

Official Journal

of the European Union

L 243

Volume 50

18 September 2007

English edition

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

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I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1063/2007

of 17 September 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 18 September 2007.

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

Done at Brussels, 17 September 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 17 September 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	MK	55,1
	XK	55,1
	XS	36,3
	ZZ	48,8
0707 00 05	JO	175,0
	MK	43,7
	TR	129,4
	ZZ	116,0
0709 90 70	TR	110,3
	ZZ	110,3
0805 50 10	AR	88,1
	UY	42,9
	ZA	67,7
	ZZ	66,2
0806 10 10	EG	177,6
	MK	28,3
	TR	111,9
	ZZ	105,9
0808 10 80	AR	62,4
	AU	215,7
	BR	117,4
	CL	88,6
	CN	79,8
	NZ	98,5
	US	98,4
	ZA	87,3
	ZZ	106,0
0808 20 50	CN	62,9
	TR	122,2
	ZA	107,6
	ZZ	97,6
0809 30 10, 0809 30 90	TR	151,3
	US	189,2
	ZZ	170,3
0809 40 05	BA	49,8
	IL	124,7
	MK	49,8
	TR	103,2
	ZZ	81,9

⁽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 1064/2007**of 17 September 2007****amending Annex I to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin, as regards Avilamycin****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

kidney) provided that, for the latter, the substance Avilamycin is not used in poultry species from which eggs are produced for human consumption.

Having regard to the Treaty establishing the European Community,

(3) Regulation (EEC) No 2377/90 should therefore be amended accordingly.

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ⁽¹⁾, and in particular Article 2 thereof,

(4) An adequate period should be allowed before the applicability of this Regulation in order to enable Member States to make any adjustment which may be necessary in the light of this Regulation to the authorisations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products ⁽²⁾ to take account of the provisions of this Regulation.

Having regard to the opinion of the European Medicines Agency formulated by the Committee for Medicinal Products for Veterinary Use,

(5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

Whereas:

(1) All pharmacologically active substances used in the Community in veterinary medicinal products intended for food-producing animals should be evaluated in accordance with Regulation (EEC) No 2377/90.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2377/90 is amended in accordance with the Annex to this Regulation.

(2) An application for establishing maximum residue limits for Avilamycin, an antibiotic belonging to the group of orthosomycins, has been submitted to the European Medicines Agency. On the basis of the recommendation of the Committee for Medicinal Products for Veterinary Use, this substance should be added in Annex I to Regulation (EEC) No 2377/90 for porcine species (muscle, skin plus fat, liver and kidney), rabbit (muscle, fat, liver and kidney) and poultry (muscle, skin plus fat, liver and

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*. It shall apply from 18 November 2007.

⁽¹⁾ OJ L 224, 18.8.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 703/2007 (OJ L 161, 22.6.2007, p. 28).

⁽²⁾ OJ L 311, 28.11.2001, p. 1. Directive as last amended by Directive 2004/28/EC (OJ L 136, 30.4.2004, p. 58).

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

Done at Brussels, 17 September 2007.

For the Commission
Günter VERHEUGEN
Vice-President

ANNEX

The following substance is added in Annex I to Regulation (EEC) No 2377/90 (List of pharmacologically active substances for which maximum residue limits have been fixed):

- 1. Anti-infectious agents
- 1.2. Antibiotics
- 1.2.15. Orthosomycins

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues
Avilamycin	Dichloroisoeverminic acid	Porcine	50 µg/kg	Muscle
			100 µg/kg	Fat ⁽¹⁾
			300 µg/kg	Liver
			200 µg/kg	Kidney
		Rabbit	50 µg/kg	Muscle
			100 µg/kg	Fat
			300 µg/kg	Liver
			200 µg/kg	Kidney
		Poultry ⁽²⁾	50 µg/kg	Muscle
			100 µg/kg	Fat ⁽³⁾
			300 µg/kg	Liver
			200 µg/kg	Kidney

⁽¹⁾ For porcine and poultry species, this MRL relates to skin and fat in natural proportions.
⁽²⁾ Not for use in animals from which eggs are produced for human consumption.
⁽³⁾ For porcine and poultry species, this MRL relates to skin and fat in natural proportions.

COMMISSION REGULATION (EC) No 1065/2007**of 17 September 2007****amending Regulation (EC) No 493/2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector**

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 Article 44 thereof,

Whereas:

- (1) Article 3 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 ⁽²⁾, provides for preventive withdrawal. As a result, above a certain threshold, the production under quota of each undertaking is considered withdrawn within the meaning of Article 19 of Regulation (EC) No 318/2006 or, if so requested by the undertaking before 31 January 2007, as produced in excess of the quota within the meaning of Article 12 of that Regulation.
- (2) On the deadline of 31 January 2007 isoglucose producers were not, unlike sugar producers, in a position to make such a request due to the continuous, year-round nature of their production. In the interests of fairness this deadline should, for isoglucose producers, be postponed to the end of the 2006/2007 marketing year to enable them to take their decision and make their request in full knowledge of the facts.

- (3) Regulation (EC) No 493/2006 should be amended accordingly.

- (4) 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

In Article 3 of Regulation (EC) No 493/2006, paragraph 1 is replaced by the following:

‘1. For each undertaking, the share of the production of sugar, isoglucose or inulin syrup in the 2006/2007 marketing year which is produced under the quota allocated in accordance with the quotas laid down in Annex IV and which exceeds the threshold established in accordance with paragraph 2 of this Article shall be considered withdrawn within the meaning of Article 19 of Regulation (EC) No 318/2006 or, at the request of the undertaking concerned submitted before 31 January 2007 for sugar and before 30 September 2007 for isoglucose, shall be considered fully or partially to have been produced in excess of the quota within the meaning of Article 12 of that 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, 17 September 2007.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

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

⁽²⁾ OJ L 89, 28.3.2006, p. 11. Regulation as last amended by Regulation (EC) No 739/2007 (OJ L 169, 29.6.2007, p. 22).

COMMISSION REGULATION (EC) No 1066/2007**of 17 September 2007****imposing a provisional anti-dumping duty on imports of certain manganese dioxides originating in South Africa**

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:

A. PROCEDURE**1. Initiation**

- (1) On 10 November 2006 the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by Tosoh Hellas AIC (the complainant) representing a major proportion, in this case more than 50 %, of the total Community production of certain manganese dioxides.
- (2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On 21 December 2006 the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union* ⁽²⁾.
- 2. Parties concerned by the proceeding**
- (4) The Commission officially advised the complainant, the other Community producer, the exporting producer, the importer, users known to be concerned and representatives of South Africa of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (5) The complainant producer, the exporting producer, the importer and users made their views known. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the exporting producer in South Africa, the complainant producer, the importer of the product concerned from South Africa and four users of the product concerned.
- (7) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:
- (a) *Community producers*
- Tosoh Hellas AIC, Thessaloniki, Greece and its related sales agent Mitsubishi International GmbH, Düsseldorf, Germany
- (b) *Exporting producer in South Africa*
- Delta E.M.D. (Pty) Ltd, Nelspruit, South Africa (Delta)
- (c) *Related supplier of the exporting producer in South Africa*
- Manganese Metal Company (Pty) Ltd, Nelspruit, South Africa
- (d) *Unrelated importer in the Community*
- Traxys France SAS, Courbevoie, France
- (e) *Users in the Community*
- Panasonic Battery Belgium NV, Tessenderlo, Belgium
- VARTA Consumer Batteries GmbH & Co. KGaA, Sulzbach, Germany
- Duracell Batteries BVBA, Aarschot, Belgium.

⁽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 314, 21.12.2006, p. 78.

3. Investigation period

- (8) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (9) The product concerned is manganese dioxides manufactured in an electrolytic process, which have not been heat-treated after the electrolytic process (EMD), originating in South Africa. It is normally declared within CN code ex 2820 10 00.
- (10) The product concerned comprises two main types: carbon-zinc grade EMD and alkaline grade EMD. Both types are produced through an electrolytic process, with an adaptation of certain parameters in the process to obtain either carbon-zinc grade EMD or alkaline grade EMD. They both normally have a high purity of manganese and are generally used as intermediate products in the production of drycell consumer batteries.
- (11) The investigation has shown that, despite some differences in terms of certain specific physical and chemical characteristics such as density, mean particle size, Brunauer-Emmet-Teller (BET) surface area and alkaline potential, both types of the product concerned share the same basic physical, chemical and technical characteristics and are used for the same purposes. They are therefore considered to constitute a single product for the purpose of this proceeding.

- (12) It should be noted that there exist other types of manganese dioxides which do not have the same basic physical, chemical and/or technical characteristics as EMD and have essentially different usages. They do not therefore form part of the product concerned. These distinct products include: (i) natural manganese dioxides which contain significant impurities and are normally classified under a different CN code, i.e. 2602 00 00; (ii) chemical manganese dioxides which are produced through a chemical process and have a significantly lower density as well as a significantly higher BET surface area than EMD; and (iii) heat-treated electrolytic manganese dioxides which, despite being manufactured through an electrolytic process like EMD, differ from EMD by a number of essential characteristics such as

moisture content, crystal structure and alkaline potential, making them suitable for application in lithium batteries, which are based on non-aqueous systems and have lithium metal as the anode, but not in carbon-zinc or alkaline batteries, which are based on aqueous systems and have zinc metal as the anode, like EMD.

- (13) It should also be noted that none of the interested parties has contested the above definition or the distinction between the two main types of the product concerned.

2. Like product

- (14) The investigation showed that the EMD produced and sold by the Community industry in the Community and that produced and sold on the South African domestic market and/or imported into the Community from South Africa share the same basic physical, chemical and technical characteristics, and have the same uses.
- (15) It was therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Normal value

- (16) As far as the determination of normal value is concerned, the Commission first established whether Delta's total domestic sales of EMD were representative in relation to its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative, as the total domestic sales volume of the exporting producer was more than 5 % of its total export sales volume to the Community.
- (17) The Commission subsequently identified those product types sold domestically, having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.
- (18) Domestic sales of a particular product type were considered to be sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

- (19) For all the product types sold for export to the Community, no product type identical or directly comparable and sold on the domestic market in representative quantities was found. Therefore, the normal value had to be constructed for all exported product types in accordance with Article 2(3) of the basic Regulation.
- (20) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative costs (SG&A) and a reasonable amount for profit. The SG&A and the profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A costs incurred and the profit realised by Delta on its domestic market constituted reliable data.
- (21) Actual domestic SG&A costs were considered reliable since the total domestic sales volume of the company concerned was representative when compared with the volume of export sales to the Community, as mentioned above.
- (22) In order to assess whether the profit made by Delta on its domestic market constituted reliable data, the Commission first examined whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been 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 sales to independent customers on the domestic market of the type in question.
- (23) As there was no type for which the volume of profitable sales represented more than 10 % of the total sales volume of that type on the domestic market, it was considered that domestic prices could not provide an appropriate basis for the establishment of the profit margin to be used in the construction of the normal value.
- (24) As Delta is the only known producer of EMD in South Africa, the reasonable profit needed to construct the normal value could not be based on actual profits determined for other exporters or producers subject to investigation in respect of production and sales of the like product on the domestic market as described in Article 2(6)(a) of the basic Regulation.
- (25) Furthermore, as EMD is the only product made and sold by Delta, the reasonable profit needed to construct the normal value could not be based on actual profits applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporting producer in question as described in Article 2(6)(b) of the basic Regulation.
- (26) The reasonable profit needed to construct the normal value was thus determined in accordance with Article 2(6)(c) of the basic Regulation.
- (27) In this respect, information has been gathered on the profitability of all other known producers of EMD in other countries. Information was found from publicly available sources for one producer located in India, two in Japan and two in the USA. However, for one producer in the USA and for the two Japanese producers no information was available on profitability for EMD or for a division of the company where EMD would be significant.
- (28) An average profit margin for the IP was calculated based on the publicly available sources for one Indian producer and the remaining producer in the USA as well as the information provided by Delta regarding the profitability of its related company Delta EMD Australia Proprietary Ltd, located in Australia, on its domestic market. The average profit margin calculated amounted to 9,2 %. The methodology, given the information available, was considered reasonable within the meaning of Article 2(6)(c) of the basic Regulation and the result conservative. Publicly available information showed that this profit margin was not exceeding the profit made by other known producers of the same general category of products (i.e. specialty chemicals) in South Africa during the IP.
- ## 2. Export prices
- (29) Delta made export sales to the Community exclusively through an independent agent, Traxys France SAS.
- (30) The export prices were based on the prices actually paid or payable for the product concerned when sold for export from South Africa to the Community, in accordance with Article 2(8) of the basic Regulation.
- ## 3. Comparison
- (31) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning commissions, transport, insurance, handling and ancillary costs, packing, credit and bank charges were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

4. Dumping margins

(32) The weighted average normal value of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(33) On this basis, the provisional weighted average dumping margin expressed as a percentage of the cif Community frontier price, duty unpaid, is:

Company	Provisional dumping margin
Delta E.M.D. (Pty) Ltd	14,9 %

(34) As regards the countrywide dumping margin applicable to all other exporters in South Africa, the Commission first established the level of cooperation. A comparison was made between Eurostat data and the questionnaire reply received from the cooperating exporting producer in South Africa. This comparison showed that, from the information available, Delta's exports to the Community represented 100 % of the exports of the product concerned from South Africa. The level of cooperation found was thus very high and the countrywide dumping margin was set at the same level as the dumping margin calculated for Delta.

D. INJURY

1. Community production and Community industry

(35) The investigation established that in the beginning of the period considered the like product was manufactured by three producers in the Community. However, one of the producers ceased production in 2003; thus, in the IP, there were only two producers in the Community.

(36) The complaint was only lodged by one producer, which cooperated fully with the investigation. Although the other producer did not cooperate, it did not oppose the complaint either. Due to the fact that only one company submitted a full reply to the questionnaire, all data referring to the Community industry are either presented in index form or given as ranges in order to protect confidentiality.

(37) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding the production of the only cooperating Community producer to the volume of production of the other producer on the basis of the data supplied in the complaint. Total Community production in the IP was in the range of 20 to 30 thousand tonnes.

(38) The production of the cooperating Community producer represented more than 50 % of the EMD produced in the Community. It is therefore considered that this company constitutes the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

2. Community consumption

(39) The apparent Community consumption was established on the basis of the sales volume on the EC market of the complainant producer, sales of the other Community producers established on the basis of the purchases reported by users and imports from the country concerned based on the verified reply to the questionnaire and other third countries obtained from Eurostat.

(40) On this basis, Community consumption decreased by 7 % over the period considered. A particularly steep increase occurred in 2003 and 2004, coinciding with the strongest increase in volume at very low prices (– 35 %) of EMD imported from South Africa and with the closure of a major Community producer. In 2005 consumption returned to its previous level and another significant decrease occurred in the IP. The trend in consumption seems to have been influenced by the closure in 2003 of a major producer accounting for one third of Community production.

	2002	2003	2004	2005	IP
Community consumption Index 2002 = 100	100	102	113	102	93

3. Imports into the Community from the country concerned

Volume and market share of imports concerned

- (41) The volume of imports from South Africa was based on verified figures supplied by the only exporting producer. As mentioned above, for reasons of confidentiality, as the analysis concerns a single company, most indicators are presented in index form or in ranges.
- (42) In terms of volume and market share the evolution of imports has been the following:

	2002	2003	2004	2005	IP
Import volumes from South Africa (tonnes), 2002 = 100	100	129	156	185	169
Market share South Africa	30-40 %	40-50 %	44-54 %	60-70 %	60-70 %
Market share South Africa, 2002 = 100	100	126	139	181	181

- (43) While consumption of EMD decreased by 7 % during the period considered, imports from the country concerned rose by 69 % during the same period. Consequently, the South African market share increased dramatically during the period considered by around 81 % from a range of 30 to 40 % to a range of 60 to 70 %.

Prices of imports and undercutting

- (44) Over the period considered the average import prices fell by 31 %, despite the increase in the price of the main raw material.

	2002	2003	2004	2005	IP
Import prices from South Africa, EUR/tonne, 2002 = 100	100	70	65	66	69

- (45) For the determination of price undercutting during the IP, the relevant sales prices of the Community industry were net prices to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the South African exporting producer, net of discounts and adjusted, where necessary, to cif Community frontier prices with an appropriate adjustment for customs clearance costs and post-importation costs.
- (46) The comparison showed that during the IP the weighted average price undercutting margin, expressed as a percentage of the Community industry's sales prices, was in the range of 11 to 14 %. There were even higher levels of underselling because the Community industry was suffering substantial losses during the IP.

4. Situation of the Community industry

- (47) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports from South Africa on the Community industry included an analysis of all economic factors and indices having a bearing on the state of the industry from 2002 to the IP. As mentioned above, for reasons of confidentiality, as the analysis concerns a single company, most indicators are presented in index form or in ranges.

Production, production capacity and capacity utilisation

- (48) The evolution of production, production capacity and capacity utilisation for the Community industry was as follows:

	2002	2003	2004	2005	IP
Production, 2002 = 100	100	87	128	135	130
Capacity, 2002 = 100	100	100	100	100	100
Capacity utilisation, 2002 = 100	100	87	128	135	130

- (49) Over the period considered, Community production increased by 30 %. However, the production capacity remained stable throughout the whole period considered. The level of production reached a peak in 2005 after a strong increase in consumption on the EC market in 2004, which was combined with the liquidation of a major producer and the increase in demand on the export market of the Community industry. From 2004 to the IP, when the raw material prices doubled, the Community industry attempted to achieve economies of scale and reduce the unit cost of production in the IP.

Stocks

- (50) Stocks increased by 32 % during the period considered, reflecting the Community industry's increasing difficulty in selling its products on the Community market due to the competition with dumped imports.

	2002	2003	2004	2005	IP
Stocks, 2002 = 100	100	71	48	113	132

Sales volume, market shares, growth and average unit prices in the Community

- (51) The figures below represent the Community industry's sales to independent customers in the Community.

	2002	2003	2004	2005	IP
Sales volume in the EC market, 2002 = 100	100	80	152	113	91
Market share, 2002 = 100	100	78	135	110	97
Average sales prices, 2002 = 100	100	76	71	75	75

- (52) Against the background of the 7 % decrease in EC consumption, the market share of the Community industry decreased by 3 %. In addition, in absolute terms, its overall sales volumes on the EC market declined significantly by 9 % during the period considered, with a particularly sharp decrease of 22 percentage points in the IP.

