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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2013/2005**of 9 December 2005****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 10 December 2005.

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

Done at Brussels, 9 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

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

ANNEX

to Commission Regulation of 9 December 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	124,3
	204	48,4
	212	90,9
	999	87,9
0707 00 05	052	114,6
	204	58,0
	220	147,3
	999	106,6
0709 90 70	052	137,4
	204	95,4
	999	116,4
0805 10 20	052	72,7
	204	70,8
	382	31,4
	388	22,0
	508	13,2
	524	38,5
	999	41,4
0805 20 10	052	73,9
	204	66,4
	999	70,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	74,4
	400	78,4
	624	80,1
	999	77,6
0805 50 10	052	65,1
	999	65,1
0808 10 80	400	107,7
	404	89,1
	720	74,1
	999	90,3
0808 20 50	052	104,1
	400	125,5
	720	63,1
	999	97,6

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

COMMISSION REGULATION (EC) No 2014/2005**of 9 December 2005****on licences under the arrangements for importing bananas into the Community in respect of bananas released into free circulation at the common customs tariff rate of duty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EC) No 1964/2005 of 2 December 2005 on the tariff rates for bananas ⁽¹⁾, and in particular Article 2 thereof,

1. The release into free circulation of bananas falling within CN code 0803 00 19 at the common customs tariff rate of duty shall be subject to the presentation of an import licence issued by the Member States to any party applying therefor, irrespective of their place of establishment in the Community.

Whereas:

2. The issue of import licences shall be subject to the provision of a security in accordance with Title III of Commission Regulation (EEC) No 2220/85 ⁽³⁾ guaranteeing compliance with the commitment to import during the period of validity of the licence. The security shall be EUR 15 per tonne.

(1) Regulation (EC) No 1964/2005 sets the rate of duty applicable from 1 January 2006 to imports into the Community of bananas falling within CN code 0803 00 19.

Save in the case of *force majeure*, the security shall be forfeit in whole or in part if the operation has not been performed or has been performed only partially during that period.

(2) Import arrangements based on the application of a customs duty at an appropriate rate, parallel to the application of a tariff preference in connection with a tariff quota for imports originating in ACP countries, must be accompanied by a mechanism for monitoring imports on a regular basis to ascertain the quantities released into free circulation in the Community. The appropriate instrument for achieving that objective is a mechanism based on issuing import licences subject to the provision of a security to ensure that the operations for which a licence has been applied for are actually performed. Detailed rules for applying such a mechanism as regards imports at the common customs tariff rate of duty should be laid down.

3. Import licence applications shall be lodged in any Member State.

(3) Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of securities for agricultural products ⁽²⁾ is applicable.

4. Licences shall be issued without delay, in accordance with Regulation (EC) No 1291/2000.

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

5. Import licences shall be valid for three months.

Article 2

Member States shall report to the Commission each month, not later than the 10th day, the quantities for which import licences have been issued during the previous month.

⁽¹⁾ OJ L 316, 2.12.2005, p. 1.

⁽²⁾ OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 1856/2005 (OJ L 297, 15.11.2005, p. 7).

⁽³⁾ OJ L 205, 3.8.1985, p. 5.

Article 3

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

It shall apply from 1 January 2006.

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

Done at Brussels, 9 December 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 2015/2005**of 9 December 2005****on imports during January and February 2006 of bananas originating in ACP countries under the tariff quota opened by Council Regulation (EC) No 1964/2005 on the tariff rates for bananas**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rates for bananas ⁽¹⁾, and in particular Article 2 thereof,

Whereas:

- (1) Article 1(2) of Regulation (EC) No 1964/2005 lays down that from 1 January each year, starting with 1 January 2006, an autonomous tariff quota of 775 000 tonnes net weight subject to a zero duty rate is to be opened for imports of bananas (CN code 0803 00 19) originating in ACP countries.
- (2) The establishment of the appropriate instruments for managing the tariff quota for ACP banana imports provided for by Regulation (EC) No 1964/2005 cannot be completed in time before 1 January 2006. The Commission should therefore adopt interim measures for the issue of import licences for January and February 2006 to ensure Community supplies, ensure the continuity of trade with the ACP countries and avoid disruptions of trade flow. These measures are without prejudice to the detailed rules to be adopted later in 2006.
- (3) Under the interim measures, provision should be made for import licences to be issued to operators established in the Community who, as the case may be, obtained a reference quantity as traditional operators, an annual allocation as non-traditional operators under the tariff quotas A/B or C referred to in Article 18(1) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽²⁾, or who, as traditional operators or non-traditional operators, qualified for the additional quantity set by Commission Regulation (EC) No 1892/2004 of 29

October 2004 on transitional measures for 2005 for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia ⁽³⁾ and who actually imported bananas originating in the ACP countries in 2005. Given the temporary nature of these measures, applications lodged by new operators not registered in previous years should not be accepted.

- (4) The allocation of the available quantities for January and February 2006 to the various groups of operators concerned should be based on data relating to the supply of ACP bananas to the Community in 2005. The supply figure was 750 000 tonnes under the tariff quota C reserved for the region in question. The figure for the 'all third countries' tariff quota A/B was 15 000 tonnes. Lastly, 10 000 tonnes of products of ACP origin were released into free circulation in the new Member States.
- (5) In the case of operators who obtained a reference quantity or an annual allocation for 2005 under the tariff quota C of 750 000 tonnes, determined by reference to imports of ACP bananas, licences may be issued on the basis of the reference quantity or annual allocation notified for 2005.
- (6) In the case of operators who obtained a reference quantity or annual allocation for 2005 under either the tariff quotas A/B or the accession-related additional quantity set by Regulation (EC) No 1892/2004, on the basis of imports of products from all third countries, not specifically products originating in ACP countries, provision should be made for licence applications to be accompanied by proof of actual import of products originating in ACP countries in 2005. The lodging of applications for quantities unrelated to imports of products from the origin in question during 2005 should be prevented. In the interests of management and monitoring, the number of applications per operator should be restricted.
- (7) However, to help improve the fluidity of trade flows and give operators greater flexibility of action, a ceiling should not be set on the quantity for which a licence application may be lodged.

⁽¹⁾ OJ L 316, 2.12.2005, p. 1.

⁽²⁾ OJ L 47, 25.2.1993, p. 1. Regulation as last amended by the 2003 Act of Accession.

⁽³⁾ OJ L 328, 30.10.2004, p. 50.

- (8) Licences should be issued in proportion to the quantities requested, in accordance with the simultaneous examination method.
- (9) Appropriate detailed rules should therefore be adopted.
- (10) To enable licence applications to be lodged in time, this Regulation should enter into force immediately.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

Subject

This Regulation lays down the conditions for the issue of import licences for bananas falling under CN code 0803 00 19 originating in the ACP countries under the tariff quota referred to in Article 1(2) of Regulation (EC) No 1964/2005, for January and February 2006.

Article 2

Quantities available for January and February 2006

For January and February 2006,

- a quantity of 135 000 tonnes shall be available for the issue of import licences to operators referred to in Title II. This tariff quota's serial number shall be 09.4160,
- a quantity of 25 000 tonnes shall be available for the issue of import licences to operators referred to in Title III. This tariff quota's serial number shall be 09.4162.

TITLE II

Operators registered under tariff quota C, referred to in Article 18(1) of Regulation (EEC) No 404/93, for 2005

Article 3

Lodging of licence applications

For January and February 2006, each traditional operator C and each non-traditional operator C, as referred to in Article 3(3)

and Article 7(1) of Commission Regulation (EC) No 896/2001⁽¹⁾ respectively, may lodge one or more import licence applications for up to a maximum, as the case may be, of

— in the case of traditional operators C, the reference quantity established and notified in respect of 2005 under tariff quota C, pursuant to Article 5(4) of Regulation (EC) No 896/2001,

— in the case of non-traditional operators C, the quantity established and notified in respect of 2005 under tariff quota C, pursuant to Article 9(3) of Regulation (EC) No 896/2001.

Box 20 of licence applications and licences shall contain the entry 'licence under Title II of Regulation (EC) No .../2005'.

TITLE III

Other operators

Article 4

Lodging of licence applications

1. Operators established in the Community, registered for the quotas A/B referred to in Article 18(1) of Regulation (EEC) No 404/93 or the additional quantity set by Regulation (EC) No 1892/2004, who, in 2005, have released bananas originating in ACP countries into free circulation may lodge a single import licence application in relation to the quantity set in the second indent of Article 2.

2. Licence applications shall be accompanied by a copy of the AGRIM licence or licences used in 2005 to import bananas originating in the ACP countries, duly endorsed, and proof that a security of EUR 150 per tonne has been provided in accordance with Title III of Commission Regulation (EEC) No 2220/85⁽²⁾.

3. Box 20 of licence applications and licences shall contain the entry 'licence under Title III of Regulation (EC) No 2015/2005'.

⁽¹⁾ OJ L 126, 8.5.2001, p. 6. Regulation as last amended by Regulation (EC) No 838/2004 (OJ L 127, 29.4.2004, p. 52).

⁽²⁾ OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 673/2004 (OJ L 105, 14.4.2004, p. 17).

TITLE IV

Common provisions*Article 5***Applications**

1. Import licence applications shall be lodged on 14 and 15 December 2005 with the competent authorities of the Member State which established the reference quantity, in the case of traditional operators, and of the Member State where the operator is registered in the case of non-traditional operators, accompanied by proof that a security has been provided for an amount of EUR 150 per tonne under Title III of Regulation (EEC) No 2220/85.

2. Applications which are not submitted in accordance with Articles 3 and 4 shall not be admissible.

*Article 6***Issuing of licences**

1. Member States shall notify the Commission not later than 19 December 2005 of the total quantity for which admissible licence applications have been lodged, giving separate figures for the operators referred to in Title II and those referred to in Title III.

2. In the light of the notifications under paragraph 1 and having regard to the quantity set in Article 2, the Commission shall, if appropriate, set reduction coefficients to be applied to each licence application in the case of the operators referred to in Title II and Title III respectively.

3. The competent authorities shall issue import licences, where appropriate applying the reduction coefficients referred to in paragraph 2.

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

Done at Brussels, 9 December 2005.

4. Where, in cases in which paragraph 3 applies, the licence is issued for a quantity less than the quantity requested, the security referred to in Article 4(3) shall be released without delay for the quantity not awarded.

TITLE V

Final provisions*Article 7***Period of validity and charging of licences**

1. Import licences shall be valid for release into free circulation from 1 January 2006 to 7 April 2006.

2. The quantities for which licences have been used under this Regulation shall be taken into account for the administration of the tariff quota provided for in Article 1(2) of Regulation (EC) No 1964/2005 and, where appropriate, charged to the allocations to be granted to operators subsequently for 2006 under that tariff quota.

*Article 8***Notifications**

Member States shall notify the Commission not later than 31 January 2006 of the quantities for which licences have been issued, a clear distinction being made between quantities issued to operators referred to in Title II and operators referred to in Title III.

*Article 9***Entry into force**

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

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 2016/2005

of 9 December 2005

laying down detailed rules for the application in 2006 of the tariff quotas for 'baby beef' products originating in Croatia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular the first subparagraph of Article 32(1) thereof,

Whereas:

- (1) Article 4(2) of Council Regulation (EC) No 2007/2000 of 18 September 2000 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, amending Regulation (EC) No 2820/98, and repealing Regulations (EC) No 1763/1999 and (EC) No 6/2000 ⁽²⁾, provides for an annual preferential tariff quota of 11 475 tonnes of 'baby beef', distributed among Bosnia and Herzegovina and Serbia and Montenegro including Kosovo.
- (2) The Interim Agreement with Croatia, approved by Council Decision 2002/107/EC of 28 January 2002 on the conclusion of an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part ⁽³⁾, and the Stabilisation and Association Agreement with the former Yugoslav Republic of Macedonia, approved by Council and Commission Decision 2004/239/EC, Euratom of 23 February 2004 concerning the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part ⁽⁴⁾, lay down annual preferential tariff quotas of 9 400 tonnes and 1 650 tonnes respectively.
- (3) Article 2 of Council Regulation (EC) No 2248/2001 of 19 November 2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part and for applying the Interim Agreement between the European Community and the Republic of Croatia ⁽⁵⁾ and Article 2 of Council Regulation (EC) No 153/2002 of 21 January 2002 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the former Yugoslav Republic of Macedonia ⁽⁶⁾ provide that detailed rules for the implementation of concessions on 'baby beef' should be laid down.
- (4) For control purposes, Regulation (EC) No 2007/2000 makes imports under the quotas of 'baby beef' for Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo, subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex II to that Regulation. For the sake of harmonisation, imports under the quotas of 'baby beef' originating in Croatia and the former Yugoslav Republic of Macedonia should also be made subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex III to the Stabilisation and Association Agreement with the former Yugoslav Republic of Macedonia and the Interim Agreement with Croatia. A model should also be established for the certificates of authenticity and detailed rules laid down for their use.
- (5) Kosovo, as defined by United Nations Security Council Resolution 1244 of 10 June 1999, is subject to an international civil administration by the United Nations Mission in Kosovo (UNMIK), which has also set up a separate customs service. There should therefore also be a specific certificate of authenticity for goods originating in the Serbia Montenegro/Kosovo.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 240, 23.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 1946/2005 (OJ L 312, 29.11.2005, p. 1).

⁽³⁾ OJ L 40, 12.2.2002, p. 9.

⁽⁴⁾ OJ L 84, 20.3.2004, p. 1.

⁽⁵⁾ OJ L 304, 21.11.2001, p. 1. Regulation as amended by Regulation (EC) No 2/2003 (OJ L 1, 4.1.2003, p. 26).

⁽⁶⁾ OJ L 25, 29.1.2002, p. 16. Regulation as amended by Regulation (EC) No 3/2003 (OJ L 1, 4.1.2003, p. 30).

- (6) The quotas concerned should be managed through the use of import licences. To this end, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽¹⁾, and Commission Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 ⁽²⁾, should be applicable subject to this Regulation.
- (7) In order to ensure proper management of imports of the products concerned, import licences should be issued subject to verification, in particular of entries on certificates of authenticity.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

1. The following tariff quotas are hereby opened for the period from 1 January to 31 December 2006:

- (a) 9 400 tonnes of 'baby beef', expressed in carcass weight, originating in Croatia;
- (b) 1 500 tonnes of 'baby beef', expressed in carcass weight, originating in Bosnia and Herzegovina;
- (c) 1 650 tonnes of 'baby beef', expressed in carcass weight, originating in the former Yugoslav Republic of Macedonia;
- (d) 9 975 tonnes of 'baby beef', expressed in carcass weight, originating in Serbia and Montenegro including Kosovo.

The quotas referred to in the first subparagraph shall bear the order Nos 09.4503, 09.4504, 09.4505 and 09.4506 respectively.

For the purposes of attributing those quotas, 100 kilograms live weight shall be equivalent to 50 kilograms carcass weight.

⁽¹⁾ OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 1856/2005 (OJ L 297, 15.11.2005, p. 7).

⁽²⁾ OJ L 143, 27.6.1995, p. 35. Regulation as last amended by Regulation (EC) No 1118/2004 (OJ L 217, 17.6.2004, p. 10).

2. The customs duty applicable under the quotas referred to in paragraph 1 shall be 20 % of the *ad valorem* duty and 20 % of the specific duty as laid down in the Common Customs Tariff.

3. Importation under the quotas referred to in paragraph 1 shall be reserved for certain live animals and certain meat falling within the following CN codes, referred to in Annex II to Regulation (EC) No 2007/2000 and in Annex III to the Interim Agreements concluded with Croatia and the Stabilisation and Association Agreement concluded with the former Yugoslav Republic of Macedonia:

— ex 0102 90 51, ex 0102 90 59, ex 0102 90 71 and ex 0102 90 79,

— ex 0201 10 00 and ex 0201 20 20,

— ex 0201 20 30,

— ex 0201 20 50.

Article 2

Save as otherwise provided in this Regulation, Regulations (EC) No 1291/2000 and (EC) No 1445/95 shall apply to importing operations under the quotas referred to in Article 1.

Article 3

1. Imports of the quantities set out in Article 1 shall be subject to presentation, on release for free circulation, of an import licence.

2. Section 8 of licence applications and licences shall show the country or customs territory of origin. Licences shall carry with them an obligation to import from the country or customs territory indicated.

Section 20 of licence applications and licences shall show one of the entries listed in Annex I.

3. The original of the certificate of authenticity drawn up in accordance with Article 4 plus a copy thereof shall be presented to the competent authority together with the application for the first import licence relating to the certificate of authenticity. The original of the certificate of authenticity shall be kept by the competent authority.

Certificates of authenticity may be used for the issue of more than one import licence for quantities not exceeding that shown on the certificate. Where more than one licence is issued in respect of a certificate, the competent authority shall endorse the certificate of authenticity to show the quantity attributed.

4. The competent authorities may issue import licences only after they are satisfied that all the information on the certificate of authenticity corresponds to that received each week from the Commission for the imports concerned. The licences shall be issued immediately thereafter.

Article 4

1. All applications for imports licences under the quotas referred to in Article 1 shall be accompanied by a certificate of authenticity issued by the authorities of the exporting country or customs territory listed in Annex VII attesting that the goods originate in that country or customs territory and that they correspond to the definition given, as the case may be, in Annex II to Regulation (EC) No 2007/2000 or Annex III to the Stabilisation and Association Agreement and the Interim Agreement referred to in Article 1(3).

2. Certificates of authenticity shall be made out in one original and two copies, to be printed and completed in one of the official languages of the Community, in accordance with the relevant model in Annexes II to VI for the exporting countries and the customs territory concerned. They may also be printed and completed in the official language or one of the official languages of the exporting country or customs territory.

The competent authorities of the Member State in which the import licence application is submitted may require a translation of the certificate to be provided.

3. The original and copies of the certificate of authenticity may be typed or hand-written. In the latter case, they shall be completed in black ink and in block capitals.

The certificate forms shall measure 210 × 297 mm. The paper used shall weigh not less than 40 g/m². The original shall be white, the first copy pink and the second copy yellow.

4. Each certificate shall have its own individual serial number followed by the name of the issuing country or customs territory.

The copies shall bear the same serial number and the same name as the original.

5. Certificates shall be valid only if they are duly endorsed by an issuing authority listed in Annex VII.

6. Certificates shall be deemed to have been duly endorsed if they state the date and place of issue and if they bear the stamp of the issuing authority and the signature of the person or persons empowered to sign them.

Article 5

1. The issuing authorities listed in Annex VII shall:

(a) be recognised as such by the exporting country or customs territory concerned;

(b) undertake to verify entries on the certificates;

(c) undertake to forward to the Commission at least once a week any information enabling the entries on the certificates of authenticity to be verified, in particular with regard to the number of the certificate, the exporter, the consignee, the country of destination, the product (live animals/meat), the net weight and the date of signature.

2. The list in Annex VII shall be revised by the Commission where the requirement referred to in paragraph 1(a) is no longer met, where an issuing authority fails to fulfil one or more of the obligations incumbent on it or where a new issuing authority is designated.

Article 6

Certificates of authenticity and import licences shall be valid for three months from their respective dates of issue. However, their term of validity shall expire on 31 December 2006.

Article 7

The exporting countries and the custom territory concerned shall communicate to the Commission specimens of the stamp imprints used by their issuing authorities and the names and signatures of the persons empowered to sign certificates of authenticity. The Commission shall communicate that information to the competent authorities of the Member States.

Article 8

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

It shall apply from 1 January 2006.

