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I

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

REGULATIONS

COMMISSION REGULATION (EC) No 895/2007**of 27 July 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 July 2007.

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

Done at Brussels, 27 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 27 July 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	TR	90,5
	ZZ	90,5
0707 00 05	TR	124,3
	ZZ	124,3
0709 90 70	TR	87,5
	ZZ	87,5
0805 50 10	AR	62,0
	UY	54,4
	ZA	60,1
	ZZ	58,8
0806 10 10	BR	161,0
	EG	160,0
	MA	144,4
	TR	178,8
	ZZ	161,1
0808 10 80	AR	94,8
	AU	160,4
	BR	89,4
	CL	98,7
	CN	100,6
	NZ	105,2
	US	106,2
	ZA	101,5
	ZZ	107,1
0808 20 50	AR	84,6
	CL	76,9
	NZ	80,2
	TR	137,4
	ZA	117,4
	ZZ	99,3
0809 10 00	TR	172,4
	ZZ	172,4
0809 20 95	CA	324,1
	TR	283,0
	US	326,2
	ZZ	311,1
0809 30 10, 0809 30 90	TR	155,2
	ZZ	155,2
0809 40 05	IL	73,8
	ZZ	73,8

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

COMMISSION REGULATION (EC) No 896/2007**of 27 July 2007****imposing a provisional anti-dumping duty on imports of dihydromyrcenol originating in India**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation') and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation of the proceeding

- (1) On 11 November 2006, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ (notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Community of dihydromyrcenol originating in India.
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 29 September 2006 by the following Community producers: Destilaciones Bordas Chinchurreta S.A. and Sensient Fragrances S.A. (the complainants) representing a major proportion, in this case more than 25 %, of the total Community production of dihydromyrcenol. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned and verification visits

- (3) The Commission officially advised the complainants, other known producers in the Community, exporting producers in India, importers and users known to be concerned and their associations and the representatives of India of the initiation of the investigation. The interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (4) In view of the apparent high number of Indian exporting producers and importers into the Community, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all Indian exporting producers and all importers in the Community were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 October 2005 to 30 September 2006. However, only two Indian exporting producers and two importers of the product concerned in the Community came forward and provided the requested information for sampling within the deadlines set out in the notice of initiation. Therefore, it was decided that sampling was not necessary.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 275, 11.11.2006, p. 25.

- (5) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.
- (6) Questionnaire replies were received from two Indian exporting producers, from four Community producers of the like product, from two importers not related to the exporting producers and from one user in the Community.
- (7) The Commission sought and verified all the information it deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verification visits at the premises of the following companies:

a) *Community producers*

- Destilaciones Bordas Chinchurreta S.A., Granada, Spain,
- Sensient Fragrances S.A., Dos Hermanas (Sevilla), Spain,
- Takasago International Chemicals (Europe) S.A., Murcia, Spain.

b) *Exporting producers in India*

- Neeru Enterprises, Rampur,
- Privi Organics Limited, Mumbai.

1.3. Investigation period

- (8) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the IP (the 'period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (9) The product concerned is dihydromyrcenol of a purity by weight of 93 % or more, originating in India (the 'product concerned'), normally declared within CN code ex 2905 22 90.
- (10) The product concerned is a colourless to pale yellow liquid with a powerful, fresh lime-like, citrusy-floral and sweet odour with little or no terpenic undertones, soluble in paraffin oil and alcohol and insoluble in water. It belongs to the family of acyclic terpenic alcohols. Its chemical name is 2,6-dimethyloct-7-en-2-ol (CAS RN 18479-58-8).
- (11) Typical applications of the product concerned are in detergents, soap fragrances and as a powerful supporting note in citrus and lime-type perfumes.

2.2. Like product

- (12) The product concerned and dihydromyrcenol produced and sold on the domestic market of India, as well as dihydromyrcenol produced and sold in the Community by the Community industry, were found to have the same basic chemical and technical characteristics and end-uses. Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Normal value

- (13) For the determination of normal value the Commission first established, for each of the two co-operating exporting producers, whether their total domestic sales of the like product were representative in comparison with their total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, the domestic sales of the like product were found to be representative for only one of the cooperating companies since the domestic sales volume of this company exceeded 5 % of its total export sales of the product concerned to the Community.
- (14) The Commission subsequently identified for this company on the basis of purity the types of the like product sold domestically which were identical or directly comparable to the types sold for export to the Community. For each of those types, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community. This was the case for all domestic types comparable to those exported to the Community.
- (15) The Commission subsequently examined whether the domestic sales of each type of the product concerned, sold domestically in representative quantities, could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type.
- (16) Since for all product types more than 80 % by volume of sales on the domestic market were sold at a net sales price equal to or above the calculated cost of production, and since at the same time the weighted average sales price was equal to or higher than the cost of production, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question, irrespective of whether these sales were profitable or not.
- (17) For the exporting producer which did not have representative domestic sales of the like product during the IP (see recital 13 above), normal value was determined on the basis of the domestic prices in the ordinary course of trade of the other exporting producer (see recitals 14 to 16 above), pursuant to Article 2(1) of the basic Regulation.

3.2. Export price

- (18) All sales of the two cooperating exporting producers were made directly to unrelated customers in the Community. For those sales, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable by these independent customers in the Community.

3.3. Comparison

- (19) The comparison between normal value and export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. Allowances for differences in transport costs, ocean freight and insurance costs, handling costs, loading and ancillary costs, discounts, commissions, credit costs and import charges were granted where applicable and justified.

3.4. Dumping margins

- (20) Pursuant to Article 2(11) and (12) of the basic Regulation, dumping margins for the two co-operating exporting producers were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

- (21) On this basis, the provisional dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Company	Provisional dumping margin
Neeru Enterprises, Rampur	3,3 %
Privi Organics Limited, Mumbai	7,5 %

- (22) For those exporting producers which did not cooperate, the dumping margin was established on the basis of facts available in accordance with Article 18 of the basic Regulation. To this end, the level of cooperation was first established. A comparison between Eurostat data concerning imports originating in India and the volume of exports to the Community reported by the cooperating exporting producers showed that the level of cooperation was high (more than 80 %). Therefore, and since there were no indications that the non-cooperating companies were dumping at a lower level, it was considered appropriate to set the dumping margin for the remaining companies, which had not cooperated with the investigation, at the level of the higher dumping margin found for the two cooperating companies. This approach is in accordance with the standing practice of the Community institutions and was also considered necessary in order not to provide an incentive for non-cooperation. Therefore, the residual dumping margin was calculated at the rate of 7,5 %.

4. INJURY

4.1. Community production and Community industry

- (23) Within the Community, the like product is manufactured by five producers. The output of these five Community producers is therefore deemed to constitute the Community production within the meaning of Article 4(1) of the basic Regulation.
- (24) Of these five producers, a total of four replied to the questionnaire. However, one of these respondents did not expressly support the complaint, i.e. it did not take a position on it. Therefore, this company could not form part of the Community industry and, consequently, of the injury analysis. Nevertheless, the situation of this company was taken into account and examined as another factor of injury in part 5 — Causation.
- (25) The three remaining co-operating producers represent more than 40 % of the total Community production of the like product. It is noted that one of them had made substantial imports of dihydromyrcenol from India in the IP. However, importation was not its core business and these imports were considered to have been made in reaction to the influx of dumped imports significantly depressing prices, in particular in order to improve its financial situation and to maintain its own production of the like product viable. Therefore, it was not considered appropriate to exclude this producer from the definition of the Community industry.
- (26) On this basis it is considered that the three Community producers referred to in recital 25 above are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will hereinafter be referred to as the 'Community industry'.

4.2. Determination of the relevant Community market

- (27) In order to establish whether or not the Community industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Community industry, it was examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis.

- (28) Dihydromyrcenol is used as an intermediate material for production of derivatives, such as tetrahydromyrcenol and myrcetol, or in compounding fragrances. It was found in the investigation that the Community industry used certain quantities of dihydromyrcenol (around 10 % of its total production volume) internally, for the aforesaid purposes. To this end, dihydromyrcenol was simply transferred without invoice within the same company; it did not enter the free market, because it was used by the producer itself for further processing and/or compounding. Such situations are referred to as captive use.
- (29) The Community industry also sold dihydromyrcenol to related parties in the Community and in third countries for resale or use by these parties. However, it was established in the investigation that these sales cannot be considered as being captive, i.e. sales on the captive market, because they were made at market prices and the buyers had a free choice of supplier. On the contrary, they should be considered as sales on the free market.
- (30) The distinction between the captive and the free market is relevant for the injury analysis because products destined for captive use, i.e. internal use by the producers themselves in this case, are not exposed to direct competition with imports. By contrast, production destined for free market sale was found to be in direct competition with imports of the product concerned.
- (31) In order to provide as complete a picture as possible of the situation of the Community industry, data have been obtained and analysed for the entire dihydromyrcenol activity and it was subsequently determined whether the production was destined for captive use or for the free market.
- (32) For the following economic indicators relating to the Community industry, it was found that a meaningful analysis and evaluation had to focus on the situation prevailing on the free market: sales volume and sales prices on the Community market, market share, growth, profitability, return on investment, cash flow and export volume and prices.
- (33) As regards other economic indicators, however, it was found on the basis of the investigation, that they could reasonably be examined only by referring to the whole activity. Indeed, production (for both the captive and the free market), capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.
- (34) Finally, it is noted that the development of captive use by the Community industry was examined as other factor of injury in part 5 — Causation in order to establish whether it could have impacted on their situation.

4.3. Community consumption

- (35) Community consumption was established on the basis of the volumes of the Community producers' own production destined for free sale on the Community market and for captive use by these producers and the volumes of imports into the Community obtained from Eurostat.
- (36) In respect to Eurostat, it is noted that products other than dihydromyrcenol may be included in these statistics, since dihydromyrcenol is declared within an ex CN code. Data from Eurostat were thus compared with the Community industry's market knowledge. As a result, imports from Japan were excluded since they were considered to be entirely composed of products other than dihydromyrcenol as there is no known production of that product in Japan. For imports from third countries other than Japan, Eurostat statistics appeared to be reasonably precise (i.e. they appeared not to include significant volumes of products other than dihydromyrcenol which would substantially distort the picture) and, thus, no adjustments to these data were carried out for the purpose of the injury and causation analysis.

