(5) Therefore, the definitive regulation of 31 hair dye substances listed in Part 2 of Annex III, on the basis of risk assessment of their reaction products, and its implementation into the laws of Member States will not take place before the provisional deadline. Consequently, their provisional use in cosmetic products under the current restrictions and conditions laid down in Part 2 of Annex III should be extended. The new prolonged deadline of 31 December 2010 is considered sufficient for the definitive regulation of these substances.

(6) Directive 76/768/EEC should therefore be amended accordingly.

(7) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS DIRECTIVE:

*Article 1***Amendment to Directive 76/768/EEC**

In reference numbers 3, 4, 5, 6, 10, 11, 12, 16, 19, 20, 21, 22, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 44, 48, 49, 50, 55, and 56 of column g in Part 2 of Annex III to Directive 76/768/EEC, the date '31.12.2009' is replaced by '31.12.2010'.

⁽¹⁾ OJ L 262, 27.9.1976, p. 169.

*Article 2***Transposition**

1. Member States shall adopt and publish, by 31 December 2009 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2010.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3***Entry into force**

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

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 16 December 2009.

For the Commission

The President

José Manuel BARROSO

COMMISSION DECISION

of 14 December 2009

amending Decision 2009/177/EC as regards eradication programmes and disease-free status of certain Member States, zones and compartments for certain aquatic animal diseases*(notified under document C(2009) 9888)***(Text with EEA relevance)**

(2009/975/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals⁽¹⁾, and in particular the first subparagraph of Article 44(2) and Article 49(1) thereof,

Whereas:

- (1) Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments⁽²⁾ lays down model forms for submission by Member States for approval of eradication programmes pursuant to Directive 2006/88/EC and for submission of documentation for approval of disease-free status pursuant to that Directive.
- (2) Part B of Annex I to Decision 2009/177/EC sets out lists of Member States, zones and compartments subject to eradication programmes approved in accordance with Directive 2006/88/EC. Part C of that Annex sets out lists of Member States, zones and compartments declared disease-free in accordance with that Directive.
- (3) Denmark submitted to the Commission a multi-annual programme for the eradication of viral haemorrhagic septicaemia (VHS) pursuant to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field⁽³⁾ for the period from 1 January 2009 to 31 December 2013. That programme was approved by Commission Decision 2008/897/EC of 28 November 2008 approving annual and multi-annual programmes and the financial contribution from the Community for the eradication, control and monitoring of certain animal

diseases and zoonoses presented by the Member States for 2009 and following years⁽⁴⁾. That programme complies with the requirements for approval laid down in Decision 2009/177/EC and should therefore be approved according to Article 44(2) of Directive 2006/88/EC. Accordingly, the zones covered by that programme should be inserted in Part B of the list set out in Annex I to that Decision.

- (4) Article 12 of Decision 2009/177/EC provides for a derogation from Directive 2006/88/EC whereby Member States are not required to submit for approval eradication programmes that were approved for the purposes of obtaining approved zone status with regard to VHS by Commission Decision 2003/634/EC of 28 August 2003 approving programmes for the purpose of obtaining the status of approved zones and of approved farms in non-approved zones with regard to viral haemorrhagic septicaemia (VHS) and infectious haematopoietic necrosis (IHN) in fish⁽⁵⁾, subject to certain conditions.
- (5) Decision 2003/634/EC approved a programme submitted by Finland for the purpose of obtaining approved zone status with regard to VHS. Finland has now submitted a report on that programme in accordance with the requirements laid down in Decision 2009/177/EC. Accordingly, the zones covered by that programme should therefore be inserted in the list in Part B of Annex I to that Decision.
- (6) Germany submitted to the Commission a multi-annual programme for the eradication of koi herpes virus (KHV) disease pursuant to Decision 90/424/EEC. That programme was approved by Decision 2008/897/EC for the period from 1 January 2009 to 31 December 2013. That programme complies with the requirements for approval laid down in Decision 2009/177/EC and should therefore be approved according to Article 44(2) of Directive 2006/88/EC. Accordingly, the zones covered by that programme should be inserted in Part B of the list set out in Annex I to that Decision.

⁽¹⁾ OJ L 328, 24.11.2006, p. 14.

⁽²⁾ OJ L 63, 7.3.2009, p. 15.

⁽³⁾ OJ L 224, 18.8.1990, p. 19.

⁽⁴⁾ OJ L 322, 2.12.2008, p. 39.

⁽⁵⁾ OJ L 220, 3.9.2003, p. 8.

- (7) The whole territory of the United Kingdom is currently listed in Part C of Annex I to Decision 2009/177/EC as declared disease-free in accordance with Directive 2006/88/EC as regards infectious salmon anaemia (ISA). The United Kingdom has notified the presence of ISA in a compartment previously declared free of that disease. Accordingly, the entry for that Member State as regards ISA should be amended in the list set out in Part C of Annex I to Decision 2009/177/EC.
- (8) The United Kingdom has now submitted for approval an eradication programme with regard to ISA to be applied in the South West Shetland Islands. That programme complies with the requirements of Decision 2009/177/EC. Accordingly, it should be approved and the South West Shetland Islands should be inserted in Part B of the list set out in Annex I to that Decision.
- (9) Decision 2003/634/EC approved a programme submitted by the United Kingdom for the purpose of obtaining approved zone status with regard to VHS. The United Kingdom has now submitted a report on that programme in accordance with the requirements laid down in Decision 2009/177/EC in order to obtain a declaration of disease-free status for those zones. That report complies with the requirements of Decision 2009/177/EC. Accordingly, those zones should therefore be inserted in the list of Part C of Annex I to that Decision.
- (10) In addition, the whole coastline of Northern Ireland, except for Lough Foyle, is currently listed in Part C of Annex I to Decision 2009/177/EC as being declared disease-free as regards infection with *Bonamia ostreae*. The United Kingdom has now notified the presence of infection with *Bonamia ostreae* in Strangforth Lough on that coastline. Strangforth Lough should therefore be excluded from the territory declared disease-free in the list set out in Part C of Annex I to that Decision.
- (11) Decision 2009/177/EC should therefore be amended accordingly.
- (12) 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*
- Annex I to Decision 2009/177/EC is amended in accordance with the Annex to this Decision.
- Article 2*
- This Decision is addressed to the Member States.
- Done at Brussels, 14 December 2009.
- For the Commission*
Androulla VASSILIOU
Member of the Commission

ANNEX

In Annex I, Parts B and C are replaced by the following:

PART B**Member States, zones and compartments subject to approved eradication programmes**

Disease	Member State	ISO Code	Geographical demarcation of the area under an eradication programme (Member State, zones or compartments)
Viral haemorrhagic septicaemia (VHS)	Denmark	DK	The following water catchments: Tim Å, Hover Å, Heager Å, Velling Å, Skjern Å, Hemmet Mølle Bæk, Lydum Å, Kongeå, Kolding Å, Vejle Å and Holmsland Klit.
	Finland	FI	The Province of Åland; The municipalities of Uusikaupunki, Pyhäranta and Rauma.
Infectious haematopoietic necrosis (IHN)			
Koi herpes virus (KHV) disease	Germany	DE	Land Saxony
Infectious salmon anaemia (ISA)	United Kingdom	UK	South West Shetland Islands
Infection with <i>Marteilia refringens</i>			
Infection with <i>Bonamia ostreae</i>			
White spot disease			