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

Done at Brussels, 9 December 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX I

Entries referred to in Article 3(2)

- *in Spanish:* 'Baby beef' [Reglamento (CE) n° 2016/2005]
 - *in Czech:* 'Baby beef' (Nařízení (ES) č. 2016/2005)
 - *in Danish:* 'Baby beef' (Forordning (EF) nr. 2016/2005)
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 - *in English:* 'Baby beef' (Regulation (EC) No 2016/2005)
 - *in French:* 'Baby beef' [Règlement (CE) n° 2016/2005]
 - *in Italian:* 'Baby beef' [Regolamento (CE) n. 2016/2005]
 - *in Latvian:* 'Baby beef' (Regula (EK) Nr. 2016/2005)
 - *in Lithuanian:* 'Baby beef' (Reglamentas (EB) Nr. 2016/2005)
 - *in Hungarian:* 'Baby beef' (2016/2005/EK rendelet)
 - *in Maltese:* 'Baby beef' (Regolament (KE) Nru 2016/2005)
 - *in Dutch:* 'Baby beef' (Verordening (EG) nr. 2016/2005)
 - *in Polish:* 'Baby beef' (Rozporządzenie (WE) nr 2016/2005)
 - *in Portuguese:* 'Baby beef' [Regulamento (CE) n.º 2016/2005]
 - *in Slovak:* 'Baby beef' [Nariadenie (ES) č. 2016/2005]
 - *in Slovenian:* 'Baby beef' (Uredba (ES) št. 2016/2005)
 - *in Finnish:* 'Baby beef' (Asetus (EY) N:o 2016/2005)
 - *in Swedish:* 'Baby beef' (Förordning (EG) nr 2016/2005)
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ANNEX II

1. Consignor (full name and address)	CERTIFICATE No 0000 ORIGINAL CROATIA		
2. Consignee (full name and address)	CERTIFICATE OF AUTHENTICITY for exports to the EC of bovine animals and meat of bovine animals (application of Regulation (EC) No 2016/2005)		
NOTES A. This certificate shall be prepared in one original and two copies. B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.			
3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods	4. Combined Nomenclature code	5. Gross weight (kg)	6. Net weight (kg)
7. Net weight (kg) (in words)			
8. I, the undersigned, acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at, in accordance with the attached veterinary certificate of, originate in and come from the Republic of Croatia and correspond exactly to the definition contained in Annex III to the Interim Agreement set out in Decision 2002/107/EC (OJ L 40, 12.2.2002, p. 9).			
9. Authorised issuing body	Place:	Date:	
	(Stamp of issuing body)	 (signature)	

ANNEX III

1. Consignor (full name and address)	CERTIFICATE No 0000 ORIGINAL BOSNIA and HERZEGOVINA		
2. Consignee (full name and address)	CERTIFICATE OF AUTHENTICITY for exports to the EC of bovine animals and meat of bovine animals (application of Regulation (EC) No 2016/2005)		
NOTES A. This certificate shall be prepared in one original and two copies. B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.			
3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods	4. Combined Nomenclature code	5. Gross weight (kg)	6. Net weight (kg)
7. Net weight (kg) (in words)			
8. I, the undersigned, acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at, in accordance with the attached veterinary certificate of, originate in and come from the Republic of Bosnia and Herzegovina and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).			
9. Authorised issuing body	Place:	Date:	
	(Stamp of issuing body)	 (signature)	

ANNEX IV

1. Consignor (full name and address)	CERTIFICATE No 0000 ORIGINAL THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA		
2. Consignee (full name and address)	CERTIFICATE OF AUTHENTICITY for exports to the EC of bovine animals and meat of bovine animals (application of Regulation (EC) No 2016/2005)		
NOTES A. This certificate shall be prepared in one original and two copies. B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.			
3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods	4. Combined Nomenclature code	5. Gross weight (kg)	6. Net weight (kg)
7. Net weight (kg) (in words)			
8. I, the undersigned, acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at, in accordance with the attached veterinary certificate of, originate in and come from the former Yugoslav Republic of Macedonia and correspond exactly to the definition contained in Annex III to the Stabilisation and Association Agreement set out in Decision 2004/239/EC, Euratom (OJ L 84, 20.3.2004, p. 1).			
9. Authorised issuing body	Place:	Date:	
	(Stamp of issuing body)	 (signature)	

ANNEX V

1. Consignor (full name and address)		CERTIFICATE No 0000 ORIGINAL SERBIA AND MONTENEGRO ⁽¹⁾	
2. Consignee (full name and address)		CERTIFICATE OF AUTHENTICITY for exports to the EC of bovine animals and meat of bovine animals (application of Regulation (EC) No 2016/2005)	
NOTES A. This certificate shall be prepared in one original and two copies. B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.			
3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods	4. Combined Nomenclature code	5. Gross weight (kg)	6. Net weight (kg)
7. Net weight (kg) (in words)			
8. I, the undersigned, acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at, in accordance with the attached veterinary certificate of, originate in and come from Serbia and Montenegro and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).			
9. Authorised issuing body	Place:	Date:	
	(Stamp of issuing body)	 (signature)	

⁽¹⁾ Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

ANNEX VI

1. Consignor (full name and address)	CERTIFICATE No 0000 ORIGINAL International civil administration of the United Nations Mission in Kosovo (UNMIK)		
2. Consignee (full name and address)	CERTIFICATE OF AUTHENTICITY for exports to the EC of bovine animals and meat of bovine animals (application of Regulation (EC) No 2016/2005)		
NOTES A. This certificate shall be prepared in one original and two copies. B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in black ink and in block capitals.			
3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods	4. Combined Nomenclature code	5. Gross weight (kg)	6. Net weight (kg)
7. Net weight (kg) (in words)			
8. I, the undersigned, acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at, in accordance with the attached veterinary certificate of, originate in and come from Serbia and Montenegro/Kosovo and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).			
9. Authorised issuing body	Place:	Date:	
	(Stamp of issuing body)	 (signature)	

ANNEX VII

Issuing authorities:

- Republic of Croatia: 'Euroinspekt', Zagreb, Croatia.
 - Bosnia-Herzegovina.
 - The former Yugoslav Republic of Macedonia.
 - Serbia and Montenegro ⁽¹⁾: 'YU Institute for Meat Hygiene and Technology, Kacanskog 13, Belgrade, Yugoslavia.'
 - Serbia and Montenegro/Kosovo.
-

⁽¹⁾ Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

COMMISSION REGULATION (EC) No 2017/2005**of 8 December 2005****establishing a prohibition of fishing for redfish in NAFO zone 3M by vessels flying the flag of a Member State**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2005.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flags of or registered in the Member States referred to therein have exhausted the quota allocated for 2005.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member States referred to in the Annex to this Regulation for the stock referred to therein for 2005 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flags of or registered in the Member States referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 8 December 2005.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

⁽³⁾ OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1936/2005 (OJ L 311, 26.11.2005, p. 1).

ANNEX

Member State	All Member States
Stock	RED/N3M.
Species	Redfish (<i>Sebastes spp.</i>)
Zone	NAFO 3M
Date	22 November 2005

COMMISSION REGULATION (EC) No 2018/2005**of 9 December 2005****amending for the 59th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan ⁽¹⁾, and in particular Article 7(1), first indent, thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

- (2) On 6 December 2005, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

- (3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 9 December 2005.

For the Commission

Eneko LANDÁBURU

Director-General for External Relations

⁽¹⁾ OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 1956/2005 (OJ L 314, 30.11.2005, p. 14).

ANNEX

The following entries shall be added to Annex I to Regulation (EC) No 881/2002 under the heading 'Natural persons':

1. Ata **Abdoulaziz Rashid** (*alias* (a) Ata Abdoul Aziz Barzingy, (b) Abdoulaziz Ata Rashid). Date of birth: 1.12.1973. Place of birth: Sulaimaniya, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0020375. Other information: in custody in Stuttgart, Germany.
2. Dieman **Abdulkadir Izzat** (*alias* Deiman Alhasenben Ali Aljabbari). Date of birth: 4.7.1965. Place of birth: Kirkuk, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0141062. Other information: in custody in Nuremberg, Germany.
3. Yasser Mohamed Ismail **Abu Shaweesh** (*alias* Yasser Mohamed Abou Shaweesh). Date of birth: 20.11.1973. Place of birth: Benghazi, Libya. Passport No: (a) Egyptian travel document 939254 (b) Egyptian passport 0003213 (c) Egyptian passport 981358 (d) Passport substitute C00071659 issued by the Federal Republic of Germany. Other information: in custody in Wuppertal, Germany.
4. Mazen **Ali Hussein** (*alias* Issa Salah Muhamad). Date of birth: (a) 1.1.1982 (Mazen Ali Hussein), (b) 1.1.1980 (Issa Salah Muhamad). Place of birth: Baghdad, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0144378. Address: Schwäbisch Hall prison, Germany.
5. Kawa **Hamawandi** (*alias* Kaua Omar Achmed). Date of birth: 1.7.1971. Place of birth: Arbil, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0139243. Other information: in custody in Kempten, Germany.
6. Isnlon Totoni **Hapilon** (*alias* (a) Isnlon Hapilun, (b) Isnlon Hapilun, (c) Abu Musab, (d) Salahudin, (e) Tuan Isnlon). Date of birth: (a) 18.3.1966, (b) 10.3.1967. Place of birth: Bulanza, Lantawan, Basilan, the Philippines. Nationality: Filipino.
7. Rafik **Mohamad Yousef** (*alias* Mohamad Raif Kairadin). Date of birth: 27.8.1974. Place of birth: Baghdad, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0092301. Other information: in custody in Mannheim, Germany.
8. Ibrahim **Mohamed Khalil** (*alias* (a) Khalil Ibrahim Jassem, (b) Khalil Ibrahim Mohammad, (c) Khalil Ibrahim Al Zafiri, (d) Khalil). Date of birth: (a) 2.7.1975 (Ibrahim Mohamed Khalil), (b) 2.5.1972 (Khalil Ibrahim Jassem), (c) 3.7.1975 (Khalil Ibrahim Mohammad), (d) 1972 (Khalil Ibrahim Al Zafiri), (e) 2.5.1975 (Khalil). Place of birth: (a) Mosul, Iraq (Ibrahim Mohamed Khalil, Khalil Ibrahim Mohammad) (b) Baghdad, Iraq (Khalil Ibrahim Jassem). Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 0003900. Other information: in custody in Frankenthal, Germany.
9. Lokman Amin **Mohammed** (*alias* (a) Lokman Ami Mohamad, (b) Lukman Ami Mohammed). Date of birth: 1.2.1974. Place of birth: Kirkuk, Iraq. Nationality: Iraqi. Passport No: German travel document ('Reiseausweis') A 006991. Other information: in custody in Stadelheim, Munich, Germany.
10. Radulan **Sahiron** (*alias* (a) Radullan **Sahiron**, (b) Radulan **Sahirun**, (c) Radulan **Sajirun**, (d) Commander Putol). Date of birth: (a) 1955, (b) circa 1952. Place of birth: Kaunayan, Patikul, Jolo Island, the Philippines. Nationality: Filipino.
11. Jainal Antel **Sali** (jr.) (*alias* (a) Abu Solaiman, (b) Abu Solayman, (c) Apong Solaiman, (d) Apung). Date of birth: 1.6.1965. Place of birth: Barangay Lanote, Bliss, Isabela, Basilan, the Philippines. Nationality: Filipino.

COMMISSION REGULATION (EC) No 2019/2005**of 9 December 2005****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1011/2005 for the 2005/2006 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, and in particular the second sentence of the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2005/2006 marketing year are fixed by

Commission Regulation (EC) No 1011/2005 ⁽³⁾. These prices and duties were last amended by Commission Regulation (EC) No 1976/2005 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 1423/95,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95, as fixed by Regulation (EC) No 1011/2005 for the 2005/2006 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 10 December 2005.

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

Done at Brussels, 9 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 141, 24.6.1995, p. 16. Regulation as last amended by Regulation (EC) No 624/98 (OJ L 85, 20.3.1998, p. 5).

⁽³⁾ OJ L 170, 1.7.2005, p. 35.

⁽⁴⁾ OJ L 317, 3.12.2005, p. 10.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 10 December 2005

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 ⁽¹⁾	28,49	2,74
1701 11 90 ⁽¹⁾	28,49	7,29
1701 12 10 ⁽¹⁾	28,49	2,60
1701 12 90 ⁽¹⁾	28,49	6,86
1701 91 00 ⁽²⁾	27,05	11,71
1701 99 10 ⁽²⁾	27,05	7,19
1701 99 90 ⁽²⁾	27,05	7,19
1702 90 99 ⁽³⁾	0,27	0,38

⁽¹⁾ Fixed for the standard quality defined in Annex I.II to Council Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2001, p. 1).⁽²⁾ Fixed for the standard quality defined in Annex I.I to Regulation (EC) No 1260/2001.⁽³⁾ Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 2020/2005**of 9 December 2005****determining the world market price for unginned cotton**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme ⁽³⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned

cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling 21,677 EUR/100 kg.

Article 2

This Regulation shall enter into force on 10 December 2005.

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

Done at Brussels, 9 December 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 3/2005 OF THE EU-ROMANIA ASSOCIATION COUNCIL

of 5 July 2005

concerning the improvement of the trade arrangements for processed agricultural products provided in Protocol 3 to the Europe Agreement

(2005/877/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part ⁽¹⁾, and in particular Article 1(2) of Protocol 3 thereto,

Whereas:

- (1) Protocol 3 lays down the trade arrangements for processed agricultural products between the Community and Romania. Protocol 3 has last been amended by the Protocol adapting the trade aspects of the Europe Agreement ⁽²⁾.
- (2) New trade improvements have recently been negotiated to facilitate economic convergence in preparation for accession and lay down concessions in the form of complete liberalisation of trade for certain processed agricultural products, reduced duties or tariff quotas for others.
- (3) Under the second indent of Article 2(1) of Protocol 3 the duties applied may be reduced by decision of the Association Council in response to reductions resulting from mutual concessions relating to processed agricultural products.
- (4) On certain processed agricultural products covered by Protocol 3 but not listed in this Decision or for which

the opened quotas are exhausted the existing trade provisions laid down by Protocol 3 should continue to apply.

- (5) For processed agricultural products not covered by Annex I to the Treaty no export refunds should be granted under Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽³⁾.
- (6) For processed agricultural products originating in Romania and exported to the Community no export refunds should be granted.
- (7) The annual quotas provided for in Annex III and Annex IV to this Decision should be opened under the conditions specified in those Annexes. For the year 2005, in view of the fact that these annual quotas can only be opened after 1 January 2005, on a date to be fixed, they should be reduced in proportion to the number of months already elapsed that year,

HAS DECIDED AS FOLLOWS:

Article 1

From the date of entry into force of this Decision, the customs duties set out in Annex I shall be applicable to the importation into the Community of goods originating in Romania listed in that Annex.

⁽¹⁾ OJ L 357, 31.12.1994, p. 2.

⁽²⁾ Protocol for the adaptation of the trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and Romania, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the agricultural negotiations of the Uruguay Round, including the improvements to the existing preferential regime (OJ L 301, 11.11.1998, p. 3).

⁽³⁾ OJ L 177, 15.7.2000, p. 1. Regulation as last amended by Regulation (EC) No 893/2005 (OJ L 152, 15.6.2005, p. 13).

From the date of entry into force of this Decision, the customs duties set out in Annex II shall be applicable to the importation into Romania of goods originating in the Community listed in that Annex.

Article 2

Processed agricultural products not listed in Annex I to the Treaty establishing the European Community originating in the Community and exported to Romania shall not be eligible for export refunds granted under Regulation (EC) No 1520/2000.

Processed agricultural products not listed in Annex I to the said Treaty originating in Romania and exported to the Community shall not be eligible for export refunds in Romania.

Article 3

The tariff quotas referred to in Annex III and Annex IV shall be open under the conditions laid down therein. For 2005, the volume of the quotas shall be reduced in proportion to the number of months already elapsed that year.

Article 4

For processed agricultural products, which are not covered by Annex I, II, III and IV or for which the quotas set out in Annex III and IV are exhausted, the provisions laid down in Protocol 3 shall continue to apply, unless otherwise specified.

Article 5

This Decision shall enter into force on the first day of the first month following the notification by both parties on the completion of their internal procedures for ratification, acceptance or approval.

Done at Brussels, 5 July 2005.

For the Association Council

The President

J. STRAW

ANNEX I

Import duties applicable upon imports into the Community of goods originating in Romania

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
0403	Buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa:			
0403 10	- Yoghurt:			
	-- Flavoured or containing added fruit, nuts or cocoa:			
	--- In powder, granules or other solid forms, of a milk fat content, by weight:			
0403 10 51	---- Not exceeding 1,5 %	0	0	0
0403 10 53	---- Exceeding 1,5 % but not exceeding 27 %	0	0	0
0403 10 59	---- Exceeding 27 %	0	0	0
	--- Other, of a milk fat content, by weight:			
0403 10 91	---- Not exceeding 3 %	0	0	0
0403 10 93	---- Exceeding 3 % but not exceeding 6 %	0	0	0
0403 10 99	---- Exceeding 6 %	0	0	0
0403 90	- Other:			
	-- Flavoured or containing added fruit, nuts or cocoa:			
	--- In powder, granules or other solid forms, of a milkfat content, by weight:			
0403 90 71	---- Not exceeding 1,5 %	0	0	0
0403 90 73	---- Exceeding 1,5 % but not exceeding 27 %	0	0	0
0403 90 79	---- Exceeding 27 %	0	0	0
	--- Other, of a milkfat content, by weight:			
0403 90 91	---- Not exceeding 3 %	0	0	0
0403 90 93	---- Exceeding 3 % but not exceeding 6 %	0	0	0
0403 90 99	---- Exceeding 6 %	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
0405	Butter and other fats and oils derived from milk; dairy spreads:			
0405 20	- Dairy spreads:			
0405 20 10	-- Of a fat content, by weight, of 39 % or more but less than 60 %	0 % + EAR (*)	0 % + EAR (*)	0
0405 20 30	-- Of a fat content, by weight, of 60 % or more but not exceeding 75 %	0 % + EAR (*)	0 % + EAR (*)	0
0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:			
0710 40 00	- Sweet corn	0	0	0
0711	Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:			
0711 90	- Other vegetables; mixtures of vegetables:			
0711 90 30	---- Sweet corn	0	0	0
1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:			
	- Vegetable saps and extracts:			
1302 13 00	-- Of hops	0	0	0
1302 20	- Pectic substances and pectates:			
1302 20 10	-- Dry	0	0	0
1302 20 90	-- Other	0	0	0
1505	Wool grease and fatty substances derived therefrom (including lanolin):			
1505 00 10	- Wool grease, crude	0	0	0
1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared:			
1516 20	- Vegetable fats and oils and their fractions:			
1516 20 10	-- Hydrogenated castor oil, so called 'opal-wax'	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No 1516:			
1517 10	- Margarine, excluding liquid margarine:			
1517 10 10	-- Containing more than 10 % but not more than 15 % by weight of milk fats	0	0	0
1517 90	- Other:			
1517 90 10	-- Containing more than 10 % but not more than 15 % by weight of milk fats	0	0	0
	-- Other:			
1517 90 93	--- Edible mixtures or preparations of a kind used as mould release preparations	0	0	0
1518 00	Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading No 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included			
1518 00 10	- Linoxyn	0	0	0
	- Other:			
1518 00 91	-- Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading No 1516	0	0	0
	-- Other:			
1518 00 95	--- Inedible mixtures or preparations of animal or of animal and vegetable fats and oils and their fractions	0	0	0
1518 00 99	--- Other	0	0	0
1521	Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured:			
1521 90	- Other:			
1521 90 99	--- Other	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1522 00	Degras; residues resulting from the treatment of fatty substances or animal or vegetable waxes:			
1522 00 10	- Degras	0	0	0
1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel:			
1702 50 00	- Chemically pure fructose	0	0	0
1702 90	- Other, including invert sugar:			
1702 90 10	-- Chemically pure maltose	0	0	0
1704	Sugar confectionery (including white chocolate), not containing cocoa:			
1704 10	- Chewing gum, whether or not sugar-coated:			
	-- Containing less than 60 % by weight of sucrose (including invert sugar expressed as sucrose):			
1704 10 11	--- Gum in strips	0	0	0
1704 10 19	--- Other	0	0	0
	-- Containing 60 % or more by weight of sucrose (including invert sugar expressed as sucrose):			
1704 10 91	--- Gum in strips	0	0	0
1704 10 99	--- Other	0	0	0
1704 90	- Other:			
1704 90 10	-- Liquorice extract containing more than 10 % by weight of sucrose but not containing other added substances	0	0	0
1704 90 30	-- White chocolate	0	0	0
	-- Other:			
1704 90 51	--- Pastes, including marzipan, in immediate packings of a net content of 1 kg or more	0	0	0
1704 90 55	--- Throat pastilles and cough drops	0	0	0
1704 90 61	--- Sugar coated (panned) goods	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
	--- Other:			
1704 90 65	---- Gum confectionery and jelly confectionery including fruit pastes in the form of sugar confectionery	0	0	0
1704 90 71	--- Boiled sweets whether or not filled	0	0	0
1704 90 75	---- Toffees, caramels and similar sweets	0	0	0
	---- Other:			
1704 90 81	----- Compressed tablets	0	0	0
1806	Chocolate and other food preparations containing cocoa:			
1806 10	- Cocoa powder, containing added sugar or other sweetening matter:			
1806 10 20	-- Containing 5 % or more but less than 65 % by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose	0	0	0
1806 10 30	-- Containing 65 % or more but less than 80 % by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose	0	0	0
1806 20	- Other preparations in block, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:			
1806 20 10	-- Containing 31 % or more by weight of cocoa butter or containing a combined weight of 31 % or more of cocoa butter and milk fat	0	0	0
1806 20 30	-- Containing a combined weight of 25 % or more, but less than 31 % of cocoa butter and milk fat	0	0	0
	-- Other:			
1806 20 50	--- Containing 18 % or more by weight of cocoa butter	0	0	0
1806 20 70	--- Chocolate milk crumb	0	0	0
1806 20 80	--- Chocolate flavour coating	0	0	0
1806 20 95	--- Other	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
	- Other, in blocks, slabs or bars:			
1806 31 00	-- Filled	0	0	0
1806 32	-- Not filled			
1806 32 10	--- With added cereal, fruit or nuts	0	0	0
1806 32 90	--- Other	0	0	0
1806 90	- Other:			
	-- Chocolate and chocolate products:			
	--- Chocolates, whether or not filled:			
1806 90 11	---- Containing alcohol	0	0	0
1806 90 19	---- Other	0	0	0
	--- Other:			
1806 90 31	---- filled	0	0	0
1806 90 39	---- Not filled	0	0	0
1806 90 50	-- Sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa	0	0	0
1806 90 60	-- spreads containing Cocoa	0	0	0
1806 90 70	-- preparations containing Cocoa for making beverages	0	0	0
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included			
1901 10 00	- Preparations for infant use, put up for retail sale	0	0	0
1901 20 00	- Mixes and doughs for the preparation of bakers' wares of heading 1905	0	0	0
1901 90	- Other:			