- (37) In the first half of the period considered, the Community market for dihydromyrcenol was relatively stable. It started to increase in 2005 and in the IP it reached a level by 23 % higher than in 2003, i.e. around 4 400 000 kilograms.

	2003	2004	2005	IP
Consumption (kg)	3 586 447	3 571 795	3 819 904	4 409 093
Index: 2003 = 100	100	100	107	123

Source: verified questionnaire replies from the Community industry, information collected from other Community producers, Eurostat.

4.4. Imports from the country concerned

4.4.1. Volume, price and market share of dumped imports from the country concerned

- (38) The volume of dumped imports of the product concerned into the Community rose dramatically in 2004, i.e. by more than 1 600 %. It further almost doubled in 2005, before slowing down in the IP and closing at a level 2 963 % higher than at the beginning of the period considered, i.e. around 760 000 kilograms in the IP compared to around 25 000 kilograms in 2003.

	2003	2004	2005	IP
Imports (kg)	24 900	430 600	751 800	762 600
Index: 2003 = 100	100	1 729	3 019	3 063

Source: Eurostat.

- (39) The average import price dropped by almost 20 % in 2004, it increased to its original level in 2005 and increased by 11 % in the IP. As can be seen from recitals 41 and 42 below, the import prices were significantly below the Community industry prices in the IP.

	2003	2004	2005	IP
Average import price (EUR/kg)	3,45	2,79	3,45	3,81
Index: 2003 = 100	100	81	100	111

Source: Eurostat.

- (40) The market share of dumped imports from India increased by almost 17 percentage points during the period considered, i.e. from 0,7 % in 2003 to 17,3 % in the IP. Significant market share was gained in 2004, in line with the above described sharp increase in import volumes and steady Community consumption. In the IP, expressed in absolute terms, the Indian exporters, despite an increase in sales volumes, saw their market share decrease by 2,4 percentage points. However, bearing in mind that Community consumption only increased by 23 % over the period considered, it is evident that the presence of dumped imports from India on the Community market increased much more significantly over the period.

	2003	2004	2005	IP
Market share	0,7 %	12,1 %	19,7 %	17,3 %
Index: 2003 = 100	100	1 736	2 835	2 491

Source: Eurostat.

4.4.2. Price undercutting

- (41) For the purpose of analysing price undercutting, the import prices of the cooperating exporting producers were compared to the Community industry prices, on the basis of weighted averages for directly comparable product types (on the basis of purity) during the IP. The Community industry prices were adjusted to an ex-works level, and compared to CIF Community frontier import prices, plus customs duty. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.
- (42) On the basis of the cooperating exporting producers' prices, the undercutting margins found, and expressed as a percentage of the Community industry's prices, are 5,8 % and 7,4 %.

4.5. Situation of the Community industry

- (43) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.
- (44) It is recalled that the existence of captive use of the like product by the Community industry had to be taken into account in the injury analysis. Certain injury indicators were thus examined by focusing on the situation prevailing on the free market, whilst certain others could reasonably be examined only by referring to the whole activity (see recitals 27 to 34 above).

a) Production, capacity and capacity utilisation

- (45) The Community industry's production of the like product increased by 6 % over the period considered. Specifically, it remained stable in 2004, increased slightly by 2 % in 2005 and by additional 4 percentage points in the IP. Since production capacity remained stable, its utilisation has slightly improved in line with the increased production volumes.

	2003	2004	2005	IP
Production (kg)	2 212 266	2 210 328	2 265 113	2 350 588
Index: 2003 = 100	100	100	102	106
Capacity (kg)	3 210 000	3 210 000	3 210 000	3 210 000
Index: 2003 = 100	100	100	100	100
Capacity utilisation	69 %	69 %	71 %	73 %
Index: 2003 = 100	100	100	102	106

Source: verified questionnaire replies.

b) Stocks

- (46) There has been an overall increase in stocks between 2003 and the IP. The peak in 2004 coincides with a sudden drop in sales described in recital 47 below. In the IP, the level of stocks was by 8 % higher than in 2003.

	2003	2004	2005	IP
Stocks (kg)	118 204	222 907	166 724	127 440
Index: 2003 = 100	100	189	141	108

Source: verified questionnaire replies.

c) *Sales volume, sales price and market share*

- (47) Sales of the Community industry own production in the free market in the Community dropped suddenly by 7 % in 2004. In 2005 they recovered slightly above their original level and increased by 19 percentage points in the IP. However, given the increased consumption in 2005 and in the IP (see recital 37 above), the Community industry did not strengthen its market position. On the contrary, it hardly maintained its market share. Average sales prices of the Community production reflected the development of the market. They dropped dramatically in 2004, i.e. by 22 %, decreased by additional 10 percentage points in 2005 and remained more or less stable in the IP.

	2003	2004	2005	IP
Sales in the EC (kg)	1 233 633	1 147 959	1 274 430	1 506 740
Index: 2003 = 100	100	93	103	122
Market share	34,4 %	32,1 %	33,4 %	34,2 %
Index: 2003 = 100	100	93	97	99
Sales price (EUR/kg)	4,55	3,55	3,09	3,15
Index: 2003 = 100	100	78	68	69

Source: verified questionnaire replies.

d) *Profitability*

- (48) Profitability of the Community industry deteriorated dramatically over the period considered. From 12,3 % profit in 2003, the Community industry's production of the like product destined for sale on the free market turned significantly loss-making in 2004, in line with the above described drop in sales volumes and prices. In 2005, the loss margin doubled and in the IP the Community industry was making losses of almost 17 %.

	2003	2004	2005	IP
Pre-tax profit margin	12,3 %	– 7,5 %	– 15,8 %	– 16,9 %
Index: 2003 = 100	100	– 60	– 128	– 137

Source: verified questionnaire replies.

e) *Investment, return on investment, cash flow and the ability to raise capital*

- (49) Investment has significantly decreased over the period considered, reaching in the IP only 7 % of its 2003 level, which reflects the fact that the industry already operates modern equipment. As can be seen from the table under recital 45 above, no investments were made in the production capacity, although the market for dihydromyrcenol was expected to maintain its increasing trend. The return on investment, expressed in terms of net profits/losses of the Community industry and the net book value of its investments, developed in line with the investment and the profit/loss margins. Specifically, it decreased from 13,7 % in 2003 to – 26,9 % in the IP. Similarly, also the Community industry's cash flow has significantly deteriorated. From the cash inflow of around EUR 1 300 000 in 2003 it turned to cash outflow of more than EUR 60 000 in the IP. All these indicators clearly confirm the Community industry's inability to raise capital.

	2003	2004	2005	IP
Investment (EUR)	221 210	44 605	23 435	16 481
Index: 2003 = 100	100	20	11	7
Return on investment	13,7 %	– 7,1 %	– 17,3 %	– 26,9 %
Index: 2003 = 100	100	– 52	– 127	– 197
Cash flow (EUR)	1 328 345	– 48 093	164 355	– 61 724
Index: 2003 = 100	100	– 4	12	– 5

Source: verified questionnaire replies.

f) *Growth*

- (50) The Community industry maintained its market share at the price of significant losses accompanied by, *inter alia*, cash outflow. It is thus concluded that the Community industry could not benefit from the growth of the market.

g) *Employment, productivity and wages*

- (51) The number of employees of the Community industry involved with the like product has diminished in spite of the increased production (see recital 45 above). In the IP the employment was 15 % lower than in 2003. Total labour cost has nevertheless increased. Specifically, it increased by 13 % in 2004, remained more or less stable in 2005, before declining slightly in the IP to a level 6 % higher than in 2003. In fact, the average labour cost increased by 24 % over the period considered. This increase was due to inflation (around 3 % in 2004 and 2005 in Spain) and to the changes in employment structure (higher share of qualified labour). Productivity expressed in output per worker per year increased by 24 % between 2003 and the IP.

	2003	2004	2005	IP
Employment	44,2	43,7	39,8	37,7
Index: 2003 = 100	100	99	90	85
Labour cost (EUR)	1 401 693	1 580 371	1 554 698	1 480 157
Index: 2003 = 100	100	113	111	106
Average labour cost (EUR)	31 741	36 206	39 033	39 282
Index: 2003 = 100	100	114	123	124
Productivity (kg per employee)	64 329	65 588	72 904	79 546
Index: 2003 = 100	100	102	113	124

Source: verified questionnaire replies.

h) *Magnitude of dumping, recovery from past dumping or subsidisation*

- (52) As concerns the impact on the Community industry of the magnitude of the actual margins of dumping, given the volume and the prices of dumped imports from the country concerned, this impact cannot be considered to be negligible.
- (53) Furthermore, there were no indications that the Community industry was recovering, during the IP, from the effects of any past dumping or subsidisation.

4.6. Conclusion on injury

- (54) During the period considered the presence of low-priced dumped imports from India increased dramatically. In terms of volume, dumped imports of the product concerned increased by almost 3 000 % between 2003 and the IP. In terms of market share, they held more than 17 % of the Community market of dihydromyrcenol in the IP compared to only 0,7 % in 2003.
- (55) Despite Community consumption of dihydromyrcenol having increased by 23 % during the period considered, the Community industry, in the IP, only managed to attain the same share on the Community market as in 2003, in particular thanks to an increase in sales of its production in 2005 and in the IP. However, as the above analysis of the economic indicators of the Community industry revealed, this could only be achieved at the price of severe losses, a fall in return on investment and cash outflow. In fact, the injury materialised in particular in terms of a significant drop in prices of the Community industry, which had a direct and significant negative impact on the financial situation of these companies. Specifically, the Community industry's prices fell from EUR 4,55 in 2003 to EUR 3,15 in the IP. This fall was not accompanied by any corresponding decrease in production cost. Therefore, the Community industry turned loss-making in 2004 and its losses from sales of dihydromyrcenol on the Community market further increased in 2005 and in the IP, when the sales revenues were hardly covering the Community industry's fixed cost. Such situation is clearly not sustainable in the long run.
- (56) Taking into account all these factors, it is provisionally considered that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (57) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry was caused by dumped imports of the product concerned. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effects of the dumped imports

- (58) First, it is recalled that the investigation revealed that dihydromyrcenol imported from India directly competes with dihydromyrcenol produced and sold by the Community industry, since it is alike in terms of its basic chemical characteristics, interchangeable and distributed via the same distribution channels.
- (59) The significant increase in volume of the dumped imports from the country concerned (almost 3 000 %) and in their share on the Community market (by almost 17 percentage points) coincided with the deterioration of the financial situation of the Community industry. This deterioration included, *inter alia*, a drop of price level of the Community industry, resulting in a worsening of its financial results during the same period. The dumped imports undercut the prices of the Community industry by substantial margins so it can be reasonably concluded that they were responsible for the price suppression which led to the deterioration of the financial situation of the Community industry.
- (60) One party argued that several manufactures of the product concerned in India have stopped production of this product and, thus, lowered the production capacity for the product concerned in India. It was concluded by this party that for the aforesaid reasons the imports from India were not posing a threat of injury to Community producers. In this respect, it was confirmed by the investigation that some of the producers mentioned in the complaint referred to in recital 2 above discontinued their production of dihydromyrcenol in the IP; however, it was also found that new capacities have been installed. In fact, at least one new Indian producer of dihydromyrcenol appeared in 2005. The claim should therefore be rejected.