PART C**Member States, zones and compartments declared disease-free**

Disease	Member State	ISO Code	Geographical demarcation of the disease-free area (Member State, zones or compartments)																																														
Viral haemorrhagic septicaemia (VHS)	Denmark	DK	<p>The water catchment and the coastal areas of:</p> <table><tr><td>— Hansted Å</td><td>— Slette Å</td></tr><tr><td>— Hovmølle Å</td><td>— Bredkær Bæk</td></tr><tr><td>— Grenå</td><td>— Vandløb til Kilen</td></tr><tr><td>— Treå</td><td>— Resenkær Å</td></tr><tr><td>— Alling Å</td><td>— Klostermølle Å</td></tr><tr><td>— Kastbjerg</td><td>— Hvidbjerg Å</td></tr><tr><td>— Villestrup Å</td><td>— Knidals Å</td></tr><tr><td>— Korup Å</td><td>— Spang Å</td></tr><tr><td>— Sæby Å</td><td>— Simested Å</td></tr><tr><td>— Elling Å</td><td>— Skals Å</td></tr><tr><td>— Uggerby Å</td><td>— Jordbro Å</td></tr><tr><td>— Lindenborg Å</td><td>— Fåremølle Å</td></tr><tr><td>— Øster Å</td><td>— Flynder Å</td></tr><tr><td>— Hasseris Å</td><td>— Damhus Å</td></tr><tr><td>— Binderup Å</td><td>— Karup Å</td></tr><tr><td>— Vidkær Å</td><td>— Gudenåen</td></tr><tr><td>— Dybvad Å</td><td>— Halkær Å</td></tr><tr><td>— Bjørnsholm Å</td><td>— Storåen</td></tr><tr><td>— Trend Å</td><td>— Århus Å</td></tr><tr><td>— Lerkenfeld Å</td><td>— Bygholm Å</td></tr><tr><td>— Vester Å</td><td>— Grejs Å</td></tr><tr><td>— Lønnerup med tilløb</td><td>— Ørum Å</td></tr><tr><td>— Fiskbæk Å</td><td></td></tr></table>	— Hansted Å	— Slette Å	— Hovmølle Å	— Bredkær Bæk	— Grenå	— Vandløb til Kilen	— Treå	— Resenkær Å	— Alling Å	— Klostermølle Å	— Kastbjerg	— Hvidbjerg Å	— Villestrup Å	— Knidals Å	— Korup Å	— Spang Å	— Sæby Å	— Simested Å	— Elling Å	— Skals Å	— Uggerby Å	— Jordbro Å	— Lindenborg Å	— Fåremølle Å	— Øster Å	— Flynder Å	— Hasseris Å	— Damhus Å	— Binderup Å	— Karup Å	— Vidkær Å	— Gudenåen	— Dybvad Å	— Halkær Å	— Bjørnsholm Å	— Storåen	— Trend Å	— Århus Å	— Lerkenfeld Å	— Bygholm Å	— Vester Å	— Grejs Å	— Lønnerup med tilløb	— Ørum Å	— Fiskbæk Å	
— Hansted Å	— Slette Å																																																
— Hovmølle Å	— Bredkær Bæk																																																
— Grenå	— Vandløb til Kilen																																																
— Treå	— Resenkær Å																																																
— Alling Å	— Klostermølle Å																																																
— Kastbjerg	— Hvidbjerg Å																																																
— Villestrup Å	— Knidals Å																																																
— Korup Å	— Spang Å																																																
— Sæby Å	— Simested Å																																																
— Elling Å	— Skals Å																																																
— Uggerby Å	— Jordbro Å																																																
— Lindenborg Å	— Fåremølle Å																																																
— Øster Å	— Flynder Å																																																
— Hasseris Å	— Damhus Å																																																
— Binderup Å	— Karup Å																																																
— Vidkær Å	— Gudenåen																																																
— Dybvad Å	— Halkær Å																																																
— Bjørnsholm Å	— Storåen																																																
— Trend Å	— Århus Å																																																
— Lerkenfeld Å	— Bygholm Å																																																
— Vester Å	— Grejs Å																																																
— Lønnerup med tilløb	— Ørum Å																																																
— Fiskbæk Å																																																	

Disease	Member State	ISO Code	Geographical demarcation of the disease-free area (Member State, zones or compartments)
	Ireland	IE	All continental and coastal areas within its territory, except: 1. Cape Clear Island
	Cyprus	CY	All continental areas within its territory
	Finland	FI	All continental and coastal areas within its territory, except: 1. the Province of Åland; 2. the municipalities of Uusikaupunki, Pyhäranta and Rauma.
	Sweden	SE	Whole territory
	United Kingdom	UK	All continental and coastal areas within Great Britain, Northern Ireland, Guernsey, the Isle of Man and Jersey.
Infectious haematopoietic necrosis (IHN)	Denmark	DK	Whole territory
	Ireland	IE	Whole territory
	Cyprus	CY	All continental areas within its territory
	Finland	FI	Whole territory
	Sweden	SE	Whole territory
	United Kingdom	UK	All continental and coastal areas within Great Britain, Northern Ireland, Guernsey, the Isle of Man and Jersey.
Koi herpes virus (KHV) disease			
Infectious salmon anaemia (ISA)	Belgium	BE	Whole territory
	Bulgaria	BG	Whole territory
	Czech Republic	CZ	Whole territory
	Denmark	DK	Whole territory
	Germany	DE	Whole territory
	Estonia	EE	Whole territory
	Ireland	IE	Whole territory
	Greece	EL	Whole territory
	Spain	ES	Whole territory
	France	FR	Whole territory
	Italy	IT	Whole territory
	Cyprus	CY	Whole territory
	Latvia	LV	Whole territory
	Lithuania	LT	Whole territory
	Luxembourg	LU	Whole territory
	Hungary	HU	Whole territory
	Malta	MT	Whole territory
	Netherlands	NL	Whole territory
	Austria	AT	Whole territory
	Poland	PL	Whole territory
	Portugal	PT	Whole territory
	Romania	RO	Whole territory
	Slovenia	SI	Whole territory
	Slovakia	SK	Whole territory
	Finland	FI	Whole territory

Disease	Member State	ISO Code	Geographical demarcation of the disease-free area (Member State, zones or compartments)
	Sweden	SE	Whole territory
	United Kingdom	UK	All continental and coastal areas within Great Britain, Northern Ireland, Guernsey, the Isle of Man and Jersey except South West Shetland Islands.
Infection with <i>Marteilia refringens</i>	Ireland	IE	The whole territory
	United Kingdom	UK	The whole coastline of Great Britain. The whole coastline of Northern Ireland. The whole coastline of Guernsey and Herm. The coastal area of the States of Jersey: the area consists of the intertidal and immediate coastal area between the mean high-water mark on the Island of Jersey and an imaginary line drawn three nautical miles from the mean low-water mark of the Island of Jersey. The area is situated in the Normano-Breton Gulf, on the south side of the English Channel. The whole coastline of the Isle of Man.
Infection with <i>Bonamia ostreae</i>	Ireland	IE	The whole coastline of Ireland, except: 1. Cork Harbour; 2. Galway Bay; 3. Ballinakill Harbour; 4. Clew Bay; 5. Achill Sound; 6. Loughmore, Blacksod Bay; 7. Lough Foyle; 8. Lough Swilly.
	United Kingdom	UK	The whole coastline of Great Britain, except: 1. the south coast of Cornwall from the Lizard to Start Point; 2. the coast of Dorset, Hampshire and Sussex from Portland Bill to Selsey Bill; 3. the area along the coast of North Kent and Essex from North Foreland to Felixstowe; 4. the area along the coast in south-west Wales from Wooltack Point to St Govan's Head, including Milford Haven and the tidal waters of the East and West Cleddau river; 5. the area containing the waters of Loch Sunart east of a line drawn south-south-east from the northernmost tip of Maclean's Nose to Auliston Point; 6. the area containing West Loch Tarbert north east of a line drawn east south east at Ardpatrik Point NR 734 578 to North Dunskeig Bay at NR 752 568. The whole coastline of Northern Ireland, except: 1. Lough Foyle; 2. Strangford Lough. The whole coastline of Guernsey, Herm and the Isle of Man. The coastal area of the States of Jersey: the area consists of the intertidal and immediate coastal area between the mean high-water mark on the Island of Jersey and an imaginary line drawn three nautical miles from the mean low water mark of the Island of Jersey. The zone is situated in the Normano-Breton Gulf, on the south side of the English Channel.
White spot disease'			