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
	-- Malt extract:			
1901 90 11	--- With a dry extract content of 90 % or more by weight	0	0	0
1901 90 19	--- Other	0	0	0
	-- Other:			
1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared:			
	- Uncooked pasta, not stuffed or otherwise prepared:			
1902 11 00	-- Containing eggs	0 % + EUR 16,7/100 kg	0 % + EUR 11/100 kg	0
1902 19	-- Other:			
1902 19 10	--- Containing no common wheat flour or meal	0 % + EUR 20,4/100 kg	0 % + EUR 13,5/100 kg	0
1902 19 90	--- Other	0 % + EUR 17,5/100 kg	0 % + EUR 11,6/100 kg	0
1902 20	- Stuffed pasta, whether or not cooked or otherwise prepared:			
	-- Other:			
1902 20 91	--- Cooked	0 % + EUR 5,2/100 kg	0 % + EUR 4/100 kg	0
1902 20 99	--- Other	0 % + EUR 14,7/100 kg	0 % + EUR 11,2/100 kg	0
1902 30	- Other pasta:			
1902 30 10	-- Dried	0 % + EUR 16,7/100 kg	0 % + EUR 11/100 kg	
1902 30 90	-- Other	0 % + EUR 6,6/100 kg	0 % + EUR 4,4/100 kg	0
1902 40	- Couscous:			
1902 40 10	-- Unprepared	0	0	0
1902 40 90	-- Other	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1903 00 00	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms	0	0	0
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included:			
1904 10	- Prepared foods obtained by the swelling or roasting of cereals or cereal products:			
1904 10 10	-- Obtained from maize	0	0	0
1904 10 30	-- Obtained from rice	0	0	0
1904 10 90	-- Other	0	0	0
1904 20	- Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:			
1904 20 10	-- Preparation of the Müsli type based on unroasted cereal flakes	0	0	0
	-- Other:			
1904 20 91	--- Obtained from maize	0	0	0
1904 20 95	--- Obtained from rice	0	0	0
1904 20 99	--- Other	0	0	0
1904 30 00	- Bulgur wheat	0	0	0
1904 90	- Other:	0	0	0
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:			
1905 10 00	- Crispbread	0	0	0
1905 20	- Gingerbread and the like:	0	0	0
	- Sweet biscuits; waffles and wafers:			
1905 31	-- Sweet biscuits:	0	0	0
1905 32	--- Waffles and wafers:	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1905 40	- Rusks, toasted bread and similar toasted products:	0	0	0
1905 90	- Other:			
1905 90 10	-- Matzos	0	0	0
1905 90 20	-- Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	0	0	0
	-- Other:	0	0	0
1905 90 30	--- Bread, not containing added honey, eggs, cheese or fruit, and containing by weight in the dry matter state not more than 5 % of sugars and not more than 5 % of fat	0	0	0
1905 90 45	--- Biscuits	0	0	0
1905 90 55	--- Extruded or expanded products, savoury or salted	0	0	0
	--- Other:			
1905 90 60	---- With added sweetening matter	0	0	0
2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:			
2001 90	- Other:			
2001 90 30	-- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2001 90 40	-- Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch	0	0	0
2001 90 60	-- Palm hearts	0	0	0
2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006:			
2004 10	- Potatoes			
2004 10 91	--- In the form of flour, meal or flakes	0	0	0
2004 90	- Other vegetables and mixtures of vegetables:			
2004 90 10	-- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:			

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2005 20	- Potatoes:			
2005 20 10	-- In the form of flour, meal or flakes	0	0	0
2005 80 00	- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:			
	- Nuts, groundnuts and other seeds, whether or not mixed together:			
2008 11	-- Groundnuts:			
2008 11 10	--- Peanut butter	0	0	0
2008 91 00	-- Palm hearts	0	0	0
2008 99	-- Other:			
	--- Not containing added spirit:			
	---- Not containing added sugar:			
2008 99 85	----- Maize (corn), other than sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2008 99 91	----- Yams, sweet potatoes and similar edible parts of plants, containing 5 % or more by weight of starch	0	0	0
2101	Extracts, essences and concentrates, of coffee, tea or maté, and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:			
	- Extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee:			
2101 11	-- Extracts, essences and concentrates:	0	0	0
2101 12	-- Preparations with a basis of these extracts, essences or concentrates or with a basis of coffee:			
2101 12 98	--- Other	0	0	0
2101 20	- Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté:			

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2101 20 20	-- Extracts, essences or concentrates	0	0	0
	-- Preparations:			
2101 20 98	--- Other	0	0	0
2101 30	- Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof:	0	0	0
2102	Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of heading 3002); prepared baking powders:			
2102 10	- Active yeasts:			
2102 10 10	-- Culture yeast	0	0	0
	-- Baker's yeast:			
2102 10 31	--- Dried	0	0	0
2102 10 39	--- Other	0	0	0
2102 20	-- Inactive yeasts:			
2102 20 11	--- In tablet, cube or similar form, or in immediate packings of a net content not exceeding 1 kg	0	0	0
2102 20 19	--- Other	0	0	0
2102 30 00	- Prepared baking powders	0	0	0
2103	Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:			
2103 10 00	- Soya sauce	0	0	0
2103 20 00	- Tomato ketchup and other tomato sauces	0	0	0
2103 90	- Other:			
2103 90 90	-- Other	0	0	0
2104	Soups and broths and preparations therefor; homogenised composite food preparations:	0	0	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2105 00	Ice cream and other edible ice, whether or not containing cocoa:			
2105 00 10	- Containing no milk fats or containing less than 3 % by weight of such fats	0	0	0
	- Containing by weight of milk fats:			
2105 00 91	-- 3 % or more but less than 7 %	0	0	0
2105 00 99	-- 7 % or more	0	0	0
2106	Food preparations not elsewhere specified or included:			
2106 10	- Protein concentrates and textured protein substances:			
2106 10 20	-- Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch	4	4	0
2106 10 80	-- Other	0 % + EAR (*)	0 % + EAR (*)	0
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages			
2208 40	- Rum and taffia:			
	-- In containers holding 2 litres or less:			
2208 40 11	--- Rum with a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol (with a 10 % tolerance)	EUR 0,6/ % vol/hl + EUR 3,2/hl	EUR 0,6/ % vol/hl + EUR 3,2/hl	0
	--- Other:			
2208 40 39	---- Other	EUR 0,6/ % vol/hl + EUR 3,2/hl	EUR 0,6/ % vol/hl + EUR 3,2/hl	0
	-- In containers holding more than 2 litres			
2208 40 51	--- Rum with a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol (with a 10 % tolerance)	EUR 0,6/ % vol/hl	EUR 0,6/ % vol/hl	0
	--- Other			
2208 40 99	---- Other	EUR 0,6/ % vol/hl	EUR 0,6/ % vol/hl	0

CN codes	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes			
2402 10 00	- Cigars, cheroots and cigarillos, containing tobacco	26	26	0
2402 20	- Cigarettes containing tobacco			
2402 20 10	-- Containing cloves	10	10	0
2402 20 90	-- Other	57,6	57,6	0
2402 90 00	- Other	57,6	57,6	0
2403	Other manufactured tobacco and manufactured tobacco substitutes; 'homogenised' or 'reconstituted' tobacco; tobacco extracts and essences:			
2403 10	- Smoking tobacco, whether or not containing tobacco substitutes in any proportion	74,9	74,9	0
	- Other			
2403 91	-- 'Homogenised' or 'reconstituted' tobacco	16,6	16,6	0
2403 99	-- Other			
2403 99 10	--- Chewing tobacco and snuff	41,6	41,6	0
2403 99 90	--- Other	16,6	16,6	0
3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages			
3302 10	- Of a kind used in the food or drink industries:			
	-- Of the kind used in the drink industries:			
	--- Preparations containing all flavouring agents characterising a beverage:			
	---- Other:			
3302 10 21	----- Containing no milkfats, sucrose, isoglucose, glucose, or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch	0	0	0
3302 10 29	----- Other	0	0	0
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols	0	0	0

(*) EA/EAR = Agricultural component/Reduced agricultural components (calculated in accordance with the basic amounts set out in Protocol 3 to the Agreement). Such agricultural components and reduced agricultural components are subject to the maximum duty laid down in the common customs tariff, if any.

ANNEX II

Import duties applicable upon imports into Romania of goods originating in the Community

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
0403	Buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa:			
0403 10	- Yoghurt			
	-- Flavoured or containing added fruit, nuts or cocoa:			
	--- In powder, granules or other solid forms, of a milk fat content, by weight:			
0403 10 51	---- Not exceeding 1,5 %	11	8	0
0403 10 53	---- Exceeding 1,5 % but not exceeding 27 %	11	8	0
0403 10 59	---- Exceeding 27 %	11	8	0
	--- Other, of a milk fat content, by weight:			
0403 10 91	---- Not exceeding 3 %	11	8	0
0403 10 93	---- Exceeding 3 % but not exceeding 6 %	11	8	0
0403 10 99	---- Exceeding 6 %	11	8	0
0403 90	- Other:			
	-- Flavoured or containing added fruit, nuts or cocoa:			
	--- In powder, granules or other solid forms, of a milkfat content, by weight:			
0403 90 71	---- Not exceeding 1,5 %	11	8	0
0403 90 73	---- Exceeding 1,5 % but not exceeding 27 %	11	8	0
0403 90 79	---- Exceeding 27 %	11	8	0
	--- Other, of a milkfat content, by weight:			
0403 90 91	---- Not exceeding 3 %	11	8	0
0403 90 93	---- Exceeding 3 % but not exceeding 6 %	11	8	0
0403 90 99	---- Exceeding 6 %	11	8	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
0405	Butter and other fats and oils derived from milk; dairy spreads:			
0405 20	– Dairy spreads:			
0405 20 10	-- Of a fat content, by weight, of 39 % or more but less than 60 %	0	0	0
0405 20 30	-- Of a fat content, by weight, of 60 % or more but not exceeding 75 %	0	0	0
0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:			
0710 40 00	– Sweet corn	0	0	0
0711	Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:			
0711 90	– Other vegetables; mixtures of vegetables:			
0711 90 30	--- Sweet corn	0	0	0
1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:			
	– Vegetable saps and extracts:			
1302 12 00	-- Of liquorice	0	0	0
1302 13 00	-- Of hops	0	0	0
	-- Of pyrethrum or of the roots of plants containing rotenone			
1302 19	-- Other:			
ex 1302 19 90	--- Intermixtures of vegetable extracts, for the manufacture of beverages or of food preparations	0	0	0
ex 1302 19 90	---- Medicinal	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1302 20	- Pectic substances, pectinates and pectates:			
1302 20 10	-- Dry	0	0	0
1302 20 90	-- Other	0	0	0
	- Mucilages and thickeners, whether or not modified, derived from vegetable products:			
1302 31 00	-- Agar-agar	0	0	0
1302 32	-- Mucilages and thickeners, whether or not modified, derived from locust beans, locust bean seeds or guar seeds:			
1302 32 10	--- Of locust beans or locust bean seeds	0	0	0
1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared:			
1516 20	- Vegetable fats and oils and their fractions:			
1516 20 10	-- Hydrogenated castor oil, so called 'opal-wax'	0	0	0
1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No 1516:			
1517 10	- Margarine, excluding liquid margarine:			
1517 10 10	-- Containing, by weight, more than 10 % but not more than 15 % of milk fats	15	10	0
1517 90	- Other:			
1517 90 10	-- Containing, by weight more than 10 % but not more than 15 % of milk fats	0	0	0
	-- Other:			
1517 90 93	--- Edible mixtures or preparations of a kind used as mould-release preparations	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1518 00	Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included:			
1518 00 10	- Linoxyn	0	0	0
	- Other:			
1518 00 91	-- Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516	0	0	0
	-- Other:			
1518 00 95	--- Inedible mixtures or preparations of animal or of animal and vegetable fats and oils and their fractions	0	0	0
1518 00 99	--- Other	0	0	0
1521	Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured:			
1521 10 00	- Vegetable waxes	0	0	0
1521 90	- Other:			
1521 90 10	-- Spermaceti, whether or not refined or coloured	0	0	0
	-- Beeswax and other insect waxes, whether or not refined or coloured:			
1521 90 91	--- Raw	0	0	0
1522 00	Degras; residues resulting from the treatment of fatty substances or animal or vegetable waxes:			
1522 00 10	- Degras	0	0	0
1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel:			

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1702 90	- Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 % by weight of fructose			
1702 90 10	-- Chemically pure maltose	0	0	0
1704	Sugar confectionery (including white chocolate), not containing cocoa:			
1704 10	- Chewing gum, whether or not sugar-coated:			
	-- Containing less than 60 % by weight of sucrose (including invert sugar expressed as sucrose):			
1704 10 11	--- Gum in strips	4	0	0
1704 10 19	--- Other	4	0	0
	-- Containing 60 % or more by weight of sucrose (including invert sugar expressed as sucrose):			
1704 10 91	--- Gum in strips	4	0	0
1704 10 99	--- Other	4	0	0
1704 90	- Other:			
1704 90 10	-- Liquorice extract containing more than 10 % by weight of sucrose but not containing other added substances	0	0	0
1704 90 30	-- White chocolate	5	0	0
	-- Other:			
1704 90 51	--- Pastes, including marzipan, in immediate packings of a net content of 1 kg or more	3	0	0
1704 90 55	--- Throat pastilles and cough drops	5	0	0
1704 90 61	--- Sugar-coated (panned) goods	10	0	0
	--- Other:			
1704 90 65	---- Gum confectionery and jelly confectionery including fruit pastes in the form of sugar confectionery	10	0	0
1704 90 71	---- Boiled sweets whether or not filled	11	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1704 90 75	---- Toffees, caramels and similar sweets	11	0	0
	---- Other:			
1704 90 81	----- Compressed tablets	11	0	0
1704 90 99	----- Other	11	0	0
1803	Cocoa paste, whether or not defatted:			
1803 10 00	- Not defatted	0	0	0
1803 20 00	- Wholly or partly defatted	0	0	0
1804 00 00	Cocoa butter, fat and oil	0	0	0
1805 00 00	Cocoa powder, not containing added sugar or other sweetening matter	0	0	0
1806	Chocolate and other food preparations containing cocoa:			
1806 10	- Cocoa powder, containing added sugar or other sweetening matter:	0	0	0
1806 20	- Other preparations in block, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:			
1806 20 10	-- Containing 31 % or more by weight of cocoa butter or containing a combined weight of 31 % or more of cocoa butter and milk fat	0	0	0
1806 20 30	-- Containing a combined weight of 25 % or more, but less than 31 % of cocoa butter and milk fat	0	0	0
	-- Other:			
1806 20 50	-- Containing 18 % or more by weight of cocoa butter	10	0	0
1806 20 70	--- Chocolate milk crumb	10	0	0
1806 20 80	--- Chocolate flavour coating	10	0	0
1806 20 95	--- Other	10	0	0
	- Other, in blocks, slabs or bars:			
1806 31 00	-- Filled	22,5	0	0
1806 32	-- Not filled			
1806 32 10	--- With added cereal, fruit or nuts	40	20	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1806 32 90	--- Other	22,5	0	0
1806 90	- Other:			
	-- Chocolate and chocolate products:			
	--- Chocolates, whether or not filled:			
1806 90 11	---- Containing alcohol	22,5	0	0
1806 90 19	---- Other	40	20	0
	--- Other:			
1806 90 31	---- Filled	40	20	0
1806 90 39	---- Not filled	40	20	0
1806 90 50	-- Sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa	40	20	0
1806 90 60	-- Spreads containing cocoa	40	20	0
1806 90 70	-- Preparations containing cocoa for making beverages	30	20	0
1806 90 90	-- Other	30	20	0
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:			
1901 20 00	- Mixes and doughs for the preparation of bakers' wares of heading 1905	20	10	0
1901 90	- Other:			
	-- Malt extract:			
1901 90 11	--- With a dry extract content of 90 % or more by weight	0	0	0
1901 90 19	--- Other	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
	-- Other:			
1901 90 91	--- Containing no milk fats, sucrose, isoglucose, glucose or starch or containing less than 1,5 % milk fat, 5 % sucrose (including invert sugar) or isoglucose, 5 % glucose or starch, excluding food preparations in powder form of goods of headings 0401 to 0404	0	0	0
1901 90 99	--- Other	0	0	0
1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:			
	- Uncooked pasta, not stuffed or otherwise prepared:			
1902 11 00	-- Containing eggs	15	10	0
1902 19	-- Other	15	10	0
1902 20	- Stuffed pasta whether or not cooked or otherwise prepared			
	-- Other:			
1902 20 91	--- Cooked	13	10	0
1902 20 99	--- Other	13	10	0
1902 30	- Other pasta	15	10	0
1902 40	- Couscous	0	0	0
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than maize (corn)), in grain form, or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included:			
1904 10	- Prepared foods obtained by the swelling or roasting of cereals or cereal products:			
1904 10 10	-- Obtained from maize	23	15	0
1904 10 30	-- Obtained from rice	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1904 10 90	-- Other:	0	0	0
1904 20	- Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:			
1904 20 10	-- Preparation of the Müsli type based on unroasted cereal flakes	0	0	0
	-- Other:			
1904 20 91	--- Obtained from maize	23	15	0
1904 20 95	--- Obtained from rice	0	0	0
1904 20 99	--- Other	0	0	0
1904 30 00	- Bulgur wheat	0	0	0
1904 90	- Other:			
1904 90 10	-- Rice	0	0	0
1904 90 80	-- Other	0	0	0
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:			
1905 10 00	- Crispbread	0	0	0
1905 20	- Gingerbread and the like:			
1905 20 10	-- Containing by weight less than 30 % of sucrose (including invert sugar expressed as sucrose)	7	5	0
1905 20 30	-- Containing by weight 30 % or more but less than 50 % of sucrose (including invert sugar expressed as sucrose)	7	5	0
1905 20 90	-- Containing by weight 50 % or more of sucrose (including invert sugar expressed as sucrose)	25	25	0
	- Sweet biscuits; waffles and wafers:			

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
1905 31	-- Sweet biscuits:			
	--- Completely or partially coated or covered with chocolate or other preparations containing cocoa:			
1905 31 11	---- In immediate packings of a net content not exceeding 85 g	20	10	0
1905 31 19	---- Other	20	10	0
	--- Other:			
1905 31 30	---- Containing 8 % or more by weight of milk fats	20	10	0
	---- Other:			
1905 31 91	----- Sandwich biscuits	12	8	0
1905 31 99	----- Other	12	8	0
1905 32	-- Waffles and wafers:			
1905 32 05	--- With a water content exceeding 10 % by weight	12	8	0
	--- Other			
	---- Completely or partially coated or covered with chocolate or other preparations containing cocoa:			
1905 32 11	---- In immediate packings of a net content not exceeding 85 g	20	10	0
1905 32 19	---- Other	20	10	0
	---- Other:			
1905 32 91	----- Salted, whether or not filled	12	8	0
1905 32 99	----- Other	18	10	0
1905 40	- Rusks, toasted bread and similar toasted products:	0	0	0
1905 90	- Other:			
1905 90 10	-- Matzos	0	0	0
1905 90 20	-- Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
	-- Other:			
1905 90 30	--- Bread, not containing added honey, eggs, cheese or fruit, and containing by weight in the dry matter state not more than 5 % of sugars and not more than 5 % of fat	20	10	0
1905 90 45	--- Biscuits	12	8	0
1905 90 55	--- Extruded or expanded products, savoury or salted	12	8	0
	--- Other:			
1905 90 60	---- With added sweetening matter	12	8	0
1905 90 90	---- Other	18	10	0
2001	Vegetables, fruits, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:			
2001 90	- Other:			
2001 90 30	-- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2001 90 40	-- Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch	0	0	0
2001 90 60	-- Palm hearts	0	0	0
2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006			
2004 10	- Potatoes:			
	-- Other			
2004 10 91	--- In the form of flour, meal or flakes	25	15	0
2004 90	- Other vegetables and mixtures of vegetables:			
2004 90 10	-- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0
2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006			
2005 20	- Potatoes:			
2005 20 10	-- In the form of flour, meal or flakes	15	10	0
2005 80 00	- Sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2008	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:			
	– Nuts, groundnuts and other seeds, whether or not mixed together:			
2008 91 00	-- Palm hearts	0	0	0
2008 99	-- Other:			
	--- Not containing added spirit:			
	---- Not containing added sugar:			
2008 99 85	----- Maize (corn), other than sweet corn (<i>Zea mays</i> var. <i>saccharata</i>)			
2008 99 91	----- Yams, sweet potatoes and similar edible parts of plants, containing 5 % or more by weight of starch	0	0	0
2101	Extracts, essences and concentrates, of coffee, tea or maté, and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof	0	0	0
2102	Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of heading 3002); prepared baking powders:			
2102 10	– Active yeasts:			
2102 10 10	-- Culture yeast	0	0	0
	-- Baker's yeast:			
2102 10 31	--- Dried	25	25	0
2102 10 39	--- Other	25	25	0
2102 10 90	-- Other	15	15	0
2102 20	– Inactive yeasts; other single-cell micro-organisms, dead:	0	0	0
2102 30 00	– Prepared baking powders	10	5	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:			
2103 10 00	– Soya sauce	0	0	0
2103 20 00	– Tomato ketchup and other tomato sauces	25	10	0
2103 30	– Mustard flour and meal and prepared mustard:			
2103 30 10	-- Mustard flour	22	22	0
2103 30 90	-- Prepared mustard	40	40	0
2103 90	– Other:	0	0	0
2104	Soups and broths and preparations therefor; homogenised composite food preparations:	5	2	0
2105 00	Ice cream and other edible ice, whether or not containing cocoa:			
2105 00 10	– Containing no milk fats or containing less than 3 % by weight of such fats	35	20	0
	– Containing by weight of milk fats:			
2105 00 91	-- 3 % or more but less than 7 %	22,5	0	0
2105 00 99	-- 7 % or more	22,5	0	0
2106	Food preparations not elsewhere specified or included:			
2106 10	– Protein concentrates and textured protein substances	7	7	0
2106 90	– Other:			
2106 90 10	-- Cheese fondues	18	18	0
2106 90 20	-- Compound alcoholic preparations, other than those based on odoriferous substances, of a kind used for the manufacture of beverages	40	40	0
	-- Other:			
2106 90 92	--- Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose or isoglucose, 5 % glucose or starch:	18	18	0
2106 90 98	--- Other	18	18	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow:	20	10	0
2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009:	20	10	0
2203 00	Beer made from malt:	35	25	0
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	60	60	0
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength	95	95	0
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages			
2208 20	– Spirits obtained by distilling grape wine or grape marc	60	60	0
2208 30	– Whiskies	35	35	0
2208 40	– Rum and taffia	60	60	0
2208 50	– Gin and Geneva	60	60	0
2208 60	– Vodka	60	60	0
2208 70	– Liqueurs and cordials	60	60	0
2208 90	– Other	60	60	0
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:			
2402 10 00	– Cigars, cheroots and cigarillos, containing tobacco	60	60	0
2402 20	– Cigarettes containing tobacco	98	98	0
2402 90 00	– Other	98	98	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
2403	Other manufactured tobacco and manufactured tobacco substitutes; 'homogenised' or 'reconstituted' tobacco; tobacco extracts and essences:	98	98	0
2403 10	- Smoking tobacco, whether or not containing tobacco substitutes in any proportion:			
2403 10 10	-- In immediate packings of a net content not exceeding 500 g	98	98	0
2403 10 90	-- Other	98	98	0
	- Other:			
2403 91 00	-- 'Homogenised' or 'reconstituted' tobacco	98	98	0
2403 99	-- Other:			
2403 99 10	--- Chewing tobacco and snuff	98	98	0
2403 99 90	--- Other	98	98	0
2905	Acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives:			
	- Other polyhydric alcohols:			
2905 44	-- D-glucitol (sorbitol):			
	--- Other:			
2905 44 91	---- Containing 2 % or less by weight of D-mannitol, calculated on the D-glucitol content	16	16	0
2905 44 99	---- Other	16	16	0
3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:			
3302 10	- Of a kind used in the food or drink industries			
	---- Other:			
3302 10 21	----- Containing no milkfats, sucrose, isoglucose, glucose, or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch	0	0	0
3302 10 29	----- Other	0	0	0