- (61) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices significantly undercutting the Community industry's prices and, on the other hand, the Community industry's price depression and worsened financial situation, it is provisionally concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

5.3. Effects of other factors

5.3.1. Performance of other Community producers

- (62) As indicated under recitals 23 to 26 above, there are five producers of the like product in the Community; two of them are not deemed to constitute the Community industry. The development of sales volume and market share of these two companies is analysed below. For confidentiality reasons actual figures cannot be disclosed. Thus, only indices are given.
- (63) Sales in the Community of dihydromyrcenol produced by other Community producers declined by 12 % during the period considered. The corresponding market share has decreased even more significantly, i.e. by 28 %, because the market expanded in the same period.

	2003	2004	2005	IP
Sales in the EC (kg) Index: 2003 = 100	100	89	88	88
Market share Index: 2003 = 100	100	90	83	72

Source: information collected from other Community producers.

- (64) In view of the above, it is provisionally concluded that the performance of the two other Community producers did not cause any injury to the Community industry.

5.3.2. Captive use by the Community industry

- (65) As indicated under recitals 27 to 34 above, the Community industry's activities in respect of the like product include, *inter alia*, captive use of this product for production of derivatives and/or perfume compounds. As further explained in the aforesaid recitals, it was considered appropriate to exclude the Community industry's captive use from the analysis of the injury indicators (where meaningful) and to examine it under other factors, i.e. other possible causes of the injury suffered by the Community industry.
- (66) The Community industry' captive use has slightly declined over the period considered. Specifically, it declined by 14 % in 2004 and by an additional 14 percentage points in 2005, before increasing in the IP to around 240 000 kilograms, which is nevertheless 5 % less than in 2003. In relative terms, captive use represented about 10 % of the total production volume, with the exception of 2005, when it went down to 8 %.

	2003	2004	2005	IP
Captive use (kg)	249 809	215 100	179 954	236 323
Index: 2003 = 100	100	86	72	95

Source: verified questionnaire replies.

- (67) In view of the above, and taking into account that captive use represents only about 10 % of the output of the Community industry, it is provisionally concluded that its development could not substantially contribute to the material injury suffered by the Community industry.

5.3.3. Export performance of the Community industry

- (68) In terms of volumes, the export performance of the Community industry slightly improved during the period considered. The volume of export sales increased by 8 % in 2004 and by additional 12 percentage points in 2005, before declining in the IP to a level 4 % higher than in 2003. In terms of unit prices, a fall by 26 % between 2003 and the IP can be seen from the table below. It should however be noted that the export sales price decreased at lower rates than the sales price in the Community and in absolute terms it remained considerably higher than the latter.

	2003	2004	2005	IP
Export sales of EC production (units)	743 445	803 219	890 242	774 802
Index: 2003 = 100	100	108	120	104
Export sales price (EUR/unit)	4,55	4,05	3,57	3,36
Index: 2003 = 100	100	89	79	74

Source: verified questionnaire replies.

- (69) In this view it can be provisionally concluded that the export performance of the Community industry did not substantially contribute to the material injury suffered.

5.3.4. Imports from other third countries

- (70) Imports from third countries other than India were also examined. It is recalled that imports from Japan resulting from Eurostat were disregarded for reasons given in recital 36 above. No other adjustments to Eurostat data were carried out for the purpose of this investigation.
- (71) As can be seen from the table below, the volume of imports from other third countries has decreased over the period considered. After a slump in 2004 and 2005, it recovered in the IP to a level 4 % lower than in 2003. Such development clearly coincided with an increase in prices of these imports in 2004 and 2005 and their subsequent drop in the IP. In absolute terms, the price level of imports from other third countries remained significantly above the price level of imports from India throughout all of the period considered (refer to recital 39 above). The corresponding share of imports from other third countries on the Community market developed in line with their volumes and with the market expansion; it decreased by 22 % between 2003 and the IP.

	2003	2004	2005	IP
Imports (kg)	935 800	756 200	606 700	895 100
Index: 2003 = 100	100	81	65	96
Average import price (EUR/kg)	4,04	4,79	4,75	4,08
Index: 2003 = 100	100	119	118	101
Market share	26 %	21 %	16 %	20 %
Index: 2003 = 100	100	81	61	78

Source: Eurostat.

- (72) In view of the above, it is concluded that imports from third countries other than India did not cause any injury to the Community industry.

5.3.5. The injury is self-inflicted

- (73) One party argued that the injury was self-inflicted because the complainants depend on imports of the main raw materials employed in production of the like product and are thus not competitive against the other producers in the Community, or even globally. In this respect, the investigation has not established any substantial differences in sources and prices of the main raw materials used and paid for by the complainants and the other Community producers, or even the cooperating Indian producers, which could justify the aforesaid allegations. The claim should therefore be rejected.

5.4. Conclusion on causation

- (74) In conclusion, it is confirmed that the material injury suffered by the Community industry, which is characterised especially by a decline in unit sales prices leading to a significant deterioration of the financial situation, was caused by the dumped imports from the country concerned. Although captive use and export performance might have to a certain extent contributed to the worsened performance of the Community industry, their development was not such as to break the causal link between the dumped imports and the injurious situation of the Community industry.
- (75) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.
- (76) It is therefore provisionally concluded that the dumped imports originating in the country concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

6. COMMUNITY INTEREST

6.1. General remarks

- (77) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

6.2. Interest of the Community industry

- (78) The injury analysis has clearly demonstrated that the Community industry has suffered from the dumped imports. The sharply increased presence of dumped imports in recent years caused a strong suppression of the prices. The Community industry, in order to maintain its market position and the volume of sales on the free market, which is decisive for the cost of production, is forced to sell at prices hardly covering fixed costs.
- (79) In this context, without the imposition of measures, the position of the Community industry would not be sustainable in the long run. Although the direct employment in dihydromyrcenol production is moderate, much of the negative impact on it would be in one geographical area in Spain, where most of the Community production is concentrated. If measures are imposed and the import price restored to a non-dumped level, the Community industry would be able to compete under fair trade circumstances, on the basis of proper comparative advantage. It is expected that the sales volumes of the Community industry would rise and that the Community industry could thereby benefit from economies of scale. It is also expected that the Community industry will utilise the relief in price suppression imposed by dumped imports to raise moderately its own selling prices, since the measures will remove the undercutting found in the IP. These expected positive effects of measures would allow the Community industry to improve its critical financial situation.

- (80) Imposing measures is therefore clearly in the interest of the Community industry. Non-imposition of measures may lead to discontinuation of dihydromyrcenol production or even closures in the Community.

6.3. Interest of users and consumers

- (81) Consumer associations have neither made themselves known nor provided any information in accordance with Article 21(2) of the basic Regulation. Therefore, and given that dihydromyrcenol is only used as raw material or component in the manufacture of other intermediate or end-products (see recitals 11 and 28 above), the analysis has been limited to the effect of measures on users. Typical applications of dihydromyrcenol are in detergents, soap fragrances and in certain perfumes. The sectors concerned are thus laundry and home care products and beauty and personal care products. Questionnaires were sent to 13 known Community users of dihydromyrcenol and to four flavours and fragrances associations. The Commission requested, amongst other information, their comments on whether the imposition of anti-dumping measures would be in the interest of the Community and how these measures would affect them.
- (82) One questionnaire reply was received from a manufacturer of a whole range of laundry, home and personal care products. It was pointed out that the product under investigation represents only a marginal fraction in all its intermediate and end-applications. In addition, this company was not using dihydromyrcenol originating in India, so it could not provide complete information. It was nevertheless assumed by this user that the imposition of measures could result in supply shortages and rising prices, which, in the long run, could result in price driven changes in perfume compositions. One other user contacted the Commission and informed that it was not using dihydromyrcenol originating in India. This company did not comment on the impact of possible measures. No representations were received from associations.
- (83) In respect of the comments received, the investigation has established that no shortages in supply of dihydromyrcenol can reasonably be expected, since the capacity utilisation by the Community industry was only 73 % in the IP (see recital 45 above). Dihydromyrcenol is also produced in several third countries other than India. In addition, given the moderate dumping margins found, no substantial increase in prices is expected. In this view, and taking into consideration the marginal impact of dihydromyrcenol on the cost of downstream products, it is provisionally concluded that the imposition of anti-dumping measures is unlikely to have a substantial effect on the situation of users in the Community.

6.4. Interest of unrelated importers/traders in the Community

- (84) 27 known importers/traders of the product concerned in the Community were approached. Three of these companies informed the Commission that they were not importing dihydromyrcenol from India. Only two importers not related to the exporting producers finally replied to the questionnaire. One of them indicated that it stopped importing from India during the IP, because its supplier decided to sell exclusively via certain other distributors. This importer did not comment on the likely impact of the measures since it was apparently no longer concerned. For the other cooperating importer, the Community sales of the product concerned represented less than 20 % of its total turnover, and its share on total imports of the product concerned from India was rather marginal. This company did not submit any specific comments concerning the likely impact of possible measures on its own business. It only indicated that any measures would encourage the Indian producers to adapt by improving their effectiveness, whilst the Community producers would be allowed, thanks to their protection, to maintain their inefficient production and would not be forced to restructure. In this respect it is noted that, as it was shown in recital 79 above, the anti-dumping measures would, contrary to the aforesaid allegations, allow the Community industry to increase sales volumes and improve its critical financial situation and, thus, they would create room for improving the production effectiveness. This argument should therefore be rejected.

- (85) In view of the above, and taking into consideration in particular the low level of cooperation from unrelated importers/traders in the Community, it is provisionally concluded that any anti-dumping measures would not have a decisive adverse impact on their situation.