COMMISSION DECISION

of 15 December 2009

amending Annex D to Council Directive 64/432/EEC as regards diagnostic tests for enzootic bovine leukosis

(notified under document C(2009) 9951)

(Text with EEA relevance)

(2009/976/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine⁽¹⁾, and in particular the second paragraph of Article 16 thereof,

Whereas:

- (1) Directive 64/432/EEC applies to intra-Union trade in bovine animals and Chapter II of Annex D thereto sets out the diagnostic tests for enzootic bovine leukosis (EBL) to be used for the control and eradication of that disease and for surveillance and monitoring, as well as for the establishment and maintenance of an officially enzootic-bovine-leukosis-free herd status and certification required for intra-Union trade in bovine animals.
- (2) Chapter II of Annex D to Directive 64/432/EEC provides that tests for EBL are to be carried out by either agar gel immune-diffusion test (AGID) with the use of antigen standardised against the official EC standard serum (EI serum), or by the enzyme-linked immunosorbent assay (ELISA) standardised against E4 serum. Both standard sera are supplied by the National Veterinary Institute, Technical University of Denmark.
- (3) A new EBL standard serum (E05 serum) has recently been developed by the World Organisation for Animal Health (OIE) Reference Laboratory for Enzootic Bovine Leukosis in Germany (Friedrich-Loeffler-Institute) in cooperation with the OIE Reference Laboratories in the United Kingdom (Veterinary Laboratories Agency) and in Poland (National Veterinary Research Institute) after being tested in a ring trial between those laboratories. The E05 serum has been validated against the EI and E4 sera by different AGID and ELISAs and consequently included as an accredited OIE standard serum in Section B(2) of Chapter 2.4.11 of the OIE Manual of Diagnostic

Tests and Vaccines for Terrestrial Animals, Sixth Edition, 2008. This serum is available from the OIE Reference Laboratory for enzootic bovine leukosis in Germany.

- (4) In addition, the National Veterinary Institute, Technical University of Denmark has informed the Commission that it is no longer able to fulfil its obligations for the supply of the standard sera currently provided for in Chapter II of Annex D to Directive 64/432/EEC.
- (5) The German competent authorities and the Friedrich-Loeffler-Institute have agreed to be a supplier of the E05 serum which shall consequently become the new official European Union (EU) standard serum for EBL.
- (6) Directive 64/432/EEC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee of the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Chapter II of Annex D to Directive 64/432/EEC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ 121, 29.7.1964, p. 1977/64.

ANNEX

Chapter II of Annex D to Directive 64/432/EEC is replaced by the following:

‘CHAPTER II

TESTS FOR ENZOOTIC BOVINE LEUKOSIS

Tests for enzootic bovine leukosis shall be carried out by the agar gel immuno-diffusion test (AGID) under the conditions described in Sections A and B or by the enzyme-linked immunosorbent assay (ELISA) under the conditions described in Section C. The agar gel immuno-diffusion test may only be used for the testing of individual samples. If test results are the subject of a duly-substantiated challenge, an additional check shall be carried out by means of the agar gel immuno-diffusion test.

The AGID and ELISA shall be standardised against the E05 serum, which shall be the official EU standard serum, to be supplied by the:

Friedrich-Loeffler-Institut
Federal Research Institute for Animal Health
OIE Reference Laboratory for Enzootic Bovine Leukosis (EBL)
Südufer 10
17493 Greifswald — Insel Riems
Germany.

A. Agar gel immuno-diffusion test for enzootic bovine leukosis

1. The antigen to be used in the test shall contain bovine leukosis virus glycoprotein. The antigen shall be standardised against the E05 serum.
2. The State institutes, national reference laboratories or official institutes designated in accordance with Article 6a for coordinating standards and methods of diagnosis of the tests for enzootic bovine leukosis shall be made responsible for calibrating the standard working antigen of the laboratory against the E05 serum.
3. The standard antigens used in the laboratory shall be submitted at least once a year to the State institutes, national reference laboratories or official institutes designated in accordance with Article 6a, for testing against the E05 serum. Apart from such standardisation, the antigen in use may be calibrated in accordance with the method described in Section B.
4. The reagents of the tests shall consist of:
 - (a) antigen: the antigen shall contain specific glycoprotein of enzootic bovine leukosis virus which has been standardised against the E05 serum;
 - (b) the test serum;
 - (c) known positive control serum;
 - (d) agar gel:
 - 0,8 % agar,
 - 8,5 % NaCl,
 - 0,05 M Tris-buffer pH 7,2,
 - 15 ml of this agar shall be introduced into a petri dish of 85 mm diameter, resulting in a depth of 2,6 mm of agar.
5. A test pattern of seven moisture-free wells shall be cut in the agar to the bottom of the plate; the pattern shall consist of one central well and six wells in a circle around it.

Diameter of central well: 4 mm

Diameter of peripheral wells: 6 mm

Distance between central and peripheral wells: 3 mm

6. The central well shall be filled with the standard antigen. Peripheral wells 1 and 4 described in B.3 are filled with the known positive serum; wells 2, 3, 5 and 6 with the test sera. The wells shall be filled until the meniscus disappears.
 7. This results in the following quantities being obtained:
 - antigen: 32 µl,
 - control serum: 73 µl,
 - test serum: 73 µl.
 8. Incubation shall be for 72 hours at room temperature (20 to 27 °C) in a closed humid chamber.
 9. The test may be read at 24 and 48 hours but a final result shall not be obtained before 72 hours:
 - (a) a test serum is positive if it forms a specific precipitation line with the bovine leukosis virus (BLV) antigen and forms a complete line of identity with the control serum;
 - (b) a test serum is negative if it does not form a specific precipitation line with the BLV antigen and if it does not bend the line of the control serum;
 - (c) the reaction cannot be considered conclusive if it:
 - (i) bends the line of the control serum towards the BLV antigen well without forming a visible precipitin line with the antigen; or
 - (ii) if it cannot be read either as negative or as positive.
- In inconclusive reactions the test may be repeated and concentrated serum utilised.
10. Any other well configuration or pattern may be utilised provided that the E05 serum diluted 1:10 in negative serum can be detected as positive.

B. Method for antigen standardisation

1. Solutions and materials required:

- (a) 40 ml of 1,6 % agarose in 0,05 M Tris/HCl buffer, pH 7,2 with 8,5 % NaCl;
- (b) 15 ml of a bovine leukosis serum, having antibody only to bovine leukosis virus glycoproteins, diluted 1:10 in 0,05 M Tris/HCl buffer, pH 7,2 with 8,5 % NaCl;
- (c) 15 ml of a bovine leukosis serum, having antibody only to bovine leukosis virus glycoproteins, diluted 1:5 in 0,05 M Tris/HCl buffer, pH 7,2 with 8,5 % NaCl;
- (d) four plastic petri dishes with a diameter of 85 mm;
- (e) a punch with a diameter of 4 to 6 mm;
- (f) a reference antigen;
- (g) the antigen which is to be standardised;
- (h) a water bath (56 °C).