CN code	Description	From the date of entry into force to 31.12.2005 (%)	From 1.1.2006 to 31.12.2006 (%)	From 1.1.2007 (%)
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:			
3823 11 00	-- Stearic acid	0	0	0
3823 12 00	-- Oleic acid	0	0	0
3823 13 00	-- Tall oil fatty acids	0	0	0
3823 19	-- Other:			
3823 19 10	--- Distilled fatty acids	0	0	0
3823 19 30	--- Fatty acid distillate	0	0	0

ANNEX III

Quotas and duties applicable upon import into the Community of goods originating in Romania

CN code	Description	Volume in tonnes		Duty within quota
(1)	(2)	(3)		(4)
		From 1.1.2005 to 31.12.2005 (*)	From 1.1.2006 to 31.12.2006	
ex 0405	Butter and other fats and oils derived from milk; dairy spreads:	1 100	1 200	0 % (**)
ex 0405 20	- Dairy spreads:			
0405 20 10	-- Of a fat content, by weight, of 39 % or more but less than 60 %			
0405 20 30	-- Of a fat content, by weight, of 60 % or more but not exceeding 75 %			
ex 1704	Sugar confectionery (including white chocolate), not containing cocoa:			
ex 1704 90	- Other:			
1704 90 99	----- Other	300	330	0 %
ex 1806	Chocolate and other food preparations containing cocoa:			
ex 1806 10	- Cocoa powder, containing added sugar or other sweetening matter:			
1806 10 90	-- Containing 80 % or more by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose	44	50	0 %
ex 1806	Chocolate and other food preparations containing cocoa:			
ex 1806 90	- Other			
1806 90 90	-- Other	44	50	0 %
ex 1901	Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:			
ex 1901 90	- Other			
	-- Other			
1901 90 99	--- Other	44	50	0 %

(1)	(2)	(3)		(4)
ex 1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:			
ex 1905 90	- Other:			
1905 90 90	-- Other	22	24	0 %
ex 2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009:	1 500	1 500	0 %
ex 2202 90	- Other:			
	-- Other, containing by weight of fat obtained from the products of headings 0401 to 0404:			
2202 90 91	--- Less than 0,2 %			
2202 90 95	--- 0,2 % or more but less than 2 %			
2202 90 99	--- 2 % or more			
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:	660	720	50 % of MFN
2205 10	- In containers holding 2 litres or less:			
2205 10 10	-- Of an actual alcoholic strength by volume of 18 % vol or less			
2205 10 90	-- Of an actual alcoholic strength by volume exceeding 18 % vol			
2205 90	- Other:			
2205 90 10	-- Of an actual alcoholic strength by volume of 18 % vol or less			
2205 90 90	-- Of an actual alcoholic strength by volume exceeding 18 % vol			
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength:	2 000 hl	2 000 hl	0 %
2207 10 00	- Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher			
2207 20 00	- Ethyl alcohol and other spirits, denatured, of any strength			
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:	200	200	50 % of MFN rate (***)
2402 10 00	- Cigars, cheroots and cigarillos, containing tobacco			
2402 20	- Cigarettes containing tobacco:			
2402 20 10	-- Containing cloves			
2402 20 90	-- Other			
2402 90 00	- Other			

(*) For 2005, the volume of the quotas will be reduced in proportion to the number of months already elapsed that year.

(**) For quantities in excess of quota, the duty set out in Annex I will apply.

(***) For the quota of 200 tonnes opened from 1.1.2006 to 31.12.2006, the duty within the quota will be 0 %.

ANNEX IV

Tariff quotas applicable upon imports into Romania of goods originating in the Community

CN code	Description	Volume in tonnes		Duty within quota (*)
(2)	(3)	(4)		(5)
		From 1.1.2005 to 31.12.2005 (**)	From 1.1.2006 to 31.12.2006	
ex 1806	Chocolate and other food preparations containing cocoa:			
1806 32	-- Not filled	2 000	2 200	0 %
1806 32 10	--- With added cereal, fruit or nuts			
1806 90	- Other:			
	-- Chocolate and chocolate products:			
1806 90 19	---- Other			
	---- Other			
1806 90 31	---- filled			
1806 90 39	---- not filled			
1806 90 50	-- Sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa			
1806 90 60	-- Spreads containing cocoa			
ex 1806	Chocolate and other food preparations containing cocoa:	220	240	0 %
1806 90 70	-- Preparations containing cocoa for making beverages			
1806 90 90	-- Other			
ex 1901	Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:	200	200	0 %
1901 20 00	- Mixes and doughs for the preparation of bakers' wares of heading No 1905			

(2)	(3)	(4)		(5)
ex 1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than maize (corn)), in grain form, or in the form of flakes or other worked grains (except flour and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included:	200	220	0 %
1904 10	– Prepared foods obtained by the swelling or roasting of cereals or cereal products:			
1904 10 10	-- Obtained from maize			
1904 20	– Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:			
1904 20 91	--- Obtained from maize			
ex 1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:	5 000	5 000	0 %
1905 20	– Gingerbread and the like:			
1905 20 10	-- Containing by weight of sucrose less than 30 % (including invert sugar expressed as sucrose)			
1905 20 30	-- Containing by weight of sucrose 30 % or more but less than 50 % (including invert sugar expressed as sucrose)			
	– Sweet biscuits; waffles and wafers:			
1905 31	-- Sweet biscuits:			
	--- Completely or partially coated or covered with chocolate or other preparations containing cocoa:			
1905 31 11	---- In immediate packings of a net content not exceeding 85 g			
1905 31 19	---- Other			
	--- Other:			
	---- Other:			
1905 31 91	----- Sandwich biscuits			
1905 31 99	----- Other			
1905 32	-- Waffles and wafers:			

(2)	(3)	(4)		(5)
1905 90	– Other:			
	– – Other:			
1905 90 45	– – – Biscuits			
1905 90 55	– – – Extruded or expanded products, savoury or salted			
	– – – Other:			
1905 90 60	– – – – With added sweetening matter			
1905 90 90	– – – – Other			
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading No 2006	165	180	0
2004 10	– Potatoes:			
	– – Other			
2004 10 91	– – – In the form of flour, meal or flakes			
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006			
2005 20	– Potatoes:			
2005 20 10	– – In the form of flour, meal or flakes			
ex 2102	Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of heading No 3002); prepared baking powders:	55	60	0
2102 30 00	– Prepared baking powders			
2104	Soups and broths and preparations therefor; homogenised composite food preparations:	1 200	—	4 %
2104 10	– Soups and broths and preparation therefor:			
2104 10 10	– – Dried			
2104 10 90	– – Other			
2104 20 00	– Homogenised composite food preparations			
2105 00	Ice cream and other edible ice, whether or not containing cocoa:			
2105 00 10	– Containing no milk fats or containing less than 3 % by weight of such fats	160	160	0

(2)	(3)	(4)		(5)
2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009:	5 000	5 000	0
2203	Beer made from malt	14 300 hl	15 600 hl	0
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	1 200 hl	1 200 hl	50 % of MFN rate
ex 2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages:			
2208 20	– Spirits obtained by distilling grape wine or grape marc	2 000 hl	2 000 hl	50 % of MFN rate
2208 30	– Whiskies	6 500 hl	6 500 hl	17,5 %
2208 40	– Rum and taffia	100 hl	100 hl	50 % of MFN rate
2208 50	– Gin and Geneva	100 hl	100 hl	50 % of MFN rate
2208 60	– Vodka	200 hl	200 hl	50 % of MFN rate
2208 70	– Liqueurs and cordials	150 hl	150 hl	50 % of MFN rate
ex 2208 90	– Other (excluding 2208 90 33, 2208 90 38, 2208 90 48, 2208 90 71, 2208 90 91 and 2208 90 99)	800 hl	800 hl	50 % of MFN rate
2403	Other manufactured tobacco and manufactured tobacco substitutes; 'homogenised' or 'reconstituted' tobacco; tobacco extracts and essences	135 tonnes at 60 %	135 tonnes at 30 %	

(*) For quantities in excess of quota, the duty set out in Annex II will apply.

(**) For 2005, the volume of the quotas will be reduced in proportion to the number of months already elapsed that year.

Information concerning the entry into force of Decision No 3/2005 of the EU-Romania Association Council of 5 July 2005 concerning the improvement of the trade arrangements for processed agricultural products provided in Protocol 3 to the Europe Agreement

Decision No 3/2005 concerning the improvement of the trade arrangements for processed agricultural products provided in Protocol 3 to the Europe Agreement, which was adopted by the EU-Romania Association Council on 5 July 2005, entered into force on 1 December 2005, the notifications concerning the completion of the procedures provided for in Article 5 of the Decision having been made by 23 November 2005.

The attention of interested parties is drawn to the fact that Commission Regulation (EC) No 1520/2000, referred to in recital 5 and in Article 2 of Decision No 3/2005, was repealed by Commission Regulation (EC) No 1043/2005 ⁽¹⁾, which entered into force on 8 July 2005. In accordance with Article 57 of the latter Regulation, the references to Regulation (EC) No 1520/2000 should be construed as references to Regulation (EC) No 1043/2005.

⁽¹⁾ OJ L 172, 5.7.2005, p. 24.

COMMISSION

COMMISSION DECISION

of 30 June 2004

on the State aid implemented by Germany for the Herlitz Group

(notified under document number C(2004) 2212)

(Only the German text is authentic)

(Text with EEA relevance)

(2005/878/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 7(3) thereof,

Having called on interested parties to submit their comments pursuant to those provisions ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) In March 2002 a complaint was lodged by one of Herlitz AG's main competitors indicating that Herlitz AG was to receive a guarantee from the *Land* of Berlin. By letter dated 25 March 2002 the Commission asked Germany to provide information on the possible aid to Herlitz AG. Germany replied by letter dated 17 April 2002, registered as received on 18 April 2002, denying such aid. Following a press article which appeared on 24 April 2002 reporting that a loan of EUR 1 million had been granted by the *Land* of Brandenburg to Herlitz AG's subsidiary Falken Office Products GmbH (hereinafter referred to as FOP), the Commission again asked Germany, by letter dated 8 May 2002, to provide information on the possible aid to Herlitz AG. Germany replied by letter dated 4 June 2002, registered as received on 5 June 2002, denying once again that any such aid had been granted.
- (2) Finally, by letter dated 17 July 2002, registered as received on 19 July 2002, Germany informed the Commission that the Investment Bank of the *Land* of Brandenburg (InvestitionsBank des Landes Brandenburg, hereinafter referred to as ILB) had granted Herlitz PBS AG a loan of some EUR 1 million. According to the information provided by Germany, the measure had already been put into effect; the case was therefore registered by the Commission as unnotified aid under case NN 89/02. Annexes including an insolvency plan were submitted by letter dated 19 July 2002, registered as received on 25 July 2002, and by letter dated 1 August 2002, registered as received on the same day. On 8 August 2002 the Commission asked for clarifications on the aid granted. Germany sent additional information by letter dated 4 September 2002, registered as received on the same day.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

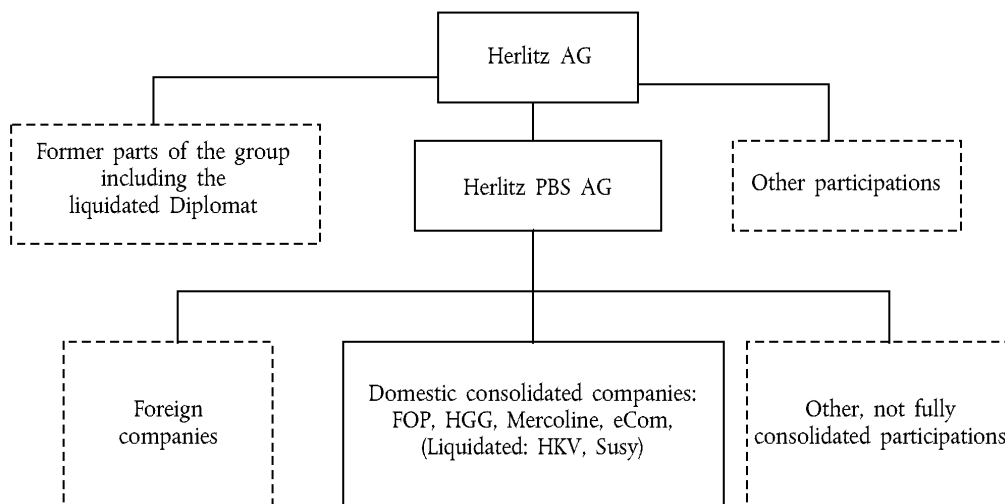
⁽²⁾ OJ C 100, 26.4.2003, p. 3.

- (3) By letter dated 29 January 2003, registered as received on the same day, Germany informed the Commission that the loan granted to Herlitz PBS AG had been fully repaid to the Investment Bank of the Land of Brandenburg. Germany also informed the Commission that the insolvency proceedings for Herlitz AG and Herlitz PBS AG had been terminated and that the insolvency plans had been accepted and carried out.
- (4) By letter dated 19 February 2003 the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty with respect to the loan and accompanying measures, with the case being registered under C 16/03. Germany submitted observations which were registered as received on 28 April 2003.
- (5) The Commission's Decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on interested parties to submit their comments. The Commission received comments from one interested party. It forwarded them to Germany, which was given the opportunity to react. Germany's comments were received by letter dated 24 July 2003, registered as received on 27 July 2003.
- (6) Germany sent additional information by letters dated 10, 12 and 28 November 2003, 8 and 26 January, 23 March and 23 and 24 April 2004. A meeting was held on 27 January 2004 between the representatives of the Commission, the German Government, the Herlitz Group and the administrator in the insolvency proceedings.

II. THE MEASURES

1. The relevant undertaking

- (7) Herlitz AG was founded as a stationery shop in Berlin in 1904, expanded to become a group and has been quoted on the stock exchange since 1977. Within the group, Herlitz AG is the holding company, owning the shares of the subsidiaries, of which Herlitz PBS AG is the most important.
- (8) Before the insolvency proceedings, Herlitz AG was the holding company of Herlitz PBS AG and Diplomat GmbH (Diplomat). At the same time within the Herlitz Group, Herlitz PBS AG was the holding company of Falken Office Products GmbH (FOP), Herlitz Kunststoffverarbeitungs GmbH (HKV), Susy Card Papeterie GmbH (Susy), HGG Verwaltungsgesellschaft mbH (HGG) and foreign subsidiaries in around 15 countries. In 2002 the Herlitz Group acquired Mercoline GmbH as well as eCom Verwaltungs GmbH and eCom Logistik GmbH & Co. KG (eCom). Currently, the Herlitz Group has the following structure:



⁽³⁾ See footnote 2.

- (9) The Herlitz Group is active in the markets for products such as stationery, office equipment and greeting cards. Herlitz AG and Herlitz PBS AG are based in Berlin. The production sites of the Herlitz Group are based in Berlin, Falkensee (Brandenburg), Peitz (Brandenburg), Cunewald (Saxony), Poznan (Poland) and Most (Czech Republic). FOP is the group's main producer of office supplies.
- (10) Since July 2001, approximately 67 % the shares of Herlitz AG have been held by a banking consortium consisting of DB Industrial Holding (Deutsche Bank), Landesbank Berlin, Berliner Bank ⁽⁴⁾, Hypovereinsbank, Bayerische Landesbank, DZ Bank AG, Dresdner Bank, HSBC, IKB Deutsche Industriebank AG and West LB. The remaining 35 % are dispersed among many shareholders ⁽⁵⁾.
- (11) The economic development of the group is summarised in Table 1 below:

Table 1

	1997	1998	1999	2000	2001	2002 total	2002 1.1.2002 to 16.9.2002	2002 17.10.2002 to 31.12.2002	2003
Turnover in EUR million (*)	714	630	567	490	438	376	255	121	347
Net income/loss in EUR million (*)	- 51	- 37	- 46	- 51	- 134	99	51	48	1,7
Employees (*)	5 420	4 483	4 228	3 380	2 984	3 096	3 181 average	3 109 average	No major change
Capital in EUR million (*)	171	123	70	18	- 55	43	- 6	43	43
Bank liabilities in EUR million (*)	172	365	373	356	297	89	250	89	63

(*) All figures refer to the status at the end of each indicated year or period except where average is indicated.

- (12) Due to the non-prolongation of bank credits in March 2002 Herlitz AG, Herlitz PBS AG and other group subsidiaries such as Diplomat, HKV and Susy faced imminent insolvency or were already insolvent. On 3 April 2002, Herlitz AG and Herlitz PBS AG applied for insolvency proceedings. On 5 June 2002, the insolvency proceedings were opened by the court for both companies.
- (13) Separate insolvency proceedings have taken place for some of the Herlitz Group subsidiaries. Diplomat, HKV and Susy applied for bankruptcy on 12 April 2002 and were later liquidated. In the course of their liquidation, all their creditors received an equal percentage of their claims from the proceeds. No creditors waived any claims on these companies or on FOP. FOP's insolvency was avoided through a rescue aid loan granted to Herlitz PBS AG.
- (14) The insolvency proceedings for Herlitz AG and Herlitz PBS AG were terminated on 16 September 2002 when the court approved the insolvency plans. Previously, on 15 July 2002, the insolvency plans for both Herlitz AG and Herlitz PBS AG had been approved unanimously and unconditionally by the creditors. The fulfilment of the insolvency plans was monitored by the insolvency administrator and the creditors until 31 March 2004.

⁽⁴⁾ On 1 July 2003 the Berliner Bank became a subsidiary of Landesbank Berlin.

⁽⁵⁾ See the website of the Herlitz Group: http://www.herlitz.de/index.php?id=347&backPID=348&begin_at=5&pS=1041375600&pL=31535999&arc=1&tt_news=81

- (15) Germany submitted that the financial difficulties of the Herlitz Group were the result of a series of mistaken investment decisions made in the 1990s outside the core activity of the group. After German reunification, due to huge profit expectations, the Herlitz Group decided to enter the real estate business in Berlin and Brandenburg. However, real estate prices did not subsequently live up to expectations, so the Herlitz Group had to set aside reserves and provide for depreciation for an amount of some EUR 95 million. The buildings constructed for the Herlitz Group's own use in Berlin-Tegel and Falkensee proved to be too large. Since no suitable external use could be found for these buildings, vacancy costs of EUR 20 million accrued.
- (16) The real estate investments were the main loss-making factor for the company. Despite efforts to sell the real estate properties, the Herlitz Group was not able to divest itself of them. Accordingly, at the end of 2001, two special-purpose real estate companies were founded by the Herlitz Group: GGB Grundstücksgesellschaft Am Borsighafen mbH Co. KG (GGB) for the buildings owned by the group in Berlin-Tegel and GGF Grundstücksgesellschaft Falkensee mbH Co. KG (GGF) for the real estate property in Falkensee. The Herlitz Group exercised majority control over GGB and GGF through Herlitz PBS AG and HGG. Herlitz PBS AG was the majority partner (*Kommanditistin*), while HGG was the minority partner (*Komplementärin*) in GGB and GGF.
- (17) The Herlitz Group planned to relieve its balance sheet from the burden of the real estate investments. Accordingly, in January 2002, it sold the two properties as well as the associated emphyteusis right to GGB and GGF, which subsequently leased back the parts of these real properties necessary for the group. However, GGB and GGF could not be separated from the Herlitz Group before the insolvency proceedings. Finally, with the agreement of the insolvency administrator, on 30 September 2002 HGG, the minority partner of GGB and GGF, was taken out of the Herlitz Group and the majority partnership rights of Herlitz PBS AG were turned into minority ownership shares of EUR 1 million in both GGB and GGF. Accordingly, under German law ⁽⁶⁾, the Herlitz Group is no longer the majority owner of these real estate companies.
- (18) Another investment misjudgement by the Herlitz Group was entering the paper and paper processing business through the acquisition of a Russian paper factory. However, due to the collapse of the paper market in the Commonwealth of Independent States, the investment led to losses of about EUR 50 million. Further investments in western Europe such as the distribution businesses in Portugal, France and Austria were unsuccessful and resulted in losses of some EUR 10 to 15 million. The total loss from all the failed investments thus amounts to about EUR 175 to 180 million. It is worth noting that throughout this period the core business of the Herlitz Group was still producing positive results, although not enough to cover the losses from the other investments.