6.5. Conclusion on Community interest

- (86) The above analysis showed that it is in the interest of the Community industry to impose measures, since those measures are expected to restrain the high level of imports at dumped prices and to eliminate the price undercutting by these imports, which proved to have a significant negative impact on the situation of the Community industry. The other Community producers are expected to also benefit from those measures.
- (87) The analysis also demonstrated that users are not likely to be substantially affected by any anti-dumping measures.
- (88) The low level of cooperation from unrelated importers/traders of the product concerned in the Community did not allow an in-depth analysis of their interest. It can however be concluded that these operators decided not to cooperate in the investigation because their activities would not be substantially affected should measures on imports of dihydromyrcenol from India be imposed.
- (89) On balance, it is considered that imposing measures, i.e. removing injurious dumping, would allow the Community industry to improve its financial situation and maintain its activity and that the adverse effects that the measures may have on certain other economic operators in the Community are not disproportionate as compared to the beneficial effects for the Community industry.
- (90) On the basis of the above, it is provisionally concluded that no compelling reasons of Community interest exist for not imposing anti-dumping measures in this case.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (91) In view of the provisional conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from India should be imposed in order to prevent further injury being caused to the Community industry by dumped imports.

7.1. Injury elimination level

- (92) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.
- (93) On the basis of the information available, it was preliminarily found that a profit margin of 5 % of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping. In 2003, i.e. before the surge of dumped imports from India, the Community industry achieved a profit of 12,3 % for its sales of the like product on the free market (see recital 48 above). It was however deemed appropriate to adjust this profitability in order to reflect the fact that the Community and world market for dihydromyrcenol has grown and new capacities have been built and, as a result, the overall price level — irrespective of presence of dumped imports — has slightly decreased, whilst the cost of production per unit remained more or less unchanged. Thus, a profit in the absence of dumped imports of around 12 % did not appear to be reasonably justified; instead, a profit margin of 5 % of turnover was considered more appropriate in the current situation.

- (94) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value. These differences were for both cooperating exporting producers above the dumping margins found.

7.2. Provisional measures

- (95) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty for the cooperating exporting producers should be imposed at the level of the dumping margins found.
- (96) It is recalled that the level of co-operation was high and, thus, it was considered appropriate to set the duty for the remaining companies, which had not cooperated in the investigation, at the level of the higher duty to be imposed on the cooperating companies (see recital 22 above). Therefore, the residual duty is set at the rate of 7,5 %.
- (97) On the basis of the above, the rate of the provisional anti-dumping duty should be as follows:

Producer	Proposed anti-dumping duty
Neeru Enterprises, Rampur	3,3 %
All other companies (including Privi Organics Limited, Mumbai)	7,5 %

- (98) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in India and produced by this company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to that specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.
- (99) Any claim requesting the application of this individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (100) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.
- ## 8. FINAL PROVISION
- (101) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of dihydromyrcenol of a purity by weight of 93 % or more, falling within CN code ex 2905 22 90 (TARIC code 2905 22 90 10), originating in India.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Producer	Anti-dumping duty	TARIC Additional Code
Neeru Enterprises, Rampur, India	3,3 %	A827
All other companies	7,5 %	A999

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

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

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 27 July 2007.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 897/2007**of 27 July 2007****amending Regulation (EC) No 1623/2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, in particular Articles 33 and 36 thereof,

Whereas:

(4) Regulation (EC) No 1623/2000 should therefore be amended accordingly.

(5) Since the new wine year begins on 1 August 2007, this Regulation should apply from that date.

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

HAS ADOPTED THIS REGULATION:

(1) The second subparagraph of Article 13(1) of Commission Regulation (EC) No 1623/2000 ⁽²⁾ grants a derogation under the aid scheme for grape must used to enrich wine for musts from wine-growing zones elsewhere than in wine-growing zones C III(a) and C III(b), which is due to expire at the end of the 2006/2007 wine year. Pending a more radical change to the aid scheme in the context of the reform of the common organisation of the market in wine scheduled for the 2008/2009 wine year, this derogation should be extended until the end of the 2007/2008 wine year.

(2) The fourth subparagraph of Article 52(1) of Regulation (EC) No 1623/2000 provides for a derogation from the distillation arrangements for wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for the production of spirits distilled from wine with a designation of origin for the 2001/2002 to 2006/2007 wine years. The derogation concerns the volume of the 'quantity normally produced'. Pending a more radical change to these arrangements in the context of the reform of the common organisation of the market in wine scheduled for the 2008/2009 wine year, this derogation should be extended until the end of the 2007/2008 wine year.

(3) The first subparagraph of Article 63a(2) of Regulation (EC) No 1623/2000 fixes a percentage of production which producers may offer for the distillation of wine into potable alcohol. This percentage should be fixed for the 2007/2008 wine year.

Article 1

Regulation (EC) No 1623/2000 is amended as follows:

1. in the second subparagraph of Article 13(1), '2003/2004 to 2006/2007' is replaced by '2003/2004 to 2007/2008'.
2. in the fourth subparagraph of Article 52(1), '2001/2002 to 2006/2007' is replaced by '2001/2002 to 2007/2008'.
3. the last sentence of the first subparagraph of Article 63a(2) is replaced by the following:

'For the 2004/2005, 2005/2006, 2006/2007 and 2007/2008 wine years, that percentage shall be 25 %.'

*Article 2*This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 August 2007.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 194, 31.7.2000, p. 45. Regulation as last amended by Regulation (EC) No 2016/2006 (OJ L 384, 29.12.2006, p. 38).

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

Done at Brussels, 27 July 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 898/2007**of 27 July 2007****amending Council Regulation (EC) No 41/2007 as regards the catch limits for the stock of sprat in EC waters of ICES zones IIa and IV**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required ⁽¹⁾, and in particular Article 5(5) thereof:

Whereas:

- (1) Preliminary catch limits for sprat in EC waters of ICES zones IIa and IV are laid down in Annex IA to Regulation (EC) No 41/2007.
- (2) Pursuant to Article 5(5) of that Regulation, the Commission may revise the catch limits in the light of scientific information collected during the first half of 2007.
- (3) Taking into account information collected during the first half of 2007, the catch limits for sprat in the zones concerned should be adjusted.

(4) Annex IA to Regulation (EC) No 41/2007 should therefore be amended accordingly.

(5) The sprat is a short-lived species, therefore the catch limitations should be implemented as soon as possible, in order to avoid delays which could lead to over-fishing of the stock.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IA to Regulation (EC) No 41/2007 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 27 July 2007.

For the Commission

Joe BORG

Member of the Commission

⁽¹⁾ OJ L 15, 20.1.2007, p. 1. Regulation as last amended by Regulation (EC) No 754/2007 (OJ L 172, 30.6.2007, p. 26).

ANNEX

Annex IA to Regulation (EC) No 41/2007 is amended as follows:

The entry concerning the stock of sprat in EC waters of ICES zones IIa and IV is replaced by the following:

Species: Sprat <i>Sprattus sprattus</i>		Zone: EC waters of IIa and IV SPR/2AC4-C
Belgium	1 917	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
Denmark	151 705	
Germany	1 917	
France	1 917	
The Netherlands	1 917	
Sweden	1 330 ⁽¹⁾	
United Kingdom	6 325	
EC	167 028	
Norway	18 812 ⁽²⁾	
Faroe Islands	9 160 ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾	
TAC	195 000	

⁽¹⁾ Including sandeel.

⁽²⁾ May only be fished in EC waters of ICES zone IV.

⁽³⁾ This quantity may be fished in ICES zone IV and zone VIa North of 56° 30' N. Any by-catch of blue whiting shall be counted against the blue whiting quota established for ICES zones VIa, VIb and VII.

⁽⁴⁾ 1 832 tonnes can be caught as herring in fisheries using nets with mesh sizes less than 32 mm. If the quota of 1 832 tonnes of herring is exhausted then all fisheries using nets with mesh sizes less than 32 mm is prohibited.

⁽⁵⁾ Catches taken in the monitoring fisheries, corresponding to 2 % of the effort and up to a maximum of 2 500 tonnes can be caught as sandeel.

COMMISSION REGULATION (EC) No 899/2007

of 27 July 2007

amending Regulation (EC) No 2037/2000 of the European Parliament and of the Council as regards the adjustment of CN codes for certain ozone depleting substances and mixtures containing ozone depleting substances to take account of amendments to the Combined Nomenclature laid down in Council Regulation (EEC) No 2658/87

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer⁽¹⁾ and in particular Article 6(5) thereof,

Whereas:

- (1) In the Combined Nomenclature for 2007, laid down in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽²⁾, as amended by Commission Regulation (EC) No 1549/2006⁽³⁾, the combined nomenclature codes (CN codes) for certain products have been amended. Annex IV to Regulation (EC) No 2037/2000, relating to ozone depleting substances and mixtures containing ozone depleting substances, refers to some of those CN-codes. It is therefore necessary to adjust that Annex. In view of the many changes to be made, clarity requires it to be replaced in its entirety.

- (2) Regulation (EC) No 2037/2000 should therefore be amended accordingly.

- (3) Since Regulation (EC) No 1549/2006 entered into force on 1 January 2007, this Regulation should apply from the same date.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 18(1) of Regulation (EC) No 2037/2000,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EC) No 2037/2000 is replaced by the text 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*.

It shall apply from 1 January 2007.

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

Done at Brussels, 27 July 2007.

For the Commission

Stavros DIMAS

Member of the Commission

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

⁽³⁾ OJ L 301, 31.10.2006, p. 1.