- (53) While in 2004 the Community industry was able to benefit briefly from the increase in consumption by increasing its sales volume by 52 % and market share by 35 % compared to 2002, in the following years its participation in the market decreased in parallel to the sharp increase in the volume of dumped imports from South Africa.

- (54) There was a downward trend in average sales prices to unrelated buyers on the Community market until 2004. This illustrates the Community industry's attempts to compete with the dumped imports and stay in the market. In 2004, however, prices reached an unsustainable low point. They then increased by four percentage points in 2005. However, despite this small increase in prices in 2005, which was confirmed in the IP, the Community industry was unable to reflect in its prices the development in the price of manganese ore, the main raw material, which rose sharply, by almost 100 %, between 2004 and 2005.

Profitability and cash flow

- (55) The levels of profits and cash flow from the sale of EMD by the Community industry were strongly negative.

	2002	2003	2004	2005	IP
Operating profit margin of product concerned (range, %)	0 to 20	0 % to – 20	0 to 5	0 to 3	0 to – 20
Operating profit margin of product concerned, index 2002 = 100	100	– 85	20	13	– 72

- (56) Profitability deteriorated significantly by minus 172 % over the period considered. It reached its lowest level in 2003 at the time of the strongest decrease in the prices of imports (– 30 %). It improved in 2004 and 2005, with an increase in quantities sold. In the IP profitability fell back to its lowest level due to price pressure and increasing cost of raw materials.

- (57) Cash flow also deteriorated over the period considered, in line with the decrease in profitability.

	2002	2003	2004	2005	IP
Cash Flow, index 2002 = 100	100	22	46	– 35	– 8

Investments, return on investments, and ability to raise capital

- (58) Investments increased by 7 % over the period considered. In the middle of this period the Community industry recorded a certain amount of investment in order to reduce the cost of production and for the maintenance of new machinery. In the following years investments continued but at a lesser level.

	2002	2003	2004	2005	IP
Investments, 2002 = 100	100	67	126	109	107

- (59) The return on investment from the production and sales of the like product followed the sales and profitability trend and was negative in 2003 and at the end of the period considered.

	2002	2003	2004	2005	IP
Return on investment, 2002 = 100	100	– 58	18	10	– 55

- (60) The Community industry's ability to raise capital was not found to be significantly affected during the period considered, given the size of investments, which were sufficient to cover the necessary capital investments.

Employment, productivity and wages

- (61) The evolution of employment, productivity and labour costs in the Community industry were as follows:

	2002	2003	2004	2005	IP
Number of employees, 2002 = 100	100	68	69	70	67
Productivity (tonnes/employee), 2002 = 100	100	129	184	192	195
Total labour cost, 2002 = 100	100	77	79	84	82
Labour costs per employee, 2002 = 100	100	115	114	119	123

- (62) The number of employees decreased by 33 % between 2002 and the IP. This was the result of both a decline in sales and the efforts by the Community industry to improve productivity. Indeed, the result of this rationalisation process within the Community industry was reflected in the rate of productivity, which showed a considerable upward trend during the period considered.

5. Conclusion on injury

- (66) It is recalled that imports from South Africa increased considerably, both in absolute terms and in terms of market share. Indeed, over the period concerned the imports increased by 69 % in absolute terms and by around 81 % relative to Community consumption, reaching a market share of 60 to 70 %.

- (63) The total labour costs were reduced significantly, by 18 %. The average cost per employee increased relatively, taking into account the development of inflation. However, on the whole, the share of labour costs in total production costs was significantly reduced showing a clear improvement in efficiency.

- (67) Moreover, in the IP, the sales prices of the Community industry were substantially undercut by those of the dumped imports of the product concerned. On a weighted average basis, price undercutting during the IP was in the range of 11 to 14 %.

Magnitude of the actual margin of dumping and recovery from past dumping

- (64) The dumping margin is specified above in the dumping section. This margin is clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered negligible.

- (68) While over the period considered the Community consumption decreased by 7 %, the sales volume of the Community industry decreased by 9 % and the market share by 3 %. A dramatic deterioration in these indicators occurred in the IP, with a fall of 22 percentage points in sales and 13 percentage points in market share compared with 2005.

- (65) There is no indication that the Community is recovering from the effects of past dumping or subsidisation.

- (69) With falling sales volume, market share and prices, the Community industry was unable to pass on the global increase in raw material prices to its customers. This resulted in a very negative profitability situation (loss).

- (70) Notwithstanding the Community industry's considerable investments during the period considered together with its continuing efforts to increase productivity and competitiveness, its profitability, cash flow and return on investment declined sharply, reaching strongly negative levels.
- (71) The deteriorating situation of the Community industry in the period considered is also confirmed by the negative development of employment.
- (72) In the light of the foregoing, it is provisionally concluded that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation.

E. CAUSAL LINK

1. Preliminary remark

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

2. Effect of the imports from South Africa

- (74) As established in recitals 43 and 44, the imports increased steadily and significantly during the period considered, by 69 % in terms of volume and by 81 % in terms of market share. The unit selling price of the imports from South Africa decreased by 31 % over the period considered. In the IP the prices of the imports originating in South Africa undercut Community industry prices by 11 to 14 %.

- (75) The effects of dumped imports are clearly illustrated by the decision of several major users representing more than 60 % of total consumption, to switch their purchases from the Community industry to the South African product. While at the beginning of the period considered these users purchased only marginal quantities from South Africa, by the end of the period considered and in the IP, they were purchasing up to 70 to 100 % of their needs from South Africa.
- (76) At the same time, the Community industry had to drastically reduce its prices in order to keep its sales contracts with other users.
- (77) The Community industry's decreasing market share in the period considered has to be seen in correlation with the increase in volume and market share of the imports from South Africa. Moreover, in 2005 and the IP, when Community consumption fell by 18 % compared with its sharp rise in 2004, the imports from South Africa increased by 8 % in absolute terms and by around 31 % in market share. At the same time, the Community industry lost 28 % of market share and 40 % of sales.
- (78) It is therefore provisionally concluded that the pressure exerted by the dumped imports, which dramatically increased their volume and market share from 2002 onwards, and which were made at dumped prices and at significant levels of undercutting and underselling, played a determining role in the fall of the Community industry's sales and consequently in its profitability, cash flow development and negative situation in return on investment, employment and increase in stocks.

3. Effect of other factors

Imports from other third countries

- (79) The development of imports from other third countries according to Eurostat data was as follows:

	2002	2003	2004	2005	IP
Imports from other third countries	5 541	4 677	5 992	2 876	2 878
Index, 2002 = 100	100	84	108	52	52
Market share	15 %	12 %	14 %	7 %	8 %
Index, 2002 = 100	100	82	96	51	56
Average prices of imports	1 527	1 204	1 226	1 550	1 537
Index, 2002 = 100	100	79	80	101	101

(80) At the beginning of the period considered EMD imports from other third countries represented 15 % of market share. In the following years these imports decreased significantly, representing only 8 % of market share by the end of the IP. The prices of those imports remained largely at a higher level than the South African prices and even increased by 1 %.

(81) Several submissions have alleged that the imports of EMD from China, which is not a country concerned by the investigation, have contributed significantly to the injury suffered by the Community producer. However, the imports from China in the IP, although at average prices lower than the South African product, represented only 0,6 % of all imports from third countries and can therefore not be considered to break the causal link between the dumped imports and the material injury suffered by the Community industry.

Export performance of the Community industry

(82) It was also examined whether or not the exports to non-EU countries may have contributed to the injury suffered during the period considered.

(83) It was found that the export volumes of the Community industry increased by 9 % over the period considered, and though the export price decreased by 14 %, it was well above the unit cost of production. Therefore, the export performance of the Community industry could not have contributed to the injury during this period.

Other Community producers

(84) As mentioned above, there were two other producers in the Community at the beginning of the period considered.

(85) One of the producers, located in Ireland, ceased production in 2003, because of financial difficulties due to important decrease in sales under strong price pressure from dumped imports. The other one, located in Spain, did not cooperate in the proceeding. As a result of this lack of cooperation, data on the sales by other producers on the Community market was obtained from user questionnaires. According to the findings of the investigation,

the latter company was involved both in battery and EMD production. The majority of the EMD produced by this company was apparently used in its own battery production. However, this company played an increasing role on the Community EMD market as well.

(86) It is clear that the general picture of other EC producers is influenced by the fact that one ceased its activities in 2003 and the other did not sell any substantial quantities on the EC market during the period considered. However, from the data obtained in the investigation it may be concluded that these Community producers were also affected by the pressure exerted on prices by South African imports and the developments on the market, since their market share decreased from a range of 10 to 25 % to a range of 4 to 10 %. Consequently, the sales of other Community producers cannot have been responsible for the injury suffered by the Community industry.

Contraction in demand

(87) It was also examined whether or not the contraction in demand on the Community market may have contributed to the injury suffered during the period considered. This was not found to be the case. As established in recitals 52 and 77, the Community industry's sales decreased by more than the total Community consumption while the corresponding market share held by the South African imports increased significantly.

Increase in raw material prices

(88) It was argued that injury had been caused mainly by the worldwide increase in the price of the basic raw material: manganese ore. Manganese ore prices which remained stable until 2004 suddenly doubled in 2005 and decreased slightly during the IP. This increased the Community industry's unit cost of production by 19 %.

(89) However, as the prices of imports from South Africa only increased by one percentage point during the same period (2004/05), the Community industry, which attempted to compete with dumped imports and stay in the market, could not pass on the total cost increase to downstream users. The Community industry was only able to increase its prices by four percentage points, which thus remained below the cost of production.

	2002	2003	2004	2005	IP
Total cost of production, 2002 = 100	100	89	103	110	119
Total unit cost per tonne, 2002 = 100	100	98	80	85	95
Unit sales price, 2002 = 100	100	76	71	75	75

- (90) In these circumstances, it was considered that the cost increase was not per se the factor causing injury but the fact that the Community industry was not able to pass on the cost increases to its customers due to the downward price pressure exerted by the dumped imports from South Africa, which did not reflect the rise in prices of raw materials. Therefore, this claim had to be rejected.

Global oversupply of EMD

- (91) It was argued by some parties that the global oversupply of EMD caused by the increased production capacity in China has depressed EMD prices and is thus the cause of the injury to the Community industry.
- (92) However, given the low volume of imports from China and despite their relatively low prices in the period considered, this allegation was found not to be valid.

Increasing competition among battery producers

- (93) It was further argued by some parties that the decrease in the Community industry's sales prices of EMD was the result of increasing competition among battery producers and the price pressure suffered by them rather than of dumped imports from South Africa.
- (94) The investigation showed that indeed battery producers in the EC were subject to price pressure resulting from global increase in the costs of raw materials and increased competition. However, it was found that given the low number of EMD producers operating on the Community market, they had a significant power to negotiate the prices of the product concerned with the battery producers. It is therefore considered that the decrease in the Community sales prices of EMD directly derives from the dumped imports and the undercutting practised by the South African exporting producer from the beginning of the period considered and not from the alleged price pressure exerted by the battery producers. In

light of the above, it was provisionally concluded that the increasing competition among battery producers did not break the causal link between dumped imports from South Africa and the injury suffered by the Community industry.

4. Conclusion on causation

- (95) The above analysis shows that there was a dramatic increase in the volume and market share of the imports originating in South Africa over the whole period considered, together with a considerable decrease in their prices coupled with a significant price undercutting during the IP. This increase in the market share of the dumped imports coincided with a significant decrease in the sales volume and market share of the Community industry. This, together with downward pressure on prices, resulted, inter alia, in substantial losses to the Community industry during the IP.
- (96) Furthermore, an examination of the other factors which could have injured the Community industry revealed that none of these could have had such a significant negative impact on the industry as the dumped imports from South Africa.
- (97) Based on the above, it is provisionally concluded that the dumped imports caused material injury to the Community industry in the meaning of Article 3(6) of the basic Regulation.

F. COMMUNITY INTEREST

1. General considerations

- (98) Pursuant to Article 21 of the basic Regulation, it has been examined whether, despite the conclusions on dumping, injury and causal link, compelling reasons exist that would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures on imports from the country concerned.

- (99) The Commission sent a questionnaire to the sole importer of EMD from South Africa and all industrial users known or likely to be concerned by the measures. Replies to the questionnaire were received from the importer and from four major users of the product concerned in the Community.

2. Interest of the Community industry

- (100) It is recalled that the Community industry consists of one producer with production facilities in Greece, whose sales and profitability deteriorated significantly during the period considered, with a consequent negative impact on its market share, employment, return on investment and cash flow.
- (101) If measures are not imposed it is likely that, as a result of the price pressure from the dumped imports, the lack of profitability will force the Community industry to cease production of EMD in the Community. It is recalled that one of the Community producers ceased production during the period considered. This coincided with increased pressure from South African imports on the Community market. Moreover, the complainant Community producer was forced to temporarily cease production for one month in 2003, and has informed the Commission of a similar situation for a longer period in 2007.
- (102) It is noted that, like the South African exporting producer, the Community industry produces only EMD and the production lines cannot be used to produce any other products.
- (103) However, following the imposition of anti-dumping measures, it is expected that the sales volumes and prices of the Community industry on the Community market will rise, thus improving profitability of the Community industry and preventing closure.
- (104) It is therefore clear that anti-dumping measures would be in the interests of the Community industry.

3. Interest of users

- (105) The only industry that uses EMD is primary cell alkaline and carbon-zinc battery producers.
- (106) As mentioned above, questionnaires were sent to all known battery producers in the Community. Replies

were received from four companies representing 93 % of the Community consumption; three of the replies were verified on the spot.

- (107) As mentioned above, it was found that the battery producers in the EC were under considerable pressure resulting from global increases in prices of raw materials (zinc, nickel, copper and steel) and increased global competition on the battery market. They submitted that the imposition of anti-dumping measures on imports from South Africa would increase the existing price pressure and cause losses, since they would not be in a position to pass any price increases on to their clients. However, it was found that they were generally still in a good financial situation, with substantial pre-tax profits in the IP and they had increased their sales volume over the period considered thanks to the positive public image of their brands. Based on the information received, it was possible to verify that the cost of EMD for producing batteries can vary between 10 and 15 % (depending on the size of the battery) of the total costs and it was possible to estimate that the imposition of the anti-dumping duty at the proposed level should not increase the estimated level of the battery price by more than EUR 0,01 to EUR 0,02. The increase in battery prices which may result from the imposition of anti-dumping duties was obtained by applying the proposed level of duty to the costs of production for different sizes of batteries.
- (108) While generally opposing the imposition of measures, several users admitted that disappearance of the Community industry would probably have a negative effect on their situation and competition on the EC market, as the Community industry is a producer of high quality EMD suitable for high-end battery production. Thus, if the Community industry were to disappear, users would run the risk of becoming dependent on EMD from South Africa alone.
- (109) In the light of the above, it may be provisionally concluded that the imposition of any anti-dumping measures are unlikely to affect seriously the situation of the user industry.

4. Interest of unrelated importers/traders in the Community

- (110) The sole Community importer of EMD from South Africa cooperated in the investigation. On the basis of the information submitted, it was found that this importer was Delta's exclusive and independent agent. All imports of EMD from South Africa were sold in the Community through this company. Its trading activities represented less than 20 % of its turnover. This importer expressed concerns about the possible

imposition of measures. However, even if its sales decreased after the imposition of measures and the agent's commissions were reduced, it is expected to remain financially healthy and it is unlikely that the importer would be significantly affected by the measures. Thus, it is clear that the impact of the anti-dumping duty would be borne by the users.

- (111) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is not likely to have a serious negative effect on the situation of importers in the Community.

5. Conclusion on Community interest

- (112) The effects of the imposition of measures can be expected to enable the Community industry to regain lost sales and market shares and to improve its profitability. In view of the deteriorating situation of the Community industry, there is a considerable risk that, in the absence of measures, the Community industry might have to close down its production facilities and layoff its workers.
- (113) Given the use of the product concerned in battery production, where the cost of EMD is not significant when compared with the value of the endproducts the impact for the users should not be significant, as explained in recital 107 above.
- (114) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of certain manganese dioxides originating in South Africa.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (115) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (116) The measures should be imposed at a level sufficient to eliminate the injury caused to the Community industry by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production

and obtain an overall profit on sales of the like product in the Community before tax that could be reasonably achieved by this industry under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation corresponded to the profit achieved by the Community industry at the beginning of the period considered, at a time when EMD prices from South Africa were at the same level as that of the like product sold by the Community industry.

- (117) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations (see recital 45), with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss/profit made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.
- (118) The injury margin was significantly higher than the dumping margin found.

2. Provisional measures

- (119) In the light of the foregoing, it is considered that in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed at the level of the dumping margin since it is lower than the injury margin calculated above.
- (120) On the basis of the above, the proposed provisional duty rates are:

Delta E.M.D (Pty) Ltd	14,9 %
All other companies	14,9 %

H. FINAL PROVISION

- (121) 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 anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, falling within CN code ex 2820 10 00 (TARIC code 2820 10 00 10) and originating in South Africa.

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

Company	Anti-Dumping Duty	TARIC Additional Code
Delta E.M.D. (Pty) Ltd	14,9 %	A828
All other companies	14,9 %	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 Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of 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, 17 September 2007.

For the Commission

Peter MANDELSON

Member of the Commission

COMMISSION REGULATION (EC) No 1067/2007**of 17 September 2007****entering a designation in the register of protected designations of origin and protected geographical indications (Staffordshire Cheese (PDO))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and food-stuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) In accordance with the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006 and pursuant to Article 17(2) thereof, the United Kingdom's application to register the name 'Staffordshire Cheese' has been published in the *Official Journal of the European Union* ⁽²⁾.

- (2) A statement of objection was lodged with the Commission in accordance with Article 7 of Regulation (EC) No 510/2006. This statement of objection having subsequently been withdrawn, the name should be registered,

HAS ADOPTED THIS REGULATION:

Article 1

The name in the Annex to this Regulation is hereby registered.