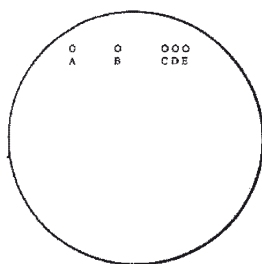
2. Procedure:

Dissolve the agarose (1,6 %) in the Tris/HCl buffer by carefully heating to 100 °C. Place in 56 °C water bath for approximately 1 hour. Also, place the bovine leukosis serum dilutions in a 56 °C water bath.

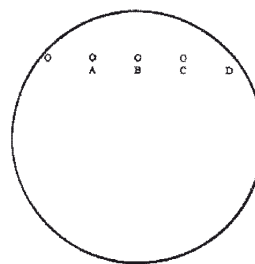
Now mix 15 ml of the 56 °C agarose solution with the 15 ml bovine leukosis serum (1:10), quickly shake and pour 15 ml into each of two petri dishes. Repeat this procedure with the bovine leukosis serum diluted 1:5.

When the agarose has hardened, holes shall be made in it as follows:

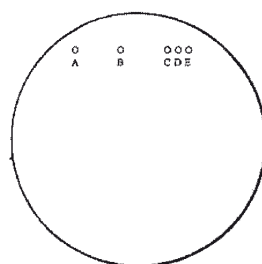
Petri dish No 1
Serum 1:10



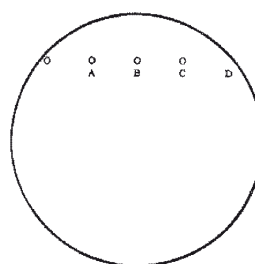
Petri dish No 2
Serum 1:10



Petri dish No 3
Serum 1:5



Petri dish No 4
Serum 1:5



3. Addition of antigen:

(a) petri dishes 1 and 3:

- (i) well A — undiluted reference antigen;
- (ii) well B — 1:2 diluted reference antigen;
- (iii) wells C and E — reference antigen;
- (iv) well D — undiluted test antigen;

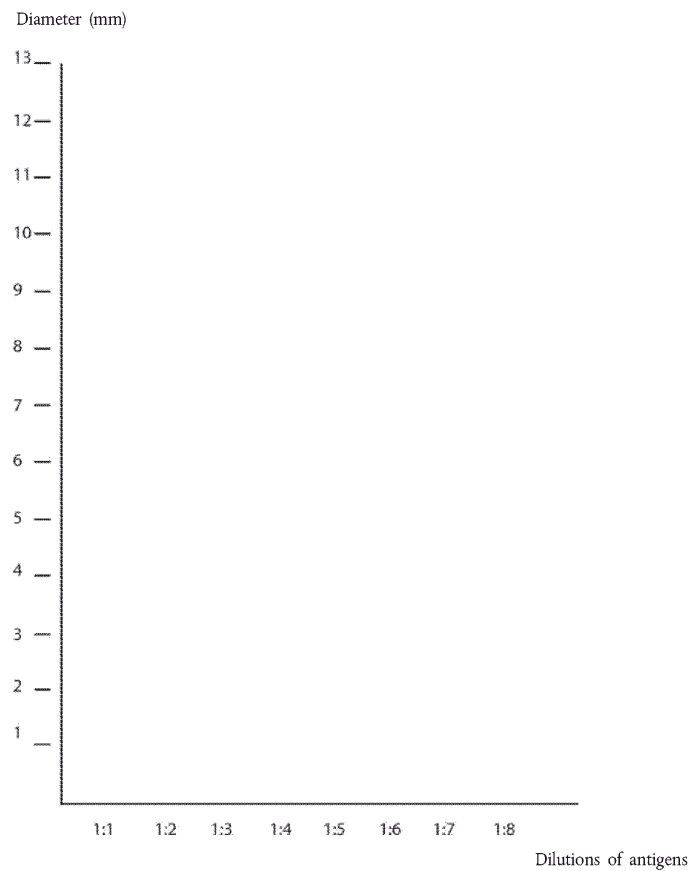
(b) petri dishes 2 and 4:

- (i) well A — undiluted test antigen;
- (ii) well B — 1:2 diluted test antigen;
- (iii) well C — 1:4 diluted test antigen;
- (iv) well D — 1:8 diluted test antigen.

4. Additional instructions:

- (a) the experiment shall be carried out with two serum dilutions (1:5 and 1:10) in order to achieve optimal precipitation;
- (b) if the precipitation diameter is too small with both dilutions, then the serum shall be further diluted;
- (c) if the precipitation diameter in both dilutions is too large and faint, then a lower serum shall be chosen;
- (d) the final concentration of the agarose shall be 0,8 %; that of the sera 5 and 10 % respectively;

- (e) plot the measured diameters in the following coordinate system. The dilution of the antigen to be tested with the same diameter as the reference antigen is the working dilution.



C. Enzyme-linked immunosorbent assay (ELISA) for detecting enzootic bovine leukosis

1. The material and reagents to be used shall be as follows:

- (a) solid-phase microplates, cuvettes or any other solid phase;
- (b) the antigen is fixed to the solid phase with or without the aid of polyclonal or monoclonal catching antibodies. If antigen is coated directly to the solid phase, all test samples giving positive reactions have to be retested against the control antigen. The control antigen should be identical to the antigen except that the BLV antigens are absent. If catching antibodies are coated to the solid phase, the antibodies shall not react to antigens other than BLV antigens;
- (c) the biological fluid to be tested;
- (d) a corresponding positive and negative control;
- (e) conjugate;
- (f) a substrate adapted to the enzyme used;
- (g) a stopping solution, if necessary;
- (h) solutions for the dilution of the test samples for preparations of the reagents and for washing;
- (i) a reading system appropriate to the substrate used.

2. Standardisation and sensitivity of test

The sensitivity of the ELISA shall be of such a level that the E05 serum is scored positive when diluted 10 times (serum samples) or 250 times (milk samples) more than the dilution obtained of individual samples when these are included in pools. In assays where samples (serum and milk) are tested individually, the E05 serum diluted 1 to 10 (in negative serum) or 1 to 250 (in negative milk) shall be scored positive when tested in the same assay dilution as used for the individual test samples. The institutes referred to in point 2 of Section A shall be responsible for checking the quality of the ELISA, and in particular for determining, for each production batch, the number of samples to be pooled on the basis of the count obtained for the E05 serum.

3. Conditions for use of the ELISA for enzootic bovine leukosis

- (a) ELISAs may be used on serum and milk samples.
 - (b) Where ELISAs are used for certification purposes in accordance with Article 6(2)(c) or for the establishment and maintenance of a herd status in accordance with Annex D(I), pooling of samples of serum or milk shall be carried out in such a way that the samples taken for examination can be undoubtedly related to the individual animals included in the pool. Any confirmatory test shall be carried out on samples taken from individual animals.
 - (c) Where ELISAs are used on a sample of bulk milk this sample shall be taken from the milk collected from a herd with at least 30 % of dairy cows in milk. Any confirmatory test shall be carried out on samples of serum or milk taken from individual animals.
-

COMMISSION DECISION

of 16 December 2009

on a Community financial contribution for 2009 towards expenditure incurred by Member States for certain projects in the field of fisheries control, inspection and surveillance

(notified under document C(2009) 9935)

(Only the Danish, German, Greek, Spanish, Italian, Latvian, Dutch, Portuguese, Romanian, Swedish and English texts are authentic)

(2009/977/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea ⁽¹⁾, and in particular Article 21 thereof,

Whereas:

- (1) Based upon the requests for Community co-finance that have been submitted by Member States in their fisheries control programmes for 2009, the Commission has adopted Decision 2009/746/EC ⁽²⁾, which has left some of the 2009 budget available for fisheries control unconsumed.
- (2) That unconsumed part of the 2009 budget should now be allocated by a new Decision.
- (3) In conformity with Article 21(2) of Regulation (EC) No 861/2006, Member States have been asked to submit requests for additional funding related to the priority areas defined by the Commission, i.e. automation and management of data, new technologies, and seminars in the area of illegal, unreported and unregulated (IUU) fishing.
- (4) On that basis and given budgetary constraints, requests for Community funding related to actions such as pilot projects, as well as the construction of patrol vessels and aircrafts, have been rejected since they were not dedicated to the priority areas defined above.
- (5) Applications concerning actions listed in Article 8(a) of Regulation (EC) No 861/2006 may qualify for Community funding.