2. The financial measures

(a) The 'old' measures

- (19) In 1989, the *Land* of Berlin, through Liegenschaftsfonds Berlin GmbH & Co. KG (Liegenschaftsfonds), offered Herlitz AG the use of real estate in Berlin-Tegel on the former industrial premises of Borsig. Liegenschaftsfonds is a fully owned company of the *Land* of Berlin entrusted with the administration of State-owned real estate properties. The *Land* of Berlin remained the owner of the real estate but granted an emphyteutic lease (*Erbbaurecht*) on the land to the Herlitz Group, which undertook to pay a ground rent (*Erbbauszinsen*) to the *Land* of Berlin until 30 April 2053.
- (20) The ground rent amounted to 3 % of the value of the land, which could vary throughout the duration of the contract. The Herlitz Group built an office building and a production plant designed to meet the group's needs on the Berlin-Tegel site. The buildings erected on the leased land were the property of the Herlitz Group and when they were sold to GGB, the emphyteusis on the land was transferred with them.

⁽⁶⁾ See paragraph 290 of the German Commercial Code, Handelsgesetzbuch of 10 May 1897 (RGL. I S. 219).

- (21) The contract between the Liegenschaftsfonds and the Herlitz Group contained a clause for increasing the ground rent from 3 to 7,5 % in the event that the use of the land changed and if the new form of use were against the interests of the owner. Nevertheless, when the Herlitz Group sold the emphyteusis on the Berlin-Tegel property to GGB, the Liegenschaftsfonds did not increase the ground rent. The ground rent was paid as agreed by the Herlitz Group until March 2002 and by GGB as of ^(a) October 2002.
- (22) Moreover, in 1989 Herlitz AG received an unsecured and interest-free loan of EUR 3,07 million (DEM 6 million) for 10 years from the *Land* of Berlin linked to the transfer of its plants from Berlin-Moabit and Berlin-Spandau to the Berlin-Tegel site (hereinafter referred to as the loan for the move) (*Umzugsdarlehen*). On 17 November 1999, shortly before the deadline for the repayment of the loan for the move, the *Land* of Berlin deferred the repayment of the loan until 31 December 2004. In return for the deferral the *Land* of Berlin applied an interest rate on the loan amounting to the base rate of the European Central Bank plus 2 %.
- (23) As security, on 23 November 1999, Herlitz AG signed a notarial deed containing an acknowledgment of debt in favour of the *Land* of Berlin for the amount of EUR 3,67 million (DEM 7,185 million) which equals the original amount of the loan for the move plus the expected amount of the cumulated interest, EUR 0,606 million (DEM 1,185 million). Furthermore, the notarial deed established a land charge (*Grundschuld*) only for the amount of the cumulated interest, on the emphyteusis that Herlitz AG enjoyed on the land in Berlin-Tegel. Nevertheless, this land charge was lower-ranking to the land charge registered for banks on the same emphyteusis right. Neither the granting of the loan for the move in 1989 nor its deferral in 1999 are covered by an aid scheme and neither measure was notified to the Commission.
- (b) *The rescue aid loan*
- (24) By contract of 10 May 2002 between the insolvency administrator of Herlitz PBS AG and ILB, the bank granted Herlitz PBS AG a loan amounting to some EUR 930 232 (hereinafter referred to as the rescue aid loan). By letter dated 29 May 2002 this amount was increased to EUR 963 855,42.
- (25) The rescue aid loan was intended to ensure the fulfilment of a sales contract between Herlitz PBS AG and FOP. FOP had delivered goods to Herlitz PBS AG but received no payment, which threatened its liquidity.
- (26) The rescue aid loan was granted at an annual interest rate of 7,5 % and had to be reimbursed within six months after its disbursement. The full amount of the loan was disbursed on 24 July 2002. The loan was secured by assignment of claims (*Abtretung der Rückgewährungsansprüche*) of FOP amounting to EUR 2,5 million as well as land charges (*auf dem Betriebsgrundstück eingetragene Grundschulden*) amounting to EUR 13 549 234,85 on the real estate of FOP. The loan was fully repaid with interest to ILB on 24 January 2003.

(c) *Restructuring through insolvency plans (Insolvenzpläne)*

General description of the insolvency plans

- (27) Germany has provided two parallel insolvency plans: one for Herlitz PBS AG and another for Herlitz AG, both dated 15 July 2002. These insolvency plans are the restructuring or rather the recapitalisation plans (*Sanierungspläne*) of the Herlitz Group. The plans provide for the reduction of capacities, the hive-off of company property, the closing of unprofitable subsidiaries, the reduction of negative operating results, measures to reduce costs and optimise distribution and the search for a strategic partner. In addition, the plans aim to reduce both companies' pending debts through partial and full waivers of non-secured debts and a contribution from the workforce.

^(a) Substantive error.

- (28) Both insolvency plans applied the methodology of maintaining the going concern through an insolvency plan (*Sanierung durch Insolvenzplan*), in accordance with the German Insolvency Statute ⁽⁷⁾. The Insolvency Statute, in force since 1 January 1999, provides for the option of rescuing a company by keeping the existing management and satisfying the creditors from the income created after the insolvency proceedings have been terminated. In the Herlitz AG and Herlitz PBS AG proceedings, this appeared to be the solution best suited to satisfying the creditors. Accordingly, the insolvency administrator and the creditors rejected the options of selling the entire company (*übertragende Sanierung*) or liquidating the company and selling assets separately (*Zerschlagung*).
- (29) The two plans have a similar methodology but apply different solutions, due to the different asset structure of Herlitz PBS AG and Herlitz AG. However, the restructuring through the insolvency plan of Herlitz AG was conditional upon the fulfilment of the insolvency plan for Herlitz PBS AG. Both plans divided the creditors of each company into groups that were supposed to contain creditors with comparable claims.
- (30) According to Article 222 of the Insolvency Statute, there are three types of creditors that take part in insolvency proceedings:
- (a) the creditors entitled to separate satisfaction if their rights are encroached upon by the plan;
 - (b) the non-lower-ranking creditors;
 - (c) lower-ranking creditors unless their claims are deemed to be waived.
- (31) These are further divided into groups of creditors with equal rights. Once groups have been created, no individual settlements can take place that would differentiate between parts of each creditor group.
- (32) In the insolvency proceedings of both Herlitz AG and Herlitz PBS AG, creditors with a right to separate satisfaction participated, but their claims were satisfied to the extent that they were covered by such a right.
- (33) Germany submitted that in the insolvency proceedings of Herlitz AG and Herlitz PBS AG all insolvency costs (*Massekosten*) and debts of the insolvency assets (*Masseverbindlichkeiten*) were paid in full. A part of these claims were public sales tax claims (*Umsatzsteuer*). In insolvency proceedings of the going-concern type, the payment of all these privileged claims is a precondition for the successful closure of the procedure. The debts of the insolvency assets were paid immediately as they arose and no separate list of these claims was made. Only hypothetical lists of insolvency costs and debts of the insolvency assets were prepared to illustrate the possible outcomes of liquidation and asset sale procedures.

Creditor groups in the insolvency plan for Herlitz AG

- (34) In the insolvency proceedings for Herlitz AG, the classification of the insolvency claims was as follows:
- (a) creditors entitled to separate satisfaction: no formal group of these creditors was drawn up. Nevertheless, a right to separate satisfaction secured the full claims of the mortgage banks Hypovereinsbank and Eurohypo ⁽⁸⁾, but only a part of the claims of group HAG 1 below;

⁽⁷⁾ Insolvenzordnung of 5 October 1994, (BGB II 1994, 2866).

⁽⁸⁾ See recital 42.

- (b) insolvency costs and debts of the insolvency assets: no formal group of these creditors was drawn up and these claims were paid in full as soon as they arose;
- (c) non-lower-ranking creditors:
- group HAG 1: group of banks with a right to separate satisfaction on part of their claims from the movable property and shareholdings of Herlitz AG,
 - group HAG 2: other non-lower-ranking creditors not belonging to group HAG 1,
 - group HAG 3: tax authority of Berlin,
 - group HAG 4: connected undertakings;
- (d) lower-ranking creditors:
- group HAG 5: interests, costs, fines etc.
- (35) The lower-ranking claims in group HAG 5 were cancelled by the insolvency plan in accordance with Article 225 of the Insolvency Statute. The non-lower-ranking groups HAG 3 and HAG 4 waived all their claims with effect from 15 July 2002 ⁽⁹⁾. The claims and the amounts waived by creditors are set out in rounded figures in the following table:

Table 2

Group	Creditors of Herlitz AG (public or private creditor)	Description of claim	Security of claim	Claims in EUR million	Waived claims in EUR million
HAG 1	Banks with right to separate satisfaction (public and private)	Credits dating from before 3 April 2002	Right to separate satisfaction from movables	[130 to 140] (*)	[up to 135] *
HAG 2	Former management and employees (private)	Future pension claims, salary for the period before 3 April 2002, redundancy payment	None	[35,91] *	[...] *
	Lessor of grounds at Spandau (private)	Rent, damages for termination of contract	None		[...] *
	Suppliers (private)	Claims from supplies and services before 3 April 2002, damages for termination of contract	None		

⁽⁹⁾ The only exception was that Herlitz PBS AG received a compensation payment of EUR 1 million for the termination of an affiliation agreement between Herlitz AG and Herlitz PBS AG.

Group	Creditors of Herlitz AG (public or private creditor)	Description of claim	Security of claim	Claims in EUR million	Waived claims in EUR million
	Mutual Insurance Association (public)	Future pension claims	None	[8,43] *	
	Federal Employment Agency (public)	Claim for compensation of the insolvency benefit paid to employees (1 January 2002 to 4 June 2002)	None		
	Health Insurance Funds (public)	Contributions for the period (5 March 2002 to 4 June 2002)	None		
	Tax authority of Alfeld (public)	Tax on the sale of real estate from the sale of an ownership share before 2002	None		
	Liegenschaftsfonds (public)	Rent interest for Berlin-Spandau	None		

Overall waivers in group HAG 2: EUR 0,5 million quota was distributed according to the size of the claims, and the remaining part of the claims was waived

HAG 3	Tax authority of Berlin (public)	Trade tax, corporate income tax and sales tax for the period ending 5 June 2002	None	[2,0] * ^(*)	[2,0] * ^(*)
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Overall waivers in group HAG 3: 100 % of the claims was waived

HAG 4	Connected undertakings (private)	All claims against Herlitz AG	None	109	108
HAG 5	Lower-ranking creditors (private or public)	Interests, costs, fines etc.	None	Not specified	Not specified

^(*) Substantive error.

^(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

Creditor groups in the insolvency plan for Herlitz PBS AG

(36) The classification of the creditors in the insolvency proceedings for Herlitz PBS AG was as follows:

(a) creditors entitled to separate satisfaction:

— group PBS 1: a right to separate satisfaction secured the full claims of certain suppliers,

— group PBS 6: banks with right to separate satisfaction on part of their claims. The mortgage banks Hypovereinsbank and Eurohypo had also rights to separate satisfaction but were not included in group PBS 6;

- (b) insolvency costs and debts of the insolvency assets: no formal group of these creditors was drawn up and these claims were paid in full as soon as they arose;
- (c) non-lower-ranking creditors:
- group PBS 2: employees
 - group PBS 3: some of the public creditors such as tax authorities, Federal Employment Agency, Health Insurance Funds (*Krankenkassen*), *Land* of Berlin
 - group PBS 4: connected undertakings
 - group PBS 5: other non-lower-ranking creditors such as former management and executive employees, the Employer's Liability Insurance Association (*Berufsgenossenschaft*), the Mutual Insurance Association (*Pensionssicherungsverein*), private leasing banks, Austrian Post, Main Customs Office etc.;
- (d) lower-ranking creditors:
- group PBS 7: interests, costs, fines etc.
- (37) The lower-ranking claims in group PBS 7 were cancelled by the insolvency plan in accordance with Article 225 of the Insolvency Statute. The non-lower-ranking groups PBS 3 and PBS 4 waived all their claims with effect from 15 July 2002. The non-lower-ranking claims and the amounts waived by creditors are set out in rounded figures in the following table:

Table 3

Group	Creditors of Herlitz PBS AG (public or private creditor)	Description of claim	Security of claim	Claims in EUR million	Waived claims in EUR million
PBS 1	Suppliers with right to separate satisfaction (private)	Claims from supplies and services before 3 April 2002	Right to separate satisfaction from movables	[3 to 6] *	0
PBS 2	Employees (private)	Future salary claims	None	[40 to 50] */ year	[2 to 4] * in 2002 [4 to 5] */ year from 2003
PBS 3	Tax authority of Berlin (public)	Corporate income tax March 2002	None	[11,50] *	[...] *
	Tax authority of Berlin (public)	Real estate tax for the period January -March 2002	None		
	Tax authority of Berlin (public)	Real estate tax for 1996	None		
	Federal Employment Agency (public)	Claim for compensation of the insolvency benefit paid to employees (1 April 2002 to 4 June 2002)	None		

Group	Creditors of Herlitz PBS AG (public or private creditor)	Description of claim	Security of claim	Claims in EUR million	Waived claims in EUR million
	Health Insurance Funds (public)	Contributions for the period 5 March 2002 to 4 June 2002	None		
	Liegenschaftsfonds (public)	Ground rent for the period April to June 2002	Lower-ranking land charge		
	Land of Berlin (public)	Claim for repayment of loan for the move	None		

Overall waivers in group PBS 3: 100 % of the claims was waived

PBS 4	Connected undertakings (private)	All remaining claims from connected undertakings in the Herlitz Group	None	139	139
PBS 5	Former management and executive employees (private) ^(a)	Future pension claims, salary for the period before 3 April 2002, redundancy payment	None	[private creditors 22,61; public creditors 19,56] *	[...] *
	Mutual Insurance Association (public)	Future pension claims	None		
	Private Leasing Banks (private)	Unpaid and capitalised future leasing payments	None		
	Austrian Post (private for this case)	Complaint credit note and returned bonus	None		
	Employer's Liability Insurance Association (public)	Accident insurance fees	None		
	Main Customs Office (public)	Import sales tax, customs duty	None		
	Duales System Deutschland (private)	Fees for 'Der Grüne Punkt' recycling system	None		
	Health Insurance Funds (public)	Contributions for the period (1 to 4 March 2002)	None		
	Liegenschaftsfonds (public)	Ground rent for the period July to September 2002	Lower-ranking land charge		

Group	Creditors of Herlitz PBS AG (public or private creditor)	Description of claim	Security of claim	Claims in EUR million	Waived claims in EUR million
	Other private suppliers without securities (private)	Claims from supplies and services before 3 April 2002, damages for termination of contract	None		
Overall waivers in group PBS 5: 90 % of the claims was waived					
PBS 6	Banks with right to separate satisfaction (private and public)	Credits dating from before 3 April 2003	Right to separate satisfaction from movables	[100-120] * ^(b)	(waived all but EUR 76,75 million)
PBS 7	Lower-ranking creditors (private or public)	Interests, costs, fines etc.	None	Not specified	Not specified

^(a) This amount results after discounting double claims made against Herlitz AG and Herlitz PBS AG.

^(b) See note (a).

Additional information on debts with public creditors

- (38) Public creditors declared claims in several groups of the insolvency proceedings. It is worth noting that none of the public or private creditors in groups HAG 2, HAG 3, PBS 3 and PBS 5 had any securities on their claims. Despite this fact, the non-lower-ranking claims within groups HAG 3 and PBS 3 were waived completely, while the non-lower-ranking creditors in groups HAG 2 and PBS 5 received a proportional share of payment.
- (39) In accordance with the insolvency plans, the creditors within group HAG 2 received by 31 March 2004 a share of a total amount of EUR 0,5 million, corresponding to the relative size of their claims. The creditors of group PBS 5 received 10 % of their claims by 31 December 2003. Tables 2 and 3 above show the amounts of the public claims and the respective waivers.

Additional information on financial institutions covered by the settlement agreement

- (40) Both insolvency plans mention a pending credit granted to Herlitz PBS AG by a bank consortium (hereinafter referred to as the consortium credit). The composition of the consortium is very similar to that of the shareholder banks described in recital 10. The consortium credit was granted by the whole consortium to Herlitz PBS AG in order to enable the full repayment of a convertible loan of EUR 100 million. On 3 April 2002, EUR 53,9 million of the EUR 65,4 million consortium credit was used up. Furthermore, before July 2001 most of these same banks granted the entire Herlitz Group other credits (lines of credit) totalling EUR 156,6 million, EUR 134,11 million of which was used up on 3 April 2003.
- (41) In group PBS 6 the banks uniformly waived the repayment of the consortium credit and the lines of credit exceeding a total amount of EUR 76,714 million with respect to Herlitz PBS AG. The same credit claims were uniformly waived in group HAG 1 with regard to Herlitz AG regarding amounts exceeding in total EUR 5 million. The parts of the credits that were not waived represent prolonged credits to the Herlitz Group. However, despite the fact that the banks waived the credits with respect to Herlitz PBS AG and Herlitz AG, these liabilities were simultaneously assumed by the real estate companies GGB and GGF.

Additional information on other debts with financial institutions

- (42) At the time of the approval of the insolvency plans by the creditors, further bank liabilities existed within the Herlitz Group, which were not covered by the consortium credit and the lines of credit. Firstly, Hypovereinsbank (Ireland), the Bayerische Landesbank and the Landesbank Berlin banks fully waived the repayment of their non-secured credits in order not to endanger the recovery of their partly secured claims within the consortium credit. Secondly, the Herlitz Group also received credits that were fully secured through a first-ranking land charge on the Berlin-Tegel property: a credit of EUR 15,4 million from Hypovereinsbank and a credit of EUR 30,8 million from Eurohypo. These two credits did not enter into the settlement agreement but could be waived against Herlitz AG and Herlitz PBS AG, because the securing Berlin-Tegel property was sold to GGB.
- (43) Furthermore, on 15 April 2002 the consortium of banks granted a liquidity loan to the Herlitz Group (liquidity loan). The liquidity loan of EUR 15 million was granted in order to enable the continuation of the group's operative business. The loan was twice prolonged (renewed) until 17 November 2003, when it was fully repaid. This loan covered the seasonal liquidity needs of the group and may be granted again in June 2004.

Additional information on debts with suppliers

- (44) Herlitz AG's debts with the suppliers amounted to EUR 9,30 million in group HAG 2. The suppliers of Herlitz PBS AG can be divided into those with securities (in group PBS 1) and those without any securities (in group PBS 5). The suppliers in group PBS 1 had a right of separate satisfaction on 35 % of each Herlitz PBS AG's current assets and therefore made no waivers. By contrast, the unsecured suppliers in group PBS 5 relinquished 90 % of their claims like the other non-lower-ranking creditors in that group.

Additional information on debts with the workforce and connected undertakings

- (45) Under German insolvency law, employees and connected undertakings can also participate and receive quotas on their claims in insolvency proceedings. This is why separate 'creditor' groups were created for these (HAG 4, PBS 4) or they were included in mixed groups (HAG 2, PBS 5).

Alternatives to the insolvency plans

- (46) In the Herlitz AG and Herlitz PBS AG proceedings, the insolvency administrator and the creditors opted for maintaining the going concern through insolvency plans. As explained in recital 33, under the going-concern procedure all the insolvency costs and the debts of the insolvency assets were paid. Furthermore, EUR 0,5 million was distributed as a quota to some non-lower ranking creditors of Herlitz AG, while some non-lower ranking creditors of Herlitz PBS AG received 10 % of their claims as a quota. As explained in recital 47, the expected value of the insolvency mass was much lower in the option of liquidating the company. Selling the entire company in an asset deal was expected to produce better satisfaction of creditors, but no investor was willing to take over the totality of the assets of the group.
- (47) According to an evaluation prepared by the firm Roland Berger and also in the opinion of the independent auctioneer, a liquidation would have reduced the value of movable assets from EUR 84,2 million to EUR [10-30] * million. This amount would have been first used to satisfy the claims with a right to separate satisfaction, leaving free insolvency assets of only EUR [0-5] * million. The revenues of the Herlitz Group during the insolvency proceedings would have amounted to approximately EUR 1 million. After adding this amount to the free assets, the result would have been total free insolvency assets of EUR [1-6] * million.

- (48) The free insolvency assets would have been used to settle, in advance, the insolvency costs and the debts of the insolvency assets, such as those created through the administration and disposition of insolvency assets. After deduction of the insolvency costs, the final amount of free assets would have been only EUR [0-1] * million. This amount could not cover the debts of the insolvency assets of the company and therefore was insufficient for even a proportional satisfaction of the non-lower-ranking creditors.
- (49) According to the insolvency plans, a restructuring whereby all assets of the Herlitz Group would have been sold in an asset deal to a new owner was not practicable. Offers were made for the takeover of certain areas of activity and stocks, but the price offered corresponded to the liquidation value. Therefore, the option promising best satisfaction to creditors was the going-concern restructuring through insolvency plan.
- (d) *The decision to initiate proceedings under Article 88(2) of the Treaty*
- (50) The Commission decided on 19 February 2003 to initiate proceedings under Article 88(2) of the Treaty for three main reasons based on its review of the compatibility of the measures with the Community guidelines on rescue and restructuring aid for firms in difficulty ⁽¹⁰⁾ (hereinafter referred to as the Guidelines).
- (51) First, the Commission found that the loan granted by ILB to Herlitz PBS AG contained elements of state aid within the meaning of Article 87(1) of the Treaty which needed to be analysed further. As regards compatibility of the aid with the Guidelines, Germany did not submit sufficient information for establishing who the real beneficiary of the aid was.
- (52) Second, the Commission wondered whether the waivers of several public creditors (tax authorities, employment institutions, social security and public financial institutions) in the insolvency plans constituted aid.
- (53) Third, as regards the Herlitz Group's use of the Berlin-Tegel real estate belonging to the *Land* of Berlin, the Commission expressed doubts as to whether the lease contract was concluded under market conditions. Since more than 10 years had passed since the contract, the granting of the lease was regarded as existing aid. However, the Commission considered that the *Land* of Berlin's waivers of ground rent claims (*Erbbauszinsen*) and the fact that the rent was not increased could constitute new aid. It also took the view that the granting and subsequent waiver of the interest-free loan of DEM 6 million by the *Land* of Berlin could constitute State aid.