Article 2

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

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

Done at Brussels, 17 September 2007.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12. Regulation as last amended by Commission Regulation (EC) No 952/2007 (OJ L 210, 10.8.2007, p. 26).

⁽²⁾ OJ C 148, 24.6.2006, p. 12.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.3. **Cheeses**

UNITED KINGDOM

Staffordshire Cheese (PDO)

COMMISSION REGULATION (EC) No 1068/2007

of 17 September 2007

approving a non-minor amendment to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Queso Nata de Cantabria (PDO))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1) and having regard to Article 17(2) of Regulation (EC) No 510/2006, the Commission has examined Spain's application for approval of an amendment to the specification for the protected designation of origin 'Queso de Cantabria' registered under Commission Regulation (EC) No 1107/96⁽²⁾.

- (2) Since the amendment in question is not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* as required by Article 6 of that Regulation⁽³⁾. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been sent to the Commission, the amendment should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendment to the specification published in the *Official Journal of the European Union* regarding the name in the Annex to this Regulation is hereby approved.

Article 2

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, 17 September 2007.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12. Regulation as last amended by Commission Regulation (EC) No 952/2007 (OJ L 210, 10.8.2007, p. 26).

⁽²⁾ OJ L 148, 21.6.1996, p. 1. Regulation as last amended by Regulation (EC) No 2156/2005 (OJ L 342, 24.12.2005, p. 54).

⁽³⁾ OJ C 288, 25.11.2006, p. 8.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty

Class 1.3. **Cheese**

SPAIN

Queso Nata de Cantabria (PDO)

COMMISSION REGULATION (EC) No 1069/2007**of 17 September 2007****imposing a provisional anti-dumping duty on imports of polyvinyl alcohol (PVA) originating in the People's Republic of China**

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**

- (1) On 19 December 2006, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of polyvinyl alcohol (PVA), originating in the People's Republic of China (PRC) and Taiwan (the countries concerned).
- (2) The proceeding was initiated following a complaint lodged on 6 November 2006 by Kuraray Specialties Europe GmbH (the complainant), since January 2007 referred to as Kuraray Europe GmbH, representing a major proportion, in this case more than 25 %, of the total Community production of polyvinyl alcohol (PVA). The complaint contained prima facie evidence of dumping of PVA originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant producer and other known Community producers, exporting producers in the countries concerned, importer/traders and users known to be concerned and the representatives of the exporting countries concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (4) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned as well as to the authorities of the PRC. One exporting producer in the PRC claimed MET pursuant to Article 2(7)(b) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.
- (5) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling for those parties was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.
- (6) However, as far as the exporting producers in the PRC are concerned, given that only three exporting producers cooperated, it was subsequently decided that sampling would not be necessary.
- (7) As concerns the importers of PVA, the Commission requested all known importers to provide information concerning imports and sales of the product concerned. On the basis of the information received from 14 cooperating importers, the Commission selected a sample of five importers, of which two were based in Germany, one in Italy, one in the Netherlands and one in the United States of America. These importers represented the largest representative volume of sales in the Community (around 80 %) of the cooperating importers, which could be reasonably investigated within the time available.

⁽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 311, 19.12.2006, p. 47.

- (8) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaire replies were received from two Community producers, three exporting producers in the PRC, one exporting producer in Taiwan, the five sampled importers and seven users in the Community.
- (9) As concerns the questionnaire replies received from users, two of those were incomplete and therefore had to be disregarded. In addition, several users submitted comments without replying to the questionnaire.
- (10) One of the sampled importers cancelled twice at a very late stage an agreed verification visit. As a consequence, the data submitted by this company could not be verified and it provisionally had to be disregarded.
- (11) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT in the case of the PRC and for a preliminary determination of dumping, resulting injury and Community interest for both countries concerned. Verification visits were carried out at the premises of the following companies:

(a) Community producers:

- Kuraray Europe GmbH, Frankfurt, Germany,
- Celanese Chemicals Ibérica S.L., Tarragona, Spain;

(b) Exporting producer in Taiwan:

- Chang Chun Petrochemical Co. Ltd., Taipei;

(c) Exporting producer in the PRC:

- Shanxi Sanwei Group Co., Ltd., Hongdong;

(d) Unrelated importers in the Community:

- Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,
- Menssing Chemiehandel & Consultants GmbH, Hamburg, Germany,
- Omya Peralta GmbH, Hamburg, Germany;

(e) Users in the Community:

- Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,
- Wacker Chemie AG, Burghausen, Germany.

- (12) In light of the need to establish a normal value for the exporting producers in the PRC which did not request MET or to which MET might not be granted, a verification to establish normal value on the basis of data from the analogue country envisaged in the notice of initiation, Japan, took place at the premises of the following producer:

- Kuraray Japan, Tokyo.

1.3. Investigation period

- (13) 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 investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (14) The product concerned is certain polyvinyl alcohols (PVA) in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % originating in the People's Republic of China and Taiwan ('the product concerned'), normally declared within CN code ex 3905 30 00.
- (15) PVA is produced by the hydrolysis of polyvinyl acetate which is manufactured by the polymerisation of vinyl acetate monomer (the latter being produced from, mainly, ethylene and acetic acid). PVA has a wide variety of applications. In the Community, it is mainly used for the production of polyvinyl butyral (PVB) (25 %-29 % of consumption), polymerisation aids (21 %-25 %), paper coatings (17 %-21 %), adhesives (13 %-17 %) and for textile sizing (8 %-12 %).
- (16) One Community user claimed that a specific product it purchased from the PRC should not be considered as the product concerned, as (i) it is not a standard PVA model and has different and very specific chemical and physical characteristics; and (ii) it has different uses or applications from commodity PVA.

(17) As concerns the first argument, it was found that this model falls within the product description as described in recital 14 and that it shares its basic physical and technical characteristics with the other models falling within the product definition. As concerns the second argument, this particular PVA model was used for the production of PVB, which is not only, as indicated in recital 15, the most important application but also the fastest growing market for PVA in the Community. It would be unrealistic to characterise such a market as not standard. Moreover, it was found that the average prices paid for PVA for the different applications were within the same range. In view of all these findings, it was considered that there were no grounds to exclude this model from the product definition and therefore the claim was dismissed.

2.2. Like product

(18) The investigation showed that PVA produced and sold in the Community by the Community industry, PVA produced and sold on the domestic markets of Taiwan and the PRC, and PVA produced in the PRC and Taiwan and exported to the Community, as well as that produced and sold in Japan, have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Taiwan

3.1.1. Normal value

(19) For the determination of normal value, it was first established whether domestic sales of the like product to independent customers of the sole exporting producer in Taiwan were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Community, in accordance with Article 2(2) of the basic Regulation.

(20) For each product type sold by the exporting producer on its domestic market and found to be directly comparable with the product type sold for export to the Community, it was established whether domestic sales were sufficiently representative. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Community.

(21) The Commission subsequently examined whether the domestic sales of each product type sold domestically in representative quantities could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exported product type the proportion of profitable domestic sales to independent customers during the IP.

(22) For those product types where more than 80 % by volume of sales on the domestic market were not below unit cost and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.

(23) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(24) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(25) Wherever domestic prices of a particular product type sold by the exporting producer could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(26) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation.

3.1.2. Export price

- (27) The sole exporting producer exported the product concerned directly to independent customers in the Community. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

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

— there are no significant distortions carried over from the former non-market economy system,

3.1.3. Comparison

- (28) The normal values and the export prices of the sole exporting producer were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, after sales costs (warranty and guarantee) and other factors (bank charges) where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

3.1.4. Dumping margin

- (29) The comparison of the normal values with the export prices showed a dumping margin of – 2,30 % for the sole Taiwanese exporting producer, Chang Chun Petrochemical Co. Ltd., during the IP.

- (32) One Chinese exporting producer and its related trading company requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. The producer manufactures the product concerned, while its related trading company is involved in the export sales of the product concerned. Indeed, it is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET.

- (30) Considering that the sole cooperating company is the only exporting producer of the product concerned in Taiwan and that it accounts for 100 % of Taiwanese exports to the EC during the IP, it was concluded that no dumping was found for Taiwan.

- (33) For the exporting producer and its trading company claiming MET, the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the companies in question as deemed necessary.

3.2. People's Republic of China (PRC)

3.2.1. Market Economy Treatment (MET)

- (31) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 for those producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

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

- (34) The investigation revealed that MET could not be granted to the Chinese exporting producer as it did not meet criterion 1 set out in Article 2(7)(c) of the basic Regulation.

- (35) The exporting producer, as well as its related trading company, was found to be controlled by fully State-owned companies which were represented by a decisive majority of the members of the Board of Directors at a ratio which was disproportionate to their shareholding. In addition, the majority of the shares were owned ultimately by the State during the IP. As the companies concerned failed to present evidence that could be considered sufficient to remove doubts of significant State interference in management decisions, it was determined that this group of companies was under significant State control and interference. The interested parties were given an opportunity to comment on the above findings. The comments received were not of a nature to change the conclusions.

- (36) On the basis of the above, the Chinese exporting producer and its related trading company have not shown that they fulfil all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

3.2.2. Individual treatment (IT)

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

- (38) As far as the PRC is concerned, the sole exporting producer and its related trading company, who requested MET, also claimed IT in the event that they would not be granted MET.

- (39) On the basis of the information available, it was found that the exporting producer and its trading company failed to demonstrate that they cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation. Namely, it was established that the exporting producer and its trading company failed to meet the criterion stipulated in Article 9(5)(c) of the basic Regulation that the majority of the shares belong to private persons and that state officials appearing on the Board of Directors or holding key management positions shall either be in the minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference, for the reasons explained in recital 35.

3.2.3. Analogue country

- (40) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country.

- (41) In the notice of initiation, the Commission indicated that it envisaged using Japan as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on this. Some of the interested parties objected to this proposal and proposed the use of India or Taiwan instead.

- (42) In India, there was no significant production of the like product. Taiwan was subject to the investigation and thus

data in that country might be distorted by dumping. Therefore, the parties were informed that Japan was selected as analogue country because it was not subject to the investigation, there was representative production of the like product and the conditions of competition seemed appropriate.

- (43) The Commission sought cooperation from four known producers in Japan and sent the relevant questionnaire to them. Two of the four Japanese producers replied to the questionnaire. However, one of them did not submit complete data and did not accept a verification visit. The data submitted by the sole fully cooperating Japanese producer were verified on the spot.

- (44) However, after the verification visit at the exporting producer in Taiwan, it was found that Taiwan was not dumping during the IP. The question of the choice of analogue country was therefore reconsidered.

- (45) In this regard, it was found that the production volume in Taiwan constitutes more than 100 % of the volume of Chinese exports of the product concerned to the Community. Moreover, the Taiwanese market can be characterised as open, given that the import duty level is low (MFN duty of 5 %). The investigation also showed that there were significant domestic sales of the like product in Taiwan and that there were sufficient imports into the Taiwanese market. Therefore, Taiwan was deemed a competitive market and sufficiently representative for the determination of normal value for the PRC.

- (46) In addition, imports of PVA into Taiwan represent around 15 % of domestic consumption compared to only around 3 % in the case of Japan, indicating that the Japanese market is less appropriate than Taiwan in terms of competition from imports. In view of the above, it was provisionally decided that Taiwan be used as analogue country, as it constitutes the most appropriate analogue country within the meaning of Article 2(7)(a) of the basic Regulation.

3.2.4. Normal value

- (47) Following the choice of Taiwan as analogue country as indicated in recital 46, and pursuant to Article 2(7)(a) of the basic Regulation, the normal value established for Taiwan in recitals 19 to 26 was used in the dumping calculation for the PRC.

3.2.5. Export price

- (48) Since the three Chinese cooperating exporting producers accounted together for almost the totality of the exports of the product concerned to the Community during the IP, their own export data were used to establish the export price. The reliability of the information provided was nevertheless cross-checked with Eurostat import data which showed reasonable agreement.
- (49) The three cooperating exporting producers in the PRC made export sales to the Community either directly to independent customers in the Community or through their related trading companies located in the exporting country.
- (50) For all export sales, export prices were established on the basis of the prices actually paid or payable, in accordance with Article 2(8) of the basic Regulation.

3.2.6. Comparison

- (51) The normal values of the sole producer in the analogue country, Taiwan and the export prices of the three cooperating Chinese exporting producers were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and commissions where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

3.2.7. Dumping margin

- (52) In the absence of MET or IT being granted to any of the cooperating Chinese exporting producers, a countrywide dumping margin was calculated for the whole of the PRC using the weighted average of the ex-works export prices of the three cooperating exporting producers.
- (53) The comparison of the weighted average Chinese export price and the weighted average normal value of the analogue country showed a dumping margin of 10,06 %.

(KEG) in Germany, Celanese Ibérica Chemicals (Celanese) in Spain and a third producer which produces very limited volumes but did not cooperate in the investigation. KEG and Celanese fully cooperated in the investigation.

- (55) In addition to the production mentioned above, three Community producers produce the like product for captive use only. Two of these companies cooperated in the investigation as a user as they also purchased significant quantities of the product concerned for the production of their downstream products.
- (56) As the two cooperating producers mentioned in recital 54 accounted for 80 % of the total (captive and non-captive) Community production during the IP, it is considered that they account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.
- (57) Given that the Community industry comprises only two producers, data relating to the Community industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.
- (58) In order to establish whether or not the Community industry suffered injury and to determine consumption and the various economic indicators relating 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.
- (59) PVA is used as an intermediate material for a variety of other products. In the Community, it is often consumed in the production of polyvinyl butyral (PVB), used as an adhesive, for paper coating, as a polymerisation aid and for textile sizing. It was found in the investigation that one of the Community producers, which sold most of its own-produced PVA on the open market, also used significant volumes of its produced PVA for further downstream processing within the same company. Such situation is referred to as captive use. As explained in recital 55, three other companies in the Community produced PVA for captive use only and in addition to this production for captive use, at least two of them also purchased significant volumes of PVA on the market as a user for further downstream processing.

4. INJURY

4.1. Community production and Community industry

- (54) Within the Community, the like product is manufactured for sale by three companies: Kuraray Europe GmbH

- (60) It was found that the quantities used for captive use, by the companies concerned in the Community, could in principle be substituted by purchased PVA, e.g. if market circumstances and/or financial considerations would trigger such a change. They have therefore been included in the Community market analysis.

4.2. Community consumption

- (61) Community consumption was established on the basis of the free market sales volumes of the Community industry's own production on the Community market, the captive use of the Community industry, the production quantities of the other (smaller) Community producers as obtained from the most widely used database in this particular business, the captive use of the two users referred to in recital 55, the verified import volumes of the sole Taiwanese producer, and Community import volumes data concerning all other countries obtained from Eurostat.

Eurostat data

- (62) Regarding the Community import volumes data obtained from Eurostat, as mentioned in recital 14, the product concerned is presently declared within CN code ex 3905 30 00. The Eurostat data concerning this ex CN code also include certain niche products not

covered by the product scope. As it was not possible to retrieve from the broader category of products the data for the product concerned only, they were therefore adjusted based on information on imports of these niche products provided in the complaint.

- (63) Also with regard to the Eurostat data it is to be noted that certain imports of the product concerned were reported under 'secret extra' and, therefore, no details on origin were available in the public database. Details on the countries of origin of the imports declared as such have been acquired from the relevant customs authorities and they therefore have been included in all relevant tables and analyses.

- (64) On the basis of the above, it was found that the consumption of PVA has increased strongly during the period considered and especially between 2004 and 2005. Over the period considered, the consumption increase was 14 % which was mainly due to a fast growing demand for PVA as raw material for the production of polyvinyl butyral (PVB), which is used for the production of PVB film or sheets. PVB film is used as an interlayer in the production of laminated safety glass, in automotive and architectural markets, which is a strongly growing market in the Community.

	2003	2004	2005	IP
Consumption in tonnes	142 894	148 807	163 851	163 096
Index (2003 = 100)	100	104	115	114

4.3. Imports from the countries concerned

- (65) As the dumping margin found for Taiwan is below *de minimis*, imports originating in this country should be provisionally excluded from the injury assessment.

(a) Volume and market share of the imports concerned

- (66) The volumes of imports of the product concerned decreased by 39 percentage points between 2003 and 2004, then increased by 29 percentage points in 2005 after which they went slightly down, resulting in a decrease of 11 % during the IP as compared to 2003.

Imports	2003	2004	2005	IP
PRC tonnes	24 067	14 710	21 561	21 513
Index (2003 = 100)	100	61	90	89

- (67) The market share held by imports from the PRC also first sharply decreased and then went up. During 2005 and the IP imports from the PRC accounted for 13 % of the whole Community market.

Market share PRC	2003	2004	2005	IP
Community market	17 %	10 %	13 %	13 %
Index (2003 = 100)	100	59	78	78

(b) *Prices*

- (68) Between 2003 and the IP, the average price of imports of the product concerned originating in the PRC decreased by two percentage points.

Unit prices	2003	2004	2005	IP
PRC (EUR/tonne)	1 150	1 115	1 164	1 132
Index (2003 = 100)	100	97	101	98

(c) *Price undercutting*

- (69) For the determination of price undercutting the price data referring to the IP were analysed. The relevant sales prices of the Community industry were net prices after deduction of discounts and rebates. Where necessary, these prices were adjusted to an ex-works level, i.e. excluding freight cost in the Community. The import prices of the PRC were also net of discounts and rebates and were adjusted where necessary to cif Community frontier with an appropriate adjustment for the customs duties (6,5 %) and post-importation costs, as incurred by importers in the Community.
- (70) The Community industry's sales prices and the import prices of the PRC were compared at the same level of trade, namely to independent customers within the Community market. As it was considered that the comparison per model had to be meaningful and fair, and, therefore, no comparison between a standard grade and a special grade falling within the product definition should be allowed, it was considered appropriate to exclude a limited number of models from the comparison. These models represented 35 % of imports from the PRC but only a very small quantity of Community industry sales on the Community market.
- (71) During the IP, the weighted average price undercutting margin thus calculated, expressed as a percentage of the Community industry's sales prices, was 3,3 % for the PRC.

4.4. Situation of the Community industry

- (72) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors having a bearing on the state of the Community industry during the period considered. For confidentiality reasons, given that the analysis concerns only two companies, most indicators are presented in indexed form or ranges are given.