- (6) Applications for Community funding are to comply with the rules set out in Commission Regulation (EC) No 391/2007 ⁽³⁾.

- (7) It is appropriate to fix the maximum amounts and the rate of the Community financial contribution within the limits set by Article 15 of Regulation (EC) No 861/2006 and to lay down the conditions under which such contribution may be granted.

- (8) In order to encourage investment in the priority actions defined by the Commission and in view of the negative impact of the financial crisis on Member States' budgets, expenditure related to the abovementioned priority areas should benefit from a high co-financing rate, within the limits laid down in Article 15 of Regulation (EC) No 861/2006.

- (9) In order to qualify for the contribution, automatic localisation devices should satisfy the requirements fixed by Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems ⁽⁴⁾.

- (10) In order to qualify for the contribution, electronic recording and reporting devices on board fishing vessels should satisfy the requirements laid down by Commission Regulation (EC) No 1077/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No 1566/2007 ⁽⁵⁾.

- (11) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

⁽¹⁾ OJ L 160, 14.6.2006, p. 1.

⁽²⁾ OJ L 267, 10.10.2009, p. 20.

⁽³⁾ OJ L 97, 12.4.2007, p. 30.

⁽⁴⁾ OJ L 333, 20.12.2003, p. 17.

⁽⁵⁾ OJ L 295, 4.11.2008, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision provides for a Community financial contribution for 2009 towards expenditure incurred by Member States for 2009 in implementing certain projects on monitoring and control systems applicable to the common fisheries policy (CFP), as referred to in Article 8(a) of Regulation (EC) No 861/2006. It establishes the amount of the Community financial contribution for each Member State, the rate of the Community financial contribution and the conditions on which such contribution may be granted.

Article 2

Closure of outstanding commitments

All payments in respect of which a reimbursement is claimed shall be made by the Member State concerned by 30 June 2013. Payments made by a Member State after that deadline shall not be eligible for reimbursement. Unused budgetary appropriations related to this Decision shall be de-committed at the latest by 31 December 2014.

Article 3

New technologies and IT networks

1. Expenditure incurred, in respect of projects referred to in Annex I, on the purchase of, installation and technical assistance for, computer technology and setting up of IT networks in order to allow efficient and secure data exchange in connection with monitoring, control and surveillance of fisheries activities shall qualify for a financial contribution of 50 % of the eligible expenditure, within the limits laid down in that Annex.

2. In case of expenditure under Annex I that is related to vessel monitoring system (VMS), electronic recording and reporting systems (ERS) or illegal, unreported and unregulated (IUU) fishing, the co-finance rate referred to in paragraph 1 is set at 95 %.

Article 4

Automatic localisation devices

1. Expenditure incurred, in respect of projects referred to in Annex II, on the purchase and fitting on board of fishing vessels of automatic localisation devices enabling vessels to be monitored at a distance by a fisheries monitoring centre through a VMS shall qualify for a financial contribution of 95 % of the eligible expenditure, within the limits established in that Annex.

2. The financial contribution referred to in paragraph 1 shall be limited to EUR 1 500 per vessel.

3. In order to qualify for the financial contribution referred to in paragraph 1, automatic localisation devices shall satisfy the requirements laid down in Regulation (EC) No 2244/2003.

Article 5

Electronic recording and reporting systems

Expenditure incurred, in respect of projects referred to in Annex III, on the development, purchase, and installation of, as well as technical assistance for, the components necessary for ERS, in order to allow efficient and secure data exchange related to monitoring, control and surveillance of fisheries activities, shall qualify for a financial contribution of 95 % of the eligible expenditure, within the limits laid down in that Annex.

Article 6

Electronic recording and reporting devices

1. Expenditure incurred, in respect of projects referred to in Annex IV, on the purchase and fitting on board of fishing vessels of ERS devices enabling vessels to record and report electronically to a Fisheries Monitoring Centre data on fisheries activities, shall qualify for a financial contribution of 95 % of the eligible expenditure, within the limits established in that Annex.

2. The financial contribution referred to in paragraph 1 shall be limited to EUR 3 000 per vessel, without prejudice to paragraph 4.

3. In order to qualify for a financial contribution, ERS devices shall satisfy the requirements established pursuant to Regulation (EC) No 1077/2008.

4. In case of devices combining ERS and VMS functions, and fulfilling the requirements laid down in Regulations (EC) No 2244/2003 and (EC) No 1077/2008, the financial contribution referred to in paragraph 1 of this Article shall be limited to EUR 4 500.

Article 7

Training and exchange programmes

1. Expenditure incurred, in respect of projects referred to in Annex V, on training and exchange programmes of civil servants responsible for monitoring, control and surveillance tasks in the fisheries area shall qualify for a financial contribution of 50 % of the eligible expenditure, within the limits laid down in that Annex.

2. In case of expenditure under Annex V that takes the form of seminars related to IUU fishing, the co-finance rate referred to in paragraph 1 is set at 95 %.

Article 8

Total maximum Community contribution per Member State

The total planned expenditure, the total expenditure for projects selected under this Decision, and the total maximum Community contribution per Member State allocated under this Decision are as follows:

(in EUR)

Member State	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
Denmark	3 638 843	1 143 733	1 057 867
Germany	2 426 282	1 017 000	828 400
Ireland	1 143 000	800 000	300 000
Greece	2 500 000	907 895	525 000
Spain	10 695 000	3 783 000	2 526 000
Italy	4 990 000	3 140 000	2 897 500
Latvia	15 652	15 652	14 869
Netherlands	1 910 000	450 000	427 500
Portugal	7 439 055	4 171 655	2 635 194
Romania	15 600	15 600	7 800
Sweden	1 550 000	700 000	600 000
United Kingdom	1 153 763	911 161	779 870
Total	37 477 195	17 055 696	12 600 000

Article 9

Addressees

This Decision is addressed to the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Latvia, the Kingdom of the Netherlands, the Portuguese Republic, Romania, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 16 December 2009.