ANNEX

‘ANNEX IV

Groups, Combined Nomenclature codes (*) and descriptions for the substances referred to in Annexes I and III

Group	CN code	Description
Group I	2903 41 00	Trichlorofluoromethane
	2903 42 00	Dichlorodifluoromethane
	2903 43 00	Trichlorotrifluoroethanes
	2903 44 10	Dichlorotetrafluoroethanes
	2903 44 90	Chloropentafluoroethane
Group II	2903 45 10	Chlorotrifluoromethane
	2903 45 15	Pentachlorofluoroethane
	2903 45 20	Tetrachlorodifluoroethanes
	2903 45 25	Heptachlorofluoropropanes
	2903 45 30	Hexachlorodifluoropropanes
	2903 45 35	Pentachlorotrifluoropropanes
	2903 45 40	Tetrachlorotetrafluoropropanes
	2903 45 45	Trichloropentafluoropropanes
	2903 45 50	Dichlorohexafluoropropanes
	2903 45 55	Chloroheptafluoropropanes
Group III	2903 46 10	Bromochlorodifluoromethane
	2903 46 20	Bromotrifluoromethane
	2903 46 90	Dibromotetrafluoroethanes
Group IV	2903 14 00	Carbon tetrachloride
Group V	2903 19 10	1,1,1-Trichloroethane (methylchloroform)
Group VI	2903 39 11	Bromomethane (methyl bromide)
Group VII	2903 49 30	Hydrobromofluoromethanes, -ethanes or -propanes
Group VIII	2903 49 10	Hydrochlorofluoromethanes, -ethanes or -propanes
Group IX	ex 2903 49 80	Bromochloromethane
Mixtures	3824 71 00	Mixtures containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs)
	3824 72 00	Mixtures containing bromochlorodifluoromethane, bromotrifluoromethane or dibromo-tetrafluoroethanes
	3824 73 00	Mixtures containing hydrobromofluorocarbons (HBFCs)
	3824 74 00	Mixtures containing hydrochlorofluorocarbons (HCFCs), whether or not containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs)
	3824 75 00	Mixtures containing carbon tetrachloride
	3824 76 00	Mixtures containing 1,1,1-trichloroethane (methyl chloroform)
	3824 77 00	Mixtures containing bromomethane (methyl bromide) or bromochloromethane

(*) An “ex” before a code implies that also other substances than those referred to in the column “Description” may fall under that subheading.’

COMMISSION REGULATION (EC) No 900/2007**of 27 July 2007****on a standing invitation to tender to determine refunds on exports of white sugar until the end of the 2007/2008 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular Articles 23(4) and 40(1)(g) thereof,

Whereas:

- (1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be opened for the export of white sugar until the end of the 2007/2008 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export refunds.
- (2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 32 of Regulation (EC) No 318/2006 should be applied.
- (3) In order to prevent any abuse associated with the re-import or re-introduction into the Community of sugar sector products that have qualified for export refunds, no export refund should be fixed for the countries of the western Balkans.
- (4) In line with Articles 32 and 33 of Council Regulation (EC) No 318/2006, export refunds may be set to cover the competitive gap between Community and third countries' exports. Community exports to certain close destinations and to third countries granting Community products a preferential import treatment are currently in a particular favourable competitive position. Therefore, refunds for exports to those destinations should be abolished.
- (5) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender, in particular as regards the deadline for the issue of the licences, their period of

validity, the amount of the security and the quantity for which the obligation to export resulting from the licence is met. However, 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 ⁽²⁾ and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products ⁽³⁾ must continue to apply.

- (6) The provisions of this Regulation replace, as regards the partial invitations to tender as from August 2007, those of Commission Regulation (EC) No 958/2006 of 28 June 2006 on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/2007 marketing year ⁽⁴⁾. For the sake of transparency and legal clarity, therefore, that Regulation should be repealed with effect from 1 August 2007.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. A standing invitation to tender shall be opened in order to determine export refunds on white sugar covered by CN code 1701 99 10 for all destinations excluding Andorra, Gibraltar, Ceuta, Melilla, the Holy See (Vatican City State), Liechtenstein, Communes of Livigno and Campione d'Italia, Heligoland, Greenland, Faroe Islands, the areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, Albania, Croatia, Bosnia and Herzegovina, Serbia ⁽⁵⁾, Montenegro and the former Yugoslav Republic of Macedonia. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

2. The standing invitation to tender shall be open until 25 September 2008.

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

⁽²⁾ OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 1913/2006 (OJ L 365, 21.12.2006, p. 52).

⁽³⁾ OJ L 16, 20.1.1989, p. 19. Regulation as last amended by Regulation (EC) No 1847/2006 (OJ L 355, 15.12.2006, p. 21).

⁽⁴⁾ OJ L 175, 29.6.2006, p. 49. Regulation as last amended by Regulation (EC) No 203/2007 (OJ L 61, 28.2.2007, p. 2).

⁽⁵⁾ Including Kosovo, under the auspices of the United Nations, pursuant to UN Security Council Resolution 1244 of 10 June 1999.

Article 2

1. The notice of invitation to tender shall be published in the *Official Journal of the European Union*. On this basis, the Member States shall draw up a notice of invitation to tender which they may publish or have published elsewhere.

2. The notice shall indicate, in particular, the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 3

1. The period during which tenders may be submitted in response to the first partial invitation to tender shall:

(a) begin on 1 August 2007;

(b) end on 9 August 2007 at 10.00, Brussels local time.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall:

(a) begin on the first working day following the end of the preceding period;

(b) end at 10.00, Brussels local time, on:

- 30 August 2007,
- 13 and 27 September 2007,
- 11 and 25 October 2007,
- 8 and 22 November 2007,
- 6 and 20 December 2007,
- 10 and 31 January 2008,
- 14 and 28 February 2008,
- 13 and 27 March 2008,
- 10 and 24 April 2008,
- 8 and 29 May 2008,
- 12 and 26 June 2008,
- 10 and 24 July 2008,
- 7 and 28 August 2008,
- 11 and 25 September 2008.

Article 4

1. Tenders in connection with this tendering procedure shall be addressed to the competent authority in a Member State by fax or electronic mail provided the competent agency accepts these forms of transmission.

The competent authorities of the Member State may require that electronic tenders be accompanied by an advance electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council ⁽¹⁾.

2. Tenders shall be valid only if the following conditions are met:

(a) Tenders shall indicate:

(i) the procedure to which the tender relates (No 1/2007) and the partial invitation;

(ii) the name, address and VAT number of the tenderer;

(iii) the quantity of white sugar to be exported;

(iv) the amount of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(v) the amount of the security to be lodged in accordance with Article 5(1) covering the quantity of sugar indicated in (iii), expressed in the currency of the Member State in which the tender is submitted;

(b) proof is furnished before expiry of the time-limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

(c) the quantity to be exported is not less than 250 tonnes of white sugar;

(d) tenders include a declaration by the tenderer that if their tender is successful they will, within the period laid down in the second subparagraph of Article 11(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

(e) tenders include a declaration by the tenderer that the product for exports is white sugar of fair, sound and marketable quality, falling within CN code 1701 99 10;

(f) tenders include a declaration by the tenderer that if their tender is successful they will:

(i) where the obligation to export resulting from the export licence referred to in Article 11(2) is not fulfilled, supplement the security by the payment of the amount referred to in Article 12(3);

(ii) within 30 days following the expiry of the export licence in question, notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used.

3. A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

4. Once submitted, a tender may not be withdrawn.

5. A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

(a) the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;

(b) the tender, if successful, relates to all or a specified part of the tendered quantity.

Article 5

1. A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 12(3), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 11(2).

2. The security referred to in paragraph 1 may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. The security referred to in paragraph 1 shall be released:

(a) in the case of unsuccessful tenderers in respect of the quantity for which no award has been made;

(b) in the case of successful tenderers who have not applied for the relevant export licence within the period referred to in the second subparagraph of Article 11(2), at a rate of EUR 10 per 100 kilograms of white sugar;

(c) in the case of successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000, the export obligation resulting from the licence referred to in Article 11(2) of this Regulation in accordance with the terms of Article 35 of Regulation (EC) No 1291/2000.

In the case referred to under (b) of the first subparagraph, the releasable part of the security shall be reduced, as applicable, by the difference between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former.

Except in cases of *force majeure*, the part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In cases of *force majeure*, the competent authority of the Member State concerned shall take such action for the release of the security as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 6

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders submitted in accordance with this Regulation shall be communicated, if eligible, to the Commission by the Member States without the tenderers being mentioned by name and must be received by the Commission within one hour and thirty minutes of the expiry of the deadline for the weekly submission of tenders stipulated in the notice of invitation to tender.

Where no tenders are submitted, the Member States shall notify the Commission of this within the same time-limit.

Article 7

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 8

1. If the Commission decides to make an award under the partial tendering procedure, it shall fix, in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006, the maximum amount of the export refund. This amount shall be fixed in the light of the current state and foreseeable development of the Community and world sugar markets.

2. Without prejudice to Article 9, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund.

Article 9

1. Where a maximum quantity has been fixed for a partial invitation to tender, contracts shall be awarded to the tenderer whose tender quotes the lowest refund. If the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in ascending order of export refunds quoted until the entire maximum quantity has been accounted for.

2. Where an award to a particular tenderer in accordance with paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenders quote the same refund, and awards to all of them would result in the maximum quantity being exceeded, the quantity available shall be allocated to the tenderers concerned in one of the following ways:

(a) by division among the tenderers concerned in proportion to the total quantities in each of their tenders; or

(b) by apportionment among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them; or

(c) by drawing of lots.

Article 10

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. It shall also send statements of award to the successful tenderers.

2. Statements of award shall indicate at least:

(a) the procedure to which the tender relates;

(b) the quantity of white sugar to be exported;

(c) the amount, expressed in euro, of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 11

1. Every successful tenderer shall have the right to receive, in the circumstances referred to in paragraph 2, an export licence covering the quantity awarded, indicating the export refund quoted in the tender.

2. Every successful tenderer shall be obliged to lodge, in accordance with the relevant provisions of Regulation (EC) No 1291/2000, an application for an export licence in respect of the quantity that has been awarded to it, the application not being revocable in derogation from Article 12 of Regulation (EEC) No 120/89.

The application shall be lodged not later than:

(a) the last working day preceding the date of the partial invitation to tender to be held the following week;

(b) if no partial invitation to tender is due to be held that week, the last working day of the following week.

3. Every successful tenderer shall be obliged to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 12(3).

4. The rights and obligations referred to in paragraphs 1, 2 and 3 shall not be transferable.

Article 12

1. For the purposes of determining the period of validity of the licences, Article 23(1) of Regulation (EC) No 1291/2000 shall apply.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

3. Except in cases of *force majeure*, the holder of the licence shall pay the competent authority a specific amount in respect of the quantity for which the obligation to export resulting from the export licence referred to in Article 11(2) has not been fulfilled, if the security referred to in Article 5(1) is less than the difference between the export refund referred to in Article 33(2)(a) of Regulation (EC) No 318/2006 in force on the last day of validity of the licence, and the refund indicated on that licence.

The amount to be paid referred to in the first subparagraph shall be equal to the difference between the difference referred to in the first subparagraph and the security referred to in Article 5(1).