(a) *Production, capacity and capacity utilisation*

	2003	2004	2005	IP
Production in tonnes (ranges)	60 000-80 000	65 000-85 000	70 000-90 000	75 000-95 000
Production (index)	100	103	119	126
Production capacity in tonnes (ranges)	60 000-80 000	65 000-85 000	70 000-90 000	75 000-95 000
Production capacity (index)	100	107	129	133
Capacity utilisation (index)	100	97	92	94

(73) The Community industry's production increased by 26 % during the period considered. The significant increase in production capacity, notably in 2005, was triggered by the increasing demand on the Community market.

(74) Between 2003 and the IP, additional production capacity was installed by the Community industry. During the same period, capacity utilisation decreased by 6 %.

(b) *Sales volume and market shares in the Community*

(75) The table below shows the Community industry's performance in relation to its sales to independent customers in the Community:

Community Industry	2003	2004	2005	IP
Sales volume (index)	100	110	112	122
Market share (index)	100	104	97	104

(76) Sales volumes of the Community industry to independent customers in the Community went up by 22 % from 2003 to the IP. This has to be seen in the light of an increasing consumption in the Community.

(77) The market share of the Community industry increased in 2004, then decreased sharply in 2005 and during the IP it was four percentage points higher than in 2003.

(c) *Prices in the Community*

(78) The main raw material used for the production of PVA is vinyl acetate monomer or VAM. VAM is a commodity product and, as such, prices of VAM are determined based on the balance in the market between demand and supply. Moreover, the market price of VAM is heavily influenced by the development of the oil and gas prices as the major inputs for the production of VAM are acetic acid (the production of which is natural gas intensive) and ethylene (produced from distillation of hydrocarbons). In addition, energy is also a major cost in producing PVA from VAM. The total weight of energy cost in the production of PVA subsequently amounts to 50 % to 60 % and therefore, in normal circumstances, a significant change in the oil and gas prices can be expected to have a direct impact on the PVA sales price.

- (79) It was found that world market prices of these raw materials went up significantly between 2003 and the IP. During this period VAM prices increased by 20 % to 30 % and the increase in energy prices was even much higher. However, this dramatic price evolution of the main raw materials cost was not reflected in higher sales prices of the Community industry: sales prices of the Community industry decreased during the same period by 5 %, with a particularly bad year in 2004 (– 7 %). Thus, instead of passing on the overall cost increase to their customers, the Community industry had to decrease prices in order not to lose customers.

	2003	2004	2005	IP
Unit prices in EUR (ranges)	1 300-1 800	1 100-1 600	1 200-1 700	1 200-1 700
Unit prices (index)	100	93	95	95

(d) *Stocks*

- (80) The figures below represent the volumes of stocks at the end of each period.

	2003	2004	2005	IP
Stocks in tonnes (ranges)	10 000-15 000	8 000-13 000	9 000-14 000	8 000-13 000
Stocks (index)	100	87	96	87

- (81) The level of stocks remained rather stable overall. It decreased by 13 % between 2003 and 2004, subsequently increased by nine percentage points until the end of 2005 and then decreased again by nine percentage points.

(e) *Investments and ability to raise capital*

	2003	2004	2005	IP
Investments (index)	100	369	177	62

- (82) Investments peaked in 2004 and 2005, when the production capacity of the Community industry was increased following the increasing demand on the market. During the investigation it was found that investments in buildings, plants and machinery in 2003 as well as during the IP were mainly to maintain the production capacity.

- (83) The investigation showed that the financial performance of the Community industry deteriorated but it did not reveal that its ability to raise capital was seriously affected yet during the period considered.

(f) *Profitability, return on investment and cash flow*

- (84) In view of very high and distorting extraordinary costs incurred by the main Community producer during the period considered, it was not considered reasonable to establish the profitability on the basis of the pre-tax net profit. These extraordinary costs were related to the change of ownership of the main Community producer in 2001. Therefore, the profitability of the Community industry was established by expressing the operating profit on the sales of the like product to unrelated customers as a percentage of the turnover of these sales.

	2003	2004	2005	IP
Profitability on EC sales (range)	7 %-17 %	3 %-13 %	2 %-12 %	(- 5 %)-(+5 %)
Profitability on EC sales (index)	100	38	29	8
Return on total investments (range)	(80 %)-(100 %)	(10 %)-(30 %)	(5 %)-(20 %)	(0 %)-(15 %)
Return on total investments (index)	100	17	12	4
Cash flow (index)	100	55	26	- 7

- (85) The decline in sales prices between 2003 and the IP significantly affected the profitability achieved by the Community industry. This profitability dropped by more than 10 percentage points during the period considered. The return on total investments was calculated by expressing the operating profit of the like product as a percentage of the net book value of fixed assets allocated to the like product. This indicator followed a similar trend as profitability, decreasing significantly over the period considered. With regard to the cash flow generated by the Community industry, a similar negative trend was found, resulting in a dramatic overall deterioration of the Community industry's financial situation in the IP.

(g) Employment, productivity and wages

	2003	2004	2005	IP
Number of employees (index)	100	100	97	96
Average labour cost per employee (index)	100	105	97	95
Productivity (index)	100	103	123	132

- (86) Due to serious efforts to cut costs, the number of personnel employed by the Community industry declined by 4 % since 2004. From 2003 to the IP, the Community industry managed to increase the productivity per employee by 32 %. During the same period the average labour cost per employee decreased by 5 %. It can therefore be concluded that, during the period considered, the Community industry made very significant progress in terms of cost efficiency.

(h) Magnitude of the dumping margin

- (87) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

(i) Recovery from past dumping

- (88) In the absence of any information on the existence of dumping prior to the situation assessed in the present proceeding, this issue is considered irrelevant.

(j) Growth

- (89) The investigation showed that during the period considered the Community industry increased its Community market share with 1 % to 2 %.

4.5. Conclusion on injury

- (90) Between 2003 and the IP, a number of injury indicators developed positively: the Community industry managed to increase its sales volumes and market share, and it invested significantly in additional production capacity.

- (91) However, its financial indicators developed dramatically: the reasonable profit margin achieved in 2003 decreased very rapidly and continuously as from 2004 to the end of the IP. Return of investment and cash flow situation developed exponentially negative. The reason for this development is that the steep increase in raw material prices could not be reflected in the sales prices of the like product. Whereas, in view of the increase of raw material prices, in a normal market situation an increase of the PVA sales price by 10 % to 20 % could have been expected, the sales prices of the like product produced by the Community industry decreased by 5 %, to the detriment of its profitability. Still, during the IP, the prices of the imports from the PRC undercut those of the Community industry, on a weighted average basis by 3,3 %.
- (92) In the light of the foregoing, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (93) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether dumped imports of the product concerned originating in the PRC have caused injury to the Community industry to a degree that may be considered material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Effects of the dumped imports

- (94) Imports from the PRC were at significant levels during the period considered, i.e. constantly representing 10 % market share or more. At the same time, average prices of all exporting producers in the PRC decreased by 2 % and they undercut the average Community industry prices by 3,3 % in the IP. The Community industry, in order to assure its presence on its home market and due to the very low market prices set by imports from the PRC, felt obliged to decrease its sales prices by 5 % during the period considered.
- (95) Therefore, the effect of this unfair pricing behaviour of the dumped imports from the PRC was that the Community industry's prices were suppressed and that they could not cover the substantial increase of cost of raw materials. This was confirmed by the significant reduction in profitability by the Community industry.
- (96) Based on the above considerations, it was found that the low-priced imports from the PRC which significantly undercut the prices of the Community industry have had a determining role in the deterioration of the situation of the Community industry, which is reflected in the sharp decrease of profitability and strong deterioration of the other financial indicators.

5.3. Effects of other factors

(a) Imports originating in third countries other than the PRC

- (97) According to Eurostat and the information collected during the investigation, the main third countries from which PVA is imported are the USA, Japan and Taiwan.

Imports originating in other third countries (quantity)

Import (tonnes)	2003	2004	2005	IP
USA	11 313	21 207	22 919	22 638
Index (2003 = 100)	100	187	203	200
Japan	13 682	11 753	12 694	14 151
Index (2003 = 100)	100	86	93	103
Taiwan (ranges)	11 000-14 000	13 000-16 500	10 000-13 000	9 000-12 000
Index (2003 = 100)	100	118	88	83

Imports originating in other third countries (average price)

Average price (EUR)	2003	2004	2005	IP
USA	1 334	1 282	1 298	1 358
Index (2003 = 100)	100	96	97	102
Japan	1 916	1 532	1 846	1 934
Index (2003 = 100)	100	80	96	101
Taiwan	1 212	1 207	1 308	1 302
Index (2003 = 100)	100	100	108	108

Market shares

Market share (%)	2003	2004	2005	IP
USA	7,9 %	14,3 %	14,0 %	13,9 %
Japan	9,6 %	7,9 %	7,7 %	8,7 %
Taiwan (ranges)	100	113	77	73

(98) Imports from the USA have strongly increased since 2003 and during the IP they had amounted to more than 22 000 tonnes, accounting for almost 14 % of the total (captive and non-captive) Community market. The investigation showed that the bulk of these sales concerned sales between related parties and that the average unit prices of these transfer sales were, throughout the period considered, between 15 % and 20 % above the average cif prices of Chinese imports. Moreover, it was established that the quantities were resold to independent customers at prices 10 %-20 % higher than these aforementioned transfer import prices. As the market prices of PVA originating in the USA were consequently in the same ballpark as sales

prices of PVA produced by the Community industry, they did not play a role in the price depression observed during the period considered. It is therefore concluded that these imports did not have a significant effect on the situation of the Community industry.

(99) During the period considered there were also significant imports from Japan, accounting for almost 9 % of the Community market during the IP. After Japanese imports had dropped in 2004, they increased again as from 2005 and they were 3 % higher during the IP as compared to 2003. However, analysis of the sales prices of these

imports showed that the average import prices of these imports were above the prices that the Community industry could obtain and they therefore have not contributed to the negative price trend which led to the serious deterioration of the Community industry's situation.

- (100) Imports from Taiwan are from one producer only which fully cooperated with the investigation. These figures were found to be more reliable than Eurostat data given that the CN code covers other products than the product concerned. They are for confidentiality reasons presented in indexes or ranges. Taiwanese imports, after a sharp increase in 2004, decreased gradually and accounted for 6 % to 7 % of the entire Community market during the IP (around half of the market share of imports from the PRC). During the same period, average prices of these imports increased by 8 % which is opposite to the price trend observed as regards imports from the PRC. Consequently, the price difference between PVA imported from the PRC and PVA imported from Taiwan increased from 12 % to 18 % during the IP. In view of these findings, it is provisionally concluded that these imports did not have a significant impact on the state of the Community industry.

- (101) Further to the imports from the USA, Japan and Taiwan, there are no significant imports from other countries. On the basis of the findings with regard to these imports, as described under recitals 97 to 100, it can thus provisionally be concluded that imports other than from the PRC did not contribute to the material injury suffered by the Community industry.

(b) Eventual Community sales of other Community producers

- (102) As stipulated in recitals 54 and 55, apart from the two producers comprising the Community industry, in the Community there are known to be four more companies producing the product concerned. Three of them, out of which two cooperated with the investigation as a user, consume all their own produced PVA in the manufacturing of downstream products. The fourth one is producing very limited quantities only. In view of the above, the other Community producers are deemed to have played no role in the price depression on the market and the subsequent injury suffered by the Community industry.

(c) Self-inflicted injury due to cost inefficiency

- (103) Several interested parties claimed that any injury suffered by the Community industry was linked to the fact that the Community industry had not managed to stay cost competitive and that it had taken unreasonable

investment decisions. In this respect, as described under recital 86, the investigation has shown that the Community industry, during the period considered, has significantly increased its productivity, due to an increase in production output and a decrease in workforce. It was further established that the investments involved with the increase in production capacity (see recital 73) did not significantly influence the dramatically negative trend observed in the development of the financial position of the Community industry.

- (104) The sole factor significantly affecting in a negative way the cost of production of the like product during the period considered, therefore, was the steep rise in the main raw material prices used for the production of the like product, as explained in recitals 78 and 79. The investigation showed that the development of the Community industry's purchase prices of VAM and energy was proportional to the development of these raw material prices on the global market and they therefore cannot be attributed to the way the Community industry purchased these. The argument is therefore dismissed.

(d) Time lag for price adjustment

- (105) An important user of PVA submitted that it would be normal, for this particular sector, for the increase in VAM purchase price not to have yet led to an upward adjustment of the PVA sales price. This would be explained by the fact that long-term contracts are standard in the sector and, therefore, a significant time lag would be a normal phenomenon. In this respect, whilst it is recognised that certain sales of the Community industry are done via long-term agreements, it is not common that such agreements include a fixed price for a period of more than one year. Within these agreements, therefore, prices are renegotiated after a certain period or if raw material prices have changed significantly. Therefore, this argument is dismissed.

5.4. Conclusion on causation

- (106) In conclusion, the above analysis has demonstrated that imports from the PRC during the period considered provoked a substantial price depression on the Community market throughout that period. During the IP, import prices from the PRC significantly undercut the Community industry prices.

- (107) This price depression led to a considerable decrease in the sales prices of the Community industry, which in its turn coincided with a strong drop in the Community industry's profitability, its return on investments and its cash flow from operating activities.

(108) On the other hand, the examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact.

(109) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is 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

(110) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21 of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned.

6.1. Interest of the Community industry

(111) As indicated in recital 56, the Community industry is composed of two companies, with production facilities in Germany and Spain, which employs in the range of 200 to 300 persons directly involved in the production, sales and administration of the like product. If measures are imposed, it is expected that the price depression on the Community market will come to an end and that sales prices of the Community industry will start to recover, as a consequence of which the financial situation of the Community industry will improve.

(112) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend in the development of the Community industry's financial indicators, and notably its profitability, will continue. The Community industry will then lose significant market share as it will no longer be able to follow the market prices set by imports from the PRC. At worst, the Community industry would be forced to step out of the free market and continue production of PVA for captive use only. In both cases, cuts in production and investments, closure of certain production capacities and job reductions in the Community will be a likely result.

(113) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the effects of injurious dumping found.

6.2. Interest of unrelated importers

(114) As described in recital 8, five sampled importers sent questionnaire replies and they accounted for around 80 % of Community imports of the product concerned during the IP. The information submitted by one of the sampled importers had to be disregarded at this stage as it cancelled twice an agreed verification visit. Three of the questionnaire replies were verified on the spot.

(115) The overall weight represented by PVA in the total turnover of these importers' activities was very small. On an average basis, 3 % to 4 % of these importers' activities could be linked to imports of PVA from the PRC. The importers have a much broader field of activities which can also include general trading and distribution. Certain importers purchase the product under investigation not only from the PRC but also from other sources in and outside the Community, including from the Community industry. The average profit margin attained by the sampled importers, on their trading of PVA, is around 5 %.

(116) Importers in the Community are not in favour of the imposition of measures. The cooperating importers argued that the imposition of measures would seriously harm their operations, as they would not be able to pass on the price increase to users. In this respect, the imposition of an anti-dumping duty on imports from the PRC, as explained in recital 111, will most likely lead to a slightly upwards correction of market prices. Therefore, it can be expected that importers which buy the product concerned from the PRC will be able to pass on these duty costs to the final customer. The significant undercutting still found after adjustment of the cif Community border prices for post-importation costs also suggests that there is room for a price increase. In any event, in view of the limited weight of sales of this product in the importers' activities, and the profit margin currently attained both overall and in view of their sales of PVA only, it is expected that the duty as provisionally established will not affect the financial situation of these economic operators to a significant extent.

(117) Although importers/distributors are not in favour of measures, it can be concluded on the basis of the information available that any advantage they may gain from not having anti-dumping measures imposed is outweighed by the interest of the Community industry in having the effect of unfair and injurious trading practices from the PRC neutralised.

6.3. Interest of users

- (118) Seven users filled in a users' questionnaire. The replies of two of these companies were incomplete and they therefore could not be included in the analysis. The five remaining companies were using PVA for a variety of applications: for the production of adhesives, the production of industrial powders, the production of PVB, textile sizing and finishing, and resin production.
- (119) Further to information on purchases reported in their responses to the questionnaires, the purchases during the IP of the five cooperating users represented about 19 % of total Community consumption of PVA and their Chinese imports represented about 22 % of total imports from the PRC. It is important to note that imports from the PRC represent, overall, the minor part of their purchases, i.e. 15 %. However, this picture is very mixed: one of the cooperating users did not import at all from the PRC during the IP whereas another cooperating user sourced its PVA exclusively from the PRC.
- (120) The cooperating users have raised a number of arguments against the imposition of duties.
- (121) Two companies used PVA for the production of adhesives. It was established that, for the production of such adhesives, PVA was a major cost input which, depending on the composition of the blend, could account for up to 80 % of the manufacturing cost. The companies argued that, in view of the significant weight of PVA in the production cost and the profit margins attained on the sales of adhesives, an anti-dumping duty might lead to bankruptcy or force them to relocate production outside the Community. These companies expressed very strong doubts as to whether their customers would be willing to pay an eventual price increase caused by duties. In this respect, whilst it is acknowledged that the profit margins achieved in this particular sector are modest, it should also be noted that the measures proposed are directly affecting purchase prices of PVA with Chinese origin only, which is one source of supply, and these prices significantly undercut the Community industry's prices during the investigation period. Therefore, the impact of the duty on these companies' production cost of adhesives is not insignificant but, also in view of the proposed duty level, there appear to be no reasons as to why their customers would not be willing to bear at least a good part of this cost increase.
- (122) Two other companies used PVA for the production of PVB. In the case of the production of PVB also, PVA is a major cost driver. One of these companies, which would subsequently use the PVB for the production of PVB film, suggested that eventual measures could trigger the company to move their production of PVB out of the Community. This company also submitted that, in view of the time it would take to qualify PVA for this application, it was complicated and burdensome for them to change supplier. The other PVB producer cooperating as a user, which used PVA not only for the production of PVB but mostly for the production of industrial powders, also pointed to the difficult and lengthy process of changing supplier and further expressed concerns about the increased costs that measures might result in.
- (123) It is acknowledged that an increase in the purchase cost of PVA will reflect in a higher manufacturing cost of PVB. At the same time, however, as imports from the PRC account for 13 % of the Community market, 87 % of the PVA consumed in the Community will not be directly affected by these measures. Moreover, the proposed duty rate is moderate. In view of the above and taking into account the good market conditions for PVB, the effect of such a duty is considered bearable.
- (124) As concerns the qualification procedure, it is recognised that, in particular applications, the characteristics of PVA can indeed be very demanding and tailor-made, resulting in a lengthy qualification process which includes intensive testing. However, it should be recalled that anti-dumping measures are not meant to deny certain suppliers access to the Community market. Any measure proposed is only meant to restore fair trade and correct a distorted market situation. Therefore, and even more in view of the level of the duty rate proposed, there is no reason why certain users would be obliged to change supplier once measures are put in place.
- (125) One cooperating user, a manufacturer of polyester/cotton and cotton fabrics, which used PVA in the sizing and finishing of greige fabrics, indicated that measures might force the company to shift its spinning and weaving activities outside the Community. In this respect, it was established that the cost share of PVA in this company's products manufacturing cost was rather limited, i.e. between 0,2 % and 0,8 %. In light of the duty rate proposed, it is therefore considered that the impact of such a duty is not significant.
- (126) Finally, the complainant, KEG, submitted that the non-imposition of measures would be against the interest of

users, as the poor financial results on its PVA activities might trigger KEG to step out of the merchant market and focus on the downstream markets. It argued that if that were to happen, the user industry would be short of supplies as KEG is a large and reliable supplier. Although this argument has not explicitly been supported by the users concerned, it is indeed confirmed that three of the five users concerned do purchase significant quantities of PVA from KEG and that this company can be considered as the most important supplier on the Community market. Therefore, if for whatever reason, KEG would step out of the market, it cannot be excluded that the user industry would be confronted with serious supply problems.