For the Commission

Joe BORG

Member of the Commission

ANNEX I

NEW TECHNOLOGIES AND IT NETWORKS

(in EUR)

Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
Denmark			
DK/09/08	44 000	0	0
DK/09/09	1 333 333	0	0
Sub-Total	1 377 333	0	0
Germany			
DE/09/12	3 782	0	0
DE/09/15	20 000	0	0
DE/09/16	9 000	0	0
DE/09/25	12 000	0	0
DE/09/26	112 500	0	0
DE/09/27	465 000	0	0
Sub-Total	622 282	0	0
Ireland			
IE/09/03	63 000	0	0
Sub-Total	63 000	0	0
Greece			
EL/09/06	1 500 000	750 000	375 000
EL/09/07	1 000 000	157 895	150 000
Sub-Total	2 500 000	907 895	525 000
Netherlands			
NL/09/18	585 000	0	0
NL/09/19	875 000	0	0
Sub-Total	1 460 000	0	0
Portugal			
PT/09/07	1 500 000	0	0
PT/09/08	1 500 800	0	0
PT/09/09	46 600	0	0
PT/09/10	220 000	0	0
Sub-Total	3 267 400	0	0
Romania			
RO/09/04	15 600	15 600	7 800
Sub-Total	15 600	15 600	7 800
Sweden			
SE/09/15	100 000	0	0
SE/09/16	500 000	0	0
SE/09/18	250 000	0	0
Sub-Total	850 000	0	0
United Kingdom			
UK/09/69	9 879	0	0
UK/09/71	1 395	0	0
UK/09/73	5 811	0	0
UK/09/74	6 973	0	0
UK/09/75	51 578	0	0
UK/09/76	5 811	0	0

(in EUR)

Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
UK/09/77	814	0	0
UK/09/78	2 529	0	0
UK/09/79	465	0	0
UK/09/80	5 113	0	0
UK/09/81	5 100	0	0
UK/09/83	7 670	0	0
UK/09/86	11 622	0	0
Sub-Total	114 760	0	0
Total	10 270 375	923 495	532 800

ANNEX II

AUTOMATIC LOCALISATION DEVICES

(in EUR)

Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
Germany			
DE/09/17	48 000	48 000	24 000
DE/09/18	12 000	0	0
DE/09/19	45 000	0	0
DE/09/20	20 000	0	0
DE/09/28	258 000	258 000	129 000
Sub-Total	383 000	306 000	153 000
United Kingdom			
UK/09/72	197 573	197 573	102 000
Sub-Total	197 573	197 573	102 000
Total	580 573	503 573	255 000

ANNEX III

ELECTRONIC RECORDING AND REPORTING SYSTEMS

(in EUR)			
Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
Denmark			
DK/09/11	100 000	0	0
DK/09/12	100 000	0	0
DK/09/13	133 333	0	0
DK/09/14	200 000	0	0
DK/09/15	166 667	0	0
DK/09/16	133 333	0	0
DK/09/17	284 444	0	0
Sub-Total	1 117 777	0	0
Germany			
DE/09/06	350 000	0	0
DE/09/07	50 000	0	0
DE/09/08	60 000	0	0
DE/09/09	30 000	0	0
DE/09/10	100 000	0	0
DE/09/11	120 000	0	0
Sub-Total	710 000	0	0
Ireland			
IE/09/04	80 000	0	0
IE/09/05	200 000	0	0
Sub-Total	280 000	0	0
Latvia			
LV/09/01	15 652	15 652	14 869
Sub-Total	15 652	15 652	14 869
Netherlands			
NL/09/20	450 000	450 000	427 500
Sub-Total	450 000	450 000	427 500
United Kingdom			
UK/09/68	116 220	0	0
UK/09/84	11 622	0	0
Sub-Total	127 842	0	0
Total	2 701 271	465 652	442 369

ANNEX IV

ELECTRONIC RECORDING AND REPORTING DEVICES

		(in EUR)		
Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution	
Denmark				
DK/09/10	1 080 000	1 080 000	1 026 000	
Sub-Total	1 080 000	1 080 000	1 026 000	
Germany				
DE/09/13	84 000	84 000	79 800	
DE/09/21	105 000	105 000	99 700	
DE/09/29	522 000	522 000	495 900	
Sub-Total	711 000	711 000	675 400	
Ireland				
IE/09/06	800 000	800 000	300 000	
Sub-Total	800 000	800 000	300 000	
Spain				
ES/09/36	3 753 000	3 753 000	2 502 000	
ES/09/37	6 912 000	0	0	
Sub-Total	10 665 000	3 753 000	2 502 000	
Italy				
ITA/09/14	4 800 000	2 950 000	2 802 500	
Sub-Total	4 800 000	2 950 000	2 802 500	
Portugal				
PT/09/11	2 091 635	2 091 635	1 224 000	
PT/09/12	1 993 500	1 993 500	1 329 000	
Sub-Total	4 085 135	4 085 135	2 553 000	
Sweden				
SWE/09/17	700 000	700 000	600 000	
Sub-Total	700 000	700 000	600 000	
United Kingdom				
UK/09/70	232 439	232 439	220 800	
UK/09/82	453 256	453 256	430 572	
UK/09/85	27 893	27 893	26 498	
Sub-Total	713 588	713 588	677 870	
Total	23 554 723	14 792 723	11 136 770	

ANNEX V

TRAINING AND EXCHANGE PROGRAMMES

(in EUR)			
Member State and project code	Expenditure planned in the national fisheries control programme	Expenditure for projects selected under this Decision	Community contribution
Denmark			
DK/09/19	63 733	63 733	31 867
Sub-Total	63 733	63 733	31 867
Spain			
ES/09/38	10 000	10 000	5 000
ES/09/39	20 000	20 000	19 000
Sub-Total	30 000	30 000	24 000
Italy			
IT/09/16	100 000	100 000	50 000
IT/09/17	90 000	90 000	45 000
Sub-Total	190 000	190 000	95 000
Portugal			
PT/09/13	86 520	86 520	82 194
Sub-Total	86 520	86 520	82 194
Total	370 253	370 253	233 061

COMMISSION DECISION
of 16 December 2009
amending Decision 2002/622/EC establishing a Radio Spectrum Policy Group
(Text with EEA relevance)
(2009/978/EU)

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

Article 1

Decision 2002/622/EC is amended as follows:

Whereas:

1. Article 2 is replaced by the following:

- (1) Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽¹⁾ has established the regulatory framework in the European Union for radio spectrum policy to ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in the European Union policy areas such as electronic communications, transport and Research and Development. This Decision recalls that the Commission may organise consultations in order to take into account the views of Member States, European Union institutions, industry and of all radio spectrum users involved, both commercial and non-commercial, as well as of other interested parties on technological, market and regulatory developments which may relate to the use of radio spectrum. Pursuant to these provisions, the Commission adopted, on 26 July 2002, Decision 2002/622/EC establishing a radio spectrum policy group ⁽²⁾ (hereinafter 'the Group').

'Article 2

Tasks

The Group shall assist and advise the Commission on radio spectrum policy issues, on coordination of policy approaches, on the preparation of multiannual radio spectrum policy programmes and, where appropriate, on harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.

Furthermore, the Group shall assist the Commission in proposing common policy objectives to the European Parliament and the Council, when necessary for ensuring the effective coordination of the interest of the European Union in international organisations competent in radio spectrum matters.'

- (2) On the occasion of the revision of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ⁽³⁾, it appeared necessary to amend Decision 2002/622/EC in order to adapt the tasks of the Group to this new regulatory framework.
- (3) Decision 2002/622/EC should therefore be amended accordingly,

2. In Article 4, a second subparagraph is inserted:

'Following a request of the European Parliament and/or the Council to the European Commission for an opinion or a report of the Group on radio spectrum policy issues relating to electronic communications, the Group shall adopt, according to the same rules as in the preceding subparagraph, such an opinion or report. Those opinions and reports shall be transmitted by the Commission to the institution which so requests. Where appropriate, they may be in the form of oral presentation to the European Parliament and/or the Council by the chairman of the group or a member nominated by the Group.'

⁽¹⁾ OJ L 108, 24.4.2002, p. 1

⁽²⁾ OJ L 198, 27.7.2002, p. 49.

⁽³⁾ OJ L 108, 24.4.2002, p. 33.

*Article 2***Entry into Force**

This Decision shall enter into force on the 20th day after its publication in the *Official Journal of the European Union*.

Done at Brussels, 16 December 2009.