III. COMMENTS FROM INTERESTED PARTIES

- (54) The only interested party that commented on the decision initiating the formal investigation procedure was Herlitz PBS AG on behalf of the beneficiary Herlitz Group. Herlitz PBS AG expressed its support for a thorough examination of the facts underlying the allegation of unlawful State aid. It informed the Commission that it had provided all the relevant documents to the German authorities.
- (55) As regards the rescue aid loan, Herlitz PBS AG submitted that it had been repaid and that it fulfilled the conditions for approving rescue aid. With respect to the waivers in the insolvency proceedings, Herlitz PBS AG stated that the public creditors had acted in a comparable manner to private ones, furthermore the waived claims were worthless. Herlitz PBS AG stressed that all creditors had voted unanimously to adopt the insolvency plans. Herlitz PBS AG reiterated that any aid elements the Commission might find in the waivers of claims would be eligible for approval as restructuring aid under the Guidelines. To avoid repetition, Herlitz PBS AG simply supported the legal arguments put forward by Germany.

⁽¹⁰⁾ OJ C 288, 9.10.1999, p. 2.

IV. COMMENTS FROM GERMANY

- (56) In its response to the decision to initiate the formal investigation procedure, Germany stated that the only measure it considered to be State aid was the rescue aid loan granted by ILB. Germany submitted that this aid was compatible with the common market under Article 87(3)(c) of the Treaty.
- (57) Germany stated that the remaining measures and in particular the waivers in the insolvency proceedings did not constitute State aid within the meaning of Article 87(1) of the Treaty. Germany submitted that the public creditors in the insolvency proceedings had waived worthless claims and that otherwise their actions were compatible with the private creditor principle. Furthermore, according to Germany even if some of the other measures might constitute aid, they would be eligible for approval as restructuring aid under Article 87(3)(c) of the Treaty.

1. Germany's comments on the rescue aid loan

- (58) With respect to the rescue aid loan, Germany pointed out that the decision to grant the loan on 10 May 2002 preceded the final adoption of the insolvency plan on 15 June 2002. The fact that the loan was only paid out on 24 July 2002 was due to certain 'unresolved questions' which could not be settled with ILB before 24 July 2002. For the period between the contract and the disbursement, the liquidity loan ensured the liquidity of Herlitz PBS AG. However, the liquidity loan was not sufficient to cover the increased liquidity needs in August 2003, which arose because of the start of the school term.
- (59) Therefore, according to Germany, the rescue aid loan was necessary to cover the period until the adoption of the insolvency plan. Germany submitted that the rescue aid loan was limited to the minimum, as demonstrated by the very low liquidity level of Herlitz PBS AG between August and December 2002.
- (60) Germany stated that the beneficiary of the rescue aid loan was not FOP but Herlitz PBS AG. Firstly, the credit agreement of 10 May 2002 was concluded between the insolvency administrator and Herlitz PBS AG. Secondly, Germany pointed out that FOP could not be regarded as the de facto beneficiary either because FOP only received due payments in accordance with its supply contract with Herlitz PBS AG.

2. Germany's comments on the restructuring through insolvency plans

- (61) Germany submitted that the waivers of certain public creditors did not lead to loss of revenue by the State since the relevant claims were worthless. According to Germany, the assets of Herlitz AG and Herlitz PBS AG were only sufficient to cover the claims of creditors with a right to separate satisfaction. The public creditors outside this group had no securities or only a lower-ranking land charge.
- (62) Germany pointed out that in a liquidation scenario little or no payment would have resulted to public creditors, including the ones secured by a lower-ranking land charge. According to paragraph 168 of the judgment of the Court of First Instance in Case T-152/99 (*HAMSA v Commission*) ⁽¹¹⁾, a creditor with an unsecured claim that would be worthless in a liquidation scenario does not make a real sacrifice by waiving a substantial part of his claim.

⁽¹¹⁾ Judgment of the Court of First Instance of 11 July 2002 case T-152/99, *Hijos de Andrés Molina, SA (HAMSA) v Commission of the European Communities* [2002] ECR II-3049.

- (63) Germany stated that waivers by public creditors do not represent a service (*Leistung*) or a benefit that can be expressed in monetary terms. Since Herlitz AG and Herlitz PBS AG were insolvent, in a liquidation scenario, their assets would not have been sufficient to pay any quota on public claims. Therefore, normally Herlitz AG and Herlitz PBS AG would have been freed from these claims by the insolvency proceedings.
- (64) Germany argued that even if waivers of public claims were considered to be a service, there was a consideration from the Herlitz Group which counterbalanced it. This consideration was the future tax and social security revenue that the public creditors could expect by maintaining the operations of the company.
- (65) Germany submitted that the analysis of public creditors' waivers had to be carried out in accordance with the private creditor principle as laid down in the *HAMSA* judgment. According to this principle, each public creditor had to be compared with private creditors in a similar situation, or with a hypothetical private creditor.
- (66) According to Germany, the public creditors in the insolvency proceedings of the two Herlitz Group companies are the public banks, the tax authority of Berlin, the Federal Employment Agency, Health Insurance Funds, the *Land* of Berlin and other creditors such as the Main Customs Office and the tax authority of Alfeld. In the opinion of Germany, in accordance with the judgment of the Court of Justice in Case C-482/99 (*France v Commission*) ⁽¹²⁾, a thorough analysis is necessary to determine whether certain credit waivers could be imputable to the State.
- (67) As regards public banks, Germany submitted that the consortium of banks that granted the consortium credit and lines of credit included the publicly controlled Landesbank Berlin, Bayerische Landesbank and WestLB. These banks acted as private members of the banking consortium, which is supported by the fact that the waivers on the basis of the insolvency plans were undertaken collectively by the consortium of banks and not by individual banks. Also, as regards the waivers of unsecured claims undertaken by individual banks outside the insolvency plans, such waivers were carried out by both private and public banks.
- (68) With regard to the tax authority of Berlin, Germany stated that the reason for fully waiving its claims in groups HAG 3 and PBS 3 was that it expected to be fully compensated by the future tax revenue from Herlitz AG and Herlitz PBS AG. Similarly, the full waivers of the Federal Employment Agency and the Health Insurance Funds in Group PBS 3 were motivated by the future revenue from statutory social security payments. The same arguments were used to justify the full waivers of the *Land* of Berlin and the *Liegenschaftsfonds*. According to Germany, the prospect of future ground rent revenue from the Herlitz Group was the reason for their waivers in group PBS 3.
- (69) Germany claims that the public creditors who waived 100 % of their claims in groups HAG 3 and PBS 3 acted in a rational way and were not comparable to the other creditor groups. The motive behind their 100 % waiver was the future revenue (tax, social security and ground rent) that the public creditors could expect by maintaining the operations of the company. In Germany's view, future revenue is one of the most important motives for a creditor when deciding on a waiver of claims. Since the public authorities had a much higher chance of obtaining future revenue from the Herlitz Group than private ones, a higher proportion of public waivers was justifiable.
- (70) Germany claims that the rule of avoiding the confusion between the roles of public authority and public investor applies only to the market economy investor test but not to the private creditor test. If public creditors could take into account future revenue when writing off past claims, this would be tantamount to discrimination between creditors, so that no effective comparison of creditors could be carried out.

⁽¹²⁾ Judgment of the Court of 16 May 2002 case C-482/99, *French Republic v Commission of the European Communities* [2002] ECR I-4397.

- (71) Referring to the opinion of the insolvency administrator, Germany pointed out that without such a full waiver by the public creditors in groups HAG 3 and PBS 3 the creditors would not have approved the insolvency plans. In fact the private creditors had demanded a bigger sacrifice from the public creditors, because the continuance of the Herlitz Group ensured statutorily guaranteed revenue for most of these creditors, while the private creditors did not have such a guaranteed future income from the firm. Another justification for the full waivers in these creditor groups was that the public tax claims were not clear at the time of the creditors' agreement, therefore, by eliminating these uncertainties, the plans could be agreed.
- (72) Germany submitted that all public creditors that undertook partial waivers in groups HAG 2 and PBS 5 were treated equally as private creditors in those groups. These groups contained claims of the Federal Employment Agency, the Health Insurance Funds, the Main Customs Office and the tax authority of Alfeld, the *Land* of Berlin and the *Liegenschaftsfonds*.
- (73) Finally, Germany argued in the alternative that, even if the Commission found that State aid was provided in the form of waivers of public claims to Herlitz AG or Herlitz PBS AG, the measures fulfilled the conditions for approval as restructuring aid under Article 87(3)(c) of the Treaty and the Guidelines.
- (74) The conditions of the Guidelines were met according to Germany because there was an effective and genuine restructuring plan, the viability of the Herlitz Group had been restored, there had been capacity reduction and the waivers of public claims had been limited to the minimum. Furthermore, no excess liquidity had been given to the Herlitz Group and the group had not received any restructuring or rescue aid in the past.

3. Germany's comments on the *Land* of Berlin and the *Liegenschaftsfonds*

- (75) As regards the emphyteusis on the real estate in Berlin-Tegel, Germany submitted an excerpt of the agreement establishing this right. Germany stated that the *Liegenschaftsfonds* did not increase the ground rent for the emphyteusis because it did not consider the sale of the Berlin-Tegel buildings to GGB a change in the use of the land that was contrary to the interests of the owner.
- (76) Concerning the loan for the move, Germany informed the Commission that the deferral of this loan was not notified because the *Land* of Berlin acted as a private creditor. This was supported by the fact that the deferral was accompanied by an interest rate, an acknowledgment of debt and a land charge for the amount of the accrued interest on the emphyteusis.

V. LEGAL ASSESSMENT

1. Existence of aid

- (77) Under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case-law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.
- (78) The products of the Herlitz Group are traded within the Community and there is competition between Member States. The rescue aid loan, the deferred loan for the move and certain waivers of public claims in the insolvency proceedings are State measures or derive from State resources. If these confer an advantage, this would distort competition and affect trade. The existence of advantage has to be assessed in accordance with the market economy investor and private creditor principles.

(a) *The 'old' measures*

- (79) As regards the granting of the loan for the move in 1989, the decision to initiate proceedings found that it was covered by the 10-year limitation period and constituted existing aid under Article 1(b)(iv) of Regulation (EC) No 659/99. The granting of this loan therefore fell outside the investigation's scope. Furthermore, any State aid element that might be involved in the offering of land to the Herlitz Group in 1989 could not be recovered in conformity with Article 15 of the said Regulation.
- (80) The decision to initiate proceedings mentioned the possibility that the non-increase of the ground rent for the land in Berlin-Tegel in 2002 might have involved aid. This was later proved not to be the case by the terms of the ground rent contract. The contract provided for the possibility of a rent increase only if the use of the land was changed. Such a change did not take place because the land and the buildings on it were used for the same purpose as before. The Herlitz Group now simply leases the same buildings which it used to own previously.
- (81) Regarding the deferral of the loan for the move in 1999, Germany argued that it was granted under market conditions. The deferral was granted at a time when the Herlitz Group was not yet in difficulty with an interest rate still higher than the reference rate applicable. The interest was secured and in any case regularly paid until the insolvency proceedings. The Commission therefore considers that the deferral was not new aid.

(b) *Aid in the rescue aid loan and the waivers of the insolvency proceedings*

- (82) The rescue aid loan provides the Herlitz Group with advantages that a company in difficulties would not have obtained on the market. Germany agrees on this. Furthermore, as will be shown below, in the insolvency proceedings of Herlitz AG and Herlitz PBS AG, the disproportionate waivers by certain public creditors derive from State resources and confer an advantage on the group. They therefore constitute aid measures within the meaning of Article 87(1) of the Treaty.

Public creditors

- (83) In order to establish which measures concern State resources and are imputable to the State, each creditor was analysed. The Commission finds that the group of public creditors is larger than submitted by Germany. Apart from the public banks, the tax authority of Berlin, the tax authority of Alfeld, the Federal Employment Agency, the Health Insurance Funds, the *Land* of Berlin (including the *Liegenschaftsfonds*) and the Main Customs Office, there are two more public creditors. These are the Mutual Insurance Association (*Pensionssicherungsverein*) and the Employer's Liability Insurance Association (*Berufsgenossenschaft*).
- (84) The Mutual Insurance Association was designated by paragraph 14 of the 1974 Occupational Pensions Schemes Act (*Gesetz zur Verbesserung der betrieblichen Altersversorgung, BetrAVG*)⁽¹³⁾ as the institution in charge of the insolvency insurance. In accordance with paragraphs 10(1) and 10(2) of that Act, the Mutual Insurance Association receives, through an *Ausgleichsfonds*, compulsory contributions under public law from all employers.
- (85) The Employer's Liability Insurance Association was designated by paragraph 144 of the SGB 7 (German Social Code, Seventh Book on Statutory Accident Insurance)⁽¹⁴⁾ as the institution in charge of statutory accident insurance. In accordance with paragraph 150(1) of the SGB 7 act, the Employer's Liability Insurance Association receives compulsory contributions made under public law from all employers.

⁽¹³⁾ See Gesetz zur Verbesserung der betrieblichen Altersversorgung, (BetrAVG) of 19 December 1974 (BGBl. I S. 3610).

⁽¹⁴⁾ BGBl. 1996-I S. 1254.

- (86) The situation of the Mutual Insurance Association and the Employer's Liability Insurance Association corresponds to the one envisaged in paragraph 58 of the judgment of the Court of Justice in Case C-379/98 (*PreussenElektra*) ⁽¹⁵⁾. In the case of these associations, waivers were not granted directly by the State, but by a public or private body designated or established by the State. These waivers were the foregoing of State resources in the form of statutory contributions to a fund designated by the State. The waivers are also imputable to the State in accordance with the judgment of the Court of Justice in Case C-342/96 (*Spain v Commission*) ⁽¹⁶⁾, because these independent social security associations are supervised by the State and financed by contributions paid by undertakings.

Application of the private creditor principle

- (87) In accordance with the case-law of the European Court of Justice ⁽¹⁷⁾, the Commission first compared each public creditor in the insolvency proceedings of the Herlitz Group with similar private creditors. Given that for each public creditor there were comparable private creditors, there was no need to perform a comparison with hypothetical private creditors.
- (88) The private creditor principle was satisfied in the liquidation procedures of the Herlitz Group subsidiaries Diplomat, HKV and Susy, because all creditors received an equal share of the liquidation proceeds. Private and public creditors behaved in a similar way with regard to the debts of the insolvency assets because these claims were fully satisfied. Similarly, the private creditor principle was respected with regard to the lower-ranking claims because all the public and private creditors concerned waived them.
- (89) The comparison of non-lower-ranking creditors produced a similar result in the procedures of Herlitz AG and Herlitz PBS AG. Most groups contained creditors with equal ranking in the order of satisfaction, but some of the creditors with identical and comparable rights were placed in different groups. As a consequence, public creditors made a disproportionate waiver in creditor groups HAG 3 and PBS 3. With the exception of these two groups, all other creditor groups established in the insolvency proceedings correspond to comparable creditors for the purpose of analysing the private creditor principle.
- (90) As set out in paragraph 168 of the *HAMSA* judgment, the factors determining the similarity of creditors are the type and amount of securities, the privileged nature of claims, the creditors' evaluation of the chances of recapitalising the company and the share of the liquidation revenue they can expect. Judging by these criteria the creditor groups HAG 3 and HAG 2 are similar and should belong to a single group with an equal right to satisfaction. The same can be said about creditors in PBS 3 and PBS 5.
- (91) All these groups comprised unsecured non-lower ranking claims, which were non-privileged and which would have received an equal share or nothing at all in the event of liquidation. The lower-ranking land charge of the *Liegenschaftsfonds* represents no security in an insolvency scenario where the banks' first-ranking mortgage and right to separate satisfaction fully covered the value of the security. Furthermore, all creditors in these groups had an equal interest in avoiding liquidation and obtaining a quota in the going concern settlement. Nevertheless, only the creditors in groups PBS 5 and HAG 2 got a quota on the basis of their existing insolvency claims.

⁽¹⁵⁾ Judgment of the Court of 13 March 2001 Case C-379/98, *PreussenElektra AG v Schleswig AG*, in the presence of Windpark Reußenköge III GmbH and Land Schleswig-Holstein [2001] ECR I-2099, paragraph 58.

⁽¹⁶⁾ Judgment of the Court of 29 April 1999 in Case C-342/96, *Kingdom of Spain v Commission of the European Communities* [1999] ECR I-2459, paragraphs 5 and 46.

⁽¹⁷⁾ See *HAMSA v Commission*, *loc. cit.*, paragraphs 167 to 170; *Spain v Commission*, *loc. cit.*, paragraph 46; and Judgment of the Court of 29 June 1999 in Case C-256/97 *Déménagements-Manutention Transport SA (DM)*, [1999] ECR I-3913, paragraph 24.

- (92) Contrary to Germany's submission, public creditors in groups HAG 3 and PBS 3 could not take into account their future statutory tax and social security revenue to justify a proportionally larger waiver. The case-law of the Court of First Instance and of the European Court of Justice ⁽¹⁸⁾ prevents a public authority from taking into account its future tax and social security revenue when deciding on the proportion of the claims it should waive against a debtor. If such considerations were allowed, the roles of public authority and investor would be confused.
- (93) The need to avoid any confusion between the roles of public authority and investor applies not only to the market economy investor principle, but also to the private creditor principle. These two principles have essentially the same purpose of establishing whether public investors behave in a comparable way to private ones. The effectiveness of both principles would be impaired if public authorities could take into account their future statutory income when making decisions as an investor. Insolvency creates an exceptional situation where the past statutory public claims (tax and social security) can be compared with civil claims of private creditors. Nevertheless, such a comparison can be performed only with regard to the past, for existing claims.
- (94) Although future revenue expectations can play a role when deciding on waivers, this is not the main consideration. Also, the State is not driven by profit considerations when levying taxes. If the argument of Germany were taken further, private creditors should be required to waive more than public ones, because the waivers are deductible from their tax base. Furthermore, Germany does not explain why in other creditor groups, public creditors of the same type were granted a quota for similar claims and not in HAG 3 and PBS 3. For the same reason, the public but non-statutory ground rent claim of the Liegenschaftsfonds in group PBS 3 cannot be waived to a larger extent than that of private or public claims in group PBS 5.
- (95) Finally, paragraph 167 of the *HAMSA* judgment of the Court of First Instance reiterated that public creditors in debt write-off situations do not have to be compared to private investors pursuing a global or sectoral structural policy, but rather to a private creditor seeking to recover as much of his claims as possible from the firm in financial difficulty. This bears out the private and public creditors' equal interest in obtaining a quota on their existing insolvency claims.

The amount of the rescue and the restructuring aid

- (96) The amount of rescue aid corresponds to the rescue aid loan of EUR 963 855,42. The aid to the Herlitz Group in the form of waivers in the insolvency proceedings corresponds to the proportional difference between waivers made on the one hand by public creditors in groups PBS 3 and HAG 3 and on the other hand the waivers of the creditors in groups PBS 5 and HAG 2.
- (97) In the insolvency proceedings of Herlitz AG, the public creditor in group HAG 3 did not behave in the same way as the comparable private creditors in group HAG 2. Therefore, its waiver is State aid, the amount of which is higher than the difference between the waived proportion of its claim and the waived proportion of the private claims. This is so because, for instance, the private bodies might not have waived to such an extent without the higher waiver of public creditors. Similarly, not only the waived proportion of claims, but also the absolute amount in each class of creditors might be relevant. In these circumstances the aid amount may be anything up to 100 % of the waiver. Nevertheless, in the present case it is not necessary to calculate this amount precisely as, in any event, even if it were to reach 100 % of the waiver, the aid would still be compatible with the common market.

⁽¹⁸⁾ See Judgment of the Court of First Instance of 6 March 2003 Joined cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission of the European Communities* [2003] ECR II-435, paragraph 272; Judgment of the Court of 28 January 2003 Case C-334/99 *Federal Republic of Germany v Commission of the European Communities* [2003] ECR I-1139, paragraph 134; Judgment of the Court of 14 September 1994 Joined Cases C-278/92, C-279/92 and C-280/92 *Kingdom of Spain v Commission of the European Communities* [1994] I-4103, paragraph 22.

- (98) The same reasoning applies to the State aid in the insolvency proceedings of Herlitz PBS AG, which results from the different proportion of claims waived in group PBS 3 and by the comparable private creditors in PBS 5.

2. Assessment in the light of the Guidelines

- (99) The rescue aid loan and the disproportionate waivers conferred an advantage on the Herlitz Group, by reducing the costs it would normally have to bear and facilitating its restructuring process. The Commission must therefore assess whether the measures can be considered to be compatible with the common market.
- (100) Since the aid measures were not granted under any scheme approved by the Commission, the aid falls to be assessed as ad hoc aid. Article 87(2) and (3) of the Treaty sets out the conditions according to which aid is compatible or may be considered compatible with the common market. Article 87(3)(c) is relevant to this case, since the purpose of the aid measures was to enable rescue and the restructuring of the recipient and no other derogation mentioned in Article 87(2) and (3) was invoked or can be applied.
- (101) In the Guidelines, the Commission set out the conditions for the positive exercise of its discretion under Article 87(3)(c) of the Treaty. Since the information submitted by Germany indicates that all of the aid that is to be assessed was granted to the recipient after the entry into force of the Guidelines, they apply to the measures in question ⁽¹⁹⁾.