6.4. Conclusion on Community interest

- (127) The effects of the imposition of measures can be expected to enable the Community industry to improve its profitability. In view of the unfavourable financial situation of the Community industry, there is a real risk that, in the absence of measures, the Community industry may close down production facilities and lay off workforce. In general, the users in the Community would also benefit from the imposition of measures, as the supply of sufficient volumes of PVA will not be jeopardised whilst the overall increase in purchase price of PVA will be moderate. In light of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures in the present case on Community interest grounds.

7. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

- (128) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed on imports of the product concerned originating in the PRC in order to prevent further injury to the Community industry by the dumped imports.
- (129) As far as imports of the product concerned originating in Taiwan are concerned, no dumping was provisionally found, as indicated at recital 30 above. Consequently, no provisional measures should be imposed. In view of the timing of this determination, it was considered appropriate to give a period of one month to interested parties to comment on this provisional finding, with a view to possibly terminating the proceeding in respect of imports of the product concerned originating in Taiwan thereafter.

7.1. Injury elimination level

- (130) The provisional measures on imports originating in the PRC should be imposed at a level sufficient to eliminate

the injurious effect caused to the Community industry by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

- (131) It is considered that in 2003 there was a normal competitive situation on the Community market where the Community industry, in the absence of injurious dumping, made a normal profit within the range as described in recital 84 above. Consequently, on the basis of the information available, it was preliminarily found that a profit margin corresponding to that level could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping.
- (132) The required price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price was obtained by adjusting the sales price of each Community industry producer to a break-even point and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. Given that none of the cooperating Chinese producers was granted MET or IT, and in view of the high level of cooperation, the provisional single countrywide injury elimination level was calculated as a weighted average of the injury margins of all three cooperating Chinese exporting producers.
- (133) The injury margin thus established for the PRC was significantly higher than the dumping margin found.

7.2. Provisional measures

- (134) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule.
- (135) On the basis of the above, the proposed duty rate for the product concerned originating in the PRC is 10,0 %.

7.3. Final provision

- (136) 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 measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on certain polyvinyl alcohols in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % falling within CN code ex 3905 30 00 (TARIC code 3905 30 00 20) and originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 shall be 10 %.

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 Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of 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, 17 September 2007.

For the Commission

Peter MANDELSON

Member of the Commission

DIRECTIVES

COMMISSION DIRECTIVE 2007/55/EC

of 17 September 2007

amending certain Annexes to Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC as regards maximum residue levels for azinphos-methyl

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables ⁽¹⁾, and in particular Article 5 thereof,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽³⁾, and in particular Article 10 thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

(1) The Commission was informed that for azinphos-methyl current MRLs may need to be revised in the light of the

availability of new information on the toxicology and consumer intake. The Commission has asked the Member State which acted as rapporteur for azinphos-methyl under Council Directive 91/414/EEC ⁽⁵⁾, to make a proposal for the review of Community MRLs. Such a proposal was submitted to the Commission.

(2) Community MRLs and the levels recommended by the *Codex Alimentarius* are fixed and evaluated following similar procedures. There are a number of Codex MRLs for azinphos-methyl. The Community MRLs based on Codex MRLs have also been evaluated by the Rapporteur Member State in the light of the new information on the risks for the consumers.

(3) The lifetime and short-term exposure of consumers to the azinphos-methyl via food products has been re-assessed and evaluated in accordance with Community procedures and practices, taking account of guidelines published by the World Health Organisation ⁽⁶⁾. On that basis, it is appropriate to fix new MRLs, which will ensure that there is no unacceptable consumer exposure.

(4) In order to ensure that the consumer is adequately protected from exposure to residues resulting from unauthorised uses of plant protection products, MRLs should be set for the relevant product/pesticide combinations at the lower limit of analytical determination.

(5) It is therefore necessary to modify the MRLs set out in the Annexes to Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC to allow for proper surveillance and control of the prohibition of their uses and to protect the consumer.

⁽¹⁾ OJ L 340, 9.12.1976, p. 26. Directive as last amended by Commission Directive 2007/8/EC (OJ L 63, 1.3.2007, p. 9).

⁽²⁾ OJ L 221, 7.8.1986, p. 37. Directive as last amended by Commission Directive 2007/27/EC (OJ L 128, 16.5.2007, p. 31).

⁽³⁾ OJ L 221, 7.8.1986, p. 43. Directive as last amended by Commission Directive 2007/28/EC (OJ L 135, 26.5.2007, p. 6).

⁽⁴⁾ OJ L 350, 14.12.1990, p. 71. Directive as last amended by Commission Directive 2007/39/EC (OJ L 165, 27.6.2007, p. 25).

⁽⁵⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/52/EC (OJ L 214, 17.8.2007, p. 3).

⁽⁶⁾ Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).

- (6) Through the World Trade Organisation, the Community's trading partners have been informed about the new MRLs and their comments on these levels will be taken into account.
- (7) Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC should therefore be amended accordingly.
- (8) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Annex II to Directive 76/895/EEC the entry relating to azinphos-methyl is deleted.

Article 2

Directive 86/362/EEC is amended in accordance with Annex I to this Directive.

Article 3

Directive 86/363/EEC is amended in accordance with Annex II to this Directive.

Article 4

Directive 90/642/EEC is amended in accordance with Annex III to this Directive.

Article 5

Member States shall adopt and publish, by 18 March 2008 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 19 March 2008.

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

Article 6

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

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 17 September 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX I

In Part A of Annex II to Directive 86/362/EEC, the following line is added:

Pesticide residues	Maximum levels in mg/kg
'Azinphos-methyl	0,05 (*) CEREALS'

ANNEX II

In Part A of Annex II to Directive 86/363/EEC, the following line is added:

	Maximum levels in mg/kg (ppm)		
Pesticide residues	of fat contained in meat, preparations of meat, offal and animal fats listed in Annex I under headings Nos ex 0201, 0202, 0203, 0204, 0205 00 00, 0206, 0207, ex 0208, 0209 00, 0210, 1601 00 and 1602 (1) (4)	for cow's milk and whole cream cow's milk listed in Annex I under headings No 0401: for other food-stuffs in heading Nos 0401, 0402, 0405 00 and 0406 in accordance with (2) (4)	of shelled fresh eggs, for bird's eggs and egg yolks listed in Annex I under headings Nos 0407 00 and 0408 (3) (4)
'Azinphos-methyl	0,01 (*)	0,01 (*)	0,01 (*)

(*) Indicates lower limit of analytical determination.'

ANNEX III

In Part A of Annex II to Directive 90/642/EEC, the following column is added:

'Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
1. Fruit, fresh, dried or uncooked, preserved by freezing, not containing added sugar, nuts	
(i) CITRUS FRUIT	0,05 (*)
Grapefruit	
Lemons	
Limes	
Mandarins (including clementines and other hybrids)	
Oranges	
Pomelos	
Others	
(ii) TREE NUTS (shelled or unshelled)	0,5
Almonds	
Brazil nuts	
Cashew nuts	
Chestnuts	
Coconuts	
Hazelnuts	
Macadamia	
Pecans	
Pine nuts	
Pistachios	
Walnuts	
Others	
(iii) POME FRUIT	0,5 (†)
Apples	
Pears	
Quinces	
Others	
(iv) STONE FRUIT	0,5 (†)
Apricots	
Cherries	
Peaches (including nectarines and similar hybrids)	
Plums	
Others	

Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
(v) BERRIES AND SMALL FRUIT	
(a) Table and wine grapes	0,05 (*)
Table grapes	
Wine grapes	
(b) Strawberries (other than wild)	0,5 (†)
(c) Cane fruit (other than wild)	0,5 (†)
Blackberries	
Dewberries	
Loganberries	
Raspberries	
Others	
(d) Other small fruit and berries (other than wild)	
Bilberries	
Cranberries	0,1
Currants (red, black and white)	0,5 (†)
Gooseberries	0,5 (†)
Others	0,05 (*)
(e) Wild berries and wild fruit	0,05 (*)
(vi) MISCELLANEOUS	0,05 (*)
Avocados	
Bananas	
Dates	
Figs	
Kiwi	
Kumquats	
Litchis	
Mangoes	
Olives (table consumption)	
Olives (oil extraction)	
Papaya	
Passion fruit	
Pineapples	
Pomegranate	
Others	

Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
2. Vegetables, fresh or uncooked, frozen or dry	
(i) ROOT AND TUBER VEGETABLES	0,05 (*)
Beetroot	
Carrots	
Cassava	
Celeriac	
Horseradish	
Jerusalem artichokes	
Parsnips	
Parsley root	
Radishes	
Salsify	
Sweet potatoes	
Swedes	
Turnips	
Yam	
Others	
(ii) BULB VEGETABLES	0,05 (*)
Garlic	
Onions	
Shallots	
Spring onions	
Others	
(iii) FRUITING VEGETABLES	
(a) Solanacea	0,05 (*)
Tomatoes	
Peppers	
Aubergines	
Okra	
Others	
(b) Cucurbits — edible peel	
Cucumbers	0,2
Gherkins	
Courgettes	
Others	0,05 (*)

Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
(c) Cucurbits — inedible peel	0,05 (*)
Melons	
Squashes	
Watermelons	
Others	
(d) Sweetcorn	0,05 (*)
(iv) BRASSICA VEGETABLES	0,05 (*)
(a) Flowering brassica	
Broccoli (including Calabrese)	
Cauliflower	
Others	
(b) Head brassica	
Brussels sprouts	
Head cabbage	
Others	
(c) Leafy brassica	
Chinese cabbage	
Kale	
Others	
(d) Kohlrabi	
(v) LEAF VEGETABLES AND FRESH HERBS	0,05 (*)
(a) Lettuce and similar	
Cress	
Lamb's lettuce	
Lettuce	
Scarole (broad-leaf endive)	
Rocket	
Leaves and stems of brassica, including turnip greens	
Others	
(b) Spinach and similar	
Spinach	
Beet leaves (chard)	
Others	
(c) Watercress	
(d) Witloof	

Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
(e) Herbs	
Chervil	
Chives	
Parsley	
Celery leaves	
Others	
(vi) LEGUME VEGETABLES (fresh)	0,05 (*)
Beans (with pods)	
Beans (without pods)	
Peas (with pods)	
Peas (without pods)	
Others	
(vii) STEM VEGETABLES (fresh)	0,05 (*)
Asparagus	
Cardoons	
Celery	
Fennel	
Globe artichokes	
Leek	
Rhubarb	
Others	
(viii) FUNGI	0,05 (*)
(a) Cultivated mushrooms	
(b) Wild mushrooms	
3. Pulses	0,05 (*)
Beans	
Lentils	
Peas	
Lupines	
Others	
4. Oilseed	
Linseed	
Peanuts	
Poppy seeds	
Sesame seeds	

Groups and examples of individual products to which the MRLs apply	Azinphos-methyl
Sunflower seed	
Rapeseed	
Soya bean	
Mustard seed	
Cotton seed	0,2
Hemp seed	
Others	0,05 (*)
5. Potatoes	0,05 (*)
Early potatoes	
Ware potatoes	
6. Tea (dried leaves and stalks, fermented or otherwise, <i>Camellia sinensis</i>)	0,1 (*)
7. Hops (dried), including hop pellets and unconcentrated powder	0,1 (*)

(*) Indicates lower limit of analytical determination.

(†) Temporary MRL until 18 September 2008. After this date the MRL will be 0,05 (*) mg/kg unless modified by a Directive or a Regulation.'

COMMISSION DIRECTIVE 2007/56/EC**of 17 September 2007****amending certain Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC as regards maximum residue levels for azoxystrobin, chlorothalonil, deltamethrin, hexachlorobenzene, ioxynil, oxamyl and quinoxifen****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽¹⁾, and in particular Article 10 thereof,

Having regard to Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽³⁾, and in particular Article 7 thereof,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽⁴⁾, and in particular Article 4(1)(f) thereof,

Whereas:

- (1) In accordance with Directive 91/414/EEC, authorisations of plant protection products for use on specific crops are the responsibility of the Member States. Such authorisations have to be based on the evaluation of effects on human and animal health and influence on the environment. Elements to be taken into account in such evaluations include operator and bystander exposure and impact on the terrestrial, aquatic and aerial environments, as well as impact on humans and animals through consumption of residues on treated crops.

- (2) Maximum residue levels (MRLs) reflect the use of minimum quantities of pesticides to achieve effective protection of plants, applied in such a manner that the amount of residue is the smallest practicable and is toxicologically acceptable, in particular in terms of estimated dietary intake.

- (3) MRLs for pesticides covered by Directive 90/642/EEC are to be kept under review and may be modified to take account of new or changed uses. Information about new or changed uses has been communicated to the Commission which should lead to changes in the residue levels of azoxystrobin, chlorothalonil, ioxynil and quinoxifen.

- (4) For hexachlorobenzene information has been communicated to the Commission that this pesticide, due to environmental contamination, can occur in pumpkin seed, a commodity that is consumed as a food in several Member States, at levels higher than the limit of analytical determination. The insertion of 'pumpkin seed' in Annex I to Directive 90/642/EEC and setting of MRLs for pumpkin seed are therefore necessary to protect consumers from excess hexachlorobenzene residues.

- (5) For oxamyl temporary MRLs have been set in Directive 90/642/EEC by Commission Directive 2006/59/EC ⁽⁵⁾, pending submission of trial data. Trial data for oxamyl have been consequently submitted and evaluated. As a result, the temporary MRLs for oxamyl can be confirmed.

- (6) For deltamethrin also temporary MRLs have been set in Directives 86/362/EEC, 86/363/EEC and 90/642/EEC by Directive 2006/59/EC, pending review of the Annex III dossier under Directive 91/414/EEC and re-registration of deltamethrin formulations at Member State level. Upon further examination, it appeared that more time should be allowed to ensure proper consideration of the uses of deltamethrin authorised at Member State level. It is therefore appropriate to prolong the validity of the temporary MRLs for deltamethrin.

⁽¹⁾ OJ L 221, 7.8.1986, p. 37. Directive as last amended by Commission Directive 2007/27/EC (OJ L 128, 16.5.2007, p. 31).

⁽²⁾ OJ L 221, 7.8.1986, p. 43. Directive as last amended by Commission Directive 2007/28/EC (OJ L 135, 26.5.2007, p. 6).

⁽³⁾ OJ L 350, 14.12.1990, p. 71. Directive as last amended by Commission Directive 2007/39/EC (OJ L 165, 27.6.2007, p. 25).

⁽⁴⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/52/EC (OJ L 214, 17.8.2007, p. 3).

⁽⁵⁾ OJ L 175, 29.6.2006, p. 61.

- (7) The lifetime exposure of consumers to those pesticides via food products that may contain residues of those pesticides has been assessed and evaluated in accordance with the procedures and practices used within the Community, taking account of guidelines published by the World Health Organisation ⁽¹⁾. Based on those assessments and evaluations, the MRLs for those pesticides should be set so as to ensure that the acceptable daily intake is not exceeded.
- (8) In the case of chlorothalonil and ioxynil, for which an acute reference dose (ARfD) exists, the acute exposure of consumers via each of the food products that may contain residues of these pesticides has been assessed and evaluated in accordance with the procedures and practices currently used within the Community, taking account of guidelines published by the World Health Organisation. The opinions of the Scientific Committee on Plants (SCP), in particular advice and recommendations concerning the protection of consumers of food products treated with pesticides ⁽²⁾, have been taken into account. Based on the dietary intake assessment, the MRLs for those pesticides should be fixed so as to ensure that the ARfD will not be exceeded. In the case of the other substances, an assessment of the available information has shown that no ARfD is required and that therefore a short-term assessment is not needed.
- (9) Where authorised uses of plant protection products do not result in detectable levels of pesticide residues in or on the food product, or where there are no authorised uses, or where uses which have been authorised by Member States have not been supported by the necessary data, or where uses in third countries resulting in residues in or on food products which may enter into circulation in the Community market have not been supported with such necessary data, MRLs should be fixed at the lower limit of analytical determination.
- (10) The setting or modification at Community level of provisional MRLs does not prevent the Member States from establishing provisional MRLs for ioxynil and quinoxifen in accordance with Article 4(1)(f) of Directive 91/414/EEC and Annex VI to that Directive. It is considered that a period of four years is sufficient to permit further uses of these substances. The provisional Community MRLs should then become definitive.
- (11) It is therefore necessary to modify the MRLs set out in Directives 86/362/EEC, 86/363/EEC and 90/642/EEC, to allow proper surveillance and control of the uses of the plant protection products concerned and to protect the consumer. Where MRLs have already been defined in the Annexes to those Directives, it is appropriate to amend them. Where MRLs have not yet been defined, it is appropriate to set them for the first time.
- (12) Directives 86/362/EEC, 86/363/EEC and 90/642/EEC should therefore be amended accordingly.
- (13) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 86/362/EEC is amended in accordance with Annex I to this Directive.