For the Commission

The President

José Manuel BARROSO

COMMISSION DECISION

of 17 December 2009

approving the national programme presented by Bulgaria for controlling and monitoring transport conditions of live bovine animals exported from the Union via Bourgas port and the financial contribution from the Union for 2010

*(notified under document C(2009) 10004)***(Only the Bulgarian text is authentic)**

(2009/979/EU)

THE EUROPEAN COMMISSION,

by all the appropriate financial information, designed to improve its control system.

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field ⁽¹⁾, and in particular Article 37 thereof,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ (hereinafter referred to as the 'Financial Regulation'), and in particular Article 75 thereof,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾ (hereinafter referred to as the 'Implementing Rules'), and in particular Article 90 thereof,

Whereas:

(1) Decision 2009/470/EC lays down the procedures governing the Community's financial contribution on expenditure in the veterinary field.

(2) In particular, Article 37(1) of Decision 2009/470/EC provides that should a Member State experience, from a structural or geographical point of view, staffing or infrastructure problems in implementing the control strategy brought about the functioning of the internal market for live animals, it may for a transitional period, obtain Community financial assistance. In addition, Article 37(2) of Decision 2009/470/EC provides that the Member State concerned shall submit to the Commission a national programme, accompanied

(3) The functioning of the internal market requires a harmonised control system for live animals including those being exported to third countries. It is appropriate to facilitate the implementation of that strategy by providing for a Union financial contribution towards the implementation of this strategy.

(4) Commission Regulation (EC) No 639/2003 of 9 April 2003 laying down detailed rules pursuant to Council Regulation (EC) No 1254/1999 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport ⁽⁴⁾ provides that the exit of the animals from the customs territory of the Union may take place through an exit point where the official veterinarian shall verify for those animals for which an export declaration is accepted whether the requirements laid down in Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 ⁽⁵⁾ have been complied with from the place of departure until the exit point and that the transport conditions for the rest of the journey comply with the provisions of Regulation (EC) No 1/2005.

(5) Regulation (EC) No 1/2005 provides that where animals are presented at exit points, official veterinarians of the Member States shall check that the animals are transported in compliance with this Regulation. Where the competent authority considers that animals are not fit to complete their journey, they shall be unloaded, watered, fed and rested in a control post.

(6) Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for control posts and amending the route plan referred to in the Annex to Directive 91/628/EEC ⁽⁶⁾ lays down the criteria applicable throughout the Community to be met by control posts so as to ensure the optimum welfare conditions for the animals passing through them and also to provide for certain incidental animal health matters.

⁽¹⁾ OJ L 155, 18.6.2009, p. 30.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ OJ L 357, 31.12.2002, p. 1.

⁽⁴⁾ OJ L 93, 10.4.2003, p. 10.

⁽⁵⁾ OJ L 3, 5.1.2005, p. 1.

⁽⁶⁾ OJ L 174, 2.7.1997, p. 1.

- (7) Bulgaria has experienced staffing and infrastructure problems at the exit point of Bourgas port in implementing the veterinary checks, required within the Community by Article 21 of Regulation (EC) No 1/2005 and Article 2 of Regulation (EC) No 639/2003, on live bovine animals exported via this port. In particular, there are neither facilities for official veterinarians to inspect live bovine animals nor an approved control post in accordance with Regulation (EC) No 1255/97 in the immediate vicinity of the port where the animals can be unloaded, watered, fed and rested if they are unfit to pursue their journey or if they cannot be transported within the journey times laid down in Regulation (EC) No 1/2005.
- (8) On 17 September 2009, Bulgaria submitted to the Commission a programme for controlling and monitoring transport conditions of live bovine animals exported from the Union via Bourgas port for 2010 for which Bulgaria wishes to receive a financial contribution from the Union.
- (9) The Commission has assessed the programme submitted by Bulgaria for 2010 from both the veterinary and the financial point of view. This programme was found to comply with the relevant Union veterinary legislation and in particular with the criteria set out in Article 21(3) of Regulation (EC) No 1/2005 and in the Annex to Regulation (EC) No 1255/97.
- (10) 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 national programme, presented by Bulgaria on 17 September 2009 to control and monitor transport conditions of live bovine animals exported from the Union via Bourgas port for 2010 is hereby approved for the period from 1 January 2010 to 31 December 2010. The present Decision constitutes a financing decision within the meaning of Article 75 of the Financial Regulation.

Article 2

The financial contribution by the Union shall be at the rate of 80 % of the design and construction costs to be incurred by Bulgaria for the building of inspection facilities and a control post with a capacity of 120 to 140 bovine animals at Bourgas port.

The financial contribution shall not exceed EUR 152 000, to be financed from the following Budgetary Line of the General Budget of the European Union for 2010, subject to its adoption:

— Budgetary Line No 17 04 02.

Article 3

1. The expenditure submitted by Bulgaria for a financial contribution by the Union shall be expressed in euro and shall exclude value added tax and other taxes.

2. Where Bulgaria's expenditure is in a currency other than the euro, Bulgaria shall convert it into euro by applying the most recent exchange rate set by the European Central Bank prior to the first day of the month in which the application for payment is submitted by Bulgaria.

Article 4

1. The financial contribution by the Union for the national programme referred to in Article 1 shall be granted provided that Bulgaria:

- (a) implements the programme in accordance with the relevant provisions of Union law, including rules on competition and on the award of public contracts;
- (b) forwards to the Commission at the latest by 31 July 2010 the intermediate technical and financial reports for the programme referred to in Article 1, in accordance with Article 27(7)(a) of Decision 2009/470/EC;
- (c) forwards to the Commission, in accordance with Article 27(7)(b) of Decision 2009/470/EC, by 30 April 2011 at the latest a final detailed technical report including the assessment of the results achieved and a detailed account of expenditure incurred from 1 January 2010 to 31 December 2010;
- (d) forwards to the Commission, in accordance with Article 27(8) of Decision 2009/470/EC, by 30 April 2011 at the latest, the payment application related to the expenditure incurred in respect of the programme submitted on 17 September 2009;
- (e) does not, for the programme referred to in Article 1, submit further requests for other Union contributions for these measures, and has not previously submitted such requests.

2. In case of late applications, the reductions of the financial contribution foreseen in Article 27(8) of Decision 2009/470/EC are applicable.

Article 5

This Decision shall apply from 1 January 2010.

Article 6

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 17 December 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

COMMISSION DECISION

of 17 December 2009

authorising a health claim on the effect of water-soluble tomato concentrate on platelet aggregation and granting the protection of proprietary data under Regulation (EC) No 1924/2006 of the European Parliament and of the Council

*(notified under document C(2009) 10113)***(Only the English text is authentic)****(Text with EEA relevance)**

(2009/980/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 18(4) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on food are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority'.
- (3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission and to deliver an opinion on a health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) In order to stimulate innovation, health claims which are based on newly developed scientific evidence and/or which include a request for the protection of proprietary data shall undergo an accelerated type of authorisation. Where at the applicant's request for the protection of proprietary data, the Commission proposes to restrict the use of such data in favour of the applicant, such restriction shall, in accordance with Article 21 of Regulation (EC) No 1924/2006 expire after 5 years.
- (6) Following an application from Provexis Natural Products Ltd, submitted on 7 January 2009 pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of water-soluble tomato concentrate (WSTC) I and II on the blood platelet activity in healthy people (Question No EFSA-Q-2009-00229) ⁽²⁾. The claim proposed by the applicant was worded as follows: 'Helps to maintain a healthy blood flow and benefits circulation'.
- (7) On 28 May 2009, the Commission and the Member States received the scientific opinion from the Authority which concluded that on the basis of the data presented, a cause and effect relationship had been established between the consumption of WSTC I and II and helping to maintain normal platelet aggregation. Subject to a revised wording, taking into account in particular the requirement referred to Article 5(2) of Regulation (EC) No 1924/2006, the claim should be considered as complying with the requirements of Regulation (EC) No 1924/2006, and it should be included in the Community list of permitted claims.
- (8) One of the objectives of the Regulation (EC) No 1924/2006 is to ensure that health claims are truthful, clear and reliable and useful to the consumer, and that wording and presentation are taken into account in that respect. Therefore, where the wording of claims used by the applicant has the same meaning for consumers as that of an authorised health claim, because they demonstrate the same relationship that exists between a food category, a food or one of its constituents and health, they should be subject to the same conditions of use, as indicated in the Annex to the present Decision.
- (9) The Authority indicated in its opinion that its conclusions could not have been reached without considering the nine studies claimed by the applicant as proprietary.