Article 13

Regulation (EC) No 958/2006 is hereby repealed with effect from 1 August 2007.

Article 14

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, 27 July 2007.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 901/2007
of 27 July 2007
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

- (5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 27 July 2007.

For the Commission

Danuta HÜBNER

Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

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

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
Product consisting of the cut, fermented and dried leaves and plant tips of the rooibos plant (<i>Aspalathus linearis</i>), also known as 'Red Bush'. After harvesting, the green leaves and plant tips are cut into pieces of 2 to 5 mm in length. These are then bruised, fermented and dried. The product is mainly used to prepare infusions.	1212 99 70	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 1212, 1212 99 and 1212 99 70. Classification in heading 1211 is excluded as the product is not used primarily for the purposes mentioned in the wording of this heading ('... of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes'). Consequently, the product has to be classified as another vegetable product of a kind used primarily for human consumption, not elsewhere specified or included, of heading 1212.

COMMISSION REGULATION (EC) No 902/2007
of 27 July 2007
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 27 July 2007.

For the Commission

Danuta HÜBNER

Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

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

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
Whole bulbs of garlic (<i>Allium sativum</i>) at a temperature between 0 °C and – 5 °C but not frozen throughout.	0703 20 00	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 0703 and 0703 20 00. The product is excluded from heading 0710 as it is not 'frozen' in the meaning of Chapter 7 (see also the Harmonized System Explanatory Notes to Chapter 7, General, third paragraph). The product is therefore to be classified in heading 0703 as chilled garlic.

COMMISSION REGULATION (EC) No 903/2007
of 27 July 2007
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

- (5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 27 July 2007.

For the Commission

Franco FRATTINI

Vice-President

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

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

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
Flat sheets measuring 32 mm by 21 mm, with the following ingredients (% by weight): sodium alginate 24-32 maltodextrin 20-28 flavours 5-15 water 5-15 carrageenan 5-15 microcrystalline cellulose 4-10 glycerine 4-10 lecithin, aspartame, sodium saccharin, acesulfame K, neohesperidine DC, colour E102 and colour E133. The product is marketed as 'breath freshening strips' which are dissolved on the tongue.	2106 90 98	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and the wording of CN codes 2106, 2106 90 and 2106 90 98. The product cannot be classified in heading 3306 as a preparation for oral hygiene, because it does not contain any specific ingredients that contribute to keeping the mouth cavity clean. The product has to be classified as a food preparation for human consumption within the meaning of heading 2106 as it contains substances with nutritional value (Harmonised System Explanatory Notes to heading 2106, 1st paragraph, A, and 2nd paragraph, B, 9).

COMMISSION REGULATION (EC) No 904/2007
of 27 July 2007
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it, or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.

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

- (5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 27 July 2007.

For the Commission

Franco FRATTINI

Vice-President

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 733/2007 (OJ L 169, 29.6.2007, p. 1).

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

ANNEX

Description of the goods	Classification (CN code)	Reasons								
(1)	(2)	(3)								
'Pasta filata' type cheese in block form made by adding rennin and thermophilic bacteria (e.g. <i>Streptococcus thermophilus</i>) to milk. The whey is separated after curdling. The curd is then heated to about 80 °C. The curd is kneaded and stretched to give it a stringy texture. The product is then divided into the requisite sizes (1 to 3 kg) and salted. The cheese is wrapped in ripening film and stored after its manufacture for one to two weeks at a low temperature (2 to 4 °C). The composition of the cheese is (% by weight): <table><tr><td>dry matter</td><td>54,2</td></tr><tr><td>total fat</td><td>23,3</td></tr><tr><td>fat content in the dry matter</td><td>43,0</td></tr><tr><td>water content in the fat-free matter</td><td>59,7</td></tr></table> The cheese has a mild, buttery, slightly salty flavour. It is used, <i>inter alia</i>, as cheese for pizzas.	dry matter	54,2	total fat	23,3	fat content in the dry matter	43,0	water content in the fat-free matter	59,7	0406 10 20	Classification is determined by General Rules 1 and 6 on the interpretation of the CN and the wording of CN codes 0406, 0406 10 and 0406 10 20. The product has the objective characteristics and properties, in particular with regard to its composition, appearance and taste of a fresh cheese and can be consumed shortly after its manufacture (Harmonized System Explanatory Notes to headings 0406, first paragraph, item 1). It cannot therefore be classified in CN subheading 0406 90 which refers to 'other cheese' than those mentioned in the preceding subheadings.
dry matter	54,2									
total fat	23,3									
fat content in the dry matter	43,0									
water content in the fat-free matter	59,7									

COMMISSION REGULATION (EC) No 905/2007**of 27 July 2007****fixing the minimum selling price for butter for the 68th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10(c) thereof,

Whereas:

- (1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.
- (2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no

award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

- (3) In the light of the tenders received, a minimum selling price should be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 68th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 24 July 2007, the minimum selling price for butter is fixed at 200,00 EUR/100 kg.

Article 2

This Regulation shall enter into force on 28 July 2007.

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

Done at Brussels, 27 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

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

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 688/2007 (OJ L 159, 20.6.2007, p. 36).

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 September 2006

relating to a proceeding under Article 81 of the Treaty establishing the European Community

(Case No COMP/F/38.456 — Bitumen (NL))

(notified under document number C(2006) 4090)

(only the Dutch, English, French and German versions are authentic)

(2007/534/EC)

1. SUMMARY OF THE INFRINGEMENT

- (1) The addressees of the Decision participated in a single and continuous infringement of Article 81 of the Treaty establishing the European Community, involving the fixing of prices concerning road pavement bitumen in the Netherlands.

1.1. The road pavement bitumen sector

- (2) Bitumen is a by-product in the production of fuel. Normally, it is produced during the distillation of specific heavy crude oils. Different crude oils and refinery configurations produce different bitumen types, which can be further modified by the addition of polymers in order to enhance performance. Bitumen is mainly used in the production of asphalt, where it serves as an adhesive binding the other materials together. The remainder of bitumen production goes into various industrial applications.
- (3) The product that is the subject of this Decision is all bitumen used for road construction and similar applications. It is also referred to as penetration bitumen, paving-grade bitumen or pen-grade bitumen. It will be referred to as road pavement bitumen.
- (4) The investigation showed that the cartel covered the territory of the Netherlands. The size estimated is at around EUR 62 million in 2001, the last full year of the infringement. A peculiar feature of the arrangements is that the collusion occurred not only among sellers, as is usually the case, but among sellers and buyers

together. Eight out of nine suppliers of road pavement bitumen and the six (now five) largest road construction companies, purchasers of the product, participated in the cartel.

- (5) The addressees referred to below participated in a single and continuous infringement of Article 81 of the EC Treaty, covering the territory of the Netherlands, the main features of which were that suppliers and purchasers jointly agreed on prices and rebates for the product concerned.

1.2. Addressees and duration of the infringement

- (6) The undertakings, with their legal entities, which have participated in the infringement (some of them are held liable as parent companies) are the following, for the periods indicated. Please note that for certain undertakings more than one legal entity is the addressee of the Decision:

Suppliers:

- (a) BP: BP plc. from 1 April 1994 to 15 April 2002, BP Nederland BV from 1 April 1994 to 1 January 2000 and BP Refining & Petrochemicals GmbH from 31 December 1999 to 15 April 2002;
- (b) Esha: Esha Holding BV, Smid & Hollander BV and Esha Port Services Amsterdam BV from 1 April 1994 to 15 April 2002;

- (c) Klöckner: Klöckner Bitumen BV from 1 April 1994 to 15 April 2002 and Sideron Industrial Development from 1 January 2000 to 15 April 2002;
- (d) Kuwait Petroleum: Kuwait Petroleum Corporation, Kuwait Petroleum International Ltd. and Kuwait Petroleum (Nederland) BV from 1 April 1994 to 15 April 2002;
- (e) Nynäs: AB Nynäs Petroleum and Nynäs Belgium AB from 1 April 1994 to 15 April 2002;
- (f) Shell: Shell Petroleum NV, The Shell Transport and Trading Company Ltd and Shell Nederland Verkoopmaatschappij BV from 1 April 1994 to 15 April 2002;
- (g) Total: Total Nederland NV from 1 April 1994 until 15 April 2002 and Total SA from 1 November 1999 to 15 April 2002;
- (h) Wintershall: Wintershall AG from 1 April 1994 until 31 December 1999.

Purchasers:

- (i) Ballast Nedam: Ballast Nedam NV and Ballast Nedam Infra BV from 21 June 1996 to 15 April 2002;
- (j) BAM: BAM NBM Wegenbouw BV from 1 April 1994 to 15 April 2002 and Koninklijke BAM Groep NV from 1 November 2000 to 15 April 2002;
- (k) Dura Vermeer: Vermeer Infrastructuur BV from 1 April 1994 to 15 April 2002, Dura Vermeer Groep NV from 13 November 1998 until 15 April 2002 and Dura Vermeer Infra BV from 1 July 2000 to 15 April 2002.
- (l) HBG: HBG Civiel BV from 1 April 1994 to 15 April 2002;
- (m) Heijmans: Heijmans NV and Heijmans Infrastructuur BV from 1 April 1994 to 15 April 2002;
- (n) KWS: Koninklijke Volker Wessels Stevin NV and Koninklijke Wegenbouw Stevin BV from 1 April 1994 to 15 April 2002;

1.3. Functioning of the cartel

- (7) The collusive practices can be categorised as price fixing practices for road pavement bitumen in the Netherlands

between the suppliers, between the main purchasers, as well as between these suppliers and purchasers.

- (8) The evidence of this cartel covers the period between 1 April 1994 and 15 April 2002 and relates essentially to the practice of regularly fixing collectively the gross price for sales and purchases of road pavement bitumen, a uniform rebate on the gross price for participating road builders and a smaller maximum rebate on the gross price for other road builders.
- (9) The Commission considers that the entire system of preparatory and joint meetings, with the ensuing agreements between the group of bitumen suppliers and the group of road builders on gross prices and rebates for road pavement bitumen in the Netherlands forms part of a single overall scheme and therefore constitutes a single infringement of Article 81 of the Treaty.

2. FINES

2.1. Basic Amount

- (10) The basic amount of the fine is determined according to the gravity and duration of the infringement.

Gravity

- (11) In assessing the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.
- (12) Regarding the nature of the infringement, the fact that it must have had an impact and the fact that it covered a substantial part of the common market, the Commission considers that the undertakings to which this Decision is addressed have committed a very serious infringement of Article 81 of the Treaty.