Article 2

Directive 86/363/EEC is amended in accordance with Annex II to this Directive.

Article 3

Directive 90/642/EEC is amended as follows:

1. in Annex I, in group '4 Oilseeds', the entry 'Pumpkin seed' is added.
2. Annex II is amended in accordance with Annex III to this Directive.

Article 4

Member States shall adopt and publish, by 18 December 2007 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

⁽¹⁾ Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).

⁽²⁾ Opinion regarding questions relating to amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC (Opinion expressed by the SCP on 14 July 1998); Opinion regarding variable pesticide residues in fruit and vegetables (Opinion expressed by the SCP on 14 July 1998) http://europa.eu.int/comm/food/fs/sc/scp/outcome_ppp_en.html

They shall apply those provisions from 19 December 2007.

Article 6

This Directive is addressed to the Member States.

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

Done at Brussels, 17 September 2007.

Article 5

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

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX I

In Part A of Annex II to Directive 86/362/EEC, the line for 'Deltamethrin' is replaced by the following:

Pesticide residues	Maximum levels in mg/kg
'Deltamethrin (cis-deltamethrin) ^(a)	2 CEREALS

^(a) Temporary MRLs valid until 1 November 2008, pending review of the Annex III dossier under Directive 91/414/EEC and re-registration of deltamethrin formulations at Member State level.'

ANNEX II

In Part A of Annex II to Directive 86/363/EEC, the line for 'Deltamethrin (cis-deltamethrin)' is replaced by the following:

	Maximum levels in mg/kg		
Pesticide residues	of fat contained in meat, preparations of meat, offal and animal fats listed in Annex I under headings Nos ex 0201, 0202, 0203, 0204, 0205, 0206, 0207, ex 0208, 0209, 0210, 1601 and 1602 (1) (4)	for cow's milk and whole cream cow's milk listed in Annex I under heading No 0401; for other food-stuffs in headings Nos 0401, 0402, 0405 00 and 0406 in accordance with (2) (4)	of shelled fresh eggs, for bird's eggs and egg yolks listed in Annex I under headings Nos 0407 and 0408 (3) (4)
'Deltamethrin (cis-deltamethrin) ^(a)	liver and kidney 0,03 (*), poultry and poultry products 0,1, others 0,5	0,05	0,05 (*)

(*) indicates lower limit of analytical determination.

^(a) Temporary MRL valid until 1 November 2008, pending review of the Annex III dossier under 91/414/EEC and the re-registration of deltamethrin formulations at member state level.'

ANNEX III

In part A of Annex II to Directive 90/642/EEC, the columns for azoxystrobin, 'chlorothalonil, deltamethrin, hexachlorobenzene, ioxynil, oxamyl and quinoxifen' are replaced by the following:

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (6)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
1. Fruit, fresh, dried or uncooked, preserved by freezing, not containing added sugar; nuts				0,01 (*)	0,05 (*) (p)		
(i) CITRUS FRUIT	1	0,01 (*)	0,05 (*)				0,02 (*) (p)
Grapefruit							
Lemons							
Limes							
Mandarins (including clementines and other hybrids)						0,02 (*) (p)	
Oranges							
Pomelos							
Others						0,01 (*) (p)	
(ii) TREE NUTS (shelled or unshelled)	0,1 (*)	0,01 (*)	0,05 (*)			0,01 (*) (p)	0,02 (*) (p)
Almonds							
Brazil nuts							
Cashew nuts							
Chestnuts							
Coconuts							
Hazelnuts							
Macadamia							
Pecans							
Pine nuts							
Pistachios							
Walnuts							
Others							

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (%)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
(iii) POME FRUIT	0,05 (*)	1				0,01 (*) (p)	
Apples			0,2				0,05 (p)
Pears							
Quinces							
Others			0,1				0,02 (*) (p)
(iv) STONE FRUIT	0,05 (*)					0,01 (*) (p)	
Apricots		1					0,05 (p)
Cherries			0,2				0,3 (p)
Peaches (including nectarines and similar hybrids)		1					0,05 (p)
Plums							
Others		0,01 (*)	0,1				0,02 (*) (p)
(v) BERRIES AND SMALL FRUIT						0,01 (*) (p)	
(a) Table and wine grapes	2		0,2				1 (p)
Table grapes		1					
Wine grapes		3					
(b) Strawberries (other than wild)	2	3	0,2				0,3 (p)
(c) Cane fruit (other than wild)		0,01 (*)					0,02 (*) (p)
Blackberries	3		0,5				
Dewberries							
Loganberries							
Raspberries	3						
Others	0,05 (*)		0,05 (*)				
(d) Other small fruit and berries (other than wild)	0,05 (*)						2 (p)
Bilberries							
Cranberries		2					

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (°)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
Currants (red, black and white)		10	0,5				
Gooseberries		10	0,2				
Others		0,01 (*)	0,05 (*)				
(e) Wild berries and wild fruit	0,05 (*)	0,01 (*)	0,05 (*)				0,02 (*) (P)
(vi) MISCELLANEOUS						0,01 (*) (P)	0,02 (*) (P)
Avocados							
Bananas	2	0,2					
Dates							
Figs							
Kiwi			0,2				
Kumquats							
Litchis							
Mangoes	0,2						
Olives (table consumption)			1				
Olives (oil extraction)			1				
Papaya	0,2	20					
Passion fruit							
Pineapples							
Pomegranate							
Others	0,05 (*)	0,01 (*)	0,05 (*)				
2. Vegetables, fresh or uncooked, frozen or dry				0,01 (*)			
(i) ROOT AND TUBER VEGETABLES			0,05 (*)			0,01 (*) (P)	0,02 (*) (P)
Beetroot							
Carrots	0,2	1			0,2 (P)		
Cassava							
Celeriac	0,3	1					

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (%)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
Horseradish	0,2						
Jerusalem artichokes							
Parsnips	0,2				0,2 (p)		
Parsley root	0,2						
Radishes	0,2						
Salsify	0,2						
Sweet potatoes							
Swedes							
Turnips							
Yam							
Others	0,05 (*)	0,01 (*)			0,05 (*) (p)		
(ii) BULB VEGETABLES						0,01 (*) (p)	0,02 (*) (p)
Garlic		0,5	0,1		0,2 (p)		
Onions		0,5	0,1		0,2 (p)		
Shallots		0,5	0,1		0,2 (p)		
Spring onions	2	5	0,1		3 (p)		
Others	0,05 (*)	0,01 (*)	0,05 (*)		0,05 (*) (p)		
(iii) FRUITING VEGETABLES					0,05 (*) (p)		
(a) Solanacea	2	2					0,02 (*) (p)
Tomatoes			0,3			0,02 (p)	
Peppers						0,02 (p)	
Aubergines			0,3			0,02 (p)	
Okra			0,3				
Others			0,2			0,01 (*) (p)	
(b) Cucurbits — edible peel	1		0,2				0,02 (*) (p)
Cucumbers		1				0,02 (p)	
Gherkins		5				0,02 (p)	

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (*)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
Courgettes						0,03 (p)	
Others		0,01 (*)				0,01 (*) (p)	
(c) Cucurbits — inedible peel	0,5	1	0,2			0,01 (*) (p)	0,05 (p)
Melons							
Squashes							
Watermelons							
Others							
(d) Sweet corn	0,05 (*)	0,01 (*)	0,05 (*)			0,01 (*) (p)	0,02 (*) (p)
(iv) BRASSICA VEGETABLES					0,05 (*) (p)	0,01 (*) (p)	0,02 (*) (p)
(a) Flowering brassica	0,5	3	0,1				
Broccoli (including Calabrese)							
Cauliflower							
Others							
(b) Head brassica	0,3		0,1				
Brussels sprouts		3					
Head cabbage		3					
Others		0,01 (*)					
(c) Leafy brassica	5	0,01 (*)	0,5				
Chinese cabbage							
Kale							
Others							
(d) Kohlrabi	0,2	0,01 (*)	0,05 (*)				
(v) LEAF VEGETABLES AND FRESH HERBS					0,05 (*) (p)	0,01 (*) (p)	0,02 (*) (p)
(a) Lettuce and similar	3	0,01 (*)	0,5				
Cress							
Lamb's lettuce							
Lettuce							

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (%)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
Scarole (broad-leaf endive)							
Ruccola							
Leaves and stems of brassica, including turnip greens							
Others							
(b) Spinach and similar	0,05 (*)	0,01 (*)	0,5				
Spinach							
Beet leaves (chard)							
Others							
(c) Water cress	0,05 (*)	0,01 (*)	0,05 (*)				
(d) Witloof	0,2	0,01 (*)	0,05 (*)				
(e) Herbs	3	5	0,5				
Chervil							
Chives							
Parsley							
Celery leaves							
Others							
(vi) LEGUME VEGETABLES (fresh)			0,2		0,05 (*) (p)	0,01 (*) (p)	0,02 (*) (p)
Beans (with pods)	1	5					
Beans (without pods)	0,2	2					
Peas (with pods)	0,5	2					
Peas (without pods)	0,2	0,3					
Others	0,05 (*)	0,01 (*)					
(vii) STEM VEGETABLES (fresh)						0,01 (*) (p)	
Asparagus							
Cardoons							
Celery	5	10					
Fennel	5						

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) (°)	Hexachlorobenzene	Ioxynil including its esters expressed as Ioxynil	Oxamyl	Quinoxifen
Globe artichokes	1		0,1				0,3 (p)
Leeks	2	10	0,2		3 (p)		
Rhubarb							
Others	0,05 (*)	0,01 (*)	0,05 (*)		0,05 (*) (p)		0,02 (*) (p)
(viii) FUNGI	0,05 (*)		0,05		0,05 (*) (p)	0,01 (*) (p)	0,02 (*) (p)
(a) Cultivated mushrooms		2					
(b) Wild mushrooms		0,01 (*)					
3. Pulses	0,1	0,01 (*)	1	0,01 (*)	0,05 (*) (p)	0,01 (*) (p)	0,02 (*) (p)
Beans							
Lentils							
Peas							
Lupines							
Others							
4. Oilseeds					0,1 (*) (p)	0,02 (*) (p)	0,05 (*) (p)
Linseed							
Peanuts		0,05					
Poppy seed							
Sesame seed							
Sunflower seed							
Rapeseed	0,5		0,1				
Soya bean	0,5						
Mustard seed			0,1				
Cotton seed							
Hemp seed							
Pumpkin seed				0,05			
Others	0,05 (*)	0,01 (*)	0,05 (*)	0,02 (*)			

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)						
	Azoxystrobin	Chlorothalonil	Deltamethrin (cis-deltamethrin) ^(*)	Hexachlorobenzene	Ioxynil including its esters expressed as ioxynil	Oxamyl	Quinoxifen
5. Potatoes	0,05 (*)	0,01 (*)	0,05 (*)	0,01	0,05 (*) ^(p)	0,01 (*) ^(p)	0,02 (*)
Early potatoes							
Ware potatoes							
6. Tea (dried leaves and stalks, fermented or otherwise, <i>Camellia sinensis</i>)	0,1 (*)	0,1 (*)	5	0,02 (*)	0,1 (*) ^(p)	0,02 (*) ^(p)	0,05 (*) ^(p)
7. Hops (dried), including hop pellets and unconcentrated powder	20	50	5	0,02 (*)	0,1 (*) ^(p)	0,02 (*) ^(p)	0,5 ^(p)

(*) Indicates lower limit of analytical determination.

^(*) Temporary MRLs valid until 1 November 2008, pending review of the Annex III dossier under Directive 91/414/EEC and re-registration of deltamethrin formulations at Member State level.

^(p) Indicates that the maximum residue level has been established provisionally in accordance with Article 4(1)(f) of Directive 91/414/EEC.

COMMISSION DIRECTIVE 2007/57/EC**of 17 September 2007****amending certain Annexes to Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC as regards maximum residue levels for dithiocarbamates****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

should lead to changes in the residue levels of maneb, mancozeb, metiram, propineb and thiram.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables ⁽¹⁾, and in particular Article 5 thereof,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽³⁾, and in particular Article 10 thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

- (1) Maximum residue levels (MRLs) reflect the use of minimum quantities of pesticides to achieve effective protection of plants, applied in such a manner that the amount of residue is the smallest practicable and is toxicologically acceptable, in particular in terms of estimated dietary intake.
- (2) MRLs for pesticides are kept under review and changed to take account of new information, including new or changed uses. Information about new or changed uses has been communicated to the Commission, which

- (3) The active substance ziram has been included in Annex I to Council Directive 91/414/EEC ⁽⁵⁾ by Commission Directive 2003/81/EC ⁽⁶⁾. The inclusion in Annex I to Directive 91/414/EEC was based on the assessment of the information submitted concerning the proposed use. The information available has been reviewed and is sufficient to allow certain MRLs to be fixed.

- (4) There are already Community MRLs in Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC for maneb, mancozeb, metiram, propineb and thiram. Those levels have been taken into consideration when adapting the MRLs concerned by this Directive. In particular, as in routine monitoring the residues of maneb, mancozeb, metiram, propineb, thiram and ziram cannot be individually identified, MRLs are set for the whole group of those pesticides which are also known as dithiocarbamates. However, for propineb, thiram and ziram single methods exist, although not on a routine basis. Those methods should be used on a case-by-case basis, when the specific quantification of propineb, ziram and/or thiram is required.

- (5) The Commission review reports which were prepared for the inclusion in Annex I to Directive 91/414/EEC of the active substances concerned, fix the Acceptable Daily Intake (ADI) and, if necessary, the Acute Reference Dose (ARfD) for those substances. The exposure of consumers of food products treated with the active substance concerned has been assessed and evaluated in accordance with Community procedures. Account has also been taken of guidelines published by the World Health Organisation ⁽⁷⁾ and the opinion of the Scientific Committee for Plants ⁽⁸⁾ on the methodology employed. It has been concluded that the MRLs proposed will not lead to those ADI or ARfD being exceeded.

⁽¹⁾ OJ L 340, 9.12.1976, p. 26. Directive as last amended by Commission Directive 2007/8/EC (OJ L 63, 1.3.2007, p. 9).

⁽²⁾ OJ L 221, 7.8.1986, p. 37. Directive as last amended by Commission Directive 2007/27/EC (OJ L 128, 16.5.2007, p. 31).

⁽³⁾ OJ L 221, 7.8.1986, p. 43. Directive as last amended by Commission Directive 2007/28/EC (OJ L 135, 26.5.2007, p. 6).

⁽⁴⁾ OJ L 350, 14.12.1990, p. 71. Directive as last amended by Commission Directive 2007/39/EC (OJ L 165, 27.6.2007, p. 25).

⁽⁵⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/52/EC (OJ L 214, 17.8.2007, p. 3).

⁽⁶⁾ OJ L 224, 6.9.2003, p. 29.

⁽⁷⁾ Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).

⁽⁸⁾ Opinion of the Scientific Committee on Plants regarding questions relating to amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC (Opinion expressed by the Scientific Committee on Plants, 14 July 1998) (http://europa.eu.int/comm/food/fs/sc/index_en.html).

- (6) Where authorised uses of plant protection products do not result in detectable levels of pesticide residues in or on the food product, or where there are no authorised uses, or where uses which have been authorised by Member States have not been supported by the necessary data, or where uses in third countries resulting in residues in or on food products which may enter into circulation in the Community market have not been supported with such necessary data, MRLs should be fixed at the lower limit of analytical determination.
- (7) It is therefore necessary to modify the MRLs set out in the Annexes to Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC to allow proper surveillance and control of the prohibition of their uses and to protect the consumer. Where MRLs have already been defined in the Annexes to those Directives, it is appropriate to amend them. Where MRLs have not already been defined, it is appropriate to set them for the first time.
- (8) Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC should therefore be amended accordingly.
- (9) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Annex II to Directive 76/895/EEC the entry relating to thiram is deleted.

Article 2

Directive 86/362/EEC is amended in accordance with Annex I to this Directive.

Article 3

Directive 86/363/EEC is amended in accordance with Annex II to this Directive.

Article 4

Directive 90/642/EEC is amended in accordance with Annex III to this Directive.

Article 5

Member States shall adopt and publish, by 18 March 2008 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 19 March 2008.

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

Article 6

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

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 17 September 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX I

In Part A of Annex II to Directive 86/362/EEC, the lines for 'Mancozeb, maneb, metiram, propineb, zineb (expressed as CS₂)' are replaced by the following:

Pesticide residues	Maximum levels in mg/kg
Dithiocarbamates, expressed as CS ₂ , including mancozeb, maneb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	1 Wheat, Rye, Triticale, Spelt (ma, mz) 2 Barley, Oats (ma, mz) 0,05 (*) Other cereals
Propineb (expressed as propilendiammine) ⁽³⁾	0,05 (*) CEREALS
Thiram (expressed as Thiram) ⁽³⁾	0,1 (*) CEREALS
Ziram (expressed as Ziram) ⁽³⁾	0,1 (*) CEREALS

⁽¹⁾ The MRLs expressed as CS₂ can arise from different dithiocarbamates and therefore they do not reflect a single Good Agricultural Practice (GAP). It is therefore not appropriate to use these MRLs to check compliance with a GAP.

⁽²⁾ In brackets the origin of the residue (ma: maneb; me: metiram; mz: mancozeb; pr: propineb; t: thiram; z: ziram).

⁽³⁾ As all dithiocarbamates result in the final CS₂ residue, discrimination among them is generally not possible. However single residue methods are available for propineb, ziram and thiram. These methods should be implemented on a case by case basis when the specific quantification of propineb, ziram and/or thiram is required.

(*) Indicates lower limit of analytical determination.'