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ *The EFSA Journal* (2009) 1101, pp. 1-15.

- (10) Following the receipt of the Authority's opinion, the Commission went back to the applicant for further clarification on the justification provided regarding the nine studies claimed as proprietary and in particular regarding the '*exclusive right of reference*' as referred to in Article 21(1)(b) of Regulation (EC) No 1924/2006. All the justifiable information provided by the applicant has been assessed. For the seven unpublished studies it is considered that the requirements laid down in Article 21(1) of Regulation (EC) No 1924/2006 are fulfilled. Accordingly, the scientific data and other information included in the seven studies may not be used for the benefit of a subsequent applicant for a period of 5 years from the date of authorisation, under the conditions laid down in Article 21(1) of that Regulation. For the two studies, which had been published prior to the submission of the application for authorisation of the health claim⁽¹⁾, it is considered that as the studies have been published and made available to the public domain, their protection is not justified in the light of the objectives of Regulation (EC) No 1924/2006 among which to protect the investment made by innovators in gathering the information and data supporting an application under that Regulation and accordingly it should not be granted.
- (11) The comments from the applicant received by the Commission, pursuant to Article 16(6) of Regulation (EC) No 1924/2006, have been considered when setting the measures provided for in this Decision.
- (12) The Member States have been consulted,

HAS ADOPTED THIS DECISION:

Article 1

The health claim set out in the Annex to this Decision shall be included in the Community list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

Article 2

The scientific data and other information included in the studies identified in the Annex to this Decision shall be restricted for use for the benefit of the applicant for a period of 5 years from the date of authorisation under the conditions laid down in Article 21(1) of Regulation (EC) No 1924/2006.

Article 3

This Decision is addressed to Provexis Natural Products Ltd, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB, United Kingdom.

Done at Brussels, 17 December 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ O'Kennedy, N., Crosbie, L., Whelam, S., Luther, V., Horgan, G., Broom, J.I., Webb, D.J., Duttaroy, A.K., *Effects of tomato extract on platelet function: a double-blinded crossover study in healthy humans*, The American Journal of Clinical Nutrition, 2006, Vol. 84, pp. 561-569 and O'Kennedy N., Crosbie, L., van Lieshout, M., Broom, J.I., Webb, D.J., Duttaroy, A.K., *Effects of antiplatelet components of tomato extract on platelet function in vitro and ex vivo: a time-course cannulation study in healthy humans*. The American Journal of Clinical Nutrition, 2006, Vol. 84, pp. 570-579.

ANNEX

Applicant — Address	Nutrient, substance, food or food category	Claim	Conditions of use of the claim	Conditions and/or restrictions of use of the food and/or additional statement or warning	Proprietary data restricted for use for the benefit of the applicant	EFSA opinion reference
Proxavis Natural Products Ltd, Thames Court, 1 Victoria Street, Windsor, Berkshire, SL4 1YB, United Kingdom	Water-Soluble Tomato Concentrate (WSTC) I and II	Water-Soluble Tomato Concentrate (WSTC) I and II helps maintain normal platelet aggregation, which contributes to healthy blood flow	Information to the consumer that the beneficial effect is obtained with a daily consumption of 3g WSTC I or 150 mg WSTC II in up to 250 ml of either fruit juices, flavoured drinks or yogurt drinks (unless heavily pasteurised)		<ol style="list-style-type: none"> 1. O'Kennedy, N., Crosbie, L., van Lieshout M., Broom J.L., Webb, D.J., Duttaroy, A.K., 2003a. <i>Persistence of the antiplatelet effect of a single dose of WSTC equivalent to 2 fresh tomatoes over a 24-hour timecourse</i>. REC No 02/0269 2. O'Kennedy et al. 2003b. A 42-day randomised, controlled and double-blinded crossover study to evaluate effects of daily WSTC consumption on platelet function, coagulation and some baseline CVD risk markers. REC No 03/0177. 3. O'Kennedy et al. 2005. <i>Effects of overconsuming Sirco®, a one-a-day fruit juice drink containing 12g/L WSTC, on platelet function in healthy subjects</i>. REC No 05/S0802/77. 4. O'Kennedy et al. 2006c. <i>A pilot study to compare the antiplatelet effects of WSTC in healthy subjects, after consumption in two different food matrices</i>. REC No 06/S0802/60. 5. O'Kennedy et al. 2007. <i>A randomised, controlled and double-blinded crossover study to compare the antiplatelet effects of three different formats of WSTC in healthy humans</i>. REC No 07/S0801/13. 6. Song, V., Sheddon, A., Horgan, G. and O'Kennedy, N. <i>Anticoagulatory and anti-inflammatory activities of WSTC in platelets and endothelial cells</i>. Manuscript for submission; 2008. 7. Zhang, F., Song, V., Neascu, M., Crosbie, L., Duncan, G., Horgan, G., de Roos, B. and O'Kennedy, N. <i>Flow cytometric and proteomic studies examining the effects of WSTC on platelet function in vitro</i>. Unpublished, 2007/2008. 	Q-2009-00229

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1194/2009 of 30 November 2009 amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances as well as for certification of design and production organisations**

(Official Journal of the European Union L 321 of 8 December 2009)

On page 19, Annex, point 39(c):

for: '(c) Action shall be taken by the competent authority to suspend the approval in whole or in part in case of failure to comply within the timescale granted by the competent authority.';

read: '(c) For a new aircraft or used aircraft originating from a non-member State, in addition to the appropriate airworthiness certificate referred to in point (a) or (b), the competent authority of the Member State of registry shall issue an initial airworthiness review certificate (EASA Form 15a, see Appendix).';

2009/977/EU:

- ★ **Commission Decision of 16 December 2009 on a Community financial contribution for 2009 towards expenditure incurred by Member States for certain projects in the field of fisheries control, inspection and surveillance** (notified under document C(2009) 9935) 42

2009/978/EU:

- ★ **Commission Decision of 16 December 2009 amending Decision 2002/622/EC establishing a Radio Spectrum Policy Group** ⁽¹⁾ 50

2009/979/EU:

- ★ **Commission Decision of 17 December 2009 approving the national programme presented by Bulgaria for controlling and monitoring transport conditions of live bovine animals exported from the Union via Bourgas port and the financial contribution from the Union for 2010** (notified under document C(2009) 10004)..... 52

2009/980/EU:

- ★ **Commission Decision of 17 December 2009 authorising a health claim on the effect of water-soluble tomato concentrate on platelet aggregation and granting the protection of proprietary data under Regulation (EC) No 1924/2006 of the European Parliament and of the Council** (notified under document C(2009) 10113) ⁽¹⁾ 55

Corrigenda

- ★ **Corrigendum to Commission Regulation (EC) No 1194/2009 of 30 November 2009 amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances as well as for certification of design and production organisations** (OJ L 321, 8.12.2009) 58



⁽¹⁾ Text with EEA relevance

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