Differential treatment

- (13) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders, respectively, to cause significant damage to competition. This is appropriate where, as in this case, there are considerable disparities between the respective market shares of the undertakings participating in the infringement.

- (14) The undertakings have been divided into six categories according to their relative importance in the relevant market in 2001, the last full year of the infringement.

Sufficient deterrence

- (15) The Commission notes that in this proceeding Shell, BP, Total and Kuwait Petroleum had worldwide turnovers in financial year 2005, the most recent financial year preceding this Decision, of respectively EUR 246, 203, 143 and 37 billion. All other undertakings had worldwide turnovers of less than EUR 10 billion.

- (16) The Commission considers that, given the circumstances of the case, no multiplier is necessary to ensure a sufficient deterrent effect of the fines for these undertakings with worldwide turnovers of less than EUR 10 billion. The Commission considers only multiplying the fine for Shell, BP, Total and Kuwait Petroleum with a factor that has been adapted to the circumstances of the case.

Duration

- (17) Individualised multiplying factors are applied accordingly to the duration of the infringement proper to each company ranging from 1,5 to 8 years (see recital 6 above).

2.2. Aggravating and attenuating circumstances*Aggravating circumstances*

- (18) At the time the infringement took place, Shell had already been subject to previous Commission prohibition decisions for cartel activities⁽¹⁾. This recidivism constitutes an aggravating circumstance justifying an increase of 50 % in the basic amount of the fine to be imposed on Shell.
- (19) During the inspections, KWS refused to submit to the investigation, prompting the inspectors to invoke the assistance of the national competition authority and the police. The Commission considers that this obstruction constitutes an aggravating circumstance that justifies an increase of 10 % in the basic amount of the fine to be imposed on KWS.
- (20) Shell, within the group of bitumen suppliers, and KWS, within the group of the bitumen purchasers, bear a

special responsibility for their role in instigating and leading the cartel. They were the driving forces in the operation of the cartel. This role justifies an increase of 50 % in the basic amount of the fine to be imposed on Shell and KWS.

2.3. Application of the 10 % turnover limit

- (21) Article 23(2) of Regulation (EC) No 1/2003⁽²⁾ provides that the fine imposed on each undertaking is not to exceed 10 % of its turnover. This threshold is applied to the fines calculated for Esha (Esha Holding BV, Smid & Hollander BV and Esha Port Services Amsterdam BV) and Klöckner Bitumen BV.

2.4. Application of the 2002 Leniency Notice*Immunity*

- (22) BP was the first undertaking to inform the Commission of the existence of a bitumen cartel in the Netherlands and the Commission granted BP conditional immunity from fines in accordance with point 15 of the Notice. BP has co-operated fully, on a continuous basis and expeditiously throughout the Commission's administrative procedure. BP ended its involvement in the suspected infringement no later than the time at which it submitted evidence under the Leniency Notice and did not take steps to coerce other undertakings to participate in the infringement. Hence, BP qualifies for a full immunity from fines.

Point 23(b), first indent (reduction of 30 to 50 %)

- (23) Kuwait Petroleum was the next undertaking to approach the Commission under the Leniency Notice and was the first undertaking to meet the requirements of point 21 thereof. The evidence provided by Kuwait Petroleum strengthened by its very nature the Commission's ability to prove the facts in question, and therefore represented added value with respect to the evidence in the Commission's possession at that time. This added value was significant because it corroborated the existing information and, together with the information already in the Commission's possession, assisted the Commission in proving the infringement. It must be taken into account that BP was not a regular attendant of the bitumen consultation meetings with the purchasers and Kuwait Petroleum was the first to give direct evidence on this central element of the cartel's functioning. In accordance with point 23 of the Leniency Notice, Kuwait Petroleum therefore qualifies for a reduction of the fine between 30 % and 50 %.

⁽¹⁾ Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149 — Polypropylene, OJ L 230, 18.8.1986, p. 1) and Commission Decision 94/599/EC of 27 July 1994 relating to a proceeding under Article 85 of the EEC Treaty (IV/31865 — PVC II, OJ L 239, 14.9.1994, p. 14).

⁽²⁾ OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

- (24) For the exact reduction of the fine to be imposed on Kuwait Petroleum, it must be taken into account that Kuwait Petroleum's leniency application and the further evidence provided thereafter strengthened by its level of detail the Commission's ability to prove the facts in question. However, it must also be taken into account that the application was made more than 11 months after the Commission had conducted inspections and only after the Commission had sent the parties a request for information asking for detailed factual information about the events. Moreover, the Commission considers it serious that certain important statements Kuwait Petroleum had made in respect of the alleged participation in the cartel of ExxonMobil were later reformulated and could not be used in evidence against this undertaking. The Commission concludes that Kuwait Petroleum is entitled to a 30 % reduction of the fine that would otherwise have been imposed.

Other applications for leniency

- (25) Shell also filed an application under section B of the Leniency Notice but no reward is proposed, due to lack of significant added value.
- (26) Nynäs and Total also claim that they have provided the Commission with self-incriminating information on a voluntary basis. But the Commission considers that the information provided does not constitute significant added value on the basis of which the Commission should grant a reduction of penalty.
- (27) Wintershall claims that it ought to be covered by the immunity application of BP. But Wintershall still exists as a separate undertaking from BP and it was BP, not Wintershall, which decided to apply for immunity with the Commission.

3. DECISION

- (28) The following undertakings infringed Article 81 of the Treaty by regularly fixing collectively, for the periods indicated, for sales and purchases of road pavement bitumen in the Netherlands the gross price, a uniform rebate on the gross price for participating road builders and a smaller maximum rebate on the gross price for other road builders:
- (a) Ballast Nedam: Ballast Nedam NV and Ballast Nedam Infra BV from 21 June 1996 to 15 April 2002;
- (b) BAM NBM: BAM NBM Wegenbouw BV from 1 April 1994 to 15 April 2002 and Koninklijke

BAM Groep NV from 1 November 2000 to 15 April 2002;

- (c) BP: BP plc from 1 April 1994 to 15 April 2002, BP Nederland BV from 1 April 1994 to 1 January 2000 and BP Refining & Petrochemicals GmbH from 31 December 1999 to 15 April 2002;
- (d) Dura Vermeer: Vermeer Infrastructuur BV from 1 April 1994 to 15 April 2002, Dura Vermeer Groep NV from 13 November 1998 to 15 April 2002 and Dura Vermeer Infra BV from 30 June 2000 to 15 April 2002;
- (e) Esha: Esha Holding BV, Smid & Hollander BV and Esha Port Services Amsterdam BV from 1 April 1994 to 15 April 2002;
- (f) HBG: HBG Civiel BV from 1 April 1994 to 15 April 2002;
- (g) Heijmans: Heijmans NV and Heijmans Infrastructuur BV from 1 April 1994 to 15 April 2002;
- (h) Klöckner: Klöckner Bitumen BV from 1 April 1994 to 15 April 2002 and Sideron Industrial Development BV from 1 January 2000 to 15 April 2002;
- (i) Kuwait Petroleum: Kuwait Petroleum Corporation, Kuwait Petroleum International Ltd and Kuwait Petroleum (Nederland) BV from 1 April 1994 to 15 April 2002;
- (j) KWS: Koninklijke Volker Wessels Stevin NV and Koninklijke Wegenbouw Stevin BV from 1 April 1994 to 15 April 2002;
- (k) Nynäs: AB Nynäs Petroleum and Nynäs Belgium AB from 1 April 1994 to 15 April 2002;
- (l) Shell: Shell Petroleum NV, The Shell Transport and Trading Company Ltd and Shell Nederland Verkoopmaatschappij BV from 1 April 1994 to 15 April 2002;
- (m) Total: Total Nederland NV from 1 April 1994 to 15 April 2002 and Total SA from 1 November 1999 to 15 April 2002;
- (n) Wintershall AG from 1 April 1994 to 31 December 1999.

- (29) For the infringements referred to in previous recital, the following fines are imposed:
- (a) Ballast Nedam: Ballast Nedam NV and Ballast Nedam Infra BV, jointly and severally: EUR 4,65 million;
 - (b) BAM NBM: BAM NBM Wegenbouw BV: EUR 13,5 million, of which Koninklijke BAM Groep NV is jointly and severally liable for EUR 9 million;
 - (c) BP: BP plc: EUR 0 million, of which BP Nederland BV is jointly and severally liable for EUR 0 million and BP Refining & Chemicals GmbH is jointly and severally liable for EUR 0 million;
 - (d) Dura Vermeer: Vermeer Infrastructuur BV: EUR 5,4 million, of which Dura Vermeer Groep NV is jointly and severally liable for EUR 3,9 million and Dura Vermeer Infra BV is jointly and severally liable for EUR 3,45 million;
 - (e) Esha: Esha Holding BV, Smid & Hollander BV and Esha Port Services Amsterdam BV, jointly and severally: EUR 11,5 million;
 - (f) HBG: HBG Civiel BV: EUR 7,2 million;
 - (g) Heijmans: Heijmans NV and Heijmans Infrastructuur BV, jointly and severally: EUR 17,1 million;
 - (h) Klöckner: Klöckner Bitumen BV: EUR 10 million, of which Sideron Industrial Development BV is jointly and severally liable for EUR 9 million;
 - (i) Kuwait Petroleum: Kuwait Petroleum Corporation, Kuwait Petroleum International Ltd and Kuwait Petroleum (Nederland) BV, jointly and severally: EUR 16,632 million;
 - (j) KWS: Koninklijke Volker Wessels Stevin NV and Koninklijke Wegenbouw Stevin BV, jointly and severally: EUR 27,36 million;
 - (k) Nynäs: AB Nynäs Petroleum and Nynäs Belgium AB, jointly and severally: EUR 13,5 million;
 - (l) Shell: Shell Petroleum NV, The Shell Transport and Trading Company Ltd and Shell Nederland Verkoopmaatschappij BV, jointly and severally: EUR 108 million;
 - (m) Total: Total Nederland NV: EUR 20,25 million, of which Total SA is jointly and severally liable for EUR 13,5 million;
 - (n) Wintershall AG: EUR 11,625 million.
- (30) The undertakings listed above shall immediately bring to an end the infringements referred to in recital 28, insofar as they have not already done so. They shall refrain from repeating any act or conduct described in recital 28, and from any act or conduct having the same or similar object or effect.
- (31) A non-confidential version of the Decision will be available in the authentic languages of the case on the Competition DG website at: http://ec.europa.eu/comm/competition/index_en.html
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COMMISSION DECISION

of 27 July 2007

terminating the anti-subsidy proceeding concerning imports of dihydromyrcenol originating in India

(2007/535/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 11 November 2006, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾ (notice of initiation), the initiation of an anti-subsidy proceeding concerning imports into the Community of dihydromyrcenol of a purity by weight of 93 % or more, originating in India, normally declared within CN code ex 2905 22 90.
- (2) The anti-subsidy proceeding was initiated, pursuant to Article 10 of the basic Regulation, following a complaint lodged on 29 September 2006 by the following Community producers: Destilaciones Bordas Chinchurreta S.A. and Sensient Fragrances S.A. (the complainants) representing a major proportion, in this case more than 25 %, of the total Community production of dihydromyrcenol. The complaint contained *prima facie* evidence of the existence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the authorities of India, the exporting producers in India, importers and users known to be concerned and their associations, and the complainants of the initiation of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a

hearing within the time limit set out in the notice of initiation.