ANNEX II

In Part B of Annex II to Directive 86/363/EEC, the lines for 'Mancozeb, maneb, metiram, propineb, zineb (expressed as CS₂)' are replaced by the following:

Pesticide residues	Maximum levels in mg/kg		
	of meat, including fat, preparations of meat, offal and animal fats listed in Annex I under headings Nos ex 0201, 0202, 0203, 0204, 0205 00 00, 0206, 0207, ex 0208, 0209 00, 0210, 1601 00 and 1602	for milk and milk products listed in Annex I under headings Nos 0401, 0402, 0405 00 and 0406	of shelled fresh eggs, for bird's eggs and egg yolks listed in Annex I under headings Nos 0407 00 and 0408
Dithiocarbamates, expressed as CS ₂ , including mancozeb, maneb, metiram, propineb, thiram and ziram	0,05 (*)	0,05 (*)	0,05 (*)

(*) Indicates lower limit of analytical determination.'

ANNEX III

In Part A of Annex II to Directive 90/642/EEC, the line for 'Mancozeb, maneb, metiram, propineb, zineb (expressed as CS₂)' is replaced by the following:

Groups and examples of individual products to which the MRLs apply	'Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiamine) ⁽³⁾	Thiram (expressed as thiram) ⁽²⁾	Ziram (expressed as ziram) ⁽³⁾
1. Fruit, fresh, dried or uncooked, preserved by freezing, not containing added sugar; nuts				
(i) CITRUS FRUIT	5 (mz)	0,05 (*)	0,1 (*)	0,1 (*)
Grapefruit				
Lemons				
Limes				
Mandarins (including clementines and other hybrids)				
Oranges				
Pomelos				
Others				
(ii) TREE NUTS (shelled or unshelled)		0,05 (*)	0,1 (*)	0,1 (*)
Almonds				
Brazil nuts				
Cashew nuts				
Chestnuts				
Coconuts				
Hazelnuts				
Macadamia				
Pecans				
Pine nuts				
Pistachios				
Walnuts	0,1 (mz)			

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiamine) ⁽³⁾	Thiram (expressed as thiram) ⁽¹⁾	Ziram (expressed as ziram) ⁽³⁾
Others	0,05 (*)			
(iii) POME FRUIT	5 (ma, mz, me, pr, t, z)	0,3		
Apples			5	0,1 (*)
Pears			5	1
Quinces				
Others			0,1 (*)	0,1 (*)
(iv) STONE FRUIT				
Apricots	2 (mz, t)		3	
Cherries	2 (mz, me, pr, t, z)	0,3	3	5
Peaches (including nectarines and similar hybrids)	2 (mz, t)		3	
Plums	2 (mz, me, t, z)		2	2
Others	0,05 (*)	0,05 (*)	0,1 (*)	0,1 (*)
(v) BERRIES AND SMALL FRUIT				0,1 (*)
(a) Table and wine grapes	5 (ma, mz, me, pr, t)			
Table grapes		1	0,1 (*)	
Wine grapes		1	3	
(b) Strawberries (other than wild)	10 (t)	0,05 (*)	10	
(c) Cane fruit (other than wild)	0,05 (*)	0,05 (*)	0,1 (*)	
Blackberries				
Dewberries				
Loganberries				
Raspberries				
Others				

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram (1), (2)	Propineb (expressed as propilendiammine) (3)	Thiram (expressed as thiram) (4)	Ziram (expressed as ziram) (5)
(d) Other small fruit and berries (other than wild)		0,05 (*)	0,1 (*)	
Bilberries				
Cranberries				
Currants (red, black and white)	5 (mz)			
Gooseberries				
Others	0,05 (*)			
(e) Wild berries and wild fruit	0,05 (*)	0,05 (*)	0,1 (*)	
(vi) MISCELLANEOUS			0,1 (*)	0,1 (*)
Avocados				
Bananas	2 (mz, me)			
Dates				
Figs				
Kiwi				
Kumquats				
Litchis				
Mangoes	2 (mz)			
Olives (table consumption)	5 (mz, pr)	0,3		
Olives (oil extraction)	5 (mz, pr)	0,3		
Papaya	7 (mz)			
Passion fruit				
Pineapples				
Pomegranate				
Others	0,05 (*)	0,05 (*)		
2. Vegetables, fresh or uncooked, frozen or dry				0,1 (*)
(i) ROOT AND TUBER VEGETABLES			0,1 (*)	
Beetroot	0,5 (mz)			
Carrots	0,2 (mz)			
Cassava				
Celeriac	0,3 (ma, me, pr, t)	0,3		

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiamine) ⁽³⁾	Thiram (expressed as thiram) ⁽³⁾	Ziram (expressed as ziram) ⁽³⁾
Horseradish	0,2 (mz)			
Jerusalem artichokes				
Parsnips	0,2 (mz)			
Parsley root	0,2 (mz)			
Radishes				
Salsify	0,2 (mz)			
Sweet potatoes				
Swedes				
Turnips				
Yam				
Others	0,05 (*)	0,05 (*)		
(ii) BULB VEGETABLES		0,05 (*)	0,1 (*)	
Garlic	0,1 (mz)			
Onions	1 (ma, mz)			
Shallots	1 (ma, mz)			
Spring onions	1 (mz)			
Others	0,05 (*)			
(iii) FRUITING VEGETABLES			0,1 (*)	
(a) Solanacea				
Tomatoes	3 (mz, me, pr)	2		
Peppers	5 (mz, pr)	1		
Aubergines	3 (mz, me)			
Okra	0,5 (mz)			
Others	0,05 (*)	0,05 (*)		
(b) Cucurbits — edible peel	2 (mz, pr)			
Cucumbers		2		
Gherkins				
Courgettes				
Others		0,05 (*)		

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiammine) ⁽³⁾	Thiram (expressed as thiram) ⁽⁴⁾	Ziram (expressed as ziram) ⁽⁵⁾
(c) Cucurbits — inedible peel	1 (mz, pr)			
Melons		1		
Squashes				
Watermelons		1		
Others		0,05 (*)		
(d) Sweetcorn	0,05 (*)	0,05 (*)		
(iv) BRASSICA VEGETABLES		0,05 (*)	0,1 (*)	
(a) Flowering brassica	1 (mz)			
Broccoli (including Calabrese)				
Cauliflower				
Others				
(b) Head brassica				
Brussels sprouts	2 (mz)			
Head cabbage	3 (mz)			
Others	0,05 (*)			
(c) Leafy brassica	0,5 (mz)			
Chinese cabbage				
Kale				
Others				
(d) Kohlrabi	1 (mz)			
(v) LEAF VEGETABLES AND FRESH HERBS		0,05 (*)		
(a) Lettuce and similar	5 (mz, me, t)			
Cress				
Lamb's lettuce				
Lettuce			2	
Scarole (broad-leaf endive)			2	
Rocket				
Leaves and stems of brassica, including turnip greens				
Others			0,1 (*)	

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiammine) ⁽³⁾	Thiram (expressed as thiram) ⁽¹⁾	Ziram (expressed as ziram) ⁽²⁾
(b) Spinach and similar	0,05 (*)		0,1 (*)	
Spinach				
Beet leaves (chard)				
Others				
(c) Watercress	0,3 (mz)		0,1 (*)	
(d) Witloof	0,5 (mz)		0,1 (*)	
(e) Herbs	5 (mz, me)		0,1 (*)	
Chervil				
Chives				
Parsley				
Celery leaves				
Others				
(vi) LEGUME VEGETABLES (fresh)		0,05 (*)	0,1 (*)	
Beans (with pods)	1 (mz)			
Beans (without pods)	0,1 (mz)			
Peas (with pods)	1 (ma, mz)			
Peas (without pods)	0,1 (mz)			
Others	0,05 (*)			
(vii) STEM VEGETABLES (fresh)		0,05 (*)	0,1 (*)	
Asparagus	0,5 (mz)			
Cardoons				
Celery				
Fennel				
Globe artichokes				
Leeks	3 (ma, mz)			
Rhubarb	0,5 (mz)			
Others	0,05 (*)			
(viii) FUNGI	0,05 (*)	0,05 (*)	0,1 (*)	
(a) Cultivated mushrooms				
(b) Wild mushrooms				

Groups and examples of individual products to which the MRLs apply	Pesticide residue and maximum residue level (mg/kg)			
	Dithiocarbamates, expressed as CS ₂ , including maneb, mancozeb, metiram, propineb, thiram and ziram ⁽¹⁾ , ⁽²⁾	Propineb (expressed as propilendiamine) ⁽³⁾	Thiram (expressed as thiram) ⁽³⁾	Ziram (expressed as ziram) ⁽³⁾
3. Pulses		0,05 (*)	0,1 (*)	0,1 (*)
Beans	0,1 (mz)			
Lentils				
Peas	0,1 (mz)			
Lupines				
Others	0,05 (*)			
4. Oilseeds		0,1 (*)	0,1 (*)	0,1 (*)
Linseed				
Peanuts				
Poppy seed				
Sesame seed				
Sunflower seed				
Rapeseed	0,5 (ma, mz)			
Soya bean				
Mustard seed				
Cotton seed				
Hemp seed				
Pumpkin seed				
Others	0,1 (*)			
5. Potatoes	0,3 (ma, mz, me, pr)	0,2	0,1 (*)	0,1 (*)
Early potatoes				
Ware potatoes				
6. Tea (dried leaves and stalks, fermented or otherwise, <i>Camellia sinensis</i>)	0,1 (*)	0,1 (*)	0,2 (*)	0,2 (*)
7. Hops (dried), including hop pellets and unconcentrated powder	25 (pr)	50	0,2 (*)	0,2 (*)

⁽¹⁾ The MRLs expressed as CS₂ can arise from different dithiocarbamates and therefore they do not reflect a single Good Agricultural Practice (GAP). It is therefore not appropriate to use these MRLs to check compliance with a GAP.

⁽²⁾ In brackets the origin of the residue (ma: maneb; me: metiram; mz: mancozeb; pr: propineb; t: thiram; z: ziram).

⁽³⁾ As all dithiocarbamates result in the final CS₂ residue, discrimination among them is generally not possible. However single residue methods are available for propineb, ziram and thiram. These methods should be implemented on a case by case basis when the specific quantification of propineb, ziram and/or thiram is required.

(*) Indicates lower limit of analytical determination.

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 4 April 2007

on State aid C 14/06 which Belgium is planning to implement for General Motors Belgium in Antwerp

(notified under document number C(2007) 435)

(Only the Dutch and French versions are authentic)

(Text with EEA relevance)

(2007/612/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

(1) The planned training aid to General Motors Belgium in Antwerp was notified to the Commission by letter of 8 December 2005, registered as received on

14 December. The Commission requested further information on 4 January 2006 and Belgium replied by letter of 7 February 2006, registered as received on 10 February. The Commission asked for further clarifications on 15 February 2006 and these were submitted by letter of 2 March 2006, registered as received on 8 March.

(2) By letter of 26 April 2006, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the notified aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 1 September 2006 ⁽²⁾. The Commission invited interested parties to submit comments on the measures. No third party submitted comments.

(3) In a letter of 31 May 2006, registered as received on 6 June, the Belgian authorities reacted to the decision initiating the procedure. By letters of 13 December 2006 and 5 February 2007, they submitted additional information. A meeting between the Commission and the Belgian authorities was held on 13 February 2007. Belgium submitted further information by letter of 20 February 2007. On 23 February the Commission sent a new request for information to which the Belgian authorities replied by letter of 28 February.

⁽¹⁾ OJ C 210, 1.9.2006, p. 6.

⁽²⁾ See footnote 1.

2. DESCRIPTION OF THE PROJECT

- (4) The beneficiary of the aid would be General Motors Belgium in Antwerp (hereinafter 'GM Belgium'), which is part of the General Motors Corporation ('GMC'). GMC activities in Europe ('GM Europe') are managed by a dedicated management team. The company, which was set up in 1924, produces car parts for internal use and for other GMC subsidiaries and also assembles cars. In 2005 it produced 253 000 cars. The bulk of production is exported. The plant currently assembles the Opel Astra model, which is present on a segment of the automobile market where, as confirmed by the Belgian authorities, competition is particularly strong. The company employs around 5 000 workers.
- (5) GM Belgium has announced an investment programme of EUR 127 million for the period 2005-07, including:
- a) The production of a new version of the Astra model: in addition to the three versions already being produced, the plant will manufacture the Astra with a retractable hardtop (the 'cabrio' or 'Astra TwinTop'). Until now, the 'cabrio' version has not been produced by GM Europe but has been outsourced to the Italian company Bertone.
 - b) The doubling of the capacity of the press shop: the extension of the press activities is part of GM Europe's strategy for production to be matched more closely to local needs. The enhanced self-supply of bodywork parts and the more efficient logistics between the group's various subsidiaries will make it possible to reduce the number of parts transported between plants.
- (6) These two additional activities will limit the reduction in the workforce in Antwerp and guarantee the future of the plant. They entail the introduction of new machines, new components, new assembly techniques and new working methods. For this reason, a training programme linked to these additional activities and covering the period 2005-07 has been set up. The costs amount to EUR 19,94 million, and the notified aid to EUR 5 338 500. As Antwerp is located in a non-assisted area, the maximum aid intensity is 50 % for general training and 25 % for specific training. The aid is to be granted as *ad hoc* aid by the Flemish Region (*Vlaamse Gemeenschap*).
- (7) According to the information provided by Belgium, the programme includes elements of general training costing EUR 6,22 million. The general training will cover activities related to:
- technical training (EUR 2,63 million) (trainers: 90 % external and 10 % internal): welding, fork-lift-truck drivers, roller bridge, toolmakers, maintenance technicians, Allen Bradley, Controllogix;
 - basic training (EUR 0,79 million) (trainers: 95 % external and 5 % internal): IT training (office software: Excel, Access, Word, PowerPoint, etc.), social skills (presentation, communication, leadership, etc.) and upgrading of basic knowledge (finance for non-finance staff, ISO standards, safety skills);
 - general coordination (EUR 0,89 million) (advisers: 100 % internal): a temporary team comprising staff from different departments will be in charge of the development, follow-up and support of the general training activities included in the training programmes. This item is not training in itself but represents the cost of advisory services in connection with the general part of the training programme;
 - simulated work environment (SWE) (EUR 1,89 million) (trainers: 100 % internal): training on the global production principles implemented in a complex work environment. In a simulated work environment, explanation of the following concepts and demonstration of their increasing importance: workplace organisation, safety, working to standards, visual management, cost saving, permanent improvement, etc. All 5 000 employees of GM Belgium will follow the SWE training in groups of 17. It will take place in a dedicated training room containing a simulated production line with wooden cars.
- (8) The *specific training* costs amount to EUR 13,73 million and cover activities related to:
- on-the-job training (EUR 4,54 million) (trainers: 100 % internal): practical training of workers, on an individual basis, at their workplace;

— training related to the extension of the press activities (EUR 4,35 million) (trainers: 20 % external and 80 % internal): a broader variety and larger quantity of metal sheets will be produced at GM Belgium. In order to prepare the current workforce for this, a higher degree of technical skills is required. Accordingly, training activities will take place that increase the technical skills of the press workforce (perforating matrixes, cutting tools, etc.);

— specific technical training (EUR 4,82 million) (trainers: 20 % external and 80 % internal): the start of production of the Astra TwinTop will affect the plant's existing production processes, in particular the press, bodywork, paint shop, assembly, quality control and logistic activities. Likewise, the workplace layout will be fully reorganised. A group of engineering and team representatives will assist the heads of section in implementing these modifications to the production process.

3. REASONS FOR INITIATING THE PROCEDURE

(9) In its decision of 26 April 2006 to initiate the procedure, the Commission expressed its doubts as to the necessity of the aid and wondered whether the training activities would have been undertaken in any event, even without aid. As the aid did not seem to lead to additional activities on the part of the beneficiary, it appeared to have no positive effect, but to be only distortive. If this analysis were confirmed, the aid could not be authorised.

(10) Regarding the training activities linked to the launch of a new model, the Commission observed that, in the car industry, the production of a new model is a normal and regular feature necessary to maintain competitiveness. The training costs associated with the launching of a new model are therefore normally incurred by car makers solely on the basis of the market incentive. Clearly, in order to produce new models, car manufacturers need to train their workforce in the new techniques to be adopted. Consequently, the training activities in question would most probably have been undertaken by GM Europe in any event, notably in the absence of aid. This seems also to be the behaviour of most competitors in the industry.

(11) The Commission raised similar questions about the incentive effect of the aid in supporting the extension

of the press activities: press-related training expenses are necessary for (increasing) the production of car parts, which is a normal activity in the automobile industry. Car parts constitute an important and indispensable input to the assembly plant and represent a significant part of the cost of the car. Thus, market forces alone should suffice to prompt the company to incur the corresponding training expenses. Therefore, the training activities covered would probably have been undertaken in any event, and notably in the absence of aid.

(12) The Commission therefore asked Belgium to explain why, in this case and contrary to what is observed for most car manufacturers in the Community, it considers that the beneficiary would not be able (or willing) to cover the expected costs of the training activities thanks to the benefits it can derive from them (in particular, the ability to produce a new product and/or the increased productivity of the trained workforce). The Commission also argued that, at this stage of the procedure, Belgium has not provided evidence that market forces alone would not prompt the company to undertake the planned training programme.

(13) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 1 September 2006 ⁽³⁾. The Commission invited interested parties to submit comments on the measures. No third party submitted comments.

4. COMMENTS FROM BELGIUM

(14) Belgium contests the Commission's initial assessment on two grounds. First, it considers that the principles of legal certainty, equality of treatment and good administration have been infringed. For example, Belgium observes that the Commission has consistently approved similar training aid in the past, including for GM Belgium. The Belgian authorities also claim that the Commission changed dramatically its interpretation of Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽⁴⁾ ('the Regulation') only six months before its expiry. According to the Belgian authorities, the Regulation has been applied in a consistent manner for four and half years. Under the principle of good administration, the Commission should have waited for its expiry and amended it at the time in accordance with the new approach.

⁽³⁾ See footnote 1.

⁽⁴⁾ OJ L 10, 13.1.2001, p. 20. Its validity has been prolonged until 30 June 2008 by Commission Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

(15) As a subsidiary argument, Belgium alleges that the training activities concerned have important positive effects for the economy. It also asserts that this training programme goes beyond the mere needs of the company. However, this assertion has been substantiated only for certain parts of the training programme.

(16) Belgium also argues that, like the earlier versions of the model, the Astra TwinTop could have been built by Bertone.