(a) *Aid beneficiary*

- (102) The Commission considers that the beneficiary of all the aid measures covered by the investigation is the entire Herlitz Group and not individual companies within that group. This conclusion follows from the closely intertwined structure of the Herlitz Group and the systematic allocation of tasks and assets between the two main companies (Herlitz AG and Herlitz PBS AG) and their subsidiaries.
- (103) The Herlitz Group appears and acts on the market as a single firm. For example Herlitz AG concluded the agreement on the emphyteusis with the *Land* of Berlin for the site in Berlin-Tegel, though the ground rent claim was registered and waived in the insolvency proceedings of Herlitz PBS AG only. Furthermore, the Herlitz Group published consolidated financial statements in accordance with Article 290 of the German Commercial Code. Finally, the creditors of the Herlitz Group treated it as a single firm when they adopted in a uniform manner the parallel and interrelated insolvency plans of Herlitz AG and Herlitz PBS AG.
- (104) Herlitz AG, Herlitz PBS AG and FOP are all located in assisted areas (Berlin/objective 2 covered by Article 87(3)(c), Brandenburg covered by Article 87(3)(a)). The Herlitz Group had not received restructuring aid in the 10-year period before the insolvency proceedings.

(b) *Firm in difficulty*

- (105) Section 2.1 of the Guidelines defines a firm in difficulty. The Herlitz Group can be considered a firm in difficulty in accordance with point (5)(a) of the Guidelines because it is a limited company more than half of whose registered capital disappeared during the 12-month period from 31 December 2000 to 31 December 2001. The amount of the group's registered capital is set out in the following table:

⁽¹⁹⁾ See point 101 of the Guidelines.

Table 4

(in EUR million)

	31.12.1998	31.12.1999	31.12.2000	31.12.2001
Registered capital	94,8	94,8	94,8	46,5

Source: the Herlitz Group's Annual Reports for the years 1999 and 2001 to 2002.

- (106) Furthermore, the Herlitz Group was in difficulty from at least April 2002, also pursuant to point (5)(c) of the Guidelines, because it fulfilled the criteria under German law for being the subject of collective insolvency proceedings. As described in recital 13, insolvency proceedings were requested in April 2002 for several main companies within the Herlitz Group.
- (107) Therefore, the Herlitz Group was in difficulty from 31 December 2001 since more than half of its registered capital disappeared during the 12 months preceding this date. Being a firm in difficulty, the Herlitz Group was eligible for both rescue and restructuring aid.

3. Analysis of the rescue aid loan

- (108) The rescue aid loan was granted by ILB. ILB, an institution incorporated under public law, was created in 1992 with the task of supporting the *Land* of Brandenburg in its activities to promote local industry. It is not a commercial bank under the German Commercial Code and profit making is not the main purpose of its operations. It acts as the development and structural bank of the *Land* of Brandenburg and is closely supervised by the *Land*. State supervision of the bank is performed by the Ministry of Finance of Brandenburg and promotional committees are formed to advise on individual projects ⁽²⁰⁾. The Commission therefore considers that the measure at issue is imputable to the State.
- (109) The rescue aid loan confers on the Herlitz Group advantages that a company in difficulties would not have obtained on the market. Since Germany recognises that the loan is aid, the Commission does not consider it necessary to apply the market economy investor principle. Consequently, the rescue aid loan includes State aid elements within the meaning of Article 87(1) of the Treaty and has to be assessed accordingly. The Guidelines set out clear conditions for such aid.
- (110) Firstly, the aid has to consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates. The rescue aid loan conforms to this requirement and its interest rate exceeded the Commission reference rate ⁽²¹⁾.
- (111) Secondly, the aid should be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States. The Commission can take account of the fact that the Herlitz Group is a large employer in the assisted areas of Berlin and Brandenburg. An immediate, disorderly insolvency would have led to serious social difficulties. For the bridging period of the rescue aid loan, the Commission considers the adverse effects on the industrial situation in other Member States to be limited and not undue.
- (112) Thirdly, although the granting of the rescue aid loan was initially not notified to the Commission, during the formal investigation procedure Germany submitted proof that the loan has been reimbursed in full.

⁽²⁰⁾ See the ILB's website: www.ilb.de

⁽²¹⁾ The reference rate adopted by the Commission for Germany was 5,06 % from 1.1.2002 and 4,8 % from 1.1.2003, see http://europa.eu.int/comm/competition/state_aid/others/reference_rates.html

- (113) Fourthly, the aid has to be restricted to the amount needed to keep a firm in business. The Commission finds that this condition is fulfilled. The rescue aid loan was only used when the liquidity loan could no longer cover the increased liquidity needs due to routine supplies for the start of the school term in the autumn of 2002. Even after receiving the rescue aid loan, the liquidity level of Herlitz PBS AG remained low between August and December 2002.
- (114) Finally, the aid has to be paid only for the time needed to devise the necessary and feasible restructuring plan. This time should not exceed six months, unless warranted by particular circumstances. In the present case, although the decision to grant the rescue aid loan was taken on 10 May 2002, the actual disbursement took place on 24 July 2002 and the repayment followed exactly six months after the disbursement. Furthermore, the repayment took place before the Commission was to take its decision on the measures involved in the insolvency plans. In conclusion, the rescue aid loan fulfils the criteria of the Guidelines and is compatible with the common market.

4. The restructuring through insolvency plans

(a) *Restoration of viability*

- (115) The insolvency plans that were approved in the procedures of Herlitz AG and Herlitz PBS AG contained the following operational measures for the restoration of the Group's viability: reduction of the firm's overcapacity, sale of factory sites, closing down of subsidiaries, improvement of negative financial results, reduction and optimisation of costs. The activities of the group were to be reduced to the still healthy core business.
- (116) The Herlitz Group's development has been in accordance with the financial plans forming part of the insolvency plans. As a result, in the financial year 2003 the group had an operating profit before interest and financing payments of EUR 7,2 million and a total turnover of EUR 346,6 million. On the basis of these figures for 2003 the operating margin disregarding interest and financing payments (*Umsatzrendite vor Finanzierungsaufwendungen*) is 2 %, which corresponds to the average in the sector. The operating cash flow before interest and financing costs for 2003 is approximately EUR 14 million.
- (117) For 2004, the expectations of the Herlitz Group are an operating profit before interest and financing payments of EUR [5-10] * million and output ^(a) (sales and changes in inventory of finished products) of EUR [250-300] * million. This will lead to an operating margin disregarding interest and financing payments of [2-4] * %. The actual results until now have borne out the Herlitz Group's expectations. Therefore, based on the above, the insolvency plans have laid the foundation for the restoration of the Herlitz Group's viability.

(b) *Aid limited to the minimum*

- (118) The Herlitz Group had already carried out restructuring measures before the insolvency proceedings. The estimated costs of the restructuring were around EUR 20,6 million, consisting of EUR 9,3 million for severance payments, EUR 6,2 million for depreciation and impairments and EUR 5,1 million for moving, closure and advisory costs. As regards the costs directly related to the restructuring measures adopted in the insolvency proceedings in 2002, these amounted to EUR 6,9 million (severance payments and costs of the insolvency proceedings).
- (119) The majority of the restructuring costs were undertaken by the firm and its creditors. The shareholders of the group have contributed by not taking any dividends since 1997. The positive cash-flows were reinvested in the group. At the beginning of the insolvency proceedings the bank consortium provided the group with a 'new' liquidity loan of EUR 15 million that was twice prolonged (renewed) until 17 November 2003, when it was fully repaid. This loan covered the seasonal liquidity needs of the group and may be granted again in June 2004. Apart from this fresh loan, the banks have also prolonged the duration of their existing and non-waived credits for another year in March 2004.

^(a) Substantive error.

- (120) If we accept the restructuring costs covering the period before the insolvency proceedings, the own contribution exceeds 95 % of EUR 27,5 million. Alternatively, if we take into account the costs directly connected to the insolvency proceedings, the own contribution amounts to 83,01 % of EUR 6,9 million. Given the significant own contribution in both cases, the restructuring aid can be considered to be limited to the minimum.

(c) Avoidance of undue distortions of competition

- (121) The following definitive compensatory measures in the form of capacity limitations were undertaken by the Herlitz Group: closing down three envelope machines; sale of an offset printing machine and a napkin machine; abandoning of the injection moulding production area; closing down or sale of subsidiaries in Portugal, Austria and France; reduction of storage capacity and reduction of personnel by 630 employees.
- (122) During the restructuring period, the group acquired control over its former joint venture eCom for EUR [...] * million, the company Mercoline for EUR [...] * million and it bought back some assets in the liquidation of its subsidiaries for EUR [...] * million. [The sum of the three figures in this paragraph is EUR 1-3 million] The amounts paid were relatively small, the function of these companies and assets fits into the aim of reducing costs, focusing on the core business and concentrating the logistical and administrative functions. Therefore, the Commission accepts that these investments were essential for restoring viability without unduly distorting competition.
- (123) There is no overcapacity on the relevant markets. The Herlitz Group has an approximate share of [5-15 %] * in Germany and [3-17 %] * in the EU. Given the small market share and the small amount of state aid, the additional investments could be regarded as necessary and not representing undue distortions. In conclusion, the restructuring aid fulfils the criteria of the Guidelines and is compatible with the common market.

VI. CONCLUSION

- (124) In view of the above, the Commission comes to the conclusion that the rescue aid and the restructuring aid comply with the conditions set out in the Guidelines and are therefore compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid in the form of rescue aid and restructuring aid which Germany has implemented for the Herlitz Group is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 June 2004.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 8 December 2005
authorising methods for grading pig carcasses in Slovenia

(notified under document number C(2005) 4744)

(Only the Slovenian text is authentic)

(2005/879/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3220/84 of 13 November 1984 determining the Community scale for grading pig carcasses ⁽¹⁾, and in particular Article 5(2) thereof,

Whereas:

(1) Article 2(3) of Regulation (EEC) No 3220/84 provides that the grading of pig carcasses must be determined by estimating the content of lean meat in accordance with statistically proven assessment methods based on the physical measurement of one or more anatomical parts of the pig carcass. The authorisation of grading methods is subject to compliance with a maximum tolerance for statistical error in assessment. This tolerance was defined in Article 3 of Commission Regulation (EEC) No 2967/85 of 24 October 1985 laying down detailed rules for the application of the Community scale for grading pig carcasses ⁽²⁾.

(2) The Government of Slovenia has requested the Commission to authorise two methods for grading pig carcasses and has submitted the results of its dissection trials which were executed before the day of accession, by presenting part two of the protocol provided for in Article 3 of Regulation (EEC) No 2967/85.

(3) The evaluation of this request has revealed that the conditions for authorising these grading methods are fulfilled for the HGP 4 apparatus, but only partially for the ZP-DM5 apparatus. In order to give the Slovenian authorities time to execute a new dissection trial, the authorisation for the ZP-DM5 apparatus should be time limited.

(4) No modification of the apparatus or grading methods may be authorised except by means of a new Commission Decision adopted in the light of experience gained. For this reason, the present authorisation may be revoked.

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

HAS ADOPTED THIS DECISION:

Article 1

The use of the following methods is hereby authorised for grading pig carcasses pursuant to Regulation (EEC) No 3220/84 in Slovenia:

- (a) the grading method known as 'Zwei-Punkt — DM5 (ZP)' and assessment methods related thereto, details of which are given in Part 1 of the Annex;
- (b) the apparatus termed 'Hennessy Grading Probe (HGP 4)' and the assessment methods related thereto, details of which are given in Part 2 of the Annex.

The authorisation for the ZP-DM5 grading method is granted until 31 December 2007.

Article 2

Modifications of the apparatus or the assessment methods shall not be authorised.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 8 December 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 301, 20.11.1984, p. 1. Regulation as last amended by Regulation (EC) No 3513/93 (OJ L 320, 22.12.1993, p. 5).

⁽²⁾ OJ L 285, 25.10.1985, p. 39. Regulation as amended by Regulation (EC) No 3127/94 (OJ L 330, 21.12.1994, p. 43).

ANNEX

METHODS FOR GRADING PIG CARCASSES IN SLOVENIA

Part 1

ZWEI-PUNKT — DM5 (ZP)

1. Grading of pig carcasses shall be carried out by means of the method termed 'Zwei-Punkt — DM5 (ZP)'.
2. The lean meat content of the carcase shall be calculated according to the following formula:

$$\hat{y} = 8,6980 + 66,7270 Z_1 + 9,7218 Z_2 + 33,2966 Z_3 - 19,8084 Z_4 - 0,1082 T$$

where:

$\hat{y}$ = estimated percentage of lean meat in the carcase,

M_{DM} = visible thickness of the lumbar muscle on the midline of split carcase in millimetres, measured as the shortest connection between the front (cranial) end of lumbar muscle and the upper (dorsal) edge of the vertebral canal,

S_{DM} = minimum thickness of visible (back) fat (including rind) on the midline of the split carcase in millimetres, covering the lumbar muscle (*Musculus gluteus medius*),

$Z_1 = S_{DM}/M_{DM}$

$Z_2 = \sqrt{M_{DM}}$

$Z_3 = \log_{10}(S_{DM})$

$Z_4 = \sqrt{S_{DM}}$

T = warm carcass weight in kilograms.

This formula shall be valid for carcasses weighing between 50 and 120 kg.

Part 2

HENNESSY GRADING PROBE (HGP 4)

1. Grading of pig carcasses shall be carried out by means of the apparatus termed 'Hennessy Grading Probe (HGP 4)'.
2. The apparatus shall be equipped with a probe of 5,95 millimetres diameter (and of 6,3 millimetres at the blade on top of the probe) containing a photodiode (Siemens LED of the type LYU 260-EO) and photodetector of the type 58 MR and having an operating distance of between 0 and 120 millimetres. The results of the measurements shall be converted into estimated lean meat content by means of the HGP 4 itself or a computer linked to it.
3. The lean meat content of the carcase shall be calculated according to the following formula:

$$\hat{y} = 64,9273 - 1,6690 S_{HGP} + 0,01947 S_{HGP}^2 + 0,2464 M_{HGP}$$

where:

$\hat{y}$ = estimated percentage of lean meat in the carcase,

S_{HGP} = the thickness of back fat (including rind) in millimetres, measured at 7 cm off the midline of the carcass between second and third last rib,

M_{HGP} = the thickness of muscle in millimetres measured at the same time and same place as S_{HGP} .

This formula shall be valid for carcasses weighing between 50 and 120 kg.

COMMISSION DECISION

of 8 December 2005

granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document number C(2005) 4778)

(Only the Dutch text is authentic)

(2005/880/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources⁽¹⁾, and in particular subparagraph (b) of paragraph 2 of Annex III thereto,

Whereas:

- (5) The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate. Application standards related to phosphate are aimed to achieve an equilibrium in phosphate fertilisation by 2015.
 - (6) The Netherlands addressed the issue of nutrient surplus from manure and mineral fertilisers through several policy instruments and in the period 1992 to 2002 decreased cattle numbers by 17 %, pigs by 14 % and sheep and goats by 21 %. Nitrogen and phosphorus in manure decreased respectively by 29 and 34 % in the period 1985 to 2002. Nitrogen and phosphorus surpluses decreased respectively by 25 and 37 %, in the period 1992 to 2002.
 - (7) Water quality data show a downwards trend in groundwater nitrate concentration and in nutrient concentration (including phosphorus) in surface water.
 - (8) The technical and scientific documents presented in the Dutch notification show that the proposed amount of 250 kg per hectare per year nitrogen from cattle manure in farms with at least 70 % grassland is compatible with the achievement of the level of 11,3 mg/l N (corresponding to 50 mg/l NO₃) in water in all soil types, and to approximately a zero phosphorus surplus, under conditions of optimal management.
 - (9) The technical and scientific documents presented show that the proposed amount of 250 kg per hectare per year nitrogen from cattle manure in farms with at least 70 % grassland is justified on the basis of objective criteria such as long growing season and crops with high nitrogen uptake.
 - (10) The Commission considers therefore that the amount of manure requested by the Netherlands will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (1) If the amount of manure that a Member state intends to apply per hectare each year is different from the one specified in introductory sentences of paragraph 2 and subparagraph (a) of Annex III to Directive 91/676/EEC, that amount has to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and has to be justified on the basis of objective criteria, such as, in the present case, long growing seasons and crops with high nitrogen uptake.
 - (2) On 8 April 2005, the Netherlands submitted to the Commission a request for a derogation under subparagraph (b) of paragraph 2 of Annex III to Directive 91/676/EEC.
 - (3) The requested derogation concerns the intention of the Netherlands to allow the application of 250 kg nitrogen per hectare per year from livestock manure in farms with at least 70 % grassland. Approximately 25 000 farms in the Netherlands and approximately 900 000 hectares are concerned by that request for derogation.
 - (4) The Dutch legislation implementing Directive 91/676/EEC has been adopted and applies equally to the requested derogation.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (11) These conditions include the establishment of fertiliser plans on a farm by farm basis, the recording of fertiliser practices through fertiliser accounts, periodic soil analysis, green cover in winter after maize, specific provisions on grass ploughing, no manure application before grass ploughing and adjustment of fertilisation to take into account the contribution of leguminous crops. These provisions are aimed at ensuring fertilisation based on crop needs and reduction and prevention of nitrogen losses to water.
- (12) In order to avoid that the application of the requested derogation leads to intensification, the competent authorities should ensure that manure production both in terms of nitrogen and phosphorus does not increase beyond the level of the year 2002 in accordance with the action programme to be implemented by the Netherlands.
- (13) Accordingly the requested derogation should be approved.
- (14) This Decision should be applicable in connection with the action programme of the Netherlands for 2006 to 2009.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by the Netherlands by letter of 8 April 2005, for the purpose of allowing a higher amount of livestock manure than that provided for in the introductory sentences and subparagraph (a) of paragraph 2 of Annex III to Directive 91/676/EEC, is granted, subject to the conditions laid down in this Decision.

Article 2

Definitions

For the purpose of this decision, the following definitions shall apply:

- (a) 'grassland farms' means holdings where 70 % or more of the acreage available for manure application is grass;
- (b) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses, donkeys, deer and water buffalo;

- (c) 'farm land' means the acreage owned, rented or managed by the farmer under another written individual contract, on which the farmer has a direct management responsibility;
- (d) 'Grass' means permanent grassland or temporary grassland which lies less than four years.

Article 3

Scope

This Decision applies on an individual basis and subject to the conditions set out in Articles 4, 5 and 6 for grassland farms.

Article 4

Annual authorisation and commitment

1. Farmers who want to benefit from a derogation shall submit an application to the competent authorities annually.
2. Together with the annual application referred to in paragraph 1 they shall undertake in writing to fulfil the conditions provided for in Articles 5 and 6.
3. The competent authorities shall ensure that all the applications for derogation and fertiliser accounts are submitted to administrative control. Where the control carried out by the national authorities of the applications referred to in paragraph 1 demonstrates that the conditions provided for in Articles 5 and 6 are not fulfilled, the applicant shall be informed thereof. In this instance, the application shall be considered to be refused.

Article 5

Application of manure and other fertilisers

1. The amount of livestock manure from grazing livestock applied to the land each year on grassland farms, including by the animals themselves, shall not exceed the amount of manure containing 250 kg nitrogen per hectare, subject to the conditions laid down in paragraphs 2 to 7.
2. The total nitrogen inputs shall comply with the nutrient demand of the considered crop and the supply from the soil.
3. A fertilisation plan shall be kept for each farm describing the crop rotation of the farmland and the planned application of manure and nitrogen and phosphate fertilisers. It shall be available on the farm by 1 February at the latest.

The fertilisation plan shall include the following:

- (a) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;
- (b) a calculation of manure nitrogen (less losses in housing and storage) and phosphorus produced on the farm;
- (c) the crop rotation and acreage for each crop, including a sketch map indicating location of individual fields;
- (d) the foreseeable nitrogen and phosphorus crop requirements;
- (e) the amount and the type of manure delivered to contractors not used on the farm land;
- (f) the amount of imported manure used on the farm land;
- (g) a calculation of the contribution from organic matter mineralization, leguminous crops and atmospheric deposition and amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree;
- (h) nitrogen and phosphorus application from manure over each field (parcels of the farm, homogeneous regarding cropping and soil type);
- (i) application of nitrogen and phosphorus with chemical and other fertilisers over each field;
- (j) calculations for assessment of compliance with nitrogen and phosphorus application standards.

Plans shall be revised no later than seven days following any changes in agricultural practices to ensure consistency between plans and actual agricultural practices.

4. Fertilisation accounts shall be kept by each farm. They shall be submitted to the competent authority for each calendar year. They shall set out the following:

- (a) the crop acreages;
- (b) the number and type of livestock;
- (c) the manure production per animal;

(d) the amount of fertilisers imported by the farm;

(e) the amount of manure offloaded from the farm and to whom.

5. Each grassland farm benefiting from an individual derogation shall accept that fertiliser application and account can be subject to control.

6. Periodic nitrogen and phosphorous analysis in soil shall be performed for each farm which benefits from an individual derogation at least every four years for each homogeneous area of the farm, with regard to crop rotation and soil characteristics.

Nitrogen analysis in respect of mineral nitrogen and parameters to assess the nitrogen contribution from organic matter mineralisation shall be performed after ploughing grassland, for each homogeneous area of the farm.

In respect of the analyses referred to in the first and the second subparagraph, one analysis per five hectares of land shall be required as a minimum.

7. Manure may not be spread in the autumn before grass cultivation.

Article 6

Land cover

1. 70 % or more of the acreage available for manure application on farms shall be cultivated with grass. Farmers benefiting from an individual derogation shall carry out the following measures:

- (a) on sand and loess soil, grass or other crops ensuring soil coverage during the winter shall be cultivated after maize in order to substantially reduce leaching potential;
- (b) catch crops shall not be ploughed before 1 February in order to ensure permanent vegetal cover of arable area for recovering subsoil autumn losses of nitrates and limit winter losses;
- (c) grass on sandy and loessial soils shall be ploughed in spring;

- (d) ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand and fertilisation shall be based on soil analysis concerning mineral nitrogen and other parameters providing references for estimate of nitrogen release from soil organic matter mineralisation;
- (e) if crop rotation includes leguminous or other plants fixing atmospheric nitrogen fertiliser application shall be reduced accordingly.