B. WITHDRAWAL OF THE COMPLAINT

- (4) By a letter of 25 May 2007 to the Commission, the complainants formally withdrew their complaint.
- (5) In accordance with Article 14(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn unless such termination would not be in the Community interest.
- (6) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Community interest. Interested parties were informed accordingly and were given the opportunity to comment. No objections were raised.
- (7) Given the above, the Commission concludes that the anti-subsidy proceeding concerning imports into the Community of dihydromyrcenol originating in India should be terminated without the imposition of counter-vailing measures,

HAS ADOPTED THIS DECISION:

Sole Article

The anti-subsidy proceeding concerning imports of dihydromyrcenol of a purity by weight of 93 % or more, falling under CN code ex 2905 22 90 and originating in India is hereby terminated.

Done at Brussels, 27 July 2007.

For the Commission

Peter MANDELSON

Member of the Commission

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ C 275, 11.11.2006, p. 29.

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 20 July 2007

amending Guideline ECB/2006/28 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets

(ECB/2007/6)

(2007/536/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community, and in particular to the third indent of Article 105(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the third indent of Article 3.1 and Articles 12.1 and 30.6 thereof,

Whereas:

- (1) Pursuant to Article 30.1 of the Statute, the European Central Bank (ECB) is provided by the national central banks (NCBs) of the Member States that have adopted the euro with foreign reserve assets and has the full right to hold and manage the foreign reserves that are transferred to it.
- (2) Pursuant to Articles 9.2 and 12.1 of the Statute, the ECB may manage certain of its activities through the NCBs and have recourse to the NCBs to carry out certain of its operations. Accordingly, the ECB considers that the NCBs should, as its agents, manage the foreign reserves transferred to it.
- (3) Pursuant to Guideline ECB/2006/28 of 21 December 2006 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets ⁽¹⁾, each NCB of a participating Member State is required to carry out operations involving the foreign reserve assets of the ECB as the ECB's agent using the legal documentation specified in such Guideline.
- (4) The definition of 'European jurisdictions' in Guideline ECB/2006/28 should be modified to cater for the future entry of Member States to the EMU.

- (5) For the purpose of including, in the list of eligible instruments, a new instrument relating to interest rate swaps that qualify as over-the-counter derivatives operations where an exposure beyond certain thresholds is secured, Guideline ECB/2006/28 should be further amended to provide for interest rate swaps to be documented as over-the-counter derivatives operations,

HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2006/28 is amended as follows:

1. Article 1 is replaced by the following:

'For the purposes of this Guideline:

- "European jurisdictions" means the jurisdictions of all Member States that have adopted the euro in accordance with the Treaty, as well as Denmark, Sweden, Switzerland and the United Kingdom (England and Wales only),
- "participating NCB" means the NCB of a Member State that has adopted the euro.'

2. Article 3(1) and (2) is replaced by the following:

'1. All operations involving the foreign reserve assets of the ECB shall be conducted using standard legal documentation as required by this Article. However, the Executive Board may decide to use a standard agreement set out in Annex I, point 1(c) or 2(c) rather than the agreement set out in Annex I, point 1(a) or 2(a) to this Guideline with respect to a Member State upon the adoption of the euro if a legal assessment in a form and with a substance acceptable to the ECB is not available regarding the use of the indicated standard agreement in that Member State. The Executive Board shall promptly inform the Governing Council of any decision taken under this provision.'

⁽¹⁾ OJ C 17, 28.1.2007, p. 5.

2. Collateralised operations involving the foreign reserve assets of the ECB comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell-buy-back agreements, and all over-the-counter derivatives operations involving the foreign reserve assets of the ECB shall be documented under the standard agreements listed in Annex I, in such forms as may be approved or amended by the ECB from time to time.’.

3. Annex I, point 2 is replaced by the following:

‘2. All over-the-counter derivatives operations involving the ECB’s foreign reserve assets (and including interest rate swaps where the exposure is secured by collateral) must be documented using the following standard agreements, in such form as may be approved or amended by the ECB from time to time:

- (a) the FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions;
- (b) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, New York law version) for operations with

counterparties organised or incorporated under US federal or state laws; and

- (c) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, English law version) for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).’.

Article 2

This Guideline shall enter into force on 27 July 2007.

Article 3

This Guideline is addressed to the NCBs of the Member States that have adopted the euro.

Done at Frankfurt am Main, 20 July 2007.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

POLITICAL AND SECURITY COMMITTEE DECISION DARFUR/6/2007

of 18 July 2007

appointing a Military Advisor to the European Union Special Representative for Sudan

(2007/537/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 25(3) thereof,

Having regard to Council Joint Action 2005/557/CFSP of 18 July 2005 on the European Union civilian-military supporting action to the African Union missions in the Darfur region of Sudan ⁽¹⁾, and in particular Article 4 thereof,

Whereas:

- (1) On 19 April 2007, the Council adopted Decision 2007/238/CFSP ⁽²⁾ appointing Torben BRYLLE as the European Union Special Representative (EUSR) for Sudan.
- (2) The EUSR for Sudan ensures, *inter alia*, the coordination and coherence of the Union's contributions to the African Union mission in the Darfur region of Sudan (AMIS). In accordance with Article 5(2) of Joint Action 2005/557/CFSP, an EU Coordination Cell in Addis Ababa under the authority of the EUSR, comprised of a political advisor, a military advisor and a police advisor, manages day-to-day coordination with all relevant EU actors and with the Administrative Control and Management Centre within the chain of command of the African Union in Addis Ababa in order to ensure coherence and timely EU support to AMIS.
- (3) By Article 4 of Joint Action 2005/557/CFSP the Council authorised the Political and Security Committee to appoint the military advisor to the EUSR upon a proposal from the Secretary-General/High Representative (SG/HR) based on a recommendation from the EUSR.

(4) The SG/HR, following the recommendation of the EUSR, has proposed that Colonel Michel BILLARD be appointed as the new Military Advisor to the EUSR.

(5) In accordance with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the elaboration and implementation of decisions and actions of the European Union which have defence implications,

HAS DECIDED AS FOLLOWS:

Article 1

Colonel Michel BILLARD is hereby appointed Military Advisor to the EUSR for Sudan.

Article 2

This Decision shall take effect on 24 July 2007.

Done at Brussels, 18 July 2007.

For the Political and Security Committee

The Chairperson

C. DURRANT PAIS

⁽¹⁾ OJ L 188, 20.7.2005, p. 46. Joint Action as amended by Joint Action 2007/245/CFSP (OJ L 106, 24.4.2007, p. 65).

⁽²⁾ OJ L 103, 20.4.2007, p. 52.

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

DECISION OF THE MANAGEMENT BOARD OF EUROPOL

of 18 July 2007

agreeing to the conditions and procedures laid down by Europol adapting the amounts mentioned in the Appendix to the Decision of the Europol Management Board of 16 November 1999 regarding taxes applicable to salaries and emoluments paid to Europol staff members for the benefit of Europol

(2007/538/EC)

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union and Article 41(3) of the Europol Convention, on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

(1) The Council decided on 12 June 2007 to adapt the salaries and emoluments for Europol officials with 1,5 % with retroactive effect as of 1 July 2006.

(2) The Management Board decided on 18 July 2007 to effect an increase in the amounts mentioned in Article 4 of the Appendix to the Decision of the Management Board of 16 November 1999 ⁽²⁾ by the same percentage and as of the same date as determined by the Council Decision of 12 June 2007 mentioned under point 1.

(3) In accordance with the same decision of the Management Board of 18 July 2007, the values thus established should be published in the *Official Journal of the European Union*,

HAS DECIDED AS FOLLOWS:

Article 1

With effect from 1 July 2006:

1. The value mentioned in the first sentence of Article 4 of the Appendix to the Decision of the Europol Management Board of 16 November 1999 shall be replaced by EUR 113,68.

2. The values in euro units of the table included in Article 4 of the Appendix to the Decision of the Europol Management Board of 16 November 1999 shall be replaced by the following:

8 % to amounts between EUR 113,68 and EUR 2 002,41

10 % to amounts between EUR 2 002,42 and EUR 2 758,01

12,5 % to amounts between EUR 2 758,02 and EUR 3 160,83

15 % to amounts between EUR 3 160,84 and EUR 3 589,60

17,5 % to amounts between EUR 3 589,61 and EUR 3 992,45

20 % to amounts between EUR 3 992,46 and EUR 4 382,91

22,5 % to amounts between EUR 4 382,92 and EUR 4 785,73

25 % to amounts between EUR 4 785,74 and EUR 5 176,21

27,5 % to amounts between EUR 5 176,22 and EUR 5 579,03

30 % to amounts between EUR 5 579,04 and EUR 5 969,51

32,5 % to amounts between EUR 5 969,52 and EUR 6 372,33

35 % to amounts between EUR 6 372,34 and EUR 6 763,42

40 % to amounts between EUR 6 763,43 and EUR 7 166,26

45 % to amounts above EUR 7 166,27.

⁽¹⁾ OJ C 221, 19.7.1997, p. 2.

⁽²⁾ OJ C 65, 28.2.2001, p. 8.

Article 2

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

Article 3

This Decision shall enter into force the day following its adoption.

Done at The Hague, 18 July 2007.

Jaime FERNANDES
Chairman of the Management Board