(17) Lastly, the Belgian authorities had already claimed before the initiation of the procedure ⁽⁵⁾ that GM Europe had carried out comparative studies to determine the best location for production of the Astra TwinTop and that the training aid had been a factor in the award of the project to GM Belgium. Belgium considers that, under the circumstances, the aid is necessary.

5. ASSESSMENT OF THE AID

5.1. Existence of aid

(18) The Commission considers that the measure constitutes state aid within the meaning of Article 87(1) of the Treaty: it takes the form of a grant by the Flemish Government and is therefore financed through state resources. The measure is selective as it is limited to General Motors Belgium. This selective grant could distort competition between GM Europe's production plants by conferring on General Motors Belgium an advantage relative to the other plants in the group. It could also distort competition with other car manufacturers. Moreover, the market for motor vehicles is characterised by extensive trade between Member States. The Commission also notes that GM Europe's plants are located in different Member States. Thus, the aid could distort competition and affect trade between Member States. In the light of the above, the Commission concludes that the notified measure constitutes state aid. Belgium does not dispute this conclusion.

5.2. Legal basis for the assessment

(19) Belgium asks that the aid be approved on the basis of Regulation (EC) No 68/2001 of 12 January 2001 as the aid is related to a training programme.

(20) In accordance with Article 5 of the Regulation, where the amount of aid granted to one enterprise for a single training project exceeds EUR 1 million, the aid is not exempted from the notification requirement of Article 88(3) of the Treaty. The Commission notes that the proposed aid in this case amounts to EUR 5,338 million, that it is to be granted to one company and that the training project is a single project. It therefore considers that the notification requirement applies to the proposed aid and that it has been duly complied with by Belgium.

(21) Recital 16 to Regulation (EC) No 68/2001 explains that this type of aid cannot be automatically exempted: 'It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect.'

(22) As already indicated in the decision to initiate the procedure, the Commission concludes that, since the measure is not exempt under Regulation (EC) No 68/2001, it has to be assessed directly on the basis of Article 87(3)(c) of the Treaty, which stipulates that 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered to be compatible with the common market. When assessing an individual training aid which, because of its size, does not qualify for the exemption laid down in that Regulation and has therefore to be assessed directly on the basis of Article 87(3)(c) of the Treaty, the Commission nevertheless applies by analogy the same guiding principles as in the Regulation. This involves, among other things, verifying compliance with all the other exemption criteria laid down in the Regulation. The Commission, however, does not confine itself to verifying compliance with those criteria but has to conduct a more thorough analysis of the compatibility of the measure. The very purpose of individual notifications is a detailed assessment of the aid in the light of the special circumstances of the case.

⁽⁵⁾ Letter of 7 February 2006.

5.3. Compatibility with the common market

- (23) The Commission considers that the notified project complies with the formal exemption criteria laid down in Article 4 of Regulation (EC) No 68/2001. First, the notified eligible costs comply with Article 4(7) of the Regulation. In particular, the trainees' personnel costs covered by the aid seem to have been limited to the amount of the total of the other eligible costs⁽⁶⁾. Second, in accordance with Article 4(2) and (3), the aid intensity has been limited to 25 % for specific training and to 50 % for general training since GM Belgium is a large company located in a non-assisted area and the training is not given to disadvantaged workers.
- (24) However, the Commission observes that an aid measure can be found compatible with the common market pursuant to Article 87(3)(c) of the Treaty only when it is necessary to enable the beneficiary to undertake the activity in question. It notes that the necessity of the aid is a general compatibility criterion. Where the aid does not lead to additional activities being undertaken by the beneficiary that would have not been achieved by market forces alone, the aid cannot be deemed to have positive effects likely to offset the distortion of trade and cannot, therefore, be authorised. With regard to compatibility pursuant to Article 87(3)(c) of the Treaty, the aid does not 'facilitate' the development of economic activities if the company would have undertaken the supported activities in any event, and notably in the absence of aid.
- (25) In the context of training aid, recital 10 to Regulation (EC) No 68/2001 states that 'Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in employment strategy. In view of the fact that enterprises in the Community generally underinvest in the training of their workers, State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market and therefore exempted from prior notification.' Recital 11 adds that it must be 'ensure[d] that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible [...]'.
(26) Accordingly, the market failure acknowledged by Regulation (EC) No 68/2001 is that firms '*underinvest in the training of their workers*'. Indeed, when planning new training activities, a company will usually compare the cost of those activities with the benefits it can derive from them (such as increased productivity or the ability to produce new products). The company will generally not take into account the benefits for the Community economy as a whole which it is not able to capture for itself. It will also consider whether there are (cheaper) alternatives to training, such as the hiring of an already skilled workforce (possibly at the expense of existing employees). Therefore, in certain cases training aid effectively addresses a specific market failure. Under those circumstances, aid is '*necessary to obtain the Community objective which market forces alone would not make possible*'.
- (27) As regards verification of the necessity of training aid in the car industry, the Commission observes that, over the last year and a half, it has amassed evidence that some car manufacturers are putting their production plants in different Member States into competition with each other for the production of new models. Car makers compare several plants when they plan to launch a new product and then decide where to locate the production on the basis of total operating costs, which means all types of costs, including government support of any kind, notably training aid. This seems to stem from the fact that large car manufacturers have production capacities in excess of demand and that their production lines have become more flexible. A plant can thus accommodate the production of additional models more easily. In view of this economic reality, where competition between production plants is more intense, and in view of the resulting risk that certain training aid measures do not contribute to the common interest objective laid down in recital 10 to Regulation (EC) No 68/2001 but simply constitute operating aid that distorts competition, the Commission has to scrutinise more carefully the need for aid 'in order to ensure that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible' (recital 11 to the Regulation)⁽⁷⁾. This assessment is even more justified in view of the current market situation in the motor vehicle sector, characterised as it is by significant overcapacity within the EU, which persists because of sluggish demand growth and the significant productivity gains regularly achieved⁽⁸⁾.

⁽⁶⁾ On account of this limitation of the trainees' costs that are eligible for aid, eligible general training costs are reduced to EUR 5 438 000 and eligible specific training costs to EUR 10 478 000.

⁽⁷⁾ The Commission came to similar conclusions in paragraph 33 of its decision of 4 July 2006 concerning Ford Genk (OJ L 366, 21.12.2006, p. 32).

⁽⁸⁾ Faced with this weak demand growth, productivity gains and falling prices, several large car manufacturers have closed plants or reduced their workforce in the Community in recent years. GM Europe announced a major restructuring plan at the end of 2004 that called for a reduction of the workforce by up to 12 000 persons: http://www.gmeurope.com/news/archive_0410.html

(28) Since in the present case several plants have been put into competition and since the aid, therefore, may have been granted for objectives other than prompting the firm to undertake additional training activities, the Commission considers it necessary to verify the necessity of the aid. Contrary to what was claimed by Belgium in response to the decision to initiate the procedure, the Commission considers that it is legally authorised to undertake that verification. As pointed out by Belgium, the Commission did not in earlier cases analyse in detail the need for specific training aid for launch costs. This, however, does not prevent it from doing so once it notices that the economic conditions on the relevant markets have changed ⁽⁹⁾.

(29) The Commission notes that the training programme at issue is related to two new activities at the plant, namely the production of the Astra TwinTop and the extension of press activity.

Necessity of the aid related to the production of the new Astra TwinTop

(30) The Belgian authorities allege in the notification ⁽¹⁰⁾ that, owing to assembly of the Astra TwinTop, more manual operations, such as welding, have to be carried out. They assert that the production of this type of car has an influence on all the activities of the company (bodywork, paint shop, press hall, logistics and assembly) and that the introduction of each new model invariably entails:

- the assembly of new parts;
- the introduction of modern working methods;
- new assembly techniques.

(31) They claim that not only does a new model therefore involve the introduction of a new product but also that many workers will have to adapt to new machines, parts, assembly techniques and working methods.

⁽⁹⁾ In paragraph 52 of its judgment of 30 September 2003 in Joined Cases C-57/00 P and C-61/00 P, the Court of Justice ruled that 'whatever the interpretation given by the Commission to Article 92(2)(c) [now 87(2)(c)] of the Treaty in the past, that cannot affect the correctness of the Commission's interpretation of that provision in the contested decision and hence its validity.' Similarly, in paragraph 177 of its judgment of 15 June 2005 in Case T-171/02, the Court of First Instance indicated that 'the legality of a Commission decision declaring that new aid does not fulfil the conditions under which the exemption in Article 87(3)(c) EC applies must be assessed solely in the context of that article, and not in the light of the Commission's earlier decision-making practice, assuming that is established.'

⁽¹⁰⁾ Annex 2 to the notification.

(32) This description confirms that, as in the case at hand, the introduction of a new model on a production line can generally be achieved successfully only after extensive significant training of the workforce. In other words, major training activities are necessary to produce the new model.

(33) Consequently, once GM Europe has decided to produce this model, the training costs become necessary to implement that business decision.

(34) As already stated in the decision initiating the procedure, the Commission notes that, in the car industry, the launching of a new model is a normal and regular feature indispensable to maintain market shares and profitability. Since new models require the workforce to be trained in the new production techniques, the training costs associated with a new model are incurred by car makers on the sole basis of the market incentive.

(35) The Belgian authorities have not presented any new elements contradicting this assessment. Despite the request in the decision initiating the procedure, they have not provided any convincing argument why GM would not have undertaken the training activities in the absence of aid.

(36) In this respect, Belgium claimed only that the training aid was necessary in order for GM Belgium to be the plant selected by the management of GM Europe for the production of the Astra TwinTop. Evidence in support of this claim was submitted. In addition, the Belgian authorities argued that the production of the new model could have been entrusted to Bertone, which is more familiar with producing that type of car.

(37) However, the Commission observes that, unlike regional investment aid, the objective of Regulation (EC) No 68/2001 is not to influence the choice of location of economic activities, but to remedy the underinvestment in training in the Community, as mentioned above. Moreover, Belgium has not explained why the hypothetical alternative subsidiary of GM Europe that would have been awarded production of the model would not have undertaken similar training activities ⁽¹¹⁾. On the contrary, the information submitted by Belgium shows that, under those circumstances, any other plant of GM Europe would in all likelihood have been forced to implement a similar training programme. Therefore, it cannot be concluded that the aid led GM Europe to carry out more training activities in the Community.

⁽¹¹⁾ The most likely candidates were plants already producing other versions of the Astra, and in particular Bochum (Germany).

- (38) As regards the claim by the Belgian authorities that the production of the new model could have been awarded to Bertone, it is not clear to the Commission what are the conclusions to be drawn from it. In particular, Belgium did not present in particular any factual evidence that the production by Bertone would have required less training than in the case of GM Europe⁽¹²⁾. In addition, it did not demonstrate that the aid played a role in GM Europe's decision to stop outsourcing production of that model. On the contrary, it is likely that this important strategic decision had already been taken before the Belgian authorities promised the aid. In conclusion, the fact that, like previous versions, the Astra TwinTop could have been outsourced to Bertone does not render the training aid necessary and compatible.

Necessity of the aid related to the extension of the press activities

- (39) The Belgian authorities allege that the extension of the press shop is part of GM's strategy in Europe to meet local needs more effectively, in order to reduce the transport of car parts between subsidiaries. As regards the Antwerp plant, the project entails:

— two additional presses;

— production of additional bodywork parts;

— introduction of new technologies.

- (40) Belgium claims that the extension also means that many of the workers will have to become familiar with the new machines, parts, press techniques and working methods. The training programme is designed to meet this need.

⁽¹²⁾ Bertone states in its website that 'Carrozzeria Bertone has always considered the human factor to be of strategic importance. [...] This is why Carrozzeria Bertone has always devoted special attention to continuously training and updating its workforce. In concrete terms, over the past two years this strategy has led to 240 hours of training [per capita]; an investment of 3 million euros.' <http://www.bertone.it/carrozzeria3.htm>

- (41) The above description confirms that, in general terms and in the case at hand, an extension of the press activity can be successful only if it includes significant training of the workforce. In other words, training is necessary for the extension of the press activities.

- (42) In the decision to initiate the procedure, the Commission questioned the incentive effect of the aid related to the extension of the press activities⁽¹³⁾. The Belgian authorities have not brought forward any new elements contradicting this assessment. In particular, they have not explained why GM would have not undertaken the training activities in question in the absence of aid.

Intermediate conclusion

- (43) On the basis of the above, it can be concluded that all training activities which provide workers with the skills necessary for the successful implementation of the two projects (production of the new model and extension of the press activities) would have been undertaken in any event, even without aid. Consequently, the corresponding aid does not lead to additional training but covers normal operating expenditure of the company, thereby reducing normal costs. The Commission considers therefore that the aid will distort competition and affect trading conditions to an extent contrary to the common interest⁽¹⁴⁾. Accordingly, the aid cannot be justified on the basis of Article 87(3)(c) of the Treaty. Since none of the other exemptions laid down in Article 87(2) and (3) of the Treaty can be applied either, the aid is incompatible with the common market.

- (44) The above conclusion applies irrespective of the *general* or *specific* nature of the training in question. In particular, the Commission notes that the general training activity labelled as 'technical training'⁽¹⁵⁾ concerns skills that are necessary for the two new activities and, more generally, for the operation of a competitive car plant⁽¹⁶⁾. However, the Belgian authorities have provided evidence showing that part of the *general* 'technical training' concerns skills that call for a lengthy training period and that a significant number of the workers involved leave the company each year. This is linked to a substantial shortage of those skills in the Belgian labour market ('bottleneck jobs'). The Commission considers that Belgium has sufficiently substantiated these arguments for three of the *general* 'technical training' activities.

⁽¹³⁾ See paragraph 11.

⁽¹⁴⁾ Case T-459/93 *Siemens SA v Commission*, ECR [1995] II-1675, paragraph 48.

⁽¹⁵⁾ See paragraph 7.

⁽¹⁶⁾ For example, the production of the new model requires the welding of more parts, which increases the company's need of welders.

Content of training	Total duration of learning period (hours)	Workforce turnover: annual percentage of workers leaving the firm	Eligible costs: participants	Eligible costs: other costs
Fork-lift-truck drivers	40	58 %	132 000	42 500
Toolmakers	2 000	13 %	660 000	355 000
Maintenance techniques	400	20 %	198 000	197 500

N.B: As regards 'welding', Belgium claims a total duration of the learning period of 60 hours and a workforce turnover in the plant of 4 %. The Commission considers that these figures are relatively low and do not prevent the company from appropriating the benefits of the training costs. The workforce turnover is therefore not high enough to deter the company from incurring those costs.

Thus it is apparent that, for those types of training, high workforce turnovers actually prevent the company from appropriating sufficient benefits to recoup the training costs incurred. Therefore, it is likely that the company would not incur those costs in the absence of aid.

further elements to the contrary, the Commission considers that the state aid seems to be necessary for the training in question to be carried out.

- (45) Accordingly, the Commission considers that the aid is necessary for the three training activities in question (unlike the rest of the *general* 'technical training').

Training activities not directly related to the two projects

- (46) In their notification, the Belgian authorities described the whole training programme as being designed to support the two projects in question⁽¹⁷⁾. However, additional information submitted by Belgium following the decision to initiate the procedure shows that some of the training activities relate to skills which are actually not indispensable for those projects. The following training items concerned (see respective descriptions above) are:

— basic training;

— simulated work environment (SWE).

- (47) The Commission notes that, contrary to the rest of the training programme, basic training and SWE relate to skills which are not necessary for the execution of the two projects at hand: the projects can be fully implemented and production started without a need for that type of training. Nor do these training items concern skills which are immediately required for the production of cars. Therefore, the reasoning developed above as to the necessity of the training is not applicable to them. As that training appears to exceed the needs of the company, it cannot be concluded that it would have been undertaken in the absence of aid. For want of

- (48) Lastly, the Commission observes that the expense item 'general coordination' does not concern a training activity as such but the advisory services in support of the *general* training. Therefore, it can also be partially included in part in the eligible costs, in so far as it covers 'basic training', 'SWE' and the part of the *general* 'Technical training' for which aid has been deemed necessary⁽¹⁸⁾.

- (49) Taking into account the rule in Regulation (EC) No 68/2001 that limits trainees' costs to the total amount of the other expenses, the eligible costs in the case of the parts of the training programme for which aid is necessary amount to EUR 4,362 million, and the aid itself to EUR 2,181 million. Since, as mentioned in paragraph 23, the other formal conditions in Regulation (EC) No 68/2001 are also met, the Commission concludes that this part of the notified aid is compatible with the common market.

6. CONCLUSION

- (50) The Commission finds that the measures notified by Belgium that represent eligible costs of EUR 4,362 million, corresponding to an aid amount of EUR 2,181 million, comply with the criteria for compatibility with the common market pursuant to Article 87(3)(c) of the Treaty.

⁽¹⁸⁾ On the basis of the number of training hours, the Commission concludes that 80,71 % of the 'general coordination' costs, representing an amount of EUR 0,723 million, can be attributed to basic training, SWE and the part of *general* technical training for which aid is necessary. The training hours considered are: (i) *technical training* (letter from Belgium dated 28 February 2007): 50 800 hours, of which 30 000 related to the three activities for which aid is deemed necessary; (ii) *basic training* (letter from Belgium dated 7 February 2006; number of trainees multiplied by the average number of training hours per trainee over three years): 17 000 hours; and (iii) *SWE* (idem): 40 000 hours.

⁽¹⁷⁾ Annex 2 to the notification.

(51) The Commission finds that the rest of the aid is not necessary for carrying out the corresponding training activities. The aid is not compatible with the common market under any derogation laid down in the Treaty and must therefore be prohibited. According to the Belgian authorities, the aid has not yet been granted and so there is no need for it to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Belgium is planning to implement for a training project at General Motors Belgium in Antwerp is incompatible with the common market to the extent of EUR 3 157 338,40.

That part of the aid may accordingly not be implemented.

The remainder of the state aid, amounting to EUR 2 181 161,60, is compatible with the common market pursuant to Article 87(3)(c) of the Treaty.

Article 2

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

Article 3

This Decision is addressed to Belgium.

Done at Brussels, 4 April 2007.

For the Commission

Neelie KROES

Member of the Commission