2. By way of derogation from point (c) grass ploughing is permitted in autumn for planting flowers bulbs.

Article 7

Measures on manure production

The national authorities shall ensure that manure production both in terms of nitrogen and phosphorus will not increase beyond the level of the year 2002.

Article 8

Monitoring

1. Maps showing the percentage of grassland farms, percentage of livestock and percentage of agricultural land covered by individual derogation in each municipality, shall be drawn by the competent authority and shall be updated every year.

Those maps shall be submitted to the Commission annually and for the first time in the second quarter of 2006.

2. A monitoring network for sampling of soil water, streams and shallow groundwater shall be established and maintained as derogation monitoring sites.

The monitoring network, corresponding to at least 300 farms benefiting from individual derogations, shall be representative of each soil type (clay, peat, sandy and sandy loessial soils), fertilisation practices and crop rotation. The composition of the monitoring network shall not be modified during the period of applicability of this Decision.

3. Survey and continuous nutrient analysis shall provide data on local land use, crop rotations and agricultural practices on farms benefiting from individual derogations. Those data can be used for model-based calculations of the magnitude of nitrate leaching and phosphorus losses from fields where up to 250 kg nitrogen per hectare per year in manure from grazing livestock is applied.

4. Shallow groundwater, soil water, drainage water and streams in farms belonging to the monitoring network shall provide data on nitrate and phosphorus concentration in water leaving the root zone and entering the groundwater and surface water system.

5. A reinforced water monitoring shall address agricultural catchments in sandy soils.

Article 9

Controls

1. The competent national authority shall carry out administrative controls in respect of all farms benefiting from an individual derogation for the assessment of compliance with the maximum amount of 250 kg nitrogen per hectare per year from grazing livestock manure, with total nitrogen and phosphate application standards and conditions on land use.

2. A programme of inspections shall be established based on risk analysis, results of controls of the previous years and results of general random controls of legislation implementing Directive 91/676/EEC.

Specific inspections shall address at least 5 % of farms benefiting from an individual derogation with regard to land use, livestock number and manure production.

Field inspections shall be carried out in at least 3 % of farms in respect to the conditions set out in Article 5 and 6.

Article 10

Reporting

1. The competent authority shall submit the results of the monitoring, every year, to the Commission, with a concise report on evaluation practice (controls at farm level, including information on non compliant farms based on results of administrative and field inspections) and water quality evolution (based on root zone leaching monitoring, surface/ground water quality and model-based calculations).

The first report shall be transmitted by March 2007, and subsequently every year by March in 2008, 2009 and 2010.

2. In addition to the data referred to in paragraph 1 the report shall include the following:

- (a) data related to fertilisation in all farms which benefit from an individual derogation;
- (b) trends in livestock numbers for each livestock category in the Netherlands and in derogation farms;

(c) trends in national manure production as far as nitrogen and phosphate in manure are concerned;

Article 11

Application

(d) a summary of the results of controls related to excretion coefficients for pig and poultry manure at country level.

This Decision shall apply from 1 January 2006.

It shall expire on 31 December 2009.

3. The results thus obtained will be taken into consideration by the Commission with regard to an eventual new request for derogation by the Dutch authorities.

Article 12

This Decision is addressed to the Kingdom of the Netherlands.

4. In order to provide elements regarding management in grassland farms, for which a derogation applies, and the achieved level of optimisation of management, a report on fertilisation and yield shall be prepared annually for the different soil types and crops by the competent authority and submitted to the Commission.

Done at Brussels, 8 December 2005.

For the Commission

Stavros DIMAS

Member of the Commission

COMMISSION RECOMMENDATION

of 8 December 2005

on the treatment in the Harmonised Indices of Consumer Prices of certain issues concerning health care reforms within the framework of Council Regulation (EC) No 2494/95 and specific implementing measures relating hereto

(Text with EEA relevance)

(2005/881/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1) Health care insurance in the Netherlands will be reformed from January 2006. A new compulsory basic social insurance scheme will cover a large part of health care for the total population, and it is expected that about 37,5 % of the total population will be moved from private insurance schemes to the new social insurance scheme (hereafter referred to as 'the reform').

(2) The reform introduces a fundamental change in the organisation and institutional structure of the health care system. Its treatment in the Harmonised Indices of Consumer Prices (HICPs) must be appropriate, consistent with the HICP legal framework and in particular the following Regulations:

— Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices ⁽¹⁾ and in particular Articles 4, 5(3), 8(3), 9 and 12 thereof,

— Commission Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonized indices of consumer prices ⁽²⁾, Articles 2, 4 and Annex Ia, in particular footnotes 16 and 17 thereof,

— Commission Regulation (EC) No 2454/97 of 10 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the quality of HICP weightings ⁽³⁾,

— Commission Regulation (EC) No 1617/1999 of 23 July 1999 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the treatment of insurance in the Harmonised Index of Consumer Prices and modifying Commission Regulation (EC) No 2214/96 ⁽⁴⁾, Articles 2 and 3 thereof,

— Council Regulation (EC) No 2166/1999 of 8 October 1999 laying down detailed rules for the implementation of Regulation (EC) No 2494/95 as regards minimum standards for the treatment of products in the health, education and social protection sectors in the Harmonised Index of Consumer Prices ⁽⁵⁾, Article 4 thereof,

and result in HICPs that are comparable, reliable and relevant.

(3) The HICP legal framework does not handle explicitly and specifically the case of this reform, which involves fundamental changes in the eligibility and access rules for social insurance. Taking into account the potential impact on the HICP, and the consequent uncertainty for users, the Commission considers it necessary to issue a recommendation, regarding the treatment of the reform in the HICP to clarify the existing HICP Regulations.

(4) For measuring changes in consumer prices, the HICP legal framework requires that the HICP should take account of changes from zero prices to positive prices and vice versa. A reading of this requirement in isolation might indicate that the HICP should record a very substantial fall in inflation as a result of this reform. However, in the context of this reform, the Commission (Eurostat) considers that such a treatment would show an unwarranted price change as a consequence of pricing transactions using different valuation concepts.

(5) The valuation of health care expenditure in the HICP (COICOP/HICP 06) ⁽⁶⁾ is conditioned on the treatment of health insurance (COICOP/HICP 12.5.3).

⁽¹⁾ OJ L 257, 27.10.1995, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 229, 10.9.1996, p. 3. Regulation as last amended by Regulations (EC) No 1708/2005 (OJ L 274, 20.10.2005, p. 9).

⁽³⁾ OJ L 340, 11.12.1997, p. 24.

⁽⁴⁾ OJ L 192, 24.7.1999, p. 9.

⁽⁵⁾ OJ L 266, 14.10.1999, p. 1.

⁽⁶⁾ Classification of individual consumption by purpose adapted to the needs of the HICPs (COICOP/HICP).

- (6) Social insurance does not fall within Household Final Monetary Consumption Expenditure (HFMCE) either before or after the reform. The reform results in a significant reduction in the population covered by private insurance schemes.
- (7) The per capita consumption volumes for health care remain in principle unchanged from those in the base or reference period, but the composition of the consumer population and the valuation concept both change in the periods being compared as a result of new eligibility and access rules for the health insurance schemes.
- (8) The impact on the HICP, as from the January in which such a reform takes effect, of consumers moving to the new social health insurance scheme, should thereby be approximately neutral for the HICP.
- (9) The Commission considers that such treatment does not call into question the treatment of earlier examples of changes from zero prices to positive prices and vice versa (e.g. TV licence abolition of 2000 and health insurance reform of 2004 in the Netherlands, or the health care reform of 2004 in Germany).
- (10) The Commission (Eurostat) has taken into consideration the views of key HICP users and national HICP experts with regard to the above,
- the rules determining prices within one and the same scheme.
2. Both prices and weights for health insurance and health care expenditure should be mutually coherent, and that must be the case across time.
3. In order that the HICP be accurate and relevant, reforms presenting the characteristics described above, should be accounted for by means of adjusting the weights and chaining the price indices for
- (a) health insurance, or within health insurance between the preceding December and the January in which a reform takes effect;
- (b) health care expenditure, or within health care expenditure between the preceding December and the January in which a reform takes effect. This treatment is thereby consistent with the treatment of health insurance.
4. This Recommendation should be taken into account by the Authorities compiling HICPs taking into consideration the specific circumstances of the individual reforms.
5. This Recommendation is addressed to the Member States.

HEREBY RECOMMENDS:

1. Changes in consumer prices should not be measured for the HICP simply as a result of changes in the eligibility and access rules for social health insurance. Rather the HICP should capture changes in the prices within one and the same scheme and price changes resulting from changes in

Done at Brussels, 8 December 2005.

For the Commission
Joaquín ALMUNIA
Member of the Commission

DECISION No 6/2005 OF THE EC-EFTA JOINT COMMITTEE ON COMMON TRANSIT
of 4 October 2005
amending the Convention of 20 May 1987 on a common transit procedure
(2005/882/EC)

THE JOINT COMMITTEE,

Having regard to the Convention of 20 May 1987 on a common transit procedure ⁽¹⁾ (hereinafter referred to as the Convention), and in particular Article 15(3)(a) thereof,

Whereas:

- (1) Romania is to accede to the Convention.
- (2) Accordingly, the Romanian language versions of the references used in the Convention should be inserted in the Convention in the appropriate order.
- (3) The application of this Decision should correspond to the date of accession of Romania to the Convention.
- (4) In order to allow the use of guarantee forms printed in accordance with the criteria in force prior to the date of accession of Romania to the Convention, a transitional period should be established during which the printed forms, with some adaptations, could be used.
- (5) The Convention should therefore be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The Convention on a common transit procedure is amended as follows:

1. Appendix I shall be amended in accordance with Annex A to this Decision.
2. Appendix II shall be amended in accordance with Annex B to this Decision.
3. Appendix III shall be amended in accordance with Annex C to this Decision.

Article 2

1. This Decision shall enter into force on the date of its adoption.

It shall apply from 1 January 2006.

2. The forms based on the specimen forms in Annexes B1, B2, B4, B5 and B6 to Appendix III may continue to be used, subject to the necessary geographical adaptations and the adaptations concerning the address for service or the authorised agent, until 31 December 2006 at the latest.

Done at Basel, 4 October 2005.

For the Joint Committee
The President
Rudolf DIETRICH

⁽¹⁾ OJ L 226, 13.8.1987, p. 2. Convention as last amended by Decision No 4/2005 (OJ L 225, 31.8.2005, p. 29).

ANNEX A

Appendix I is amended as follows:

1. the following indent shall be added to the second subparagraph of Article 14(3):

‘— RO Validitate limitată’;

2. the following indent shall be added to the second subparagraph of Article 28(7):

‘— RO Dispensă’;

3. Article 34 shall be amended as follows:

(a) the following indent shall be added to paragraph 3:

‘— RO Probă alternativă’;

(b) the following indent shall be added to the second subparagraph of paragraph 4:

‘— RO Diferențe: mărfuri prezentate la biroul vamal.....(nume și țara)’;

(c) the following indent shall be added to paragraph 5:

‘— RO ieșire din... supusă restricțiilor sau impozitelor prin Reglementarea/Directiva/Decizia nr.....’;

4. the following indent shall be added to Article 64(2):

‘— RO Dispensă de la itinerariul obligatoriu’;

5. the following indent shall be added to Article 69(1):

‘— RO Expeditor agreeat’;

6. the following indent shall be added to Article 70(2):

‘— RO Dispensă de semnătură’;

7. Annex IV shall be amended as follows:

(a) the following subindent shall be added to the first indent of point 2.8:

‘— RO GARANȚIE GLOBALĂ INTERZISĂ’;

(b) the following indent shall be added to point 4.3:

‘— RO UTILIZARE NELIMITATĂ’.

ANNEX B

Appendix II is amended as follows:

1. the following indent shall be added to Article 4(2):

‘— RO Eliberat ulterior’;

2. the following indent shall be added to Article 16(2):

‘— RO Expeditor agreat’;

3. the following indent shall be added to Article 17(2):

‘— RO Dispensă de semnătură’.

ANNEX C

Appendix III is amended as follows:

1. in Annex A7, Title II, Section I shall be amended as follows:

(a) under Box 2, third paragraph, the following indent shall be added:

‘— RO Diversi’;

(b) under Box 31, first paragraph, the following indent shall be added:

‘— RO Vrac’;

(c) Under Box 40, the following indent shall be added:

‘— RO Diversi’;

2. in Annex A8, Part B shall be amended as follows:

(a) under Box 2, the indent following shall be added:

‘— RO Diversi’;

(b) under Box 14, first paragraph, the following indent shall be added:

‘— RO Expeditor’;

(c) under Box 31, first paragraph, the following indent shall be added:

‘— RO Vrac’;

3. in Annex A9, under box 51, the following code shall be inserted in the list between the applicable codes for Norway and Switzerland:

‘Romania RO’;

4. Annex B1 shall be replaced by the following:

‘ANNEX B1

COMMON/COMMUNITY TRANSIT PROCEDURE

GUARANTEE DOCUMENT

INDIVIDUAL GUARANTEE

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

resident at ⁽²⁾

hereby jointly and severally guarantees, at the office of guarantee of

up to a maximum amount of

in favour of the European Community comprising the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and of the Republic of Iceland, the Kingdom of Norway, Romania, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino ⁽³⁾, any amount of principal, further liabilities, expenses and incidentals — but not fines — for which the principal ⁽⁴⁾,

may be or become liable to the abovementioned countries for debt in the form of duty and other charges applicable to the goods described below placed under the Community or common transit procedure from the office of departure of

to the office of destination of

Goods description:

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in point 1 and without being able to defer payment beyond a period of 30 days from the date of application the sums requested unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the operation has ended.

At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

3. This undertaking shall be valid from the day of its acceptance by the office of guarantee. The undersigned shall remain liable for payment of any debt arising during the Community or common transit operation covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

⁽³⁾ Delete the name of the Contracting Party or Parties or States (Andorra or San Marino) whose territory is not transited. The references to the Principality of Andorra and the Republic of San Marino shall apply solely to Community transit operations.

⁽⁴⁾ Surname and forename, or name of firm and full address of the principal.

4. For the purpose of this undertaking the undersigned gives his or her address for service ⁽⁵⁾ in each of the other countries referred to in paragraph 1 as:

Country	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for service shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her addresses for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at, on

.....
(Signature) ⁽⁶⁾

II. Acceptance by the office of guarantee

Office of guarantee Guarantor's undertaking accepted on to cover the
Community/common transit operation effected under transit declaration No of ⁽⁷⁾

.....
(Stamp and signature)

⁽⁵⁾ If, in the law of the country, there is no provision for address for service the guarantor shall appoint, in this country, an agent authorised to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.

⁽⁶⁾ The person signing the document must enter the following by hand before his or her signature: "Guarantee for the amount of", the amount being written out in letters.

⁽⁷⁾ To be completed by the office of departure.

5. Annex B2 shall be replaced by the following:

‘ANNEX B2

COMMON/COMMUNITY TRANSIT PROCEDURE

GUARANTEE DOCUMENT

INDIVIDUAL GUARANTEE IN THE FORM OF VOUCHERS

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

resident at ⁽²⁾

hereby jointly and severally guarantees, at the office of guarantee of

in favour of the European Community comprising the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and of the Republic of Iceland, the Kingdom of Norway, Romania, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino ⁽³⁾,

any amount of principal, further liabilities, expenses and incidentals — but not fines — for which a principal may be or become liable to the above mentioned States for debt in the form of duty and other charges applicable to the goods placed under the Community or common transit procedure, in respect of which the undersigned has undertaken to issue individual guarantee vouchers up to a maximum of EUR 7 000 per voucher.

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in paragraph 1 and without being able to defer payment beyond a period of 30 days from the date of application the sums requested, up to EUR 7 000 per individual guarantee voucher, unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the operation has ended.

At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

3. This undertaking shall be valid from the day of its acceptance by the office of guarantee. The undersigned shall remain liable for payment of any debt arising during any Community or common transit operations covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

⁽³⁾ Only for Community transit operations.

4. For the purpose of this undertaking the undersigned gives his or her address for service ⁽⁴⁾ in each of the other countries referred to in paragraph 1 as:

Country	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for service shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her addresses for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at, on

.....
(Signature) ⁽⁵⁾

II. Acceptance by the office of guarantee

Office of guarantee

.....

Guarantor's undertaking accepted on

.....

.....
(Stamp and signature)

⁽⁴⁾ If, in the law of the country, there is no provision for address for service the guarantor shall appoint, in this country, an agent authorised to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.

⁽⁵⁾ The signature must be preceded by the following in the signatory's own handwriting: "Guarantee".

6. Annex B4 shall be replaced by the following:

‘ANNEX B4

COMMON/COMMUNITY TRANSIT PROCEDURE

GUARANTEE DOCUMENT

COMPREHENSIVE GUARANTEE

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

resident at ⁽²⁾

hereby jointly and severally guarantees, at the office of guarantee of

up to a maximum amount of

.....
being 100/50/30 % ⁽³⁾ of the reference amount, in favour of the European Community comprising the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and of the Republic of Iceland, the Kingdom of Norway, Romania, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino ⁽⁴⁾,

any amount of principal, further liabilities, expenses and incidentals — but not fines — for which the principal ⁽⁵⁾,

.....
may be or become liable to the abovementioned countries for debt in the form of duty and other charges applicable to the goods placed under the Community or common transit procedure.

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in paragraph 1 and without being able to defer payment beyond a period of 30 days from the date of application the sums requested up to the limit of the abovementioned maximum amount, unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the operation has ended.

At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

This amount may not be reduced by any sums already paid under the terms of this undertaking unless the undersigned is called upon to pay a debt arising during a Community or common transit operation commenced before the preceding demand for payment was received or within 30 days thereafter.

3. This undertaking shall be valid from the day of its acceptance by the office of guarantee. The undersigned shall remain liable for payment of any debt arising during any Community or common transit operations covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

⁽³⁾ Delete what does not apply.

⁽⁴⁾ Delete the name of the Contracting Party or Parties or States (Andorra or San Marino) whose territory is not transited. The references to the Principality of Andorra and the Republic of San Marino shall apply solely to Community transit operations.

⁽⁵⁾ Surname and forename, or name of firm and full address of the principal.

4. For the purpose of this undertaking the undersigned gives his or her address for service ⁽⁶⁾ in each of the other countries referred to in paragraph 1 as:

Country	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for service shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her addresses for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at, on

.....
(Signature) ⁽⁷⁾

II. Acceptance by the office of guarantee

Office of guarantee

.....

Guarantor's undertaking accepted on

.....

.....
(Stamp and signature)

⁽⁶⁾ If, in the law of the country, there is no provision for address for service the guarantor shall appoint, in this country, an agent authorised to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.

⁽⁷⁾ The signature must be preceded by the following in the signatory's own handwriting: "Guarantee for the amount of ..." with the amount written out in full.

7. in Box 7 of Annex B5, the word 'Romania' shall be inserted between the words 'Norway' and 'Switzerland';

8. in Box 6 of Annex B6, the word 'Romania' shall be inserted between the words 'Norway' and 'Switzerland';

9. in point 1.2.1 of Annex B7, the following indent shall be added:

‘— RO Validitate limitată.’

COMMISSION DECISION

of 9 December 2005

concerning certain protection measures in relation to a suspicion of highly pathogenic avian influenza in Ukraine*(notified under document number C(2005) 5385)***(Text with EEA relevance)**

(2005/883/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽¹⁾, and in particular Article 22 thereof,

Whereas:

(1) Avian influenza is an infectious viral disease in poultry and birds, causing mortality and disturbances which can quickly take epizootic proportions liable to present a serious threat to animal and public health and to reduce sharply the profitability of poultry farming. There is a risk that the disease agent might be introduced via international trade in live poultry and poultry products.

(2) On 5 December 2005 Ukraine has notified to the Commission an outbreak of avian influenza. The isolated H5 virus and the clinical picture allow the suspicion of highly pathogenic avian influenza pending the determination of the neuraminidase (N) type and of the pathogenicity index.

(3) Imports from Ukraine of birds and poultry and products derived from these species are not authorised with the exception of live birds other than poultry, untreated feathers and certain treated byproducts including treated feathers which do not pose an animal health threat to the Community. Imports of live birds other than poultry and pet birds from Ukraine are suspended until 31 January 2006 as a result of Decision 2005/759/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third

countries and the movement from third countries of birds accompanying their owners ⁽²⁾ and Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds ⁽³⁾.

(4) In view of the animal health risk of disease introduction into the Community, it is therefore appropriate to temporarily suspend imports from Ukraine of untreated feathers.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall suspend the importation from the territory of Ukraine of untreated feathers and parts of untreated feathers.

Article 2

Member States shall ensure that when imported from the territory of Ukraine, consignments of treated feathers or parts of treated feathers (excluding treated decorative feathers, treated feathers carried by travelers for their private use or consignments of treated feathers sent to private individuals for non industrial purposes) are accompanied by a commercial document stating that the treated feathers or parts of treated feathers have been treated with a steam current or by some other method ensuring the inactivation of the pathogen.

Article 3

Member States shall immediately take the necessary measures to comply with this Decision and publish those measures. They shall immediately inform the Commission thereof.

⁽¹⁾ OJ L 24, 31.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1; corrected version in OJ L 191, 28.5.2004, p. 1).

⁽²⁾ OJ L 285, 28.10.2005 p. 52.

⁽³⁾ OJ L 285, 28.10.2005 p. 60.

Article 4

This Decision shall apply until 31 May 2006.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 9 December 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission
